

IN THE SENATE

SENATE BILL NO. 1035

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO JUVENILE CORRECTIONS; REPEALING SECTION 18-216, IDAHO CODE,
2 RELATING TO CRIMINAL TRIAL OF JUVENILES BARRED, EXCEPTIONS, JURISDIC-
3 TIONAL HEARING AND TRANSFER OF DEFENDANT TO DISTRICT COURT; AMENDING
4 SECTION 19-2601, IDAHO CODE, TO REMOVE REFERENCE TO JUVENILE PRISON-
5 ERS, TO PROVIDE CODE REFERENCES, TO PROVIDE THAT THE STATE BOARD OF
6 CORRECTION MAY MAKE RECOMMENDATIONS TO THE COURT AND TO MAKE TECHNICAL
7 CORRECTIONS; AMENDING CHAPTER 26, TITLE 19, IDAHO CODE, BY THE ADDITION
8 OF A NEW SECTION 19-2601A, IDAHO CODE, TO AUTHORIZE A BLENDED SENTENCE
9 FOR A CONVICTED JUVENILE; AMENDING SECTION 19-2604, IDAHO CODE, TO
10 PROVIDE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
11 SECTION 20-219, IDAHO CODE, TO PROVIDE FOR THE BLENDED SENTENCE OF A
12 CONVICTED JUVENILE; AMENDING SECTION 20-508, IDAHO CODE, TO PROVIDE
13 FOR THE BLENDED SENTENCE AND DUAL CUSTODY OF A CONVICTED JUVENILE AND
14 TO PROVIDE A CODE REFERENCE; AMENDING SECTION 20-509, IDAHO CODE, TO
15 PROVIDE FOR THE BLENDED SENTENCE AND DUAL CUSTODY OF A CONVICTED JUVE-
16 NILE AND TO PROVIDE A CODE REFERENCE; AND AMENDING SECTION 20-520, IDAHO
17 CODE, TO PROVIDE THAT CONVICTED JUVENILES WITH A BLENDED SENTENCE ARE
18 NOT WITHIN THE PURVIEW OF THE CUSTODY REVIEW BOARD AND TO MAKE TECHNICAL
19 CORRECTIONS.
20

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

22 SECTION 1. That Section [18-216](#), Idaho Code, be, and the same is hereby
23 repealed.

24 SECTION 2. That Section 19-2601, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 19-2601. COMMUTATION, SUSPENSION, WITHHOLDING OF SENTENCE -- PRO-
27 BATION. Whenever any person shall have been convicted, or enter a plea of
28 guilty, in any district court of the state of Idaho, of or to any crime
29 against the laws of the state, except those of treason or murder, the court in
30 its discretion may:

31 1. Commute the sentence and confine the defendant in the county jail,
32 or, if the defendant is of proper age, commit the defendant to the custody of
33 the state department of juvenile corrections; ~~or~~

34 2. Suspend the execution of the judgment at the time of judgment or at
35 any time during the term of a sentence in the county jail and may place the
36 defendant on probation under such terms and conditions as it deems necessary
37 and appropriate; ~~or~~

38 3. Withhold judgment on such terms and for such time as it may prescribe
39 and may place the defendant on probation under such terms and conditions as
40 it deems necessary and appropriate; or

1 4. Suspend the execution of the judgment at any time during the first
2 three hundred sixty-five (365) days of a sentence to the custody of the state
3 board of correction. The court shall retain jurisdiction over the prisoner
4 for a period of up to the first three hundred sixty-five (365) days ~~or, if~~
5 ~~the prisoner is a juvenile, until the juvenile reaches twenty-one (21) years~~
6 ~~of age. Except as provided for in section 19-2601A, Idaho Code, d~~During the
7 period of retained jurisdiction, the state board of correction shall be re-
8 sponsible for determining the placement of the prisoner and such education,
9 programming and treatment as it determines to be appropriate. The prisoner
10 will remain committed to the board of correction if not affirmatively placed
11 on probation by the court. In extraordinary circumstances, where the court
12 concludes that it is unable to obtain and evaluate the relevant information
13 within the period of retained jurisdiction, or where the court concludes
14 that a hearing is required and is unable to obtain the defendant's presence
15 for such a hearing within such period, the court may decide whether to place
16 the defendant on probation or release jurisdiction within a reasonable time,
17 not to exceed thirty (30) days, after the period of retained jurisdiction has
18 expired. Placement on probation shall be under such terms and conditions
19 as the court deems necessary and appropriate. The court in its discretion
20 may sentence a defendant to more than one (1) period of retained jurisdic-
21 tion after a defendant has been placed on probation in a case or following
22 release from commitment to the department of juvenile corrections pursuant
23 to section 19-2601A, Idaho Code. In no case shall the board of correction or
24 its agent, the department of correction, be required to hold a hearing of any
25 kind with respect to a recommendation to the court for the grant or denial of
26 probation. Probation is a matter left to the sound discretion of the court.
27 Any recommendation made by the ~~department~~ state board of correction to the
28 court regarding the prisoner shall be in the nature of an addendum to the
29 presentence report. The board of correction and its agency, the department
30 of correction, and their employees shall not be held financially responsible
31 for damages, injunctive or declaratory relief for any recommendation made to
32 the district court under this section.

