

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 26
SUSPENSION OF JUDGMENT AND SENTENCE AND PAROLE OFFENDERS

19-2601. COMMUTATION, SUSPENSION, WITHHOLDING OF SENTENCE -- PROBATION. Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, the court in its discretion may:

1. Commute the sentence and confine the defendant in the county jail, or, if the defendant is of proper age, commit the defendant to the custody of the state department of juvenile corrections;

2. Suspend the execution of the judgment at the time of judgment or at any time during the term of a sentence in the county jail and may place the defendant on probation under such terms and conditions as it deems necessary and appropriate;

3. Withhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation under such terms and conditions as it deems necessary and appropriate; or

4. Suspend the execution of the judgment at any time during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction. The court may retain jurisdiction over the prisoner for a period of up to the first three hundred sixty-five (365) days. Except as provided for in section [19-2601A](#), Idaho Code, during the period of retained jurisdiction, the state board of correction shall be responsible for determining the placement of the prisoner and such education, programming and treatment as it determines to be appropriate. The prisoner will remain committed to the board of correction if not affirmatively placed on probation by the court. In extraordinary circumstances, where the court concludes that it is unable to obtain and evaluate the relevant information within the period of retained jurisdiction, or where the court concludes that a hearing is required and is unable to obtain the defendant's presence for such a hearing within such period, the court may decide whether to place the defendant on probation or release jurisdiction within a reasonable time, not to exceed thirty (30) days, after the period of retained jurisdiction has expired. Placement on probation shall be under such terms and conditions as the court deems necessary and appropriate. The court in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case or following release from commitment to the department of juvenile corrections pursuant to section [19-2601A](#), Idaho Code. In no case shall the board of correction or its agent, the department of correction, be required to hold a hearing of any kind with respect to a recommendation to the court for the grant or denial of probation. Probation is a matter left to the sound discretion of the court. Any recommendation made by the state board of correction to the court regarding the prisoner shall be in the nature of an addendum to the presentence report. The board of correction and its agency, the department of correction, and their employees shall not be held financially responsible for damages, injunctive or declaratory relief for any recommendation made to the district court under this section.

5. If the crime involved is a felony and if judgment is withheld as provided in subsection 3. of this section or if judgment and a sentence of custody to the state board of correction is suspended at the time of judgment in accordance with subsection 2. of this section or as provided by subsection 4. of this section, the court may place the defendant on probation. If the court places the defendant on probation to the board of correction, the court shall include in the terms and conditions of probation a requirement that the defendant enter into and comply with an agreement of supervision with the board of correction. The agreement of supervision shall include provisions setting forth the potential sanctions for a violation of the terms or conditions imposed and potential rewards for compliance with the terms and conditions imposed, as such sanctions and rewards are set forth in rules of the board of correction.

6. If the crime involved is a misdemeanor, indictable or otherwise, or if the court should suspend any remaining portion of a jail sentence already commuted in accordance with subsection 1. of this section, the court, if it grants probation, may place the defendant on probation.

7. The period of probation ordered by a court under this section under a conviction or plea of guilty for a misdemeanor, indictable or otherwise, may be for a period of not more than two (2) years; provided that the court may extend the period of probation to include the period of time during which the defendant is a participant in a problem solving court program and for a period of up to one (1) year after a defendant's graduation or termination from a problem solving court program. Under a conviction or plea of guilty for a felony the period of probation may be for a period of not more than the maximum period for which the defendant might have been imprisoned.

[19-2601, added 1972, ch. 336, sec. 9, p. 989; am. 1972, ch. 381, sec. 16, p. 1102; am. 1973, ch. 292, sec. 1, p. 615; am. 1974, ch. 68, sec. 1, p. 1149; am. 1980, ch. 176, sec. 1, p. 374; am. 1994, ch. 33, sec. 1, p. 50; am. 1995, ch. 247, sec. 1, p. 817; am. 1996, ch. 418, sec. 1, p. 1388; am. 1998, ch. 67, sec. 1, p. 260; am. 2000, ch. 246, sec. 1, p. 686; am. 2005, ch. 186, sec. 1, p. 572; am. 2010, ch. 350, sec. 1, p. 913; am. 2012, ch. 46, sec. 1, p. 140; am. 2014, ch. 150, sec. 4, p. 418; am. 2015, ch. 113, sec. 2, p. 281; am. 2018, ch. 125, sec. 1, p. 264.]

19-2601A. BLENDED SENTENCE. (1) If the convicted juvenile is a juvenile held for adult criminal proceedings, the court may suspend execution of judgment of a sentence, retain jurisdiction and issue an order committing the convicted juvenile to dual custody with the state board of correction and the department of juvenile corrections.

