

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 149

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CRIMINAL HISTORY RECORDS; AMENDING SECTION 67-3004, IDAHO CODE,
2 TO PROVIDE THAT CRIMINAL HISTORY RECORDS SHALL BE SHIELDED FROM DISCLO-
3 SURE UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 74-105, IDAHO CODE,
4 TO PROVIDE THAT CERTAIN RECORDS SHALL BE SHIELDED FROM DISCLOSURE AND TO
5 MAKE A CODIFIER'S CORRECTION; AND DECLARING AN EMERGENCY AND PROVIDING
6 AN EFFECTIVE DATE.
7

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

9 SECTION 1. That Section 67-3004, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 67-3004. FINGERPRINTING AND IDENTIFICATION -- SHIELDING OF RECORDS
12 FROM DISCLOSURE. (1) The bureau shall:

13 (a) Obtain and file fingerprints, physical descriptions and any other
14 available identifying data on persons who have been arrested or served a
15 criminal summons in this state for a retainable offense;

16 (b) Accept fingerprints and other identifying data taken by a law en-
17 forcement agency for the purpose of identification or conducting a
18 records review for criminal justice purposes; and

19 (c) Process latent fingerprints generated from crime scenes, evidence
20 and law enforcement agencies through the automated fingerprint identi-
21 fication system for prospective identification.

22 (2) The bureau shall establish policy regarding an arrest fingerprint
23 card and procedures for the taking of fingerprints under this section.

24 (3) When a person is arrested for a retainable offense, with or with-
25 out a warrant, fingerprints of the person shall be taken by the law enforce-
26 ment agency making the arrest. A law enforcement agency may contract or make
27 arrangements with a jail or correctional facility or other criminal justice
28 agency to take the required fingerprints from a person who is arrested by the
29 law enforcement agency.

30 (4) If a person was arrested and is in the custody of a law enforcement
31 agency, jail or correctional facility and a felony summons or information is
32 filed for an offense separate from the offense for which the person is in cus-
33 tody, the agency, jail or correctional facility shall take the fingerprints
34 of the person in connection with the new offense.

35 (5) At the initial court appearance or arraignment of a person for an
36 offense pursuant to a felony summons or information, the court, upon notice
37 from the prosecuting attorney, shall order a law enforcement agency to fin-
38 gerprint the person if he has not been previously fingerprinted for the same
39 offense.

40 (6) When a defendant is convicted or otherwise adjudicated for a felony
41 offense for which the defendant has not been previously fingerprinted, the
42 court shall order, upon notice from the prosecuting attorney, a law enforce-

1 ment agency to fingerprint the defendant as a condition of sentence, proba-
2 tion or release.

3 (7) When a person is received by a state correctional facility, the de-
4 partment of correction shall ensure that legible fingerprints of the person
5 are taken and submitted to the bureau.

6 (8) When the bureau receives fingerprints of a person in connection
7 with an arrest or incarceration, the bureau shall make a reasonable ef-
8 fort to confirm within five (5) working days the identity of the person
9 fingerprinted. In an emergency situation when an immediate positive identi-
10 fication is needed, a criminal justice agency may request the department to
11 provide immediate identification service.

12 (9) If the arresting officer, the law enforcement agency that employs
13 the officer, or the jail or correctional facility where fingerprints were
14 taken is notified by the bureau that fingerprints taken under this section
15 are not legible, the officer, agency or facility shall make a reasonable ef-
16 fort to obtain a legible set of fingerprints. If legible fingerprints can-
17 not be obtained within a reasonable period of time, and if illegible finger-
18 prints were taken under a court order, the officer or agency shall inform the
19 court, which shall order the defendant to submit to fingerprinting again.

20 (10) Any person who was arrested or served a criminal summons and who
21 subsequently was not charged by indictment or information within one (1)
22 year of the arrest or summons and any person who was acquitted of all of-
23 fenses arising from an arrest or criminal summons, or who has had all charges
24 dismissed, may have the fingerprint and criminal history record taken in
25 connection with the incident expunged pursuant to the person's written re-
26 quest directed to the department and may have the official court file thereof
27 sealed. This provision shall not apply to any dismissal granted pursuant to
28 section 19-2604(1), Idaho Code.

