

19-2524 Process Revisions

As you know, a small workgroup consisting of Idaho Supreme Court, Department of Correction, and Department of Health and Welfare representatives met throughout last year dedicated to drafting 19-2524 changes that would see the following:

1. All felony offenders would be subject to a screening by the Idaho Department of Corrections (IDOC) for both mental health and substance abuse issues, unless waived by the court, and in within seven (7) days post guilty plea/finding.
2. If the screening indicates a serious mental illness may be present then IDOC will refer the defendant to IDHW for a mental health examination.
3. Offenders receiving a mental health examination would be assessed for a serious mental illness within 35 days of the plea/finding of guilt.
4. The screening looks at both mental health and substance abuse issues and would be conducted by IDOC and paid for by IDOC. Treatment and evaluation for substance abuse will be paid for by IDOC. Treatment and examinations for mental health will be paid for by IDHW.
5. If a mental health examination is recent and covers the necessary information the court would not have to order a subsequent mental health evaluation.
6. If the court determines that a defendant suffers from a serious mental illness, then the judge may order that as a condition of release, the defendant undergoes treatment, consistent with the plan of treatment subject to modification by the court.

The workgroup also committed to reviewing these processes through a pilot project. With “lessons learned” regarding potential stretched timeframes with multiple responsibilities and duplicate information gathered across both agencies, we revisited the process for efficiencies. We found that for substance abuse a screening tool would be unnecessary and IDOC has committed to conducting a GAIN-I on every offender. As part of the GAIN-I, there are a series of mental health questions (**page 10 of the attached packet**) that DHW could review for their treatment recommendations to be included in the PSI that would improve timelines and provide judges quality mental health information at sentencing.

We are asking that you review the attached packet of materials in anticipation of the district judges conference and the Wednesday the 23rd, 11:45 – 12:25 session, ***Felony Sentencing Committee Update & Feedback-19-2524 – IDOC/IDHW; Hon. Joel Horton, Justice, Idaho Supreme Court; Hon. Barry Wood, Senior Judge, Idaho Supreme Court.*** The 19-2524 workgroup will present the attached information and ask for additional feedback on our proposed process.

Keep in mind, we are attempting to build the best process to improve timeliness and quality of information provided to judges at sentencing and will review for statutory changes afterwards.

Attached:

- 1) 19-2524 new statute effective March 2013 ~ **page 3**
- 2) 19-2524 proposed revisions ~**page 9**
- 3) Mental Health Questions from GAIN-I ~ **page 10**
- 4) Sample of current 19-2524 mental health examination summary ~ **page 12**
- 5) Sample of proposed 19-2524 mental health summary ~ **page 14**



Idaho Statutes

TITLE 19 CRIMINAL PROCEDURE

CHAPTER 25 JUDGMENT

19-2524. SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT. [EFFECTIVE UNTIL MARCH 1, 2013] (1) When a defendant has pled guilty to or been found guilty of a felony, or when a defendant who has been convicted of a felony has admitted to or been found to have committed a violation of a condition of probation, the court, prior to the sentencing hearing or the hearing on revocation of probation, may order the defendant to undergo a substance abuse assessment and/or a mental health examination.

(2) If a substance abuse assessment ordered pursuant to this section indicates that the defendant is a drug addict or alcoholic, as those terms are defined in section 39-302, Idaho Code, then the assessment submitted to the court shall also include a plan of treatment. If the court concludes at sentencing that the defendant is a drug addict or alcoholic, as those terms are defined in section 39-302, Idaho Code, and if the court places the defendant on probation, the court may order the defendant, as a condition of probation, to undergo treatment consistent with the plan of treatment, subject to modification of the plan of treatment by the court.