33 5. If the crime involved is a felony and if judgment is withheld as pro-
34 vided in subsection 3. of this section or if judgment and a sentence of cus-
35 tody to the state board of correction is suspended at the time of judgment in
36 accordance with subsection 2. of this section or as provided by subsection
37 4. of this section, the court may place the defendant on probation. If the
38 court places the defendant on probation to the board of correction, the court
39 shall include in the terms and conditions of probation a requirement that
40 the defendant enter into and comply with an agreement of supervision with the
41 board of correction. The agreement of supervision shall include provisions
42 setting forth the potential sanctions for a violation of the terms or condi-
43 tions imposed and potential rewards for compliance with the terms and condi-
44 tions imposed, as such sanctions and rewards are set forth in rules of the
45 board of correction.

46 6. If the crime involved is a misdemeanor, indictable or otherwise, or
47 if the court should suspend any remaining portion of a jail sentence already
48 commuted in accordance with subsection 1. of this section, the court, if it
49 grants probation, may place the defendant on probation. ~~If the convicted~~
50 ~~person is a juvenile held for adult criminal proceedings, the court may order~~

1 ~~probation under the supervision of the county's juvenile probation depart-~~
 2 ~~ment.~~

3 7. The period of probation ordered by a court under this section under
 4 a conviction or plea of guilty for a misdemeanor, indictable or otherwise,
 5 may be for a period of not more than two (2) years; provided that the court
 6 may extend the period of probation to include the period of time during which
 7 the defendant is a participant in a problem solving court program and for a
 8 period of up to one (1) year after a defendant's graduation or termination
 9 from a problem solving court program. Under a conviction or plea of guilty
 10 for a felony the period of probation may be for a period of not more than the
 11 maximum period for which the defendant might have been imprisoned.

12 SECTION 3. That Chapter 26, Title 19, Idaho Code, be, and the same is
 13 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 14 ignated as Section 19-2601A, Idaho Code, and to read as follows:

15 19-2601A. BLENDED SENTENCE. (1) If the convicted juvenile is a juve-
 16 nile held for adult criminal proceedings, the court may suspend execution
 17 of judgment of a sentence, retain jurisdiction and issue an order committing
 18 the convicted juvenile to dual custody with the state board of correction and
 19 the department of juvenile corrections.

20 (2) During this period of dual custody and retained jurisdiction:

21 (a) The department of juvenile corrections shall assume physical cus-
 22 tody of and financial responsibility for the convicted juvenile from
 23 the time of the court's order until the court terminates the depart-
 24 ment's custody, jurisdiction is relinquished or the juvenile reaches
 25 twenty-one (21) years of age, whichever occurs first;

26 (b) The department of juvenile corrections shall be responsible for de-
 27 termining the placement of the convicted juvenile and such education,
 28 programming and treatment as it determines to be appropriate. However,
 29 court approval is required by the sentencing court prior to the depart-
 30 ment placing a convicted juvenile in a community residential setting;

31 (c) The state board of correction shall be a member of the convicted
 32 juvenile's treatment team. The state board of correction shall partic-
 33 ipate in staffings and shall provide supervision pursuant to section
 34 20-219, Idaho Code, if the convicted juvenile is placed in a community
 35 residential setting by the department of juvenile corrections. During
 36 this period of supervision, the state board of correction shall not file
 37 a probation violation, but may petition the court to terminate the cus-
 38 tody of the department pursuant to paragraph (d) of this subsection;

39 (d) While the convicted juvenile is in the physical custody of the de-
 40 partment of juvenile corrections, if either the department or the state
 41 board of correction reasonably believes that the juvenile is failing to
 42 comply with all reasonable program requirements, the department or the
 43 state board of correction may petition the sentencing court to termi-
 44 nate custody of the department. If the juvenile has successfully com-
 45 pleted the program or is sixty (60) days or less from turning twenty-one
 46 (21) years of age, the department of juvenile corrections shall return
 47 the convicted juvenile to the court for further disposition;

48 (e) Any recommendation made by the state board of correction or the de-
 49 partment of juvenile corrections to the court regarding the convicted

1 juvenile shall be in the nature of an addendum to the presentence re-
2 port; and

3 (f) Upon the release of the juvenile by the department of juvenile cor-
4 rections, its duties and obligations cease and custody of the convicted
5 juvenile with the department is terminated.

6 (3) All time served under the custody of the department of juvenile cor-
7 rections shall be credited toward the total sentence given the convicted ju-
8 venile. However, in no event may the total of the actual time spent by the
9 convicted juvenile in the custody of the department, plus any adult sentence
10 imposed by the court, exceed the maximum period of imprisonment that could be
11 imposed on an adult convicted of the same crime.

12 (4) Upon the release of the convicted juvenile by the department of ju-
13 venile corrections or termination of department custody, the court may im-
14 pose another period of retained jurisdiction pursuant to subsection 4. of
15 section 19-2601, Idaho Code, relinquish jurisdiction and impose the remain-
16 der of the sentence with the state board of correction, or place the con-
17 victed juvenile on adult felony probation.

18 SECTION 4. That Section 19-2604, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT.

21 (1) (a) Application for relief under this subsection may be made by
22 the following persons who have pled guilty to or been found guilty of a
23 crime:

24 (i) A defendant whose sentence has been suspended or who has re-
25 ceived a withheld judgment;

26 (ii) A defendant in a felony case whose sentence has been commuted
27 under section 19-2601 1., Idaho Code;

28 (iii) A defendant in a felony case upon whom the court has not im-
29 posed a sentence to the custody of the board of correction;

30 (iv) A defendant who has not been sentenced but who has success-
31 fully completed a drug court or mental health court program;

32 (v) A defendant in a misdemeanor case who has not been sentenced
33 to serve a term in the county jail.

