

IN THE SENATE

SENATE BILL NO. 1385

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO RAPE; AMENDING SECTION 18-6101, IDAHO CODE, TO REVISE
2 THE CIRCUMSTANCES THAT CONSTITUTE RAPE, TO PROVIDE THAT CERTAIN
3 CIRCUMSTANCES CONSTITUTING RAPE DO NOT AFFECT CERTAIN OTHER PROVISIONS
4 OF LAW AND TO SPECIFY THE METHOD FOR DETERMINING A CERTAIN AGE
5 DIFFERENCE; AMENDING SECTION 18-6107, IDAHO CODE, TO PROVIDE CORRECT
6 CODE REFERENCES; AMENDING SECTION 18-6108, IDAHO CODE, TO REVISE
7 THE CIRCUMSTANCES THAT CONSTITUTE MALE RAPE, TO PROVIDE THAT CERTAIN
8 CIRCUMSTANCES CONSTITUTING MALE RAPE DO NOT AFFECT CERTAIN OTHER
9 PROVISIONS OF LAW AND TO SPECIFY THE METHOD FOR DETERMINING A CERTAIN
10 AGE DIFFERENCE; AMENDING SECTION 18-609A, IDAHO CODE, TO PROVIDE
11 CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING
12 SECTION 18-609G, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND
13 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-8303, IDAHO CODE,
14 TO REVISE A DEFINITION AND TO MAKE A TECHNICAL CORRECTION; AMENDING
15 SECTION 18-8304, IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONS ARE NOT
16 SUBJECT TO THE APPLICATION OF THE SEXUAL OFFENDER REGISTRATION ACT, TO
17 PROVIDE CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION;
18 AMENDING SECTION 18-8314, IDAHO CODE, TO PROVIDE AN EXCEPTION RELATING
19 TO THE DUTIES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD AND TO MAKE
20 TECHNICAL CORRECTIONS; AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE
21 CORRECT CODE REFERENCES; AND AMENDING SECTION 20-509, IDAHO CODE, TO
22 PROVIDE THAT CERTAIN JUVENILES WHO HAVE ALLEGEDLY COMMITTED MALE RAPE
23 SHALL BE CHARGED, ARRESTED AND PROCEEDED AGAINST AS AN ADULT, TO PROVIDE
24 A CORRECT CODE REFERENCE AND TO DELETE REFERENCE TO STATUTORY RAPE.
25

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

27 SECTION 1. That Section 18-6101, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 18-6101. RAPE DEFINED. Rape is defined as the penetration, however
30 slight, of the oral, anal or vaginal opening with the perpetrator's penis
31 accomplished with a female under any one (1) of the following circumstances:

32 ~~1-(1)~~ 1-(1) Where the female is under the age of ~~eighteen~~ sixteen (16) years
33 and the perpetrator is eighteen (18) years of age or older.

34 ~~2-(2)~~ 2-(2) Where the female is sixteen (16) or seventeen (17) years of age
35 and the perpetrator is three (3) years or more older than the female.

36 (3) Where she is incapable, through any unsoundness of mind, due to any
37 cause including, but not limited to, mental illness, mental deficiency or
38 developmental disability, whether temporary or permanent, of giving legal
39 consent.

40 ~~3-(4)~~ 3-(4) Where she resists but her resistance is overcome by force or
41 violence.

1 ~~4.~~(5) Where she is prevented from resistance by the infliction,
2 attempted infliction, or threatened infliction of bodily harm, accompanied
3 by apparent power of execution; or is unable to resist due to any
4 intoxicating, narcotic, or anaesthetic substance.

5 ~~5.~~(6) Where she is at the time unconscious of the nature of the act. As
6 used in this section, "unconscious of the nature of the act" means incapable
7 of resisting because the victim meets one (1) of the following conditions:

8 (a) Was unconscious or asleep;

9 (b) Was not aware, knowing, perceiving, or cognizant that the act
10 occurred.