(3) (a) If a mental health examination is ordered pursuant to this section, the report of the mental health examination shall include the following:

- (i) A description of the nature of the examination;
- (ii) A diagnosis, evaluation or prognosis of the mental condition of the defendant;
- (iii) An analysis of the degree of the defendant's illness or defect and level of functional impairment;
- (iv) A consideration of whether treatment is available for the defendant's mental condition;
- (v) An analysis of the relative risks and benefits of treatment or nontreatment;
- (vi) A consideration of the risk of danger which the defendant may create for the public if at large; and
- (vii) A plan of treatment if the mental health examination indicates that:

1. The defendant suffers from a severe and reliably diagnosable mental illness or defect;
2. Without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the defendant;
3. Treatment is available for such illness or defect; and
4. The relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment.

(b) If the court, after receiving the mental health assessment and plan of treatment, determines that additional information is necessary to determine whether the factors listed above in subsection

(3) (a) are present, or to determine an appropriate plan of treatment, the court may order an evaluation and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist.

(c) If the court concludes at sentencing that all of the factors listed above in subsection (3)(a) are present, and if the court places the defendant on probation, then the court may order as a condition of probation that the defendant undergo treatment consistent with the plan of treatment, subject to modification of the plan of treatment by the court.

(4) Where the court has ordered either a substance abuse assessment or mental health examination of the defendant pursuant to this section, the court shall also order a criminogenic risk assessment of the defendant if such an assessment is not provided in the presentence report. Any substance abuse assessment or report of mental health examination shall, in addition to the criminogenic risk assessment, be delivered to the court, the defendant and the prosecuting attorney prior to the sentencing or the hearing on revocation of probation.

(5) If the defendant is sentenced to the custody of the board of correction, then any substance abuse assessment, report of mental examination, plan of treatment or criminogenic risk assessment shall be sent to the department of correction along with the presentence report.

(6) The expenses of all screenings and assessments for substance use disorder provided or ordered under this section shall be borne by the department of correction. The expenses for treatment provided or ordered under this section shall be borne by the department of correction unless the defendant is placed in a treatment program that is funded by an alternate source. The department of correction shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of correction for the service provided to the defendant. The department of correction may promulgate rules for a schedule of fees to be charged to defendants for the substance use disorder assessments and treatments provided to the defendants based upon the actual costs of such services and the ability of a defendant to pay. The department of correction shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

(7) The expenses of all mental health examinations and treatment provided or ordered by the court pursuant to this section shall be borne by the department of health and welfare. The department of health and welfare shall be entitled to any payment received by the defendant or to which he may be entitled for the examinations and treatment, and to any payment from any public or private source available to the department of health and welfare because of the examinations and treatment provided to the defendant. The department of health and welfare is authorized to promulgate rules for a schedule of fees to be charged to defendants for the mental health examinations and treatments provided to the defendants based upon the costs of such services and the ability of the defendants to pay. The department of health and welfare shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

19-2524. CONSIDERATION OF COMMUNITY-BASED TREATMENT TO MEET BEHAVIORAL HEALTH NEEDS IN SENTENCING AND POST-SENTENCING PROCEEDINGS. [EFFECTIVE MARCH 1, 2013] (1) After a defendant has pled guilty to or been found guilty of a felony, and at any time thereafter while the court exercises jurisdiction over the defendant, behavioral health needs determinations shall be conducted when, and as provided by, this section.

(a) As part of the presentence process, a screening to determine whether a defendant is in need of a substance use disorder assessment and/or a mental health examination shall be made in every felony case unless the court waives the requirement for a screening. The screening shall be performed within seven (7) days after the plea of guilty or finding of guilt.

(b) At any time after sentencing while the court exercises jurisdiction over the defendant, the court may order such a screening to be performed by individuals authorized or approved by the department of correction if the court determines that one is indicated. The screening shall be performed within seven (7) days after the order of the court requiring such screening.

(2) Substance use disorder provisions.

(a) Should a screening indicate the need for further assessment of a substance use disorder, the necessary assessment shall be timely performed so as to avoid any unnecessary delay in the criminal proceeding and not later than thirty-five (35) days after a plea of guilty or finding of guilt or other order of the court requiring such screening. The assessment may be performed by qualified employees of the department of correction or by private providers approved by the department of health and welfare. If the screening or assessment is not timely completed, the court may order that the screening be performed by another qualified provider.

