



Idaho State Judiciary



Report to Idaho Courts:

Uniform Business Practices to Implement Legislative and Rule Changes

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IDAHO RULES OF CIVIL PROCEDURE

I.R.C.P. 16(a)&(b)

In 2014, Rule 16 was amended at the recommendation of the Advancing Justice Committee. After additional review and consideration, the rule has been amended again. **Rule 16(a)** still requires the court to **take action which results in the filing of a scheduling order** within 30 days after an answer or notice of appearance has been filed, or within 90 days after a complaint has been filed, if one or more defendants have been served but no appearance has been made. The requirement to conduct a scheduling conference has been deleted. The amendment allows more discretion on the part of the court as to what action to take.

Rule **16(b)** was also revised to remove the requirement that a formal pretrial conference take place. Instead the court may exercise its discretion to take action that requires the parties to "confirm that the matter is proceeding to trial in the manner required by the court's scheduling order."

Business Process for Court Clerks:

- It is no longer mandatory to set a scheduling conference or final pretrial conference. Consult with the presiding judge and adjust your practice accordingly.
- If the presiding judge conducts a formal pretrial conference, the new Rule 16(b) language expressly requires that "it shall be held on the record and any ruling of the court shall be reflected in a minute entry prepared as ordered by the court."

(Effective July 1, 2015.)

IDAHO RULES OF FAMILY LAW PROCEDURE

I.R.F.L.P. 106

In many domestic relations cases there is a previous case involving only child support in the same or a different county. Since child support is likely to be modified in the new case, consolidation is preferred. In order to make that easier, the new amendment provides that, if the domestic relations case is filed in the proper county, a motion to consolidate may be filed in the new case and the judge assigned to the new case may rule on the motion.

Business Process for Court Clerks:

1. File stamp motion and enter the appropriate ROA / Event code. There is **NO filing fee**.
2. Route the motion and proposed order with the case file to **the judge assigned to the new domestic relations case involving custody**.
3. The new case must be in the proper venue.
4. A motion for change of venue **is not required**.
5. Upon granting of the motion, file stamp the "Order Granting Consolidation" and enter the appropriate ROA / Event code.

6a. If the prior support case was *in same county*:

- a. In ISTARS, consolidate the previous child support and new domestic relations case involving custody into one file. In Odyssey, relate the previous child support case to this new domestic relations case.
- b. Confirm that the case management system identifies both cases under the case number assigned to the action involving custody.

6b. If the prior support case was *in different county*:

- a. Provide notice of the order to the court where the prior child support case was venued.
- b. Upon receipt of the order, the prior county court will handle the case as a change of venue without fees. The Clerk will make a copy of the file to retain, keeping the original order. Send all original pleadings with a Certified Copy of the Order and any other papers to the clerk of the new court. Transfer all materials by certified mail.

- c. Enter the ROA / Event code “VENU” and indicate the court of new venue, enter the civil disposition from the disposition screen in ISTARS. In Odyssey enter the disposition and close the case with event “CDIS.”
- d. Upon receipt of the original child support case, the receiving court clerk will then consolidate / relate the previous child support and new domestic relations case involving custody into one file. The case management system should identify both cases under the case number assigned to the new action involving custody.

7. All future papers shall be filed under that case number assigned to the new action involving custody.
8. All further action with regard to the consolidated cases shall be heard by the judge who is assigned the action involving custody.

(Effective April 15, 2015.)

I.R.F.L.P. 201(c)

I.R.F.L.P. 201(c) controlling proceedings to modify child custody, child support, or spousal maintenance was amended to clarify that this proceeding is commenced by filing a petition **in the original action**. The petition must be in a form similar to an original petition and the method of service is the same as for an original action. Service must be on the opposing party rather than on the previous attorney of record for the party. It also states that there is no right for an existing party in the lawsuit to disqualify the judge without cause pursuant to Rule 107 if that judge had previously presided in the lawsuit and had not been disqualified. The amendment also clarifies that a petition to modify shall be resolved by the entry of a judgment as provided in Rule 803(B), and that all orders issued in adjudicating the motion to modify prior to the entry of the judgment are interlocutory orders.

Business Process for Clerks:

Although clerks should be aware of this rule change, it does not impact current business processes.

(Effective April 15, 2015.)

I.R.F.L.P. 101

Legal separation has been added to the actions governed by these rules.

Business Process for Clerks:

Although clerks should be aware of this rule change, it does not impact current business processes.

(Effective July 1, 2015.)

