

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 126

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CRIMINAL HISTORY RECORDS; AMENDING SECTION 67-3004, IDAHO CODE,  
2 TO REVISE A PROVISION REGARDING RECORDS SHIELDED FROM DISCLOSURE AND TO  
3 PROVIDE FOR THE COLLECTION OF FEES, FINES, AND RESTITUTION OWED TO THE  
4 COURT; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
5

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

7 SECTION 1. That Section 67-3004, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 67-3004. FINGERPRINTING AND IDENTIFICATION -- SHIELDING OF RECORDS  
10 FROM DISCLOSURE. (1) The bureau shall:

11 (a) Obtain and file fingerprints, physical descriptions and any other  
12 available identifying data on persons who have been arrested or served a  
13 criminal summons in this state for a retainable offense;

14 (b) Accept fingerprints and other identifying data taken by a law en-  
15 forcement agency for the purpose of identification or conducting a  
16 records review for criminal justice purposes; and

17 (c) Process latent fingerprints generated from crime scenes, evidence  
18 and law enforcement agencies through the automated fingerprint identi-  
19 fication system for prospective identification.

20 (2) The bureau shall establish policy regarding an arrest fingerprint  
21 card and procedures for the taking of fingerprints under this section.

22 (3) When a person is arrested for a retainable offense, with or with-  
23 out a warrant, fingerprints of the person shall be taken by the law enforce-  
24 ment agency making the arrest. A law enforcement agency may contract or make  
25 arrangements with a jail or correctional facility or other criminal justice  
26 agency to take the required fingerprints from a person who is arrested by the  
27 law enforcement agency.

28 (4) If a person was arrested and is in the custody of a law enforcement  
29 agency, jail or correctional facility and a felony summons or information is  
30 filed for an offense separate from the offense for which the person is in cus-  
31 tody, the agency, jail or correctional facility shall take the fingerprints  
32 of the person in connection with the new offense.

33 (5) At the initial court appearance or arraignment of a person for an  
34 offense pursuant to a felony summons or information, the court, upon notice  
35 from the prosecuting attorney, shall order a law enforcement agency to fin-  
36 gerprint the person if he has not been previously fingerprinted for the same  
37 offense.

38 (6) When a defendant is convicted or otherwise adjudicated for a felony  
39 offense for which the defendant has not been previously fingerprinted, the  
40 court shall order, upon notice from the prosecuting attorney, a law enforce-  
41 ment agency to fingerprint the defendant as a condition of sentence, proba-  
42 tion or release.

1 (7) When a person is received by a state correctional facility, the de-  
2 partment of correction shall ensure that legible fingerprints of the person  
3 are taken and submitted to the bureau.

4 (8) When the bureau receives fingerprints of a person in connection  
5 with an arrest or incarceration, the bureau shall make a reasonable ef-  
6 fort to confirm within five (5) working days the identity of the person  
7 fingerprinted. In an emergency situation when an immediate positive identi-  
8 fication is needed, a criminal justice agency may request the department to  
9 provide immediate identification service.

10 (9) If the arresting officer, the law enforcement agency that employs  
11 the officer, or the jail or correctional facility where fingerprints were  
12 taken is notified by the bureau that fingerprints taken under this section  
13 are not legible, the officer, agency or facility shall make a reasonable ef-  
14 fort to obtain a legible set of fingerprints. If legible fingerprints can-  
15 not be obtained within a reasonable period of time, and if illegible finger-  
16 prints were taken under a court order, the officer or agency shall inform the  
17 court, which shall order the defendant to submit to fingerprinting again.

18 (10) Any person who was arrested or served a criminal summons and who  
19 subsequently was not charged by indictment or information within one (1)  
20 year of the arrest or summons and any person who was acquitted of all of-  
21 fenses arising from an arrest or criminal summons, or who has had all charges  
22 dismissed, may have the fingerprint and criminal history record taken in  
23 connection with the incident expunged pursuant to the person's written re-  
24 quest directed to the department and may have the official court file thereof  
25 sealed. This provision shall not apply to any dismissal granted pursuant to  
26 section 19-2604(1), Idaho Code.

27 (11)(a) In addition to the remedies set forth in subsection (10) of  
28 this section, any person arrested for, prosecuted for, or convicted of  
29 a misdemeanor that is not an assaultive or violent misdemeanor listed  
30 in paragraph (b) of this subsection or arrested for, prosecuted for,  
31 or convicted of felony possession of a controlled substance under sec-  
32 tion 37-2732(a), (c), or (e), Idaho Code, in this state may petition  
33 the court to have the person's record be shielded from disclosure in  
34 accordance with rules adopted by the Idaho supreme court and within  
35 the capabilities of its record-keeping system. Upon the filing of the  
36 petition, the court shall set a date for a hearing and shall notify the  
37 prosecuting attorney of the date of the hearing. Upon receipt of such  
38 notification from the court, the prosecuting attorney shall provide to  
39 any readily identifiable crime victim whatever notifications are re-  
40 quired under section 22, article I of the constitution of the state of  
41 Idaho. The court, in its discretion, may hear testimony at the hearing  
42 from any person who has relevant information about the petitioner.

