

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 78

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO CODE, TO
2 PROVIDE THAT CERTAIN INFORMATION SHALL BE GIVEN AT THE TIME OF EVIDEN-
3 TIARY TESTING FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES, TO
4 PROVIDE THAT PERSONS PARTICIPATING IN A DIVERSION PROGRAM MAY BE ELIGI-
5 BLE FOR CERTAIN DRIVING PRIVILEGES, AND TO MAKE TECHNICAL CORRECTIONS;
6 AMENDING SECTION 18-8002A, IDAHO CODE, TO REVISE PROVISIONS REGARDING
7 CERTAIN INFORMATION GIVEN TO PERSONS UNDERGOING EVIDENTIARY TESTING
8 FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES, TO PROVIDE FOR
9 DRIVING PRIVILEGES IN A DIVERSION PROGRAM, AND TO MAKE TECHNICAL COR-
10 RECTIONS; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE PROVISIONS
11 REGARDING PENALTIES; AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE
12 THE DEFINITION OF IGNITION INTERLOCK SYSTEM AND TO MAKE A TECHNICAL
13 CORRECTION; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION
14 OF A NEW SECTION 19-3507, IDAHO CODE, TO DEFINE A TERM AND TO PROVIDE
15 LEGISLATIVE INTENT; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE
16 ADDITION OF A NEW SECTION 19-3508, IDAHO CODE, TO PROVIDE ELIGIBILITY
17 REQUIREMENTS FOR A DIVERSION PROGRAM; AMENDING CHAPTER 35, TITLE 19,
18 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3509, IDAHO CODE, TO ES-
19 TABLISH PROVISIONS REGARDING DIVERSION PROGRAMS; AND AMENDING SECTION
20 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS PARTICIPATING IN DIVERSION
21 PROGRAMS MAY BE REQUIRED TO PERFORM CERTAIN LABOR.
22

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

24 SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS
27 OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF
28 TESTS. (1) Any person who drives or is in actual physical control of a motor
29 vehicle in this state shall be deemed to have given his consent to eviden-
30 tiary testing for concentration of alcohol as defined in section 18-8004,
31 Idaho Code, and to have given his consent to evidentiary testing for the
32 presence of drugs or other intoxicating substances, provided that such
33 testing is administered at the request of a peace officer having reasonable
34 grounds to believe that person has been driving or was in actual physical
35 control of a motor vehicle in violation of the provisions of section 18-8004
36 or 18-8006, Idaho Code.

37 (2) Such person shall not have the right to consult with an attorney be-
38 fore submitting to such evidentiary testing.

39 (3) At the time evidentiary testing for concentration of alcohol or for
40 the presence of drugs or other intoxicating substances is requested, the
41 person shall be informed that if he refuses to submit to or if he fails to
42 complete evidentiary testing:

1 (a) He is subject to a civil penalty of two hundred fifty dollars (\$250)
2 for refusing to take the test;

3 (b) He is subject to mandatory installation of a state-approved igni-
4 tion interlock system, at his expense, on all of the motor vehicles op-
5 erated by him for a period to end one (1) year following the end of the
6 suspension period;

7 (c) He has the right to request a hearing within seven (7) days to show
8 cause why he refused to submit to, or complete evidentiary testing;

9 (d) If he does not request a hearing or does not prevail at the hearing,
10 the court shall sustain the civil penalty and shall order the required
11 installation of a state-approved ignition interlock system on all motor
12 vehicles operated by him and his driver's license will be suspended ab-
13 solutely for one (1) year if this is his first refusal and two (2) years
14 if this is his second refusal within ten (10) years;

15 (e) Provided however, if he is admitted to a problem solving court pro-
16 gram and has served at least forty-five (45) days of an absolute sus-
17 pension of driving privileges, then he may be eligible for a restricted
18 permit for the purpose of getting to and from work, school or an alcohol
19 treatment program, but only if a state-approved ignition interlock sys-
20 tem has been installed, at his expense, on all motor vehicles operated
21 by him; and

22 (f) Provided however, if he is admitted to a diversion program pursuant
23 to section 19-3509, Idaho Code, then he may be eligible for a restricted
24 permit for the purpose of getting to and from work, school, medical ap-
25 pointments, or a treatment program, but only if a state-approved igni-
26 tion interlock system has been installed, at his expense, on all motor
27 vehicles operated by him; and

28 (g) After submitting to evidentiary testing, he may, when practicable,
29 at his own expense, have additional tests made by a person of his own
30 choosing.

31 (4) If the motorist refuses to submit to or complete evidentiary test-
32 ing after the information has been given in accordance with subsection (3) of
33 this section:

34 (a) He shall be fined a civil penalty of two hundred fifty dollars
35 (\$250);

36 (b) The court shall direct the installation, at his expense, of a state-
37 approved ignition interlock system meeting the requirements set forth
38 in section 18-8008, Idaho Code, on all motor vehicles operated by him
39 for a period of one (1) year following the end of the suspension period;

40 (c) A written request may be made within seven (7) calendar days for a
41 hearing before the court; if requested, the hearing must be held within
42 thirty (30) days of the date of service unless this period is, for good
43 cause shown, extended by the court for one (1) additional thirty (30)
44 day period. The hearing shall be limited to the question of why the
45 defendant did not submit to, or complete, evidentiary testing, and the
46 burden of proof shall be upon the defendant; the court shall sustain
47 a two hundred fifty dollar (\$250) civil penalty immediately, suspend
48 all the defendant's driving privileges immediately for one (1) year for
49 a first refusal and two (2) years for a second refusal within ten (10)
50 years and direct the installation, at his expense, of a state-approved

1 ignition interlock system meeting the requirements set forth in section
2 18-8008, Idaho Code, on all motor vehicles operated by him for a period
3 to end one (1) year following the end of the suspension period, unless it
4 finds that the peace officer did not have legal cause to stop and request
5 him to take the test or that the request violated his civil rights;

6 (d) If a hearing is not requested by written notice to the court con-
7 cerned within seven (7) calendar days, upon receipt of a sworn statement
8 by the peace officer of the circumstances of the refusal, the court
9 shall sustain a two hundred fifty dollar (\$250) civil penalty, suspend
10 the defendant's driving privileges for one (1) year for a first refusal
11 and two (2) years for a second refusal within ten (10) years, during
12 which time he shall have absolutely no driving privileges of any kind,
13 and direct the installation of a state-approved ignition interlock
14 system, at his expense, meeting the requirements set forth in section
15 18-8008, Idaho Code, on all motor vehicles operated by him for a period
16 to end one (1) year following the end of the suspension period;

17 (e) Notwithstanding the provisions of paragraphs (c) and (d) of this
18 subsection, if the defendant is enrolled in and is a participant in good
19 standing in a drug court or mental health court approved by the supreme
20 court drug court and mental health court coordinating committee under
21 the provisions of chapter 56, title 19, Idaho Code, or other similar
22 problem solving court utilizing community-based sentencing alterna-
23 tives, then the defendant shall be eligible for restricted noncommer-
24 cial driving privileges for the purpose of getting to and from work,
25 school or an alcohol treatment program, which may be granted by the pre-
26 siding judge of the drug court or mental health court or other similar
27 problem solving court, provided that the defendant has served a period
28 of absolute suspension of driving privileges of at least forty-five
29 (45) days, that a state-approved ignition interlock system meeting the
30 requirements set forth in section 18-8008, Idaho Code, is installed,
31 at his expense, on all motor vehicles operated by him for a period to
32 end one (1) year following the end of the suspension period and that the
33 defendant has shown proof of financial responsibility as defined and
34 in the amounts specified in section 49-117, Idaho Code, provided that
35 the restricted noncommercial driving privileges and the requirement
36 of a state-approved ignition interlock system may be continued if the
37 defendant successfully completes the drug court, mental health court or
38 other similar problem solving court, and that the court may revoke such
39 privileges for failure to comply with the terms of probation or with the
40 terms and conditions of the drug court, mental health court or other
41 similar problem solving court program; ~~and~~

