

IN THE SENATE

SENATE BILL NO. 1337

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE SEXUAL EXPLOITATION OF A CHILD; AMENDING SECTION 18-1505B,
2 IDAHO CODE, TO DEFINE A TERM, TO REVISE A DEFINITION AND TO REMOVE A CODE
3 REFERENCE; AMENDING SECTION 18-1507, IDAHO CODE, TO REMOVE LEGISLA-
4 TIVE FINDINGS, TO REMOVE A DEFINITION, TO REVISE A DEFINITION AND TO
5 REVISE PROVISIONS RELATING TO SEXUAL EXPLOITATION OF A CHILD AND PENAL-
6 TIES; REPEALING SECTION 18-1507A, IDAHO CODE, RELATING TO POSSESSION
7 OF SEXUALLY EXPLOITATIVE MATERIAL FOR OTHER THAN A COMMERCIAL PURPOSE;
8 AMENDING SECTION 18-8304, IDAHO CODE, TO REMOVE A CODE REFERENCE AND TO
9 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 19-3004A, IDAHO CODE, TO
10 REMOVE A CODE REFERENCE; AMENDING SECTION 19-5506, IDAHO CODE, TO RE-
11 VISE A CODE REFERENCE; AMENDING SECTION 33-1208, IDAHO CODE, TO REMOVE
12 A CODE REFERENCE; AND AMENDING SECTION 39-1113, IDAHO CODE, TO REMOVE
13 CODE REFERENCES.
14

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

16 SECTION 1. That Section 18-1505B, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 18-1505B. SEXUAL ABUSE AND EXPLOITATION OF A VULNERABLE ADULT. (1) It
19 is a felony for any person, with the intent of arousing, appealing to or grat-
20 ifying the lust, passion or sexual desires of such person, a vulnerable adult
21 or a third party, to:

22 (a) Commit any lewd or lascivious act or acts upon or with the body or
23 any part or member thereof of a vulnerable adult including, but not lim-
24 ited to: genital-genital contact, oral-genital contact, anal-genital
25 contact, oral-anal contact, manual-anal contact or manual-genital con-
26 tact, whether between persons of the same or opposite sex;

27 (b) Involve a vulnerable adult in any act of bestiality or sado-
28 masochism as defined in section 18-1507, Idaho Code; or

29 (c) Cause or have sexual contact with a vulnerable adult, not amounting
30 to lewd conduct as defined in paragraph (a) of this subsection.

31 (2) For the purposes of this section:

32 (a) "Commercial purpose" means the intention, objective, anticipation
33 or expectation of monetary gain or other material consideration, com-
34 penensation, remuneration or profit.

35 (b) "Sexual contact" means any physical contact between a vulnerable
36 adult and any person or between vulnerable adults, which is caused by
37 the actor, or the actor causing the vulnerable adult to have self-con-
38 tact;

39 (c) "Sexually exploitative material" means any image, photograph, mo-
40 tion picture, videotape, print, negative, slide or other mechanically,
41 electronically, digitally or chemically produced or reproduced visual
42 material that depicts shows a vulnerable adult engaged in, participat-

ing in, observing or being used for explicit sexual conduct ~~as defined in section 18-1507, Idaho Code,~~ or showing a vulnerable adult engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling; and

(ed) "Vulnerable adult" is as defined in section 18-1505, Idaho Code.

(3) Sexual abuse of a vulnerable adult is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed twenty-five (25) years or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both such fine and imprisonment.

(4) It shall be a felony for any person to commit sexual exploitation of a vulnerable adult if, for any commercial purpose, ~~as defined in section 18-1507, Idaho Code,~~ he knowingly:

(a) Causes, induces or permits a vulnerable adult to engage in or be used in any explicit sexual conduct as defined in section 18-1507, Idaho Code; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses or distributes sexually exploitative material.

(5) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

(6) Sexual exploitation of a vulnerable adult shall be punishable by imprisonment in the state prison for a period not to exceed fifteen (15) years or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both such fine and imprisonment.

SECTION 2. That Section 18-1507, Idaho Code, be, and the same is hereby amended to read as follows:

18-1507. DEFINITIONS -- SEXUAL EXPLOITATION OF A CHILD -- PENALTIES. (1) ~~The legislature hereby finds and declares that the commercial sexual exploitation of children constitutes a wrongful invasion of the child's right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of eighteen (18) years is incapable of giving informed consent to the use of his or her body for a commercial purpose; and that to protect children from commercial sexual exploitation it is necessary to prohibit the production for trade or commerce of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.~~

~~(2)~~ As used in this section, unless the context otherwise requires:

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(b) "Child" means a person who is less than eighteen (18) years of age.