34 (b) Upon application of the defendant and upon satisfactory showing
35 that:

36 (i) The court did not find, and the defendant did not admit, in any
37 probation violation proceeding that the defendant violated any of
38 the terms or conditions of any probation that may have been im-
39 posed; or

40 (ii) The defendant has successfully completed and graduated from
41 an authorized drug court program or mental health court program
42 and during any period of probation that may have been served fol-
43 lowing such graduation, the court did not find, and the defendant
44 did not admit, in any probation violation proceeding that the de-
45 fendant violated any of the terms or conditions of probation;

46 the court, if convinced by the showing made that there is no longer cause for
47 continuing the period of probation should the defendant be on probation at
48 the time of the application, and that there is good cause for granting the re-
49 quested relief, may terminate the sentence or set aside the plea of guilty

1 or conviction of the defendant, and finally dismiss the case and discharge
2 the defendant or may amend the judgment of conviction from a term in the cus-
3 tody of the state board of correction to "confinement in a penal facility"
4 for the number of days served prior to sentencing, and the amended judgment
5 may be deemed to be a misdemeanor conviction. This shall apply to the cases
6 in which defendants have been convicted before this law goes into effect, as
7 well as to cases which arise thereafter. The final dismissal of the case as
8 herein provided shall have the effect of restoring the defendant to his civil
9 rights.

10 (2) If sentence has been imposed but suspended for any period during the
11 first three hundred sixty-five (365) days of a sentence to the custody of the
12 state board of correction, and the defendant placed upon probation as pro-
13 vided in subsection 4. of section 19-2601 or 19-2601A, Idaho Code, upon ap-
14 plication of the defendant, the prosecuting attorney, or upon the court's
15 own motion, and upon satisfactory showing that:

16 (a) The court did not find, and the defendant did not admit, in any
17 probation violation proceeding that the defendant violated any of the
18 terms or conditions of probation; or

19 (b) The defendant has successfully completed and graduated from an au-
20 thorized drug court program or mental health court program and during
21 any period of probation that may have been served following such grad-
22 uation, the court did not find, and the defendant did not admit, in any
23 probation violation proceeding that the defendant violated any of the
24 terms or conditions of probation;

25 the court may amend the judgment of conviction from a term in the custody of
26 the state board of correction to "confinement in a penal facility" for the
27 number of days served prior to suspension, and the amended judgment may be
28 deemed to be a misdemeanor conviction.

29 (3) (a) In addition to the circumstances in which relief from a felony
30 conviction may be granted under subsections (1) and (2) of this section,
31 a defendant who has been convicted of a felony and who has been dis-
32 charged from probation may apply to the sentencing court for a reduction
33 of the conviction from a felony to a misdemeanor as provided in this
34 subsection.

35 (b) If less than five (5) years have elapsed since the defendant's dis-
36 charge from probation, the application may be granted only if the prose-
37 cuting attorney stipulates to the reduction.

38 (c) If at least five (5) years have elapsed since the defendant's dis-
39 charge from probation, and if the defendant was convicted of any of the
40 following offenses, the application may be granted only if the prose-
41 cuting attorney stipulates to the reduction:

42 (i) Assault with intent to commit a serious felony (18-909,
43 18-915, Idaho Code);

44 (ii) Battery with intent to commit a serious felony (18-911,
45 18-915, Idaho Code);

46 (iii) Enticing of children (18-1509, Idaho Code);

47 (iv) Murder in the first or second degree (18-4003, Idaho Code);

48 (v) Voluntary manslaughter (18-4006(1), Idaho Code);

49 (vi) Assault with intent to commit murder (18-4015, Idaho Code);

1 (vii) Administering poison with intent to kill (18-4014, Idaho
2 Code);

3 (viii) Kidnapping in the first degree (18-4502, Idaho Code);

4 (ix) Robbery (18-6501, Idaho Code);

5 (x) Trafficking (37-2732B, Idaho Code);

6 (xi) Threats against state officials of the executive, legisla-
7 tive or judicial branch, felony (18-1353A, Idaho Code);

8 (xii) Unlawful discharge of a firearm at a dwelling house, occu-
9 pied building, vehicle or mobile home (18-3317, Idaho Code);

10 (xiii) Cannibalism (18-5003, Idaho Code);

11 (xiv) Unlawful use of destructive device or bomb (18-3320, Idaho
12 Code);

13 (xv) Attempt, conspiracy or solicitation to commit any of the
14 crimes described in subparagraphs (e)(i) through (xiv) of this
15 paragraph.

16 (d) The decision as to whether to grant such an application shall be in
17 the discretion of the district court, provided that the application may
18 be granted only if the court finds that:

19 (i) The defendant has not been convicted of any felony committed
20 after the conviction from which relief is sought;

21 (ii) The defendant is not currently charged with any crime;

22 (iii) There is good cause for granting the reduction in sentence;
23 and

24 (iv) In those cases where the stipulation of the prosecuting at-
25 torney is required under paragraph (b) or (c) of this subsection,
26 the prosecuting attorney has so stipulated.

27 (e) If the court grants the application, the court shall reduce the
28 felony conviction to a misdemeanor and amend the judgment of conviction
29 for a term in the custody of the state board of correction to "confine-
30 ment in a penal facility" for the number of days served prior to the
31 judgment of conviction.

32 (4) Subsections (2) and (3) of this section shall not apply to any judg-
33 ment of conviction for a violation of any offense requiring sex offender reg-
34 istration as set forth in section 18-8304, Idaho Code. A judgment of convic-
35 tion for a violation of any offense requiring sex offender registration as
36 set forth in section 18-8304, Idaho Code, shall not be subject to dismissal
37 or reduction under this section. A conviction for the purposes of this chap-
38 ter means that the person has pled guilty or has been found guilty, notwith-
39 standing the form of the judgment or withheld judgment.