42 (f) Notwithstanding the provisions of paragraphs (c) and (d) of this
43 subsection, if a defendant is a participant in good standing in a diver-
44 sion program pursuant to section 19-3509, Idaho Code, then the defen-
45 dant shall be eligible for restricted noncommercial driving privileges
46 for the purpose of getting to and from work, school, medical appoint-
47 ments, or a treatment program, which privileges may be granted by the
48 presiding court, provided that the defendant has:

1 (i) Installed a state-approved ignition interlock system, at his
2 expense, on all motor vehicles operated by him in accordance with
3 the presiding court's order; and

4 (ii) Presented proof of financial responsibility as defined in
5 section 49-117, Idaho Code, to the presiding court; and

6 (g) After submitting to evidentiary testing at the request of the peace
7 officer, he may, when practicable, at his own expense, have additional
8 tests made by a person of his own choosing. The failure or inability to
9 obtain an additional test or tests by a person shall not preclude the ad-
10 mission of results of evidentiary testing for alcohol concentration or
11 for the presence of drugs or other intoxicating substances taken at the
12 direction of the peace officer unless the additional test was denied by
13 the peace officer.

14 (5) Any sustained sanction under this section or section 18-8002A,
15 Idaho Code, shall be a sanction separate and apart from any other sanction
16 imposed for a violation of other Idaho motor vehicle codes or for a con-
17 viction of an offense pursuant to this chapter and may be appealed to the
18 district court.

19 (6) No hospital, hospital officer, agent, or employee, or health care
20 professional licensed by the state of Idaho, whether or not such person has
21 privileges to practice in the hospital in which a body fluid sample is ob-
22 tained or an evidentiary test is made, shall incur any civil or criminal li-
23 ability for any act arising out of administering an evidentiary test for al-
24 cohol concentration or for the presence of drugs or other intoxicating sub-
25 stances at the request or order of a peace officer in the manner described in
26 this section and section 18-8002A, Idaho Code; provided that nothing in this
27 section shall relieve any such person or legal entity from civil liability
28 arising from the failure to exercise the community standard of care.

29 (a) This immunity extends to any person who assists any individual to
30 withdraw a blood sample for evidentiary testing at the request or order
31 of a peace officer, which individual is authorized to withdraw a blood
32 sample under the provisions of section 18-8003, Idaho Code, regardless
33 of the location where the blood sample is actually withdrawn.

34 (b) A peace officer is empowered to order an individual authorized in
35 section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary
36 testing when the peace officer has probable cause to believe that the
37 suspect has committed any of the following offenses:

38 (i) Aggravated driving under the influence of alcohol, drugs or
39 other intoxicating substances as provided in section 18-8006,
40 Idaho Code;

41 (ii) Vehicular manslaughter as provided in subsection (3) (a), (b)
42 and (c) of section 18-4006, Idaho Code;

43 (iii) Aggravated operating of a vessel on the waters of the state
44 while under the influence of alcohol, drugs or other intoxicating
45 substances as provided in section 67-7035, Idaho Code; or

46 (iv) Any criminal homicide involving a vessel on the waters of the
47 state while under the influence of alcohol, drugs or other intoxi-
48 cating substances.

1 (c) Nothing herein shall limit the discretion of the hospital admin-
2 istration to designate the qualified hospital employee responsible to
3 withdraw the blood sample.

4 (d) The law enforcement agency that requests or orders withdrawal of
5 the blood sample shall pay the reasonable costs to withdraw such blood
6 sample, perform laboratory analysis, preserve evidentiary test re-
7 sults, and testify in judicial proceedings. The court may order resti-
8 tution pursuant to the provisions of section 18-8003(2), Idaho Code.

9 (e) The withdrawal of the blood sample may be delayed or terminated if:

10 (i) In the reasonable judgment of the hospital personnel, with-
11 drawal of the blood sample may result in serious bodily injury to
12 hospital personnel or other patients; or

13 (ii) The licensed health care professional treating the suspect
14 believes the withdrawal of the blood sample is contraindicated be-
15 cause of the medical condition of the suspect or other patients.

16 (7) "Actual physical control" as used in this section and section
17 18-8002A, Idaho Code, shall be defined as being in the driver's position of
18 the motor vehicle with the motor running or with the motor vehicle moving.

19 (8) Any written notice required by this section shall be effective upon
20 mailing.

21 (9) For the purposes of this section and section 18-8002A, Idaho Code,
22 "evidentiary testing" shall mean a procedure or test or series of proce-
23 dures or tests, including the additional test authorized in subsection (10)
24 of this section, utilized to determine the concentration of alcohol or the
25 presence of drugs or other intoxicating substances in a person.

26 (10) A person who submits to a breath test for alcohol concentration,
27 as defined in subsection (4) of section 18-8004, Idaho Code, may also be re-
28 quested to submit to a second evidentiary test of blood or urine for the pur-
29 pose of determining the presence of drugs or other intoxicating substances
30 if the peace officer has reasonable cause to believe that a person was driv-
31 ing under the influence of any drug or intoxicating substance or the combined
32 influence of alcohol and any drug or intoxicating substance. The peace of-
33 ficer shall state in his or her report the facts upon which that belief is
34 based.

35 (11) Notwithstanding any other provision of law to the contrary, the
36 civil penalty imposed under the provisions of this section must be paid, as
37 ordered by the court, to the county justice fund or the county current ex-
38 pense fund where the incident occurred. If a person does not pay the civil
39 penalty imposed as provided in this section within thirty (30) days of the
40 imposition, unless this period has been extended by the court for good cause
41 shown, the prosecuting attorney representing the political subdivision
42 where the incident occurred may petition the court in the jurisdiction where
43 the incident occurred to file the order imposing the civil penalty as an or-
44 der of the court. Once entered, the order may be enforced in the same manner
45 as a final judgment of the court. In addition to the civil penalty, attor-
46 ney's fees, costs and interest may be assessed against any person who fails
47 to pay the civil penalty.

48 (12) Upon motion of the person required to install an ignition inter-
49 lock pursuant to subsection (4)(b) of this section, a court in its
50 discretion may relieve the person from the installation of the device where

1 the court finds it clear and convincing that the person will not present a
2 danger to the public or that there are exceptional or mitigating circum-
3 stances demonstrating that installation of the device is unnecessary or
4 unwarranted. Financial hardship, standing alone, is not an exceptional or
5 mitigating circumstance.

6 (13) A court may determine that an offender is eligible to utilize
7 available funds from the court interlock device and electronic monitoring
8 device fund, as outlined in section 18-8010, Idaho Code, for the instal-
9 lation and operation of an ignition interlock device, based on evidence of
10 financial hardship.

11 (14) As used in this section, "at his expense" includes the cost of ob-
12 taining, installing, using and maintaining an ignition interlock system.

13 SECTION 2. That Section 18-8002A, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF
16 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF
17 TESTS. (1) Definitions. As used in this section:

18 (a) "Actual physical control" means being in the driver's position of a
19 motor vehicle with the motor running or with the vehicle moving.

20 (b) "Administrative hearing" means a hearing conducted by a hearing
21 officer to determine whether a suspension imposed by the provisions of
22 this section should be vacated or sustained.

23 (c) "Department" means the Idaho transportation department and, as the
24 context requires, shall be construed to include any agent of the depart-
25 ment designated by rule as hereinafter provided.

26 (d) "Director" means the director of the Idaho transportation depart-
27 ment.