I.R.F.L.P. 112

I.R.C.P. 11(b)(3) was amended in 2014 to **require the clerk to serve the order to withdraw on all parties**. The amendment to this rule mirrors the language in the civil rule. As such, the amendment places the responsibility on the clerk to serve the order of withdrawal in accord with Rule 115(B), in the same manner that other orders are served, and clarifies that the 20 day period for the client to respond begins after service of the order.

Business Process for Court Clerks:

See the business process described for compliance with I.R.F.L.P. 115(B) below.

(Effective July 1, 2015.)

I.R.F.L.P. 115(B)

I.R.F.L.P. 115 was amended to add subsection B which consists of the provision found in I.R.C.P. 77(d) which requires the clerk to give notice of orders or judgments.

Business Process for Court Clerks:

1. Immediately upon the entry of an order of judgment the clerk shall serve by mail a copy on every party affected.
2. The prevailing party should supply a sufficient number of copies along with stamped addressed envelopes.
3. The clerk may hand deliver or mail serve the attorney of record of each party. If a party is not represented by an attorney, the clerk will send to the designated address most likely to give notice.
4. The judgment should include the clerk's filing stamp showing the date of filing.
5. Prepare and attach a Certificate of Mailing / Service to all parties to the judgment to document service requirement by clerk.

(Effective July 1, 2015.)

IDAHO CRIMINAL RULES

I.C.R. 5.3(c)(7)

This subsection to I.C.R. 5.3 was added to address the issue of timely transport when a probationer is arrested in a county different from the one in which he or she was originally sentenced. Currently most clerks are advising the originating county by sending a copy of the court minutes, rights advisement, and a copy of the warrant. The rule change mandates the additional step of serving a formal notice entitled: Notice of Arrest on Out of County Probation Violation.

Business Process for Court Clerks:

1. The probationer must be advised that if he or she remains in custody, he or she will be transported and arraigned in the sentencing county within a reasonable time not to exceed fourteen (14) days.
2. If the probationer posts bond, he or she will be given a date to appear before a magistrate for arraignment in the county of sentencing.
3. After the first / initial appearance, the clerk of the arresting county will provide **written notice** to the clerk of the county where the probationer was placed on probation so that timely transport can be provided to the sentencing county of the following:
 - a. The date of the probationer's arrest; **and**
 - b. The date of the appearance before the court.

The written notice should be a formal pleading titled "I.C.R. 5.3(c)(7) NOTICE OF ARREST ON OUT OF COUNTY PROBATION VIOLATION" signed by the clerk or judge. This pleading will be made available in the case management system. (*See example below.*)

4. The clerk of the arresting county should also forward a copy of the minutes, any rights form advisory, and a copy of the warrant **ALONG WITH THE NEW FORM** to the clerk in the originating county.
5. Upon receipt of the written notice, the clerk of the county where the probationer was placed on probation must then complete the certificate of service page and provide copies to parties in the case.

NOTE: While the rule does not state a specific time requirement, it is recommended that the clerk of the arresting county forward the written notice via email within twenty-four hours of the first appearance. It is recommended that the receiving / sentencing clerk serve the parties with the written notice within twenty-four hours of receipt. This prompt action is necessary to assure that

a defendant is transported and arraigned before the fourteen (14) day time limit in subsection (c)(7)(a) lapses.

(Effective July 1, 2015.)

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

STATE OF IDAHO,

Plaintiff,
vs.

Defendant.

NOTICE OF ARREST ON OUT OF COUNTY
PROBATION VIOLATION I.C.R. 5.3(C)(7)

PLEASE BE ADVISED that your probationer was arrested in _____ County, on
[Date] , and seen in court on [Date] .

Clerk of the Court

Dated: _____

By: _____
Deputy Clerk

CERTIFICATE OF SERVICE

I certify that on [Date] , I served a copy of the attached to:

	<input type="checkbox"/> By mail <input type="checkbox"/> By email <input type="checkbox"/> By fax (number) _____ <input type="checkbox"/> By personal delivery <input type="checkbox"/> Overnight delivery/Fed Ex
	<input type="checkbox"/> By mail <input type="checkbox"/> By email <input type="checkbox"/> By fax (number) _____ <input type="checkbox"/> By personal delivery <input type="checkbox"/> Overnight delivery/Fed Ex

By: _____

Deputy Clerk

I.C.R. 11 (New Plea Advisory Form)

Recently the District Judges Workgroup made suggested revisions to the Guilty Plea Advisory Form as part of a committee looking at best practices, forms and formatting for the upcoming new court case management system. The suggested revisions were sent to the Criminal Rules Advisory Committee for review and further recommendations and then adopted by the Supreme Court. The form is referenced in Rule 11 and identified as "Appendix A" to the Criminal Rules.

