

IN THE SENATE

SENATE BILL NO. 1398

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES AND CRIMES AND PUNISHMENT; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE CERTAIN PENALTY PROVISIONS.

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

SECTION 1. That Section 18-8005, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who

1 previously has been found guilty of or has pled guilty to a violation of
2 the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any
3 substantially conforming foreign criminal violation within ten (10) years,
4 notwithstanding the form of the judgment(s) or withheld judgment(s),
5 and except as provided in section 18-8004C, Idaho Code, is guilty of a
6 misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

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

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

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

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

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

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

30 (5) If the person has pled guilty or was found guilty for the second
31 time within ten (10) years of a violation of the provisions of section
32 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,
33 Idaho Code, shall apply.

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

42 (a) Shall be sentenced to the custody of the state board of correction
43 for not to exceed ten (10) years; provided that notwithstanding the
44 provisions of section 19-2601, Idaho Code, should the court impose
45 any sentence other than incarceration in the state penitentiary, the
46 defendant shall be sentenced to the county jail for a mandatory minimum
47 period of not less than thirty (30) days, the first forty-eight (48)
48 hours of which must be consecutive, and ten (10) days of which must
49 be served in jail, as required by 23 U.S.C. section 164; and further

1 provided that notwithstanding the provisions of section 18-111, Idaho
2 Code, a conviction under this section shall be deemed a felony;

3 (b) Maybe fined an amount not to exceed five thousand dollars (\$5,000);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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