29 (11) (a) In addition to the remedies set forth in subsection (10) of
30 this section, any person arrested for, prosecuted for, or convicted of
31 a misdemeanor that is not an assaultive or violent misdemeanor listed
32 in paragraph (b) of this subsection or arrested for, prosecuted for,
33 or convicted of felony possession of a controlled substance under sec-
34 tion 37-2732(a), (c), or (e), Idaho Code, in this state may petition
35 the court to have the person's record be shielded from disclosure in
36 accordance with rules adopted by the Idaho supreme court and within
37 the capabilities of its record-keeping system. Upon the filing of the
38 petition, the court shall set a date for a hearing and shall notify the
39 prosecuting attorney of the date of the hearing. Upon receipt of such
40 notification from the court, the prosecuting attorney shall provide to
41 any readily identifiable crime victim whatever notifications are re-
42 quired under section 22, article I of the constitution of the state of
43 Idaho. The court, in its discretion, may hear testimony at the hearing
44 from any person who has relevant information about the petitioner.

45 (b) Assaultive or violent misdemeanors shall include:

46 (i) Assault (18-901, Idaho Code);

47 (ii) Battery (18-903, Idaho Code);

48 (iii) Domestic battery (18-918, Idaho Code);

49 (iv) Stalking in the second degree (18-7906, Idaho Code);

1 (v) Violation of a protection order or no contact order (18-7907
2 and 18-920, Idaho Code);

3 (vi) Telephone harassment (18-6710, Idaho Code);

4 (vii) Vehicular manslaughter (18-4006(3) (c), Idaho Code);

5 (viii) Excessive driving under the influence (18-8004C, Idaho
6 Code);

7 (ix) Domestic assault (18-918(3) (a), Idaho Code);

8 (x) Battery upon law enforcement (18-915(1) (b), Idaho Code);

9 (xi) Injury to children (18-1501, Idaho Code);

10 (xii) Sexual battery (18-924, Idaho Code); and

11 (xiii) Indecent exposure (18-4116, Idaho Code).

12 (c) To be eligible to have records shielded from disclosure under this
13 subsection, a petitioner must file a petition to shield records of the
14 conviction no earlier than five (5) years after completing the peti-
15 tioner's sentence, including all ordered probation, parole, fines, and
16 restitution; provided that during such five (5) year period and until
17 the time of a hearing on the petition, the petitioner has not had any
18 subsequent felony or misdemeanor convictions and is not on probation or
19 parole for a subsequent conviction, has no misdemeanor or felony cases
20 pending against him, and has no restraining orders against him in effect
21 at the time of filing the petition to shield the records.

22 (d) If the court finds, after a hearing, that the petitioner is el-
23 igible to have his records shielded from disclosure pursuant to this
24 subsection and further finds to its satisfaction that the petitioner
25 has been held accountable and that shielding the petitioner's record
26 from disclosure would not compromise public safety or the safety of any
27 victims, the court shall order all records in the petitioner's case in
28 the custody of the court to be shielded from disclosure and unavailable
29 for public viewing. Upon such a shielding from disclosure of the peti-
30 tioner's records, the court shall notify the Idaho state police of the
31 shielding and, upon receipt of the notification, the Idaho state police
32 shall make any law enforcement investigatory reports and fingerprint
33 records unavailable for public viewing. A special index of the shield-
34 ing proceedings and records shall be kept by the court ordering the
35 shielding of records, which shall not be available to the public unless
36 otherwise ordered by a court of competent jurisdiction. Except as pro-
37 vided in paragraphs (i) and (j) of this subsection and other than in a
38 judicial proceeding or as part of the licensing process for peace offi-
39 cers, upon the entry of the order, the proceedings in the petitioner's
40 case shall be deemed never to have occurred, and the petitioner may law-
41 fully reply accordingly to any inquiry in the matter.

42 (e) A proceeding to shield records from disclosure under the provisions
43 of this subsection shall occur in the underlying criminal case.

44 (f) A court ordering records to be shielded from disclosure pursuant to
45 this subsection shall notify the supreme court of the shielding, and the
46 supreme court shall, within the capabilities of its record-keeping sys-
47 tem, maintain a record of all records shielded, searchable by the name
48 of the person whose records are shielded. To the extent not prohibited
49 by federal law, it shall be the policy of the state of Idaho that the
50 records shielded from disclosure shall not be available to the public

1 but may be accessed at any time by the subject of the petition, by law
 2 enforcement personnel, and by court officers to the extent permitted by
 3 operative court rules. The record shall otherwise remain shielded from
 4 disclosure to the public. Nothing in this paragraph shall be construed
 5 to limit a law enforcement agency or court officer from accessing any
 6 records or databases created or maintained by law enforcement or prose-
 7 cutors.