(2) During this period of dual custody and retained jurisdiction:

(a) The department of juvenile corrections shall assume physical custody of and financial responsibility for the convicted juvenile from the time of the court's order until the court terminates the department's custody, jurisdiction is relinquished or the juvenile reaches twenty-one (21) years of age, whichever occurs first;

(b) The department of juvenile corrections shall be responsible for determining the placement of the convicted juvenile and such education, programming and treatment as it determines to be appropriate. However, court approval is required by the sentencing court prior to the department placing a convicted juvenile in a community residential setting;

(c) The state board of correction shall be a member of the convicted juvenile's treatment team. The state board of correction shall partic-

ipate in staffings and shall provide supervision pursuant to section [20-219](#), Idaho Code, if the convicted juvenile is placed in a community residential setting by the department of juvenile corrections. During this period of supervision, the state board of correction shall not file a probation violation, but may petition the court to terminate the custody of the department pursuant to paragraph (d) of this subsection;

(d) While the convicted juvenile is in the physical custody of the department of juvenile corrections, if either the department or the state board of correction reasonably believes that the juvenile is failing to comply with all reasonable program requirements, the department or the state board of correction may petition the sentencing court to terminate custody of the department. 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;

(e) Any recommendation made by the state board of correction or the department of juvenile corrections to the court regarding the convicted juvenile shall be in the nature of an addendum to the presentence report; and

(f) Upon the release of the juvenile by the department of juvenile corrections, its duties and obligations cease and custody of the convicted juvenile with the department is terminated.

(3) All time served under the custody of the department of juvenile corrections shall be credited toward the total sentence given the convicted juvenile. However, in no event may the total of the actual time spent by the convicted juvenile in the custody of the department, 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.

(4) Upon the release of the convicted juvenile by the department of juvenile corrections or termination of department custody, the court may impose another period of retained jurisdiction pursuant to subsection 4. of section [19-2601](#), Idaho Code, relinquish jurisdiction and impose the remainder of the sentence with the state board of correction, or place the convicted juvenile on adult felony probation.

[19-2601A, added 2015, ch. 113, sec. 3, p. 283.]

19-2602. VIOLATION OF PROBATION -- ARREST. If it is proved to the satisfaction of the court that the terms and conditions upon which the defendant was placed on probation by the court or any of them have been violated or for any other cause satisfactory to the court, the court may, at any time within the longest period for which the defendant might have been originally sentenced by judgment of the court, issue a bench warrant for the rearrest of the defendant.

[(19-2602) 1915, ch. 104, part of sec. 1, p. 245; reen. C.L., sec. 8000; C.S., sec. 9044; I.C.A., sec. 19-2504.]

19-2603. PRONOUNCEMENT AND EXECUTION OF JUDGMENT AFTER VIOLATION OF PROBATION. When the court finds that the defendant has violated the terms and conditions of probation, it may, if judgment has been withheld, pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, revoke probation. The time such person shall have been at large under such suspended sentence shall not be counted

as a part of the term of his sentence. The defendant shall receive credit for time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant pursuant to section [20-227](#), Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence.

[(19-2603) 1915, ch. 104, part of sec. 1, p. 245; reen. C.L., sec. 8001; C.S., sec. 9045; I.C.A., sec. 19-2505; am. 2015, ch. 99, sec. 2, p. 240.]

19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT.

(1) (a) Application for relief under this subsection may be made by the following persons who have pled guilty to or been found guilty of a crime:

- (i) A defendant whose sentence has been suspended or who has received a withheld judgment;
- (ii) A defendant in a felony case whose sentence has been commuted under section [19-2601](#) 1., Idaho Code;
- (iii) A defendant in a felony case upon whom the court has not imposed a sentence to the custody of the board of correction;
- (iv) A defendant who has not been sentenced but who has successfully completed a drug court or mental health court program;
- (v) A defendant in a misdemeanor case who has not been sentenced to serve a term in the county jail or whose sentence or any portion thereof has been suspended.

(b) Upon application of the defendant and upon satisfactory showing that:

- (i) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of any probation that may have been imposed; or
- (ii) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

the court, if convinced by the showing made that there is no longer cause for continuing the period of probation should the defendant be on probation at the time of the application, and that there is good cause for granting the requested relief, may terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to sentencing, and the amended judgment may be deemed to be a misdemeanor conviction. This shall apply to the cases in which defendants have been convicted before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

(2) If sentence has been imposed but suspended for any period during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as

provided in subsection 4. of section [19-2601](#) or [19-2601A](#), Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that:

(a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

(b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

(3) (a) In addition to the circumstances in which relief from a felony conviction may be granted under subsections (1) and (2) of this section, a defendant who has been convicted of a felony and who has been discharged from probation may apply to the sentencing court for a reduction of the conviction from a felony to a misdemeanor as provided in this subsection.

(b) If less than five (5) years have elapsed since the defendant's discharge from probation, the application may be granted only if the prosecuting attorney stipulates to the reduction.

