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LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

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AN ACT

1
2 RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO CODE,
3 TO PROVIDE THAT CERTAIN INFORMATION SHALL BE GIVEN AT THE TIME OF EVI-
4 DENTIARY TESTING FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES,
5 TO PROVIDE THAT PERSONS PARTICIPATING IN A DIVERSION PROGRAM MAY BE
6 ELIGIBLE FOR CERTAIN DRIVING PRIVILEGES, AND TO MAKE TECHNICAL COR-
7 RECTIONS; AMENDING SECTION 18-8002A, IDAHO CODE, TO REVISE PROVISIONS
8 REGARDING CERTAIN INFORMATION GIVEN TO PERSONS UNDERGOING EVIDEN-
9 TIARY TESTING FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES,
10 TO PROVIDE FOR DRIVING PRIVILEGES IN A DIVERSION PROGRAM, AND TO MAKE
11 TECHNICAL CORRECTIONS; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE
12 PROVISIONS REGARDING PENALTIES; AMENDING SECTION 18-8008, IDAHO CODE,
13 TO REVISE THE DEFINITION OF IGNITION INTERLOCK SYSTEM AND TO MAKE A
14 TECHNICAL CORRECTION; ~~AMENDING SECTION 18-8010, IDAHO CODE, TO PROVIDE~~
15 ~~THAT A PROSECUTING ATTORNEY WHO ESTABLISHES A DIVERSION PROGRAM MAY USE~~
16 ~~CERTAIN MONEYS; AMENDING SECTION 19-403, IDAHO CODE, TO PROVIDE THAT~~
17 ~~CERTAIN MISDEMEANOR CASES SHALL BE REFILED NO LATER THAN TWO YEARS AFTER~~
18 ~~DISMISSAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-3506,~~
19 ~~IDAHO CODE, TO PROVIDE THAT DISMISSED MISDEMEANOR CASES MAY BE REFILED~~
20 ~~UNDER CERTAIN CIRCUMSTANCES; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE,~~
21 BY THE ADDITION OF A NEW SECTION 19-3507, IDAHO CODE, TO DEFINE A TERM
22 AND TO PROVIDE LEGISLATIVE INTENT; AMENDING CHAPTER 35, TITLE 19, IDAHO
23 CODE, BY THE ADDITION OF A NEW SECTION 19-3508, IDAHO CODE, TO PROVIDE
24 ELIGIBILITY REQUIREMENTS FOR A DIVERSION PROGRAM; AMENDING CHAPTER 35,
25 TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3509, IDAHO
26 CODE, TO ESTABLISH PROVISIONS REGARDING DIVERSION PROGRAMS; AND AMEND-
27 ING SECTION 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS PARTICIPATING
28 IN DIVERSION PROGRAMS MAY BE REQUIRED TO PERFORM CERTAIN LABOR.

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

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

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

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

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

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

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

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

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

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

28 ~~(f)~~ Provided however, if he is admitted to a diversion program pursuant
29 to section 19-3509, Idaho Code, then he may be eligible for a restricted
30 permit for the purpose of getting to and from work, school, medical ap-
31 pointments, or a treatment program; and

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

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

38 (a) He shall be fined a civil penalty of two hundred fifty dollars
39 (\$250);

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

44 (c) A written request may be made within seven (7) calendar days for a
45 hearing before the court; if requested, the hearing must be held within
46 thirty (30) days of the date of service unless this period is, for good
47 cause shown, extended by the court for one (1) additional thirty (30)
48 day period. The hearing shall be limited to the question of why the
49 defendant did not submit to or complete evidentiary testing, and the
50 burden of proof shall be upon the defendant; the court shall sustain

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1 a two hundred fifty dollar (\$250) civil penalty immediately, suspend
2 all the defendant's driving privileges immediately for one (1) year for
3 a first refusal and two (2) years for a second refusal within ten (10)
4 years and direct the installation, at his expense, of a state-approved
5 ignition interlock system meeting the requirements set forth in section
6 18-8008, Idaho Code, on all motor vehicles operated by him for a period
7 to end one (1) year following the end of the suspension period, unless it
8 finds that the peace officer did not have legal cause to stop and request
9 him to take the test or that the request violated his civil rights;

10 (d) If a hearing is not requested by written notice to the court con-
11 cerned within seven (7) calendar days, upon receipt of a sworn statement
12 by the peace officer of the circumstances of the refusal, the court
13 shall sustain a two hundred fifty dollar (\$250) civil penalty, suspend
14 the defendant's driving privileges for one (1) year for a first refusal
15 and two (2) years for a second refusal within ten (10) years, during
16 which time he shall have absolutely no driving privileges of any kind,
17 and direct the installation of a state-approved ignition interlock
18 system, at his expense, meeting the requirements set forth in section
19 18-8008, Idaho Code, on all motor vehicles operated by him for a period
20 to end one (1) year following the end of the suspension period;