11 ~~6.~~(7) Where she submits under the belief that the person committing
12 the act is her husband, and the belief is induced by artifice, pretense or
13 concealment practiced by the accused, with intent to induce such belief.

14 ~~7.~~(8) Where she submits under the belief, instilled by the actor, that
15 if she does not submit, the actor will cause physical harm to some person
16 in the future; or cause damage to property; or engage in other conduct
17 constituting a crime; or accuse any person of a crime or cause criminal
18 charges to be instituted against her; or expose a secret or publicize an
19 asserted fact, whether true or false, tending to subject any person to
20 hatred, contempt or ridicule.

21 The provisions of subsections (1) and (2) of this section shall not affect
22 the age requirements in any other provision of law, unless otherwise
23 provided in any such law. Further, for the purposes of subsection (2) of this
24 section, in determining whether the perpetrator is three (3) years or more
25 older than the female, the difference in age shall be measured from the date
26 of birth of the perpetrator to the date of birth of the female.

27 SECTION 2. That Section 18-6107, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 18-6107. RAPE OF SPOUSE. No person shall be convicted of rape for any
30 act or acts with that person's spouse, except under the circumstances cited
31 in ~~paragraphs 3. and 4.~~ subsections (4) and (5) of section 18-6101, Idaho
32 Code.

33 SECTION 3. That Section 18-6108, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 18-6108. MALE RAPE. Male rape is defined as the penetration, however
36 slight, of the oral or anal opening of another male, with the perpetrator's
37 penis, for the purpose of sexual arousal, gratification or abuse, under any
38 of the following circumstances:

39 ~~1.~~(1) Where the victim is under the age of sixteen (16) years and the
40 perpetrator is eighteen (18) years of age or older.

41 (2) Where the victim is sixteen (16) or seventeen (17) years of age and
42 the perpetrator is three (3) years or more older than the victim.

43 (3) Where the victim is incapable, through any unsoundness of mind,
44 whether temporary or permanent, of giving consent.

45 ~~2.~~(4) Where the victim resists but his resistance is overcome by force
46 or violence.

1 ~~3.~~(5) Where the victim is prevented from resistance by threats of
2 immediate and great bodily harm, accompanied by apparent power of execution.

3 ~~4.~~(6) Where the victim is prevented from resistance by the use of any
4 intoxicating, narcotic, or anaesthetic substance administered by or with
5 the privity of the accused.

6 ~~5.~~(7) Where the victim is at the time unconscious of the nature of the
7 act, and this is known to the accused.

8 The provisions of subsections (1) and (2) of this section shall not affect
9 the age requirements in any other provision of law, unless otherwise
10 provided in any such law. Further, for the purposes of subsection (2) of this
11 section, in determining whether the perpetrator is three (3) years or more
12 older than the victim, the difference in age shall be measured from the date
13 of birth of the perpetrator to the date of birth of the victim.

14 SECTION 4. That Section 18-609A, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 18-609A. CONSENT REQUIRED FOR ABORTIONS FOR MINORS. (1) Except as
17 otherwise provided in this section, a person shall not knowingly perform an
18 abortion on a pregnant unemancipated minor unless the attending physician
19 has secured the written consent from one (1) of the minor's parents or the
20 minor's guardian or conservator.

21 (2) A judge of the district court shall, on petition or motion, and
22 after an appropriate hearing, authorize a physician to perform the abortion
23 if the judge determines, by clear and convincing evidence, that:

24 (a) The pregnant minor is mature and capable of giving informed consent
25 to the proposed abortion; or

26 (b) The performance of an abortion would be in her best interests.

27 (3) The pregnant minor may participate in the court proceedings on her
28 own behalf. The court may appoint a guardian ad litem for her. The court
29 shall provide her with counsel unless she appears through private counsel.

