

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO THE
IDAHO CRIMINAL RULES

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ORDER

The Court, having received a recommendation to amend the Idaho Criminal Rules, and being fully informed as to the recommendation,

NOW, THEREFORE, IT IS ORDERED that the Idaho Criminal Rules be amended as follows:

Idaho Criminal Rule 32. Presentence Investigations and Reports

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

(g) Access to Presentence Report.

(1) *Disclosure of Report, Exceptions.* Full disclosure of the contents of ~~the~~ any presentence report considered by any sentencing court must be made to the defendant, defendant's counsel, and the prosecuting attorney prior to any hearing on the sentence except as provided in this Rule. The defendant and defendant's attorney must 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 in it. The defendant must be afforded a full opportunity to present favorable evidence in defendant's behalf during the proceeding involving the determination of sentence. The trial court may, however, withhold from disclosure:

(A) parts of the presentence report that contain diagnostic opinion that might seriously disrupt a program of rehabilitation,

(B) information that in the court's discretion may prove harmful to an individual not a party in the proceeding, or

(C) pictures or depictions of child pornography that are separately identified pursuant to subsection (e)(1).

(h) Disclosure of Presentence Reports.

(1) *Custody of Presentence Report.* Any presentence report must 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~~ All presentence reports must shall be filed and kept as sealed by court order records and, except as otherwise allowed by this rule, a presentence report may only be disclosed upon court order entered pursuant to Idaho Court Administrative Rule 32(i) after which it cannot be opened without a court order authorizing release of the report or parts of it to a specific agency or individual. The presentence report must, however, be available to the Idaho Department of Corrections and the Idaho Commission of Pardons and Parole 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. If probation or parole supervision is transferred to another state, the Department may provide a copy of the presentence report to the supervising entity in that state. In addition, when preparing a report on a defendant, a presentence investigator must 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 presentence investigator's own copy of the presentence report 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 may release to any other person or agency the report itself or any information contained in it. As provided in Article 1, Section 22(9) of the Idaho Constitution, the victim has a right to read, but not to have a copy of, the presentence report. Any violation of this rule is a contempt of court and subject to appropriate sanctions.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective July 1, 2020.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 4th day of May, 2020.

By Order of the Supreme Court



Roger S. Burdick, Chief Justice