(b) Following completion of the assessment, the results of the assessment, including a determination of whether the defendant meets diagnostic criteria for a substance use disorder and the recommended level of care, shall be submitted to the court as part of the presentence investigation report or other department of correction report to the court.

(c) Following the entry of a plea of guilty or a finding of guilt, the court may order, as a condition of the defendant's continued release on bail or on the defendant's own recognizance, that if the assessment reflects that the defendant meets diagnostic criteria for a substance use disorder, the defendant shall promptly, and prior to sentencing, begin treatment at the recommended level of care.

(d) If the court concludes at sentencing, or at any time after sentencing while the court exercises jurisdiction over the defendant, that the defendant meets diagnostic criteria for a substance use disorder, and if the court places the defendant on probation, the court may order the defendant, as a condition of probation, to undergo treatment at the recommended level of care, subject to modification of the level of care by the court. If substance use disorder treatment is ordered, all treatment shall be performed by a qualified private provider approved by the department of health and welfare. The court may order that if the level of care placement or the treatment plan is modified in any material term, the department of correction shall notify the court stating the reason for the modifications and informing the court as to the clinical alternatives available to the defendant.

(e) In no event shall the persons or facility doing the assessment be the person or facility that provides the treatment unless this requirement is waived by the court or where the assessment and treatment are provided by or through a federally recognized Indian tribe or federal military installation, where diagnosis and treatment are appropriate and available.

(f) Defendants who have completed department of correction institutional programs may receive after care services from qualified

employees of the department of correction.

(g) The expenses of all screenings and assessments for substance use disorder provided or ordered under this section shall be borne by the department of correction. The expenses for treatment provided or ordered under this section shall be borne by the department of correction unless the defendant is placed in a treatment program which is funded by an alternate source. The department of correction shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of correction for the service provided to the defendant. The department of correction may promulgate rules for a schedule of fees to be charged to defendants for the substance use disorder assessments and treatments provided to the defendants based upon the actual costs of such services and the ability of a defendant to pay. The department of correction shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

(3) Mental health provisions.

(a) Should the mental health screening indicate that a serious mental illness may be present, then the department of correction shall refer the defendant to the department of health and welfare for further examination. The examination shall be timely performed so as to avoid any unnecessary delay in the criminal proceeding and not later than thirty-five (35) days after a plea of guilty or finding of guilt or other order of the court requiring such screening.

(b) The examination may be performed by qualified department of health and welfare employees or by private providers under contract with the department of health and welfare, provided that such examination shall at a minimum include an in-depth evaluation of the following:

- (i) Mental health concerns;
- (ii) Psychosocial risk factors;
- (iii) Medical, psychiatric, developmental and other relevant history;
- (iv) Functional impairments;
- (v) Mental status examination;
- (vi) Multiaxial diagnoses; and
- (vii) Any other examinations necessary to provide the court with the information set forth in paragraph (c) of this subsection.

(c) Upon completion of the mental health examination, the court shall be provided, as part of the presentence report or other department of health and welfare report to the court, a copy of the mental health assessment along with a summary report. The summary report shall include the following:

- (i) Description and nature of the examination;
- (ii) Multiaxial diagnoses;
- (iii) Description of the defendant's diagnosis and if the defendant suffers from a serious mental illness (SMI) as that term is now defined, or is hereafter amended, in IDAPA 16.07.33.010, to also include post-traumatic stress disorder;
- (iv) An analysis of the degree of impairment due to the defendant's diagnosis;
- (v) Consideration of the risk of danger the defendant may create for the public; and
- (vi) If the defendant suffers from a serious mental illness the report shall also include a plan of treatment that addresses the

following:

1. An analysis of the relative risks and benefits of treatment versus nontreatment;
2. Types of treatment appropriate for the defendant; and
3. Beneficial services to be provided.

(d) If the court, after receiving a mental health examination and plan of treatment, determines that additional information is needed regarding the mental condition of the defendant or the risk of danger such condition may create for the public, the court may order additional evaluations and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist.