40 (5) A violation of the terms of an agreement of supervision with the
41 board of correction by a person under the supervision of the board shall not
42 preclude the granting of relief to that person under this section.

43 SECTION 5. That Section 20-219, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 20-219. PROBATION AND PAROLE SUPERVISION AND TRAINING -- LIMITED SU-
46 PERVISION -- RULEMAKING. (1) The state board of correction shall be charged
47 with the duty of:

48 (a) Supervising all persons convicted of a felony placed on probation
49 to the board;

1 (b) Supervising all persons released from the state penitentiary on pa-
2 role;

3 (c) Supervising all persons convicted of a felony released on parole or
4 probation from other states and residing in the state of Idaho;

5 (d) Program delivery, as "program" is defined in section 20-216, Idaho
6 Code, to all persons under its probation or parole supervision based on
7 individual criminal risk factors and specific needs;

8 (e) Making such investigations as may be necessary;

9 (f) Reporting alleged violations of parole in specific cases to the
10 commission to aid in determining whether the parole should be continued
11 or revoked;

12 (g) Reporting alleged violations of the terms or conditions of proba-
13 tion in specific cases to the court and the prosecuting attorney to aid
14 in determining whether the probation should be continued or revoked;

15 and

16 (h) Preparing a case history record of the prisoners to assist the com-
17 mission or the courts in determining if they should be paroled or should
18 be released on probation; and

19 (i) Supervising juveniles convicted as adults with a blended sentence
20 pursuant to and in the manner described in section 19-2601A, Idaho Code.

21 (2) Any person placed on probation or parole and who has been desig-
22 nated as a violent sexual predator pursuant to chapter 83, title 18, Idaho
23 Code, shall be monitored with electronic monitoring technology for the dura-
24 tion of the person's probation or parole period. Any person who, without au-
25 thority, intentionally alters, tampers with, damages, or destroys any elec-
26 tronic monitoring equipment shall be guilty of a felony.

27 (3) The state board of correction shall have the discretion to deter-
28 mine the level of supervision of all persons under its supervision, except
29 those who are being supervised by a problem solving court. "Level of super-
30 vision" includes the determination of the following:

31 (a) The frequency, location, methods and nature of contact with the su-
32 pervising officer;

33 (b) Testing requirements and frequency;

34 (c) Contact restrictions;

35 (d) Curfew restrictions; and

36 (e) Reporting requirements.

37 (4) Subject to the availability of moneys, caseloads for supervising
38 officers who are supervising offenders determined by the department of cor-
39 rection's validated risk assessment to be high or moderate risk of rearrest
40 should not exceed an average of fifty (50) offenders per supervising offi-
41 cer.

42 (5) In carrying out its duty to supervise felony probationers and
43 parolees, the state board of correction shall use evidence-based practices,
44 shall target the offender's criminal risk and need factors with appropriate
45 supervision and intervention and shall focus resources on those identified
46 by the board as moderate-risk and high-risk offenders. The supervision
47 shall include:

48 (a) Use of validated risk and needs assessments of the offender that
49 measure criminal risk factors, specific individual needs and driving
50 variable supervision levels;

1 (b) Use of assessment results to guide supervision responses consis-
2 tent with evidence-based practices as to the level of supervision and
3 the practices used to reduce recidivism;

4 (c) Collateral and personal contacts with the offender and community
5 that may be unscheduled and which shall occur as often as needed based on
6 the offender's supervision level and risk of reoffense and based on the
7 need to stay informed of the offender's conduct, compliance with condi-
8 tions and progress in community-based intervention;

9 (d) Case planning for each offender assessed as moderate to high risk to
10 reoffend; and

11 (e) Use of practical and suitable methods that are consistent with ev-
12 idence-based practices to aid and encourage the offender to improve his
13 or her conduct and circumstances so as to reduce the offender's risk of
14 recidivism.

15 (6) The state board of correction shall provide all supervising of-
16 ficers with initial and ongoing training and professional development
17 services to support the implementation of evidence-based supervision prac-
18 tices. All supervising officers employed as of the effective date of this
19 section shall complete the training requirements set forth in this subsec-
20 tion on or before July 1, 2016. All supervising officers hired after the
21 effective date of this section shall complete the training requirements set
22 forth in this subsection within two (2) years of their hire date. The train-
23 ing and professional development services shall include:

24 (a) Assessment techniques;

25 (b) Case planning;

26 (c) Risk reduction and intervention strategies;

27 (d) Effective communication skills;

28 (e) Behavioral health needs;

29 (f) Application of core correctional practices, including motiva-
30 tional interviewing, cognitive restructuring, structured skill build-
31 ing, problem solving, reinforcement and use of authority;

32 (g) Training for supervising officers to become trainers so as to en-
33 sure long-term and self-sufficient training capacity in the state; and

34 (h) Other topics identified by the board as evidence-based practices.

35 (7) The state board of correction shall promulgate rules in consulta-
36 tion with the Idaho supreme court to:

37 (a) Establish a program of limited supervision for offenders who qual-
38 ify addressing eligibility, risk and needs assessments, transfers
39 among levels of supervision and reporting to the court and the prosecut-
40 ing attorney.