~~(c) "Commercial purpose" means the intention, objective, anticipation, or expectation of monetary gain or other material consideration, compensation, remuneration, or profit.~~

~~(d)~~ "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a

1 female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.
 2 "Erotic fondling" shall not be construed to include physical contact,
 3 even if affectionate, which is not for the purpose of real or simulated
 4 overt sexual gratification or stimulation of one (1) or more of the persons involved.
 5

6
 7 (ed) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.
 8
 9

10
 11 (fe) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.
 12
 13

14
 15 (gf) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.
 16
 17
 18
 19
 20
 21
 22
 23

24 (hg) "Sadomasochism" means:

25 (i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

26 (ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.
 27
 28
 29

30 (ih) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.
 31
 32

33 (ji) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.
 34
 35
 36

37 (kj) "Sexually exploitative material" means any image, photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced visual material which depicts shows a child engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a child engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling.
 38
 39
 40
 41
 42
 43
 44

45 (32) A person commits sexual exploitation of a child if, ~~for any commercial purpose, he knowingly the person:~~

46 (a) ~~Causes, induces, or permits a child to engage in, or be used for, any explicit sexual conduct~~ Knowingly and willfully possesses or accesses through any means including, but not limited to, the internet, any sexually exploitative material; or
 47
 48
 49
 50

1 ~~(b) Prepares, arranges for, publishes, produces, Knowingly and will-~~
 2 ~~fully promotes, makes, sells, finances, offers, exhibits, advertises,~~
 3 ~~deals in, possesses, or distributes any the sale or exchange of or~~
 4 ~~access to sexually exploitative material if such person prepares, ar-~~
 5 ~~ranges for, publishes, produces, promotes, makes, sells, finances,~~
 6 ~~offers, exhibits, advertises or deals in the sale, exchange or distri-~~
 7 ~~bution of any sexually exploitative material; or~~

8 ~~(c) Knowingly distributes through any means including, but not lim-~~
 9 ~~ited to, mail, physical delivery or exchange, use of a computer or any~~
 10 ~~other electronic or digital method, any sexually exploitative mate-~~
 11 ~~rial. Distribution of sexually exploitative material does not require~~
 12 ~~a pecuniary transaction or exchange of interests in order to complete~~
 13 ~~the offense.~~

14 ~~(4) The possession by any person of three (3) or more identical copies~~
 15 ~~of any sexually exploitative material shall create a presumption that such~~
 16 ~~possession is for a commercial purpose.~~

17 ~~(3) The sexual exploitation of a child pursuant to subsection (2) (a) of~~
 18 ~~this section is a felony and shall be punishable by imprisonment in the state~~
 19 ~~prison for a period not to exceed ten (10) years or by a fine not to exceed ten~~
 20 ~~thousand dollars (\$10,000), or by both such imprisonment and fine.~~

21 ~~(54) The sexual exploitation of a child pursuant to subsections (2) (b)~~
 22 ~~and (2) (c) of this section is a felony and shall be punishable by imprison-~~
 23 ~~ment in the state prison for a term not to exceed thirty (30) years or by a~~
 24 ~~fine not to exceed fifty thousand dollars (\$50,000) or by both such fine and~~
 25 ~~imprisonment.~~

26 ~~(65) If any provision of this section or the application thereof to any~~
 27 ~~person or circumstance is held invalid, such invalidity shall not affect~~
 28 ~~other provisions or applications of this section which can be given effect~~
 29 ~~without the invalid provision or application, and to this end the provisions~~
 30 ~~of this section are declared to be severable.~~

31 SECTION 3. That Section [18-1507A](#), Idaho Code, be, and the same is hereby
 32 repealed.

33 SECTION 4. That Section 18-8304, Idaho Code, be, and the same is hereby
 34 amended to read as follows:

35 18-8304. APPLICATION OF CHAPTER -- RULEMAKING AUTHORITY. (1) The pro-
 36 visions of this chapter shall apply to any person who:

37 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
 38 solicitation, or a conspiracy to commit a crime provided for in section
 39 18-909 (assault with intent to commit rape, infamous crime against na-
 40 ture, or lewd and lascivious conduct with a minor, but excluding mayhem,
 41 murder or robbery), 18-911 (battery with intent to commit rape, infa-
 42 mous crime against nature, or lewd and lascivious conduct with a minor,
 43 but excluding mayhem, murder or robbery), 18-919 (sexual exploitation
 44 by a medical care provider), 18-1505B (sexual abuse and exploitation
 45 of a vulnerable adult), 18-1506 (sexual abuse of a child under six-
 46 teen years of age), 18-1506A (ritualized abuse of a child), 18-1507
 47 (sexual exploitation of a child), ~~18-1507A (possession of sexually~~
 48 ~~exploitative material for other than a commercial purpose), 18-1508~~

1 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor
2 child sixteen or seventeen years of age), 18-1509A (enticing a child
3 over the internet), 18-4003(d) (murder committed in perpetration of
4 rape), 18-4116 (indecent exposure, but excluding a misdemeanor conviction),
5 18-4502 (first degree kidnapping committed for the purpose of
6 rape, committing the infamous crime against nature or for committing
7 any lewd and lascivious act upon any child under the age of sixteen, or
8 for purposes of sexual gratification or arousal), 18-4503 (second degree
9 kidnapping where the victim is an unrelated minor child), 18-5605
10 (detention for prostitution), 18-5609 (inducing person under eighteen
11 years of age into prostitution), 18-5611 (inducing person under eighteen
12 years of age to patronize a prostitute), 18-6101 (rape, but excluding
13 18-6101(1) where the defendant is eighteen years of age or where the
14 defendant is exempted under subsection (4) of this section), 18-6108
15 (male rape, but excluding 18-6108(1) where the defendant is eighteen
16 years of age or where the defendant is exempted under subsection (4) of
17 this section), 18-6110 (sexual contact with a prisoner), 18-6602 (incest),
18 18-6605 (crime against nature), 18-6608 (forcible sexual penetration by use of a foreign object),
19 18-6609 (video voyeurism where the victim is a minor or upon a second or subsequent conviction),
20 18-7804 (if the racketeering act involves kidnapping of a minor) or 18-8602(1),
21 Idaho Code, (sex trafficking).

