

IN THE SENATE

SENATE BILL NO. 1341

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE SEXUAL OFFENDER REGISTRATION ACT; AMENDING SECTION 18-8304,
2 IDAHO CODE, TO REMOVE PROVISIONS RELATING TO CERTAIN EXEMPTIONS AND TO
3 MAKE A TECHNICAL CORRECTION; AND AMENDING CHAPTER 83, TITLE 18, IDAHO
4 CODE, BY THE ADDITION OF A NEW SECTION 18-8310A, IDAHO CODE, TO PROVIDE
5 A PETITION PROCESS FOR CERTAIN PERSONS TO BE EXEMPTED FROM THE DUTY TO
6 REGISTER AS A SEXUAL OFFENDER, TO GRANT THE DISTRICT COURT THE AUTHORITY
7 TO EXEMPT CERTAIN PERSONS FROM THE DUTY TO REGISTER AS A SEXUAL OFFENDER
8 AND TO ALLOW FOR EXPUNGEMENT.
9

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

11 SECTION 1. That Section 18-8304, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 18-8304. APPLICATION OF CHAPTER -- RULEMAKING AUTHORITY. (1) The pro-
14 visions of this chapter shall apply to any person who:
15 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
16 solicitation, or a conspiracy to commit a crime provided for in section
17 18-909 (assault with intent to commit rape, infamous crime against na-
18 ture, or lewd and lascivious conduct with a minor, but excluding mayhem,
19 murder or robbery), 18-911 (battery with intent to commit rape, infa-
20 mous crime against nature, or lewd and lascivious conduct with a minor,
21 but excluding mayhem, murder or robbery), 18-919 (sexual exploitation
22 by a medical care provider), 18-1505B (sexual abuse and exploitation
23 of a vulnerable adult), 18-1506 (sexual abuse of a child under six-
24 teen years of age), 18-1506A (ritualized abuse of a child), 18-1507
25 (sexual exploitation of a child), 18-1507A (possession of sexually
26 exploitative material for other than a commercial purpose), 18-1508
27 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor
28 child sixteen or seventeen years of age), 18-1509A (enticing a child
29 over the internet), 18-4003(d) (murder committed in perpetration of
30 rape), 18-4116 (indecent exposure, but excluding a misdemeanor convic-
31 tion), 18-4502 (first degree kidnapping committed for the purpose of
32 rape, committing the infamous crime against nature or for committing
33 any lewd and lascivious act upon any child under the age of sixteen, or
34 for purposes of sexual gratification or arousal), 18-4503 (second de-
35 gree kidnapping where the victim is an unrelated minor child), 18-5605
36 (detention for prostitution), 18-5609 (inducing person under eighteen
37 years of age into prostitution), 18-5611 (inducing person under eigh-
38 teen years of age to patronize a prostitute), 18-6101 (rape, but exclud-
39 ing 18-6101(1) where the defendant is eighteen years of age ~~or where the~~
40 ~~defendant is exempted under subsection (4) of this section~~), 18-6108
41 (male rape, but excluding 18-6108(1) where the defendant is eighteen
42 years of age ~~or where the defendant is exempted under subsection (4) of~~

1 ~~this section~~, 18-6110 (sexual contact with a prisoner), 18-6602 (in-
2 cest), 18-6605 (crime against nature), 18-6608 (forcible sexual pene-
3 tration by use of a foreign object), 18-6609 (video voyeurism where the
4 victim is a minor or upon a second or subsequent conviction), 18-7804
5 (if the racketeering act involves kidnapping of a minor) or 18-8602(1),
6 Idaho Code, (sex trafficking).

7 (b) On or after July 1, 1993, has been convicted of any crime, an at-
8 tempt, a solicitation or a conspiracy to commit a crime in another ju-
9 risdiction or who has a foreign conviction that is substantially equiv-
10 alent to the offenses listed in subsection (1) (a) of this section and
11 enters this state to establish residence or for employment purposes or
12 to attend, on a full-time or part-time basis, any public or private ed-
13 ucational institution including any secondary school, trade or profes-
14 sional institution or institution of higher education.

15 (c) Has been convicted of any crime, an attempt, a solicitation or a
16 conspiracy to commit a crime in another jurisdiction, including mili-
17 tary courts, that is substantially equivalent to the offenses listed in
18 subsection (1) (a) of this section and was required to register as a sex
19 offender in any other state or jurisdiction when he established resi-
20 dency in Idaho.

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

25 (e) Is a nonresident regularly employed or working in Idaho or is a stu-
26 dent in the state of Idaho and was convicted, found guilty or pleaded
27 guilty to a crime covered by this chapter and, as a result of such con-
28 viction, finding or plea, is required to register in his state of resi-
29 dence.

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

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

38 (4) ~~When a defendant is convicted of rape under section 18-6101(2) or~~
39 ~~18-6108(2), Idaho Code, and at the time of the offense the defendant is nine-~~
40 ~~teen (19) or twenty (20) years of age and not more than three (3) years older~~
41 ~~than the victim of the rape, the court may order that the defendant is exempt~~
42 ~~from the requirements of this chapter upon a finding by the court that:~~

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

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

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

1 SECTION 2. That Chapter 83, Title 18, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 18-8310A, Idaho Code, and to read as follows:

4 18-8310A. DISTRICT COURT TO RELEASE FROM REGISTRATION REQUIREMENTS --
5 EXPUNGEMENT. Any person who was convicted under section 18-6101 1., Idaho
6 Code, as it existed before July 1, 2010, where such person would not have been
7 convicted under section 18-6101(1) or (2), Idaho Code, may petition the dis-
8 trict court for a determination to be exempted from the duty to register as a
9 sexual offender. If the district court finds that such person would not have
10 been convicted under section 18-6101(1) or (2), Idaho Code, then the dis-
11 trict court may exempt the petitioner from the duty to register as a sexual
12 offender and may order that any information regarding the petitioner be ex-
13 punged from the central registry. In the petition, the petitioner shall:

14 (1) Provide a certified copy of the judgment of conviction which caused
15 the petitioner to report as a sexual offender; and

16 (2) Provide an affidavit that states the following:

17 (a) The specific underlying facts of petitioner's conviction and that
18 such facts do not come within the provisions of section 18-6101(1) or
19 (2), Idaho Code;

20 (b) The petitioner does not have a criminal charge pending nor is the
21 petitioner knowingly under criminal investigation for any crime iden-
22 tified in section 18-8304, Idaho Code; and

23 (c) The petitioner is not required to register as a sexual offender for
24 any other reason set forth in this chapter.