(e) If the court concludes that the defendant suffers from a serious mental illness as defined in paragraph (c)(iii) of this subsection and that treatment is available for such serious mental illness, then the court may order, as a condition of the defendant's release on bail or on the defendant's own recognizance or as a condition of probation, that the defendant undergo treatment consistent with the plan of treatment, subject to modification of the plan of treatment by the court. If the plan of treatment is modified in any material term, the department of health and welfare shall notify the court in a timely manner stating the reasons for the modification and informing the court as to the clinical alternatives available to the defendant.

(f) If treatment is ordered, all treatment shall be performed by a provider approved by the department of health and welfare.

(g) The expenses of all mental health examinations and/or treatment provided or ordered under this section shall be borne by the department of health and welfare. The department of health and welfare shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of health and welfare for the service provided to the defendant. The department of health and welfare is authorized to promulgate rules for a schedule of fees to be charged to defendants for the mental health examinations and treatments provided to the defendants based upon the actual costs of such services and the ability of a defendant to pay. The department of health and welfare shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

(4) Unless otherwise ordered by the court, if the defendant is in treatment for a substance use disorder or mental illness, any substance use disorder assessment required under subsection (2) of this section or mental health examination required under subsection (3) of this section need not be performed while the defendant is in such treatment. In such circumstances, the court may make such order as it finds appropriate to facilitate the completion of the sentencing process or other proceeding before the court, including providing for the assessment and treatment records to be included in the presentence investigation report or other report to the court.

(5) Any substance use disorder assessment including any recommended level of care or mental health examination including any plan of treatment shall be delivered to the court, the defendant and the prosecuting attorney prior to any sentencing hearing or probation revocation hearing.

(6) A substance use disorder assessment prepared pursuant to the provisions of this section shall satisfy the requirement of an alcohol evaluation prior to sentencing set forth in section 18-8005(11), Idaho

Code, and shall also satisfy the requirement of a substance abuse evaluation prior to sentencing set forth in section 37-2738, Idaho Code.

(7) If the defendant is sentenced to the custody of the board of correction, then any substance use disorder assessment, mental health examination or plan of treatment shall be sent to the department of correction along with the presentence report.