22 (b) On or after July 1, 1993, has been convicted of any crime, an attempt,
23 a solicitation or a conspiracy to commit a crime in another jurisdiction
24 or who has a foreign conviction that is substantially equivalent to the offenses
25 listed in subsection (1) (a) of this section and enters this state to establish
26 residence or for employment purposes or to attend, on a full-time or part-time
27 basis, any public or private educational institution including any secondary school,
28 trade or professional institution or institution of higher education.

29 (c) Has been convicted of any crime, an attempt, a solicitation or a
30 conspiracy to commit a crime in another jurisdiction, including military courts,
31 that is substantially equivalent to the offenses listed in subsection (1) (a)
32 of this section and was required to register as a sex offender in any other
33 state or jurisdiction when he established residency in Idaho.

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

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

42 (2) An offender shall not be required to comply with the registration
43 provisions of this chapter while incarcerated in a correctional institution
44 of the department of correction, a county jail facility, committed to the
45 department of juvenile corrections or committed to a mental health institution
46 of the department of health and welfare.

1 (3) A conviction for purposes of this chapter means that the person has
2 pled guilty or has been found guilty, notwithstanding the form of the judg-
3 ment or withheld judgment.

4 (4) When a defendant is convicted of rape under section 18-6101(2) or
5 18-6108(2), Idaho Code, and at the time of the offense the defendant is nine-
6 teen (19) or twenty (20) years of age and not more than three (3) years older
7 than the victim of the rape, the court may order that the defendant is exempt
8 from the requirements of this chapter upon a finding by the court that:

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

10 (b) The defendant has demonstrated by clear and convincing evidence
11 that he is not a risk to commit another crime identified in subsection
12 (1) of this section and in the case there were no allegations by the
13 victim of any violation of section 18-6101(3) through (9) or 18-6108(3)
14 through (7), Idaho Code.

15 (5) The department shall have authority to promulgate rules to imple-
16 ment the provisions of this chapter.

17 SECTION 5. That Section 19-3004A, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 19-3004A. ADMINISTRATIVE SUBPOENA -- ELECTRONIC COMMUNICATION AND
20 REMOTE COMPUTING SERVICES. (1) A provider of an electronic communication
21 service or remote computing service that is transacting or has transacted
22 any business in the state shall disclose the following to a prosecuting at-
23 torney or the attorney general pursuant to an administrative subpoena issued
24 by the prosecuting attorney or attorney general:

25 (a) Records and information in its possession containing the name, ad-
26 dress, local and long distance telephone connection records, or records
27 of session times and durations, length of service, including the start
28 date; and

29 (b) Records and information in its possession containing the types of
30 service utilized, telephone or instrument number or other subscriber
31 number or identity, including any temporarily assigned network ad-
32 dress; and

33 (c) Records and information in its possession relating to the means and
34 source of payment for such service pertaining to a subscriber to or cus-
35 tomer of such service.

36 The provider of an electronic communication service or remote computing
37 service shall deliver the records to the prosecuting attorney or attorney
38 general within fourteen (14) days of receipt of the subpoena.

39 (2) For the purpose of this section, the following definitions shall
40 apply:

41 (a) "Electronic communication service" has the same meaning as pro-
42 vided in section 18-6701(13), Idaho Code.

43 (b) "Remote computing service" means the provision to the public of
44 computer storage or processing service by means of an electronic commu-
45 nications system as defined in section 18-6701(12), Idaho Code.

46 (3) In order to obtain the records or information, the prosecuting
47 attorney or attorney general shall certify on the face of the subpoena that
48 there is reason to believe that the records or information being sought are
49 relevant to a legitimate law enforcement investigation concerning a viola-

1 tion of section 18-1505B, 18-1506, 18-1506A, 18-1507, ~~18-1507A~~, 18-1508,
2 18-1508A, 18-1509, 18-1509A, 18-1515, 18-2202 or 18-6609, Idaho Code.

3 (4) No subpoena issued pursuant to this section shall demand records
4 that disclose the content of electronic communications or subscriber
5 account records disclosing internet locations which have been accessed in-
6 cluding, but not limited to, websites, chat channels and news groups, but
7 excluding servers used to initially access the internet. No recipient of a
8 subpoena issued pursuant to this section shall provide any such content or
9 records accessed, in response to the subpoena.

10 (5) On a motion made by the electronic communication service or remote
11 computing service provider prior to the time for appearance or the produc-
12 tion of documents under the subpoena issued pursuant to this section, a court
13 of competent jurisdiction may quash or modify the administrative subpoena if
14 the provider establishes that the records or other information requested are
15 unusually voluminous in nature or if compliance with the subpoena would oth-
16 erwise cause an undue burden on the service provider.

