

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 658

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO EXECUTION; AMENDING SECTION 19-2716A, IDAHO CODE, TO PROVIDE  
2 CONFIDENTIALITY FOR CERTAIN PERSONS AND TO PROVIDE THAT CERTAIN PERSONS  
3 SHALL NOT HAVE THEIR LICENSURE SUSPENDED OR REVOKED; AMENDING SECTION  
4 74-105, IDAHO CODE, TO PROVIDE THAT CERTAIN RECORDS SHALL BE EXEMPT FROM  
5 DISCLOSURE; AND DECLARING AN EMERGENCY.  
6

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

8 SECTION 1. That Section 19-2716A, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 19-2716A. PRACTICE OF MEDICINE AND POSSESSION OF CONTROLLED SUB-  
11 STANCES -- EXEMPTION -- EXCEPTIONS TO GOVERNMENTAL LIABILITY -- CONFI-  
12 DENTIALITY -- LICENSURE. (1) Notwithstanding any other provision of law,  
13 infliction of the punishment of death in the manner required by section  
14 19-2716, Idaho Code, shall not be construed as the practice of medicine. The  
15 director of the department of correction and all persons authorized by him  
16 to participate in an execution, as provided in section 19-2716, Idaho Code,  
17 shall be exempt from all laws, rules and regulations governing the practice  
18 of medicine.

19 (2) For the purposes of carrying out the provisions of section 19-2716,  
20 Idaho Code, any pharmacy, prescriber, manufacturer, wholesale distributor  
21 or other entity authorized by law to possess controlled substances may dis-  
22 tribute controlled substances to the director or his designees and shall not  
23 be subject to criminal or civil liability for the death of the condemned per-  
24 son.

25 (3) For the purposes of carrying out the provisions of section 19-2716,  
26 Idaho Code, the director and his designees may obtain, possess, store and ad-  
27 minister controlled substances and are exempt from all laws, rules and reg-  
28 ulations governing pharmacies and controlled substances, notwithstanding  
29 any other provision of law. Any employee of the state of Idaho participat-  
30 ing in an execution pursuant to section 19-2716, Idaho Code, shall be pre-  
31 sumed to be acting within the course and scope of his employment and without  
32 malice or criminal intent for purposes of section 6-903, Idaho Code. Any em-  
33 ployee, agent or contractor of the state of Idaho participating in an execu-  
34 tion pursuant to section 19-2716, Idaho Code, shall not be subject to crimi-  
35 nal or civil liability for the death of the condemned person.

36 (4) For purposes of carrying out the provisions of section 19-2716,  
37 Idaho Code, the identities of any of the following persons or entities  
38 involved in the planning, training, or performance of an execution shall  
39 be confidential, shall not be subject to disclosure, and shall not be ad-  
40 missible as evidence or discoverable in any proceeding before any court,  
41 tribunal, board, agency, or person:

1       (a) The on-site physician and any member of the escort team or medical  
2       team; and

3       (b) Any person or entity who compounds, synthesizes, tests, sells,  
4       supplies, manufactures, stores, transports, procures, dispenses, or  
5       prescribes the chemicals or substances for use in an execution or that  
6       provides the medical supplies or medical equipment for the execution  
7       process.

8       (5) If any person who participates or performs ancillary functions in  
9       an execution is licensed by a board, the licensing board shall not suspend or  
10       revoke the person's license, or take disciplinary action against the person,  
11       because of the person's participation in an execution.

12       SECTION 2. That Section 74-105, Idaho Code, be, and the same is hereby  
13       amended to read as follows:

14       74-105. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS,  
15       INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS,  
16       WORKER'S COMPENSATION. The following records are exempt from disclosure:

17       (1) Investigatory records of a law enforcement agency, as defined in  
18       section 74-101(7), Idaho Code, under the conditions set forth in section  
19       74-124, Idaho Code.

20       (2) Juvenile records of a person maintained pursuant to chapter 5,  
21       title 20, Idaho Code, except that facts contained in such records shall be  
22       furnished upon request in a manner determined by the court to persons and  
23       governmental and private agencies and institutions conducting pertinent  
24       research studies or having a legitimate interest in the protection, welfare  
25       and treatment of the juvenile who is thirteen (13) years of age or younger.  
26       If the juvenile is petitioned or charged with an offense which would be a  
27       criminal offense if committed by an adult, the name, offense of which the  
28       juvenile was petitioned or charged and disposition of the court shall be sub-  
29       ject to disclosure as provided in section 20-525, Idaho Code. Additionally,  
30       facts contained in any records of a juvenile maintained under chapter 5,  
31       title 20, Idaho Code, shall be furnished upon request to any school district  
32       where the juvenile is enrolled or is seeking enrollment.

