

Proposed Amendments to the Idaho Juvenile Rules and Idaho Criminal Rules

April 2022

The following amendments to Idaho Juvenile Rule (I.J.R.) 26, and proposed “new” rule to the Idaho Criminal Rules (I.C.R.) are recommended by the Idaho Supreme Court’s Juvenile Justice Advisory Committee (JJAC) for approval by the Court.

Proposed Amendment to I.J.R. 26 – In response to the passage of 2022 House Bill 452 (effective July 1, 2022), the proposed amendments seek to provide a judicial procedure to ensure compliance with new statutory requirements under the Juvenile Corrections Act regarding when a juvenile can legally be held in an adult jail or lockup.

I.J.R. 26. Discretionary Waiver of Jurisdiction under the Juvenile Corrections Act

(a) Upon the filing of a written Motion to Waive Jurisdiction on a misdemeanor or felony charged under the Juvenile Corrections Act by the prosecuting attorney, the juvenile, or the court, the court shall:

1. Give written notice of the Waiver Hearing at least 10 days before the date of the hearing to the juvenile, the juvenile's parent(s), guardian, or custodian, prosecuting attorney, probation officer (if any) and Department of Juvenile Corrections district liaison. The notice shall inform the juvenile of his or her right to counsel. Service shall be made in the manner provided by I.J.R. 5.
2. Order a full and complete investigation of the circumstances of the alleged offenses and the factors as listed in I.C. Section 20-508(8)(a) through (f) to be conducted by county probation, or such other agency or investigation officer designated by the court, who shall submit a written report to the court, prosecuting attorney and juvenile or counsel for the juvenile at least 5 days prior to the hearing.
3. The court shall make findings as to whether or not the juvenile should, in the discretion of the court, be waived under the Juvenile Corrections Act.

(b) At the hearing, the court may rely on the investigative report, the juvenile's criminal record in the state of Idaho, certified court records from other states and county 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.~~

(c) The juvenile may stipulate to waiver but said stipulation shall be reduced to writing or placed upon the record in open court.

(d) Upon waiver, the prosecuting attorney shall file a criminal complaint within 24 hours, excluding Saturdays, Sundays, or holidays, and the court shall ~~remand the juvenile to the custody of the county sheriff and order that an initial appearance on the criminal complaint shall be held pursuant to I.C.R. 5. The juvenile shall be held without bond on a felony, or held pursuant to M.C.R. 13 on a misdemeanor, pending the initial appearance.~~

(e) Before sentencing, a juvenile under the age of 18 may not be held in a jail or lockup for adults unless a court finds, after a hearing and in writing, that it is in the interest of justice. In determining whether it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults, or have sight or sound contact with adult inmates, 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.

Proposed NEW I.C.R. XX – In response to the passage of 2022 House Bill 452 (effective July 1, 2022), the proposed new rule seeks to provide a judicial procedure to ensure compliance with new statutory requirements under the Juvenile Corrections Act regarding when a juvenile can legally be held in an adult jail or lockup. The new rule is applicable in cases in which a juvenile is being processed in adult criminal court. It sets out the procedures to be followed in such cases, generally, and also sets out the judicial procedure for proceedings following the implementation of a blended sentence under I.C. § 19-2601A.

I.C.R. XX. Juvenile Charged as an Adult.

- (a) **Initial Appearance.** Once a juvenile has been charged as an adult, waived for criminal prosecution as an adult pursuant to section 20-508, Idaho Code, or formally charged or indicted of the crimes listed in section 20-509, Idaho Code, the court shall hold an initial appearance on the criminal complaint pursuant to I.C.R. 5.
- (b) **Presentence Custody Determination.** Before sentencing, a juvenile under the age of eighteen (18) may not be held in an adult jail or lockup, or have sight or sound contact with adult inmates, unless a hearing is held and the court finds, in writing, that it is in the interest of justice. In determining whether 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.
- (c) **Presentence Custody Review Hearings.** Before sentencing, if a court determines that it is in the interest of justice to permit a juvenile under the age of eighteen (18) to be held in any adult jail or lockup, or have sight or sound contact with adult inmates:
- (1) the court shall, not less frequently than once every twenty-eight (28) days, hold a hearing and determine, in writing, if it is still in the interest of justice to permit the juvenile to be so held or have such sight or sound contact; and
 - (2) the juvenile shall not be so held, or have such sight or sound contact, for more than one-hundred eighty (180) days, unless the court holds a hearing and determines, in writing, there is good cause for an extension, or the juvenile expressly waives this limitation on the record and in writing.
- (d) **Sentencing.** Upon a plea or verdict of guilt the court may:
- (1) **Sentence as an Adult.** Sentence the convicted juvenile in accordance with Idaho Criminal Rule 33;
 - (2) **Sentence as a Juvenile.** Sentence the convicted juvenile in accordance with the juvenile sentencing options set forth in the Juvenile Corrections Act, Title 20, Chapter 5, Idaho Code; or
 - (3) **Blended Sentence.** Sentence the convicted juvenile to the county jail or to the custody of the state board of correction, but suspend the sentence and retain jurisdiction in accordance with Idaho Code § 19-2601A and order:

- (A) the convicted juvenile to dual custody with the state board of correction and the department of juvenile corrections;
- (B) the department of juvenile corrections to assume physical custody and financial responsibility until the order is relinquished by the court or the juvenile reaches twenty-one (21) years of age, whichever comes first; and
- (C) the state board of correction to be a participating member of the juvenile's treatment team and provide supervision of the juvenile.

(e) **Proceedings after Imposition of a Blended Sentence.** During the period of dual custody and retained jurisdiction under subsection (d)(3) of this rule, the court may receive a petition or request for the following hearings, including but not limited to:

(1) **Community Placement.** Approval by the sentencing court is required before the department of juvenile corrections may place a convicted juvenile in a community residential setting.

(2) **Failure to Comply with Program Requirements.** If either the department of juvenile corrections or the state board of correction reasonably believes that the juvenile is failing to comply with all reasonable program requirements, the department of juvenile corrections or the state board of correction may petition the sentencing court to terminate custody of the department of juvenile corrections.

(3) **Completion of Program.** If the juvenile has successfully completed the program or is sixty (60) days or less from turning twenty-one (21) years of age, the department of juvenile corrections shall return the convicted juvenile to the court for further disposition.

(f) **Release or Termination of Custody by the Department of Juvenile Corrections.**

Upon the release or termination of the convicted juvenile by the department of juvenile corrections under subsection (d)(3), the court may impose another period of retained jurisdiction, relinquish jurisdiction and execute the remainder of the sentence with the state board of correction, or place the convicted juvenile on adult probation.

The convicted juvenile shall be given credit for all time served. In no event may the total of the actual time spent by the convicted juvenile in the custody of the department of juvenile corrections, plus any adult sentence imposed by the court, exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.