The new form will be loaded into the court's case management system. A copy can also be found on the sixth page of the Supreme Court's Order adopting the new form.

http://www.isc.idaho.gov/orders/ICR_Order_5.3-32etc_07.15.pdf

(Effective July 1, 2015.)

I.C.R. 18

This rule regarding **Pretrial Conferences** now applies **only to felonies** and it makes a distinction between pretrial conferences and informal settlement conferences. The existing statement in the rule that "no admissions made by the defendant or defense counsel at the conference may be used against the defendant unless reduced to writing and signed by the defendant" only applies to admissions made in the course of an informal settlement conference.

Business Process for Court Clerks:

- The amendment allows the court to hold an **informal** settlement conference **off the record**. Consult with your judge and adjust your practice accordingly.
- If the court conducts a pretrial conference, the court **shall** make a written record of the matters decided. Please do so by capturing those matters in the court's minutes.

(Effective July 1, 2015.)

I.C.R. 23

Rule 23 was amended to state that if felony and misdemeanor charges are charged together, in the same information or indictment in a consolidated case, they **shall** be tried before the same twelve-person jury.

(Effective July 1, 2015.)

I.C.R. 32(h)(1)

When supervision of a probationer or a parolee is transferred to another state under the Interstate Compact, the Idaho Department of Correction transfers a copy of the PSI. Language was added to Subsection 32(h)(1) to clarify that the IDOC does not need the approval of the custodian judge in each of these cases. This subsection was also amended to be more specific as to the victim's right to read (but NOT have a copy of) a presentence report.

(Effective July 1, 2015.)

I.C.R. 33(e)

A new subsection has been added to Rule 33 on discretionary jail time, which is defined as jail time to be served at the discretion of the probation officer as a sanction for violating a term or condition of probation. Discretionary jail time **does not include** incarceration in jail in order for a defendant to obtain treatment or programming provided in the jail.

The new subsection sets out a procedure for imposing discretionary jail time as follows:

1. Upon receipt of a written statement of facts made under oath or affirmation by the probation officer showing probable cause to believe that the defendant violated any term or condition of probation, a court may order in writing that the defendant serve a specified number of days of the discretionary jail time.
2. If, without a court order issued pursuant to subsection (1), a defendant is arrested pursuant to Idaho Code Section 20-227 for violating a term or condition of probation, there shall be a **judicial determination of probable cause within forty-eight (48) hours of the arrest**. If, within that time period, there is no judicial finding that there was probable cause for the arrest, the defendant shall be released. If there is a judicial finding of probable cause within that time period, the defendant shall be released seventy-two (72) hours after the arrest unless the sentencing court has ordered a longer period of jail time. If, when delivering the defendant to the jail, the probation officer informs the jail authorities in writing that the defendant is to serve a specific period of time in jail that is less than forty-eight (48) hours, the defendant may be released upon the conclusion of that specific period without further court approval.
3. **The number of consecutive days served as discretionary jail time shall not exceed three (3) days.**
4. **Any time served in jail as discretionary jail time shall be credited against the period of discretionary jail time specified as a condition of probation.**

5. If the defendant is arrested pursuant to Idaho Code Section 20-227 for violating the conditions of probation and a motion seeking a judicial finding of a probation violation is not filed with respect to the conditions allegedly violated, the time served in jail pursuant to that arrest shall be credited against such period of discretionary jail time.
6. Nothing herein shall limit a sentencing court's authority to impose additional terms and conditions of probation including jail time.

(Effective July 1, 2015.)

IDaho Misdemeanor / Infraction Criminal Rules

M.C.R. 13(b) - Bail Bond Schedule

Several changes were made to the bail bond schedule to reflect recent legislation. Tampering with a vehicle was removed. Those new infractions are described below.

http://www.isc.idaho.gov/orders/IMCR_Order_13b_7.15.pdf

(Effective July 1, 2015.)

I.I.R. 9(b) - Infraction Penalty Schedule

Due to recent legislation changing some misdemeanors to infractions and setting the penalties for those infractions, several new infractions were added to the infraction penalty schedule. Those new infractions are described below.

[http://www.isc.idaho.gov/orders/InfractionRule9\(b\)_Order_7.15%202015.pdf](http://www.isc.idaho.gov/orders/InfractionRule9(b)_Order_7.15%202015.pdf)

(Effective July 1, 2015.)

IDAHO JUVENILE RULES

I.J.R. 37

Language was added to make this rule consistent with recent amendments to Idaho Code Section 16-1614, including that for a child under the age of twelve years the court shall appoint a guardian *ad litem* for the child or children and shall appoint counsel to represent the guardian *ad litem* unless the guardian *ad litem* is already represented by counsel.