41 (b) Establish a matrix of swift, certain and graduated sanctions
42 and rewards to be imposed by the board in response to corresponding
43 violations of or compliance with the terms or conditions imposed. Sanc-
44 tions for violations shall include, but are not limited to, community
45 service, increased reporting, curfew, submission to substance use
46 assessment, monitoring or treatment, submission to cognitive behav-
47 ioral treatment, submission to an educational or vocational skills
48 development program, submission to a period of confinement in a local
49 correctional facility for no more than three (3) consecutive days and

1 house arrest. Rewards for compliance shall include, but are not limited
2 to, decreased reporting and transfer to limited supervision.

3 SECTION 6. That Section 20-508, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 20-508. WAIVER OF JURISDICTION AND TRANSFER TO OTHER COURTS. (1) After
6 the filing of a petition and after full investigation and hearing, the court
7 may waive jurisdiction under the juvenile corrections act over the juvenile
8 and order that the juvenile be held for adult criminal proceedings when:

9 (a) A juvenile is alleged to have committed any of the crimes enumerated
10 in section 20-509, Idaho Code; or

11 (b) A juvenile is alleged to have committed an act other than those enu-
12 merated in section 20-509, Idaho Code, after the child became fourteen
13 (14) years of age which would be a crime if committed by an adult; or

14 (c) An adult at the time of the filing of the petition is alleged to have
15 committed an act prior to his having become eighteen (18) years of age
16 which would be a felony if committed by an adult, and the court finds
17 that the adult is not committable to an institution for people with
18 intellectual disabilities or mental illness, is not treatable in any
19 available institution or facility available to the state designed for
20 the care and treatment of juveniles, or that the safety of the community
21 requires the adult continue under restraint; or

22 (d) An adult already under the jurisdiction of the court is alleged to
23 have committed a crime while an adult.

24 (2) A motion to waive jurisdiction under the juvenile corrections act
25 and prosecute a juvenile under the criminal law may be made by the prosecut-
26 ing attorney, the juvenile, or by motion of the court upon its own initia-
27 tive. The motion shall be in writing and contain the grounds and reasons in
28 support thereof.

29 (3) Upon the filing of a motion to waive jurisdiction under the juvenile
30 corrections act, the court shall enter an order setting the motion for hear-
31 ing at a time and date certain and shall order a full and complete investi-
32 gation of the circumstances of the alleged offense to be conducted by county
33 probation, or such other agency or investigation officer designated by the
34 court.

35 (4) Upon setting the time for the hearing upon the motion to waive ju-
36 risdiction, the court shall give written notice of said hearing to the juve-
37 nile, and the parents, guardian or custodian of the juvenile, and the prose-
38 cuting attorney, at least ten (10) days before the date of the hearing, or a
39 lesser period stipulated by the parties, and such notice shall inform the ju-
40 venile and the parents, guardian or custodian of the juvenile of their right
41 to court appointed counsel. Service of the notice shall be made in the manner
42 prescribed for service of a summons under section 20-512, Idaho Code.

43 (5) The hearing upon the motion to waive jurisdiction shall be held in
44 the same manner as an evidentiary hearing upon the original petition and
45 shall be made part of the record.

46 (6) If as a result of the hearing on the motion to waive jurisdiction
47 the court shall determine that jurisdiction should not be waived, the peti-
48 tion shall be processed in the customary manner as a juvenile corrections act
49 proceeding. However, in the event the court determines, as a result of the

1 hearing, that juvenile corrections act jurisdiction should be waived and the
2 juvenile should be prosecuted under the criminal laws of the state of Idaho,
3 the court shall enter findings of fact and conclusions of law upon which it
4 bases such decision together with a decree waiving juvenile corrections act
5 jurisdiction and binding the juvenile over to the authorities for prosecu-
6 tion under the criminal laws of the state of Idaho.

7 (7) No motion to waive juvenile corrections act jurisdiction shall be
8 recognized, considered, or heard by the court in the same case once the court
9 has entered an order or decree in that case that said juvenile has come within
10 the purview of the juvenile corrections act, and all subsequent proceedings
11 after the decree finding the juvenile within the purview of the act must be
12 under and pursuant to the act and not as a criminal proceeding.

13 (8) In considering whether or not to waive juvenile court jurisdiction
14 over the juvenile, the juvenile court shall consider the following factors:

15 (a) The seriousness of the offense and whether the protection of the
16 community requires isolation of the juvenile beyond that afforded by
17 juvenile facilities;

18 (b) Whether the alleged offense was committed in an aggressive, vio-
19 lent, premeditated, or willful manner;

20 (c) Whether the alleged offense was against persons or property,
21 greater weight being given to offenses against persons;

22 (d) The maturity of the juvenile as determined by considerations of his
23 home, environment, emotional attitude, and pattern of living;

24 (e) The juvenile's record and previous history of contacts with the ju-
25 venile corrections system;

26 (f) The likelihood that the juvenile will develop competency and life
27 skills to become a contributing member of the community by use of facil-
28 ities and resources available to the court;

29 (g) The amount of weight to be given to each of the factors listed in
30 subsection (8) of this section is discretionary with the court, and a
31 determination that the juvenile is not a fit and proper subject to be
32 dealt with under the juvenile court law may be based on any one (1) or a
33 combination of the factors set forth within this section, which shall be
34 recited in the order of waiver.

35 (9) If the court does not waive jurisdiction and order a juvenile or
36 adult held for criminal proceedings, the court in a county other than the ju-
37 venile's or adult's home county, after entering a decree that the juvenile
38 or adult is within the purview of this chapter, may certify the case for sen-
39 tencing to the court of the county in which the juvenile offender or adult
40 resides upon being notified that the receiving court is willing to accept
41 transfer. In the event of a transfer, which should be made unless the court
42 finds it contrary to the interest of the juvenile offender or adult, the ju-
43 risdiction of the receiving court shall attach to the same extent as if the
44 court had original jurisdiction.