28 (e) "Evidentiary testing" means a procedure or test or series of proce-
29 dures or tests utilized to determine the concentration of alcohol or the
30 presence of drugs or other intoxicating substances in a person, includ-
31 ing additional testing authorized by subsection (6) of this section. An
32 evidentiary test for alcohol concentration shall be based on a formula
33 of grams of alcohol per one hundred (100) cubic centimeters of blood,
34 per two hundred ten (210) liters of breath, or per sixty-seven (67) mil-
35 liliters of urine. Analysis of blood, breath or urine for the purpose
36 of determining alcohol concentration shall be performed by a laboratory
37 operated by the Idaho state police or by a laboratory approved by the
38 Idaho state police under the provisions of approval and certification
39 standards to be set by the Idaho state police, or by any other method ap-
40 proved by the Idaho state police. Notwithstanding any other provision
41 of law or rule of court, the results of any test for alcohol concentra-
42 tion and records relating to calibration, approval, certification or
43 quality control performed by a laboratory operated and approved by the
44 Idaho state police or by any other method approved by the Idaho state po-
45 lice shall be admissible in any proceeding in this state without the ne-
46 cessity of producing a witness to establish the reliability of the test-
47 ing procedure for examination.

48 (f) "Hearing officer" means a person designated by the department to
49 conduct administrative hearings. The hearing officer shall have au-

1 thority to administer oaths, examine witnesses and take testimony,
2 receive relevant evidence, issue subpoenas, regulate the course and
3 conduct of the hearing and make a final ruling on the issues before him.

4 (g) "Hearing request" means a request for an administrative hearing on
5 the suspension imposed by the provisions of this section.

6 (2) Information to be given. At the time of evidentiary testing for
7 concentration of alcohol or for the presence of drugs or other intoxicating
8 substances is requested, the person shall be informed that if the person re-
9 fuses to submit to or fails to complete evidentiary testing, or if the per-
10 son submits to and completes evidentiary testing and the test results indi-
11 cate an alcohol concentration or the presence of drugs or other intoxicating
12 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,
13 the person shall be informed substantially as follows (but need not be in-
14 formed verbatim):

15 If you refuse to submit to or if you fail to complete and pass eviden-
16 tiary testing for alcohol or other intoxicating substances:

17 (a) The peace officer will issue a notice of suspension and you will be
18 required to install, at your expense, a state-approved ignition inter-
19 lock system on all motor vehicles you operate for a period to end one (1)
20 year following the end of the suspension period;

21 (b) You have the right to request a hearing within seven (7) days of the
22 notice of suspension of your driver's license to show cause why you re-
23 fused to submit to or to complete and pass evidentiary testing and why
24 your driver's license should not be suspended;

25 (c) If you refused or failed to complete evidentiary testing and do not
26 request a hearing before the court or do not prevail at the hearing, your
27 driver's license will be suspended and you will be required to install,
28 at your expense, a state-approved ignition interlock system on all mo-
29 tor vehicles you operate for a period to end one (1) year following the
30 end of the suspension period. The suspension will be for one (1) year if
31 this is your first refusal. The suspension will be for two (2) years if
32 this is your second refusal within ten (10) years. You will not be able
33 to obtain a temporary restricted license during that period;

34 (d) If you complete evidentiary testing and fail the testing and do not
35 request a hearing before the department or do not prevail at the hear-
36 ing, your driver's license will be suspended and you will be required to
37 install, at your expense, a state-approved ignition interlock system on
38 all motor vehicles you operate for a period to end one (1) year following
39 the end of the suspension period. This suspension will be for ninety
40 (90) days if this is your first failure of evidentiary testing, but you
41 may request restricted noncommercial vehicle driving privileges after
42 the first thirty (30) days. The suspension will be for one (1) year
43 if this is your second failure of evidentiary testing within five (5)
44 years. You will not be able to obtain a temporary restricted license
45 during that period;

46 (e) However, if you are admitted to a problem solving court program and
47 have served at least forty-five (45) days of an absolute suspension of
48 driving privileges, you may be eligible for a restricted permit for the
49 purpose of getting to and from work, school or an alcohol treatment pro-

1 gram, but only if you install, at your expense, a state-approved igni-
 2 tion interlock system on all motor vehicles you operate; ~~and~~

3 (f) However, if you are admitted to a diversion program under section
 4 19-3509, Idaho Code, you may be eligible for a restricted permit for the
 5 purpose of getting to and from work, school, medical appointments, or
 6 a treatment program, but only if you install, at your expense, a state-
 7 approved ignition interlock system on all motor vehicles you operate;
 8 and

9 (g) After submitting to evidentiary testing, you may, when practica-
 10 ble, at your own expense, have additional tests made by a person of your
 11 own choosing.

12 (3) Rulemaking authority of the Idaho state police. The Idaho state po-
 13 lice may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

14 (a) What testing is required to complete evidentiary testing under this
 15 section; and

16 (b) What calibration or checking of testing equipment must be performed
 17 to comply with the department's requirements. Any rules of the Idaho
 18 state police shall be in accordance with the following: a test for alco-
 19 hol concentration in breath as defined in section 18-8004, Idaho Code,
 20 and subsection (1) (e) of this section will be valid for the purposes of
 21 this section if the breath alcohol testing instrument was approved for
 22 testing by the Idaho state police in accordance with section 18-8004,
 23 Idaho Code, at any time within ninety (90) days before the evidentiary
 24 testing. A test for alcohol concentration in blood or urine as defined
 25 in section 18-8004, Idaho Code, that is reported by the Idaho state po-
 26 lice or by any laboratory approved by the Idaho state police to perform
 27 this test will be valid for the purposes of this section.

28 (4) Suspension and ignition interlock system.

29 (a) Upon receipt of the sworn statement of a peace officer that there
 30 existed legal cause to believe a person had been driving or was in actual
 31 physical control of a motor vehicle while under the influence of alco-
 32 hol, drugs or other intoxicating substances and that the person submit-
 33 ted to a test and the test results indicated an alcohol concentration or
 34 the presence of drugs or other intoxicating substances in violation of
 35 section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall
 36 suspend the person's driver's license, driver's permit, driving privi-
 37 leges or nonresident driving privileges:

38 (i) For a period of ninety (90) days for a first failure of evi-
 39 dentiary testing under the provisions of this section. The
 40 first thirty (30) days of the suspension shall be absolute and the
 41 person shall have absolutely no driving privileges of any kind.
 42 Restricted noncommercial vehicle driving privileges applicable
 43 during the remaining sixty (60) days of the suspension may be re-
 44 quested as provided in subsection (9) of this section.

45 (ii) For a period of one (1) year for a second and any subsequent
 46 failure of evidentiary testing under the provisions of this sec-
 47 tion within the immediately preceding five (5) years. No driving
 48 privileges of any kind shall be granted during the suspension im-
 49 posed pursuant to this ~~subsection~~ subparagraph.

1 The department shall also direct the installation, at the offender's
2 expense, of a state-approved ignition interlock system meeting the re-
3 quirements of section 18-8008, Idaho Code, on all motor vehicles oper-
4 ated by the offender for a period to end one (1) year following the end of
5 the suspension period.

6 The person may request an administrative hearing on the suspension as
7 provided in subsection (7) of this section. Any right to contest the
8 suspension shall be waived if a hearing is not requested as therein pro-
9 vided.

