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LEGISLATURE OF THE STATE OF IDAHO
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AN ACT

1 RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8001, IDAHO CODE,
2 TO PROVIDE ELIGIBILITY FOR RESTRICTED DRIVING PRIVILEGES UNDER CER-
3 TAIN CIRCUMSTANCES; AMENDING SECTION 18-8002, IDAHO CODE, TO PROVIDE
4 THAT PERSONS PARTICIPATING IN A DIVERSION PROGRAM MAY BE ELIGIBLE FOR
5 CERTAIN DRIVING PRIVILEGES; AMENDING SECTION 18-8002A, IDAHO CODE, TO
6 REVISE PROVISIONS REGARDING CERTAIN INFORMATION GIVEN TO PERSONS UN-
7 DERGOING EVIDENTIARY TESTING FOR ALCOHOL, DRUGS OR OTHER INTOXICATING
8 SUBSTANCES; AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE THE DEFINI-
9 TION OF IGNITION INTERLOCK SYSTEM; AMENDING SECTION 18-8010, IDAHO
10 CODE, TO PROVIDE THAT A PROSECUTING ATTORNEY WHO ESTABLISHES A DIVER-
11 SION PROGRAM MAY USE CERTAIN MONEYS; AMENDING SECTION 18-8011, IDAHO
12 CODE, TO PROVIDE FOR A CERTAIN WAIVER; AMENDING SECTION 19-3506, IDAHO
13 CODE, TO PROVIDE THAT DISMISSED MISDEMEANOR CASES MAY BE REFILED UNDER
14 CERTAIN CIRCUMSTANCES; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY
15 THE ADDITION OF A NEW SECTION 19-3507, IDAHO CODE, TO DEFINE A TERM AND
16 TO PROVIDE LEGISLATIVE INTENT; AMENDING CHAPTER 35, TITLE 19, IDAHO
17 CODE, BY THE ADDITION OF A NEW SECTION 19-3508, IDAHO CODE, TO PROVIDE
18 ELIGIBILITY REQUIREMENTS FOR DIVERSION PROGRAMS; AMENDING CHAPTER 35,
19 TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3509, IDAHO
20 CODE, TO ESTABLISH PROVISIONS REGARDING DIVERSION PROGRAMS; AND AMEND-
21 ING SECTION 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS PARTICIPATING
22 IN DIVERSION PROGRAMS MAY BE REQUIRED TO PERFORM CERTAIN LABOR.
23

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

25 SECTION 1. That Section 18-8001, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 18-8001. DRIVING WITHOUT PRIVILEGES. (1) Any person who drives or is
28 in actual physical control of any motor vehicle upon the highways of this
29 state with knowledge or who has received legal notice pursuant to section
30 49-320, Idaho Code, that his driver's license, driving privileges or permit
31 to drive is revoked, disqualified or suspended in this state or any other ju-
32 risdiction is guilty of a misdemeanor.

33 (2) A person has knowledge that his license, driving privileges or per-
34 mit to drive is revoked, disqualified or suspended when:

35 (a) He has actual knowledge of the revocation, disqualification or sus-
36 pension of his license, driving privileges or permit to drive; or

37 (b) He has received oral or written notice from a verified, authorized
38 source, that his license, driving privileges or permit to drive was re-
39 voked, disqualified or suspended; or

40 (c) Notice of the suspension, disqualification or revocation of his li-
41 cense, driving privileges or permit to drive was mailed by first class
42 mail to his address pursuant to section 49-320, Idaho Code, as shown in

1 the transportation department records, and he failed to receive the no-
2 tice or learn of its contents as a result of his own unreasonable, in-
3 tentional or negligent conduct or his failure to keep the transporta-
4 tion department apprised of his mailing address as required by section
5 49-320, Idaho Code; or

6 (d) He has knowledge of, or a reasonable person in his situation exer-
7 cising reasonable diligence would have knowledge of, the existence of
8 facts or circumstances which, under Idaho law, might have caused the re-
9 vocation, disqualification or suspension of his license, driving priv-
10 ileges or permit to drive.

11 (3) Any person who pleads guilty to or is found guilty of a violation of
12 subsection (1) for the first time:

13 (a) Shall be sentenced to jail for a mandatory minimum period of not
14 less than two (2) days, and may be sentenced to not more than six (6)
15 months, provided however, that in the discretion of the sentencing
16 judge, the judge may authorize the defendant to be assigned to a work
17 release or work detail program within the custody of the county sheriff
18 during the period of incarceration, or, if the underlying suspension
19 that resulted in the violation of this section is not a suspension re-
20 sulting from an offense identified in subsection (8) of this section,
21 the judge may authorize an equivalent amount of community service in
22 lieu of jail, or any equivalent combination of these options;

23 (b) May be fined an amount not to exceed one thousand dollars (\$1,000);
24 and

25 (c) May have his driving privileges suspended by the court for a period
26 not to exceed one hundred eighty (180) days following the end of any pe-
27 riod of suspension, disqualification or revocation existing at the time
28 of the violation; the defendant may request restricted driving priv-
29 ileges during the period of the suspension or disqualification, which
30 the court may allow if the defendant shows by a preponderance of the ev-
31 idence that driving privileges are necessary for his employment, educa-
32 tion or for family health needs.

33 (4) Any person who pleads guilty to or is found guilty of a violation of
34 subsection (1) for a second time within five (5) years, irrespective of the
35 form of the judgment (s) or withheld judgment (s):

36 (a) Shall be sentenced to jail for a mandatory minimum period of not
37 less than twenty (20) days, and may be sentenced to not more than one (1)
38 year, provided however, that in the discretion of the sentencing judge,
39 the judge may authorize the defendant to be assigned to a work release or
40 work detail program within the custody of the county sheriff during the
41 period of incarceration, or, if the underlying suspension that resulted
42 in the violation of this section is not a suspension resulting from an
43 offense identified in subsection (8) of this section, the judge may au-
44 thorize an equivalent amount of community service in lieu of jail, or
45 any equivalent combination of these options;

46 (b) May be fined an amount not to exceed one thousand dollars (\$1,000);
47 and

48 (c) May have his driving privileges suspended by the court for a period
49 not to exceed one (1) year following the end of any period of suspension,
50 disqualification or revocation existing at the time of the second vio-

1 lation. The defendant may request restricted driving privileges during
2 the period of the suspension, which the court may allow if the defen-
3 dant shows by a preponderance of the evidence that driving privileges
4 are necessary for his employment, education or for family health needs.