Business Process for Court Clerk:

In the event the court appoints the guardian *ad litem* and/or counsel – add as a participant (ODYSSEY) and Other party in ISTARS along with attorney appointment.

(Effective July 1, 2015.)

IDAHO COURT ADMINISTRATIVE RULES

I.C.A.R. 32

A number of amendments have been made to Rule 32, including the definition of “court record” which was amended from the over inclusive “collected, received, or maintained” to any document, information or other thing that is “filed, docketed or lodged.”

Subsection (g) of this rule addresses court records exempt from disclosure and subsection (g)(9) addresses juvenile records. Subsection (g)(9)(E) made an exception in cases where a juvenile is adjudicated guilty of an act which would be a criminal offense if committed by an adult, providing that in those cases the name, offense, and disposition of the court was open to the public. This subsection has now been deleted as inconsistent with the rest of the rule and because it could subject juveniles to severe and needless adverse consequences.

Subsection (g)(20) addresses records in cases involving child custody, child support, and paternity and provides that these records are exempt from disclosure, with the exception that the register of actions and a redacted copy of any order decree or judgment are available to the public. The rule was creating confusion as to whether the full names, birthdates and social security numbers should be included in the original order, decree or judgment; however, this information is required for identification of the children and collection of support. To clarify this issue the rule was amended to state that **no redacted copy of any order, decree or judgment must be prepared until there is a specific request for the document**, in which case the document should be redacted in the manner specified in I.R.C.P. 3(c)(1)(a) - (d). (**Effective April 15, 2015.**) In addition, language was added that a person may request the court to make other records in the case available for examination and copying at which point the court must review and make the records available subject to the criteria set out in the rule.

Subsection (i) addresses other prohibitions or limitations on disclosure and motions regarding the sealing of records and has been amended to provide that when there is a motion to seal a record the court may order that the record be immediately redacted or sealed pending the hearing if the court finds that doing so may be necessary to prevent harm to any person or persons.

(Effective July 1, 2015 except where indicated above.)

LEGISLATIVE CHANGES

HB 061

Amends law regarding juvenile sentencing to clarify that the court may sentence a juvenile to the custody of the Department of Juvenile Corrections and may also provide that the juvenile will be on probation following release from custody. The amendment also mandates a post custody hearing to determine the appropriate terms of that probation and provides time limits to that period of probation.

HB 061 amends I.C. § 20-520 controlling juvenile sentencing to include the following language:

If a juvenile offender is committed to the Idaho department of juvenile corrections pursuant to paragraph (r) of this subsection, the court may place the juvenile offender on probation from the date of sentencing up to three (3) years past the date of release from custody or the juvenile offender's twenty-first birthday, whichever occurs first; provided the court shall conduct a review hearing within thirty (30) days following release of the juvenile offender from the department of juvenile corrections in order to determine the conditions and term of such probation; . . .

Previously the statute was vague and interpreted by some to exclude the practice of sentencing a juvenile to both custody and probation. This language provides clarification to the law so that it is clear that a judge does have the discretion to order both when beneficial to the juvenile.

Business Process for Court Clerks:

- In the event the judge elects to sentence a juvenile to probation after his or her term on custody, schedule a “Probation Review Hearing” within thirty days of the scheduled release of the juvenile.

(Effective July 1, 2015.)

HB 062 & SB1069a

Amends law expanding the rights to collect on certain judgments.

HB 062 - The Legislature recognized that victims of crimes, who are awarded restitution, may not have understood that their right to execute on a judgment originating from that restitution would expire after five years unless they petitioned the court for an extension. This bill extended the five year limitation to **twenty years** for those victims seeking to recover on a judgment for restitution.

SB 1069a – Amends law to extend the period during which judgments may be enforced, other than for the recovery of money, **from five years to ten years**. This change in law shall apply only to judgments issued or renewed on and after July 1, 2015.

House Bill 062 was sponsored by the Judiciary to address the concern that victim's rights to execute judgments (including the filing of liens) were expiring without their knowledge. The bill also provided additional time within which to collect owed funds. Crime victims are generally not represented by an attorney, and they may not realize the effect of failing to file a formal extension request. This bill enables victims of crime to fully recognize their constitutional right to restitution for the harm that has been done to them by extending the five year limitation to twenty years for victims who are seeking to recover on a judgment for restitution arising from a defendant's conviction.

House Bill 062 amends I.C. § 10-1110 to provide that the lien arising from an order for restitution to a crime victim that has been recorded as a judgment shall be 20 years; amends I.C. § 11-101 to provide that a writ of execution may be issued at any time within 20 years after the order of restitution if the order was recorded as a judgment.