10 (b) The suspension shall become effective thirty (30) days after ser-
11 vice upon the person of the notice of suspension and notice of the re-
12 quirement to install, at his expense, a state-approved ignition inter-
13 lock system for a period to end one (1) year following the end of the sus-
14 pension period. The notice shall be in a form provided by the department
15 and shall state:

16 (i) The reason and statutory grounds for the suspension and the
17 requirement to install the ignition interlock system;

18 (ii) The effective date of the suspension and the requirement to
19 install the ignition interlock system;

20 (iii) The suspension periods to which the person may be subject as
21 provided in paragraph (a) of this subsection;

22 (iv) The procedures for obtaining restricted noncommercial vehi-
23 cle driving privileges;

24 (v) The rights of the person to request an administrative hear-
25 ing on the suspension and that, if an administrative hearing is not
26 requested within seven (7) days of service of the notice of suspen-
27 sion and notice of the requirement to install the ignition inter-
28 lock system, the right to contest the suspension shall be waived;

29 (vi) The procedures for obtaining an administrative hearing on
30 the suspension;

31 (vii) The right to judicial review of the hearing officer's deci-
32 sion on the suspension and the procedures for seeking such review.

33 (c) Notwithstanding the provisions of paragraph(a)(i) and (ii) of
34 this subsection, a person who is enrolled in and is a participant in
35 good standing in a drug court or mental health court approved by the
36 supreme court drug court and mental health court coordinating commit-
37 tee under the provisions of chapter 56, title 19, Idaho Code, or other
38 similar problem solving court utilizing community-based sentencing
39 alternatives shall be eligible for restricted noncommercial driving
40 privileges for the purpose of getting to and from work, school or an al-
41 cohol treatment program, which may be granted by the presiding judge of
42 the drug court or mental health court or other similar problem solving
43 court, provided that the offender has served a period of absolute sus-
44 pension of driving privileges of at least forty-five (45) days, that a
45 state-approved ignition interlock system is installed, at his expense,
46 on all motor vehicles operated by him for a period to end one (1) year
47 following the end of the suspension period and that the offender has
48 shown proof of financial responsibility as defined and in the amounts
49 specified in section 49-117, Idaho Code, provided that the restricted
50 noncommercial driving privileges may be continued if the offender

1 successfully completes the drug court, mental health court or other
2 similar problem solving court, and that the court may revoke such privi-
3 leges for failure to comply with the terms of probation or with the terms
4 and conditions of the drug court, mental health court or other similar
5 problem solving court program.

6 (d) Notwithstanding the provisions of paragraph (a) (i) and (ii) of
7 this subsection, a person who is enrolled in and is a participant in
8 good standing in a diversion program pursuant to section 19-3509, Idaho
9 Code, shall be eligible for restricted noncommercial driving privi-
10 leges for the purpose of getting to and from work, school, medical
11 appointments, or a treatment program, which privileges may be granted
12 by the presiding court, provided that the person has:

13 (i) Installed, at the person's expense, a state-approved ig-
14 nitiation interlock system in each motor vehicle operated by the
15 person, which system shall be maintained as provided in section
16 18-8008, Idaho Code; and

17 (ii) Shown proof of financial responsibility as defined and in the
18 amounts specified in section 49-117, Idaho Code, to the presiding
19 court.

20 (5) Service of suspension and ignition interlock system by peace of-
21 ficer or the department. If the driver submits to evidentiary testing af-
22 ter the information in subsection (2) of this section has been provided and
23 the results of the test indicate an alcohol concentration or the presence
24 of drugs or other intoxicating substances in violation of the provisions of
25 section 18-8004, 18-8004C or 18-8006, Idaho Code:

26 (a) The peace officer shall, acting on behalf of the department, serve
27 the person with a notice of suspension and notice of the requirement to
28 install, at his expense, a state-approved ignition interlock system for
29 a period to end one (1) year following the end of the suspension period
30 in the form and containing the information required under subsection
31 (4) of this section. The department may serve the person with a notice
32 of suspension and the requirement to install the ignition interlock
33 system if the peace officer failed to do so or failed to include the date
34 of service as provided in subsection (4) (b) of this section.

35 (b) Within five (5) business days following service of a notice of sus-
36 pension and notice of the requirement to install the ignition interlock
37 system, the peace officer shall forward to the department a copy of the
38 completed notice of suspension and notice of the requirement to install
39 the ignition interlock system form upon which the date of service upon
40 the driver shall be clearly indicated, a certified copy or duplicate
41 original of the results of all tests for alcohol concentration, as shown
42 by analysis of breath administered at the direction of the peace offi-
43 cer, and a sworn statement of the officer, which may incorporate any
44 arrest or incident reports relevant to the arrest and evidentiary test-
45 ing setting forth:

46 (i) The identity of the person;

47 (ii) Stating the officer's legal cause to stop the person;

48 (iii) Stating the officer's legal cause to believe that the per-
49 son had been driving or was in actual physical control of a motor
50 vehicle while under the influence of alcohol, drugs or other in-

1 toxicating substances in violation of the provisions of section
2 18-8004, 18-8004C or 18-8006, Idaho Code;

3 (iv) That the person was advised of the consequences of taking and
4 failing the evidentiary test as provided in subsection (2) of this
5 section;

6 (v) That the person was lawfully arrested;

7 (vi) That the person was tested for alcohol concentration, drugs
8 or other intoxicating substances as provided in this chapter, and
9 that the results of the test indicated an alcohol concentration or
10 the presence of drugs or other intoxicating substances in viola-
11 tion of the provisions of section 18-8004, 18-8004C or 18-8006,
12 Idaho Code.

13 If an evidentiary test of blood or urine was administered rather than
14 a breath test, the peace officer or the department shall serve the no-
15 tice of suspension once the results are received. The sworn statement
16 required in this subsection shall be made on forms in accordance with
17 rules adopted by the department.

18 (c) The department may serve the person with a notice of suspension if
19 the peace officer failed to issue the notice of suspension or failed to
20 include the date of service as provided in subsection (4) (b) of this
21 section.

22 (6) Additional tests. After submitting to evidentiary testing at the
23 request of the peace officer, the person may, when practicable, at his own
24 expense, have additional tests for alcohol concentration or for the presence
25 of drugs or other intoxicating substances made by a person of his own choos-
26 ing. The person's failure or inability to obtain additional tests shall not
27 preclude admission of the results of evidentiary tests administered at the
28 direction of the peace officer unless additional testing was denied by the
29 peace officer.

30 (7) Administrative hearing on suspension. A person who has been served
31 with a notice of suspension and notice of the requirement to install the ig-
32 nition interlock system after submitting to an evidentiary test may request
33 an administrative hearing on the suspension before a hearing officer desig-
34 nated by the department. The hearing may be held only on the suspension and
35 not on the requirement to install an ignition interlock system. The request
36 for hearing shall be in writing and must be received by the department within
37 seven (7) calendar days of the date of service upon the person of the notice
38 of suspension and notice of the requirement to install the ignition inter-
39 lock system and shall include what issue or issues shall be raised at the
40 hearing. The date on which the hearing request was received shall be noted
41 on the face of the request.

42 If a hearing is requested, the hearing shall be held within twenty (20)
43 days of the date the hearing request was received by the department unless
44 this period is, for good cause shown, extended by the hearing officer for a
45 ten (10) day period. Such extension shall not operate as a stay of the sus-
46 pension, notwithstanding an extension of the hearing date beyond such thirty
47 (30) day period. Written notice of the date and time of the hearing shall
48 be sent to the party requesting the hearing at least seven (7) days prior to
49 the scheduled hearing date. The department may conduct all hearings by tele-

1 phone if each participant in the hearing has an opportunity to participate in
2 the entire proceeding while it is taking place.