5 (5) Any person who has pled guilty to or been found guilty of more than
6 two (2) violations of the provisions of subsection (1) of this section within
7 five (5) years, notwithstanding the form of the judgment(s) or withheld
8 judgment(s), is guilty of a misdemeanor; and

9 (a) Shall be sentenced to the county jail for a mandatory minimum pe-
10 riod of not less than thirty (30) days, and may be sentenced to not more
11 than one (1) year; provided, however, that in the discretion of the sen-
12 tencing judge, the judge may authorize the defendant to be assigned to
13 a work release or work detail program within the custody of the county
14 sheriff during the period of incarceration, or, if the underlying sus-
15 pension that resulted in the violation of this section is not a suspen-
16 sion resulting from an offense identified in subsection (8) of this sec-
17 tion, the judge may authorize an equivalent amount of community service
18 in lieu of jail, or any equivalent combination of these options;

19 (b) May be fined an amount not to exceed three thousand dollars
20 (\$3,000); and

21 (c) May have his driving privileges suspended by the court for a pe-
22 riod not to exceed two (2) years following the end of any period of sus-
23 pension, disqualification or revocation existing at the time of the vi-
24 olation. The defendant may request restricted driving privileges dur-
25 ing the period of the suspension, which the court may allow if the defen-
26 dant shows by a preponderance of the evidence that driving privileges
27 are necessary for his employment, education or for family health needs.

28 (6) A minor may be prosecuted for a violation of subsection (1) of this
29 section under chapter 5, title 20, Idaho Code.

30 (7) If a person is convicted for a violation of section 18-8004,
31 18-8004C or 18-8006, Idaho Code, and at the time of arrest had no driving
32 privileges, the penalties imposed by this section shall be in addition to
33 any penalties imposed under the provisions of section 18-8005, 18-8004A,
34 18-8004C or 18-8006, Idaho Code, and not in lieu thereof.

35 (8) For purposes of this section, the offenses referred to in subsec-
36 tions (3) (a), (4) (a) and (5) (a) of this section are:

37 (a) Section 18-1501(3), Idaho Code, transporting a minor in a motor ve-
38 hicle while under the influence;

39 (b) Section 18-4006(3), Idaho Code, vehicular manslaughter;

40 (c) Section 18-8001, Idaho Code, driving without privileges;

41 (d) Section 18-8004, Idaho Code, driving under the influence of alco-
42 hol, drugs or other intoxicating substances;

43 (e) Section 18-8004C, Idaho Code, excessive alcohol concentration;

44 (f) Section 18-8006, Idaho Code, aggravated driving while under the in-
45 fluence of alcohol, drugs or any other intoxicating substances;

46 (g) Section 18-8007, Idaho Code, leaving the scene of an accident re-
47 sulting in injury or death;

48 (h) Section 49-1229, Idaho Code, required motor vehicle insurance;

49 (i) Section 49-1232, Idaho Code, certificate or proof of liability in-
50 surance to be carried in motor vehicle;

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- 1 (j) Section 49-1401, Idaho Code, reckless driving;
2 (k) Section 49-1404, Idaho Code, eluding a police officer;
3 (l) Section 49-1428, Idaho Code, operating a vehicle without liability
4 insurance;
5 or any substantially conforming foreign criminal violation.
6 (9) In no event shall a person be granted restricted driving privileges
7 unless the person shows proof of liability insurance or other proof of finan-
8 cial responsibility, as provided in chapter 12, title 49, Idaho Code.
9 (10) In no event shall a person who is disqualified or whose driving
10 privileges are suspended, revoked or canceled under the provisions of this
11 chapter be granted restricted driving privileges to operate a commercial
12 motor vehicle.
13 (11) Notwithstanding the provisions of this section, a person admitted
14 to a diversion program pursuant to section 19-3509, Idaho Code, may be eligi-
15 ble for restricted driving privileges for the purpose of getting to and from
16 work, school, medical appointments or a treatment program according to the
17 terms and conditions of the diversion agreement.

18 SECTION 2. That Section 18-8002, Idaho Code, be, and the same is hereby
19 amended to read as follows:

- 20 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS
21 OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF
22 TESTS. (1) Any person who drives or is in actual physical control of a motor
23 vehicle in this state shall be deemed to have given his consent to eviden-
24 tiary testing for concentration of alcohol as defined in section 18-8004,
25 Idaho Code, and to have given his consent to evidentiary testing for the
26 presence of drugs or other intoxicating substances, provided that such
27 testing is administered at the request of a peace officer having reasonable
28 grounds to believe that person has been driving or in actual physical control
29 of a motor vehicle in violation of the provisions of section 18-8004, Idaho
30 Code, or section 18-8006, Idaho Code.
31 (2) Such person shall not have the right to consult with an attorney be-
32 fore submitting to such evidentiary testing.
33 (3) At the time evidentiary testing for concentration of alcohol, or
34 for the presence of drugs or other intoxicating substances is requested, the
35 person shall be informed that if he refuses to submit to or if he fails to com-
36 plete, evidentiary testing:
37 (a) He is subject to a civil penalty of two hundred fifty dollars (\$250)
38 for refusing to take the test;
39 (b) He has the right to request a hearing within seven (7) days to show
40 cause why he refused to submit to, or complete evidentiary testing;
41 (c) If he does not request a hearing or does not prevail at the hearing,
42 the court shall sustain the civil penalty and his driver's license will
43 be suspended absolutely for one (1) year if this is his first refusal and
44 two (2) years if this is his second refusal within ten (10) years;
45 (d) Provided however, if he is admitted to a problem solving court pro-
46 gram and has served at least forty-five (45) days of an absolute sus-
47 pension of driving privileges, then he may be eligible for a restricted

1 permit for the purpose of getting to and from work, school or an alcohol
2 treatment program; and

3 (e) Provided however, if he is admitted to a diversion program pursuant
4 to section 19-3509, Idaho Code, then he may be eligible for a restricted
5 permit for the purpose of getting to and from work, school, medical ap-
6 pointments or a treatment program; and

7 (f) After submitting to evidentiary testing he may, when practicable,
8 at his own expense, have additional tests made by a person of his own
9 choosing.