17 (6) No cause of action shall lie in any court against an electronic
18 communication service or remote computing service provider, its officers,
19 employees, agents or other specified persons for providing information,
20 facilities or assistance in accordance with the terms of an administrative
21 subpoena issued under this section.

22 (7) A person who is subpoenaed under this section and who fails to ap-
23 pear or produce materials as required by the subpoena, or who refuses to be
24 sworn or give testimony, may be found to be in contempt of court. Proceed-
25 ings to hold a person in contempt under this subsection may be brought in the
26 county where the subpoena was issued.

27 (8) Nothing in this section shall limit the right of a prosecuting at-
28 torney or the attorney general to otherwise obtain records or information
29 from a provider of electronic communication service or remote computing ser-
30 vice pursuant to a search warrant, a court order or a grand jury or trial sub-
31 poena.

32 SECTION 6. That Section 19-5506, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 19-5506. SCOPE OF LAW -- OFFENDERS SUBJECT TO SAMPLE COLLECTION --
35 EARLY COLLECTION OF SAMPLES -- RESTITUTION. (a) Any person, including any
36 juvenile tried as an adult, who is convicted of, or pleads guilty to, any of
37 the following crimes, regardless of the form of judgment or withheld judg-
38 ment, and regardless of the sentence imposed or disposition rendered, shall
39 be required to provide to the Idaho state police, a DNA sample and a right
40 thumbprint impression:

- 41 (1) Arson (sections 18-802, 18-803, 18-804 and 18-805, Idaho Code);
- 42 (2) Aggravated assault (section 18-905, Idaho Code);
- 43 (3) Aggravated battery (section 18-907, Idaho Code);
- 44 (4) Assault with the intent to commit a serious felony (section 18-909,
45 Idaho Code);
- 46 (5) Battery with the intent to commit a serious felony (section 18-911,
47 Idaho Code);
- 48 (6) Felonious administering of drugs (sections 18-913 and 18-914,
49 Idaho Code);

- 1 (7) Assault or battery upon certain personnel (section 18-915, Idaho
2 Code);
- 3 (8) Removing a firearm from a law enforcement officer (section 18-915A,
4 Idaho Code);
- 5 (9) Propelling bodily fluid or waste (section 18-915B, Idaho Code);
- 6 (10) Domestic violence (section 18-918, Idaho Code, constituting a
7 felony);
- 8 (11) Burglary (sections 18-1401 and 18-1405, Idaho Code), except those
9 convictions in which the defendant entered a retail mercantile es-
10 tablishment and the offense took place when the victim was open to the
11 public for business and the defendant committed a theft and his actions
12 did not constitute grand theft as defined in chapter 24, title 18, Idaho
13 Code;
- 14 (12) Injury to a child (section 18-1501(1), Idaho Code);
- 15 (13) Sexual abuse of a child under the age of sixteen years (section
16 18-1506, Idaho Code);
- 17 (14) Ritualized abuse of a child (section 18-1506A, Idaho Code);
- 18 (15) ~~Possession of sexually exploitive material for other than a com-~~
19 ~~mmercial purpose~~ Sexual exploitation of a child (section 18-1507A, Idaho
20 Code);
- 21 (16) Lewd conduct with minor child under sixteen (section 18-1508,
22 Idaho Code);
- 23 (17) Sexual battery of a minor child sixteen or seventeen years of age
24 (section 18-1508A, Idaho Code);
- 25 (18) Enticing of children (sections 18-1509 and 18-1509A, Idaho Code);
- 26 (19) Sale or barter of a child (section 18-1511, Idaho Code);
- 27 (20) Possession of a controlled substance or dangerous weapon (section
28 18-2511, Idaho Code);
- 29 (21) False reports of explosives (section 18-3313, Idaho Code);
- 30 (22) Unlawful possession of a firearm (section 18-3316, Idaho Code);
- 31 (23) Unlawful discharge of a firearm (section 18-3317, Idaho Code);
- 32 (24) Unlawful possession or use of bombs or destructive devices (sec-
33 tions 18-3319 and 18-3320, Idaho Code);
- 34 (25) Use of weapons of mass destruction (section 18-3322, Idaho Code);
- 35 (26) Murder, any degree (sections 18-4001 and 18-4003, Idaho Code);
- 36 (27) Manslaughter (sections 18-4006(1) or (2) and 18-4007, Idaho Code);
- 37 (28) Administering poison with intent to kill (section 18-4014, Idaho
38 Code);
- 39 (29) Assault with intent to murder (section 18-4015, Idaho Code);
- 40 (30) Indecent exposure (section 18-4116, Idaho Code), constituting a
41 felony;
- 42 (31) Kidnapping, any degree (sections 18-4501 and 18-4502, Idaho Code);
- 43 (32) Forest sabotage (section 18-4631, Idaho Code);
- 44 (33) Mayhem (sections 18-5001 and 18-5002, Idaho Code);
- 45 (34) Cannibalism (section 18-5003, Idaho Code);
- 46 (35) Poisoning food, medicine or wells (section 18-5501, Idaho Code);
- 47 (36) Interstate trafficking in prostitution (section 18-5601, Idaho
48 Code);
- 49 (37) Inducing a minor into prostitution (section 18-5609, Idaho Code);
- 50 (38) Rape (section 18-6101, Idaho Code);