3 The hearing shall be recorded. The sworn statement of the arresting of-
4 ficer, and the copy of the notice of suspension and the notice of the require-
5 ment to install the ignition interlock system issued by the officer shall
6 be admissible at the hearing without further evidentiary foundation. The
7 results of any tests for alcohol concentration or the presence of drugs or
8 other intoxicating substances by analysis of blood, urine or breath adminis-
9 tered at the direction of the peace officer and the records relating to cal-
10 ibration, certification, approval or quality control pertaining to equip-
11 ment utilized to perform the tests shall be admissible as provided in section
12 18-8004(4), Idaho Code. The arresting officer shall not be required to par-
13 ticipate unless directed to do so by a subpoena issued by the hearing offi-
14 cer.

15 The burden of proof shall be on the person requesting the hearing. The
16 hearing officer shall not vacate the suspension unless he finds, by a prepon-
17 derance of the evidence, that:

18 (a) The peace officer did not have legal cause to stop the person; or

19 (b) The officer did not have legal cause to believe the person had been
20 driving or was in actual physical control of a vehicle while under the
21 influence of alcohol, drugs or other intoxicating substances in viola-
22 tion of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho
23 Code; or

24 (c) The test results did not show an alcohol concentration or the pres-
25 ence of drugs or other intoxicating substances in violation of section
26 18-8004, 18-8004C or 18-8006, Idaho Code; or

27 (d) The tests for alcohol concentration, drugs or other intoxicating
28 substances administered at the direction of the peace officer were not
29 conducted in accordance with the requirements of section 18-8004(4),
30 Idaho Code, or the testing equipment was not functioning properly when
31 the test was administered; or

32 (e) The person was not informed of the consequences of submitting to ev-
33 identiary testing as required in subsection (2) of this section.

34 If the hearing officer finds that the person has not met his burden of proof,
35 he shall sustain the suspension. The hearing officer shall make findings of
36 fact and conclusions of law and shall enter an order vacating or sustaining
37 the suspension. The findings of fact, conclusions of law and order entered
38 by the hearing officer shall be considered a final order pursuant to the pro-
39 visions of chapter 52, title 67, Idaho Code, except that motions for recon-
40 sideration of such order shall be allowed and new evidence can be submitted.

41 The facts as found by the hearing officer shall be independent of the de-
42 termination of the same or similar facts in the adjudication of any criminal
43 charges arising out of the same occurrence. The disposition of those crim-
44 inal charges shall not affect the suspension and the requirement to install
45 the ignition interlock system required to be imposed under the provisions of
46 this section. If a license is suspended under this section and the person is
47 also convicted on criminal charges arising out of the same occurrence for a
48 violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho
49 Code, both the suspension under this section and the suspension imposed pur-
50 suant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be

1 imposed, but the periods of suspension shall run concurrently, with the to-
2 tal period of suspension not to exceed the longer of the applicable suspen-
3 sion periods, unless the court ordering the suspension in the criminal case
4 orders to the contrary.

5 (8) Judicial review. A party aggrieved by the decision of the hearing
6 officer may seek judicial review of the decision in the manner provided for
7 judicial review of final agency action provided in chapter 52, title 67,
8 Idaho Code. Upon motion of the person required to install an ignition in-
9 terlock device pursuant to subsection (4) (a) of this section, a court in its
10 discretion may relieve the person from the installation of the device where
11 the court finds it clear and convincing that the person will not present a
12 danger to the public or that there are exceptional or mitigating circum-
13 stances demonstrating that installation of the device is unnecessary or
14 unwarranted. Financial hardship, standing alone, is not an exceptional or
15 mitigating circumstance. A court may determine that an offender is eligible
16 to utilize available funds from the court interlock device and electronic
17 monitoring device fund, as outlined in section 18-8010, Idaho Code, for the
18 installation and operation of an ignition interlock device, based on evi-
19 dence of financial hardship.

20 (9) Restricted noncommercial vehicle driving privileges. A person
21 served with a notice of suspension for ninety (90) days pursuant to this
22 section may apply to the department for restricted noncommercial vehicle
23 driving privileges, to become effective after the thirty (30) day absolute
24 suspension has been completed. The request may be made at any time after ser-
25 vice of the notice of suspension. Restricted noncommercial vehicle driving
26 privileges will be issued for the person to travel to and from work and for
27 work purposes not involving operation of a commercial vehicle, to attend an
28 alternative high school, work on a GED, for postsecondary education, or to
29 meet the medical needs of the person or his family if the person is eligible
30 for restricted noncommercial vehicle driving privileges. Any person whose
31 driving privileges are suspended under the provisions of this chapter may be
32 granted privileges to drive a noncommercial vehicle but shall not be granted
33 privileges to operate a commercial motor vehicle.

34 (10) As used in this section, "at his expense," "at your expense" and "at
35 the offender's expense" include the cost of obtaining, installing, using and
36 maintaining an ignition interlock system.

37 (11) Rules. The department may adopt rules under the provisions of
38 chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-
39 sions of this section.

40 SECTION 3. That Section 18-8005, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found
43 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho
44 Code, for the first time is guilty of a misdemeanor; and, except as provided
45 in section 18-8004C, Idaho Code:

- 46 (a) May be sentenced to jail for a term not to exceed six (6) months;
47 (b) May be fined an amount not to exceed one thousand dollars (\$1,000);
48 (c) Shall be advised by the court in writing at the time of sentencing
49 of the penalties that will be imposed for subsequent violations of the

1 provisions of section 18-8004, Idaho Code, which advice shall be signed
2 by the defendant, and a copy retained by the court and another copy re-
3 tained by the prosecuting attorney;

4 (d) Shall have his driving privileges suspended by the court for a pe-
5 riod of thirty (30) days, which shall not be reduced and during which
6 thirty (30) day period absolutely no driving privileges of any kind may
7 be granted. After the thirty (30) day period of absolute suspension of
8 driving privileges has passed, the defendant shall have driving privi-
9 leges suspended by the court for an additional period of at least sixty
10 (60) days, not to exceed one hundred fifty (150) days, during which
11 the defendant may request restricted driving privileges that the court
12 may allow, if the defendant shows by a preponderance of the evidence
13 that driving privileges are necessary for his employment or for family
14 health needs; and

15 (e) Unless an exception is granted pursuant to section 18-8002(12),
16 Idaho Code, shall within ten (10) days following the end of the manda-
17 tory suspension period have a state-approved ignition interlock system
18 meeting the requirements of section 18-8008, Idaho Code, installed, at
19 his expense, on all motor vehicles operated by him for a period to end
20 one (1) year following the end of the suspension period. A court may
21 determine that an offender is eligible to utilize available funds from
22 the court interlock device and electronic monitoring device fund, as
23 outlined in section 18-8010, Idaho Code, for the installation and oper-
24 ation of an ignition interlock device, based on evidence of financial
25 hardship.

26 (2) Any person who pleads guilty to or is found guilty of a violation of
27 the provisions of section 18-8004(1) (b), Idaho Code, for the first time is
28 guilty of a misdemeanor and subject to:

29 (a) The provisions of subsection (1) (a), (b), (c) and (e) of this sec-
30 tion; and

31 (b) The provisions of section 49-335, Idaho Code.

32 (3) Any person who pleads guilty to or is found guilty of a violation of
33 the provisions of section 18-8004(1) (c), Idaho Code, for the first time is
34 guilty of a misdemeanor and is subject to:

35 (a) The provisions of subsection (1) (a), (b), (c) and (e) of this sec-
36 tion; and

37 (b) The provisions of section 49-335, Idaho Code.