30 (4) Proceedings in the court under this section shall be closed and have
31 precedence over other pending matters. A judge who conducts proceedings
32 under this section shall make in writing specific factual findings and legal
33 conclusions supporting the decision and shall order a confidential record
34 of the evidence to be maintained including the judge's own findings and
35 conclusions. The minor may file the petition using a fictitious name. All
36 records contained in court files of judicial proceedings arising under the
37 provisions of this section shall be confidential and exempt from disclosure
38 pursuant to section 9-340G, Idaho Code. Dockets and other court records
39 shall be maintained and court proceedings undertaken so that the names and
40 identities of the parties to actions brought pursuant to this section will
41 not be disclosed to the public.

42 (5) The court shall hold the hearing within forty-eight (48) hours,
43 excluding weekends and holidays, after the petition is filed, and shall
44 issue its ruling at the conclusion of the hearing. If the court fails to
45 issue its ruling at the conclusion of the hearing, the petition is deemed to
46 have been granted and the consent requirement is waived.

47 (6) An expedited confidential appeal is available to a pregnant
48 minor for whom the court denies an order authorizing an abortion without
49 parental consent. A minor shall file her notice of appeal within five (5)

1 days, excluding weekends and holidays, after her petition was denied by
 2 the district court. The appellate court shall hold the hearing within
 3 forty-eight (48) hours, excluding weekends and holidays, after the notice
 4 of appeal is filed and shall issue its ruling at the conclusion of the
 5 hearing. If the appellate court fails to issue its ruling at the conclusion
 6 of the hearing, the petition is deemed to have been granted and the consent
 7 requirement is waived. Filing fees are not required of the pregnant minor at
 8 either the district court or the appellate level.

9 (7) Parental consent or judicial authorization is not required under
 10 this section if either:

11 (a) The pregnant minor certifies to the attending physician that the
 12 pregnancy resulted from rape as defined in section 18-6101, Idaho Code,
 13 excepting subsections (1-) and (2) thereof, or sexual conduct with the
 14 minor by the minor's parent, stepparent, uncle, grandparent, sibling,
 15 adoptive parent, legal guardian or foster parent.

16 (b) A medical emergency exists for the minor and the attending
 17 physician records the symptoms and diagnosis upon which such judgment
 18 was made in the minor's medical record.

19 SECTION 5. That Section 18-609G, Idaho Code, be, and the same is hereby
 20 amended to read as follows:

21 18-609G. STATISTICAL RECORDS. (1) The bureau of vital statistics of
 22 the department of health and welfare shall, in addition to other information
 23 required pursuant to section 39-261, Idaho Code, require the complete and
 24 accurate reporting of information relevant to each abortion performed upon a
 25 minor which shall include, at a minimum, the following:

26 (a) Whether the abortion was performed following the physician's
 27 receipt of:

28 (i) The written informed consent of a parent, guardian or
 29 conservator and the minor; or

30 (ii) The written informed consent of an emancipated minor for
 31 herself; or

32 (iii) The written informed consent of a minor for herself pursuant
 33 to a court order granting the minor the right to self-consent; or

34 (iv) The court order which includes a finding that the performance
 35 of the abortion, despite the absence of the consent of a parent, is
 36 in the best interests of the minor; or

37 (v) Certification from the pregnant minor to the attending
 38 physician pursuant to section 18-609A, Idaho Code, that parental
 39 consent is not required because the pregnancy resulted from rape
 40 as defined in section 18-6101, Idaho Code, excepting subsections
 41 (1-) and (2) thereof, or sexual conduct with the minor by
 42 the minor's parent, stepparent, uncle, grandparent, sibling,
 43 adoptive parent, legal guardian or foster parent.

44 (b) If the abortion was performed due to a medical emergency and
 45 without consent from a parent, guardian or conservator or court order,
 46 the diagnosis upon which the attending physician determined that the
 47 abortion was immediately necessary due to a medical emergency.

