

IN THE SENATE

SENATE BILL NO. 1151

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-2604, IDAHO CODE, TO RE-
2 VISE PROVISIONS WHEN RELIEF FROM A FELONY CONVICTION MAY BE GRANTED AND
3 TO PROVIDE PROCEDURES.
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5 Be It Enacted by the Legislature of the State of Idaho:

6 SECTION 1. That Section 19-2604, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT. (1) If sen-
9 tence has been imposed but suspended, or if sentence has been withheld, upon
10 application of the defendant and upon satisfactory showing that:

11 (a) The court did not find, and the defendant did not admit, in any
12 probation violation proceeding that the defendant violated any of the
13 terms or conditions of probation; or

14 (b) The defendant has successfully completed and graduated from an au-
15 thorized drug court program or mental health court program and during
16 any period of probation that may have been served following such grad-
17 uation, the court did not find, and the defendant did not admit, in any
18 probation violation proceeding that the defendant violated any of the
19 terms or conditions of probation;

20 the court may, if convinced by the showing made that there is no longer cause
21 for continuing the period of probation, and if it be compatible with the pub-
22 lic interest, terminate the sentence or set aside the plea of guilty or con-
23 viction of the defendant, and finally dismiss the case and discharge the de-
24 fendant or may amend the judgment of conviction from a term in the custody
25 of the state board of correction to "confinement in a penal facility" for
26 the number of days served prior to suspension, and the amended judgment may
27 be deemed to be a misdemeanor conviction. This shall apply to the cases in
28 which defendants have been convicted and granted probation by the court be-
29 fore this law goes into effect, as well as to cases which arise thereafter.
30 The final dismissal of the case as herein provided shall have the effect of
31 restoring the defendant to his civil rights.

32 (2) If sentence has been imposed but suspended for any period during the
33 first three hundred sixty-five (365) days of a sentence to the custody of the
34 state board of correction, and the defendant placed upon probation as pro-
35 vided in subsection 4. of section 19-2601, Idaho Code, upon application of
36 the defendant, the prosecuting attorney, or upon the court's own motion, and
37 upon satisfactory showing that:

38 (a) The court did not find, and the defendant did not admit, in any
39 probation violation proceeding that the defendant violated any of the
40 terms or conditions of probation; or

41 (b) The defendant has successfully completed and graduated from an au-
42 thorized drug court program or mental health court program and during

1 any period of probation that may have been served following such grad-
2 uation, the court did not find, and the defendant did not admit, in any
3 probation violation proceeding that the defendant violated any of the
4 terms or conditions of probation;
5 the court may amend the judgment of conviction from a term in the custody of
6 the state board of correction to "confinement in a penal facility" for the
7 number of days served prior to suspension, and the amended judgment may be
8 deemed to be a misdemeanor conviction.

9 (3) (a) In addition to the circumstances in which relief from a felony
10 conviction may be granted under subsections (1) and (2) of this section,
11 a defendant who has been convicted of a felony and who has been dis-
12 charged from probation may apply to the sentencing court for a reduction
13 of the conviction from a felony to a misdemeanor as provided in this
14 subsection.

15 (b) If less than five (5) years have elapsed since the defendant's dis-
16 charge from probation, the application may be granted only if the prose-
17 cuting attorney stipulates to the reduction.

18 (c) If at least five (5) years have elapsed since the defendant's dis-
19 charge from probation, and if the defendant was convicted of any of the
20 following offenses, the application may be granted only if the prose-
21 cuting attorney stipulates to the reduction:

22 (i) Assault with intent to commit a serious felony (18-909,
23 18-915, Idaho Code);

24 (ii) Battery with intent to commit a serious felony (18-911,
25 18-915, Idaho Code);

26 (iii) Enticing of children (18-1509, Idaho Code);

27 (iv) Murder in the first or second degree (18-4003, Idaho Code);

28 (v) Voluntary manslaughter (18-4006(1), Idaho Code);

29 (vi) Assault with intent to commit murder (18-4015, Idaho Code);

30 (vii) Administering poison with intent to kill (18-4014, Idaho
31 Code);

32 (viii) Kidnapping in the first degree (18-4502, Idaho Code);

33 (ix) Robbery (18-6501, Idaho Code);

34 (x) Trafficking (37-2732B, Idaho Code);

35 (xi) Threats against state officials of the executive, legisla-
36 tive or judicial branch, felony (18-1353A, Idaho Code);

37 (xii) Unlawful discharge of a firearm at a dwelling house, occu-
38 pied building, vehicle or mobile home (18-3317, Idaho Code);

39 (xiii) Cannibalism (18-5003, Idaho Code);

40 (xiv) Unlawful use of destructive device or bomb (18-3320, Idaho
41 Code);

42 (xv) Attempt, conspiracy or solicitation to commit any of the
43 crimes described in paragraph (c) (i) through (xiv).

44 (d) The decision as to whether to grant such an application shall be in
45 the discretion of the district court, provided that the application may
46 be granted only if the court finds that:

47 (i) The defendant has not been convicted of any felony committed
48 after the conviction from which relief is sought;

49 (ii) The defendant is not currently charged with any crime;

1 (iii) The reduction in sentence would be compatible with the pub-
2 lic interest; and

3 (iv) In those cases where the stipulation of the prosecuting at-
4 torney is required under paragraph (b) or (c) of this subsection,
5 the prosecuting attorney has so stipulated.

6 (e) If the court grants the application, the court shall reduce the
7 felony conviction to a misdemeanor and amend the judgment of conviction
8 for a term in the custody of the state board of correction to "confine-
9 ment in a penal facility" for the number of days served prior to the
10 judgment of conviction.

11 (4) Subsections (2) and (3) of this section shall not apply to any judg-
12 ment of conviction for a violation of any offense requiring sex offender reg-
13 istration as set forth in section 18-8304, Idaho Code. A judgment of convic-
14 tion for a violation of any offense requiring sex offender registration as
15 set forth in section 18-8304, Idaho Code, shall not be subject to dismissal
16 or reduction under this section. A conviction for the purposes of this chap-
17 ter means that the person has pled guilty or has been found guilty, notwith-
18 standing the form of the judgment or withheld judgment.