

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO
CRIMINAL RULE 32

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ORDER

The Court, having received a recommendation to amend Idaho Criminal Rule 32,
and the Court being fully informed:

IT IS ORDERED that Idaho Criminal Rule 32 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:

- (a) **When a Presentence Investigations are is to be Ordered.** ~~The trial judge court may,~~
~~but is not required to,~~ order a presentence investigation. With respect to felony
convictions, if the trial court does not require a presentence investigation, the record
must show affirmatively why such an investigation was not ordered.
- (b) **Contents of Presentence Investigation Report.** ~~A trial judge~~ The court may request a
record check and other background information concerning the defendant ~~prior to~~
before sentencing without ordering a full presentence investigation ~~of the defendant.~~
~~However, w~~When a full presentence investigation is ordered, the report of the
investigation must contain the following ~~elements~~:
- (1) ~~the~~ a description of the situation surrounding the criminal activity with which the
defendant has been charged, including:
 - (A) the defendant's version of the criminal act; and
 - (B) the defendant's explanation for the act;
 - (C) the arresting officer's version or report of the offense, where available; and
 - (D) the victim's version, where relevant to the sentencing decision;
 - (2) ~~any prior the defendant's~~ 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) the defendant's residence history ~~of the defendant~~;

- (7) the defendant's financial status ~~of defendant~~;
- (8) the defendant's health ~~of the defendant~~;
- (9) the defendant's sense of values and general outlook on life ~~in general~~;
- (10) the results of any substance abuse ~~evaluation~~, mental health ~~evaluation~~, domestic assault and battery ~~evaluation~~, or psychosexual evaluation.; This includes any report prepared under Idaho Code § 19-2522 or § 19-2524, but excludes content of any evaluation or report prepared under Idaho Code § 18-211 or § 18-212; and
- (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 plan~~.

(c) Sentencing Recommendations Concerning Sentence.

- (1) **Specific Recommendations Not Included.** The presentence investigation report (PSI report) may recommend incarceration but it should not contain specific recommendations concerning:
 - (A) the length of incarceration;
 - (B) the imposition of a fine; ~~or~~
 - (C) the amount of a fine; ~~or~~
 - (D) the length of probation; or
 - (E) other matters ~~that are~~ within the province of the court.
- (2) **Treatment Recommendations.** The presentence PSI report may, however, recommend programs or treatment for the defendant and ~~comment as to suggest~~ the length of time that may be required for ~~the defendant to complete any recommended programs or treatment completion~~. The presentence PSI report may also ~~comment generally on~~ include an estimate of 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 at the court's discretion.~~

(e) Information That May be Included in a Presentence PSI Report.

- (1) **Content.** A presentence PSI report may include hearsay information of a hearsay nature ~~where~~ if the presentence investigator believes that the information is reliable. The court may consider material in the presentence PSI report that is inadmissible under the rules of evidence. Conjecture and speculation must not be

- included in the ~~presentence~~ PSI report. Pictures or depictions of child pornography included as report attachments must be placed in a separate envelope and marked. Access is restricted to those permitted by the court.
- (2) **Previous Charges**. The court may consider information in a ~~presentence~~ PSI report regarding a previous charge against the defendant that was dismissed after a successful probation.
- (3) **Idaho Sentencing Information**. The ~~presentence~~ PSI report may include a report found at <https://courtdata.idaho.gov/Reporting> and may contain a description of the report findings.
- (f) **Additional Report May be Ordered**. The ~~sentencing judge~~ court may order an additional investigation of the case, if the ~~judge~~ deems it necessary, and use ~~such~~ the results in considering the disposition.
- (g) **Access to Presentence PSI Report**.
- (1) **Disclosure of the Presentence PSI Report, Exceptions**. Full disclosure of the contents of any ~~presentence~~ PSI report considered by ~~any~~ the ~~sentencing~~ court must be made to the defendant, defendant's counsel, and the prosecuting attorney ~~prior to~~ before any hearing on the sentence, except as provided in this Rule.
- (A) The defendant and ~~defendant's~~ their attorney must be given a full opportunity to examine the ~~presentence investigation~~ PSI report so ~~that, if the defendant desires, the defendant~~ they may explain and defend adverse matters in it.
- (B) The defendant must be afforded a full opportunity to present favorable evidence ~~on defendant's~~ their behalf during the proceeding ~~involving the~~ determination ~~determine~~ of the sentence.
- (2) **Exceptions to Disclosure**. The ~~trial~~ court may, ~~however,~~ withhold from disclosure:-
- (A) parts of the ~~presentence~~ PSI report that contain a diagnostic opinion that ~~might~~ may seriously disrupt a program of rehabilitation;;
- (B) information that ~~in the court's discretion~~ may ~~prove~~ be harmful to an ~~individual who not~~ a non-party in the proceeding;; or
- (C) pictures or depictions of child pornography that are ~~separately~~ identified pursuant to under subsection (e)(1).
- (3) **Explanation of Non-Disclosure**.
- (A) Where the ~~trial~~ court chooses to withhold ~~from disclosure to the defendant~~ information in the ~~presentence~~ PSI report ~~from the defendant~~, the court must:
- (i) state for the record the reasons for its action;;
- (ii) inform the defendant and defendant's ~~their~~ attorney that information has not been disclosed;; and
- (iii) explain the general nature of the information being withheld.

(B) Further, if requested, the defendant's attorney, if any, must be allowed to review any information in the presentence PSI report that is so withheld from disclosure so as to allow the attorney an full opportunity to explain and rebut the information contained in it.