48 (2) The knowing failure of the attending physician to perform any one
 49 (1) or more of the acts required under this section is grounds for discipline

1 pursuant to section 54-1814(6), Idaho Code, and shall subject the physician
2 to assessment of a civil penalty of one hundred dollars (\$100) for each month
3 or portion thereof that each such failure continues, payable to the bureau
4 of vital statistics of the department of health and welfare, but such failure
5 shall not constitute a criminal act.

6 SECTION 6. That Section 18-8303, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 18-8303. DEFINITIONS. As used in this chapter:

9 (1) "Aggravated offense" means any of the following crimes: 18-1506A
10 (ritualized abuse of a child); 18-1508 (lewd conduct); 18-4003(d) (murder
11 committed in the perpetration of rape); 18-4502 (first-degree kidnapping
12 committed for the purpose of rape, committing an infamous crime against
13 nature, committing any lewd and lascivious act upon any child under the
14 age of sixteen years or for purposes of sexual gratification or arousal);
15 18-4503 (second degree kidnapping where the victim is an unrelated minor
16 child and the kidnapping is committed for the purpose of rape, committing
17 an infamous crime against nature, committing any lewd and lascivious act
18 upon any child under the age of sixteen years or for purposes of sexual
19 gratification or arousal); 18-6101 (rape, but excluding section 18-6101(1)
20 where the victim is at least twelve years of age or the defendant is
21 eighteen years of age ~~or younger~~); 18-6108 (male rape, but excluding section
22 18-6108(1) where the victim is at least twelve years of age or the defendant
23 is eighteen years of age); 18-6608 (forcible sexual penetration by use of a
24 foreign object); 18-8602(1) (sex trafficking); and any other offense set
25 forth in section 18-8304, Idaho Code, if at the time of the commission of the
26 offense the victim was below the age of thirteen years.

27 (2) "Board" means the sexual offender classification board described
28 in section 18-8312, Idaho Code.

29 (3) "Central registry" means the registry of convicted sexual
30 offenders maintained by the Idaho state police pursuant to this chapter.

31 (4) "Certified evaluator" means either a psychiatrist licensed by this
32 state pursuant to chapter 18, title 54, Idaho Code, or a master's or doctoral
33 level mental health professional licensed by this state pursuant to chapter
34 23, chapter 32, or chapter 34, title 54, Idaho Code. Such person shall have
35 by education, experience and training, expertise in the assessment and
36 treatment of sexual offenders, and such person shall meet the qualifications
37 and shall be approved by the board to perform psychosexual evaluations in
38 this state, as described in section 18-8314, Idaho Code.

39 (5) "Department" means the Idaho state police.

40 (6) "Employed" means full-time or part-time employment exceeding
41 ten (10) consecutive working days or for an aggregate period exceeding
42 thirty (30) days in any calendar year, or any employment which involves
43 counseling, coaching, teaching, supervising or working with minors in any
44 way regardless of the period of employment, whether such employment is
45 financially compensated, volunteered or performed for the purpose of any
46 government or education benefit.

47 (7) "Incarceration" means committed to the custody of the Idaho
48 department of correction or department of juvenile corrections, but
49 excluding cases where the court has retained jurisdiction.

1 (8) "Offender" means an individual convicted of an offense listed and
 2 described in section 18-8304, Idaho Code, or a substantially similar offense
 3 under the laws of another state or in a federal, tribal or military court or
 4 the court of another country.

5 (9) "Offense" means a sexual offense listed in section 18-8304, Idaho
 6 Code.

7 (10) "Predatory" means actions directed at an individual who was
 8 selected by the offender for the primary purpose of engaging in illegal
 9 sexual behavior.

10 (11) "Psychosexual evaluation" means an evaluation which specifically
 11 addresses sexual development, sexual deviancy, sexual history and risk of
 12 reoffense as part of a comprehensive evaluation of an offender.

13 (12) "Recidivist" means an individual convicted two (2) or more times of
 14 any offense requiring registration under this chapter.

