

IN THE SENATE

SENATE BILL NO. 1153

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO DRIVING UNDER THE INFLUENCE; AMENDING SECTION 18-8002,
 2 IDAHO CODE, TO PROVIDE THAT CERTAIN OFFENDERS ENROLLED IN
 3 DRUG COURT SHALL BE ELIGIBLE FOR RESTRICTED NONCOMMERCIAL
 4 DRIVING PRIVILEGES UNDER CERTAIN CONDITIONS AND TO MAKE
 5 TECHNICAL CORRECTIONS; AMENDING SECTION 18-8002A, IDAHO CODE,
 6 TO REVISE INFORMATION REQUIRED TO BE GIVEN TO OFFENDERS, TO
 7 PROVIDE THAT CERTAIN OFFENDERS ENROLLED IN DRUG COURT SHALL
 8 BE ELIGIBLE FOR RESTRICTED NONCOMMERCIAL DRIVING PRIVILEGES
 9 UNDER CERTAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS;
 10 AMENDING SECTION 18-8004A, IDAHO CODE, TO PROVIDE CORRECT CODE
 11 REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
 12 SECTION 18-8004C, IDAHO CODE, TO REVISE PENALTIES FOR EXCESSIVE
 13 ALCOHOL CONCENTRATION AND TO MAKE A TECHNICAL CORRECTION;
 14 AND AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE PENALTIES
 15 RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS
 16 OR OTHER INTOXICATING SUBSTANCES AND TO MAKE TECHNICAL
 17 CORRECTIONS.
 18

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

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

22 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF
 23 DRUGS OR OTHER INTOXICATING SUBSTANCES – PENALTY AND SUSPENSION
 24 UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of
 25 a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing
 26 for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given
 27 his consent to evidentiary testing for the presence of drugs or other intoxicating substances,
 28 provided that such testing is administered at the request of a peace officer having reasonable
 29 grounds to believe that person has been driving or in actual physical control of a motor vehicle
 30 in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

31 (2) Such person shall not have the right to consult with an attorney before submitting to
 32 such evidentiary testing.

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

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

1 (b) His driver's license will be seized by the peace officer and a temporary permit will be
 2 issued; provided, however, that no peace officer shall issue a temporary permit pursuant to
 3 this section to a driver whose driver's license or permit has already been and is suspended
 4 or revoked because of previous violations, and in no instance shall a temporary permit be
 5 issued to a driver of a commercial vehicle who refuses to submit to or fails to complete
 6 an evidentiary test;

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

9 (d) If he does not request a hearing or does not prevail at the hearing, the court shall
 10 sustain the civil penalty and his driver's license will be suspended absolutely for one (1)
 11 year if this is his first refusal and two (2) years if this is his second refusal within ten (10)
 12 years; ~~and~~

13 (e) Provided however, if he is enrolled in and is a participant in good standing in a drug
 14 court approved by the supreme court drug court and mental health court coordinating
 15 committee under the provisions of chapter 56, title 19, Idaho Code, then he shall be
 16 eligible for restricted noncommercial driving privileges for the purpose of getting to
 17 and from work, school or an alcohol treatment program, which may be granted by the
 18 presiding judge of the drug court, provided that he has served a period of absolute
 19 suspension of driving privileges of at least forty-five (45) days, that an ignition interlock
 20 device is installed on each of the motor vehicles owned or operated, or both, by him and
 21 that he has shown proof of financial responsibility; and

22 (f) After submitting to evidentiary testing he may, when practicable, at his own expense,
 23 have additional tests made by a person of his own choosing.

24 (4) If the motorist refuses to submit to or complete evidentiary testing after the
 25 information has been given in accordance with subsection (3) above:

26 (a) He shall be fined a civil penalty of two hundred fifty dollars (\$250) and his driver's
 27 license or permit shall be seized by the peace officer and forwarded to the court and a
 28 temporary permit shall be issued by the peace officer which allows him to operate a motor
 29 vehicle until the date of his hearing, if a hearing is requested, but in no event for more
 30 than thirty (30) days; provided, however, that no peace officer shall issue a temporary
 31 permit pursuant to this section to a driver whose driver's license or permit has already
 32 been and is suspended or revoked because of previous violations and in no instance shall
 33 a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to
 34 or fails to complete an evidentiary test;

35 (b) A written request may be made within seven (7) calendar days for a hearing before
 36 the court; if requested, the hearing must be held within thirty (30) days of the seizure
 37 unless this period is, for good cause shown, extended by the court for one (1) additional
 38 thirty (30) day period. The court, in granting such an extension, may, for good cause
 39 shown, extend the defendant's temporary driving privileges for one (1) additional thirty
 40 (30) day period. The hearing shall be limited to the question of why the defendant did
 41 not submit to, or complete, evidentiary testing, and the burden of proof shall be upon
 42 the defendant; the court shall sustain a two hundred fifty dollar (\$250) civil penalty
 43 immediately and suspend all the defendant's driving privileges immediately for one (1)
 44 year for a first refusal and two (2) years for a second refusal within ten (10) years unless
 45 it finds that the peace officer did not have legal cause to stop and request him to take the
 46 test or that the request violated his civil rights;