8 (g) A person whose records are shielded from disclosure pursuant to
 9 this subsection:

10 (i) Shall, upon a subsequent felony conviction and upon request
 11 by the prosecutor, have such shielding from disclosure revoked by
 12 the court as part of his sentencing; and

13 (ii) May, upon a subsequent misdemeanor conviction and upon re-
 14 quest by the prosecutor, have such shielding revoked by the court
 15 as part of his sentencing.

16 (h) A law enforcement agency, prosecuting attorney, or the court shall
 17 not incur any civil or criminal liability for the unintentional or neg-
 18 ligent release, or the release by a third party, of a record shielded
 19 from disclosure pursuant to this subsection.

20 (i) The shielding from disclosure of records under this subsection
 21 shall have no effect on the operation of sections 18-310 and 18-3316,
 22 Idaho Code.

23 (j) To the extent permitted by operative court rules, a POST-certified
 24 peace officer or prosecuting attorney shall have complete access to and
 25 use of all records shielded from disclosure pursuant to this subsection
 26 for purposes including but not be limited to communicating with crime
 27 victims, all in-court purposes and hearings, investigations, and en-
 28 hancements.

29 (k) A person may have only one (1) petition granted during such person's
 30 lifetime to have one (1) of the crimes eligible under this subsection,
 31 or more than one (1) eligible crime under this subsection if committed
 32 in a single incident or transaction, shielded from disclosure pursuant
 33 to this subsection.

34 (l) The procedures set forth in this subsection, including the specific
 35 processes established that affect access to court records, are subject
 36 to the rules of the Idaho supreme court.

37 SECTION 2. That Section 74-105, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 74-105. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS,
 40 INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS,
 41 WORKER'S COMPENSATION. The following records are exempt from disclosure:

42 (1) Investigatory records of a law enforcement agency as defined in
 43 section 74-101(7), Idaho Code, under the conditions set forth in section
 44 74-124, Idaho Code.

45 (2) Juvenile records of a person maintained pursuant to chapter 5,
 46 title 20, Idaho Code, except that facts contained in such records shall be
 47 furnished upon request in a manner determined by the court to persons and
 48 governmental and private agencies and institutions conducting pertinent
 49 research studies or having a legitimate interest in the protection, welfare

1 and treatment of the juvenile who is thirteen (13) years of age or younger.
2 If the juvenile is petitioned or charged with an offense that would be a
3 criminal offense if committed by an adult, the name, offense of which the
4 juvenile was petitioned or charged, and disposition of the court shall be
5 subject to disclosure as provided in section 20-525, Idaho Code. Addi-
6 tionally, facts contained in any records of a juvenile maintained pursuant
7 to chapter 5, title 20, Idaho Code, shall be furnished upon request to any
8 school district where the juvenile is enrolled or is seeking enrollment.

9 (3) Records of the custody review board of the Idaho department of ju-
10 venile corrections, including records containing the names, addresses and
11 written statements of victims and family members of juveniles, shall be ex-
12 empt from public disclosure pursuant to section 20-533A, Idaho Code.

13 (4) (a) The following records of the department of correction:

14 (i) Records of which the public interest in confidentiality, pub-
15 lic safety, security and habilitation clearly outweighs the pub-
16 lic interest in disclosure as identified pursuant to the authority
17 of the state board of correction under section 20-212, Idaho Code;

18 (ii) Records that contain any identifying information, or any in-
19 formation that would lead to the identification of any victims or
20 witnesses;

21 (iii) Records that reflect future transportation or movement of a
22 prisoner;

23 (iv) Records gathered during the course of the presentence inves-
24 tigation;

25 (v) Records of a prisoner as defined in section 74-101(10), Idaho
26 Code, or probationer shall not be disclosed to any other prisoner
27 or probationer.