45 (10) Upon conviction of a juvenile offender held for adult criminal pro-
46 ceedings under this section, the sentencing judge may, if a finding is made
47 that adult sentencing measures would be inappropriate:

48 (a) Sentence the convicted person in accordance with the juvenile sen-
49 tencing options set forth in this chapter; or

1 (b) Sentence the convicted person to the county jail or to the custody
 2 of the state board of correction but suspend the sentence ~~or withhold~~
 3 ~~judgment and retain jurisdiction~~ pursuant to section 19-2601A, Idaho
 4 Code, and commit the defendant to the dual custody of the department of
 5 juvenile corrections ~~for an indeterminate period of time in accordance~~
 6 ~~with section 20-520(1)(r), Idaho Code. The court, in its discretion,~~
 7 ~~may order that the suspended sentence or withheld judgment be condi-~~
 8 ~~tioned upon the convicted person's full compliance with all reasonable~~
 9 ~~program requirements of the department of juvenile corrections. Such a~~
 10 ~~sentence may also set terms of probation, which may be served under the~~
 11 ~~supervision of county juvenile probation. However, in no event may the~~
 12 ~~total of the actual time spent by the convicted person in the custody of~~
 13 ~~the department plus any adult sentence imposed by the court exceed the~~
 14 ~~maximum period of imprisonment that could be imposed on an adult con-~~
 15 ~~vinced of the same crime and the state board of correction.~~

16 ~~(c) If a convicted person is given a suspended sentence or withheld~~
 17 ~~judgment conditioned upon the convicted person's compliance with all~~
 18 ~~reasonable program requirements of the department pursuant to para-~~
 19 ~~graph (b) of this subsection, and if the department reasonably believes~~
 20 ~~that the convicted person is failing to comply with all reasonable pro-~~
 21 ~~gram requirements, the department may petition the sentencing court to~~
 22 ~~revoke the commitment to the department and transfer the convicted per-~~
 23 ~~son to the county jail or to the custody of the state board of correction~~
 24 ~~for the remainder of the sentence.~~

25 SECTION 7. That Section 20-509, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 20-509. VIOLENT OFFENSES, CONTROLLED SUBSTANCES VIOLATIONS NEAR
 28 SCHOOLS AND OFFENDERS. (1) Any juvenile, age fourteen (14) years to age eigh-
 29 teen (18) years, who is alleged to have committed any of the following crimes
 30 or any person under age fourteen (14) years who is alleged to have committed
 31 any of the following crimes and, pursuant to section 20-508, Idaho Code, has
 32 been ordered by the court to be held for adult criminal proceedings:

- 33 (a) Murder of any degree or attempted murder;
- 34 (b) Robbery;
- 35 (c) Rape as defined in section 18-6101, Idaho Code;
- 36 (d) Male rape as defined in section 18-6108, Idaho Code;
- 37 (e) Forcible sexual penetration by the use of a foreign object;
- 38 (f) Infamous crimes against nature, committed by force or violence;
- 39 (g) Mayhem;
- 40 (h) Assault or battery with the intent to commit any of the above seri-
- 41 ous felonies;
- 42 (i) A violation of the provisions of section 37-2732(a)(1)(A), (B) or
- 43 (C), Idaho Code, when the violation occurred on or within one thousand
- 44 (1,000) feet of the property of any public or private primary or sec-
- 45 oundary school, or in those portions of any building, park, stadium or
- 46 other structure or grounds which were, at the time of the violation, be-
- 47 ing used for an activity sponsored by or through such a school;
- 48 (j) Arson in the first degree and aggravated arson;

1 shall be charged, arrested and proceeded against by complaint, indictment
2 or information as an adult. All other felonies or misdemeanors charged in
3 the complaint, indictment or information, which are based on the same act
4 or transaction or on one (1) or more acts or transactions as the violent
5 or controlled substances offense shall similarly be charged, arrested and
6 proceeded against as an adult. Any juvenile proceeded against pursuant to
7 this section shall be accorded all constitutional rights, including bail and
8 trial by jury, and procedural safeguards as if that juvenile were an adult
9 defendant.

10 (2) Once a juvenile has been formally charged or indicted pursuant to
11 this section or has been transferred for criminal prosecution as an adult
12 pursuant to the waiver provisions of section 20-508, Idaho Code, or this sec-
13 tion, the juvenile shall be held in a county jail or other adult prison facil-
14 ity unless the court, after finding good cause, orders otherwise.

15 (3) Except as otherwise allowed by subsection (4) of this section,
16 once a juvenile offender has been found to have committed the offense for
17 which the juvenile offender was charged, indicted or transferred pursuant
18 to this section or section 20-508, Idaho Code, or has been found guilty or
19 pled guilty to a lesser offense or amended charge growing out of or included
20 within the original charge, whether or not such lesser offense or amended
21 charge is included within the acts enumerated in subsection (1) of this sec-
22 tion, the juvenile offender shall thereafter be handled in every respect as
23 an adult. For any subsequent violation of Idaho law, the juvenile offender
24 shall be handled in every respect as an adult.