1 (c) If a hearing is not requested by written notice to the court concerned within seven (7)
2 calendar days, upon receipt of a sworn statement by the peace officer of the circumstances
3 of the refusal, the court shall sustain a two hundred fifty dollar (\$250) civil penalty and
4 suspend the defendant's driving privileges for one (1) year for a first refusal and two
5 (2) years for a second refusal within ten (10) years, during which time he shall have
6 absolutely no driving privileges of any kind; ~~and~~

7 (d) Notwithstanding the provisions of subsection (4)(b) and (c) of this section, if the
8 defendant is enrolled in and is a participant in good standing in a drug court approved
9 by the supreme court drug court and mental health court coordinating committee under
10 the provisions of chapter 56, title 19, Idaho Code, then the defendant shall be eligible
11 for restricted noncommercial driving privileges for the purpose of getting to and from
12 work, school or an alcohol treatment program, which may be granted by the presiding
13 judge of the drug court, provided that the defendant has served a period of absolute
14 suspension of driving privileges of at least forty-five (45) days, that an ignition interlock
15 device is installed on each of the motor vehicles owned or operated, or both, by the
16 defendant and that the defendant has shown proof of financial responsibility as defined
17 and in the amounts specified in section 49-117, Idaho Code, provided that the restricted
18 noncommercial driving privileges may be continued if the defendant successfully
19 completes the drug court, and that the court may revoke such privileges for failure to
20 comply with the terms of probation or with the terms and conditions of the drug court
21 program; and

22 (e) After submitting to evidentiary testing at the request of the peace officer, he may,
23 when practicable, at his own expense, have additional tests made by a person of his own
24 choosing. The failure or inability to obtain an additional test or tests by a person shall not
25 preclude the admission of results of evidentiary testing for alcohol concentration or for
26 the presence of drugs or other intoxicating substances taken at the direction of the peace
27 officer unless the additional test was denied by the peace officer.

28 (5) Any sustained civil penalty or suspension of driving privileges under this section
29 or section 18-8002A, Idaho Code, shall be a civil penalty separate and apart from any other
30 suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an
31 offense pursuant to this chapter, and may be appealed to the district court.

32 (6) No hospital, hospital officer, agent, or employee, or health care professional licensed
33 by the state of Idaho, whether or not such person has privileges to practice in the hospital
34 in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil
35 or criminal liability for any act arising out of administering an evidentiary test for alcohol
36 concentration or for the presence of drugs or other intoxicating substances at the request or
37 order of a peace officer in the manner described in this section and section 18-8002A, Idaho
38 Code: provided, that nothing in this section shall relieve any such person or legal entity from
39 civil liability arising from the failure to exercise the community standard of care.

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

44 (b) A peace officer is empowered to order an individual authorized in section 18-8003,
45 Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer

1 has probable cause to believe that the suspect has committed any of the following
2 offenses:

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

5 (ii) Vehicular manslaughter as provided in subsections (3)(a), (b) and (c) of
6 section 18-4006, Idaho Code;

7 (iii) Aggravated operating of a vessel on the waters of the state while under the
8 influence of alcohol, drugs or other intoxicating substances as provided in section
9 67-7035, Idaho Code; or

10 (iv) Any criminal homicide involving a vessel on the waters of the state while
11 under the influence of alcohol, drugs or other intoxicating substances.

12 (c) Nothing herein shall limit the discretion of the hospital administration to designate the
13 qualified hospital employee responsible to withdraw the blood sample.

14 (d) The law enforcement agency that requests or orders withdrawal of the blood sample
15 shall pay the reasonable costs to withdraw such blood sample, perform laboratory
16 analysis, preserve evidentiary test results, and testify in judicial proceedings.

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

18 (i) In the reasonable judgment of the hospital personnel withdrawal of the blood
19 sample may result in serious bodily injury to hospital personnel or other patients;
20 or

21 (ii) The licensed health care professional treating the suspect believes the
22 withdrawal of the blood sample is contraindicated because of the medical
23 condition of the suspect or other patients.

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

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

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

32 (10) A person who submits to a breath test for alcohol concentration, as defined in
33 subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second
34 evidentiary test of blood or urine for the purpose of determining the presence of drugs or other
35 intoxicating substances if the peace officer has reasonable cause to believe that a person was
36 driving under the influence of any drug or intoxicating substance or the combined influence of
37 alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report
38 the facts upon which that belief is based.

39 (11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed
40 under the provisions of this section must be paid, as ordered by the court, to the county justice
41 fund or the county current expense fund where the incident occurred. If a person does not pay
42 the civil penalty imposed as provided in this section within thirty (30) days of the imposition,
43 unless this period has been extended by the court for good cause shown, the prosecuting
44 attorney representing the political subdivision where the incident occurred may petition the
45 court in the jurisdiction where the incident occurred to file the order imposing the civil penalty
46 as an order of the court. Once entered, the order may be enforced in the same manner as a

1 final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest
2 may be assessed against any person who fails to pay the civil penalty.