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

46 (f) Notwithstanding the provisions of paragraphs (c) and (d) of this
47 subsection, if a person is a participant in good standing in a diver-
48 sion program pursuant to section 19-3509, Idaho Code, then the person
49 may be eligible for restricted noncommercial driving privileges for the
50 purpose of getting to and from work, school, medical appointments, or a

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1 treatment program, which privileges may be granted by the administrator
2 of the diversion program; and

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

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

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

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

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

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

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

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

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

46 (c) Nothing herein shall limit the discretion of the hospital admin-
47 istration to designate the qualified hospital employee responsible to
48 withdraw the blood sample.

49 (d) The law enforcement agency that requests or orders withdrawal of
50 the blood sample shall pay the reasonable costs to withdraw such blood

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1 sample, perform laboratory analysis, preserve evidentiary test re-
2 sults, and testify in judicial proceedings. The court may order resti-
3 tution pursuant to the provisions of section 18-8003(2), Idaho Code.

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

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

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

11 (7) "Actual physical control" as used in this section and section
12 18-8002A, Idaho Code, shall be defined as being in the driver's position of
13 the motor vehicle with the motor running or with the motor vehicle moving.

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

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

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

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

43 (12) Upon motion of the person required to install an ignition inter-
44 lock device pursuant to subsection (4)(b) of this section, a court in its
45 discretion may relieve the person from the installation of the device where
46 the court finds it clear and convincing that the person will not present a
47 danger to the public or that there are exceptional or mitigating circum-
48 stances demonstrating that installation of the device is unnecessary or
49 unwarranted. Financial hardship, standing alone, is not an exceptional or
50 mitigating circumstance.

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

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

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

10 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF
11 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF
12 TESTS. (1) Definitions. As used in this section:

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

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

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

21 (d) "Director" means the director of the Idaho transportation depart-
22 ment.

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

43 (f) "Hearing officer" means a person designated by the department to
44 conduct administrative hearings. The hearing officer shall have au-
45 thority to administer oaths, examine witnesses and take testimony,
46 receive relevant evidence, issue subpoenas, regulate the course and
47 conduct of the hearing and make a final ruling on the issues before him.

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

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

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

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

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

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

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

43 (e) However, if you are admitted to a problem solving court program and
44 have served at least forty-five (45) days of an absolute suspension of
45 driving privileges, you may be eligible for a restricted permit for the
46 purpose of getting to and from work, school or an alcohol treatment pro-
47 gram, but only if you install, at your expense, a state-approved igni-
48 tion interlock system on all motor vehicles you operate; and

49 (f) However, if you are admitted to a diversion program under section
50 19-3509, Idaho Code, you may be eligible for a restricted permit for the

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1 purpose of getting to and from work, school, medical appointments, or a
2 treatment program; and

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

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

8 (a) What testing is required to complete evidentiary testing under this
9 section; and

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

22 (4) Suspension and ignition interlock system.

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

32 (i) For a period of ninety (90) days for a first failure of ev-
33 identiary testing under the provisions of this section. The
34 first thirty (30) days of the suspension shall be absolute and the
35 person shall have absolutely no driving privileges of any kind.
36 Restricted noncommercial vehicle driving privileges applicable
37 during the remaining sixty (60) days of the suspension may be re-
38 quested as provided in subsection (9) of this section.

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

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

49 The person may request an administrative hearing on the suspension as
50 provided in subsection (7) of this section. Any right to contest the

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1 suspension shall be waived if a hearing is not requested as therein pro-
2 vided.

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

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

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

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

15 (iv) The procedures for obtaining restricted noncommercial vehi-
16 cle driving privileges;

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

22 (vi) The procedures for obtaining an administrative hearing on
23 the suspension;

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

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

49 (d) Notwithstanding the provisions of paragraph (a)(i) and (ii) of
50 this subsection, a person who is enrolled in and is a participant in

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1 good standing in a diversion program pursuant to section 19-3509, Idaho
2 Code, may be eligible for restricted noncommercial driving privileges
3 for the purpose of getting to and from work, school, medical appoint-
4 ments, or a treatment program, which privileges may be granted by the
5 administrator of the diversion program.

