

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 149

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-511, IDAHO
2 CODE, TO PROVIDE THAT CERTAIN STATEMENTS ARE INADMISSIBLE AT CERTAIN
3 PROCEEDINGS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION
4 20-514, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO REPRESENTATION
5 BY COUNSEL OF CERTAIN JUVENILES, TO PROVIDE REQUIREMENTS RELATING TO A
6 WAIVER OF THE RIGHT TO COUNSEL BY CERTAIN JUVENILES AND TO REVISE PROVI-
7 SIONS RELATING TO REIMBURSEMENT OF CERTAIN COSTS.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 20-511, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 20-511. DIVERSION OR INFORMAL DISPOSITION OF THE PETITION. (1) Prior
13 to the filing of any petition under this act, the prosecuting attorney may
14 request a preliminary inquiry from the county probation officer to determine
15 whether the interest of the public or the juvenile requires a formal court
16 proceeding. If court action is not required, the prosecuting attorney may
17 utilize the diversion process and refer the case directly to the county
18 probation officer or a community-based diversion program for informal pro-
19 bation and counseling. If the diversion process is utilized pursuant to this
20 subsection, then statements made by a juvenile in a diversion proceeding
21 shall be inadmissible at an adjudicative proceeding on the underlying charge
22 as substantive evidence of guilt. If community service is going to be uti-
23 lized pursuant to this subsection, the prosecuting attorney shall collect a
24 fee of sixty cents (60¢) per hour for each hour of community service work the
25 juvenile is going to perform and remit the fee to the state insurance fund
26 for the purpose of securing worker's compensation insurance for the juvenile
27 offender performing community service. However, if a county is self-insured
28 and provides worker's compensation insurance for persons performing commu-
29 nity service pursuant to the provisions of this chapter, then remittance to
30 the state insurance fund is not required.

31 (2) After the petition has been filed and where, at the admission or de-
32 nial hearing, the juvenile offender admits to the allegations contained in
33 the petition, the court may decide to make an informal adjustment of the pe-
34 tition. Informal adjustment includes, but is not limited to:

- 35 (a) Reprimand of the juvenile offender;
- 36 (b) Informal supervision with the probation department;
- 37 (c) Community service work;
- 38 (d) Restitution to the victim;
- 39 (e) Participation in a community-based diversion program.

40 (3) Information uniquely identifying the juvenile offender, the of-
41 fense, and the type of program utilized shall be forwarded to the department.
42 This information shall be maintained by the department in a statewide ju-

1 juvenile offender information system. Access to the information shall be
2 controlled by the department, subject to the provisions of section 9-342,
3 Idaho Code.

4 (4) Such informal adjustment of the petition shall be conducted in the
5 manner prescribed by the Idaho juvenile rules. When an informal adjustment
6 is made pursuant to this section and the juvenile offender is to perform
7 community service work, the court shall assess the juvenile offender a fee
8 of sixty cents (60¢) per hour for each hour of community service work the
9 juvenile offender is to perform. This fee shall be remitted by the court to
10 the state insurance fund for the purpose of securing worker's compensation
11 insurance for the juvenile offender performing community service. However,
12 if a county is self-insured and provides worker's compensation insurance
13 for persons performing community service pursuant to the provisions of this
14 chapter, then remittance to the state insurance fund is not required.

15 SECTION 2. That Section 20-514, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 20-514. REPRESENTATION AT ALL STAGES OF PROCEEDINGS -- APPOINTMENT OF
18 COUNSEL -- WAIVER -- PAYMENT OF COST OF LEGAL SERVICES. (1) A juvenile who
19 is being detained by a law enforcement officer or who is under formal charge
20 of having committed, or who has been adjudicated for commission of, an act,
21 omission or status that brings him under the purview of this act, is enti-
22 tled:

23 (a) To be represented by an attorney to the same extent as an adult
24 having his own counsel is so entitled pursuant to section 19-852, Idaho
25 Code; and

26 (b) To be provided with the necessary services and facilities of repre-
27 sentation, including investigation and other preparation.

28 (2) A juvenile who is entitled to be represented by an attorney under
29 subsection (1) of this section is entitled:

30 (a) To be counseled and defended at all stages of the matter beginning
31 with the earliest time and including revocation of probation or recom-
32 mitment;

33 (b) To be represented in any appeal; and

34 (c) To be represented in any other post-adjudication or review proceed-
35 ing that the attorney or the juvenile considers appropriate, unless the
36 court in which the proceeding is brought determines that it is not a pro-
37 ceeding that a reasonable person with adequate means would be willing to
38 bring at his own expense and is therefore a frivolous proceeding.

