I.C.R. 32. Standards and Procedures Governing Presentence Investigations and Reports.

Idaho Criminal Rule 32. Standards and Procedures Governing Presentence Investigations and Reports.

The following standards and procedures shall govern presentence investigations and reports in the Idaho courts:

(a) When presentence investigations are to be ordered. The trial judge need not require a presentence investigation report in every criminal case. The ordering of such a report is within the discretion of the court. With respect to felony convictions, if the trial court does not require a presentence investigation and report, the record must show affirmatively why such an investigation was not ordered.

(b) Contents of presentence report. A trial judge may request a record check and other background information concerning the defendant prior to sentence without conducting a full presentence investigation of the defendant. However, whenever a full presentence report is ordered, it shall contain the following elements:

(1) The description of the situation surrounding the criminal activity with which the defendant has been charged, including the defendant's version of the criminal act and the defendant's explanation for the act, the arresting officer's version or report of the offense, where available, and the victim's version, where relevant to the sentencing decision.

(2) Any prior criminal record of the defendant.

(3) The defendant's social history, including family relationships, marital status, age, interests and activities.

(4) The defendant's educational background.

(5) The defendant's employment background, including any military record, and defendant's present employment status and capabilities.

(6) Residence history of the defendant.

(7) Financial status of defendant.

(8) Health of the defendant.

(9) The defendant's sense of values and outlook on life in general.

(10)The results of any substance abuse evaluation, mental health evaluation,domestic assault and battery evaluation, or psychosexual evaluation, including anyreport prepared pursuant to I.C. § 19-2522 or I.C. § 19-2524, but excluding content ofany evaluation or report prepared pursuant to I.C. § 18-211 or I.C. §18-212.

(11) The presentence investigator's analysis of the defendant's condition. The analysis of the defendant's condition contained in the presentence report should include a complete summary of the presentence investigator's view of the psychological factors surrounding the commission of the crime or regarding the defendant individually which the investigator discovers. Where appropriate, the analysis should also include a specific recommendation regarding a psychological examination and a plan of rehabilitation.

(c) Recommendations concerning sentence. The presentence report may recommend incarceration but it should not contain specific recommendations concerning the length of incarceration, the imposition of a fine or the amount of a fine, or the length of probation or other matters which are within the province of the court. Provided, however, thepresentence report may recommend programs or treatment for the defendant andcomment as to the length of time that may be required for the defendant to complete anyrecommended programs or treatment. The presentence report may also comment generally on the probability of the defendant's successfully completing the term of probation or the defendant's financial ability to pay a fine imposed by the court.

(d) Psychological evaluations. The presentence investigator may recommend a psychological evaluation, but the decision as to whether to order a psychological evaluation is to be made by the sentencing judge.

(e) Information which may be included in the presentence report.

(1) Content. The presentence report may include information of a hearsay nature where the presentence investigator believes that the information is reliable, and the court may consider such information. In the trial judge's discretion, the judge may consider material contained in the presentence report which would have been inadmissible under the rules of evidence applicable at a trial. However, while not all information in a presentence report need be in the form of sworn testimony and be admissible in trial, conjecture and speculation should not be included in the presentence report. Any pictures or depictions of child pornography that are included as attachments to the report must be placed in a separate envelope and marked as such, with access

restricted to only those allowed by the trial court.

(2) Previous charges against defendant. It is permissible for the sentencing judge to consider information in a presentence report regarding a previous charge against the defendant which had been dismissed after a successful probation period.

(3) Idaho Sentencing Information Database. The presentence report mayinclude a report generated from use of the Sentencing Tool of the Idaho SentencingInformation Database (http://sentencing.isc.idaho.gov/ [1]), and may contain a narrativedescription of the database results.

(f) Additional report may be ordered. The sentencing judge may order an additional investigation of the case if the judge deems it necessary and use such results in considering the disposition.

(g) Access to presentence report.

(1) Disclosure of report, exceptions. Full disclosure of the contents of the presentence report shall be made to the defendant, defendant's counsel, and the prosecuting attorney prior to any hearing on the sentence except as hereinafter provided. The defendant and defendant's attorney shall be given a full opportunity to examine the presentence investigation report so that, if the defendant desires, the defendant may explain and defend adverse matters therein. The defendant shall be afforded a full opportunity to present favorable evidence in defendant's behalf during the proceeding involving the determination of sentence. Provided, however, the trial court may withhold from disclosure parts of the presentence report which contain diagnostic opinion which might seriously disrupt a program of rehabilitation, or information which in the court's discretion may prove harmful to an individual not a party in the proceeding, or pictures or depictions of child pornography that are separately identified pursuant to subsection (e)(1).