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

5 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE
6 OF DRUGS OR OTHER INTOXICATING SUBSTANCES – SUSPENSION UPON FAILURE
7 OF TESTS. (1) Definitions. As used in this section:

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

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

13 (c) "Department" means the Idaho transportation department and, as the context requires,
14 shall be construed to include any agent of the department designated by rule as hereinafter
15 provided.

16 (d) "Director" means the director of the Idaho transportation department.

17 (e) "Evidentiary testing" means a procedure or test or series of procedures or tests
18 utilized to determine the concentration of alcohol or the presence of drugs or other
19 intoxicating substances in a person, including additional testing authorized by subsection
20 (6) of this section. An evidentiary test for alcohol concentration shall be based on a
21 formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two
22 hundred ten (210) liters of breath, or sixty-seven (67) milliliters of urine. Analysis of
23 blood, breath or urine for the purpose of determining alcohol concentration shall be
24 performed by a laboratory operated by the Idaho state police or by a laboratory approved
25 by the Idaho state police under the provisions of approval and certification standards to
26 be set by the Idaho state police, or by any other method approved by the Idaho state
27 police. Notwithstanding any other provision of law or rule of court, the results of any
28 test for alcohol concentration and records relating to calibration, approval, certification
29 or quality control performed by a laboratory operated and approved by the Idaho state
30 police or by any other method approved by the Idaho state police shall be admissible in
31 any proceeding in this state without the necessity of producing a witness to establish the
32 reliability of the testing procedure for examination.

33 (f) "Hearing officer" means a person designated by the department to conduct
34 administrative hearings. The hearing officer shall have authority to administer oaths,
35 examine witnesses and take testimony, receive relevant evidence, issue subpoenas,
36 regulate the course and conduct of the hearing and make a final ruling on the issues
37 before him.

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

40 (2) Information to be given. At the time of evidentiary testing for concentration of
41 alcohol, or for the presence of drugs or other intoxicating substances is requested, the person
42 shall be informed that if the person refuses to submit to or fails to complete evidentiary testing,
43 or if the person submits to and completes evidentiary testing and the test results indicate an
44 alcohol concentration or the presence of drugs or other intoxicating substances in violation of

1 section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be informed substantially
2 as follows (but need not be informed verbatim):

3 If you refuse to submit to or if you fail to complete and pass evidentiary testing for
4 alcohol or other intoxicating substances:

5 (a) The peace officer will seize your driver's license and issue a notice of suspension and
6 a temporary driving permit to you, but no peace officer will issue you a temporary driving
7 permit if your driver's license or permit has already been and is suspended or revoked.
8 No peace officer shall issue a temporary driving permit to a driver of a commercial
9 vehicle who refuses to submit to or fails to complete and pass an evidentiary test;

10 (b) You have the right to request a hearing within seven (7) days of the notice of
11 suspension of your driver's license to show cause why you refused to submit to or
12 to complete and pass evidentiary testing and why your driver's license should not be
13 suspended;

14 (c) If you refused or failed to complete evidentiary testing and do not request a hearing
15 before the court or do not prevail at the hearing, your driver's license will be suspended.
16 The suspension will be for one (1) year if this is your first refusal. The suspension will
17 be for two (2) years if this is your second refusal within ten (10) years. You will not be
18 able to obtain a temporary restricted license during that period; ~~and~~

19 (d) If you complete evidentiary testing and fail the testing and do not request a hearing
20 before the department or do not prevail at the hearing, your driver's license will be
21 suspended. This suspension will be for ninety (90) days if this is your first failure
22 of evidentiary testing, but you may request restricted noncommercial vehicle driving
23 privileges after the first thirty (30) days. The suspension will be for one (1) year if this is
24 your second failure of evidentiary testing within five (5) years. You will not be able to
25 obtain a temporary restricted license during that period;

26 (e) If you become enrolled in and are a participant in good standing in a drug
27 court approved by the supreme court drug court and mental health court coordinating
28 committee under the provisions of chapter 56, title 19, Idaho Code, you shall be eligible
29 for restricted noncommercial driving privileges for the purpose of getting to and from
30 work, school or an alcohol treatment program, which may be granted by the presiding
31 judge of the drug court, provided that you have served a period of absolute suspension
32 of driving privileges of at least forty-five (45) days, that an ignition interlock device is
33 installed on each of the motor vehicles owned or operated, or both, by you and that you
34 have shown proof of financial responsibility; and

35 (f) After submitting to evidentiary testing you may, when practicable, at your own
36 expense, have additional tests made by a person of your own choosing.

37 (3) Rulemaking authority of the Idaho state police. The Idaho state police may, pursuant
38 to chapter 52, title 67, Idaho Code, prescribe by rule:

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

40 (b) What calibration or checking of testing equipment must be performed to comply
41 with the department's requirements. Any rules of the Idaho state police shall be in
42 accordance with the following: a test for alcohol concentration in breath as defined in
43 section 18-8004, Idaho Code, and subsection (1)(e) of this section will be valid for the
44 purposes of this section if the breath alcohol testing instrument was approved for testing
45 by the Idaho state police in accordance with section 18-8004, Idaho Code, at any time
46 within ninety (90) days before the evidentiary testing. A test for alcohol concentration in

1 blood or urine as defined in section 18-8004, Idaho Code, that is reported by the Idaho
2 state police or by any laboratory approved by the Idaho state police to perform this test
3 will be valid for the purposes of this section.