10 (4) If the motorist refuses to submit to or complete evidentiary test-
11 ing after the information has been given in accordance with subsection (3)
12 above:

13 (a) He shall be fined a civil penalty of two hundred fifty dollars
14 (\$250);

15 (b) A written request may be made within seven (7) calendar days for a
16 hearing before the court; if requested, the hearing must be held within
17 thirty (30) days of the date of service unless this period is, for good
18 cause shown, extended by the court for one (1) additional thirty (30)
19 day period. The hearing shall be limited to the question of why the de-
20 fendant did not submit to, or complete, evidentiary testing, and the
21 burden of proof shall be upon the defendant; the court shall sustain a
22 two hundred fifty dollar (\$250) civil penalty immediately and suspend
23 all the defendant's driving privileges immediately for one (1) year for
24 a first refusal and two (2) years for a second refusal within ten (10)
25 years unless it finds that the peace officer did not have legal cause to
26 stop and request him to take the test or that the request violated his
27 civil rights;

28 (c) If a hearing is not requested by written notice to the court con-
29 cerned within seven (7) calendar days, upon receipt of a sworn statement
30 by the peace officer of the circumstances of the refusal, the court
31 shall sustain a two hundred fifty dollar (\$250) civil penalty and sus-
32 pend the defendant's driving privileges for one (1) year for a first
33 refusal and two (2) years for a second refusal within ten (10) years,
34 during which time he shall have absolutely no driving privileges of any
35 kind;

36 (d) Notwithstanding the provisions of subsection (4)(b) and (c) of
37 this section, if the defendant is enrolled in and is a participant in
38 good standing in a drug court or mental health court approved by the
39 supreme court drug court and mental health court coordinating commit-
40 tee under the provisions of chapter 56, title 19, Idaho Code, or other
41 similar problem solving court utilizing community-based sentencing
42 alternatives, then the defendant shall be eligible for restricted non-
43 commercial driving privileges for the purpose of getting to and from
44 work, school or an alcohol treatment program, which may be granted by
45 the presiding judge of the drug court or mental health court or other
46 similar problem solving court, provided that the defendant has served
47 a period of absolute suspension of driving privileges of at least
48 forty-five (45) days, that a state-approved ignition interlock system
49 is installed, and for repeat offenders it shall be maintained for not
50 less than one (1) year, on each of the motor vehicles owned or oper-

1 ated, or both, by the defendant and that the defendant has shown proof
2 of financial responsibility as defined and in the amounts specified in
3 section 49-117, Idaho Code, provided that the restricted noncommer-
4 cial driving privileges may be continued if the defendant successfully
5 completes the drug court, mental health court or other similar problem
6 solving court, and that the court may revoke such privileges for failure
7 to comply with the terms of probation or with the terms and conditions
8 of the drug court, mental health court or other similar problem solving
9 court program; and

10 (e) Notwithstanding the provisions of subsection 4(a), (b) and (c) of
11 this section, if a person is a participant in good standing in a diver-
12 sion program pursuant to section 19-3509, Idaho Code, then the person
13 shall be eligible for restricted noncommercial driving privileges for
14 the purpose of getting to and from work, school, medical appointments or
15 a treatment program, which privileges may be granted by the administra-
16 tor of the diversion program, provided that the person has:

17 (i) Installed a state-approved ignition interlock system, as de-
18 defined in section 18-8008, Idaho Code, in each motor vehicle oper-
19 ated by the person for a minimum period of one (1) year or for the
20 duration of the diversion program, whichever is longer; and

21 (ii) Presented proof of financial responsibility as defined in
22 section 49-117, Idaho Code, to the administrator of the diversion
23 program.

24 (f) After submitting to evidentiary testing at the request of the peace
25 officer, he may, when practicable, at his own expense, have additional
26 tests made by a person of his own choosing. The failure or inability to
27 obtain an additional test or tests by a person shall not preclude the ad-
28 mission of results of evidentiary testing for alcohol concentration or
29 for the presence of drugs or other intoxicating substances taken at the
30 direction of the peace officer unless the additional test was denied by
31 the peace officer.

32 (5) Any sustained civil penalty or suspension of driving privileges un-
33 der this section or section 18-8002A, Idaho Code, shall be a civil penalty
34 separate and apart from any other suspension imposed for a violation of other
35 Idaho motor vehicle codes or for a conviction of an offense pursuant to this
36 chapter, and may be appealed to the district court.

37 (6) No hospital, hospital officer, agent, or employee, or health care
38 professional licensed by the state of Idaho, whether or not such person has
39 privileges to practice in the hospital in which a body fluid sample is ob-
40 tained or an evidentiary test is made, shall incur any civil or criminal li-
41 ability for any act arising out of administering an evidentiary test for al-
42 cehol concentration or for the presence of drugs or other intoxicating sub-
43 stances at the request or order of a peace officer in the manner described in
44 this section and section 18-8002A, Idaho Code; provided that nothing in this
45 section shall relieve any such person or legal entity from civil liability
46 arising from the failure to exercise the community standard of care.

47 (a) This immunity extends to any person who assists any individual to
48 withdraw a blood sample for evidentiary testing at the request or order
49 of a peace officer, which individual is authorized to withdraw a blood

1 sample under the provisions of section 18-8003, Idaho Code, regardless
2 of the location where the blood sample is actually withdrawn.

3 (b) A peace officer is empowered to order an individual authorized in
4 section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary
5 testing when the peace officer has probable cause to believe that the
6 suspect has committed any of the following offenses:

7 (i) Aggravated driving under the influence of alcohol, drugs or
8 other intoxicating substances as provided in section 18-8006,
9 Idaho Code;

10 (ii) Vehicular manslaughter as provided in subsection (3) (a), (b)
11 and (c) of section 18-4006, Idaho Code;

12 (iii) Aggravated operating of a vessel on the waters of the state
13 while under the influence of alcohol, drugs or other intoxicating
14 substances as provided in section 67-7035, Idaho Code; or

15 (iv) Any criminal homicide involving a vessel on the waters of the
16 state while under the influence of alcohol, drugs or other intoxi-
17 cating substances.

18 (c) Nothing herein shall limit the discretion of the hospital admin-
19 istration to designate the qualified hospital employee responsible to
20 withdraw the blood sample.

21 (d) The law enforcement agency that requests or orders withdrawal of
22 the blood sample shall pay the reasonable costs to withdraw such blood
23 sample, perform laboratory analysis, preserve evidentiary test re-
24 sults, and testify in judicial proceedings. The court may order resti-
25 tution pursuant to the provisions of section 18-8003(2), Idaho Code.

26 (e) The withdrawal of the blood sample may be delayed or terminated if:

27 (i) In the reasonable judgment of the hospital personnel with-
28 drawal of the blood sample may result in serious bodily injury to
29 hospital personnel or other patients; or

30 (ii) The licensed health care professional treating the suspect
31 believes the withdrawal of the blood sample is contraindicated be-
32 cause of the medical condition of the suspect or other patients.

33 (7) "Actual physical control" as used in this section and section
34 18-8002A, Idaho Code, shall be defined as being in the driver's position of
35 the motor vehicle with the motor running or with the motor vehicle moving.

36 (8) Any written notice required by this section shall be effective upon
37 mailing.

38 (9) For the purposes of this section and section 18-8002A, Idaho Code,
39 "evidentiary testing" shall mean a procedure or test or series of proce-
40 dures or tests, including the additional test authorized in subsection (10)
41 of this section, utilized to determine the concentration of alcohol or the
42 presence of drugs or other intoxicating substances in a person.

