

# WAIVER TO ADULT COURT

## I.C. § 20-508, I.C. § 20-509, AND I.J.R. 26

*BENCH CARD*

### **PURPOSE<sup>1</sup>**

To outline the process of waiver and transfer of a juvenile to be held for adult criminal proceedings.

### **WHEN**

#### **Non-discretionary:**

Any juvenile, 14 to 18 years old, who is alleged to have committed any of the following crimes shall be held for adult criminal proceedings:

1. Murder of any degree or attempted murder;
2. Robbery;
3. Rape;<sup>2</sup>
4. Forcible sexual penetration by the use of a foreign object;
5. Infamous crimes against nature, committed by force or violence;
6. Mayhem;
7. Assault of battery with the intent to commit any of the above felonies;
8. Drug transaction within one thousand feet of school property or function;<sup>3</sup> and
9. Arson in the first degree and aggravated arson.

Any juvenile proceeded against pursuant to this section shall be accorded all constitutional rights, including bail and trial by jury, and procedural safeguards as if that juvenile were an adult defendant.<sup>4</sup>

#### **Discretionary:**

After the filing of a petition, but before the court has entered an order or decree that the juvenile has come within the purview of the Juvenile Corrections Act (JCA)<sup>5</sup>, the court may waive jurisdiction and order that the juvenile be held for adult criminal proceedings when:

1. A juvenile under 14 years of age is alleged to have committed any of the crimes enumerated in I.C. § 20-509; or
2. A juvenile 14 years of age or older is alleged to have committed an act which would be a crime if committed by an adult; or
3. An adult is alleged to have committed an act as a juvenile which would be a felony if committed by an adult, and the court finds that the adult is not committable to an institution for people with intellectual disabilities or mental illness, is not treatable in any available institution or facility available to the state designed for the care and treatment of juveniles, or that the safety of the community requires the adult continue under restraint; or
4. An adult already under the jurisdiction of the court is alleged to have committed a crime while an adult.<sup>6</sup>

### **WHO MAY INITIATE<sup>7</sup>**

The prosecuting attorney, the juvenile, or the court may initiate waiver proceedings by filing a written motion containing the grounds and reasons to support waiving jurisdiction.

### **ORDER SETTING HEARING AND INVESTIGATION**

Upon the filing of a motion to waive jurisdiction, the court shall set the motion for hearing and order county probation or other court designee to complete a full investigation of the circumstances of the alleged offense.<sup>8</sup>

**Notice:**

At least 10 days before the waiver hearing, notice shall be provided to the juvenile, the juvenile's parent(s), guardian or custodian, prosecuting attorney, probation officer (if any) and Department of Juvenile Corrections district liaison, and shall inform the juvenile of the right to counsel.<sup>9</sup>

**Investigation:**

The court shall order county probation or other court designee to complete a full investigation of the circumstances of the alleged offense and the following factors:

1. The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
3. Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;
4. The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;
5. The juvenile's record and previous history of contacts with the juvenile corrections system; and,
6. The likelihood that the juvenile will develop competency and life skills to become a contributing member of the community by use of facilities and resources available to the court.<sup>10</sup>

At least 5 days prior to the hearing, the investigative report shall be submitted to the court, prosecuting attorney, and juvenile or counsel for the juvenile.<sup>11</sup>

## HEARING

**Evidence:**

The Rules of Evidence apply, except that the court may consider such hearsay as may be contained in the investigative report, criminal records, or other relevant evidence submitted to the court.<sup>12</sup> The court's decision to waive jurisdiction is discretionary and not a determination with a required burden of proof.<sup>13</sup>

**Making the Record:**

The hearing upon the motion to waive jurisdiction shall be held in the same manner as an evidentiary hearing upon the original petition and shall be made part of the record.<sup>14</sup>

The court may rely on the investigative report, the juvenile's criminal record in the state of Idaho, and other states' certified court and probation records. The prosecuting attorney, juvenile, or attorney for the juvenile may present evidence in support of, or opposed to, the contents of the reports and records before the court and the waiver request. Each party shall have the right to present such evidence as may be relevant to the issue of waiver, and the court may consider such hearsay as may be contained in the investigative report, criminal records, or other relevant evidence submitted to the court.<sup>15</sup>

The juvenile may stipulate to waiver, but said stipulation shall be in writing or on the record in open court.<sup>16</sup>

**Factors:**

In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:<sup>17</sup>

1. The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
3. Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;
4. The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;
5. The juvenile's record and previous history of contacts with the juvenile corrections system; and
6. The likelihood that the juvenile will develop competency and life skills to become a contributing member of the community by use of facilities and resources available to the court.