4 (4) Suspension.

5 (a) Upon receipt of the sworn statement of a peace officer that there existed legal cause
6 to believe a person had been driving or was in actual physical control of a motor vehicle
7 while under the influence of alcohol, drugs or other intoxicating substances and that
8 the person submitted to a test and the test results indicated an alcohol concentration or
9 the presence of drugs or other intoxicating substances in violation of section 18-8004,
10 18-8004C or 18-8006, Idaho Code, the department shall suspend the person's driver's
11 license, driver's permit, driving privileges or nonresident driving privileges:

12 (i) For a period of ninety (90) days for a first failure of evidentiary testing
13 under the provisions of this section. The first thirty (30) days of the suspension
14 shall be absolute and the person shall have absolutely no driving privileges of
15 any kind. Restricted noncommercial vehicle driving privileges applicable during
16 the remaining sixty (60) days of the suspension may be requested as provided in
17 subsection (9) of this section.

18 (ii) For a period of one (1) year for a second and any subsequent failure of
19 evidentiary testing under the provisions of this section within the immediately
20 preceding five (5) years. No driving privileges of any kind shall be granted during
21 the suspension imposed pursuant to this subsection.

22 The person may request an administrative hearing on the suspension as provided in
23 subsection (7) of this section. Any right to contest the suspension shall be waived if a
24 hearing is not requested as therein provided.

25 (b) The suspension shall become effective thirty (30) days after service upon the person
26 of the notice of suspension. The notice shall be in a form provided by the department and
27 shall state:

28 (i) The reason and statutory grounds for the suspension;

29 (ii) The effective date of the suspension;

30 (iii) The suspension periods to which the person may be subject as provided in
31 subsection (4)(a) of this section;

32 (iv) The procedures for obtaining restricted noncommercial vehicle driving
33 privileges;

34 (v) The rights of the person to request an administrative hearing on the
35 suspension and that if an administrative hearing is not requested within seven (7)
36 days of service of the notice of suspension the right to contest the suspension shall
37 be waived;

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

39 (vii) The right to judicial review of the hearing officer's decision on the suspension
40 and the procedures for seeking such review.

41 (c) Notwithstanding the provisions of subsection (4)(a)(i) and (ii) of this section, a
42 person who is enrolled in and is a participant in good standing in a drug court approved
43 by the supreme court drug court and mental health court coordinating committee
44 under the provisions of chapter 56, title 19, Idaho Code, shall be eligible for restricted
45 noncommercial driving privileges for the purpose of getting to and from work, school or
46 an alcohol treatment program, which may be granted by the presiding judge of the drug

court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the offender and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court program.

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

(a) The peace officer shall take possession of the person's driver's license, shall issue a temporary permit which shall be valid for a period not to exceed thirty (30) days from the date of issuance, and, acting on behalf of the department, will serve the person with a notice of suspension in the form and containing the information required under subsection (4) of this section. The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4)(b) of this section.

(b) Within five (5) business days following service of a notice of suspension the peace officer shall forward to the department a copy of the completed notice of suspension form upon which the date of service upon the driver shall be clearly indicated, a copy of any completed temporary permit form along with any confiscated driver's license, a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer, which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

(i) The identity of the person;

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

(iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code;

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

(v) That the person was lawfully arrested;

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

If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

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

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

10 (7) Administrative hearing on suspension. A person who has been served with a notice
11 of suspension after submitting to an evidentiary test may request an administrative hearing on
12 the suspension before a hearing officer designated by the department. The request for hearing
13 shall be in writing and must be received by the department within seven (7) calendar days of
14 the date of service upon the person of the notice of suspension, and shall include what issue or
15 issues shall be raised at the hearing. The date on which the hearing request was received shall
16 be noted on the face of the request.

17 If a hearing is requested, the hearing shall be held within twenty (20) days of the date
18 the hearing request was received by the department unless this period is, for good cause shown,
19 extended by the hearing officer for one ten (10) day period. Such extension shall not operate
20 as a stay of the suspension and any temporary permit shall expire thirty (30) days after service
21 of the notice of suspension, notwithstanding an extension of the hearing date beyond such
22 thirty (30) day period. Written notice of the date and time of the hearing shall be sent to the
23 party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The
24 department may conduct all hearings by telephone if each participant in the hearing has an
25 opportunity to participate in the entire proceeding while it is taking place.

26 The hearing shall be recorded. The sworn statement of the arresting officer, and the copy
27 of the notice of suspension and any temporary permit issued by the officer shall be admissible
28 at the hearing without further evidentiary foundation. The results of any tests for alcohol
29 concentration or the presence of drugs or other intoxicating substances by analysis of blood,
30 urine or breath administered at the direction of the peace officer and the records relating to
31 calibration, certification, approval or quality control pertaining to equipment utilized to perform
32 the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting
33 officer shall not be required to participate unless directed to do so by a subpoena issued by the
34 hearing officer.