(c) If at least five (5) years have elapsed since the defendant's discharge from probation, and if the defendant was convicted of any of the following offenses, the application may be granted only if the prosecuting attorney stipulates to the reduction:

(i) Assault with intent to commit a serious felony ([18-909](#), [18-915](#), Idaho Code);

(ii) Battery with intent to commit a serious felony ([18-911](#), [18-915](#), Idaho Code);

(iii) Enticing of children ([18-1509](#), Idaho Code);

(iv) Murder in the first or second degree ([18-4003](#), Idaho Code);

(v) Voluntary manslaughter ([18-4006](#)(1), Idaho Code);

(vi) Assault with intent to commit murder ([18-4015](#), Idaho Code);

(vii) Administering poison with intent to kill ([18-4014](#), Idaho Code);

(viii) Kidnapping in the first degree ([18-4502](#), Idaho Code);

(ix) Robbery ([18-6501](#), Idaho Code);

(x) Trafficking ([37-2732B](#), Idaho Code);

(xi) Threats against state officials of the executive, legislative or judicial branch, felony ([18-1353A](#), Idaho Code);

(xii) Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home ([18-3317](#), Idaho Code);

(xiii) Cannibalism ([18-5003](#), Idaho Code);

(xiv) Unlawful use of destructive device or bomb ([18-3320](#), Idaho Code);

(xv) Attempt, conspiracy or solicitation to commit any of the crimes described in subparagraphs (i) through (xiv) of this paragraph.

(d) The decision as to whether to grant such an application shall be in the discretion of the district court, provided that the application may be granted only if the court finds that:

- (i) The defendant has not been convicted of any felony committed after the conviction from which relief is sought;
- (ii) The defendant is not currently charged with any crime;
- (iii) There is good cause for granting the reduction in sentence; and
- (iv) In those cases where the stipulation of the prosecuting attorney is required under paragraph (b) or (c) of this subsection, the prosecuting attorney has so stipulated.

(e) If the court grants the application, the court shall reduce the felony conviction to a misdemeanor and amend the judgment of conviction for a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to the judgment of conviction.

(4) Subsections (2) and (3) of this section shall not apply to any judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section [18-8304](#), Idaho Code. A judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section [18-8304](#), Idaho Code, shall not be subject to dismissal or reduction under this section. A conviction for the purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

(5) A violation of the terms of an agreement of supervision with the board of correction by a person under the supervision of the board shall not preclude the granting of relief to that person under this section.

[19-2604, added 1915, ch. 104, part of sec. 1, p. 245; reen. C.L., sec. 8002; am. 1919, ch. 134, sec. 2, p. 429; C.S., sec. 9046; I.C.A., sec. 19-2506; am. 1951, ch. 99, sec. 1, p. 224; am. 1970, ch. 143, sec. 4, p. 425; am. 1971, ch. 97, sec. 2, p. 210; am. 1989, ch. 305, sec. 1, p. 759; am. 2006, ch. 104, sec. 1, p. 287; am. 2006, ch. 157, sec. 1, p. 473; am. 2010, ch. 350, sec. 2, p. 914; am. 2011, ch. 187, sec. 1, p. 537; am. 2013, ch. 256, sec. 1, p. 631; am. 2014, ch. 283, sec. 1, p. 717; am. 2015, ch. 113, sec. 4, p. 284; am. 2017, ch. 172, sec. 1, p. 398.]

19-2605. POWERS OF JUDGE AT CHAMBERS. The powers hereby conferred upon the district court may be exercised by the judge thereof at chambers.

[(19-2605) 1915, ch. 104, part of sec. 1, p. 245; reen. C.L., sec. 8003; C.S., sec. 9047; I.C.A., sec. 19-2507.]

19-2606. SUSPENDED OFFENDER -- DUTY TO REPORT -- ORDER ON REPORT. As ordered by the court, it shall be the duty of each person whose sentence is suspended to appear or report during the continuance of such suspension and to furnish, at his own expense, proof to the satisfaction of the court that he has, since his sentence was suspended or since the last date at which proof has been furnished, complied with the terms and conditions upon which his sentence was suspended by the court. The court may modify the terms and conditions of suspension or vacate the order of suspension of sentence and order retained jurisdiction or execution of the judgment as though suspension had not been made.

[(19-2606) 1915, ch. 104, sec. 2, p. 245; reen. C.L., sec. 7999; C.S., sec. 9043; am. 1929, ch. 100, sec. 1, p. 163; I.C.A., sec. 19-2503; am. 2014, ch. 150, sec. 5, p. 419.]

19-2607. PAROLE SECURED BY MISREPRESENTATION. If at any time after suspension of sentence it shall appear to the district judge that the order suspending sentence was obtained by fraud, perjury or by any sort of misrepresentation or suppression of facts, or that the accused has failed or neglected to have a fixed place of abode and a regular occupation, the district judge shall issue a warrant for his apprehension and shall remand him for sentence.

[(19-2607) 1915, ch. 104, sec. 3, p. 245; reen. C.L., sec. 7998; C.S., sec. 9042; I.C.A., sec. 19-2502.]

19-2608. PAYMENT OF COURT-ORDERED TESTS OF BREATH OR BODILY FLUIDS. Whenever a court orders testing of breath or bodily fluids as a condition of probation, such costs for the tests shall be paid for by the probationer in addition to any supervision fee authorized under section [20-225](#) or [31-3201D](#), Idaho Code, to the clerk of the court if services are provided by the county or directly to the agency providing the testing, provided the court may waive this requirement upon a showing of cause.

[19-2608, added 1994, ch. 248, sec. 1, p. 792; am. 2012, ch. 109, sec. 1, p. 299; am. 2020, ch. 281, sec. 1, p. 818.]