38 (4) Any person who pleads guilty to or is found guilty of a violation of
39 the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, who previ-
40 ously has been found guilty of or has pled guilty to a violation of the provi-
41 sions of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially
42 conforming foreign criminal violation within ten (10) years, notwithstand-
43 ing the form of the judgment(s) or withheld judgment(s), and except as pro-
44 vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-
45 cept as provided in section 18-8004C, Idaho Code:

46 (a) Shall be sentenced to jail for a mandatory minimum period of not
47 less than ten (10) days, the first forty-eight (48) hours of which must
48 be consecutive, and five (5) days of which must be served in jail, as re-
49 quired by 23 U.S.C. 164, and may be sentenced to not more than one (1)
50 year, provided however, that in the discretion of the sentencing judge,

1 the judge may authorize the defendant to be assigned to a work detail
2 program within the custody of the county sheriff during the period of
3 incarceration;

4 (b) May be fined an amount not to exceed two thousand dollars (\$2,000);

5 (c) Shall be advised by the court in writing at the time of sentencing
6 of the penalties that will be imposed for subsequent violations of the
7 provisions of section 18-8004, Idaho Code, which advice shall be signed
8 by the defendant, and a copy retained by the court and another copy re-
9 tained by the prosecuting attorney;

10 (d) Shall surrender his driver's license or permit to the court;

11 (e) Shall have his driving privileges suspended by the court for an
12 additional mandatory minimum period of one (1) year after release from
13 confinement, during which one (1) year period absolutely no driving
14 privileges of any kind may be granted; and

15 (f) Shall, while operating a motor vehicle, be required to drive only
16 a motor vehicle equipped with a functioning ignition interlock system,
17 as provided in section 18-8008, Idaho Code, following the one (1) year
18 mandatory license suspension period.

19 (5) If the person has pled guilty or was found guilty for the sec-
20 ond time within ten (10) years of a violation of the provisions of section
21 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,
22 Idaho Code, shall apply.

23 (6) Except as provided in section 18-8004C, Idaho Code, any person who
24 pleads guilty to or is found guilty of a violation of the provisions of sec-
25 tion 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found
26 guilty of or has pled guilty to two (2) or more violations of the provisions
27 of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially con-
28 forming foreign criminal violation, or any combination thereof, or who has
29 completed a diversion program for driving under the influence, whether or
30 not the person has pled guilty or been found guilty, or any substantially
31 conforming foreign program, and has pled guilty or been found guilty of one
32 (1) or more violations of the provisions of section 18-8004(1)(a), (b), or
33 (c), Idaho Code, or any substantially conforming foreign criminal violation
34 within ten (10) years, notwithstanding the form of the judgment(s) or with-
35 held judgment(s), shall be guilty of a felony and:

36 (a) Shall be sentenced to the custody of the state board of correction
37 for not to exceed ten (10) years; provided that notwithstanding the
38 provisions of section 19-2601, Idaho Code, should the court impose any
39 sentence other than incarceration in the state penitentiary, the de-
40 fendant shall be sentenced to the county jail for a mandatory minimum
41 period of not less than thirty (30) days, the first forty-eight (48)
42 hours of which must be consecutive, and ten (10) days of which must be
43 served in jail, as required by 23 U.S.C. 164; and further provided that
44 notwithstanding the provisions of section 18-111, Idaho Code, a convic-
45 tion under this section shall be deemed a felony;

46 (b) May be fined an amount not to exceed five thousand dollars (\$5,000);

47 (c) Shall surrender his driver's license or permit to the court;

48 (d) Shall have his driving privileges suspended by the court for a
49 mandatory minimum period of one (1) year after release from imprison-
50 ment, during which time he shall have absolutely no driving privileges

1 of any kind, and may have his driving privileges suspended by the court
2 for an additional period not to exceed four (4) years, during which
3 the defendant may request restricted driving privileges that the court
4 may allow if the defendant shows by a preponderance of the evidence
5 that driving privileges are necessary for his employment or for family
6 health needs; and

7 (e) Shall, while operating a motor vehicle, be required to drive only
8 a motor vehicle equipped with a functioning ignition interlock system,
9 as provided in section 18-8008, Idaho Code, following the mandatory one
10 (1) year license suspension period.

11 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)
12 of this section, any person who is enrolled in and is a participant in good
13 standing in a drug court or mental health court approved by the supreme
14 court drug court and mental health court coordinating committee under the
15 provisions of chapter 56, title 19, Idaho Code, or other similar problem
16 solving court utilizing community-based sentencing alternatives shall be
17 eligible for restricted noncommercial driving privileges for the purpose
18 of getting to and from work, school or an alcohol treatment program, which
19 may be granted by the presiding judge of the drug court or mental health
20 court or other similar problem solving court, provided that the offender
21 has served a period of absolute suspension of driving privileges of at least
22 forty-five (45) days, that a state-approved ignition interlock system is
23 installed, at his expense, on any motor vehicles operated by the offender
24 for a period to end one (1) year following the end of the suspension period
25 and that the offender has shown proof of financial responsibility as defined
26 and in the amounts specified in section 49-117, Idaho Code, provided that
27 the restricted noncommercial driving privileges may be continued if the of-
28 fender successfully completes the drug court, mental health court or other
29 similar problem solving court, and that the court may revoke such privileges
30 for failure to comply with the terms of probation or with the terms and condi-
31 tions of the drug court, mental health court or other similar problem solving
32 court program.

33 (8) For the purpose of computation of the enhancement period in subsec-
34 tions (4), (6) and (9) of this section, the time that elapses between the date
35 of commission of the offense and the date the defendant pleads guilty or is
36 found guilty for the pending offense shall be excluded. If the determination
37 of guilt against the defendant is reversed upon appeal, the time that elapsed
38 between the date of the commission of the offense and the date the defendant
39 pleads guilty or is found guilty following the appeal shall also be excluded.

40 (9) Notwithstanding the provisions of subsections (4) and (6) of this
41 section, any person who has pled guilty to or has been found guilty of a
42 felony violation of the provisions of section 18-8004, Idaho Code, a felony
43 violation of the provisions of section 18-8004C, Idaho Code, a violation
44 of the provisions of section 18-8006, Idaho Code, a violation of the provi-
45 sions of section 18-4006 3.(b), Idaho Code, notwithstanding the form of the
46 judgment(s) or withheld judgment(s) or any substantially conforming foreign
47 criminal felony violation, notwithstanding the form of the judgment(s) or
48 withheld judgment(s), and within fifteen (15) years pleads guilty to or is
49 found guilty of a further violation of the provisions of section 18-8004,

1 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to
2 subsection (6) of this section.

3 (10) For the purpose of subsections (4), (6) and (9) of this section and
4 the provisions of section 18-8004C, Idaho Code, a substantially conforming
5 foreign criminal violation exists when a person has pled guilty to or has
6 been found guilty of a violation of any federal law or law of another state,
7 or any valid county, city, or town ordinance of another state substantially
8 conforming to the provisions of section 18-8004, Idaho Code. The determina-
9 tion of whether a foreign criminal violation is substantially conforming is
10 a question of law to be determined by the court.