35 The burden of proof shall be on the person requesting the hearing. The hearing officer
36 shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

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

38 (b) The officer did not have legal cause to believe the person had been driving or was in
39 actual physical control of a vehicle while under the influence of alcohol, drugs or other
40 intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or
41 18-8006, Idaho Code; or

42 (c) The test results did not show an alcohol concentration or the presence of drugs or
43 other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho
44 Code; or

45 (d) The tests for alcohol concentration, drugs or other intoxicating substances
46 administered at the direction of the peace officer were not conducted in accordance with

1 the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not
2 functioning properly when the test was administered; or

3 (e) The person was not informed of the consequences of submitting to evidentiary testing
4 as required in subsection (2) of this section.

5 If the hearing officer finds that the person has not met his burden of proof, he shall sustain
6 the suspension. The hearing officer shall make findings of fact and conclusions of law on
7 each issue and shall enter an order vacating or sustaining the suspension. If the suspension is
8 vacated, the person's driver's license, unless unavailable by reason of an existing suspension,
9 revocation, cancellation, disqualification or denial shall be returned to him. The findings of
10 fact, conclusions of law and order entered by the hearing officer shall be considered a final
11 order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for
12 reconsideration of such order shall be allowed and new evidence can be submitted.

13 The facts as found by the hearing officer shall be independent of the determination of
14 the same or similar facts in the adjudication of any criminal charges arising out of the same
15 occurrence. The disposition of those criminal charges shall not affect the suspension required
16 to be imposed under the provisions of this section. If a license is suspended under this section
17 and the person is also convicted on criminal charges arising out of the same occurrence for
18 a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the
19 suspension under this section and the suspension imposed pursuant to the provisions of section
20 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension shall run
21 concurrently, with the total period of suspension not to exceed the longer of the applicable
22 suspension periods, unless the court ordering the suspension in the criminal case orders to the
23 contrary.

24 (8) Judicial review. A party aggrieved by the decision of the hearing officer may seek
25 judicial review of the decision in the manner provided for judicial review of final agency action
26 provided in chapter 52, title 67, Idaho Code.

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

39 (10) Rules. The department may adopt rules under the provisions of chapter 52, title 67,
40 Idaho Code, deemed necessary to implement the provisions of this section.

41 SECTION 3. That Section 18-8004A, Idaho Code, be, and the same is hereby amended
42 to read as follows:

43 18-8004A. PENALTIES – PERSONS UNDER 21 WITH LESS THAN 0.08
44 ALCOHOL CONCENTRATION. (1) Any person found guilty of a violation of subsection

1 (1)(d) of section 18-8004, Idaho Code, shall be guilty of a misdemeanor; and, for a first
2 offense:

3 (a) Shall be fined an amount not to exceed one thousand dollars (\$1,000);

4 (b) Shall have his driving privileges suspended by the court for a period of one (1) year,
5 ninety (90) days of which shall not be reduced and during which period absolutely no
6 driving privileges of any kind may be granted. After the period of absolute suspension
7 of driving privileges has passed, the defendant may request restricted driving privileges
8 which the court may allow, if the defendant shows by a preponderance of the evidence
9 that driving privileges are necessary as deemed appropriate by the court;

10 (c) Shall be advised by the court in writing at the time of sentencing of the penalties
11 that will be imposed for any subsequent violation of the provisions of this section or any
12 violation of section 18-8004, Idaho Code, which advice shall be signed by the defendant,
13 and a copy retained by the court and another copy retained by the prosecuting attorney;

14 (d) Shall be required to undergo an alcohol evaluation and otherwise comply with the
15 requirements of sections ~~18-8005(911)~~ and ~~18-8005(124)~~, Idaho Code, as ordered by the
16 court.

17 (2) Any person who pleads guilty to or is found guilty of a violation of the provisions
18 of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty
19 of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b), (c) or (d),
20 Idaho Code, or any substantially conforming foreign criminal violation, as defined in section
21 18-8005(~~§10~~), Idaho Code, notwithstanding the form of the judgment or withheld judgment, is
22 guilty of a misdemeanor; and:

23 (a) Shall be sentenced to jail for a mandatory minimum period of five (5) days, as
24 required by 23 U.S.C. section 164, not to exceed thirty (30) days;

25 (b) Shall be fined an amount of not less than five hundred dollars (\$500) nor more than
26 two thousand dollars (\$2,000);

27 (c) Shall have his driving privileges suspended by the court for a period not to exceed
28 two (2) years, one (1) year of which shall be absolute and shall not be reduced and during
29 which period absolutely no driving privileges of any kind may be granted;

30 (d) Shall, while operating a motor vehicle, be required to drive only a motor vehicle
31 equipped with a functioning ignition interlock system, as provided in section 18-8008,
32 Idaho Code, following the mandatory one (1) year license suspension period; ~~and~~

33 (e) Shall be advised by the court in writing at the time of sentencing of the penalties
34 that will be imposed for subsequent violations of the provisions of this section or section
35 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained
36 by the court and another copy retained by the prosecuting attorney; and

37 (f) Shall undergo an alcohol evaluation and comply with the other requirements of
38 subsections (~~911~~) and (~~124~~) of section 18-8005, Idaho Code.