43 (b) Assaultive or violent misdemeanors shall include:

- 44 (i) Assault (18-901, Idaho Code);  
45 (ii) Battery (18-903, Idaho Code);  
46 (iii) Domestic battery (18-918, Idaho Code);  
47 (iv) Stalking in the second degree (18-7906, Idaho Code);  
48 (v) Violation of a protection order or no contact order (18-7907  
49 and 18-920, Idaho Code);  
50 (vi) Telephone harassment (18-6710, Idaho Code);

- 1 (vii) Vehicular manslaughter (18-4006(3) (c), Idaho Code);  
2 (viii) Excessive driving under the influence (18-8004C, Idaho  
3 Code);  
4 (ix) Domestic assault (18-918(3) (a), Idaho Code);  
5 (x) Battery upon law enforcement (18-915(1) (b), Idaho Code);  
6 (xi) Injury to children (18-1501, Idaho Code);  
7 (xii) Sexual battery (18-924, Idaho Code); and  
8 (xiii) Indecent exposure (18-4116, Idaho Code).

9 (c) To be eligible to have records shielded from disclosure under this  
10 subsection, a petitioner must file a petition to shield records of the  
11 conviction no earlier than five (5) years after completing the peti-  
12 tioner's sentence, including all ordered probation, ~~and parole, fines,~~  
13 ~~and restitution~~; provided that during such five (5) year period and un-  
14 til the time of a hearing on the petition, the petitioner has not had any  
15 subsequent felony or misdemeanor convictions and is not on probation or  
16 parole for a subsequent conviction, has no misdemeanor or felony cases  
17 pending against him, and has no restraining orders against him in effect  
18 at the time of filing the petition to shield the records.

19 (d) If the court finds, after a hearing, that the petitioner is el-  
20 igible to have his records shielded from disclosure pursuant to this  
21 subsection and further finds to its satisfaction that the petitioner  
22 has been held accountable and that shielding the petitioner's record  
23 from disclosure would not compromise public safety or the safety of any  
24 victims, the court shall order all records in the petitioner's case in  
25 the custody of the court to be shielded from disclosure and unavailable  
26 for public viewing. Upon such a shielding from disclosure of the peti-  
27 tioner's records, the court shall notify the Idaho state police of the  
28 shielding and, upon receipt of the notification, the Idaho state police  
29 shall make any law enforcement investigatory reports and fingerprint  
30 records unavailable for public viewing. A special index of the shield-  
31 ing proceedings and records shall be kept by the court ordering the  
32 shielding of records, which shall not be available to the public unless  
33 otherwise ordered by a court of competent jurisdiction. Except as pro-  
34 vided in paragraphs (i) and (j) of this subsection and other than in a  
35 judicial proceeding or as part of the licensing process for peace offi-  
36 cers, upon the entry of the order, the proceedings in the petitioner's  
37 case shall be deemed never to have occurred, and the petitioner may law-  
38 fully reply accordingly to any inquiry in the matter.

39 (e) A proceeding to shield records from disclosure under the provisions  
40 of this subsection shall occur in the underlying criminal case.

41 (f) A court ordering records to be shielded from disclosure pursuant to  
42 this subsection shall notify the supreme court of the shielding, and the  
43 supreme court shall, within the capabilities of its record-keeping sys-  
44 tem, maintain a record of all records shielded, searchable by the name  
45 of the person whose records are shielded. To the extent not prohibited  
46 by federal law, it shall be the policy of the state of Idaho that the  
47 records shielded from disclosure shall not be available to the public  
48 but may be accessed at any time by the subject of the petition, by law  
49 enforcement personnel, and by court officers to the extent permitted by  
50 operative court rules. The record shall otherwise remain shielded from

1 disclosure to the public. Nothing in this paragraph shall be construed  
2 to limit a law enforcement agency or court officer from accessing any  
3 records or databases created or maintained by law enforcement or prose-  
4 cutors.

5 (g) A person whose records are shielded from disclosure pursuant to  
6 this subsection:

7 (i) Shall, upon a subsequent felony conviction and upon request  
8 by the prosecutor, have such shielding from disclosure revoked by  
9 the court as part of his sentencing; and

10 (ii) May, upon a subsequent misdemeanor conviction and upon re-  
11 quest by the prosecutor, have such shielding revoked by the court  
12 as part of his sentencing.

13 (h) A law enforcement agency, prosecuting attorney, or the court shall  
14 not incur any civil or criminal liability for the unintentional or neg-  
15 ligent release, or the release by a third party, of a record shielded  
16 from disclosure pursuant to this subsection.

17 (i) The shielding from disclosure of records under this subsection  
18 shall have no effect on the operation of sections 18-310 and 18-3316,  
19 Idaho Code.

20 (j) To the extent permitted by operative court rules, a POST-certified  
21 peace officer or prosecuting attorney shall have complete access to and  
22 use of all records shielded from disclosure pursuant to this subsection  
23 for purposes including but not be limited to communicating with crime  
24 victims, all in-court purposes and hearings, investigations, and en-  
25 hancements.

26 (k) A person may have only one (1) petition granted during such person's  
27 lifetime to have one (1) of the crimes eligible under this subsection,  
28 or more than one (1) eligible crime under this subsection if committed  
29 in a single incident or transaction, shielded from disclosure pursuant  
30 to this subsection.

31 (l) The procedures set forth in this subsection, including the specific  
32 processes established that affect access to court records, are subject  
33 to the rules of the Idaho supreme court.

34 (m) Nothing in this subsection shall prohibit the court from releas-  
35 ing whatever portion of the petitioner's record that it deems necessary  
36 solely for the purpose of collection of any outstanding fees, fines, or  
37 restitution owed to the court or to any other party in connection with  
38 the underlying conviction and sentence.

39 SECTION 2. An emergency existing therefor, which emergency is hereby  
40 declared to exist, this act shall be in full force and effect on and after  
41 July 1, 2025.