25 (4) Upon the conviction of a juvenile offender pursuant to this sec-
26 tion, the sentencing judge may, if a finding is made that adult sentencing
27 measures would be inappropriate:

28 (a) Sentence the convicted person in accordance with the juvenile sen-
29 tencing options set forth in this chapter; or

30 (b) Sentence the convicted person to the county jail or to the custody
31 of the state board of correction but suspend the sentence ~~or withhold~~
32 ~~judgment~~ pursuant to section 19-2601A, Idaho Code, and commit the
33 defendant to the dual custody of the department of juvenile correc-
34 tions for an indeterminate period of time in accordance with section
35 20-520(1)(r), Idaho Code. The court, in its discretion, may order that
36 the suspended sentence or withheld judgment be conditioned upon the
37 convicted person's full compliance with all reasonable program re-
38 quirements of the department of juvenile corrections. Such a sentence
39 may also set terms of probation, which may be served under the supervi-
40 sion of county juvenile probation. However, in no event may the total
41 of the actual time spent by the convicted person in the custody of the
42 department plus any adult sentence imposed by the court exceed the max-
43 imum period of imprisonment that could be imposed on an adult convicted
44 of the same crime and the state board of correction.

45 (c) If a convicted person is given a suspended sentence or withheld
46 judgment conditioned upon the convicted person's compliance with all
47 reasonable program requirements of the department pursuant to para-
48 graph (b) of this subsection, and if the department reasonably believes
49 that the convicted person is failing to comply with all reasonable pro-
50 gram requirements, the department may petition the sentencing court to

1 ~~revoke the commitment to the department and transfer the convicted per-~~
2 ~~son to the county jail or to the custody of the state board of correction~~
3 ~~for the remainder of the sentence.~~

4 SECTION 8. That Section 20-520, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 20-520. SENTENCING. (1) Upon the entry of an order finding the juve-
7 nile offender is within the purview of the act, the court shall then hold a
8 sentencing hearing in the manner prescribed by the Idaho juvenile rules to
9 determine the sentence that will promote accountability, competency devel-
10 opment and community protection. Prior to the entry of an order disposing
11 of the case, other than an order of discharge or dismissal, the court may re-
12 quest and, if requested, shall receive a report containing the results of
13 an inquiry into the home environment, past history, competency development,
14 prevention or out of home placement services provided, and the social, phys-
15 ical and mental condition of the juvenile offender. The court shall not con-
16 sider or review the report prior to the entry of an order of adjudication.
17 Upon presentation and consideration of the report by the court, the court may
18 proceed to sentence the juvenile offender as follows:

19 (a) Place the juvenile offender on formal probation for a period not to
20 exceed three (3) years from the date of the order, except the court may
21 place a juvenile offender on formal probation for a period not to exceed
22 the juvenile offender's twenty-first birthday if the court finds that
23 the juvenile offender has committed a crime of a sexual nature;

24 (b) Sentence the juvenile offender to detention pursuant to this act
25 for a period not to exceed thirty (30) days for each act, omission or
26 status which is prohibited by the federal, state, local or municipal
27 law or ordinance by reason of minority only. The sentence shall not be
28 executed unless the act, omission or status is in violation of ~~section~~
29 ~~922(x) of title 18, United States Code 18 U.S.C. section 922(x)~~, or the
30 court finds that the juvenile offender has violated the court's decree
31 imposing the sentence as provided below in this subsection.

32 If the court, after notice and hearing, finds that a juvenile of-
33 fender has violated the court's decree imposing the sentence under cir-
34 cumstances that bring the violation under the valid court order excep-
35 tion of the federal juvenile justice and delinquency prevention act of
36 1974, as amended, the court may commit the juvenile offender to deten-
37 tion for the period of detention previously imposed at sentencing;

38 (c) Commit the juvenile offender to a period of detention, pursuant to
39 this act, for a period of time not to exceed ninety (90) days for each un-
40 lawful or criminal act the juvenile offender is found to have committed,
41 if the unlawful or criminal act would be a misdemeanor if committed by an
42 adult, or where the juvenile offender has been adjudicated as an habit-
43 ual status offender;

44 (d) If the juvenile offender has committed an unlawful or criminal act
45 which would be a felony if committed by an adult, the court may commit
46 the juvenile offender to detention for a period not to exceed one hun-
47 dred eighty (180) days for each unlawful or criminal act;

48 (e) Whenever a court commits a juvenile offender to a period of deten-
49 tion, the juvenile detention center shall notify the school district

1 where the detention center is located. No juvenile offender who is
2 found to come within the purview of the act for the commission of a sta-
3 tus offense shall be sentenced to detention in a jail facility unless
4 an adjudication has been made that the juvenile offender is an habitual
5 status offender;

6 (f) Commit the juvenile offender to detention and suspend the sentence
7 on specific probationary conditions;

8 (g) The court may suspend or restrict the juvenile offender's driving
9 privileges for such periods of time as the court deems necessary, and
10 the court may take possession of the juvenile offender's driver's li-
11 cense. The juvenile offender may request restricted driving privileges
12 during a period of suspension, which the court may allow if the juvenile
13 offender shows by a preponderance of evidence that driving privileges
14 are necessary for his employment or for family health needs;

15 (h) The court may order that the juvenile offender be examined or
16 treated by a physician, surgeon, psychiatrist or psychologist, or that
17 he receive other special care, or that he submit to an alcohol or drug
18 evaluation, if needed, and for such purposes may place the juvenile of-
19 fender in a hospital or other suitable facility;