- 1 (39) Male rape (sections 18-6108 and 18-6109, Idaho Code);
- 2 (40) Sexual contact with a prisoner (section 18-6110, Idaho Code);
- 3 (41) Video voyeurism (section 18-6609, Idaho Code);
- 4 (42) Robbery (section 18-6501, Idaho Code);
- 5 (43) Incest (section 18-6602, Idaho Code);
- 6 (44) Crime against nature (section 18-6605, Idaho Code);
- 7 (45) Forcible sexual penetration (section 18-6608, Idaho Code);
- 8 (46) Removal, destruction or burning of electric lines or plants (sec-
- 9 tions 18-6803, 18-6804 and 18-6805, Idaho Code);
- 10 (47) Malicious injury to property (section 18-7001, Idaho Code), con-
- 11 stituting a felony;
- 12 (48) Injuring dams, canals or other structures (section 18-7019, Idaho
- 13 Code);
- 14 (49) Setting fire to underground workings of mines (sections 18-7024
- 15 and 18-7025, Idaho Code);
- 16 (50) Sabotage (section 18-7026, Idaho Code);
- 17 (51) Aircraft hijacking (section 18-7501, Idaho Code);
- 18 (52) Assault with intent to commit aircraft hijacking (section 18-7502,
- 19 Idaho Code);
- 20 (53) Threats made against airline passengers and other persons, commer-
- 21 cial airline companies, or aircraft (section 18-7504, Idaho Code);
- 22 (54) Racketeering (section 18-7804, Idaho Code);
- 23 (55) Malicious harassment (sections 18-7902 and 18-7903, Idaho Code);
- 24 (56) Stalking in the first degree (section 18-7905, Idaho Code);
- 25 (57) Prohibited terrorist activities (section 18-8103, Idaho Code);
- 26 (58) Providing material support to terrorists (section 18-8106, Idaho
- 27 Code);
- 28 (59) Prohibited employment of adult criminal sex offenders (section
- 29 18-8327, Idaho Code);
- 30 (60) Transfer of body fluid which may contain the HIV virus (section
- 31 39-608, Idaho Code);
- 32 (61) Failure to register as sex offender (sections 18-8304 and 18-8308,
- 33 Idaho Code).
- 34 (b) In addition to those crimes enumerated in subsection (a) of this
- 35 section, any person, including any juvenile tried as an adult, who is con-
- 36 victed for an attempt to commit any of the following crimes, regardless of
- 37 the form of judgment or withheld judgment, and regardless of the sentence
- 38 imposed or disposition rendered, shall be required to provide to the Idaho
- 39 state police, a DNA sample and a right thumbprint impression:
- 40 (1) Arson (sections 18-802 through 18-805, Idaho Code);
- 41 (2) Felonious administering of drugs (sections 18-913 and 18-914,
- 42 Idaho Code);
- 43 (3) Assault or battery upon certain personnel (section 18-915, Idaho
- 44 Code);
- 45 (4) Removing a firearm from a law enforcement officer (section 18-915A,
- 46 Idaho Code);
- 47 (5) Propelling bodily fluid or waste (section 18-915B, Idaho Code);
- 48 (6) Sexual abuse of a child under the age of sixteen years (section
- 49 18-1506, Idaho Code);
- 50 (7) Ritualized abuse of a child (section 18-1506A, Idaho Code);