(4) **Time of Disclosure.**

(A) Disclosure of the information contained in the presentence PSI report under the conditions mentioned above must be made at a sufficient time prior to before sentencing so as to afford provide the defendant or their attorney a reasonable opportunity for the defendant or defendant's attorney to verify or rebut any information contained in the PSI report.

(B) A Reasonable requests for a continuance of sentencing, when based on lack of sufficient time to examine or offer rebuttal to information contained in the presentence PSI report, may be granted by the sentencing judge court.

(h) **Disclosure of Presentence PSI Reports.**

(1) **Custody of Presentence PSI Report.** Any presentence PSI report must be available for the purpose of to assisting a the sentencing court and once prepared may be released to any district judge for that purpose. All presentence PSI reports shall must be filed and kept as a sealed court records and, except as otherwise allowed by this rule, a presentence report may only be disclosed upon court order entered pursuant to under Idaho Court Administrative Rule 32(i).

(2) **Idaho Department of Correction and Idaho Commission of Pardons and Parole.** The presentence PSI report must, however, be available to the Idaho Department of Corrections (I.D.O.C.) and the Idaho Commission of Pardons and Parole so long as while the defendant is committed to or supervised by the Department I.D.O.C.; and It may be retained by the Department I.D.O.C. for three years after the defendant is discharged. If probation or parole supervision is transferred to another state, the Department I.D.O.C. may provide a copy of the presentence PSI report to the supervising entity in that state.

(3) **Idaho Department of Juvenile Corrections.** If the defendant is committed to the Idaho Department of Juvenile Corrections (I.D.J.C.) under a blended sentence as provided at Idaho Code § 19-2601A, the PSI report must be available to the I.D.J.C. while the defendant is committed to or supervised by the I.D.J.C. The PSI report may be retained by the I.D.J.C. until the defendant is discharged from its commitment or supervision.

(4) **Presentence Investigator.** In addition, wWhen preparing a report on a defendant, a presentence investigator must have access to previous other presentence PSI 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 PSI report is restricted from use by all but may only be

used by authorized court personnel. Neither the defendant, defendant's counsel, the prosecuting attorney nor any other person authorized by the sentencing court to receive a copy of the presentence PSI report may release any information contained in it to any another 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 PSI report, As provided in Article 1, Section 22(9) of the Idaho Constitution. Any violation of this rule is a contempt of court and subject to appropriate sanctions.

- (5) **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 a persons preparing a reports to assist the court in sentencing pursuant to under a court-ordered evaluation. Any person receiving this information must not release it to anyone other person or agency. Any violation of this rule is a contempt of court and subject to appropriate sanctions.

- (6) **Availability of PSI Report to a Third Parties.**

(A) With the court's permission of the sentencing judge, the presentence PSI report may be available to a persons or agencies having a legitimate professional interest in the information likely to be contained in it, if it appears that making the PSI report available will further the:

- (i) plan; or
- (ii) rehabilitation of the defendant; or further
- (iii) the interests of public protection.

(B) A person or agency receiving the presentence report must provide and that appropriate safeguards for the confidentiality of information contained in the presentence PSI report. will be provided by the persons or agencies receiving the information.

(C) Such Persons or agencies who may receive a presentence report may include:

- (i) a physician or psychiatrist appointed to assist the court in sentencing;
- (ii) an examining facility;
- (iii) a correctional institution;
- (iv) a probation or parole department; or
- (v) the supervisors of a public or private rehabilitation program.

- (7) **Availability of Presentence PSI Report to Problem-Solving Treatment Court Personnel.** With the court's permission of the sentencing judge, the presentence PSI report may be made available provided to problem-solving treatment court

personnel for purposes of screening the defendant to determine the defendant's suitability for admission into a problem-solving treatment court program.

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

(i) **Corrections to PSI Report.**

- (1) **Time to Request Corrections to Presentence Investigation Report.** A request to correct a PSI report must be made by the sentencing hearing.
- (2) **Order Correcting PSI Report.** A change to the PSI report by the court must be included in an Order Correcting Presentence Report. The Order must be attached to the front of the sealed PSI.
- (3) **Service of the Order Correcting PSI Report.** Only the Order and PSI must be served on the IDOC. The Order and PSI must be stamped by the clerk showing that both were served on the I.D.O.C.
- (4) **Challenges to Corrections or Service of the PSI Report.** A party may challenge whether the court erred in correcting the report or whether the corrected report was provided to the I.D.O.C. The challenging party must seek relief in the district court to preserve the issue for appeal by filing a motion no later than 14 days after the entry of judgment.

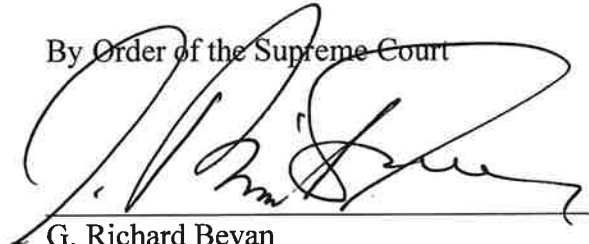
IT IS FURTHER ORDERED that this order and these amendments shall be effective immediately.

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 notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

DATED this 15th day of January, 2026.

By Order of the Supreme Court



G. Richard Bevan
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
Order entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court 11/5/26
Melanie Gagnepain, Clerk

By  Deputy