6 (5) Service of suspension and ignition interlock system by peace of-
7 ficer or the department. If the driver submits to evidentiary testing after
8 the information in subsection (2) of this section has been provided and
9 the results of the test indicate an alcohol concentration or the presence
10 of drugs or other intoxicating substances in violation of the provisions of
11 section 18-8004, 18-8004C or 18-8006, Idaho Code:

12 (a) The peace officer shall, acting on behalf of the department, serve
13 the person with a notice of suspension and notice of the requirement to
14 install, at his expense, a state-approved ignition interlock system for
15 a period to end one (1) year following the end of the suspension period
16 in the form and containing the information required under subsection
17 (4) of this section. The department may serve the person with a notice
18 of suspension and the requirement to install the ignition interlock
19 system if the peace officer failed to do so or failed to include the date
20 of service as provided in subsection (4) (b) of this section.

21 (b) Within five (5) business days following service of a notice of sus-
22 pension and notice of the requirement to install the ignition interlock
23 system, the peace officer shall forward to the department a copy of the
24 completed notice of suspension and notice of the requirement to install
25 the ignition interlock system form upon which the date of service upon
26 the driver shall be clearly indicated, a certified copy or duplicate
27 original of the results of all tests for alcohol concentration, as shown
28 by analysis of breath administered at the direction of the peace offi-
29 cer, and a sworn statement of the officer, which may incorporate any
30 arrest or incident reports relevant to the arrest and evidentiary test-
31 ing setting forth:

- 32 (i) The identity of the person;
- 33 (ii) Stating the officer's legal cause to stop the person;
- 34 (iii) Stating the officer's legal cause to believe that the per-
35 son had been driving or was in actual physical control of a motor
36 vehicle while under the influence of alcohol, drugs or other in-
37 toxicating substances in violation of the provisions of section
38 18-8004, 18-8004C or 18-8006, Idaho Code;
- 39 (iv) That the person was advised of the consequences of taking and
40 failing the evidentiary test as provided in subsection (2) of this
41 section;
- 42 (v) That the person was lawfully arrested;
- 43 (vi) That the person was tested for alcohol concentration, drugs
44 or other intoxicating substances as provided in this chapter, and
45 that the results of the test indicated an alcohol concentration or
46 the presence of drugs or other intoxicating substances in viola-
47 tion of the provisions of section 18-8004, 18-8004C or 18-8006,
48 Idaho Code.

49 If an evidentiary test of blood or urine was administered rather than
50 a breath test, the peace officer or the department shall serve the no-

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1 tice of suspension once the results are received. The sworn statement
2 required in this subsection shall be made on forms in accordance with
3 rules adopted by the department.

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

8 (6) Additional tests. After submitting to evidentiary testing at the
9 request of the peace officer, the person may, when practicable, at his own
10 expense, have additional tests for alcohol concentration or for the presence
11 of drugs or other intoxicating substances made by a person of his own choos-
12 ing. The person's failure or inability to obtain additional tests shall not
13 preclude admission of the results of evidentiary tests administered at the
14 direction of the peace officer unless additional testing was denied by the
15 peace officer.

16 (7) Administrative hearing on suspension. A person who has been served
17 with a notice of suspension and notice of the requirement to install the ig-
18 nition interlock system after submitting to an evidentiary test may request
19 an administrative hearing on the suspension before a hearing officer desig-
20 nated by the department. The hearing may be held only on the suspension and
21 not on the requirement to install an ignition interlock system. The request
22 for hearing shall be in writing and must be received by the department within
23 seven (7) calendar days of the date of service upon the person of the notice
24 of suspension and notice of the requirement to install the ignition inter-
25 lock system and shall include what issue or issues shall be raised at the
26 hearing. The date on which the hearing request was received shall be noted
27 on the face of the request.

28 If a hearing is requested, the hearing shall be held within twenty (20)
29 days of the date the hearing request was received by the department unless
30 this period is, for good cause shown, extended by the hearing officer for a
31 ten (10) day period. Such extension shall not operate as a stay of the sus-
32 pension, notwithstanding an extension of the hearing date beyond such thirty
33 (30) day period. Written notice of the date and time of the hearing shall
34 be sent to the party requesting the hearing at least seven (7) days prior to
35 the scheduled hearing date. The department may conduct all hearings by tele-
36 phone if each participant in the hearing has an opportunity to participate in
37 the entire proceeding while it is taking place.

38 The hearing shall be recorded. The sworn statement of the arresting of-
39 ficer, and the copy of the notice of suspension and the notice of the require-
40 ment to install the ignition interlock system issued by the officer shall
41 be admissible at the hearing without further evidentiary foundation. The
42 results of any tests for alcohol concentration or the presence of drugs or
43 other intoxicating substances by analysis of blood, urine or breath adminis-
44 tered at the direction of the peace officer and the records relating to cal-
45 ibration, certification, approval or quality control pertaining to equip-
46 ment utilized to perform the tests shall be admissible as provided in section
47 18-8004(4), Idaho Code. The arresting officer shall not be required to par-
48 ticipate unless directed to do so by a subpoena issued by the hearing offi-
49 cer.

