

DRAFT

DRRCB100

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature First Regular Session - 2017

This bill draft contains confidential and privileged information exempt from disclosure under Section 74-109(1), Idaho Code. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning the Legislative Services Office at (208) 334-2475.

1 AN ACT
2 RELATING TO THE IDAHO CRIMINAL JUSTICE SYSTEM; AMENDING SECTION 20-219,
3 IDAHO CODE, TO PROVIDE THAT A HEARING SHALL NOT BE REQUIRED IN RULES RE-
4 GARDING CERTAIN SANCTIONS AND REWARDS; AMENDING SECTION 20-223, IDAHO
5 CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE CERTAIN RULEMAKING AU-
6 THORITY, TO PROVIDE THAT THE COMMISSION SHALL CONSIDER CERTAIN FACTORS
7 IN MAKING ANY PAROLE OR COMMUTATION DECISION, TO REMOVE A PROVISION
8 REGARDING A UNIFIED SENTENCE, TO REVISE PROVISIONS REGARDING CERTAIN
9 RULEMAKING AUTHORITY, AND TO REVISE A PROVISION REGARDING REPORTING
10 REQUIREMENTS; AMENDING SECTION 20-229B, IDAHO CODE, TO REVISE TER-
11 MINOLOGY, TO REVISE A PROVISION REGARDING COMMISSION RULINGS AND TO
12 REMOVE PROVISIONS REGARDING COMMISSION RULINGS; AND AMENDING SECTION
13 19-2513, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

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

15 SECTION 1. That Section 20-219, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 20-219. PROBATION AND PAROLE SUPERVISION AND TRAINING -- LIMITED SU-
18 PERVISION -- RULEMAKING. (1) The state board of correction shall be charged
19 with the duty of:

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

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

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

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

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

30 (f) Reporting alleged violations of parole in specific cases to the
31 commission to aid in determining whether the parole should be continued
32 or revoked;

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

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

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

41 (2) Any person placed on probation or parole and who has been desig-
42 nated as a violent sexual predator pursuant to chapter 83, title 18, Idaho

1 Code, shall be monitored with electronic monitoring technology for the dura-
2 tion of the person's probation or parole period. Any person who, without au-
3 thority, intentionally alters, tampers with, damages, or destroys any elec-
4 tronic monitoring equipment shall be guilty of a felony.

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

- 9 (a) The frequency, location, methods and nature of contact with the su-
10 pervising officer;
- 11 (b) Testing requirements and frequency;
- 12 (c) Contact restrictions;
- 13 (d) Curfew restrictions; and
- 14 (e) Reporting requirements.

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

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

- 26 (a) Use of validated risk and needs assessments of the offender that
27 measure criminal risk factors, specific individual needs and driving
28 variable supervision levels;
- 29 (b) Use of assessment results to guide supervision responses consis-
30 tent with evidence-based practices as to the level of supervision and
31 the practices used to reduce recidivism;
- 32 (c) Collateral and personal contacts with the offender and community
33 that may be unscheduled and which shall occur as often as needed based on
34 the offender's supervision level and risk of reoffense and based on the
35 need to stay informed of the offender's conduct, compliance with condi-
36 tions and progress in community-based intervention;
- 37 (d) Case planning for each offender assessed as moderate to high risk to
38 reoffend; and
- 39 (e) Use of practical and suitable methods that are consistent with evi-
40 dence-based practices to aid and encourage the offender to improve his
41 or her conduct and circumstances so as to reduce the offender's risk of
42 recidivism.

43 (6) The state board of correction shall provide all supervising of-
44 ficers with initial and ongoing training and professional development
45 services to support the implementation of evidence-based supervision prac-
46 tices. All supervising officers employed as of the effective date of this
47 section shall complete the training requirements set forth in this subsec-
48 tion on or before July 1, 2016. All supervising officers hired after the
49 effective date of this section shall complete the training requirements set

1 forth in this subsection within two (2) years of their hire date. The train-
2 ing and professional development services shall include:

- 3 (a) Assessment techniques;
- 4 (b) Case planning;
- 5 (c) Risk reduction and intervention strategies;
- 6 (d) Effective communication skills;
- 7 (e) Behavioral health needs;
- 8 (f) Application of core correctional practices, including motiva-
9 tional interviewing, cognitive restructuring, structured skill build-
10 ing, problem solving, reinforcement and use of authority;
- 11 (g) Training for supervising officers to become trainers so as to en-
12 sure long-term and self-sufficient training capacity in the state; and
- 13 (h) Other topics identified by the board as evidence-based practices.