43 (10) A person who submits to a breath test for alcohol concentration,
44 as defined in subsection (4) of section 18-8004, Idaho Code, may also be re-
45 quested to submit to a second evidentiary test of blood or urine for the pur-
46 pose of determining the presence of drugs or other intoxicating substances
47 if the peace officer has reasonable cause to believe that a person was driv-
48 ing under the influence of any drug or intoxicating substance or the combined
49 influence of alcohol and any drug or intoxicating substance. The peace of-

1 ficer shall state in his or her report the facts upon which that belief is
2 based.

3 (11) Notwithstanding any other provision of law to the contrary, the
4 civil penalty imposed under the provisions of this section must be paid, as
5 ordered by the court, to the county justice fund or the county current ex-
6 pense fund where the incident occurred. If a person does not pay the civil
7 penalty imposed as provided in this section within thirty (30) days of the
8 imposition, unless this period has been extended by the court for good cause
9 shown, the prosecuting attorney representing the political subdivision
10 where the incident occurred may petition the court in the jurisdiction where
11 the incident occurred to file the order imposing the civil penalty as an or-
12 der of the court. Once entered, the order may be enforced in the same manner
13 as a final judgment of the court. In addition to the civil penalty, attor-
14 ney's fees, costs and interest may be assessed against any person who fails
15 to pay the civil penalty.

16 SECTION 3. That Section 18-8002A, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF
19 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF
20 TESTS. (1) Definitions. As used in this section:

21 (a) "Actual physical control" means being in the driver's position of a
22 motor vehicle with the motor running or with the vehicle moving.

23 (b) "Administrative hearing" means a hearing conducted by a hearing
24 officer to determine whether a suspension imposed by the provisions of
25 this section should be vacated or sustained.

26 (c) "Department" means the Idaho transportation department and, as the
27 context requires, shall be construed to include any agent of the depart-
28 ment designated by rule as hereinafter provided.

29 (d) "Director" means the director of the Idaho transportation depart-
30 ment.

31 (e) "Evidentiary testing" means a procedure or test or series of proce-
32 dures or tests utilized to determine the concentration of alcohol or the
33 presence of drugs or other intoxicating substances in a person, includ-
34 ing additional testing authorized by subsection (6) of this section. An
35 evidentiary test for alcohol concentration shall be based on a formula
36 of grams of alcohol per one hundred (100) cubic centimeters of blood,
37 per two hundred ten (210) liters of breath, or sixty-seven (67) millili-
38 ters of urine. Analysis of blood, breath or urine for the purpose of de-
39 termining alcohol concentration shall be performed by a laboratory op-
40 erated by the Idaho state police or by a laboratory approved by the Idaho
41 state police under the provisions of approval and certification stan-
42 dards to be set by the Idaho state police, or by any other method ap-
43 proved by the Idaho state police. Notwithstanding any other provision
44 of law or rule of court, the results of any test for alcohol concentra-
45 tion and records relating to calibration, approval, certification or
46 quality control performed by a laboratory operated and approved by the
47 Idaho state police or by any other method approved by the Idaho state po-
48 lice shall be admissible in any proceeding in this state without the ne-

1 cessity of producing a witness to establish the reliability of the test-
2 ing procedure for examination.

3 (f) "Hearing officer" means a person designated by the department to
4 conduct administrative hearings. The hearing officer shall have au-
5 thority to administer oaths, examine witnesses and take testimony,
6 receive relevant evidence, issue subpoenas, regulate the course and
7 conduct of the hearing and make a final ruling on the issues before him.

8 (g) "Hearing request" means a request for an administrative hearing on
9 the suspension imposed by the provisions of this section.

10 (2) Information to be given. At the time of evidentiary testing for
11 concentration of alcohol, or for the presence of drugs or other intoxicat-
12 ing substances is requested, the person shall be informed that if the person
13 refuses to submit to or fails to complete evidentiary testing, or if the per-
14 son submits to and completes evidentiary testing and the test results indi-
15 cate an alcohol concentration or the presence of drugs or other intoxicating
16 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,
17 the person shall be informed substantially as follows (but need not be in-
18 formed verbatim):

19 If you refuse to submit to or if you fail to complete and pass eviden-
20 tiary testing for alcohol or other intoxicating substances:

21 (a) The peace officer will issue a notice of suspension;

22 (b) You have the right to request a hearing within seven (7) days of the
23 notice of suspension of your driver's license to show cause why you re-
24 fused to submit to or to complete and pass evidentiary testing and why
25 your driver's license should not be suspended;

26 (c) If you refused or failed to complete evidentiary testing and do not
27 request a hearing before the court or do not prevail at the hearing, your
28 driver's license will be suspended. The suspension will be for one (1)
29 year if this is your first refusal. The suspension will be for two (2)
30 years if this is your second refusal within ten (10) years. You will not
31 be able to obtain a temporary restricted license during that period;

32 (d) If you complete evidentiary testing and fail the testing and do not
33 request a hearing before the department or do not prevail at the hear-
34 ing, your driver's license will be suspended. This suspension will be
35 for ninety (90) days if this is your first failure of evidentiary test-
36 ing, but you may request restricted noncommercial vehicle driving priv-
37 ileges after the first thirty (30) days. The suspension will be for one
38 (1) year if this is your second failure of evidentiary testing within
39 five (5) years. You will not be able to obtain a temporary restricted
40 license during that period;

41 (e) However, if you are admitted to a problem solving court program and
42 have served at least forty-five (45) days of an absolute suspension of
43 driving privileges, you may be eligible for a restricted permit for the
44 purpose of getting to and from work, school or an alcohol treatment pro-
45 gram; and

46 (f) However, if you are admitted to a diversion program under section
47 19-3509, Idaho Code, you may be eligible for a restricted permit for the
48 purpose of getting to and from work, school, medical appointments or a
49 treatment program; and

1 (g) After submitting to evidentiary testing you may, when practicable,
2 at your own expense, have additional tests made by a person of your own
3 choosing.

4 (3) Rulemaking authority of the Idaho state police. The Idaho state po-
5 lice may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

6 (a) What testing is required to complete evidentiary testing under this
7 section; and

8 (b) What calibration or checking of testing equipment must be performed
9 to comply with the department's requirements. Any rules of the Idaho
10 state police shall be in accordance with the following: a test for alco-
11 hol concentration in breath as defined in section 18-8004, Idaho Code,
12 and subsection (1) (e) of this section will be valid for the purposes of
13 this section if the breath alcohol testing instrument was approved for
14 testing by the Idaho state police in accordance with section 18-8004,
15 Idaho Code, at any time within ninety (90) days before the evidentiary
16 testing. A test for alcohol concentration in blood or urine as defined
17 in section 18-8004, Idaho Code, that is reported by the Idaho state po-
18 lice or by any laboratory approved by the Idaho state police to perform
19 this test will be valid for the purposes of this section.