- 1 (8) Injury to a child (section 18-1501(1), Idaho Code);
- 2 (9) Lewd conduct with minor child under sixteen (section 18-1508, Idaho
- 3 Code);
- 4 (10) Sexual battery of a minor child sixteen or seventeen years of age
- 5 (section 18-1508A, Idaho Code);
- 6 (11) Enticing of children (sections 18-1509 and 18-1509A, Idaho Code);
- 7 (12) Sale or barter of a child (section 18-1511, Idaho Code);
- 8 (13) Possession of a controlled substance or dangerous weapon (section
- 9 18-2511, Idaho Code);
- 10 (14) False reports of explosives (section 18-3313, Idaho Code);
- 11 (15) Unlawful possession of a firearm (section 18-3316, Idaho Code);
- 12 (16) Unlawful discharge of a firearm (section 18-3317, Idaho Code);
- 13 (17) Unlawful possession or use of bombs or destructive devices (sec-
- 14 tions 18-3319 and 18-3320, Idaho Code);
- 15 (18) Use of weapons of mass destruction (section 18-3322, Idaho Code);
- 16 (19) Murder, any degree (sections 18-4001 and 18-4003, Idaho Code);
- 17 (20) Administering poison with intent to kill (section 18-4014, Idaho
- 18 Code);
- 19 (21) Assault with intent to murder (section 18-4015, Idaho Code);
- 20 (22) Indecent exposure (section 18-4116, Idaho Code), constituting a
- 21 felony;
- 22 (23) Kidnapping, any degree (sections 18-4501 and 18-4502, Idaho Code);
- 23 (24) Forest sabotage (section 18-4631, Idaho Code);
- 24 (25) Mayhem (section 18-5001, Idaho Code);
- 25 (26) Cannibalism (section 18-5003, Idaho Code);
- 26 (27) Poisoning food, medicine or wells (section 18-5501, Idaho Code);
- 27 (28) Interstate trafficking in prostitution (section 18-5601, Idaho
- 28 Code);
- 29 (29) Inducing a minor into prostitution (section 18-5609, Idaho Code);
- 30 (30) Rape (section 18-6101, Idaho Code);
- 31 (31) Male rape (sections 18-6108 and 18-6109, Idaho Code);
- 32 (32) Sexual contact with a prisoner (section 18-6110, Idaho Code);
- 33 (33) Video voyeurism (section 18-6609, Idaho Code);
- 34 (34) Robbery (section 18-6501, Idaho Code);
- 35 (35) Incest (section 18-6602, Idaho Code);
- 36 (36) Crime against nature (section 18-6605, Idaho Code);
- 37 (37) Forcible sexual penetration (section 18-6608, Idaho Code);
- 38 (38) Removal, destruction or burning of electric lines or plants (sec-
- 39 tions 18-6803, 18-6804 and 18-6805, Idaho Code);
- 40 (39) Malicious injury to property (section 18-7001, Idaho Code), con-
- 41 stituting a felony;
- 42 (40) Injuring dams, canals or other structures (section 18-7019, Idaho
- 43 Code);
- 44 (41) Setting fire to underground workings of mines (sections 18-7024
- 45 and 18-7025, Idaho Code);
- 46 (42) Sabotage (section 18-7026, Idaho Code);
- 47 (43) Aircraft hijacking (section 18-7501, Idaho Code);
- 48 (44) Assault with intent to commit aircraft hijacking (section 18-7502,
- 49 Idaho Code);

1 (45) Threats made against airline passengers and other persons, commer-
2 cial airline companies, or aircraft (section 18-7504, Idaho Code);

3 (46) Malicious harassment (sections 18-7902 and 18-7903, Idaho Code);

4 (47) Stalking in the first degree (section 18-7905, Idaho Code);

5 (48) Prohibited terrorist activities (section 18-8103, Idaho Code);

6 (49) Providing material support to terrorists (section 18-8106, Idaho
7 Code);

8 (50) Prohibited employment of adult criminal sex offenders (section
9 18-8327, Idaho Code);

10 (51) Transfer of body fluid which may contain the HIV virus (section
11 39-608, Idaho Code).

12 (c) This chapter's requirements for submission to tests and proce-
13 dures for obtaining a DNA sample and thumbprint impression from the persons
14 described above are mandatory and apply to those persons convicted of such
15 crimes covered in this chapter prior to its effective date, and who, as a
16 result of the offense, are incarcerated in a county jail facility or a penal
17 facility or are under probation or parole supervision after the effective
18 date of this chapter.

19 (d) The collection of samples and impressions specified in this chapter
20 are required regardless of whether the person previously has supplied a DNA
21 sample to law enforcement agencies in any other jurisdiction.

22 (e) The requirements of this chapter are mandatory and apply regardless
23 of whether a court advises a person that samples and impressions must be pro-
24 vided to the databank and database as a condition of probation or parole.

25 (f) Unless the court determines that an order of restitution would be
26 inappropriate or undesirable, it shall order any person subject to the pro-
27 visions of this section to pay restitution to help offset costs incurred by
28 law enforcement agencies for the expense of DNA analysis.

29 (g) The court may order such person to pay restitution for DNA analysis
30 in an amount not to exceed five hundred dollars (\$500) per DNA sample analy-
31 sis, or in the aggregate not more than two thousand dollars (\$2,000), regard-
32 less of whether:

33 (1) The source of the sample is the person, the victim or other persons
34 of interest in the case;

35 (2) Results of the analysis are entered into evidence in the person's
36 criminal case;

37 (3) The DNA sample was previously analyzed for another criminal case;
38 or

39 (4) Restitution for that DNA sample analysis was ordered in any other
40 criminal case.

41 (h) Law enforcement agencies entitled to restitution under this sec-
42 tion include the Idaho state police, county and city law enforcement agen-
43 cies, the office of the attorney general, county prosecuting attorneys and
44 city attorneys.

45 (i) In the case of reimbursement for DNA analysis performed by the Idaho
46 state police, those moneys shall be paid to the Idaho state police and de-
47 posited in the law enforcement fund. In the case of reimbursement to the of-
48 fice of the attorney general, those moneys shall be paid to the general fund.

1 (j) Persons who have been sentenced to death, or life without the possi-
2 bility of parole, or to any life or indeterminate term are not exempt from the
3 requirements of this chapter.