The amount of weight to be given to each of the factors listed is discretionary with the court, and a determination to waive the juvenile may be based on any one or a combination of the factors, which shall be recited in the order of waiver.<sup>18</sup>

**Findings:<sup>19</sup>**

If the court determines that jurisdiction should not be waived, the petition shall be processed under the JCA.

If the court determines jurisdiction should be waived and the juvenile should be prosecuted as an adult, the court shall enter findings of fact and conclusions of law together with a decree waiving JCA jurisdiction and binding the juvenile over to the authorities for prosecution as an adult.

**Following a Waiver:**

Upon waiver, the prosecuting attorney shall file a criminal complaint within 24 hours, excluding Saturdays, Sundays, or holidays, and order that an initial appearance on the criminal complaint shall be held pursuant to I.C.R. 5.<sup>20</sup>

Upon non-discretionary or discretionary waiver, the juvenile offender shall thereafter and in all subsequent violation of Idaho law be handled in every respect as an adult.<sup>21</sup>

**Placement:<sup>22</sup>**

A juvenile under the age of 18 may not be held before sentencing in any adult jail or lockup unless a court finds, after a hearing and in writing, that it is in the interest of justice. In determining if it is in the interest of justice, a court shall consider:

1. the age of the juvenile;
2. the physical and mental maturity of the juvenile;
3. the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
4. the nature and circumstances of the alleged offense;
5. the juvenile's history of prior delinquent acts;
6. the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
7. any other relevant factor.

If a court determines that it is in the interest of justice to hold a juvenile under the age of 18 before sentencing in any adult jail or lockup:

1. the court shall hold a hearing not less frequently than once every 28 days, to review if it is still in the interest of justice to hold the juvenile in an adult jail or lockup; and
2. the juvenile shall not be held in an adult jail or lockup for more than 180 days, unless the court, in writing, determines there is good cause for an extension or the juvenile expressly waives this limitation.<sup>23</sup>

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<sup>1</sup> I.C. § 20-508, I.C. § 20-509; I.J.R. 26.

<sup>2</sup> I.C. § 18-6101.

<sup>3</sup> I.C. § 37-2732(a)(1)(A),(B), or (C).

<sup>4</sup> I.C. § 20-509(1).

<sup>5</sup> I.C. § 20-508(7).

<sup>6</sup> I.C. § 20-508(1).

<sup>7</sup> I.C. § 20-508(2).

<sup>8</sup> I.C. § 20-508(3).

<sup>9</sup> I.J.R. 26(a)(1).

<sup>10</sup> I.C. § 20-508(8); I.J.R. 26(a)(2).

<sup>11</sup> I.J.R. 26(2).

<sup>12</sup> I.J.R. 51(a); I.C. § 20-508(5); I.J.R. 26(b).

<sup>13</sup> I.C. § 20-508(1) and (8)(g); *In re Doe*, 147 Idaho 243, 247 (2008); *See also Interest of Doe*, 167 Idaho 249, 260 (Ct. App. 2020).

<sup>14</sup> I.C. § 20-508(5).

<sup>15</sup> I.J.R. 26(b).

<sup>16</sup> I.J.R. 26(c).

<sup>17</sup> I.C. § 20-508.

<sup>18</sup> I.C. § 20-508(8)(g).

<sup>19</sup> I.C. § 20-508(6).

<sup>20</sup> I.J.R. 26(d).

<sup>21</sup> I.C. § 20-509(3).

<sup>22</sup> I.C. § 20-509(2); I.C.R. 53.

<sup>23</sup> *Id.*