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

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

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

10 (c) The test results did not show an alcohol concentration or the pres-
11 ence of drugs or other intoxicating substances in violation of section
12 18-8004, 18-8004C or 18-8006, Idaho Code; or

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

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

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

27 The facts as found by the hearing officer shall be independent of the de-
28 termination of the same or similar facts in the adjudication of any criminal
29 charges arising out of the same occurrence. The disposition of those crim-
30 inal charges shall not affect the suspension and the requirement to install
31 the ignition interlock system required to be imposed under the provisions of
32 this section. If a license is suspended under this section and the person is
33 also convicted on criminal charges arising out of the same occurrence for a
34 violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho
35 Code, both the suspension under this section and the suspension imposed pur-
36 suant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be
37 imposed, but the periods of suspension shall run concurrently, with the to-
38 tal period of suspension not to exceed the longer of the applicable suspen-
39 sion periods, unless the court ordering the suspension in the criminal case
40 orders to the contrary.

41 (8) Judicial review. A party aggrieved by the decision of the hearing
42 officer may seek judicial review of the decision in the manner provided for
43 judicial review of final agency action provided in chapter 52, title 67,
44 Idaho Code. Upon motion of the person required to install an ignition in-
45 terlock device pursuant to subsection (4) (a) of this section, a court in its
46 discretion may relieve the person from the installation of the device where
47 the court finds it clear and convincing that the person will not present a
48 danger to the public or that there are exceptional or mitigating circum-
49 stances demonstrating that installation of the device is unnecessary or
50 unwarranted. Financial hardship, standing alone, is not an exceptional or

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1 mitigating circumstance. A court may determine that an offender is eligible
2 to utilize available funds from the court interlock device and electronic
3 monitoring device fund, as outlined in section 18-8010, Idaho Code, for the
4 installation and operation of an ignition interlock device, based on evi-
5 dence of financial hardship.

6 (9) Restricted noncommercial vehicle driving privileges. A person
7 served with a notice of suspension for ninety (90) days pursuant to this
8 section may apply to the department for restricted noncommercial vehicle
9 driving privileges, to become effective after the thirty (30) day absolute
10 suspension has been completed. The request may be made at any time after ser-
11 vice of the notice of suspension. Restricted noncommercial vehicle driving
12 privileges will be issued for the person to travel to and from work and for
13 work purposes not involving operation of a commercial vehicle, to attend an
14 alternative high school, work on a GED, for postsecondary education, or to
15 meet the medical needs of the person or his family if the person is eligible
16 for restricted noncommercial vehicle driving privileges. Any person whose
17 driving privileges are suspended under the provisions of this chapter may be
18 granted privileges to drive a noncommercial vehicle but shall not be granted
19 privileges to operate a commercial motor vehicle.

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

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

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

28 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found
29 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho
30 Code, for the first time is guilty of a misdemeanor; and, except as provided
31 in section 18-8004C, Idaho Code:

- 32 (a) May be sentenced to jail for a term not to exceed six (6) months;
33 (b) May be fined an amount not to exceed one thousand dollars (\$1,000);
34 (c) Shall be advised by the court in writing at the time of sentencing
35 of the penalties that will be imposed for subsequent violations of the
36 provisions of section 18-8004, Idaho Code, which advice shall be signed
37 by the defendant, and a copy retained by the court and another copy re-
38 tained by the prosecuting attorney;
39 (d) Shall have his driving privileges suspended by the court for a pe-
40 riod of thirty (30) days, which shall not be reduced and during which
41 thirty (30) day period absolutely no driving privileges of any kind may
42 be granted. After the thirty (30) day period of absolute suspension of
43 driving privileges has passed, the defendant shall have driving privi-
44 leges suspended by the court for an additional period of at least sixty
45 (60) days, not to exceed one hundred fifty (150) days, during which
46 the defendant may request restricted driving privileges that the court
47 may allow, if the defendant shows by a preponderance of the evidence

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1 that driving privileges are necessary for his employment or for family
2 health needs; and

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

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

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

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

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

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

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

26 (4) Any person who pleads guilty to or is found guilty of a violation of
27 the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, who previ-
28 ously has been found guilty of or has pled guilty to a violation of the provi-
29 sions of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially
30 conforming foreign criminal violation within ten (10) years, notwithstand-
31 ing the form of the judgment(s) or withheld judgment(s), and except as pro-
32 vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-
33 cept as provided in section 18-8004C, Idaho Code:

34 (a) Shall be sentenced to jail for a mandatory minimum period of not
35 less than ten (10) days, the first forty-eight (48) hours of which must
36 be consecutive, and five (5) days of which must be served in jail, as re-
37 quired by 23 U.S.C. 164, and may be sentenced to not more than one (1)
38 year, provided however, that in the discretion of the sentencing judge,
39 the judge may authorize the defendant to be assigned to a work detail
40 program within the custody of the county sheriff during the period of
41 incarceration;

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

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

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

49 (e) Shall have his driving privileges suspended by the court for an
50 additional mandatory minimum period of one (1) year after release from

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1 confinement, during which one (1) year period absolutely no driving
2 privileges of any kind may be granted; and

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

7 (5) If the person has pled guilty or was found guilty for the sec-
8 ond time within ten (10) years of a violation of the provisions of section
9 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,
10 Idaho Code, shall apply.

11 (6) Except as provided in section 18-8004C, Idaho Code, any person who
12 pleads guilty to or is found guilty of a violation of the provisions of sec-
13 tion 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found
14 guilty of or has pled guilty to two (2) or more violations of the provisions
15 of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially con-
16 forming foreign criminal violation, or any combination thereof, or who has
17 completed a diversion program for driving under the influence, whether or
18 not the person has pled guilty or been found guilty, or any substantially
19 conforming foreign program, and has pled guilty or been found guilty of one
20 (1) or more violations of the provisions of section 18-8004(1)(a), (b), or
21 (c), Idaho Code, or any substantially conforming foreign criminal violation
22 within ten (10) years, notwithstanding the form of the judgment(s) or with-
23 held judgment(s), shall be guilty of a felony and:

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

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

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

36 (d) Shall have his driving privileges suspended by the court for a
37 mandatory minimum period of one (1) year after release from imprison-
38 ment, during which time he shall have absolutely no driving privileges
39 of any kind, and may have his driving privileges suspended by the court
40 for an additional period not to exceed four (4) years, during which
41 the defendant may request restricted driving privileges that the court
42 may allow if the defendant shows by a preponderance of the evidence
43 that driving privileges are necessary for his employment or for family
44 health needs; and

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

49 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)
50 of this section, any person who is enrolled in and is a participant in good

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

21 (8) For the purpose of computation of the enhancement period in subsec-
22 tions (4), (6) and (9) of this section, the time that elapses between the date
23 of commission of the offense and the date the defendant pleads guilty or is
24 found guilty for the pending offense shall be excluded. If the determination
25 of guilt against the defendant is reversed upon appeal, the time that elapsed
26 between the date of the commission of the offense and the date the defendant
27 pleads guilty or is found guilty following the appeal shall also be excluded.

28 (9) Notwithstanding the provisions of subsections (4) and (6) of this
29 section, any person who has pled guilty to or has been found guilty of a
30 felony violation of the provisions of section 18-8004, Idaho Code, a felony
31 violation of the provisions of section 18-8004C, Idaho Code, a violation
32 of the provisions of section 18-8006, Idaho Code, a violation of the provi-
33 sions of section 18-4006 3. (b), Idaho Code, notwithstanding the form of the
34 judgment(s) or withheld judgment(s) or any substantially conforming foreign
35 criminal felony violation, notwithstanding the form of the judgment(s) or
36 withheld judgment(s), and within fifteen (15) years pleads guilty to or is
37 found guilty of a further violation of the provisions of section 18-8004,
38 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to
39 subsection (6) of this section.

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

48 (11) Any person who pleads guilty to or is found guilty of a violation of
49 the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall
50 undergo, at his own expense (or at county expense through the procedures set