20 (4) Suspension.

21 (a) Upon receipt of the sworn statement of a peace officer that there
22 existed legal cause to believe a person had been driving or was in actual
23 physical control of a motor vehicle while under the influence of alco-
24 hol, drugs or other intoxicating substances and that the person submit-
25 ted to a test and the test results indicated an alcohol concentration or
26 the presence of drugs or other intoxicating substances in violation of
27 section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall
28 suspend the person's driver's license, driver's permit, driving privi-
29 leges or nonresident driving privileges:

30 (i) For a period of ninety (90) days for a first failure of ev-
31 identiary testing under the provisions of this section. The
32 first thirty (30) days of the suspension shall be absolute and the
33 person shall have absolutely no driving privileges of any kind.
34 Restricted noncommercial vehicle driving privileges applicable
35 during the remaining sixty (60) days of the suspension may be re-
36 quested as provided in subsection (9) of this section.

37 (ii) For a period of one (1) year for a second and any subsequent
38 failure of evidentiary testing under the provisions of this sec-
39 tion within the immediately preceding five (5) years. No driving
40 privileges of any kind shall be granted during the suspension im-
41 posed pursuant to this subsection.

42 The person may request an administrative hearing on the suspension as
43 provided in subsection (7) of this section. Any right to contest the
44 suspension shall be waived if a hearing is not requested as therein pro-
45 vided.

46 (b) The suspension shall become effective thirty (30) days after ser-
47 vice upon the person of the notice of suspension. The notice shall be in
48 a form provided by the department and shall state:

49 (i) The reason and statutory grounds for the suspension;

50 (ii) The effective date of the suspension;

1 (iii) The suspension periods to which the person may be subject as
2 provided in subsection (4) (a) of this section;
3 (iv) The procedures for obtaining restricted noncommercial vehi-
4 cle driving privileges;
5 (v) The rights of the person to request an administrative hear-
6 ing on the suspension and that if an administrative hearing is not
7 requested within seven (7) days of service of the notice of suspen-
8 sion the right to contest the suspension shall be waived;
9 (vi) The procedures for obtaining an administrative hearing on
10 the suspension;
11 (vii) The right to judicial review of the hearing officer's deci-
12 sion on the suspension and the procedures for seeking such review.
13 (c) Notwithstanding the provisions of subsection (4) (a) (i) and (ii)
14 of this section, a person who is enrolled in and is a participant in
15 good standing in a drug court or mental health court approved by the
16 supreme court drug court and mental health court coordinating commit-
17 tee under the provisions of chapter 56, title 19, Idaho Code, or other
18 similar problem solving court utilizing community-based sentencing
19 alternatives, shall be eligible for restricted noncommercial driving
20 privileges for the purpose of getting to and from work, school or an
21 alcohol treatment program, which may be granted by the presiding judge
22 of the drug court or mental health court or other similar problem solv-
23 ing court, provided that the offender has served a period of absolute
24 suspension of driving privileges of at least forty-five (45) days, that
25 a state-approved ignition interlock system is installed, and for re-
26 peat offenders it shall be maintained for not less than one (1) year, on
27 each of the motor vehicles owned or operated, or both, by the offender
28 and that the offender has shown proof of financial responsibility as
29 defined and in the amounts specified in section 49-117, Idaho Code,
30 provided that the restricted noncommercial driving privileges may be
31 continued if the offender successfully completes the drug court, mental
32 health court or other similar problem solving court, and that the court
33 may revoke such privileges for failure to comply with the terms of pro-
34 bation or with the terms and conditions of the drug court, mental health
35 court or other similar problem solving court program.
36 (d) Notwithstanding the provisions of subsection (4) (a) (i) and (ii)
37 of this section, a person who is enrolled in and is a participant in
38 good standing in a diversion program pursuant to section 19-3509, Idaho
39 Code, shall be eligible for restricted noncommercial driving privi-
40 leges for the purpose of getting to and from work, school, medical
41 appointments or a treatment program, which privileges may be granted by
42 the administrator of the diversion program, provided that a state-ap-
43 proved ignition interlock system is installed in each motor vehicle op-
44 erated by the person, which system shall be maintained for not less than
45 six (6) months or for the duration of the diversion program, whichever
46 is longer; and provided further, that the person has shown proof of fi-
47 ancial responsibility as defined and in the amounts specified in sec-
48 tion 49-117, Idaho Code, to the administrator of the diversion program.
49 (5) Service of suspension by peace officer or the department. If the
50 driver submits to evidentiary testing after the information in subsection

1 (2) of this section has been provided and the results of the test indicate
2 an alcohol concentration or the presence of drugs or other intoxicating
3 substances in violation of the provisions of section 18-8004, 18-8004C or
4 18-8006, Idaho Code:

5 (a) The peace officer shall, acting on behalf of the department, serve
6 the person with a notice of suspension in the form and containing the in-
7 formation required under subsection (4) of this section. The depart-
8 ment may serve the person with a notice of suspension if the peace of-
9 ficer failed to issue the notice of suspension or failed to include the
10 date of service as provided in subsection (4) (b) of this section.

11 (b) Within five (5) business days following service of a notice of
12 suspension the peace officer shall forward to the department a copy of
13 the completed notice of suspension form upon which the date of service
14 upon the driver shall be clearly indicated, a certified copy or dupli-
15 cate original of the results of all tests for alcohol concentration, as
16 shown by analysis of breath administered at the direction of the peace
17 officer, and a sworn statement of the officer, which may incorporate
18 any arrest or incident reports relevant to the arrest and evidentiary
19 testing setting forth:

20 (i) The identity of the person;

21 (ii) Stating the officer's legal cause to stop the person;

22 (iii) Stating the officer's legal cause to believe that the per-
23 son had been driving or was in actual physical control of a motor
24 vehicle while under the influence of alcohol, drugs or other in-
25 toxicating substances in violation of the provisions of section
26 18-8004, 18-8004C or 18-8006, Idaho Code;

27 (iv) That the person was advised of the consequences of taking and
28 failing the evidentiary test as provided in subsection (2) of this
29 section;

30 (v) That the person was lawfully arrested;

31 (vi) That the person was tested for alcohol concentration, drugs
32 or other intoxicating substances as provided in this chapter, and
33 that the results of the test indicated an alcohol concentration or
34 the presence of drugs or other intoxicating substances in viola-
35 tion of the provisions of section 18-8004, 18-8004C or 18-8006,
36 Idaho Code.