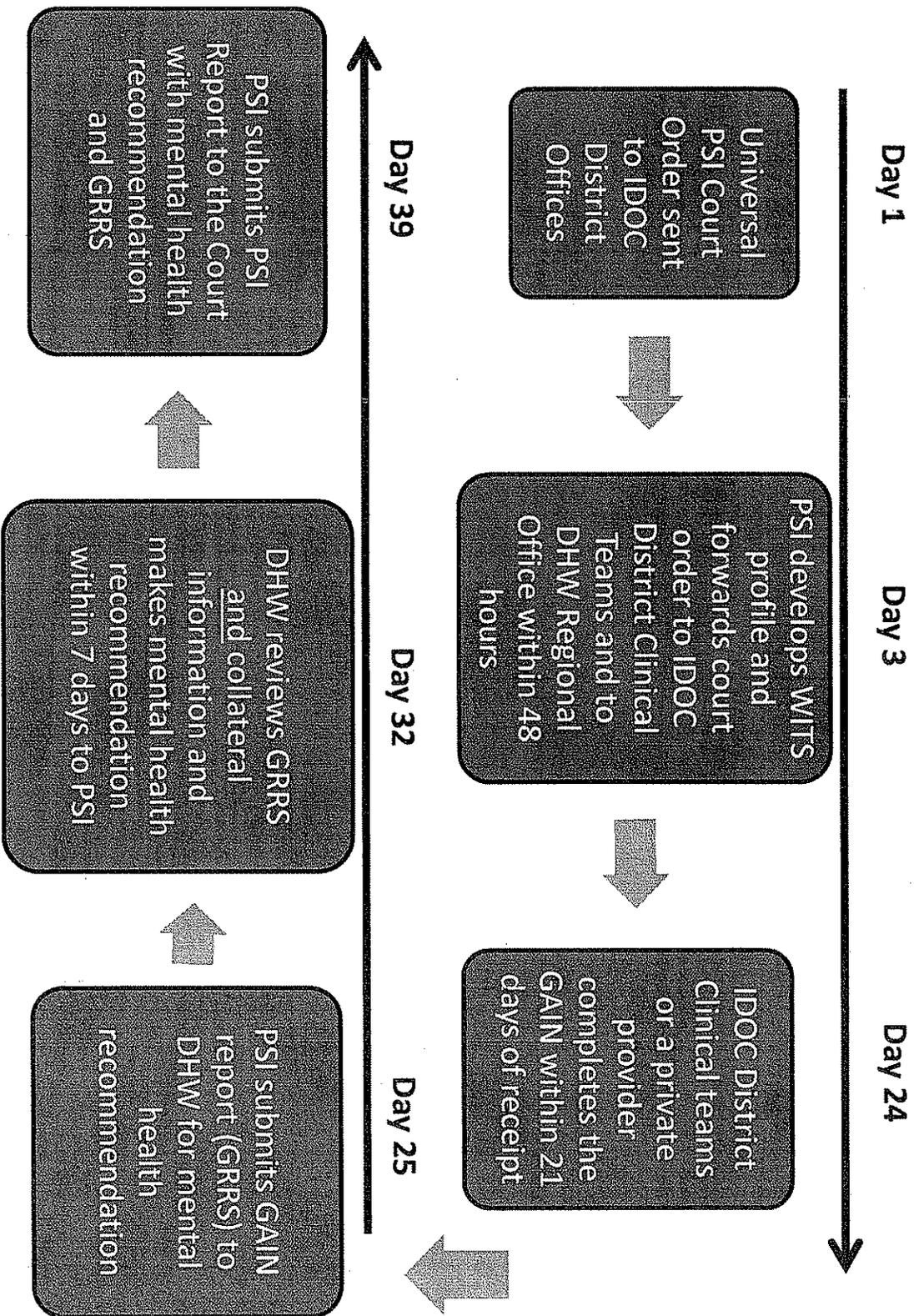
History:

[19-2524, added 2007, ch. 310, sec. 1, p. 875; am. 2012, ch. 225, sec. 2, p. 612; am. 2012, ch. 225, sec. 3, p. 614.]

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19-2524 Proposed Revisions

Maximum
Timeline:



Mental Health Questions From the GAIN-I

1. **During the past 90 days**, on how many **days** have you cut, burned or hurt yourself on purpose?

*The next questions are about **treatment** for mental, emotional, behavioral or psychological problems.*

*This includes taking medication like Ritalin that a regular doctor may have given you to help you focus or calm down. Do not count treatment that was **only** for substance use or health problems.*

2. Has a doctor, nurse or counselor **ever** told you that you have a mental, emotional or psychological problem, or told you the name of a particular condition you have or had?

What did they say? (**Please record and select all that apply**)

Options:

1. Alcohol or drug dependence
2. Attention-deficit/hyperactivity disorder
3. Antisocial personality disorder
4. Anxiety or phobia disorder
5. Borderline personality
6. Conduct disorder
7. Major depression
8. Other depression, dysthymia, bipolar or mood disorder
9. Mental retardation, developmental or other communication disorder
10. Oppositional defiant disorder
11. Pathological gambling
12. Post or acute traumatic stress disorder
13. Somatoform, pain, sleep, eating or body disorder
14. Other cognitive disorder (like delirium, dementia, amnesic)
15. Other mental breakdown, nerves or stress
16. Other personality disorder (like avoidant, dependent, histrionic, narcissistic, obsessive-compulsive, paranoid, schizoid or schizotypal)
17. Other schizophrenia or psychotic disorder

3. How many **times in your life** have you...

a. been treated in an emergency room for mental, emotional, behavioral or psychological problems?

b. been admitted for at least one night to a hospital for mental, emotional, behavioral or psychological problems?