28 (b) Records, other than public expenditure records, related to pro-
29 posed or existing critical infrastructure held by or in the custody
30 of any public agency only when the disclosure of such information is
31 reasonably likely to jeopardize the safety of persons, property or the
32 public safety. Such records may include emergency evacuation, escape
33 or other emergency response plans, vulnerability assessments, oper-
34 ation and security manuals, plans, blueprints or security codes. For
35 purposes of this paragraph, "system" includes electrical, computer
36 and telecommunication systems, electric power (including production,
37 generating, transportation, transmission and distribution), heating,
38 ventilation, and air conditioning. For purposes of this subsection,
39 "critical infrastructure" means any system or asset, whether physical
40 or virtual, so vital to the state of Idaho, including its political sub-
41 divisions, that the incapacity or destruction of such system or asset
42 would have a debilitating impact on state or national economic secu-
43 rity, state or national public health or safety, or any combination of
44 those matters.

45 (c) Records of the Idaho commission of pardons and parole shall be ex-
46 empt from public disclosure pursuant to section 20-1003, Idaho Code,
47 and section 20-1005, Idaho Code. Records exempt from disclosure shall
48 also include those containing the names, addresses and written state-
49 ments of victims.

1 (5) Voting records of the former sexual offender classification board.
2 The written record of the vote to classify an offender as a violent sexual
3 predator by each board member in each case reviewed by that board member
4 shall be exempt from disclosure to the public and shall be made available
5 upon request only to the governor, the chairman of the senate judiciary and
6 rules committee, and the chairman of the house of representatives judiciary,
7 rules and administration committee for all lawful purposes.

8 (6) Records of the sheriff or Idaho state police received or maintained
9 pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating
10 to an applicant or licensee, except that any law enforcement officer and law
11 enforcement agency, whether inside or outside the state of Idaho, may access
12 information maintained in the license record system as set forth in section
13 18-3302K(16), Idaho Code.

14 (7) Records of investigations prepared by the department of health and
15 welfare pursuant to its statutory responsibilities dealing with the protec-
16 tion of children, the rehabilitation of youth, adoptions and the commitment
17 of mentally ill persons. For reasons of health and safety, best interests of
18 the child or public interest, the department of health and welfare may pro-
19 vide for the disclosure of records of investigations associated with actions
20 pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by
21 the department of health and welfare pursuant to its statutory responsibil-
22 ities dealing with the protection of children, except any such records re-
23 garding adoptions shall remain exempt from disclosure.

24 (8) Records, including but not limited to investigative reports, re-
25 sulting from investigations conducted into complaints of discrimination
26 made to the Idaho human rights commission unless the public interest in
27 allowing inspection and copying of such records outweighs the legitimate
28 public or private interest in maintaining confidentiality of such records.
29 A person may inspect and copy documents from an investigative file to which
30 he or she is a named party if such documents are not otherwise prohibited from
31 disclosure by federal law or regulation or state law. The confidentiality of
32 this subsection will no longer apply to any record used in any judicial pro-
33 ceeding brought by a named party to the complaint or investigation, or by the
34 Idaho human rights commission, relating to the complaint of discrimination.

35 (9) Records containing information obtained by the manager of the Idaho
36 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on
37 behalf of employers or employees contained in underwriting and claims for
38 benefits files.

39 (10) The worker's compensation records of the Idaho industrial commis-
40 sion, provided that the industrial commission shall make such records avail-
41 able:

42 (a) To the parties in any worker's compensation claim and to the indus-
43 trial special indemnity fund of the state of Idaho; or

44 (b) To employers and prospective employers subject to the provisions of
45 the Americans with disabilities act, 42 U.S.C. 12112, or other statu-
46 tory limitations, who certify that the information is being requested
47 with respect to a worker to whom the employer has extended an offer of
48 employment and will be used in accordance with the provisions of the
49 Americans with disabilities act, 42 U.S.C. 12112, or other statutory
50 limitations; or

1 (c) To employers and prospective employers not subject to the provi-
2 sions of the Americans with disabilities act, 42 U.S.C. 12112, or other
3 statutory limitations, provided the employer presents a written autho-
4 rization from the person to whom the records pertain; or

5 (d) To others who demonstrate that the public interest in allowing in-
6 spection and copying of such records outweighs the public or private in-
7 terest in maintaining the confidentiality of such records, as deter-
8 mined by a civil court of competent jurisdiction; or

9 (e) Although a claimant's records maintained by the industrial commis-
10 sion, including medical and rehabilitation records, are otherwise ex-
11 empt from public disclosure, the quoting or discussing of medical or re-
12 habilitation records contained in the industrial commission's records
13 during a hearing for compensation or in a written decision issued by the
14 industrial commission shall be permitted; provided further, the true
15 identification of the parties shall not be exempt from public disclo-
16 sure in any written decision issued and released to the public by the in-
17 dustrial commission.