15 (13) "Residence" means the offender's present place of abode.

16 (14) "Student" means a person who is enrolled on a full-time or
 17 part-time basis, in any public or private educational institution,
 18 including any secondary school, trade or professional institution or
 19 institution of higher education.

20 (15) "Violent sexual predator" means a person who has been convicted of
 21 an offense listed in section 18-8314, Idaho Code, and who has been determined
 22 to pose a high risk of committing an offense or engaging in predatory sexual
 23 conduct.

24 SECTION 7. That Section 18-8304, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 18-8304. APPLICATION OF CHAPTER. (1) The provisions of this chapter
 27 shall apply to any person who:

28 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
 29 solicitation, or a conspiracy to commit a crime provided for in section
 30 18-909 (assault with attempt to commit rape, infamous crime against
 31 nature, or lewd and lascivious conduct with a minor, but excluding
 32 mayhem, murder or robbery), 18-911 (battery with attempt to commit
 33 rape, infamous crime against nature, or lewd and lascivious conduct
 34 with a minor, but excluding mayhem, murder or robbery), 18-919 (sexual
 35 exploitation by a medical care provider), 18-1505B (sexual abuse and
 36 exploitation of a vulnerable adult), 18-1506 (sexual abuse of a child
 37 under sixteen years of age), 18-1506A (ritualized abuse of a child),
 38 18-1507 (sexual exploitation of a child), 18-1507A (possession of
 39 sexually exploitative material for other than a commercial purpose),
 40 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of
 41 a minor child sixteen or seventeen years of age), 18-1509A (enticing a
 42 child over the internet), 18-4003(d) (murder committed in perpetration
 43 of rape), 18-4116 (indecent exposure, but excluding a misdemeanor
 44 conviction), 18-4502 (first degree kidnapping committed for the
 45 purpose of rape, committing the infamous crime against nature or
 46 for committing any lewd and lascivious act upon any child under the
 47 age of sixteen, or for purposes of sexual gratification or arousal),
 48 18-4503 (second degree kidnapping where the victim is an unrelated
 49 minor child), 18-5609 (inducing person under eighteen years of age into

1 prostitution), 18-6101 (rape, but excluding 18-6101~~(1-)~~ where the
2 defendant is eighteen years of age ~~or younger~~ or where the defendant is
3 exempted under subsection (4) of this section), 18-6108 (male rape, but
4 excluding 18-6108(1) where the defendant is eighteen years of age or
5 where the defendant is exempted under subsection (4) of this section),
6 18-6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605
7 (crime against nature), 18-6608 (forcible sexual penetration by use of
8 a foreign object), upon a second or subsequent conviction under 18-6609
9 (video voyeurism) or 18-8602(1), Idaho Code, (sex trafficking).

10 (b) On or after July 1, 1993, has been convicted of any crime,
11 an attempt, a solicitation or a conspiracy to commit a crime in
12 another state, territory, commonwealth, or other jurisdiction of the
13 United States, including tribal courts and military courts, that is
14 substantially equivalent to the offenses listed in subsection (1) (a) of
15 this section and enters the state to establish permanent or temporary
16 residence.

17 (c) Has been convicted of any crime, an attempt, a solicitation or a
18 conspiracy to commit a crime in another state, territory, commonwealth,
19 or other jurisdiction of the United States, including tribal courts
20 and military courts, that is substantially equivalent to the offenses
21 listed in subsection (1) (a) of this section and was required to register
22 as a sex offender in any other state or jurisdiction when he established
23 permanent or temporary residency in Idaho.

24 (d) Pleads guilty to or has been found guilty of a crime covered in
25 this chapter prior to July 1, 1993, and the person, as a result of the
26 offense, is incarcerated in a county jail facility or a penal facility
27 or is under probation or parole supervision, on or after July 1, 1993.