4. Are you currently taking medication for mental, emotional, behavioral or psychological problems? (**Please describe specific medications and the reasons they believe they are taking them**)

Mental Health Questions From the GAIN-I

5. When was the **last** time, if ever, you were treated for a mental, emotional, behavioral or psychological problem by a mental health specialist or in an emergency room, hospital or outpatient mental health facility, or with prescribed medication?

(Select one)

Within the past two days	6
3 to 7 days ago	5
1 to 4 weeks ago	4
1 to 3 months ago.....	3
4 to 12 months ago.....	2
More than 12 months ago	1
Never	0

6. **During the past 90 days**, how many...

Please answer the next questions using the number of times, nights or days.

- times** have you had to go to the **emergency room** for mental, emotional, behavioral or psychological problems?
- nights** total did you spend in the **hospital** for mental, emotional, behavioral or psychological problems?
- times** did you see a mental health doctor in an **office or outpatient clinic** for mental, emotional, behavioral or psychological problems?
- days** did you take prescribed **medication** for mental, emotional, behavioral or psychological problems?

7. Are you currently being treated for a mental, emotional, behavioral or psychological problem? **(Where do you go?)**

8. During the **last 12 months**, have you had significant problems with:

- avoiding snakes, the dark, being alone, elevators or other things because they frightened you?
- thoughts that other people were taking advantage of you, not giving you enough credit, or causing you problems?
- thoughts that someone was watching you, following you or out to get you?
- seeing or hearing things that no one else could see or hear or feeling that someone else could read or control your thoughts?

19-2524 EXAMINATION REPORT

Report Date: 12/4/12	Client Name: Charles [REDACTED]		
Report Completed By: Roy Theriot LCSW	Case Number: CR FE 12-11788		
Assessment Date (date of face to face): 11/29/12	Regional POC: Ellie Merrick		
Assessment Completed by: Roy Theriot LCSW	DOB: [REDACTED]	Age: 38	Sex: Male

DESCRIPTION AND NATURE OF EXAMINATION § 19-2524 (3.a.i)

Pursuant to the Court's Order dated 11/1/12, and in accordance with Idaho Code § 19-2524, I, Roy Theriot, an Adult Mental Health Clinician for the State of Idaho, conducted a mental health examination of the above-named Defendant on 11/29/12.

The Idaho Standard Mental Health Assessment tool was used to examine Mr. [REDACTED] current state of mind and obtain a comprehensive description of Mr. [REDACTED] biographical and historical information, psychiatric history, and functional limitations.

DIAGNOSIS, EVALUATION OR PROGNOSIS § 19-2524 (3.a.ii)

The Diagnostic and Statistical Manual of Mental Disorders, Forth Edition, Text Revision (DSM-IV-TR) is a categorical classification that divides mental disorders into three types based on criteria sets with defining features. The DSM-IV-TR along with the information gathered during the mental health examination was used to formulate the following Multiaxial Diagnoses.

AXIS I	296.33 Major Depressive Disorder, Recurrent, Severe With Psychotic Features 300.02 Generalized Anxiety Disorder 314.00 Attention-Deficit/Hyperactivity Disorder, Predominantly Inattentive Type 304.80 Polysubstance Dependence		
AXIS II	799.9 Diagnosis Deferred on Axis II		
AXIS III	799.9 Diagnosis Deferred on Axis III		
AXIS IV	V62.6 Problems related to Interaction with the legal system/crime V62.81 Problems with Primary Support Group		
AXIS V	Current GAF: 51	Highest GAF Past Year:	

Clinical Formulation:
[REDACTED] is a 38 y/o white male diagnosed with major depression severe with psychotic features. Mr. [REDACTED] reports auditory hallucinations where he hears his name called, hears noise or derogatory statements. Mr. [REDACTED] reports he is often paranoid believing others are talking about him. Mr. [REDACTED] reports racing thoughts, insomnia with an average of 3 to 4 hours of sleep a night. Increased appetite, irritability, anhedonia, low energy, poor concentration, indecisiveness and suicidal thoughts from time to time. Additionally, Mr. [REDACTED] is diagnosed with ADHD, Generalized Anxiety Disorder and Polysubstance dependence.