37 If an evidentiary test of blood or urine was administered rather than
38 a breath test, the peace officer or the department shall serve the no-
39 tice of suspension once the results are received. The sworn statement
40 required in this subsection shall be made on forms in accordance with
41 rules adopted by the department.

42 (c) The department may serve the person with a notice of suspension if
43 the peace officer failed to issue the notice of suspension or failed to
44 include the date of service as provided in subsection (4) (b) of this
45 section.

46 (6) Additional tests. After submitting to evidentiary testing at the
47 request of the peace officer, the person may, when practicable, at his own
48 expense, have additional tests for alcohol concentration or for the presence
49 of drugs or other intoxicating substances made by a person of his own choos-
50 ing. The person's failure or inability to obtain additional tests shall not

1 preclude admission of the results of evidentiary tests administered at the
2 direction of the peace officer unless additional testing was denied by the
3 peace officer.

4 (7) Administrative hearing on suspension. A person who has been served
5 with a notice of suspension after submitting to an evidentiary test may re-
6 quest an administrative hearing on the suspension before a hearing officer
7 designated by the department. The request for hearing shall be in writing
8 and must be received by the department within seven (7) calendar days of the
9 date of service upon the person of the notice of suspension, and shall in-
10 clude what issue or issues shall be raised at the hearing. The date on which
11 the hearing request was received shall be noted on the face of the request.

12 If a hearing is requested, the hearing shall be held within twenty (20)
13 days of the date the hearing request was received by the department unless
14 this period is, for good cause shown, extended by the hearing officer for one
15 ten (10) day period. Such extension shall not operate as a stay of the sus-
16 pension, notwithstanding an extension of the hearing date beyond such thirty
17 (30) day period. Written notice of the date and time of the hearing shall
18 be sent to the party requesting the hearing at least seven (7) days prior to
19 the scheduled hearing date. The department may conduct all hearings by tele-
20 phone if each participant in the hearing has an opportunity to participate in
21 the entire proceeding while it is taking place.

22 The hearing shall be recorded. The sworn statement of the arresting of-
23 ficer, and the copy of the notice of suspension issued by the officer shall
24 be admissible at the hearing without further evidentiary foundation. The
25 results of any tests for alcohol concentration or the presence of drugs or
26 other intoxicating substances by analysis of blood, urine or breath adminis-
27 tered at the direction of the peace officer and the records relating to cali-
28 bration, certification, approval or quality control pertaining to equip-
29 ment utilized to perform the tests shall be admissible as provided in section
30 18-8004(4), Idaho Code. The arresting officer shall not be required to par-
31 ticipate unless directed to do so by a subpoena issued by the hearing offi-
32 cer.

33 The burden of proof shall be on the person requesting the hearing. The
34 hearing officer shall not vacate the suspension unless he finds, by a prepon-
35 derance of the evidence, that:

36 (a) The peace officer did not have legal cause to stop the person; or

37 (b) The officer did not have legal cause to believe the person had been
38 driving or was in actual physical control of a vehicle while under the
39 influence of alcohol, drugs or other intoxicating substances in viola-
40 tion of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho
41 Code; or

42 (c) The test results did not show an alcohol concentration or the pres-
43 ence of drugs or other intoxicating substances in violation of section
44 18-8004, 18-8004C or 18-8006, Idaho Code; or

45 (d) The tests for alcohol concentration, drugs or other intoxicating
46 substances administered at the direction of the peace officer were not
47 conducted in accordance with the requirements of section 18-8004(4),
48 Idaho Code, or the testing equipment was not functioning properly when
49 the test was administered; or

1 (e) The person was not informed of the consequences of submitting to ev-
2 diciary testing as required in subsection (2) of this section.
3 If the hearing officer finds that the person has not met his burden of proof,
4 he shall sustain the suspension. The hearing officer shall make findings of
5 fact and conclusions of law on each issue and shall enter an order vacating
6 or sustaining the suspension. The findings of fact, conclusions of law and
7 order entered by the hearing officer shall be considered a final order pur-
8 suant to the provisions of chapter 52, title 67, Idaho Code, except that mo-
9 tions for reconsideration of such order shall be allowed and new evidence can
10 be submitted.

11 The facts as found by the hearing officer shall be independent of the de-
12 termination of the same or similar facts in the adjudication of any criminal
13 charges arising out of the same occurrence. The disposition of those crim-
14 inal charges shall not affect the suspension required to be imposed under
15 the provisions of this section. If a license is suspended under this section
16 and the person is also convicted on criminal charges arising out of the same
17 occurrence for a violation of the provisions of section 18-8004, 18-8004C
18 or 18-8006, Idaho Code, both the suspension under this section and the sus-
19 pension imposed pursuant to the provisions of section 18-8005 or 18-8006,
20 Idaho Code, shall be imposed, but the periods of suspension shall run concur-
21 rently, with the total period of suspension not to exceed the longer of the
22 applicable suspension periods, unless the court ordering the suspension in
23 the criminal case orders to the contrary.

24 (8) Judicial review. A party aggrieved by the decision of the hear-
25 ing officer may seek judicial review of the decision in the manner provided
26 for judicial review of final agency action provided in chapter 52, title 67,
27 Idaho Code.

28 (9) Restricted noncommercial vehicle driving privileges. A person
29 served with a notice of suspension for ninety (90) days pursuant to this
30 section may apply to the department for restricted noncommercial vehicle
31 driving privileges, to become effective after the thirty (30) day absolute
32 suspension has been completed. The request may be made at any time after ser-
33 vice of the notice of suspension. Restricted noncommercial vehicle driving
34 privileges will be issued for the person to travel to and from work and for
35 work purposes not involving operation of a commercial vehicle, to attend an
36 alternative high school, work on a GED, for postsecondary education, or to
37 meet the medical needs of the person or his family if the person is eligible
38 for restricted noncommercial vehicle driving privileges. Any person whose
39 driving privileges are suspended under the provisions of this chapter may be
40 granted privileges to drive a noncommercial vehicle but shall not be granted
41 privileges to operate a commercial motor vehicle.

42 (10) Rules. The department may adopt rules under the provisions of
43 chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-
44 sions of this section.

45 SECTION 4. That Section 18-8008, Idaho Code, be, and the same is hereby
46 amended to read as follows:

47 18-8008. IGNITION INTERLOCKS -- ELECTRONIC MONITORING DEVICES. (1) If
48 a person is convicted, is found guilty, pleads guilty or receives a with-

1 held judgment for violating any of the provisions of this chapter and has had
2 any or all of a sentence or fine suspended for the violation, the court, in
3 its discretion, may impose any, some, or all of the sanctions provided for
4 in this section in addition to any other penalty or fine imposed pursuant to
5 this chapter.