39 (3) Any person who pleads guilty to or is found guilty of a violation of the provisions
40 of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of
41 or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b),
42 (c) or (d), Idaho Code, or any substantially conforming foreign criminal violation, within five
43 (5) years, notwithstanding the form of the judgment or withheld judgment, shall be guilty of a
44 misdemeanor; and:

45 (a) Shall be sentenced to jail for a mandatory minimum period of ten (10) days, as
46 required by 23 U.S.C. section 164, not to exceed six (6) months;

- 1 (b) Shall be fined an amount of not less than one thousand dollars (\$1,000) nor more
- 2 than two thousand dollars (\$2,000);
- 3 (c) Shall surrender his driver's license or permit to the court;
- 4 (d) Shall have his driving privileges suspended by the court for a mandatory minimum
- 5 period of one (1) year, during which period absolutely no driving privileges of any kind
- 6 may be granted, or until such person reaches the age of twenty-one (21) years, whichever
- 7 is greater; ~~and~~
- 8 (e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle
- 9 equipped with a functioning ignition interlock system, as provided in section 18-8008,
- 10 Idaho Code, following the mandatory one (1) year license suspension period; and
- 11 (f) Shall undergo an alcohol evaluation and comply with all other requirements imposed
- 12 by the court pursuant to sections ~~18-8005(911)~~ and ~~18-8005(124)~~, Idaho Code.
- 13 (4) All provisions of section 18-8005, Idaho Code, not otherwise in conflict with or
- 14 provided for in this section shall apply to any sentencing imposed under the provisions of this
- 15 section.
- 16 (5) A person violating the provisions of section 18-8004(1)(d), Idaho Code, may be
- 17 prosecuted under title 20, Idaho Code.
- 18 (6) Any person whose driving privileges are suspended, revoked, canceled or disqualified
- 19 under the provisions of this chapter shall not be granted privileges to operate a commercial
- 20 motor vehicle during the period of suspension, revocation, cancellation or disqualification.

21 SECTION 4. That Section 18-8004C, Idaho Code, be, and the same is hereby amended
 22 to read as follows:

23 18-8004C. EXCESSIVE ALCOHOL CONCENTRATION –
 24 PENALTIES. Notwithstanding any provision of section 18-8005, Idaho Code, to the contrary:

- 25 (1) Any person who pleads guilty to or is found guilty of a violation of the provisions of
- 26 section 18-8004(1)(a), Idaho Code, for the first time, but who has an alcohol concentration of
- 27 0.20, as defined in section 18-8004(4), Idaho Code, or more, as shown by an analysis of his
- 28 blood, breath or urine by a test requested by a police officer, shall be guilty of a misdemeanor;
- 29 and:
- 30 (a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10)
- 31 days the first forty-eight (48) hours of which must be consecutive, and may be sentenced
- 32 to not more than one (1) year;
- 33 (b) May be fined an amount not to exceed two thousand dollars (\$2,000);
- 34 (c) Shall be advised by the court in writing at the time of sentencing, of the penalties that
- 35 will be imposed for subsequent violations of the provisions of this section and violations
- 36 of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a
- 37 copy retained by the court and another copy retained by the prosecuting attorney;
- 38 (d) Shall surrender his driver's license or permit to the court;
- 39 (e) Shall have his driving privileges suspended by the court for an additional mandatory
- 40 minimum period of one (1) year after release from confinement, during which one (1)
- 41 year period absolutely no driving privileges of any kind may be granted; and
- 42 (2) Any person who pleads guilty to or is found guilty of a violation of the provisions
- 43 of section 18-8004, Idaho Code, and who has an alcohol concentration of 0.20, as defined in
- 44 section 18-8004(4), Idaho Code, or more, as shown by an analysis of his blood, breath or
- 45 urine by a test requested by a police officer, and who previously has been found guilty of or

1 has pled guilty to one (1) or more violations of section 18-8004, Idaho Code, in which the
2 person had an alcohol concentration of 0.20 or more, or any substantially conforming foreign
3 criminal violation wherein the defendant had an alcohol concentration of 0.20 or more, or any
4 combination thereof, within five (5) years, notwithstanding the form of judgment or withheld
5 judgment shall be guilty of a felony; and:

6 (a) Shall be sentenced to the custody of the state board of correction for not to
7 exceed five (5) years; provided that notwithstanding the provisions of section 19-2601,
8 Idaho Code, should the court impose any sentence other than incarceration in the state
9 penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum
10 period of not less than thirty (30) days; and further provided that notwithstanding the
11 provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed
12 a felony;

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

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

15 (d) Shall have his driving privileges suspended by the court for a mandatory minimum
16 period of one (1) year after release from imprisonment, and may have his driving
17 privileges suspended by the court for not to exceed five (5) years after release from
18 imprisonment, during which time he shall have absolutely no driving privileges of any
19 kind; and

20 (e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle
21 equipped with a functioning ignition interlock system, as provided in section 18-8008,
22 Idaho Code, following the mandatory license suspension period.