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

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

20 (b) Establish a matrix of swift, certain and graduated sanctions and
21 rewards to be imposed by the board, without the necessity of a hear-
22 ing, in response to corresponding violations of or compliance with the
23 terms or conditions imposed. Sanctions for violations shall include,
24 but are not limited to, community service, increased reporting, cur-
25 few, submission to substance use assessment, monitoring or treatment,
26 submission to cognitive behavioral treatment, submission to an educa-
27 tional or vocational skills development program, submission to a period
28 of confinement in a local correctional facility for no more than three

29 (3) consecutive days and house arrest. Rewards for compliance shall
30 include, but are not limited to, decreased reporting and transfer to
31 limited supervision.

32 SECTION 2. That Section 20-223, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 20-223. PAROLE AND RULES GOVERNING -- RESTRICTIONS -- PSYCHIATRIC OR
35 PSYCHOLOGICAL EXAMINATION. (1) It is the intent of the legislature to fo-
36 cus prison space on those who commit the most serious offenses or who have
37 the highest likelihood of offending in the future, and the commission, con-
38 sistent with the provisions of this subsection, shall promulgate rules that
39 establish clear guidelines and procedures that retain the commission's dis-
40 cretion in individual cases.

41 (2) Subject to section 19-2513, Idaho Code, the commission shall have
42 the power to establish rules in compliance with chapter 52, title 67, Idaho
43 Code, under which any prisoner, excepting any under sentence of death, may be
44 allowed to go upon parole but to remain while on parole in the legal custody
45 and under the control of the board and subject to be taken back into confine-
46 ment at the direction of the commission.

47 (23) Any prisoner who is granted parole under the interstate compact
48 may be required to post a bond prior to release or prior to such acceptance

DRAFT

DRRCB100

1 under the interstate compact; such bond may be posted by the prisoner, the
2 prisoner's family, or other interested party. Failure to successfully com-
3 plete parole may be grounds for forfeiture of the bond. Upon successful com-
4 pletion of parole, the amount of the bond may be returned, less an amount for
5 administrative costs as determined by commission rule, in compliance with
6 chapter 52, title 67, Idaho Code. A request must be made for return of the
7 bond within one (1) year of discharge of the offense for which the particular
8 offender was serving parole. Funds collected through the bonding process
9 will be placed in a separate commission receipts fund which is hereby created
10 in the state treasury and utilized for the extradition of parole violators.

11 (34) No person serving a sentence for rape, incest, committing a lewd
12 act upon a child, crime against nature, or with an intent or an assault with
13 intent to commit any such crimes, or whose history and conduct indicate to
14 the commission that he is a sexually dangerous person, shall be released on
15 parole except upon the examination and evaluation of one (1) or more psy-
16 chiatrists or psychologists or mental health professionals designated for
17 this purpose by the department of correction to be selected by the commission
18 and such evaluation shall be duly considered by the commission in making its
19 parole determination. The commission may, in its discretion, likewise re-
20 quire a similar examination and evaluation for persons serving sentences for
21 crimes other than those above enumerated. No person making such evaluation
22 shall be held financially responsible to any person for denial of parole by
23 the commission or for the results of the future acts of such person if he be
24 granted parole.

25 (45) Before considering the parole of any prisoner, the commission
26 shall ensure that a risk assessment has been conducted pursuant to section
27 20-224, Idaho Code, and shall afford the prisoner the opportunity to be in-
28 terviewed by the commission, a commissioner or other designated commission
29 staff. A designated report and risk assessment prepared by commission staff
30 or a designated department of correction employee that is specifically to be
31 used by the commission in making a parole determination shall be exempt from
32 public disclosure; such reports contain information from the presentence
33 investigation report, medical or psychological information, the results
34 of a risk assessment, victim information, designated confidential witness
35 information and criminal history information. A parole shall be ordered
36 when, in the discretion of the commission, it is in the best interests of
37 society, and the commission believes the prisoner is able and willing to
38 fulfill the obligations of a law-abiding citizen. Such determination shall
39 not be a reward of clemency and it shall not be considered to be a reduction
40 of sentence or a pardon. The commission may also by its rules fix the times
41 and conditions under which any application denied may be reconsidered. No
42 action may be maintained against the commission and/or any of its members in
43 any court in connection with any decision taken by the commission to parole
44 a prisoner and neither the commission nor its members shall be liable in any
45 way for its action with respect thereto.