33       (3) Records of the custody review board of the Idaho department of ju-  
34       venile corrections, including records containing the names, addresses and  
35       written statements of victims and family members of juveniles, shall be ex-  
36       empt from public disclosure pursuant to section 20-533A, Idaho Code.

37       (4) (a) The following records of the department of correction:

38           (i) Records of which the public interest in confidentiality, pub-  
39           lic safety, security and habilitation clearly outweighs the pub-  
40           lic interest in disclosure as identified pursuant to the authority  
41           of the state board of correction under section 20-212, Idaho Code;

42           (ii) Records that contain any identifying information, or any in-  
43           formation that would lead to the identification of any victims or  
44           witnesses;

45           (iii) Records that reflect future transportation or movement of a  
46           prisoner;

47           (iv) Records gathered during the course of the presentence inves-  
48           tigation;

1 (v) Records of a prisoner, as defined in section 74-101(10),  
2 Idaho Code, or probationer shall not be disclosed to any other  
3 prisoner or probationer.

4 (b) Records, other than public expenditure records, related to pro-  
5 posed or existing critical infrastructure held by or in the custody  
6 of any public agency only when the disclosure of such information is  
7 reasonably likely to jeopardize the safety of persons, property or the  
8 public safety. Such records may include emergency evacuation, escape  
9 or other emergency response plans, vulnerability assessments, oper-  
10 ation and security manuals, plans, blueprints or security codes. For  
11 purposes of this paragraph, "system" includes electrical, computer  
12 and telecommunication systems, electric power (including production,  
13 generating, transportation, transmission and distribution), heating,  
14 ventilation, and air conditioning. For purposes of this subsection,  
15 "critical infrastructure" means any system or asset, whether physical  
16 or virtual, so vital to the state of Idaho, including its political sub-  
17 divisions, that the incapacity or destruction of such system or asset  
18 would have a debilitating impact on state or national economic secu-  
19 rity, state or national public health or safety or any combination of  
20 those matters.

21 (c) Records of the Idaho commission of pardons and parole shall be ex-  
22 empt from public disclosure pursuant to section 20-1003, Idaho Code,  
23 and section 20-1005, Idaho Code. Records exempt from disclosure shall  
24 also include those containing the names, addresses and written state-  
25 ments of victims.

26 (5) Voting records of the former sexual offender classification board.  
27 The written record of the vote to classify an offender as a violent sexual  
28 predator by each board member in each case reviewed by that board member  
29 shall be exempt from disclosure to the public and shall be made available  
30 upon request only to the governor, the chairman of the senate judiciary and  
31 rules committee, and the chairman of the house of representatives judiciary,  
32 rules and administration committee, for all lawful purposes.

33 (6) Records of the sheriff or Idaho state police received or maintained  
34 pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating  
35 to an applicant or licensee except that any law enforcement officer and law  
36 enforcement agency, whether inside or outside the state of Idaho, may access  
37 information maintained in the license record system as set forth in section  
38 18-3302K(16), Idaho Code.

39 (7) Records of investigations prepared by the department of health and  
40 welfare pursuant to its statutory responsibilities dealing with the protec-  
41 tion of children, the rehabilitation of youth, adoptions and the commitment  
42 of mentally ill persons. For reasons of health and safety, best interests of  
43 the child or public interest, the department of health and welfare may pro-  
44 vide for the disclosure of records of investigations associated with actions  
45 pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by  
46 the department of health and welfare pursuant to its statutory responsibili-  
47 ties dealing with the protection of children except any such records regard-  
48 ing adoptions shall remain exempt from disclosure.

49 (8) Records including, but not limited to, investigative reports,  
50 resulting from investigations conducted into complaints of discrimination

1 made to the Idaho human rights commission unless the public interest in  
2 allowing inspection and copying of such records outweighs the legitimate  
3 public or private interest in maintaining confidentiality of such records.  
4 A person may inspect and copy documents from an investigative file to which  
5 he or she is a named party if such documents are not otherwise prohibited from  
6 disclosure by federal law or regulation or state law. The confidentiality of  
7 this subsection will no longer apply to any record used in any judicial pro-  
8 ceeding brought by a named party to the complaint or investigation, or by the  
9 Idaho human rights commission, relating to the complaint of discrimination.

10 (9) Records containing information obtained by the manager of the Idaho  
11 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on  
12 behalf of employers or employees contained in underwriting and claims for  
13 benefits files.