28 (e) Is a nonresident regularly employed or working in Idaho or is a
29 student in the state of Idaho and was convicted, found guilty or pleaded
30 guilty to a crime covered by this chapter and, as a result of such
31 conviction, finding or plea, is required to register in his state of
32 residence.

33 (2) An offender shall not be required to comply with the registration
34 provisions of this chapter while incarcerated in a correctional institution
35 of the department of correction, a county jail facility, committed to
36 the department of juvenile corrections or committed to a mental health
37 institution of the department of health and welfare.

38 (3) A conviction for purposes of this chapter means that the person
39 has pled guilty or has been found guilty, notwithstanding the form of the
40 judgment or withheld judgment.

41 (4) When a defendant is convicted of rape under section 18-6101~~(1-)~~(2)
42 or 18-6108(2), Idaho Code, and at the time of the offense the defendant is
43 nineteen (19) or twenty (20) years of age and not more than three (3) years
44 older than the victim of the rape, the court may order that the defendant
45 is exempt from the requirements of this chapter upon a finding by the court
46 that:

47 (a) All parties have stipulated to the exemption; or

48 (b) The defendant has demonstrated by clear and convincing evidence
49 that he is not a risk to commit another crime identified in subsection

50 (1) of this section and in the case there were no allegations by the

1 victim of any violation of section 18-6101~~2~~(3) through ~~7~~(8) or
2 18-6108(3) through (7), Idaho Code.

3 SECTION 8. That Section 18-8314, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 18-8314. POWERS AND DUTIES OF THE SEXUAL OFFENDER CLASSIFICATION
6 BOARD. (1) The board shall consider for review offenders scheduled for
7 release from incarceration who are referred by the department of correction
8 or parole commission to determine whether the offender should be designated
9 as a violent sexual predator presenting a high risk of reoffense. Only
10 offenders who were sentenced and convicted for one (1) or more of the crimes
11 set forth in sections 18-1506, 18-1506A, 18-1507, 18-1508, 18-4003(d),
12 18-4502, 18-6101 (but excluding subsection 1-) of such section when the
13 offender is eighteen (18) years of age ~~or younger~~, 18-6108 (but excluding
14 subsection (1) of such section when the offender is eighteen (18) years of
15 age), 18-6602, 18-6605 and 18-6608, Idaho Code, or any violation of the duty
16 to register as provided in this chapter, or are recidivists as defined in
17 this chapter, are eligible for review by the board.

18 (2) The board shall consider for review offenders who were sentenced
19 and convicted for one (1) or more crimes enumerated in subsection (1) of
20 this section, or any violation of the duty to register as provided in this
21 chapter, or offenders who are recidivists as defined in this chapter, who
22 have been released under supervision, for the purpose of determining whether
23 the offender should be designated as a violent sexual predator presenting
24 a high risk of reoffense. Such review shall be undertaken upon request of
25 the district court having jurisdiction over the offender on probation or of
26 the parole commission if the offender has been released on parole regardless
27 of whether the offender has been reviewed by the board prior to release
28 from incarceration. For purposes of seeking a board review pursuant to
29 this subsection, the court or parole commission may consider all relevant
30 evidence including, but not limited to, the probation or parole official's
31 observations and opinions of these offenders while under supervision, in
32 light of the circumstances of the underlying offense.

33 (3) The board shall consider for review offenders living in Idaho
34 who were sentenced and convicted for one (1) or more crimes enumerated
35 in subsection (1) of this section, or substantially equivalent to those
36 enumerated in subsection (1) of this section and committed in another
37 state, territory, commonwealth or other jurisdiction of the United States,
38 including tribal courts and military courts, and who have been released
39 under federal or tribal court supervision. Such review shall be for the
40 purpose of determining whether the offender should be designated as a
41 violent sexual predator presenting a high risk of reoffense, and shall be
42 undertaken upon request of the federal or tribal court having jurisdiction
43 over the offender. For purposes of seeking a board review pursuant to this
44 subsection, the federal or tribal court may consider all relevant evidence
45 including, but not limited to, the probation official's observations
46 and opinions of these offenders while under supervision, in light of the
47 circumstances of the underlying offense.