46 (56) In making any parole or commutation decision with respect to
47 a prisoner, the commission shall consider the current risk assessment,
48 criminal history, program participation, compliance and completion, in-
49 stitutional misconduct and other individual characteristics related to the
50 likelihood of offending in the future, as well as the compliance of the pris-

1 oner with any order of restitution which may have been entered according to
2 section 19-5304, Idaho Code. The commission may make compliance with such an
3 order of restitution a condition of parole.

4 (67) Except as provided in subsection (1) of this section, no provision
5 of chapter 52, title 67, Idaho Code, shall apply to the commission.

6 (78) Subject to the limitations of this subsection and notwithstanding
7 any fixed term of confinement or minimum period of confinement as provided
8 in section 19-2513, Idaho Code, the commission may parole an inmate for med-
9 ical reasons. A prisoner may be considered for medical parole only when the
10 prisoner is permanently incapacitated or terminally ill and when the commis-
11 sion reasonably believes the prisoner no longer poses a threat to the safety
12 of society. For the purposes of this section, "permanently incapacitated"
13 shall mean a person who, by reason of an existing physical condition which
14 is not terminal, is permanently and irreversibly physically incapacitated.
15 For the purposes of this section "terminally ill" shall mean a person who has
16 an incurable condition caused by illness or disease and who is irreversibly
17 terminally ill.

18 (89) The commission shall prepare and send to the house of represen-
19 tatives and senate judiciary committees annually a report containing the
20 names, medical condition and current status of all persons granted parole
21 pursuant to subsection (7) of this section.

22 (910) The department of correction shall promulgate rules in consul-
23 tation with the commission to prepare prisoners for parole upon completing
24 the fixed portion of the unified sentence based on current risk assessment,
25 criminal history, institutional behavior and programming completion. The
26 department of correction shall give prisoners access to programming so that
27 prisoners will have an opportunity to complete create sufficient program-
28 ming to be opportunities, such that lack of access to programming is not the
29 sole cause in delaying parole eligible upon completing their fixed sentence
30 eligibility. The department shall promulgate rules to include case plan de-
31 velopment upon entry into prison so that programming can be completed before
32 the first parole eligibility date and a current risk assessment before all
33 parole hearings.

34 ~~(10) It is the intent of the legislature to focus prison space on the~~
35 ~~most violent or greatest risk prisoners. To help accomplish this goal, the~~
36 ~~commission shall promulgate rules that establish clear guidelines and pro-~~
37 ~~cedures that retain the commission's discretion in individual cases while~~
38 ~~achieving a reduction in the overall average percentage of time spent be-~~
39 ~~yond the fixed term for prisoners who have been convicted of a property or~~
40 ~~drug offense. Such rules shall allow current risk assessment, past criminal~~
41 ~~history, program completion, institutional misconduct and other individual~~
42 ~~characteristics related to the likelihood of offending in the future to be~~
43 ~~factored into when a release decision is made while still working to accom-~~
44 ~~plish the overarching goal of the legislature.~~

45 (11) By February 1, 2015, and by February 1 of each year thereafter, the
46 department of correction and the commission shall submit a report to the leg-
47 islature and governor that describes the percentage of people sentenced to
48 a term in prison for a property or drug offense conviction who are released
49 before serving one hundred fifty percent (150%) of the fixed portion of the
50 sentence, and that documents the most common reasons for people whose re-

1 ~~lease was delayed or denied~~ delay or denial of release, including statisti-
2 cal data supporting the conclusions of the report.

3 SECTION 3. That Section 20-229B, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 20-229B. COMMISSION RULINGS. (1) After a factual parole revocation
6 hearing has been concluded, the member or members of the commission for par-
7 dons and parole or the designated hearing officer, having heard the matter,
8 shall ~~enter~~ render a decision within twenty (20) days. If the alleged parole
9 violator waives the parole hearing pursuant to the provisions of section
10 20-229A(3), Idaho Code, then a decision shall be entered upon acceptance of
11 the waiver.

12 (2) If the member or members or hearing officer, having heard the mat-
13 ter, should conclude that the allegations of violation of the conditions
14 of parole have not been proven by a preponderance of the evidence, or those
15 which have been proven by a preponderance of the evidence are not sufficient
16 cause for the revocation of parole, then the parolee shall be reinstated on
17 parole on the same or modified conditions of parole.

