

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 814

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO CRIMINAL RECORDS; AMENDING SECTION 18-3316, IDAHO CODE, TO
2 REVISE PROVISIONS REGARDING THE UNLAWFUL POSSESSION OF A FIREARM BY A
3 FELON; AMENDING SECTION 19-2604, IDAHO CODE, TO REVISE PROVISIONS RE-
4 GARDING THE DISCHARGE OF A DEFENDANT AND AN AMENDMENT OF JUDGMENT AND
5 TO REMOVE A PROVISION REGARDING AN AMENDMENT OF JUDGMENT; DECLARING AN
6 EMERGENCY; AND PROVIDING APPLICABILITY.
7

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

9 SECTION 1. That Section 18-3316, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 18-3316. UNLAWFUL POSSESSION OF A FIREARM. (1) A Subject to subsection
12 (3) of this section, a person who ~~previously has been~~ stands convicted of a
13 felony who purchases, ~~owns,~~ possesses, or has under his custody or control
14 any firearm shall be guilty of a felony and shall be imprisoned in the state
15 prison for a period of time not to exceed five (5) years and by a fine not to
16 exceed five thousand dollars (\$5,000).

17 (2) For the purpose of subsection (1) of this section, "stands con-
18 vinced of a felony" shall include, subject to subsection (3) of this section,
19 mean a person who ~~has entered a plea of guilty, nolo contendere~~ stands con-
20 vinced or who, outside the state of Idaho, has been found ~~not~~ guilty ~~of any~~
21 of the crimes enumerated in section 18-310, Idaho Code, or to a comparable
22 felony crime by reason of insanity of a crime punishable by more than one (1)
23 year of imprisonment whether in this state or in another state, territory,
24 commonwealth, ~~or~~ other jurisdiction of the United States, or in any court of
25 the United States, but shall not include:

26 (a) Any federal or state offenses pertaining to antitrust violations,
27 unfair trade practices, restraints of trade, or other similar offenses
28 relating to the regulation of business practices; or

29 (b) Any state offense classified by the laws of the state as a misde-
30 meanor and punishable by a term of imprisonment of two (2) years or less.

31 (3) Subsection (1) of this section shall not apply to a person whose For
32 the purpose of this section, a person stands convicted at such time as:

33 (a) Whether as an adult or as a juvenile, a plea of guilty or nolo con-
34 tendere has been accepted or a verdict of guilty has been filed; or

35 (b) If adjudicated as a juvenile in this state, upon the entry of an or-
36 der finding that the person is within the purview of the juvenile cor-
37 rections act, chapter 5, title 20, Idaho Code;

38 notwithstanding the pendency of any future proceedings, including but not
39 limited to sentencing or disposition, posttrial motions, and appeals, un-
40 less the conviction or adjudication as a juvenile has been nullified by the
41 subject of an expungement, pardon, setting aside, or vacating the convic-
42 tion, or adjudication as a juvenile, reduction of a felony conviction to a

1 misdemeanor, or other comparable procedure by this state or the jurisdic-
 2 tion where the ~~felony~~ conviction or adjudication as a juvenile occurred; ~~or.~~
 3 Subsection (1) of this section shall not apply to a person whose civil right
 4 to bear arms either specifically or in combination with other civil rights
 5 has been restored by any other provision of Idaho law or by the jurisdiction
 6 where the conviction or adjudication as a juvenile occurred.

7 SECTION 2. That Section 19-2604, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT.

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

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

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

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

19 (iv) A defendant who has ~~not been sentenced but who has~~ success-
 20 fully completed a ~~drug court or mental health~~ an authorized treat-
 21 ment court program;

22 (v) A defendant in a misdemeanor case ~~who has not been sentenced~~
 23 ~~to serve a term in the county jail or whose sentence or any portion~~
 24 ~~thereof has been suspended; and~~

25 (vi) A defendant who receives a judgment of conviction specify-
 26 ing a period of retained jurisdiction that is not the result of a
 27 violation of probation, successfully completes that period of re-
 28 tained jurisdiction, and is granted probation.

29 (b) Upon application of the defendant and upon ~~satisfactory~~ showing by
 30 a preponderance that:

31 (i) If in a felony case, tThe court did not find, and the defen-
 32 dant did not admit, in any probation violation proceeding that the
 33 defendant violated any of the terms or conditions of any probation
 34 that may have been imposed; or

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

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

6 ~~(2) If sentence has been imposed but suspended for any period during the~~
 7 ~~first three hundred sixty-five (365) days of a sentence to the custody of the~~
 8 ~~state board of correction, and the defendant placed upon probation as pro-~~
 9 ~~vided in subsection 4. of section 19-2601 or 19-2601A, Idaho Code, upon ap-~~
 10 ~~plication of the defendant, the prosecuting attorney, or upon the court's~~
 11 ~~own motion, and upon satisfactory showing that:~~

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

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

21 ~~the court may amend the judgment of conviction from a term in the custody of~~
 22 ~~the state board of correction to "confinement in a penal facility" for the~~
 23 ~~number of days served prior to suspension, and the amended judgment may be~~
 24 ~~deemed to be a misdemeanor conviction.~~

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

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

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

38 ~~(i) Assault with intent to commit a serious felony (18-909,~~
 39 ~~18-915, Idaho Code);~~

40 ~~(ii) Battery with intent to commit a serious felony (18-911,~~
 41 ~~18-915, Idaho Code);~~

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

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

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

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

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

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

49 ~~(ix) Robbery (18-6501, Idaho Code);~~

50 ~~(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 by a preponderance 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; and

22 (v) The defendant has completed all terms and conditions of any
23 probation that may have been ordered in the case, and the defendant
24 has satisfied all legal financial obligations ordered by the court
25 in the case, including court costs, fees, fines, and victim resti-
26 tution; provided, however, that where the case record lacks suf-
27 ficient information necessary to determine whether any such terms
28 and conditions of any probation have been completed, or whether
29 all such legal financial obligations have been satisfied, there
30 shall be a rebuttable presumption for purposes of this subsection
31 that the defendant has completed all terms and conditions of any
32 probation and that the defendant has satisfied all legal financial
33 obligations ordered by the court.

34 (e) If the court grants the application, the court shall reduce the
35 felony conviction to a misdemeanor and amend the judgment of conviction
36 for a term in the custody of the state board of correction to "confine-
37 ment in a penal facility" for the number of days served prior to the
38 judgment of conviction. This paragraph shall apply to the cases in
39 which defendants have been convicted before this law goes into effect as
40 well as to cases that arise thereafter. The amended judgment of convic-
41 tion as provided in this section shall be deemed to be a misdemeanor and,
42 notwithstanding any provisions of section 18-310, Idaho Code, to the
43 contrary, shall have the effect of restoring the defendant to his civil
44 rights under Idaho law.

45 (43) Subsections (21) and (32) of this section shall not apply to any
46 judgment of conviction for a violation of any offense requiring sex offender
47 registration as set forth in section 18-8304, Idaho Code. A judgment of con-
48 viction for a violation of any offense requiring sex offender registration
49 as set forth in section 18-8304, Idaho Code, shall not be subject to dis-
50 missal or reduction under this section. A conviction for the purposes of

1 this chapter means that the person has pled guilty or has been found guilty,
2 notwithstanding the form of the judgment or withheld judgment.

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

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

9 SECTION 4. The provisions of Section 1 of this act shall not be con-
10 strued in any manner as to affect or limit the provisions of Chapter 2, Title
11 18, Idaho Code.