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1 forth in chapters 34 and 35, title 31, Idaho Code) and prior to the sentenc-
2 ing date, an alcohol evaluation by an alcohol evaluation facility approved
3 by the Idaho department of health and welfare; provided however, if the
4 defendant has no prior or pending charges with respect to the provisions
5 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the
6 records and information required under subsection (12)(a), (b) and (c) of
7 this section or possesses information from other reliable sources relating
8 to the defendant's use or nonuse of alcohol or drugs which does not give
9 the court any reason to believe that the defendant regularly abuses alco-
10 hol or drugs and is in need of treatment, the court may, in its discretion,
11 waive the evaluation with respect to sentencing for a violation of section
12 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant.
13 The court may also, in its discretion, waive the requirement of an alcohol
14 evaluation with respect to a defendant's first violation of the provisions
15 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence
16 the defendant if the court has a presentence investigation report, sub-
17 stance abuse assessment, criminogenic risk assessment, or other assessment
18 which evaluates the defendant's degree of alcohol abuse and need for alco-
19 hol treatment conducted within twelve (12) months preceding the date of the
20 defendant's sentencing. In the event an alcohol evaluation indicates the
21 need for alcohol treatment, the evaluation shall contain a recommendation
22 by the evaluator as to the most appropriate treatment program, together with
23 the estimated cost thereof, and recommendations for other suitable alter-
24 native treatment programs, together with the estimated costs thereof. The
25 person shall request that a copy of the completed evaluation be forwarded
26 to the court. The court shall take the evaluation into consideration in
27 determining an appropriate sentence. If a copy of the completed evaluation
28 has not been provided to the court, the court may proceed to sentence the
29 defendant; however, in such event, it shall be presumed that alcohol treat-
30 ment is required unless the defendant makes a showing by a preponderance of
31 evidence that treatment is not required. If the defendant has not made a good
32 faith effort to provide the completed copy of the evaluation to the court,
33 the court may consider the failure of the defendant to provide the report
34 as an aggravating circumstance in determining an appropriate sentence. If
35 treatment is ordered, in no event shall the person or facility doing the
36 evaluation be the person or facility that provides the treatment unless this
37 requirement is waived by the sentencing court, with the exception of fed-
38 erally recognized Indian tribes or federal military installations, where
39 diagnosis and treatment are appropriate and available. Nothing herein con-
40 tained shall preclude the use of funds authorized pursuant to the provisions
41 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for
42 indigent defendants.

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

- 45 (a) The results, if administered, of any evidentiary test for alcohol
46 and/or drugs;
47 (b) A computer or teletype or other acceptable copy of the person's
48 driving record;
49 (c) Information as to whether the defendant has pled guilty to or
50 been found guilty of a violation of the provisions of section 18-8004,

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1 18-8004C or 18-8006, Idaho Code, or a similar offense within the past
2 five (5) years, notwithstanding the form of the judgment(s) or withheld
3 judgment(s); and

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

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

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

35 (15) Any person who is disqualified, or whose driving privileges have
36 been suspended, revoked or canceled under the provisions of this chapter,
37 shall not be granted restricted driving privileges to operate a commercial
38 motor vehicle.

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

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

43 18-8008. IGNITION INTERLOCK SYSTEMS.

44 (1) (a) If a person is convicted, is found guilty, pleads guilty or re-
45 ceives a withheld judgment for violating any of the provisions of this
46 chapter relating to driving under the influence and has had any or all of
47 a sentence or fine suspended for the violation, the court shall, unless
48 an exception is granted pursuant to section 18-8002(12), Idaho Code,

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1 impose the sanction provided for in this section in addition to any
2 other penalty or fine imposed pursuant to this chapter.

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

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

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

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

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

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

31 ~~SECTION 5. That Section 18-8010, Idaho Code, be, and the same is hereby~~
32 ~~amended to read as follows:~~

33 18-8010. SURCHARGE ADDED TO ALL FINES. Every person who is convicted,
34 found guilty, pleads guilty or receives a withheld judgment for violating
35 the provisions of this chapter shall be required to pay an additional fif-
36 teen dollars (\$15.00) in addition to any other fine, penalty or costs the
37 court may assess. Moneys received pursuant to this section shall be remit-
38 ted to the county treasurer in the county where the person was adjudicated
39 for deposit in the "court interlock device and electronic monitoring device
40 fund," which is hereby created in each county. Moneys in this fund may be
41 utilized for the purchase of ignition interlock devices and electronic moni-
42 toring devices required pursuant to sections 18-8002, 18-8002A, 18-8005,
43 18-8008 and 18-8008A, Idaho Code. Additionally, any moneys a court charges
44 a defendant for using an ignition interlock device or electronic monitoring
45 devices shall be placed in this fund. The court or a prosecuting attorney who
46 establishes a diversion program pursuant to section 19-3509, Idaho Code, may
47 also utilize moneys in this fund to pay for drug testing for an indigent di-
48 version participant or to assist an indigent defendant or indigent diversion

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1 participant to procure an ignition interlock device or electronic monitor-
2 ing devices. The court may also utilize moneys in this fund for alcohol or
3 drug abuse-related probation, treatment or prevention programs for adults
4 or juveniles.

5 SECTION 6. That Section 19-403, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 19-403. MISDEMEANORS. (1) Except as otherwise provided in subsections
8 ~~(2) and (3)~~ of this section, a prosecution for any misdemeanor must be com-
9 menced by the filing of the complaint or the finding of an indictment within
10 one (1) year after its commission.

11 (2) A prosecution for failure to report or failure to cause to be re-
12 ported the abuse, abandonment, or neglect of a child as provided for in sec-
13 tion 16-1605, Idaho Code, must be commenced by the filing of the complaint or
14 the finding of an indictment within four (4) years after its commission.