48 (4) The board shall by rule:

1 (a) Establish standards for psychosexual evaluations and the
 2 qualifications for certified evaluators performing evaluations
 3 pursuant to sections 18-8316 and 18-8317, Idaho Code.

4 (b) Set forth procedures for the approval, certification and quality
 5 assurance of evaluators pursuant to this section.

6 (c) Establish a nonrefundable initial certification processing fee not
 7 to exceed one hundred fifty dollars (\$150) and a nonrefundable annual
 8 recertification processing fee not to exceed one hundred fifty dollars
 9 (\$150).

10 (5) The board shall establish guidelines to determine whether an
 11 offender who meets the criteria of this section is a violent sexual predator
 12 presenting a high risk of reoffense. The guidelines shall be established
 13 with the assistance of sexual offender treatment and law enforcement
 14 professionals who have, by education, experience or training, expertise in
 15 the assessment and treatment of sexual offenders.

16 (a) Factors to be used in establishment of the guidelines must
 17 be supported in the sexual offender assessment field as criteria
 18 reasonably related to the risk of reoffense and be objective criteria
 19 that can be gathered in a consistent and reliable manner.

20 (b) The guidelines shall include, but are not limited to, the following
 21 general categories for risk assessment: seriousness of the offense,
 22 offense history, whether the offense was predatory, characteristics
 23 of the offender, characteristics of the victim, the relationship of
 24 the offender to the victim, the number of victims and the number of
 25 violations of each victim.

26 (6) If the offender has indicated an intention to reoffend if released
 27 into the community and the available record reveals credible evidence to
 28 support this finding, then the offender shall be deemed a violent sexual
 29 predator regardless of application of the guidelines.

30 (7) Once the board has made its determination, it shall set forth
 31 written findings which shall include:

32 (a) The board's risk assessment and the reasons upon which the risk
 33 assessment was based; and

34 (b) The board's determination whether the offender should be
 35 designated as a violent sexual predator and the reasons upon which
 36 the determination was based.

37 (8) The board shall have authority to promulgate rules to carry out the
 38 provisions of this chapter.

39 SECTION 9. That Section 19-401, Idaho Code, be, and the same is hereby
 40 amended to read as follows:

41 19-401. NO STATUTE OF LIMITATIONS FOR CERTAIN FELONIES. Notwithstanding
 42 any other provision of law, there is no limitation of time within which a
 43 prosecution for the following crimes must be commenced:

44 (1) Murder;

45 (2) Voluntary manslaughter;

46 (3) Rape pursuant to section 18-6101 ~~2., 3., 4., 5. or 7.~~ (3) through
 47 (8), or section 18-6108 (3) through (7), Idaho Code;

48 (4) Sexual abuse of a child or lewd conduct with a child as set forth in
 49 sections 18-1506 and 18-1508, Idaho Code; or

1 (5) An act of terrorism as set forth in sections 18-8102, 18-8103,
2 18-3322, 18-3323 and 18-3324, Idaho Code.

3 SECTION 10. That Section 20-509, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 20-509. VIOLENT OFFENSES, CONTROLLED SUBSTANCES VIOLATIONS NEAR
6 SCHOOLS AND OFFENDERS. (1) Any juvenile, age fourteen (14) years to age
7 eighteen (18) years, who is alleged to have committed any of the following
8 crimes or any person under age fourteen (14) years who is alleged to have
9 committed any of the following crimes and, pursuant to section 20-508,
10 Idaho Code, has been ordered by the court to be held for adult criminal
11 proceedings:

12 (a) Murder of any degree or attempted murder;

13 (b) Robbery;

14 (c) ~~Rape, but excluding statutory rape~~ as defined in section 18-6101,
15 Idaho Code;