39 (3) A juvenile's right to a benefit under subsection (1) or (2) of this
40 section is unaffected by his having provided a similar benefit at his own ex-
41 penditure, or by his having waived it, at an earlier stage.

42 (4) As early as possible in the proceedings, and in any event before
43 the hearing of the petition on the merits, the juvenile and his parents, or
44 guardian, shall be notified of their right to have counsel represent them.
45 When it appears to the court that the juvenile or his parents or guardian
46 desire counsel but are financially unable to pay for such legal services,
47 the court shall appoint counsel to represent the juvenile and his parents
48 or guardian; provided that in the event the court shall find that there is
49 a conflict of interest between the interests of the juvenile and his parents

1 or guardian, then the court shall appoint separate counsel for the juvenile,
 2 whether or not he or his parents or guardian are able to afford counsel, un-
 3 less there is an intelligent waiver of the right of counsel by the juvenile,
 4 except as provided in subsection (6) of this section, and the court further
 5 determines that the best interest of the juvenile does not require the ap-
 6 pointment of counsel. Counsel appointed under this section shall initially
 7 receive reasonable compensation from the county and the county shall have
 8 the right to be reimbursed for the cost thereof by the parents or guardian as
 9 hereafter provided in this section.

10 (5) Any waiver of the right to counsel by a juvenile under this act shall
 11 be made in writing, on the record and upon a finding by the court that:

12 (a) The juvenile has been informed of the right to counsel and the dan-
 13 gers and disadvantages of self-representation; and

14 (b) The waiver is intelligently made after consideration of the total-
 15 ity of the circumstances including, but not limited to:

16 (i) The age, maturity, intelligence, education, competency and
 17 comprehension of the juvenile;

18 (ii) The presence of the juvenile's parents or guardian;

19 (iii) The seriousness of the offense;

20 (iv) The collateral consequences of adjudication of the offense;
 21 and

22 (v) Whether the interests of the juvenile and his parents or
 23 guardian conflict.

24 (6) A juvenile shall not be permitted to waive the assistance to counsel
 25 in any of the following circumstances:

26 (a) If the juvenile is under the age of fourteen (14) years;

27 (b) In sentencing proceedings in which it has been recommended that the
 28 juvenile be committed to the legal custody of the department of juvenile
 29 corrections;

30 (c) In proceedings in which the juvenile is being adjudicated for com-
 31 mission of a crime of a sexual nature;

32 (d) In proceedings in which the juvenile is being adjudicated for com-
 33 mission of a felony;

34 (e) In hearings upon a motion to waive jurisdiction under the juvenile
 35 corrections act pursuant to section 20-508, Idaho Code;

36 (f) In hearings upon a motion to examine the juvenile to determine if he
 37 is competent to proceed pursuant to section 20-519A, Idaho Code; or

38 (g) In recommitment proceedings.

39 (27) Upon the entry of an order finding the juvenile is within the
 40 purview of this act, ~~t~~The parents, spouse or other person liable for the sup-
 41 port of the juvenile, or the estates of such persons, and the estate of such
 42 juvenile, ~~shall~~ may be liable for the cost to the county of required by the
 43 court to reimburse the county for all or a portion of the cost of those legal
 44 services rendered to the juvenile by counsel appointed pursuant to this sec-
 45 tion, unless the court finds such persons to be needy persons and financially
 46 unable to pay the cost of such legal services that are related to the finding
 47 that the juvenile is within the purview of this act, unless the court finds
 48 such persons or estate to be indigent as defined in section 19-851(c), Idaho
 49 Code, and the requirement would impose a manifest hardship on those persons
 50 responsible for the juvenile or the estates. The current inability of those

1 persons or entities to pay the reimbursement shall not, in and of itself,
2 restrict the court from ordering reimbursement.

3 (38) The prosecuting attorney of each county may, on behalf of the
4 county, recover payment or reimbursement, as the case may be, from each per-
5 son or estate who is liable for the payment or reimbursement of the cost of
6 court appointed counsel for the juvenile, ~~his parents or guardian under this~~
7 as provided in subsection (7) of this section. In the event such payment or
8 reimbursement is not made upon demand by the prosecuting attorney, suit may
9 be brought against such persons by the prosecuting attorney within five (5)
10 years after the date on which such counsel was appointed by the court.