15 (3) A prosecution for misuse of funds as provided for in section
16 18-5702 (1), Idaho Code, must be commenced by the filing of the complaint or
17 the finding of an indictment within five (5) years after its commission.

18 (4) A prosecution for a misdemeanor that was dismissed pursuant to sec-
19 tion 19-3509, Idaho Code, must be refiled no later than two (2) years after
20 its dismissal.

21 SECTION 7. That Section 19-3506, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 19-3506. EFFECT OF DISMISSAL AS BAR -- DISMISSAL FOR DIVERSION PARTIC-
24 IPANT. (1) An order for the dismissal of the action, as provided in this chap-
25 ter, is a bar to any other prosecution for the same offense, if it is a misde-
26 meanor, except as provided in subsection (2) of this section; but it is not a
27 bar if the offense is a felony.

28 (2) A prosecuting attorney may move for dismissal of a misdemeanor
29 action, and the court may order such dismissal, if the defendant agrees to
30 participate in a diversion program pursuant to section 19-3509, Idaho Code.
31 The action may be refiled for failure to complete the diversion program, and
32 speedy trial shall be calculated from the date of refileing.

33 SECTION 8. That Chapter 35, Title 19, Idaho Code, be, and the same is
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
35 ignated as Section 19-3507, Idaho Code, and to read as follows:

36 19-3507. DIVERSION PROGRAMS -- LEGISLATIVE INTENT. (1) For purposes
37 of this section and sections 19-3508 and 19-3509, Idaho Code, "diversion
38 program" means the use of local community resources, churches, substance
39 abuse counseling, informal probation, community service work, voluntary
40 restitution, or other available services or programs as an alternative to
41 adjudication of a criminal case in court.

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

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

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

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

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

15 SECTION 9. That Chapter 35, Title 19, Idaho Code, be, and the same is
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
17 ignated as Section 19-3508, Idaho Code, and to read as follows:

18 19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. A person is eligible to
19 participate in a diversion program if:

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

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

24 (3) The person charged has not been convicted of driving under the in-
25 fluence or a substantially conforming foreign criminal violation within the
26 past ten (10) years and has not previously participated in a diversion pro-
27 gram pursuant to section 19-3509, Idaho Code.

28 SECTION 10. That Chapter 35, Title 19, Idaho Code, be, and the same is
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
30 ignated as Section 19-3509, Idaho Code, and to read as follows:

31 19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) A prosecuting attorney
32 may, at the prosecuting attorney's discretion, establish a diversion pro-
33 gram and may refer a defendant eligible to participate in a diversion pro-
34 gram pursuant to section 19-3508, Idaho Code, to such program within thirty
35 (30) calendar days of a citation being issued or charges being filed against
36 the defendant. Before entering an agreement to participate in the diver-
37 sion program, a defendant may obtain advice from a defense attorney on the
38 requirements and consequences of participating in the diversion program and
39 must undergo a drug or alcohol evaluation, or both, if requested by the pros-
40 ecuting attorney. The terms and conditions of the diversion program shall
41 be set forth in a written agreement signed by the prosecuting attorney and
42 the defendant as well as the defendant's attorney, if the defendant is repre-
43 sented by an attorney. If the defendant agrees to participate in the diver-
44 sion program, then the prosecuting attorney shall move for dismissal of the
45 action against the defendant pursuant to section 19-3506, Idaho Code.

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1 (a) A diversion program may be administered by the prosecuting attorney
2 or by the prosecuting attorney's designee. The diversion agreement
3 shall specify the person administering the program and shall set out the
4 requirements for successful completion of the program and the duration
5 of the diversion agreement. The duration of the period a person is re-
6 quired to participate in a diversion program under this section shall
7 be no shorter than twelve (12) months. A person participating in a di-
8 version program for an alcohol-related charge shall be required to in-
9 stall and maintain, at the participant's expense, an ignition inter-
10 lock system in each vehicle such person operates for the duration of the
11 program, as further provided in subsection (5) of this section. A per-
12 son participating in a diversion program for a charge unrelated to al-
13 cohoh shall be required to undergo drug testing at the person's expense
14 for at least twelve (12) months. If the person is indigent, the pros-
15 ecuting attorney may order the use of moneys from the interlock device
16 and electronic monitoring device fund created by section 18-8010, Idaho
17 Code, to assist the person in procuring an ignition interlock device or
18 to pay for drug testing. The participant in a diversion program must
19 also complete at least thirty-two (32) hours of sheriff inmate labor de-
20 tail or approved community service and at least twenty-four (24) hours
21 of drug and alcohol counseling, therapy, or education from an approved
22 provider.