6 (2) The court shall order the person to have a state-approved ignition
7 interlock system installed on each of the motor vehicles owned or operated,
8 or both, by the offender. The restriction shall be for a period not in ex-
9 cess of the time the person is on probation for the offense but not less than
10 one (1) year for repeat offenders. The calibration setting at which the ig-
11 nition interlock system will prevent the motor vehicle from being started
12 shall be .025. As used in this section, the term "ignition interlock system"
13 means breath alcohol ignition interlock device, including a camera, certi-
14 fied by the transportation department, designed to prevent a motor vehicle
15 from being operated by a person who has consumed an alcoholic beverage. The
16 transportation department shall by rule provide standards for the certifi-
17 cation, installation, repair and removal of the devices. The court shall no-
18 tify the transportation department of its order imposing a sanction pursuant
19 to this subsection. The department shall attach or imprint a notation on the
20 driver's license or other document granting the person restricted driving
21 privileges of any person restricted under this subsection that the person
22 may operate only a motor vehicle equipped with an ignition interlock system.

23 (3) The court may order the person to use electronic monitoring devices
24 to record the person's movements if as a condition of probation the person
25 has been given restricted driving privileges between certain times, has been
26 placed under a curfew or has been ordered confined to his residence during
27 times certain. Nothing in this subsection shall restrict the court's usage
28 of electronic monitoring devices to supervise a defendant on probation for
29 other offenses.

30 (4) If a court orders a defendant to use an ignition interlock system
31 or electronic monitoring device pursuant to this section, and the court, or
32 its probation department, furnishes the defendant with the device, the court
33 may order the defendant to pay a reasonable fee for utilizing the equipment.
34 All fees collected pursuant to this section shall be in addition to any
35 other fines or penalty provided by law and shall be deposited in the court
36 interlock device and electronic monitoring device fund created in section
37 18-8010, Idaho Code.

38 SECTION 5. That Section 18-8010, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 18-8010. SURCHARGE ADDED TO ALL FINES. Every person who is convicted,
41 found guilty, pleads guilty or receives a withheld judgment for violating
42 the provisions of this chapter shall be required to pay an additional fifteen
43 dollars (\$15.00) in addition to any other fine, penalty or costs the court
44 may assess. Moneys received pursuant to this section shall be remitted to
45 the county treasurer in the county where the person was adjudicated for de-
46 posit in the "court interlock device and electronic monitoring device fund"
47 which is hereby created in each county. Moneys in this fund may be utilized
48 for the purchase of ignition interlock devices and electronic monitoring de-

1 vices required pursuant to section 18-8008, Idaho Code. Additionally, any
2 moneys a court charges a defendant for using an ignition interlock device
3 or electronic monitoring devices shall be placed in this fund. The court
4 or a prosecuting attorney who established a diversion program pursuant to
5 section 19-3509, Idaho Code, may also utilize moneys in this fund to assist
6 an indigent defendant to procure an ignition interlock device or electronic
7 monitoring devices. The court may also utilize moneys in this fund for al-
8 cohol or drug abuse related probation, treatment or prevention programs for
9 adults or juveniles.

10 SECTION 6. That Section 18-8011, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 18-8011. STAY OF SUSPENSION OF DRIVERS' LICENSES OR DRIVING PRIVI-
13 LEGES UPON REINCARCERATION. A court-ordered suspension of an individual's
14 driver's license or driving privileges issued pursuant to this chapter
15 that is to commence after that individual's release from confinement or
16 imprisonment, shall cease to run if the individual is reincarcerated. The
17 court-ordered suspension will be stayed for the entire period the individ-
18 ual is reincarcerated and will recommence as of the date the individual is
19 rereleased from confinement or imprisonment. Upon the individual's release
20 from confinement or imprisonment, the suspension period will run for the
21 number of days remaining on the suspension as of the date of the individual's
22 reincarceration. This stay may be waived by the prosecuting attorney if the
23 individual is admitted to a diversion program pursuant to section 19-3509,
24 Idaho Code.

25 SECTION 7. That Section 19-3506, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 19-3506. EFFECT OF DISMISSAL AS BAR -- DISMISSAL FOR DIVERSION PARTIC-
28 IPANT. (1) An order for the dismissal of the action, as provided in this chap-
29 ter, is a bar to any other prosecution for the same offense, if it is a misde-
30 meanor, except as provided in subsection (2) of this section; but it is not a
31 bar if the offense is a felony.

32 (2) A prosecuting attorney may move for dismissal of a misdemeanor
33 action, and the court may order such dismissal, if the defendant agrees to
34 participate in a diversion program pursuant to section 19-3509, Idaho Code.
35 The action may be refiled for failure to complete the diversion program, and
36 speedy trial shall be calculated from the date of refiling.

37 SECTION 8. That Chapter 35, Title 19, Idaho Code, be, and the same is
38 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
39 ignated as Section 19-3507, Idaho Code, and to read as follows:

40 19-3507. DIVERSION PROGRAMS -- LEGISLATIVE INTENT. (1) For purposes
41 of this section and sections 19-3508 and 19-3509, Idaho Code, "diversion
42 program" means the use of local community resources, churches, substance
43 abuse counseling, informal probation, community service work, voluntary

1 restitution or other available services or programs as an alternative to
2 adjudication of a criminal case in court.

3 (2) It is the intent of the legislature and the policy of the state of
4 Idaho that a diversion program should:

5 (a) Provide an opportunity to incorporate statistics and empirical re-
6 search into decision-making in the criminal justice system in a way that
7 saves taxpayer dollars while also reducing recidivism and enhancing
8 public safety;

9 (b) Provide individuals with the opportunity to rectify criminal con-
10 duct through early rehabilitative services or supervision, when such
11 services or supervision can reasonably be expected to deter future
12 criminal behavior by such individuals;

13 (c) Provide an alternative to the imposition of criminal sanctions when
14 such an alternative can be expected to serve as sufficient sanction to
15 deter criminal conduct; and

16 (d) Provide assistance to criminal court calendars in order to focus
17 expenditure of criminal justice resources on matters involving serious
18 criminality and severe correctional problems.

19 SECTION 9. That Chapter 35, Title 19, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 19-3508, Idaho Code, and to read as follows:

22 19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. (1) A person is eligible
23 to participate in a diversion program if the person has been charged with:

24 (a) Driving under the influence offenses charged pursuant to section
25 18-8004 or 18-8004A, Idaho Code, if the person has not been convicted
26 of a driving under the influence offense or a substantially conforming
27 foreign criminal violation within the past ten (10) years;

28 (b) Noncommercial driver's license validity-related offenses includ-
29 ing, but not limited to, driving without privileges offenses as set
30 forth in section 18-8001, Idaho Code, invalid driver's license offenses
31 as set forth in section 49-301, Idaho Code, and expired driver's license
32 offenses as set forth in section 49-319, Idaho Code.