20 (i) The court may order that the county probation office authorize a
21 comprehensive substance abuse assessment of the juvenile offender. Af-
22 ter receiving the comprehensive substance abuse assessment, and upon a
23 finding by the court that treatment will provide a cost-effective means
24 of achieving the sentencing goals of accountability, competency devel-
25 opment and community protection, the court may order that the juvenile
26 offender receive immediate treatment for substance abuse in keeping
27 with a plan of treatment approved by the court. The initial cost of the
28 assessment and treatment shall be borne by the department of juvenile
29 corrections with funds allocated to the county probation office. The
30 director of the department of juvenile corrections may promulgate rules
31 consistent with this paragraph to establish a schedule of fees to be
32 charged to parents by the county probation office for such services
33 based upon the cost of the services and the ability of parents to pay;

34 (j) In support of an order under the provisions of this section, the
35 court may make an additional order setting forth reasonable conditions
36 to be complied with by the parents, the juvenile offender, his legal
37 guardian or custodian, or any other person who has been made a party to
38 the proceedings, including, but not limited to, restrictions on visi-
39 tation by the parents or one (1) parent, restrictions on the juvenile
40 offender's associates, occupation and other activities, and require-
41 ments to be observed by the parents, guardian or custodian;

42 (k) The court may make any other reasonable order which is in the best
43 interest of the juvenile offender or is required for the protection of
44 the public, except that no person under the age of eighteen (18) years
45 may be committed to jail, prison or a secure facility which does not meet
46 the standards set forth in section 20-518, Idaho Code, unless jurisdic-
47 tion over the individual is in the process of being waived or has been
48 waived pursuant to section 20-508 or 20-509, Idaho Code. The court may
49 combine several of the above-listed modes of disposition where they are
50 compatible;

1 (l) An order under the provisions of this section for probation or
2 placement of a juvenile offender with an individual or an agency may
3 provide a schedule for review of the case by the court;

4 (m) Order the proceeding expanded or altered to include consideration
5 of the cause pursuant to chapter 16, title 16, Idaho Code;

6 (n) Order the case and all documents and records connected therewith
7 transferred to the magistrate division of the district court for the
8 county where the juvenile offender and/or parents reside if different
9 than the county where the juvenile offender was charged and found to
10 have committed the unlawful or criminal act, for the entry of a disposi-
11 tional order;

12 (o) Order such other terms, conditions, care or treatment as appears to
13 the court will best serve the interests of the juvenile offender and the
14 community;

15 (p) The court shall assess a twenty dollar (\$20.00) detention/proba-
16 tion training academy fee against the juvenile offender for every pe-
17 tition filed where there has been an adjudication that the juvenile of-
18 fender is within the purview of this chapter. All moneys raised pur-
19 suant to this paragraph shall be transmitted by the court for deposit in
20 the juvenile corrections fund which is created in section 20-542, Idaho
21 Code;

22 (q) Additionally, the court shall assess a fee of sixty cents (60¢) per
23 hour of community service against the juvenile offender for every pe-
24 tition filed where there has been an adjudication that the juvenile of-
25 fender is within the purview of this chapter and the court is ordering
26 community service. Such fee is to be remitted by the court to the state
27 insurance fund for purposes of providing worker's compensation insur-
28 ance for persons performing community service pursuant to this chapter.
29 However, if a county is self-insured and provides worker's compensation
30 insurance for persons performing community service pursuant to the pro-
31 visions of this chapter, then remittance to the state insurance fund is
32 not required;

33 (r) Commit the juvenile offender to the legal custody of the department
34 of juvenile corrections for an indeterminate period of time not to ex-
35 ceed the juvenile offender's nineteenth birthday, unless the custody
36 review board determines that extended time in custody is necessary to
37 address competency development, accountability, and community protec-
38 tion; provided however, that no juvenile offender shall remain in the
39 custody of the department beyond the juvenile offender's twenty-first
40 birthday. The department shall adopt rules implementing the custody
41 review board and operations and procedures of such board. Juvenile
42 offenders convicted as adults and placed in the dual custody of the
43 department of juvenile corrections and the state board of correction
44 under section 19-2601A, Idaho Code, are under the retained jurisdiction
45 of the court and are not within the purview of the custody review board;

46 (s) Notwithstanding any other provision of this section, a court may
47 not commit a juvenile offender under the age of ten (10) years to a pe-
48 riod of detention or to the custody of the department of juvenile cor-
49 rections for placement in secure confinement.

1 (2) When an order is entered pursuant to this section, the juvenile
2 offender shall be transported to the facility or program so designated by the
3 court or the department, as applicable, by the sheriff of the county where
4 the juvenile offender resides or is committed, or by an appointed agent.
5 When committing a juvenile offender to the department, or another entity,
6 the court shall at once forward to the department or entity a certified copy
7 of the order of commitment.

8 (3) Unless the court determines that an order of restitution would be
9 inappropriate or undesirable, it shall order the juvenile offender or his
10 parents or both to pay restitution to or make whole any victim who suffers an
11 economic loss as a result of the juvenile offender's conduct in accordance
12 with the standards and requirements of sections 19-5304 and 19-5305, Idaho
13 Code. The amount of restitution which may be ordered by the court shall not
14 be subject to the limitations of section 6-210, Idaho Code. Court-ordered
15 restitution shall be paid prior to any other court-ordered payments unless
16 the court specifically orders otherwise. The clerk of the district court,
17 with the approval of the administrative district judge, may use the proce-
18 dures set forth in section 19-4708, Idaho Code, for the collection of the
19 restitution.

20 (4) The court may order the juvenile offender's parents or custodian to
21 pay the charges imposed by community programs ordered by the court for the
22 juvenile offender, or the juvenile offender's parents or custodian.

23 (5) Any parent, legal guardian or custodian violating any order of the
24 court entered against the person under the provisions of this chapter shall
25 be subject to contempt proceedings under the provisions of chapter 6, title
26 7, Idaho Code.