Senate Bill 1069a amends I.C. § 11-101 and I.C. § 11-105 to increase from five years to ten years the enforceability of judgments in cases, other than for the recovery of money, on or after July 1, 2015. I.C. § 10-1110 was amended to do the same in the context of liens resulting from recorded judgments. This bill also amends I.C. § 45-510 to increase from five years to ten years the duration of a lien. (Note that this statute has no exclusion of cases for "recovery of money.") Finally, this bill amends I.C. § 5-215 to increase from six years to eleven years the ability to make an action on a judgment for mesne profits of real property.

Business Process for Court Clerks:

Although the clerks should be aware of these changes, there is no impact to the current business process.

(Effective July 1, 2015.)

HB 064

Amends law to clarify that defendants receive credit for time served after service of a warrant for a probation violation. This will ensure that the total time of incarceration served by a defendant does not exceed the sentence imposed by the court.

This bill amends statutes addressing the credit a defendant receives upon sentencing or revocation of probation for time previously served in jail. Defendants currently receive credit for time spent in jail prior to judgment if their incarceration in jail was for the offense for which judgment was entered. However, defendants who are placed on probation will sometimes be required to serve time in jail as a condition of probation. If the defendant's probation is later revoked and the defendant is ordered to serve the previously suspended prison sentence, the defendant does not receive credit for the time served in jail as a condition of probation. This bill provides that such a defendant receives credit for the time served as a condition of probation, ensuring that the total time of incarceration served by a defendant does not exceed the sentence imposed by the court. The bill also clarify that a defendant who is served with a bench warrant or arrested on a probation violation charge receives credit for time served in jail following the service of the warrant or the arrest.

Overview of House Bill 064

Computation of Term of Imprisonment I.C. § 18-309

The statute was amended to include a subsection with the following language: "In computing the term of imprisonment when judgment has been withheld and is later entered or sentence has been suspended and is later imposed, the person against whom the judgment is entered or imposed ***shall receive credit in the judgment for any period of incarceration served as a condition of probation under the original withheld or suspended judgment.***" (emphasis added)

Pronouncement and Execution of Judgment After Violation of Probation I.C. § 19-2603

In addition to clarifying the language of the law, the statute now includes language that expressly states a defendant who is served with a bench warrant or arrested on a probation violation charge shall receive credit for time served in jail following the service of the warrant or the arrest "***and*** for and for any time served as a condition of probation under the withheld judgment or suspended sentence." (emphasis added)

Removal of Duplicative Language I.C. § 20-209A

Language pertaining to credit for time served prior to sentence was deleted as it is duplicative of the clear language of I.C. § 18-309.

Business Process for Court Clerks:

Although the clerks should be aware of these changes, there is no impact to the current business process.

(Effective July 1, 2015.)

HB 102, HB 104, HB 159, HB 160, HB 161, HB 195

These are a group of bills to reclassify low level misdemeanors to infractions. The subject matter covered include: Juvenile curfew violations (HB 102); debris on highways or property (HB 104 / HB160); first time tobacco violation by juvenile (HB 159); several fish and game offenses (HB 161); and fireworks offenses (HB 195).

These are a group of bills to reclassify low level misdemeanors to infractions. The purpose behind the reclassification is to better align punishment with crimes committed and save costs related to public defense, while maintaining penalties adequate for deterrence and enforcement. This effort builds on 2014's House Bill 434 which updated infraction penalties to increase the viability of migrating low level misdemeanors to infraction penalties. The changes in these bills originated with recommendations from the Misdemeanor Reclassification Subcommittee of the Criminal Justice Commission, which were then reviewed and approved in concept by the Public Defense Reform Interim Committee. Below is a summary of the each of the bills.

Business Practices for Judges and Court Clerks:

- Clerks need only to be aware that these charges are now infractions if they are charged as a first offense and not misdemeanors. They are to be handled the same as other infractions.
- Judges and clerks should watch for prosecutors initiating misdemeanor charges in these subject areas based on city or county ordinances. Per I.C. § 49-1503 and the Idaho Constitution, article XII, section 2, a city or county may not charge as a misdemeanor an act that has been defined as an infraction under Idaho state law.

HB 102

This bill amended I.C. § 20-549 to reduce a first-time curfew violation by a juvenile from a misdemeanor to an infraction. The bill sets a \$150 infraction fine for curfew violations.

HB 104 / HB 160

House Bill 104 made structural changes to two statutes addressing litter and debris on highways and on private and public property so that the two statutes (I.C. § 18-3906 and I.C. § 18-7031) are the same in application. The first and second offenses of placing debris on highways and placing debris on public or private property were reduced from a

misdemeanor to an infraction. The bill sets a first time offense infraction penalty at \$150, a second offense within 2 years at a \$300 infraction penalty, and a third offense within 3 years as a misdemeanor with a fine not exceeding \$1000 and jail of up to 30 days.