33 (2) A person charged with an offense not listed in subsection (1) of
34 this section, including a driving under the influence offense charged pur-
35 suant to section 18-8006, Idaho Code, or vehicular homicide charged pursuant
36 to section 18-4006(3) (b), Idaho Code, is not eligible to participate in a di-
37 version program.

38 SECTION 10. That Chapter 35, Title 19, Idaho Code, be, and the same is
39 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
40 ignated as Section 19-3509, Idaho Code, and to read as follows:

41 19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) A prosecuting attorney
42 may, at the prosecuting attorney's discretion, establish a diversion pro-
43 gram and may refer a criminal defendant to such program within thirty (30)
44 calendar days of a citation being issued or charges being filed against the
45 defendant. Before entering an agreement to participate in the diversion
46 program, a defendant may obtain advice from a defense attorney on the re-

1 quirements and consequences of participating in the diversion program and
2 must undergo a drug or alcohol evaluation, or both, if requested by the pros-
3 ecuting attorney. If the defendant agrees to participate in the diversion
4 program, the prosecuting attorney shall move for dismissal of the action
5 against the defendant pursuant to section 19-3506, Idaho Code.

6 (2) If a person participates in a diversion program pursuant to this
7 section, then any statement made by the person in diversion activities or
8 proceedings is inadmissible as substantive evidence of guilt during an adju-
9 dicative proceeding on the underlying charge.

10 (3) A diversion program may be administered by the prosecuting attorney
11 or by the prosecuting attorney's designee. The diversion program shall last
12 for no less than six (6) months and no more than two (2) years, and may require
13 participation in activities including, but not limited to, the following:

- 14 (a) Informal supervision with the probation department;
- 15 (b) Community service work;
- 16 (c) Inmate labor detail work;
- 17 (d) Restitution to the victim;
- 18 (e) A community-based diversion program;
- 19 (f) Alcohol monitoring and testing;
- 20 (g) Individual therapy and counseling;
- 21 (h) Group therapy and counseling; and
- 22 (i) Drug monitoring and testing.

23 (4) The administrator of the diversion program may require payment of
24 restitution as well as fees to cover the costs of the program, including su-
25 pervision, monitoring devices and drug or alcohol tests. Any fees collected
26 shall be reasonably related to, but shall not exceed, actual program costs.
27 If community service work or inmate labor detail work will be included in
28 the diversion program, a portion of the fees shall be remitted to the state
29 insurance fund for the purpose of securing worker's compensation insurance
30 for the participant performing community service work or inmate labor detail
31 work. If a county is self-insured and provides worker's compensation insur-
32 ance for persons performing community service work or inmate labor detail
33 work pursuant to the provisions of this section, then remittance to the state
34 insurance fund is not required.

35 (5) A participant in a diversion program whose driving privileges have
36 been suspended may be granted driving privileges by the administrator of
37 the diversion program, in which case the participant shall be issued a re-
38 stricted driving permit by the Idaho transportation department. If partici-
39 pating in the diversion program due to an underlying charge of driving under
40 the influence of alcohol, drugs or another intoxicating substance, the par-
41 ticipant, to qualify for a restricted driving permit, must have an ignition
42 interlock system, as defined in section 18-8008, Idaho Code, installed in
43 each vehicle operated by the participant and must pay an ignition interlock
44 fee of fifteen dollars (\$15.00) to be deposited in the court interlock device
45 and electronic monitoring device fund created by section 18-8010, Idaho
46 Code. The ignition interlock system shall remain in each vehicle operated by
47 the participant for six (6) months or for the duration of the diversion pro-
48 gram, whichever is longer. If the participant refused evidentiary testing
49 pursuant to section 18-8002, Idaho Code, the ignition interlock system shall
50 remain in each vehicle operated by the participant for one (1) year or for

1 the duration of the diversion program, whichever is longer. The ignition in-
2 terlock system shall be removed once the participant successfully completes
3 diversion, provided that such removal shall not occur until the prosecuting
4 attorney who established the diversion program receives a declaration from
5 the participant's ignition interlock system vendor, on a form provided or
6 approved by the prosecuting attorney, certifying that none of the following
7 incidents occurred while the system was installed in the vehicle:

8 (a) An attempt to start the vehicle with a breath alcohol concentration
9 of 0.04 or more, unless a subsequent test performed within ten (10) min-
10 utes registers a breath alcohol concentration lower than 0.04 and a digi-
11 tal image from the system's camera confirms the same person provided
12 both samples;

13 (b) Failure to take any random test, unless a review of a digital image
14 from the system's camera confirms that the vehicle was not occupied by
15 the participant at the time of the missed test;

16 (c) Failure to pass any random retest with a breath alcohol concentra-
17 tion of 0.025 or lower, unless a subsequent test performed within ten
18 (10) minutes registers a breath alcohol concentration lower than 0.025,
19 and a digital image from the system's camera confirms the same person
20 provided both samples; or

21 (d) Failure of the participant to appear at the ignition interlock sys-
22 tem vendor's place of business when required for maintenance, repair,
23 calibration, monitoring, inspection or replacement of the system.

24 If criminal charges against the participant are refiled pursuant to
25 section 19-3506, Idaho Code, the ignition interlock system shall be removed.

26 (6) If the participant fails to complete the terms of the diversion
27 agreement to the satisfaction of the prosecuting attorney who established
28 the diversion program, then the prosecuting attorney may refile the action
29 against the participant pursuant to section 19-3506, Idaho Code.

30 (7) Diversion may not be used more than once for the same underlying
31 charge. Diversion may not be used for a driving under the influence offense
32 if the person has been convicted of a driving under the influence offense or
33 a substantially conforming foreign criminal violation within the past ten
34 (10) years.

35 (8) An individual's participation in a diversion program shall be noted
36 in the individual's criminal record pursuant to a rule or policy established
37 by the supreme court, and the court is hereby authorized to establish rules
38 or policies regarding diversion programs as the court deems necessary.

39 SECTION 11. That Section 20-617, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 20-617. LABOR OF PRISONERS ON PUBLIC WORKS. Persons confined in the
42 county jail under a judgment of conviction, suspended sentence or withheld
43 judgment rendered in any criminal case, either under a judgment of imprison-
44 ment or a judgment for the payment of a fine and costs, or persons partici-
45 partating in a diversion program pursuant to section 19-3509, Idaho Code, may be
46 required to perform labor on federal, state or other governmental projects
47 or community service projects.