11 (11) Any person who pleads guilty to or is found guilty of a violation of
12 the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall
13 undergo, at his own expense (or at county expense through the procedures set
14 forth in chapters 34 and 35, title 31, Idaho Code) and prior to the sentenc-
15 ing date, an alcohol evaluation by an alcohol evaluation facility approved
16 by the Idaho department of health and welfare; provided however, if the
17 defendant has no prior or pending charges with respect to the provisions
18 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the
19 records and information required under subsection (12) (a), (b) and (c) of
20 this section or possesses information from other reliable sources relating
21 to the defendant's use or nonuse of alcohol or drugs which does not give
22 the court any reason to believe that the defendant regularly abuses alco-
23 hol or drugs and is in need of treatment, the court may, in its discretion,
24 waive the evaluation with respect to sentencing for a violation of section
25 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant.
26 The court may also, in its discretion, waive the requirement of an alcohol
27 evaluation with respect to a defendant's first violation of the provisions
28 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence
29 the defendant if the court has a presentence investigation report, sub-
30 stance abuse assessment, criminogenic risk assessment, or other assessment
31 which evaluates the defendant's degree of alcohol abuse and need for alco-
32 hol treatment conducted within twelve (12) months preceding the date of the
33 defendant's sentencing. In the event an alcohol evaluation indicates the
34 need for alcohol treatment, the evaluation shall contain a recommendation
35 by the evaluator as to the most appropriate treatment program, together with
36 the estimated cost thereof, and recommendations for other suitable alter-
37 native treatment programs, together with the estimated costs thereof. The
38 person shall request that a copy of the completed evaluation be forwarded
39 to the court. The court shall take the evaluation into consideration in
40 determining an appropriate sentence. If a copy of the completed evaluation
41 has not been provided to the court, the court may proceed to sentence the
42 defendant; however, in such event, it shall be presumed that alcohol treat-
43 ment is required unless the defendant makes a showing by a preponderance of
44 evidence that treatment is not required. If the defendant has not made a good
45 faith effort to provide the completed copy of the evaluation to the court,
46 the court may consider the failure of the defendant to provide the report
47 as an aggravating circumstance in determining an appropriate sentence. If
48 treatment is ordered, in no event shall the person or facility doing the
49 evaluation be the person or facility that provides the treatment unless this
50 requirement is waived by the sentencing court, with the exception of fed-

1 erally recognized Indian tribes or federal military installations, where
2 diagnosis and treatment are appropriate and available. Nothing herein con-
3 tained shall preclude the use of funds authorized pursuant to the provisions
4 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for
5 indigent defendants.

6 (12) At the time of sentencing, the court shall be provided with the fol-
7 lowing information:

8 (a) The results, if administered, of any evidentiary test for alcohol
9 and/or drugs;

10 (b) A computer or teletype or other acceptable copy of the person's
11 driving record;

12 (c) Information as to whether the defendant has pled guilty to or
13 been found guilty of a violation of the provisions of section 18-8004,
14 18-8004C or 18-8006, Idaho Code, or a similar offense within the past
15 five (5) years, notwithstanding the form of the judgment (s) or withheld
16 judgment (s); and

17 (d) The alcohol evaluation required in subsection (11) of this section,
18 if any.

19 (13) A minor may be prosecuted for a violation of the provisions of sec-
20 tion 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code.
21 In addition to any other penalty, if a minor pleads guilty to or is found
22 guilty of a violation of the provisions of section 18-8004(1) (a), (b) or
23 (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended
24 or denied for an additional one (1) year following the end of any period of
25 suspension or revocation existing at the time of the violation, or until
26 he reaches the age of twenty-one (21) years, whichever period is greater.
27 During the period of additional suspension or denial, absolutely no driving
28 privileges shall be allowed.

29 (14) In the event that the alcohol evaluation required in subsection
30 (11) of this section recommends alcohol treatment, the court shall order
31 the person to complete a treatment program in addition to any other sentence
32 which may be imposed, unless the court determines that alcohol treatment
33 would be inappropriate or undesirable, in which event the court shall enter
34 findings articulating the reasons for such determination on the record. The
35 court shall order the defendant to complete the preferred treatment program
36 set forth in the evaluation, or a comparable alternative, unless it appears
37 that the defendant cannot reasonably obtain adequate financial resources
38 for such treatment. In that event, the court may order the defendant to com-
39 plete a less costly alternative set forth in the evaluation, or a comparable
40 program. Such treatment shall, to the greatest extent possible, be at the
41 expense of the defendant. In the event that funding is provided for or on
42 behalf of the defendant by an entity of state government, restitution shall
43 be ordered to such governmental entity in accordance with the restitution
44 procedure for crime victims, as specified under chapter 53, title 19, Idaho
45 Code. Nothing contained herein shall be construed as requiring a court to
46 order that a governmental entity shall provide alcohol treatment at govern-
47 ment expense unless otherwise required by law.

48 (15) Any person who is disqualified, or whose driving privileges have
49 been suspended, revoked or canceled under the provisions of this chapter,

1 shall not be granted restricted driving privileges to operate a commercial
2 motor vehicle.

3 (16) As used in this section, "at his expense" includes the cost of ob-
4 taining, installing, using and maintaining an ignition interlock system.

5 SECTION 4. That Section 18-8008, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 18-8008. IGNITION INTERLOCK SYSTEMS.

8 (1) (a) If a person is convicted, is found guilty, pleads guilty or re-
9 ceives a withheld judgment for violating any of the provisions of this
10 chapter relating to driving under the influence and has had any or all of
11 a sentence or fine suspended for the violation, the court shall, unless
12 an exception is granted pursuant to section 18-8002(12), Idaho Code,
13 impose the sanction provided for in this section in addition to any
14 other penalty or fine imposed pursuant to this chapter.

15 (b) The court shall order the person to have a state-approved ignition
16 interlock system installed, at his expense, on all motor vehicles op-
17 erated by him. A court may determine that an offender is eligible to
18 utilize available funds from the court interlock device and electronic
19 monitoring device fund, as outlined in section 18-8010, Idaho Code, for
20 the installation and operation of an ignition interlock device, based
21 on evidence of financial hardship.

22 (2) The calibration setting at which the ignition interlock system will
23 prevent the motor vehicle from being started shall be .025.

24 (3) As used in this chapter, the term "ignition interlock system" means
25 breath alcohol ignition interlock device, including a camera, certified by
26 the transportation department, designed to prevent a motor vehicle from be-
27 ing operated by a person who has consumed an alcoholic beverage.

28 (4) The transportation department shall by rule provide standards for
29 the certification, installation, repair and removal of the devices.

30 (5) The court shall notify the transportation department of its order
31 imposing a sanction pursuant to this section. The department shall attach
32 or imprint a notation on the driver's license or other document granting the
33 person restricted driving privileges of any person restricted under this
34 section that the person may operate only a motor vehicle equipped with an
35 ignition interlock system.

36 (6) When a court orders a person to install and use an ignition inter-
37 lock system pursuant to this section, the court shall order the person to pay
38 the cost for obtaining, installing, utilizing and maintaining the ignition
39 interlock system. All fees collected pursuant to this section shall be in
40 addition to any other fines or penalty provided by law and shall be deposited
41 in the court interlock device and electronic monitoring device fund created
42 in section 18-8010, Idaho Code.

43 SECTION 5. That Chapter 35, Title 19, Idaho Code, be, and the same is
44 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
45 ignated as Section 19-3507, Idaho Code, and to read as follows:

46 19-3507. DIVERSION PROGRAMS -- LEGISLATIVE INTENT. (1) For purposes
47 of this section and sections 19-3508 and 19-3509, Idaho Code, "diversion

1 program" means the use of local community resources, churches, substance
2 abuse counseling, informal probation, community service work, voluntary
3 restitution, or other available services or programs as an alternative to
4 adjudication of a criminal case in court.

5 (2) It is the intent of the legislature and the policy of the state of
6 Idaho that a diversion program should:

7 (a) Provide an opportunity to incorporate statistics and empirical re-
8 search into decision-making in the criminal justice system in a way that
9 saves taxpayer dollars while also reducing recidivism and enhancing
10 public safety;

11 (b) Provide individuals with the opportunity to rectify criminal con-
12 duct through early rehabilitative services or supervision, when such
13 services or supervision can reasonably be expected to deter future
14 criminal behavior by such individuals;

15 (c) Provide an alternative to the imposition of criminal sanctions when
16 such an alternative can be expected to serve as sufficient sanction to
17 deter criminal conduct; and

18 (d) Provide assistance to criminal court calendars in order to focus
19 expenditure of criminal justice resources on matters involving serious
20 criminality and severe correctional problems.