18 (11) Records of investigations compiled by the commission on aging in-
19 volving vulnerable adults as defined in section 18-1505, Idaho Code, alleged
20 to be abused, neglected or exploited.

21 (12) Criminal history records and fingerprints as defined in section
22 67-3001, Idaho Code, and compiled by the Idaho state police. Such records
23 shall be released only in accordance with chapter 30, title 67, Idaho Code.

24 (13) Records furnished or obtained pursuant to section 41-1019, Idaho
25 Code, regarding termination of an appointment, employment, contract or
26 other insurance business relationship between an insurer and a producer.

27 (14) Records of a prisoner or former prisoner in the custody of any state
28 or local correctional facility, when the request is made by another prisoner
29 in the custody of any state or local correctional facility.

30 (15) Except as provided in section 72-1007, Idaho Code, records of the
31 Idaho industrial commission relating to compensation for crime victims pur-
32 suant to chapter 10, title 72, Idaho Code.

33 (16) Records or information identifying a complainant maintained by the
34 department of health and welfare pursuant to section 39-3556, Idaho Code,
35 relating to certified family homes, unless the complainant consents in writ-
36 ing to the disclosure or the disclosure of the complainant's identity is re-
37 quired in any administrative or judicial proceeding.

38 (17) Records of any certification or notification required by federal
39 law to be made in connection with the acquisition or transfer of a firearm,
40 including a firearm as defined in 26 U.S.C. 5845(a).

41 (18) The following records of the state public defense commission:

42 (a) Records containing information protected or exempted from disclo-
43 sure under the rules adopted by the Idaho supreme court, attorney work
44 product, attorney-client privileged communication, records containing
45 confidential information from an individual about his criminal case or
46 performance of his attorney, or confidential information about an in-
47 quiry into an attorney's fitness to represent indigent defendants.

48 (b) Records related to the administration of the extraordinary liti-
49 gation fund by the state public defense commission pursuant to section
50 19-850(2)(e), Idaho Code, to the extent that such records contain in-

1 formation protected or exempted from disclosure under rules adopted
2 by the Idaho supreme court, attorney work product or attorney-client
3 privileged communication. This exemption does not include the amount
4 awarded based upon an application for extraordinary litigation funds.

5 (19) Records and information received by the office of the state con-
6 troller from any local government, state agency and department, or volunteer
7 nongovernmental entity for purposes of entry into the criminal justice
8 integrated data system pursuant to section 19-4803, Idaho Code, and all
9 records created by persons authorized to research and analyze information
10 entered into the criminal justice integrated data system, regardless of
11 whether such records were previously exempted from disclosure or redacted
12 pursuant to state or federal law or court order. This exemption does not
13 apply to projects, reports, and data analyses approved for release by the
14 data oversight council and issued by persons authorized to conduct research
15 and analysis as set forth in chapter 48, title 19, Idaho Code. Records and
16 information relating to the management of the criminal justice integrated
17 data system shall not be exempt from disclosure except as otherwise provided
18 in law.

19 (20) Records that contain any identifying information or any informa-
20 tion that could lead to the identification of any persons or entities that
21 participate in or assist with an execution of a death sentence as described
22 in section 19-2716A, Idaho Code.

23 ~~(20)~~ (21) Records, other than public expenditure records, relating to
24 the nature, location, or function of cybersecurity devices, programs, or
25 systems designed to protect computer, information technology, or communica-
26 tions systems against terrorist or other attacks.

27 (22) Any index, report, or records of any person arrested for, prose-
28 cuted for, or convicted of a crime in this state who has successfully peti-
29 tioned a court to have his records shielded from disclosure pursuant to sec-
30 tion 67-3004(11), Idaho Code.

31 SECTION 3. An emergency existing therefor, which emergency is hereby
32 declared to exist, this act shall be in full force and effect on and after
33 January 1, 2024.