

IN THE SENATE

SENATE BILL NO. 1026

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-2604, IDAHO CODE, TO RE-
VISE A PROVISION REGARDING WHO MAY APPLY FOR RELIEF.

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

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

19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT.

(1) (a) Application for relief under this subsection may be made by
the following persons who have pled guilty to or been found guilty of a
crime:

(i) A defendant whose sentence has been suspended or who has re-
ceived a withheld judgment;

(ii) A defendant in a felony case whose sentence has been commuted
under section 19-2601 1., Idaho Code;

(iii) A defendant in a felony case upon whom the court has not im-
posed a sentence to the custody of the board of correction;

(iv) A defendant who has not been sentenced but who has success-
fully completed a drug court or mental health court program;

(v) A defendant in a misdemeanor case who has not been sentenced
to serve a term in the county jail or whose sentence or any portion
thereof has been suspended.

(b) Upon application of the defendant and upon satisfactory showing
that:

(i) The court did not find, and the defendant did not admit, in any
probation violation proceeding that the defendant violated any of
the terms or conditions of any probation that may have been im-
posed; or

(ii) The defendant has successfully completed and graduated from
an authorized drug court program or mental health court program
and during any period of probation that may have been served fol-
lowing such graduation, the court did not find, and the defendant
did not admit, in any probation violation proceeding that the de-
fendant violated any of the terms or conditions of probation;

the court, if convinced by the showing made that there is no longer cause
for continuing the period of probation should the defendant be on pro-
bation at the time of the application, and that there is good cause for
granting the requested relief, may terminate the sentence or set aside
the plea of guilty or conviction of the defendant, and finally dismiss
the case and discharge the defendant or may amend the judgment of con-
viction from a term in the custody of the state board of correction to
"confinement in a penal facility" for the number of days served prior to
sentencing, and the amended judgment may be deemed to be a misdemeanor

1 conviction. This shall apply to the cases in which defendants have been
2 convicted before this law goes into effect, as well as to cases which
3 arise thereafter. The final dismissal of the case as herein provided
4 shall have the effect of restoring the defendant to his civil rights.

5 (2) If sentence has been imposed but suspended for any period during the
6 first three hundred sixty-five (365) days of a sentence to the custody of the
7 state board of correction, and the defendant placed upon probation as pro-
8 vided in subsection 4. of section 19-2601 or 19-2601A, Idaho Code, upon ap-
9 plication of the defendant, the prosecuting attorney, or upon the court's
10 own motion, 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 amend the judgment of conviction from a term in the custody of
21 the state board of correction to "confinement in a penal facility" for the
22 number of days served prior to suspension, and the amended judgment may be
23 deemed to be a misdemeanor conviction.

24 (3) (a) In addition to the circumstances in which relief from a felony
25 conviction may be granted under subsections (1) and (2) of this section,
26 a defendant who has been convicted of a felony and who has been dis-
27 charged from probation may apply to the sentencing court for a reduction
28 of the conviction from a felony to a misdemeanor as provided in this
29 subsection.

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

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

37 (i) Assault with intent to commit a serious felony (18-909,
38 18-915, Idaho Code);

39 (ii) Battery with intent to commit a serious felony (18-911,
40 18-915, Idaho Code);

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

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

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

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

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

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

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

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

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

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

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

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

8 (xv) Attempt, conspiracy or solicitation to commit any of the
9 crimes described in subparagraphs (i) through (xiv) of this para-
10 graph.

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

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

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

17 (iii) There is good cause for granting the reduction in sentence;
18 and

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

22 (e) If the court grants the application, the court shall reduce the
23 felony conviction to a misdemeanor and amend the judgment of conviction
24 for a term in the custody of the state board of correction to "confine-
25 ment in a penal facility" for the number of days served prior to the
26 judgment of conviction.

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

35 (5) A violation of the terms of an agreement of supervision with the
36 board of correction by a person under the supervision of the board shall not
37 preclude the granting of relief to that person under this section.