16 (d) Male rape as defined in section 18-6108, Idaho Code;

17 (e) Forcible sexual penetration by the use of a foreign object;

18 (~~ef~~) Infamous crimes against nature, committed by force or violence;

19 (~~fg~~) Mayhem;

20 (~~gh~~) Assault or battery with the intent to commit any of the above
21 serious felonies;

22 (~~hi~~) A violation of the provisions of section 37-2732(a)(1)(A),
23 (B) or (C), Idaho Code, when the violation occurred on or within one
24 thousand (1,000) feet of the property of any public or private primary
25 or secondary school, or in those portions of any building, park, stadium
26 or other structure or grounds which were, at the time of the violation,
27 being used for an activity sponsored by or through such a school;

28 (~~ij~~) Arson in the first degree and aggravated arson;

29 shall be charged, arrested and proceeded against by complaint, indictment
30 or information as an adult. All other felonies or misdemeanors charged in
31 the complaint, indictment or information, which are based on the same act
32 or transaction or on one (1) or more acts or transactions as the violent
33 or controlled substances offense shall similarly be charged, arrested and
34 proceeded against as an adult. Any juvenile proceeded against pursuant to
35 this section shall be accorded all constitutional rights, including bail and
36 trial by jury, and procedural safeguards as if that juvenile were an adult
37 defendant.

38 (2) Once a juvenile has been formally charged or indicted pursuant to
39 this section or has been transferred for criminal prosecution as an adult
40 pursuant to the waiver provisions of section 20-508, Idaho Code, or this
41 section, the juvenile shall be held in a county jail or other adult prison
42 facility unless the court, after finding good cause, orders otherwise.

43 (3) Except as otherwise allowed by subsection (4) of this section,
44 once a juvenile has been found to have committed the offense for which the
45 juvenile was charged, indicted or transferred pursuant to this section
46 or section 20-508, Idaho Code, or has been found guilty or pled guilty to
47 a lesser offense or amended charge growing out of or included within the
48 original charge, whether or not such lesser offense or amended charge is
49 included within the acts enumerated in subsection (1) of this section, the

1 juvenile shall thereafter be handled in every respect as an adult. For any
2 subsequent violation of Idaho law, the juvenile shall be handled in every
3 respect as an adult.

4 (4) Upon the conviction of a juvenile pursuant to this section, the
5 sentencing judge may, if a finding is made that adult sentencing measures
6 would be inappropriate:

7 (a) Sentence the convicted person in accordance with the juvenile
8 sentencing options set forth in this chapter; or

9 (b) Sentence the convicted person to the county jail or to the
10 custody of the state board of correction but suspend the sentence
11 or withhold judgment pursuant to section 19-2601, Idaho Code, and
12 commit the defendant to the custody of the department of juvenile
13 corrections for an indeterminate period of time in accordance with
14 section 20-520(1)(r), Idaho Code. The court, in its discretion, may
15 order that the suspended sentence or withheld judgment be conditioned
16 upon the convicted person's full compliance with all reasonable
17 program requirements of the department of juvenile corrections. Such a
18 sentence may also set terms of probation, which may be served under the
19 supervision of county juvenile probation. However, in no event may the
20 total of the actual time spent by the convicted person in the custody
21 of the department plus any adult sentence imposed by the court exceed
22 the maximum period of imprisonment that could be imposed on an adult
23 convicted of the same crime.

24 (c) If a convicted person is given a suspended sentence or withheld
25 judgment conditioned upon the convicted person's compliance with
26 all reasonable program requirements of the department pursuant to
27 paragraph (b) of this subsection, and if the department reasonably
28 believes that the convicted person is failing to comply with all
29 reasonable program requirements, the department may petition the
30 sentencing court to revoke the commitment to the department and
31 transfer the convicted person to the county jail or to the custody of the
32 state board of correction for the remainder of the sentence.