23 (3) Notwithstanding the provisions of subsections (1)(e) and (2)(d) of this section, a
24 person who is enrolled in and is a participant in good standing in a drug court approved by the
25 supreme court drug court and mental health court coordinating committee under the provisions
26 of chapter 56, title 19, Idaho Code, shall be eligible for restricted noncommercial driving
27 privileges for the purpose of getting to and from work, school or an alcohol treatment program,
28 which may be granted by the presiding judge of the drug court, provided that the offender has
29 served a period of absolute suspension of driving privileges of at least forty-five (45) days,
30 that an ignition interlock device is installed on each of the motor vehicles owned or operated,
31 or both, by the offender, and that the offender has shown proof of financial responsibility as
32 defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted
33 noncommercial driving privileges may be continued if the offender successfully completes the
34 drug court, and that the court may revoke such privileges for failure to comply with the terms
35 of probation or with the terms and conditions of the drug court program.

36 (4) All the provisions of section 18-8005, Idaho Code, not in conflict with or otherwise
37 provided for in this section, shall apply to this section.

38 (45) Notwithstanding any other provision of law, any evidence of conviction under this
39 section shall be admissible in any civil action for damages resulting from the occurrence. A
40 conviction for the purposes of this section means that the person has pled guilty or has been
41 found guilty, notwithstanding the form of the judgment or withheld judgment.

42 SECTION 5. That Section 18-8005, Idaho Code, be, and the same is hereby amended to
43 read as follows:

1 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found guilty of a
2 violation of the provisions of section 18-8004(1)(a) ~~or (5)~~, Idaho Code, for the first time is
3 guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

4 (a) May be sentenced to jail for a term not to exceed six (6) months;

5 (b) May be fined an amount not to exceed one thousand dollars (\$1,000);

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

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

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

21 (a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

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

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

26 (a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

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

28 (4) Any person who pleads guilty to or is found guilty of a violation of the provisions
29 of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty
30 of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b) or (c),
31 Idaho Code, or any substantially conforming foreign criminal violation within ten (10) years,
32 notwithstanding the form of the judgment(s) or withheld judgment(s), and except as provided in
33 section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, except as provided in section
34 18-8004C, Idaho Code:

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

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

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

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

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

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

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

10 (~~6~~) Except as provided in section 18-8004C, Idaho Code, any person who pleads
11 guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or
12 (c), Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or
13 more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any
14 substantially conforming foreign criminal violation, or any combination thereof, within ten (10)
15 years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a
16 felony; and

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

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

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

27 (d) Shall have his driving privileges suspended by the court for a mandatory minimum
28 period of one (1) year after release from imprisonment, and may have his driving
29 privileges suspended by the court for not to exceed five (5) years after release from
30 imprisonment, during which time he shall have absolutely no driving privileges of any
31 kind; and

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

35 (~~6~~7) Notwithstanding the provisions of subsections (4)(e) and (6)(d) of this section, any
36 person who is enrolled in and is a participant in good standing in a drug court approved by the
37 supreme court drug court and mental health court coordinating committee under the provisions
38 of chapter 56, title 19, Idaho Code, shall be eligible for restricted noncommercial driving
39 privileges for the purpose of getting to and from work, school or an alcohol treatment program,
40 which may be granted by the presiding judge of the drug court, provided that the offender has
41 served a period of absolute suspension of driving privileges of at least forty-five (45) days,
42 that an ignition interlock device is installed on each of the motor vehicles owned or operated,
43 or both, by the offender and that the offender has shown proof of financial responsibility as
44 defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted
45 noncommercial driving privileges may be continued if the offender successfully completes the

1 drug court, and that the court may revoke such privileges for failure to comply with the terms
2 of probation or with the terms and conditions of the drug court program.

3 (8) For the purpose of computation of the enhancement period in subsections (4), (~~5~~)
4 and (~~7~~) of this section, the time that elapses between the date of commission of the offense
5 and the date the defendant pleads guilty or is found guilty for the pending offense shall be
6 excluded. If the determination of guilt against the defendant is reversed upon appeal, the time
7 that elapsed between the date of the commission of the offense and the date the defendant
8 pleads guilty or is found guilty following the appeal shall also be excluded.

9 (~~7~~) Notwithstanding the provisions of subsections (4) and (~~5~~) of this section, any
10 person who has pled guilty or has been found guilty of a felony violation of the provisions
11 of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C,
12 Idaho Code, a violation of the provisions of section 18-8006, Idaho Code, a violation of the
13 provisions of section 18-4006 3.(b), Idaho Code, or any substantially conforming foreign
14 criminal felony violation, and within fifteen (15) years pleads guilty or is found guilty of a
15 further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony
16 and shall be sentenced pursuant to subsection (~~5~~) of this section.