21 SECTION 6. That Chapter 35, Title 19, Idaho Code, be, and the same is
22 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
23 ignated as Section 19-3508, Idaho Code, and to read as follows:

24 19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. A person is eligible to
25 participate in a diversion program if:

26 (1) The person has been charged with driving under the influence pur-
27 suant to section 18-8004 or 18-8004A, Idaho Code;

28 (2) No other person is alleged to have been physically injured as a re-
29 sult of the conduct underlying such charge; and

30 (3) The person charged has not been convicted of driving under the in-
31 fluence or a substantially conforming foreign criminal violation within the
32 past ten (10) years and has not previously had a charge dismissed upon suc-
33 cessful completion of a diversion program pursuant to section 19-3509, Idaho
34 Code.

35 SECTION 7. That Chapter 35, Title 19, Idaho Code, be, and the same is
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
37 ignated as Section 19-3509, Idaho Code, and to read as follows:

38 19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) No later than thirty
39 (30) days after a defendant's initial appearance before the presiding court
40 in a case meeting the criteria set forth in section 19-3508, Idaho Code,
41 the presiding court may, on motion by the prosecuting attorney and with the
42 consent of the defendant, order a defendant to participate in a diversion
43 program. A defendant's consent to participate in a diversion program shall
44 be deemed to be a waiver of the defendant's right to speedy trial.

45 (a) The order directing a defendant to participate in a diversion pro-
46 gram shall specify the person overseeing the defendant's participation
47 in the program and shall set out the requirements for successful comple-

1 tion of the program and the duration of the order. The duration of the
2 period a defendant is required to participate in a diversion program un-
3 der this section shall be no shorter than twelve (12) months. A defen-
4 dant participating in a diversion program shall be required to install
5 and maintain, at the defendant's expense, an ignition interlock sys-
6 tem in each vehicle such defendant operates for the duration of the pro-
7 gram. The defendant in a diversion program must also complete at least
8 thirty-two (32) hours of sheriff inmate labor detail or approved com-
9 munity service and at least twenty-four (24) hours of drug and alcohol
10 counseling, therapy, or education from an approved provider.

11 (b) Upon issuing an order for diversion, the presiding court shall hold
12 the case in abeyance until the duration prescribed in the order for di-
13 version has been satisfied, unless the court determines that the defen-
14 dant has failed to comply with the requirements of the diversion order.
15 At the end of the diversion period, the court shall determine whether
16 the defendant complied with the requirements of the diversion order and
17 shall dismiss the case with prejudice if the court finds that the defen-
18 dant has complied with the requirements of the diversion order.

19 (c) If the court finds that the defendant failed to comply with the re-
20 quirements of the diversion order, the court may:

21 (i) Order the defendant to spend an additional period of time in
22 the diversion program, with terms consistent with this section and
23 with the consent of the defendant, provided that in no case may
24 the total amount of time the defendant participates in a diversion
25 program exceed twenty-four (24) months; or

26 (ii) Enter any other order or schedule any other proceeding avail-
27 able to the court for the administration and adjudication of a case
28 properly before it on the charges originally filed or as amended,
29 if the prosecuting attorney has properly amended the charges.

30 (d) The court shall have the authority to set aside an order for diver-
31 sion at any time irrespective of the duration set forth in the origi-
32 nal order, but no order for diversion may be set aside without affording
33 the defendant a hearing before the presiding court. Such hearing may be
34 initiated by the court or on a motion filed by either the prosecuting at-
35 torney or the defendant. Notice shall be provided to all parties in ac-
36 cordance with the Idaho criminal rules or other applicable court rule.

37 (e) If the presiding court concludes that the defendant has failed to
38 comply with the requirements of the diversion order, then the court
39 shall determine whether the ignition interlock system or systems in-
40 stalled in the defendant's vehicle or vehicles shall be removed or
41 whether such system or systems shall remain in place under other ap-
42 plicable law. The court shall also determine the extent to which the
43 defendant is entitled to driving privileges, whether full, restricted,
44 or suspended.

45 (f) At a hearing held to determine compliance with an order for diver-
46 sion, the court may consider any evidence relevant to determining the
47 defendant's compliance with the diversion order, including evidence
48 from the ignition interlock system vendor of:

49 (i) An attempt to start the vehicle with an alcohol concentration
50 of 0.04 or more;

- 1 (ii) Failure to take any random test;
2 (iii) Failure to pass any random retest with an alcohol concentra-
3 tion of 0.025 or lower; or
4 (iv) Failure of the defendant to appear at the ignition interlock
5 system vendor's place of business when required for maintenance,
6 repair, calibration, monitoring, inspection, or replacement of
7 the system.

8 (2) If a defendant participates in a diversion program pursuant to this
9 section, then any statement made by the defendant in diversion activities or
10 proceedings is inadmissible as substantive evidence of guilt during an adju-
11 dicative proceeding on the underlying charge.

12 (3) The requirements for successful completion of a diversion program
13 ordered under this section may include, but are not limited to:

- 14 (a) Informal supervision with the probation department;
15 (b) Community service work;
16 (c) Inmate labor detail work;
17 (d) A community-based diversion program;
18 (e) Restitution to a victim;
19 (f) Alcohol monitoring and testing;
20 (g) Individual therapy and counseling;
21 (h) Group therapy and counseling; and
22 (i) Drug monitoring and testing.

23 (4) The court may require the defendant to pay restitution and fees for
24 any classes or activities required as part of the diversion program. The
25 court shall assess a diversion fee of one hundred fifty-seven dollars and
26 fifty cents (\$157.50) to the defendant, which fee shall be distributed as
27 follows:

- 28 (a) Seventeen dollars and fifty cents (\$17.50) to be distributed as
29 provided in section 31-3201A(2), Idaho Code;
30 (b) Ten dollars (\$10.00) to be distributed as provided in section
31 31-3201(3), Idaho Code;
32 (c) Ten dollars (\$10.00) to be distributed as provided in section
33 31-3201(5), Idaho Code;
34 (d) Fifteen dollars (\$15.00) to be distributed as provided in section
35 31-3201B, Idaho Code;
36 (e) Fifty dollars (\$50.00) to be distributed as provided in section
37 31-3201H, Idaho Code;
38 (f) Fifteen dollars (\$15.00) to be distributed as provided in section
39 31-3204, Idaho Code;
40 (g) Thirty-seven dollars (\$37.00) to be distributed as provided in sec-
41 tion 72-1025, Idaho Code; and
42 (h) Three dollars (\$3.00) to be distributed as provided in section
43 72-1105, Idaho Code.

44 (5) A defendant participating in a diversion program whose driving
45 privileges have been suspended may be granted driving privileges by the
46 presiding court, in which case the defendant shall be issued a restricted
47 driving permit by the Idaho transportation department. To qualify for a
48 restricted driving permit, the defendant must have an ignition interlock
49 system as defined in section 18-8008, Idaho Code, installed in each vehicle
50 operated by the defendant and must pay an ignition interlock fee of fifteen

1 dollars (\$15.00) to be deposited in the court interlock device and elec-
2 tronic monitoring device fund created by section 18-8010, Idaho Code.

3 (6) Upon successful completion of the diversion program, the court's
4 order of dismissal shall reflect that the dismissal is based on successful
5 completion of the diversion program.

6 SECTION 8. That Section 20-617, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 20-617. LABOR OF PRISONERS ON PUBLIC WORKS. Persons confined in the
9 county jail under a judgment of conviction, suspended sentence or withheld
10 judgment rendered in any criminal case, either under a judgment of imprison-
11 ment or a judgment for the payment of a fine and costs, or persons partici-
12 pating in a diversion program pursuant to section 19-3509, Idaho Code, may be
13 required to perform labor on federal, state or other governmental projects
14 or community service projects.