House Bill 160 was a “trailer bill” to House Bill 104 to amend I.C. § 18-3906 to include a statutory deterrence for **willfully** placing debris on highways and streets in a way that impedes traffic or creates a driving hazard. The amendment includes a provision that makes it a misdemeanor to willfully throw, deposit or place on or alongside any highway or street any debris, substance, object or material that impedes traffic or creates a hazardous driving condition. The new language states that such a willful act is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail not exceeding six (6) months, or by both.

HB 159

This bill amended I.C. § 39-5703 to reduce a first-time tobacco violation by a juvenile from a misdemeanor to an infraction. The bill sets a \$17.50 infraction fine for underage possession, use and consumption, a first offense infraction of \$200 for sale or distribution, false identification to obtain, and for subsequent offenses for sale, distribution, or false identification to obtain, a misdemeanor is maintained with a fine up to \$300, but reduces potential jail time from 6 months to 30 days.

HB 161

This bill amended I.C. § 36-1401 and § 36-1402 to reduce several fish and game offenses from misdemeanors to infractions. The proposed changes affect certain grouse permits, taking of upland birds with exceptions, public use restrictions, evidence of species and Henry's Lake fishing limits. The bill also maintains the fine for existing infractions at \$72 but removes reference to the Idaho infraction rules. It also sets a \$250 fine for the infractions being migrated from misdemeanor to infraction status.

HB 195

This bill amended I.C. § 39-2609 and § 39-2613 to reduce several fireworks offenses (sell / use any fireworks not permitted and the act of altering fireworks) from misdemeanors to infractions. The bill sets a \$100 infraction fine for altering fireworks and for selling or using fireworks at times not permitted by law.

Business Process for Court Clerks:

Although the clerks should be aware of these changes, there is no impact to the current business process regarding processing infractions.

(Effective July 1, 2015.)

HB 158

Amends law to provide that when a court issues a failure to appear warrant it can set no bail on the warrant or require the defendant to appear in court before being released on bail.

This bill was a recommendation of the Supreme Court's Bail Bonds Guidelines Committee. Under previous law, when a criminal defendant fails to appear in court as required, the court was required to issue a bench warrant for the defendant's arrest and set an amount of bail on the warrant. The result was that a defendant who is arrested on the bench warrant would sometimes post bail, be released from jail, and then again fail to appear in court as required. This delayed proceedings and defeats the ends of justice. These amendment to I.C. § 19-2903 and I.C. § 19-2915 correct this situation by giving courts discretion to either set no bail on a bench warrant, or to set bail but require that the defendant actually appear before the court where the charges are pending before being released. This will allow a judge to set appropriate bail when the defendant actually appears in court and to set additional conditions of release to ensure the defendant's future appearance in court.

Business Process for Court Clerks:

Although the clerks should be aware of these changes, there is no impact to the current business process.

(Effective July 1, 2015.)

SB 1026

Amends law to clarify that in sentencing a person convicted of felony DUI the court must impose a one-year absolute license suspension, and may impose an additional period of suspension of up to four years during which the court may grant restricted driving privileges.

Idaho Code § 18-8005(6) requires a person convicted of felony DUI to serve a mandatory period of incarceration. Subsection (6)(d) states that the defendant "[s]hall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind." This appears to state that if the court imposes a license suspension of more than one year, the defendant cannot receive restricted driving privileges even for the period of suspension beyond the initial year. However, this does not appear to have been the intent of the Legislature because the very next subsection, (6)(e), states that the defendant shall "be required to drive only a motor vehicle equipped with a functioning interlock system . . . following the mandatory one (1) year license suspension period." This bill amends subsection (6)(d) to

provide that a court may, in its discretion, grant restricted driving privileges for employment and family health needs during the period of suspension following the one year mandatory suspension.

Business Process for Court Clerks:

Although the clerks should be aware of these changes, there is no impact to the current business process.

(Effective July 1, 2015.)

SB 1035

Amends laws pertaining to “blended sentences” for juveniles convicted as adults; provides that Idaho Department of Juvenile Corrections (IDJC) will have physical custody of the convicted juvenile until the court terminates IDJC’s custody, jurisdiction is relinquished, or the juvenile reaches 18, whichever occurs first; that the Board of Correction will be part of the treatment team; and that upon release of the juvenile by IDJC, the court may impose a period of retained jurisdiction, relinquish jurisdiction and impose the remainder of the sentence with Idaho Department of Corrections (IDOC), or place the juvenile on adult felony probation.