23 (b) At the end of the diversion period, the prosecuting attorney shall
24 determine whether the participant complied with the requirements of the
25 diversion agreement. If the prosecuting attorney finds that the par-
26 ticipant failed to comply with the requirements of the diversion agree-
27 ment, then the prosecuting attorney may refile the case pursuant to sec-
28 tion 19-3506, Idaho Code.

29 (2) If a person participates in a diversion program pursuant to this
30 section, then any statement made by the person in diversion activities or
31 proceedings is inadmissible as substantive evidence of guilt during an adju-
32 dicative proceeding in the refiled case.

33 (3) The requirements for successful completion of a diversion program
34 may include, but are not limited to:

- 35 (a) Informal supervision with the probation department;
- 36 (b) Community service work;
- 37 (c) Inmate labor detail work;
- 38 (d) A community-based diversion program;
- 39 (e) Restitution to a victim;
- 40 (f) Alcohol monitoring and testing;
- 41 (g) Individual therapy and counseling;
- 42 (h) Group therapy and counseling; and
- 43 (i) Drug monitoring and testing.

44 (4) The administrator of a diversion program may require payment of
45 restitution and fees to cover the costs of the diversion program. Any moneys
46 collected shall be reasonably related to program costs. The administrator
47 shall assess a diversion fee of one hundred fifty-seven dollars and fifty
48 cents (\$157.50) to each diversion participant. If the participant is indig-
49 ent, the diversion fee may be waived. The diversion fee shall be paid to the
50 clerk of the district court and distributed as follows:

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1 (a) Seventeen dollars and fifty cents (\$17.50) to be distributed as
2 provided in section 31-3201A(2), Idaho Code;

3 (b) Ten dollars (\$10.00) to be distributed as provided in section
4 31-3201(3), Idaho Code;

5 (c) Ten dollars (\$10.00) to be distributed as provided in section
6 31-3201(5), Idaho Code;

7 (d) Fifteen dollars (\$15.00) to be distributed as provided in section
8 31-3201B, Idaho Code;

9 (e) Fifty dollars (\$50.00) to be distributed as provided in section
10 31-3201H, Idaho Code;

11 (f) Fifteen dollars (\$15.00) to be distributed as provided in section
12 31-3204, Idaho Code;

13 (g) Thirty-seven dollars (\$37.00) to be distributed as provided in sec-
14 tion 72-1025, Idaho Code; and

15 (h) Three dollars (\$3.00) to be distributed as provided in section
16 72-1105, Idaho Code.

17 (5) A participant in a diversion program whose driving privileges have
18 been suspended may be granted driving privileges by the administrator of
19 a diversion program, in which case the participant shall be issued a re-
20 stricted driving permit by the Idaho transportation department. Prior to
21 being granted restricted driving privileges, the participant must show to
22 the administrator proof of financial responsibility as defined and in the
23 amounts specified in section 49-117, Idaho Code. If participating in the
24 diversion program due to a charge involving alcohol, then the participant,
25 to receive a restricted driving permit, must have an ignition interlock
26 system as defined in section 18-8008, Idaho Code, installed in each vehi-
27 cle operated by the participant and must pay an ignition interlock fee of
28 fifteen dollars (\$15.00) to be deposited in the court interlock device and
29 electronic monitoring device fund created by section 18-8010, Idaho Code.
30 The ignition interlock system shall be removed once the participant suc-
31 cessfully completes diversion, provided that such removal shall not occur,
32 and the program shall not be considered successfully completed, until the
33 administrator of the diversion program receives a declaration from the par-
34 ticipant's ignition interlock vendor, on a form provided or approved by the
35 administrator, certifying that none of the following incidents occurred
36 while the system was installed in the vehicle:

37 (a) An attempt to start the vehicle with an alcohol concentration of
38 0.04 or more;

39 (b) Failure to take any random test;

40 (c) Failure to pass any random retest with an alcohol concentration of
41 0.025 or lower; or

42 (d) Failure of the participant to appear at the ignition interlock sys-
43 tem vendor's place of business when required for maintenance, repair,
44 calibration, monitoring, inspection, or replacement of the system.

45 (6) If criminal charges against the participant are refiled pursuant
46 to section 19-3506, Idaho Code, then an ignition interlock system installed
47 pursuant to this section shall be removed.

48 SECTION 11. That Section 20-617, Idaho Code, be, and the same is hereby
49 amended to read as follows:

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1 20-617. LABOR OF PRISONERS ON PUBLIC WORKS. Persons confined in the
2 county jail under a judgment of conviction, suspended sentence or withheld
3 judgment rendered in any criminal case, either under a judgment of imprison-
4 ment or a judgment for the payment of a fine and costs, or persons partici-
5 pating in a diversion program pursuant to section 19-3509, Idaho Code, may be
6 required to perform labor on federal, state or other governmental projects
7 or community service projects.