(2) Explanation of non-disclosure. Where the trial court chooses to withhold from disclosure to the defendant information in the presentence report, the court must state for the record the reasons for its action, inform the defendant and defendant's attorney that information has not been disclosed, and explain the general nature of the information being withheld. Further, if requested, the defendant's attorney, if the defendant is represented by counsel, shall be allowed to review any information in the presentence report which is so withheld from disclosure so as to allow the attorney a full opportunity to explain and rebut the information contained therein.

(3) Time of disclosure. Disclosure of the information contained in the presentence report under the conditions mentioned above shall be made at a sufficient time prior to the imposition of sentence so as to afford a reasonable opportunity for the defendant or defendant's attorney to verify or rebut any information contained in the report. Reasonable requests for a continuance of the sentence proceeding, when based on lack of sufficient time to examine or offer rebuttal to information contained in the presentence report, may be granted by the sentencing judge.

(h) Disclosure of presentence reports.

(1) Custody of presentence report. Any presentence report shall be available for the purpose of assisting a sentencing court and once prepared may be released to any district judge for that purpose. After use in the sentencing procedure, the presentence report shall be sealed by court order, and thereafter cannot be opened without a court order authorizing release of the report or parts thereof to a specific agency or individual. Provided, the presentence report shall be available to the Idaho Department of Corrections so long as the defendant is committed to or supervised by the Department, and may be retained by the Department for three years after the defendant is discharged. In addition, when preparing a report on a defendant, a presentence investigator shall have access to previous presentence reports, including all attachments and addendums, prepared on that defendant, whether in the same case or in previous cases. The pre-sentence investigator's own copy of the presentence report similarly is restricted from use by all but authorized court personnel. Neither the defendant, defendant's counsel, the prosecuting attorney nor any person authorized by the sentencing court to receive a copy of the presentence report shall release to any other person or agency the report itself or any information contained therein, except as provided in Article 1, Section 22(9) of the Idaho Constitution. Any violation of this rule shall be deemed contempt of court and subject to appropriate sanctions.

(2) Availability of presentence information to evaluators. The presentence investigator may release information relating to the defendant's criminal history and law enforcement reports related to the offense for which the defendant is to be sentenced to persons preparing reports to assist the court in sentencing pursuant to a court-ordered evaluation. Any person receiving such information shall not release that information to any other person or agency. Any violation of this rule shall be deemed contempt of court and subject to appropriate sanctions.

(3) Availability of presentence report to third parties. With the permission of the sentencing judge, the presentence report may be available to persons or agencies having a legitimate professional interest in the information likely to be contained therein, if it appears that such availability will further the plan or rehabilitation of the defendant or further the interests of public protection, and that appropriate safeguards or the confidentiality of information contained in the presentence report will be provided by the persons or agencies receiving such information. Such persons or agencies may include a physician or psychiatrist appointed to assist the court in sentencing, an examining facility, a correctional institution, a probation or parole department, or the supervisors of a public or private rehabilitation program.

(4) Availability of presentence report to problem-solving court personnel. With the permission of the sentencing judge, the presentence report may be made available to problem-solving court personnel for purposes of screening the defendant to determine the defendant's suitability for admission into a problem-solving court program.

(5) Availability of presentence report on appeal. When relevant to an issue on which an appeal has been taken, the report shall be available for review in courts of appeal when requested by a party or ordered by the court pursuant to Idaho Appellate Rule 31 (b). Pictures and depictions of child pornography contained in the report that are placed in a separate envelope pursuant to subsection (e)(1) of this rule shall not be transmitted to the parties or the court as part of the appeal unless specifically requested.

(Adopted December 27, 1979, effective July 1, 1980; amended June 15, 1987, effective November 1, 1987; amended March 1, 2000, efffective July 1, 2000; amended January 30, 2001, effective July 1, 2001; amended April 4, 2008, effective July 1, 2008; amended March 18, 2011, effective July 1, 2011; amended February 27, 2013, effective July 1, 2013.)

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[1] http://sentencing.isc.idaho.gov/