14 (10) The worker's compensation records of the Idaho industrial commis-  
15 sion provided that the industrial commission shall make such records avail-  
16 able:

17 (a) To the parties in any worker's compensation claim and to the indus-  
18 trial special indemnity fund of the state of Idaho; or

19 (b) To employers and prospective employers subject to the provisions of  
20 the Americans with disabilities act, 42 U.S.C. 12112, or other statu-  
21 tory limitations, who certify that the information is being requested  
22 with respect to a worker to whom the employer has extended an offer of  
23 employment and will be used in accordance with the provisions of the  
24 Americans with disabilities act, 42 U.S.C. 12112, or other statutory  
25 limitations; or

26 (c) To employers and prospective employers not subject to the provi-  
27 sions of the Americans with disabilities act, 42 U.S.C. 12112, or other  
28 statutory limitations, provided the employer presents a written autho-  
29 rization from the person to whom the records pertain; or

30 (d) To others who demonstrate that the public interest in allowing in-  
31 spection and copying of such records outweighs the public or private in-  
32 terest in maintaining the confidentiality of such records, as deter-  
33 mined by a civil court of competent jurisdiction; or

34 (e) Although a claimant's records maintained by the industrial commis-  
35 sion, including medical and rehabilitation records, are otherwise ex-  
36 empt from public disclosure, the quoting or discussing of medical or re-  
37 habilitation records contained in the industrial commission's records  
38 during a hearing for compensation or in a written decision issued by the  
39 industrial commission shall be permitted; provided further, the true  
40 identification of the parties shall not be exempt from public disclo-  
41 sure in any written decision issued and released to the public by the in-  
42 dustrial commission.

43 (11) Records of investigations compiled by the commission on aging in-  
44 volving vulnerable adults, as defined in section 18-1505, Idaho Code, al-  
45 leged to be abused, neglected or exploited.

46 (12) Criminal history records and fingerprints, as defined in section  
47 67-3001, Idaho Code, and compiled by the Idaho state police. Such records  
48 shall be released only in accordance with chapter 30, title 67, Idaho Code.

1 (13) Records furnished or obtained pursuant to section 41-1019, Idaho  
2 Code, regarding termination of an appointment, employment, contract or  
3 other insurance business relationship between an insurer and a producer.

4 (14) Records of a prisoner or former prisoner in the custody of any state  
5 or local correctional facility, when the request is made by another prisoner  
6 in the custody of any state or local correctional facility.

7 (15) Except as provided in section 72-1007, Idaho Code, records of the  
8 Idaho industrial commission relating to compensation for crime victims un-  
9 der chapter 10, title 72, Idaho Code.

10 (16) Records or information identifying a complainant maintained by the  
11 department of health and welfare pursuant to section 39-3556, Idaho Code,  
12 relating to certified family homes, unless the complainant consents in writ-  
13 ing to the disclosure or the disclosure of the complainant's identity is re-  
14 quired in any administrative or judicial proceeding.

15 (17) Records of any certification or notification required by federal  
16 law to be made in connection with the acquisition or transfer of a firearm,  
17 including a firearm as defined in 26 U.S.C. 5845(a).

18 (18) The following records of the state public defense commission:

19 (a) Records containing information protected or exempted from disclo-  
20 sure under the rules adopted by the Idaho supreme court, attorney work  
21 product, attorney-client privileged communication, records containing  
22 confidential information from an individual about his criminal case or  
23 performance of his attorney, or confidential information about an in-  
24 quiry into an attorney's fitness to represent indigent defendants.

25 (b) Records related to the administration of the extraordinary litiga-  
26 tion fund by the state public defense commission, pursuant to section  
27 19-850(2)(e), Idaho Code, to the extent that such records contain in-  
28 formation protected or exempted from disclosure under rules adopted  
29 by the Idaho supreme court, attorney work product or attorney-client  
30 privileged communication. This exemption does not include the amount  
31 awarded based upon an application for extraordinary litigation funds.

32 (19) Records and information received by the office of the state con-  
33 troller from any local government, state agency and department, or volunteer  
34 nongovernmental entity for purposes of entry into the criminal justice  
35 integrated data system pursuant to section 19-4803, Idaho Code, and all  
36 records created by persons authorized to research and analyze information  
37 entered into the criminal justice integrated data system, regardless of  
38 whether such records were previously exempted from disclosure or redacted  
39 pursuant to state or federal law or court order. This exemption does not  
40 apply to projects, reports, and data analyses approved for release by the  
41 data oversight council and issued by persons authorized to conduct research  
42 and analysis as set forth in chapter 48, title 19, Idaho Code. Records and  
43 information relating to the management of the criminal justice integrated  
44 data system shall not be exempt from disclosure except as otherwise provided  
45 in law.

46 (20) Records that contain any identifying information or any informa-  
47 tion that could lead to the identification of any persons or entities that  
48 participate in or assist with an execution of a death sentence as described  
49 in section 19-2716A, Idaho Code.

1           SECTION 3. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after its  
3 passage and approval.