18 (3) ~~Except as otherwise provided in subsection (4) of this section, i~~
19 ~~f~~ the member or members or hearing officer, having heard the matter, should
20 conclude that the allegations of violation of the conditions of parole have
21 been proven by a preponderance of the evidence and ~~the violation does not~~
22 ~~result from either conduct that is sexual or violent in nature or a formal~~
23 ~~charge of a new felony or violent misdemeanor, then the commission or the~~
24 ~~hearing officer shall:~~

25 ~~(a) Cause the parolee to be confined for a period of up to ninety (90)~~
26 ~~days effective immediately upon entering the decision;~~

27 ~~(b) For a second parole violation, cause the parolee to be confined for~~
28 ~~a period of up to one hundred eighty (180) days effective immediately~~
29 ~~upon entering the decision; or~~

30 ~~(c) For a third or subsequent parole violation, convene~~ constitute suf-
31 ficient cause for the revocation of parole, then a dispositional hear-
32 ing shall be convened during a regular session of the commission to exe-
33 cute an order of parole revocation and determine the period of time the
34 parole violator shall be returned to state custody.

35 (4) ~~If the member or members or hearing officer, having heard the mat-~~
36 ~~ter, should conclude that the allegations of violation of parole by abscond-~~
37 ~~ing supervision have been proven by a preponderance of the evidence, then the~~
38 ~~commission or the hearing officer shall:~~

39 ~~(a) Cause the parolee to be confined for a period of up to one hundred~~
40 ~~eighty (180) days effective immediately upon entering the decision; or~~

41 ~~(b) For a second or subsequent parole violation by absconding supervi-~~
42 ~~sion, convene a dispositional hearing during a regular session of the~~
43 ~~commission to execute an order of parole revocation and determine the~~
44 ~~period of time the parole violator shall be returned to state custody.~~

45 (5) ~~If the commission or the hearing officer causes a parolee to be con-~~
46 ~~finned under subsection (3) (a), (3) (b) or (4) (a) of this section, then the~~
47 ~~commission or the hearing officer may reduce the period of confinement by up~~
48 ~~to thirty (30) days if the commission or the hearing officer finds that there~~

DRAFT

DRRCB100

7

1 ~~has been no instance of misconduct during the period of time the parolee is~~
2 ~~confined.~~

3 ~~(6) Upon completion of a term of confinement under this section, ac-~~
4 ~~counting for any reduction in subsection (5) of this section, the parolee~~
5 ~~shall be released to parole supervision.~~

6 SECTION 4. That Section 19-2513, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 19-2513. UNIFIED SENTENCE. (1) Whenever any person is convicted of
9 having committed a felony, the court shall, unless it shall commute the sen-
10 tence, suspend or withhold judgment and sentence or grant probation, as pro-
11 vided in chapter 26, title 19, Idaho Code, or unless it shall impose the death
12 sentence as provided by law, sentence such offender to the custody of the
13 state board of correction. The court shall specify a minimum period of con-
14 finement and may specify a subsequent indeterminate period of custody. The
15 court shall set forth in its judgment and sentence the minimum period of con-
16 finement and the subsequent indeterminate period, if any, provided, that the
17 aggregate sentence shall not exceed the maximum provided by law. During a
18 minimum term of confinement, the offender shall not be eligible for parole or
19 discharge or credit or reduction of sentence for good conduct except for mer-
20 itorious service except as provided in section 20-223(78), Idaho Code. The
21 offender may be considered for parole or discharge at any time during the in-
22 determinate period of the sentence and as provided in section 20-223(78),
23 Idaho Code.

24 (2) If the offense carries a mandatory minimum penalty as provided by
25 statute, the court shall specify a minimum period of confinement consistent
26 with such statute. If the offense is subject to an enhanced penalty as pro-
27 vided by statute, or if consecutive sentences are imposed for multiple of-
28 fenses, the court shall, if required by statute, direct that the enhance-
29 ment or each consecutive sentence contain a minimum period of confinement;
30 in such event, all minimum terms of confinement shall be served before any
31 indeterminate periods commence to run.

32 (3) Enactment of this amended section shall not affect the prosecution,
33 adjudication or punishment of any felony committed before the effective date
34 of enactment.