4 SECTION 7. That Section 33-1208, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 33-1208. REVOCATION, SUSPENSION, DENIAL, OR PLACE REASONABLE CONDI-
7 TIONS ON CERTIFICATE -- GROUNDS. 1. The professional standards commission
8 may deny, revoke, suspend, or place reasonable conditions on any certificate
9 issued or authorized under the provisions of section 33-1201, Idaho Code,
10 upon any of the following grounds:

11 a. Gross neglect of duty;

12 b. Incompetency;

13 c. Breach of the teaching contract;

14 d. Making any material statement of fact in the application for a cer-
15 tificate, which the applicant knows to be false;

16 e. Revocation, suspension, denial or surrender of a certificate in an-
17 other state for any reason constituting grounds for revocation in this
18 state;

19 f. Conviction, finding of guilt, withheld judgment or suspended sen-
20 tence, in this or any other state of a crime involving moral turpitude;

21 g. Conviction, finding of guilt, withheld judgment, or suspended sen-
22 tence in this state or any other state for the delivery, manufacture or
23 production of controlled substances or simulated controlled substances
24 as those terms are defined in section 37-2701, Idaho Code;

25 h. A guilty plea or a finding of guilt, notwithstanding the form of the
26 judgment or withheld judgment in this or any other state, of the crime
27 of involuntary manslaughter, section 18-4006 2. or section 18-4006 3.,
28 Idaho Code;

29 i. Any disqualification which would have been sufficient grounds for
30 refusing to issue or authorize a certificate, if the disqualification
31 existed or had been known at the time of its issuance or authorization;

32 j. Willful violation of any professional code or standard of ethics or
33 conduct, adopted by the state board of education;

34 k. The kidnapping of a child, section 18-4503, Idaho Code;

35 l. Conviction, finding of guilt, withheld judgment, or suspended sen-
36 tence, in this state or any other state of any felony, the commission of
37 which renders the certificated person unfit to teach or otherwise per-
38 form the duties of the certificated person's position.

39 2. The professional standards commission shall permanently revoke any
40 certificate issued or authorized under the provisions of section 33-1201,
41 Idaho Code, and shall deny the application for issuance of a certificate of
42 a person who pleads guilty to or is found guilty of, notwithstanding the form
43 of the judgment or withheld judgment, any of the following felony offenses
44 against a child:

45 a. The aggravated assault of a child, section 18-905, Idaho Code, or the
46 assault with intent to commit a serious felony against a child, section
47 18-909, Idaho Code.

1 b. The aggravated battery of a child, section 18-907, Idaho Code, or the
2 battery with intent to commit a serious felony against a child, section
3 18-911, Idaho Code.

4 c. The injury or death of a child, section 18-1501, Idaho Code.

5 d. The sexual abuse of a child under sixteen (16) years of age, section
6 18-1506, Idaho Code.

7 e. The ritualized abuse of a child under eighteen (18) years of age,
8 section 18-1506A, Idaho Code.

9 f. The sexual exploitation of a child, section 18-1507, Idaho Code.

10 ~~g. Possession of photographic representations of sexual conduct in-~~
11 ~~volving a child, section 18-1507A, Idaho Code.~~

12 ~~h.~~ Lewd conduct with a child under the age of sixteen (16) years, sec-
13 tion 18-1508, Idaho Code.

14 ~~ih.~~ The sexual battery of a minor child sixteen (16) or seventeen (17)
15 years of age, section 18-1508A, Idaho Code.

16 ~~ji.~~ The sale or barter of a child for adoption or other purposes, sec-
17 tion 18-1511, Idaho Code.

18 ~~kj.~~ The murder of a child, section 18-4003, Idaho Code, or the voluntary
19 manslaughter of a child, section 18-4006 1., Idaho Code.

20 ~~lk.~~ The kidnapping of a child, section 18-4502, Idaho Code.

21 ~~ml.~~ The importation or exportation of a juvenile for immoral purposes,
22 section 18-5601, Idaho Code.

23 ~~nm.~~ The abduction of a person under eighteen (18) years of age for pros-
24 titution, section 18-5610, Idaho Code.

25 ~~on.~~ The rape of a child, section 18-6101 or 18-6108, Idaho Code.

26 The general classes of felonies listed in subsection 2. of this section
27 shall include equivalent laws of federal or other state jurisdictions. For
28 the purpose of this subsection, "child" means a minor or juvenile as defined
29 by the applicable state or federal law.

30 3. The professional standards commission may investigate and follow
31 the procedures set forth in section 33-1209, Idaho Code, for any allegation
32 of inappropriate conduct as defined in this section, by a holder of a cer-
33 tificate whether or not the holder has surrendered his certificate without a
34 hearing or failed to renew his certificate. In those cases where the holder
35 of a certificate has surrendered or failed to renew his certificate and it
36 was found that inappropriate conduct occurred, the commission shall record
37 such findings in the permanent record of the individual and shall deny the
38 issuance of a teaching certificate.

39 4. Any person whose certificate may be or has been revoked, suspended
40 or denied under the provisions of this section shall be afforded a hearing
41 according to the provisions of section 33-1209, Idaho Code.

42 5. The professional standards commission may deny the issuance of a
43 certificate for any reason that would be a ground for revocation or suspen-
44 sion.

45 SECTION 8. That Section 39-1113, Idaho Code, be, and the same is hereby
46 amended to read as follows:

47 39-1113. DENIAL, SUSPENSION OR REVOCATION OF LICENSE. (1) A license
48 may be denied, suspended or revoked by the department if the department finds

1 that the applicant or licensee does not comply with the provisions of this
2 chapter.