There are inconsistencies in the current laws on blended sentences for juveniles who are convicted as adults and placed in the custody of IDJC. This bill amends existing statutes to allow these juveniles to be placed in the dual custody of the IDOC and the IDJC for a certain time. A new section contains all major elements of a blended sentence in one place in Juvenile Corrections. Judges may view the webinar through the Judicial Education SharePoint Website: <https://sharepoint10.idcourts.us/isc/JudicialEducation/SitePages/Home.aspx>

Background

Juveniles in Idaho who commit certain, serious crimes may be waived to district court for prosecution as an adult. Waiver may be mandatory, or may be discretionary with the magistrate court. Mandatory waiver crimes include murder or attempted murder; robbery; rape excluding statutory rape; infamous crimes against nature committed with force or violence; mayhem; forcible sexual penetration by foreign object; assault or battery with intent to commit any of these felonies; and delivery or possession with intent to deliver controlled and certain illegal substances within 1000 feet of any public or private school or any other locations being used for a school activity. Juveniles below the age of 14 who have committed one of these serious crimes can be waived in Idaho, subject to a waiver hearing. A magistrate court can also decide to waive a juvenile to district court for other serious crimes after a waiver hearing. If the juvenile is convicted in district court of any charge other than murder or treason, a “blended sentence” can be utilized by the sentencing court.

A “blended sentence” is often a last chance for a juvenile to avoid going to prison. A juvenile will receive rehabilitative treatment and programming through IDJC. A juvenile can be retained by IDJC until the age of 21, or released earlier for either failure or successful completion of program and treatment.

The current statutes are unclear on how to implement a blended sentence. This has resulted in different systems being used by different courts. Some courts re-sentence a juvenile upon their completion of IDJC program, and some pronounce and suspend the adult sentence for the period of IDJC commitment. The juvenile often has no exposure to adult probation prior to release, although IDOC works with IDJC now to provide “courtesy supervision” and participates in the juvenile’s progress.

Experience has shown that juveniles who have been convicted in district court have had no experience with the strict requirements they will be exposed to if placed on adult felony probation. They may be used to juvenile probation officers who have smaller caseloads and can work with the juveniles and their families or other support systems. Some education and exposure to felony probation rules during their custody with IDJC will be very beneficial in preparing them for their post-release probation. In addition, the juvenile’s IDJC treatment team will benefit from working with adult probation officers to set up viable release plans for these juveniles.

Change in Law (I.C. § 19-2601A) / Change in Process

A committee consisting of judges, deputy attorneys general, leadership from IDOC and IDJC, and a representative from adult felony probation drafted a legislative proposal for introduction this year. The result was a proposal is to add a new section of law, **I.C. § 19-2601A**, which addresses the process to be used in imposing a blended sentence.

- An adult sentence is given to the convicted juvenile and suspended.
- The juvenile is then placed in the dual custody of the Idaho Department of Correction and the Board of Correction for a period not to exceed his 21st birthday. The court retains jurisdiction during this period of dual custody.
- The juvenile will be placed with IDJC for rehabilitative treatment and programming. This gives juveniles a chance to correct their criminogenic behaviors and thinking errors, while being incarcerated with juveniles their own age. They receive appropriate education, counseling, medical and psychiatric care as needed.

The proposed system involves an adult felony probation officer from the beginning of the juvenile’s custody with IDJC. The probation officer will participate as a member of the juvenile’s treatment team and, later, supervise a juvenile who steps down to a community-based program while still in IDJC custody. This gives the juvenile exposure to the adult probation system before being released from IDJC, and gives him or her better chance of success upon release.

- When a juvenile has successfully completed or failed program with IDJC, or is within 60 days of reaching age 21, he will go back before the sentencing judge for imposition of the suspended sentence, a rider or placement on adult felony probation.
- If a juvenile is failing or refusing to comply with the reasonable program requirements of IDJC, either IDOC or IDJC may petition the court to terminate IDJC custody and move forward with sentencing.

The amended statutes make clear that the convicted juvenile need not be placed on probation first in order for the court to have a second period of retained jurisdiction, but the custody of IDJC must be terminated.

All time spent in the custody of IDJC will be credited toward the juvenile's sentence.