ANALYSIS OF THE DEGREE OF MENTAL ILLNESS AND LEVEL OF FUNCTIONAL IMPAIRMENT § 19-2524 (3.a.iii)

Mr. [REDACTED] is diagnosed with Major Depression, Severe, with Psychotic features, ADHD, Generalized Anxiety Disorder and Polysubstance dependence. Mr. [REDACTED] functional deficits are problems with primary support group and problems related to interaction with the legal system.

AVAILABILITY OF TREATMENT FOR MENTAL CONDITION § 19-2524 (3.a.iv)

The following treatment options are available:
Mental health treatment in the community or incarcerated. Community treatment would include support with a broad variety of treatment options such as psychotherapy, behavioral interventions, pharmacological management, and case management.

Mr. [REDACTED] should follow the recommendations of the substance abuse evaluation.

ANALYSIS OF RELATIVE RISKS AND BENEFITS OF TREATMENT OR NONTREATMENT § 19-2524 (3.a.v)

Mr. [redacted] has demonstrated improved judgment and overall functioning when he has stabilized on psychotropic medications and complied with taking medication as prescribed. Close supervision and supportive counseling will provide Mr. [redacted] with the supports and monitoring he needs to maintain medication compliance.

RISK OF DANGER DEFENDANT MAY PRESENT FOR PUBLIC AT LARGE § 19-2524 (3.a.vi)

Mr. [redacted] criminal history includes: eluding officers, DUI, domestic violence and vehicle code violations, possession of a concealed weapon without a license, burglary, and battery on a law enforcement officer.

Mr. [redacted] involvement with the criminal justice system has typically been in response to his behavior while under the influence of substances. He does present risk of danger to public safety when abusing drugs. There is history of Mr. [redacted] being physically aggressive or otherwise posing a risk of harm to others when he is stable not taking psychotropic medication and abusing alcohol or other drugs. Mr. [redacted] reports that on his current medication regimen, he is still very depressed but feels better than if he were taking nothing.

CONCLUSIONS § 19-2524 (3.a.vii)

Based on the mental health examination, I find that:
[check all that apply]

- The Defendant suffers from a severe and reliably diagnosable mental illness or defect;
- Without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the Defendant;
- Treatment is available for such illness or defect; and
- The relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment.
- In the absence of all factors listed above, no treatment plan was prepared.

PLAN OF TREATMENT § 19-2524 (3.a.vii)

Mr. Sly would benefit from the following intervention services:

Service	Service Provider	Level of Need	Estimated Duration
Pharmacological Management	Community/IDOC	Outpatient	TBD by provider.
Individual Psychotherapy	Community/IDOC	Outpatient	TBD by provider.

19-2524 EXAMINATION REPORT

Report Date: 1/17/13	Client Name: Charles		
Report Completed By: J. Burlage, LMFT	Case Number:		
	Regional POC:		
	DOB:	Age:	Sex:

DESCRIPTION AND NATURE OF MATERIALS REVIEWED

Records review including GAIN-I Recommendation and Referral Summary and H&W Region IV client records.

Per GAIN-I GRRS Charles has a history of co-occurring mental illness and substance abuse, he has been hospitalized multiple times in the past, has been prescribed medications for mental illness, and has engaged in treatment for mental illness and trauma. Charles reports current mental health symptoms including auditory hallucinations. Client denies current suicidal or homicidal ideation.

Per H&W records Charles has a history of Bipolar II and substance abuse, involuntary hospitalization due to a suicide attempt in August 2012, and has been homeless and without benefits. Charles planned to follow up with Easter Seals post hospitalization however he was arrested 6 days after discharge.

TREATMENT RECOMMENDATIONS

The Defendant would benefit from the following intervention services:

Service	Service Provider	Level of Need	Estimated Duration
Psychiatric Medication Evaluation	Community/IDOC	Outpatient	TBD by provider
Individual or group therapy	Community/IDOC	Outpatient	TBD by provider
Contact Region IV upon release to community for specific referrals	TBD based on client resources and need	Outpatient	Initial contact and referrals provided upon release to the community