3 (2) No person who pleads guilty to, has been found guilty of or received
4 a withheld judgment for any offense involving neglect or any physical injury
5 to, or other abuse of a child including the following offenses or a similar
6 provision in another jurisdiction, shall be eligible for a license under the
7 provisions of this chapter:

- 8 (a) Felony injury of a child, section 18-1501, Idaho Code.
9 (b) The sexual abuse of a child under sixteen years of age, section
10 18-1506, Idaho Code.
11 (c) The ritualized abuse of a child under eighteen years of age, section
12 18-1506A, Idaho Code.
13 (d) The sexual exploitation of a child, section 18-1507 ~~or 18-1507A~~,
14 Idaho Code.
15 (e) Sexual abuse of a child under the age of sixteen years, section
16 18-1506, Idaho Code.
17 (f) Lewd conduct with a child under the age of sixteen years, section
18 18-1508, Idaho Code.
19 (g) The sale or barter of a child for adoption or other purposes, sec-
20 tion 18-1511, Idaho Code.
21 (h) Murder in any degree, section 18-4001 or 18-4003, Idaho Code.
22 (i) Assault with intent to murder, section 18-4015, Idaho Code.
23 (j) Voluntary manslaughter, section 18-4006, Idaho Code.
24 (k) Rape, section 18-6101 or 18-6108, Idaho Code.
25 (l) Incest, section 18-6602, Idaho Code.
26 (m) Forcible sexual penetration by use of foreign object, section
27 18-6608, Idaho Code.
28 (n) Abuse, neglect or exploitation of a vulnerable adult, section
29 18-1505, Idaho Code.
30 (o) Aggravated, first degree, second degree and third degree arson,
31 sections 18-801 through 18-805, Idaho Code.
32 (p) Crimes against nature, section 18-6605, Idaho Code.
33 (q) Kidnapping, sections 18-4501 through 18-4503, Idaho Code.
34 (r) Mayhem, section 18-5001, Idaho Code.
35 (s) Poisoning, section 18-4014 or 18-5501, Idaho Code.
36 ~~(t) Possession of sexually exploitative material, section 18-1507A,~~
37 ~~Idaho Code.~~
38 ~~(u)~~ Robbery, section 18-6501, Idaho Code.
39 ~~(v)~~ Stalking in the first degree, section 18-7905, Idaho Code.
40 ~~(w)~~ Video voyeurism, section 18-6609, Idaho Code.
41 ~~(x)~~ Enticing of children, section 18-1509 or 18-1509A, Idaho Code.
42 ~~(y)~~ Inducing individuals under eighteen years of age into prostitu-
43 tion, section 18-5609, Idaho Code.
44 ~~(z)~~ Inducing person under eighteen years of age to patronize a prosti-
45 tute, section 18-5611, Idaho Code.
46 ~~(aa)~~ Any felony punishable by death or life imprisonment.
47 ~~(bb)~~ Attempt, section 18-306, Idaho Code, conspiracy, section
48 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho
49 Code, to commit any of the crimes designated in this subsection.

1 (3) No person who has pleaded guilty to, been found guilty of or re-
2 ceived a withheld judgment for any offense involving neglect or any physi-
3 cal injury to, or other abuse of a child, including the following offenses or
4 a similar provision in another jurisdiction shall be eligible for a license
5 for a period of five (5) years under the provisions of this chapter.

6 (a) Aggravated assault, section 18-905, Idaho Code.

7 (b) Aggravated battery, section 18-907(1), Idaho Code.

8 (c) Burglary, section 18-1401, Idaho Code.

9 (d) Felony theft, sections 18-2403 and 18-2407(1), Idaho Code.

10 (e) Forgery of a financial transaction card, section 18-3123, Idaho
11 Code.

12 (f) Fraudulent use of a financial transaction card or number, section
13 18-3124, Idaho Code.

14 (g) Forgery or counterfeiting, chapter 36, title 18, Idaho Code.

15 (h) Misappropriation of personal identifying information, section
16 18-3126, Idaho Code.

17 (i) Insurance fraud, section 41-293, Idaho Code.

18 (j) Damage to or destruction of insured property, section 41-294, Idaho
19 Code.

20 (k) Public assistance fraud, section 56-227, Idaho Code.

21 (l) Provider fraud, section 56-227A, Idaho Code.

22 (m) Attempted strangulation, section 18-923, Idaho Code.

23 (n) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701,
24 Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to
25 commit any of the crimes designated in this subsection.

26 (o) Misdemeanor injury to a child, section 18-1501(2), Idaho Code.

27 (4) A daycare facility license may be denied, suspended or revoked by
28 the department if the department finds that the daycare facility is not in
29 compliance with the standards provided for in this chapter or criminal ac-
30 tivity that threatens the health or safety of a child.

31 (5) A daycare facility license or privilege to operate a family daycare
32 home shall be denied or revoked if a registered sex offender resides on the
33 premises where daycare services are provided.

34 (6) The denial, suspension or revocation of a license under this chap-
35 ter may be appealed to the district court of the county in which the affected
36 daycare facility is located and the appeal shall be heard de novo in the dis-
37 trict court.