Other Statutes Amended

- I.C. § 19-2601 covers Suspension of Judgment and Sentencing. This section was amended to allow a second period of retained jurisdiction for a rider without a period of probation first if the juvenile's custody with IDJC has terminated.
- I.C. § 19-2604 was amended to clarify that a rider and second period of retained jurisdiction under 19-2601A and 19-2601 is allowed.
- I.C. § 20-520(1)(r) is the section of the Juvenile Corrections Act (JCA) that gives IDJC's Custody Review Board (CRB) the responsibility of determining whether a juvenile shall be released at 19 or be retained for further accountability, competency development and community safety. This amendment makes it clear that juveniles under retained jurisdiction of the district court are not being subject to CRB review.
- I.C. § 20-508 and I.C. § 20-509 are the sections of the JCA that set forth the Department's obligations for juveniles with blended sentences. It was amended to clarify that the juvenile is dually committed to IDOC and IDJC, and that the court has retained jurisdiction. These sections also allow the Department or the adult probation officer to petition the court for revocation of custody to IDJC.
- Finally, section I.C. § 18-216 was repealed. This is a section of the Idaho Code that also covered waiver of juveniles into district court for prosecution as an adult. However, it was confusing and conflicted with the blended sentencing laws.

(Effective July 1, 2015.)

SB 1154a

New law that provides for expungement of records of arrests, prosecutions, and convictions of offenses committed by a person at the time that the person was a victim of human trafficking and that was the result of acts required by the human trafficker; requires sealing of court records related to such arrests, prosecutions, and convictions.

New law, I.C. § 67-3014, allows victims of human trafficking to petition a court to vacate convictions and expunge records of prostitution charges and other charges for which a defense of coercion would be available that result from their condition of being enslaved. Providing this avenue helps these victims to have the opportunity to improve their lives after they escape or are freed from involuntary servitude and victimization. Removing these records from view of the public will enable these victims to obtain education, housing, and employment that otherwise would either be impaired or otherwise not available to them.

Business Process for Court Clerks:

1. File the petition as a **civil matter**.

The filing should include:

- a. Petition (Initiating Document)
- b. Affidavit in Support
- c. Proposed Order (vacating conviction and/or to expunge the identified criminal records)
- d. Proof of Service (to prosecutor if conviction resulted from criminal charge or to police agency if arrest did not result in prosecution.) The statute is vague as to whether this proof of service is required at time of filing or simply before a pretrial can be scheduled.

2. Check status of prior criminal case to determine if it is a current pending matter. (The petitioner should identify the prior criminal case number and court at issue.) If it is, inform the assigned judge of the same.
3. At case creation, relate the underlying criminal action to this new case from the Odyssey Detail Tab.
4. **Seal Case.** (Any hearing pursuant to this petition shall be **closed to the public**.) I.C. § 67-3014(12). (Odyssey Case will be automatically sealed upon case creation.)
5. Set pretrial **not later than sixty (60) days after petition is served**.
6. If the judge grants the petition, the entire court file is deemed confidential and must be kept in a sealed envelope. Further, the clerk must modify the case's setting in the case management system such that the petition and prior criminal case are not visible to the public. Clerk will then seal prior criminal case.

7. If the judge orders expungement, **send notice** of the order of expungement to each public office or agency that the court has reason to believe may have a record pertaining to the arrest, prosecution and conviction that is the subject of the order of expungement.
8. Clerks need to be aware that these cases will not be a true expungement, but rather handled like a sealed case.

Judges Please NOTE:

1. As this is a civil matter, petitioners are not entitled to appointment of counsel. I.C. § 67-3014(2).
2. Relief shall not be available under this section if the petitioner raised the affirmative defense of coercion at trial and was convicted. I.C. § 67-3014(3).
3. Any action brought under this section shall be filed within a reasonable time after the arrest, prosecution or conviction that is the subject of the action brought under this section, except that a petition to expunge an arrest that did not result in a prosecution shall not be brought until two (2) years after the arrest. I.C. § 67-3014(4).
4. If an action is filed under this section while a criminal case against the petitioner is pending and the charges in the criminal case are the same as the ones sought to be expunged or vacated in the action under this section, then the petition under this section shall be dismissed **without** prejudice. I.C. § 67-3014(5).
5. Confirm that the prosecutor or police agency associated with the underlying criminal matter has been served notice of the petition per I.C. § 67-3014(7).
6. Evidence documenting the person's status as a victim of human trafficking at the time of the offense from a federal, state or local governmental agency shall create a rebuttable presumption that the person was a victim of human trafficking at the time of the offense but shall not be required to obtain relief under this section. I.C. § 67-3014(9).
7. If the court finds that the petitioner has demonstrated by a preponderance of the evidence that the petitioner's participation in the activities that resulted in the arrest, prosecution and/or conviction, that is the subject of the petition, occurred during a period of time when the petitioner was a victim of human trafficking and that the petitioner's participation in the activities that resulted in the arrest, prosecution and/or conviction was the result of acts required by the human trafficker, then the court shall vacate the conviction, if any, and order that the criminal history records taken in connection with the arrest, prosecution and conviction be expunged. I.C. § 67-3014(9).

(Effective July 1, 2015.)