17 (~~8~~) For the purpose of subsections (4), (~~5~~) and (~~7~~) of this section and the provisions
18 of section 18-8004C, Idaho Code, a substantially conforming foreign criminal violation exists
19 when a person has pled guilty to or has been found guilty of a violation of any federal law or
20 law of another state, or any valid county, city, or town ordinance of another state substantially
21 conforming to the provisions of section 18-8004, Idaho Code. The determination of whether a
22 foreign criminal violation is substantially conforming is a question of law to be determined by
23 the court.

24 (~~9~~) Any person who pleads guilty to or is found guilty of a violation of the provisions
25 of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall undergo, at his own expense,
26 (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho
27 Code,) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation
28 facility approved by the Idaho department of health and welfare; provided however, if the
29 defendant has no prior or pending charges with respect to the provisions of section 18-8004,
30 18-8004C or 18-8006, Idaho Code, and the court has the records and information required
31 under subsections (~~10~~)(a), (b) and (c) of this section or possesses information from other
32 reliable sources relating to the defendant's use or nonuse of alcohol or drugs which does not
33 give the court any reason to believe that the defendant regularly abuses alcohol or drugs and
34 is in need of treatment, the court may, in its discretion, waive the evaluation with respect to
35 sentencing for a violation of section 18-8004 or 18-8004C(1), Idaho Code, and proceed to
36 sentence the defendant. The court may also, in its discretion, waive the requirement of an
37 alcohol evaluation with respect to a defendant's violation of the provisions of section 18-8004,
38 18-8004C or 18-8006, Idaho Code, and proceed to sentence the defendant if the court has a
39 presentence investigation report, substance abuse assessment, criminogenic risk assessment,
40 or other assessment which evaluates the defendant's degree of alcohol abuse and need for
41 alcohol treatment conducted within twelve (12) months preceding the date of the defendant's
42 sentencing. In the event an alcohol evaluation indicates the need for alcohol treatment, the
43 evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment
44 program, together with the estimated cost thereof, and recommendations for other suitable
45 alternative treatment programs, together with the estimated costs thereof. The person shall
46 request that a copy of the completed evaluation be forwarded to the court. The court shall

1 take the evaluation into consideration in determining an appropriate sentence. If a copy of the
2 completed evaluation has not been provided to the court, the court may proceed to sentence
3 the defendant; however, in such event, it shall be presumed that alcohol treatment is required
4 unless the defendant makes a showing by a preponderance of evidence that treatment is not
5 required. If the defendant has not made a good faith effort to provide the completed copy of
6 the evaluation to the court, the court may consider the failure of the defendant to provide the
7 report as an aggravating circumstance in determining an appropriate sentence. If treatment is
8 ordered, in no event shall the person or facility doing the evaluation be the person or facility
9 that provides the treatment unless this requirement is waived by the sentencing court, with the
10 exception of federally recognized Indian tribes or federal military installations, where diagnosis
11 and treatment are appropriate and available. Nothing herein contained shall preclude the use of
12 funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered
13 alcohol treatment for indigent defendants.

14 (~~102~~) At the time of sentencing, the court shall be provided with the following
15 information:

- 16 (a) The results, if administered, of any evidentiary test for alcohol and/or drugs;
17 (b) A computer or teletype or other acceptable copy of the person's driving record;
18 (c) Information as to whether the defendant has pled guilty to or been found guilty of
19 violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, or a
20 similar offense within the past five (5) years, notwithstanding the form of the judgment(s)
21 or withheld judgment(s); and
22 (d) The alcohol evaluation required in subsection (~~911~~) of this section, if any.

23 (~~143~~) A minor may be prosecuted for a violation of the provisions of section 18-8004
24 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code. In addition to any other
25 penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of
26 section 18-8004(1)(a), (b) or (c) or 18-8004C, Idaho Code, he shall have his driving privileges
27 suspended or denied for an additional one (1) year following the end of any period of
28 suspension or revocation existing at the time of the violation, or until he reaches the age of
29 twenty-one (21) years, whichever period is greater. During the period of additional suspension
30 or denial, absolutely no driving privileges shall be allowed.

31 (~~124~~) In the event that the alcohol evaluation required in subsection (~~911~~) of this section
32 recommends alcohol treatment, the court shall order the person to complete a treatment
33 program in addition to any other sentence which may be imposed, unless the court determines
34 that alcohol treatment would be inappropriate or undesirable, in which event, the court shall
35 enter findings articulating the reasons for such determination on the record. The court shall
36 order the defendant to complete the preferred treatment program set forth in the evaluation, or a
37 comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate
38 financial resources for such treatment. In that event, the court may order the defendant to
39 complete a less costly alternative set forth in the evaluation, or a comparable program. Such
40 treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event
41 that funding is provided for or on behalf of the defendant by an entity of state government,
42 restitution shall be ordered to such governmental entity in accordance with the restitution
43 procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing
44 contained herein shall be construed as requiring a court to order that a governmental entity shall
45 provide alcohol treatment at government expense unless otherwise required by law.

1 (135) Any person who is disqualified, or whose driving privileges have been suspended,
2 revoked or canceled under the provisions of this chapter, shall not be granted restricted driving
3 privileges to operate a commercial motor vehicle.