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LEGISLATURE OF THE STATE OF IDAHO  
Sixty-fourth Legislature Second Regular Session - 2018  
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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 CERTAIN  
3 CIRCUMSTANCES; AMENDING SECTION 18-8002, IDAHO CODE, TO PROVIDE THAT  
4 PERSONS PARTICIPATING IN A DIVERSION PROGRAM MAY BE ELIGIBLE FOR CER-  
5 TAIN DRIVING PRIVILEGES; AMENDING SECTION 18-8002A, IDAHO CODE, TO RE-  
6 VISE PROVISIONS REGARDING CERTAIN INFORMATION GIVEN TO PERSONS UNDER-  
7 GOING EVIDENTIARY TESTING FOR ALCOHOL, DRUGS OR OTHER INTOXICATING SUB-  
8 STANCES; AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE THE DEFINITION  
9 OF IGNITION INTERLOCK SYSTEM; AMENDING SECTION 18-8011, IDAHO CODE, TO  
10 PROVIDE FOR A CERTAIN WAIVER; AMENDING SECTION 19-3503, IDAHO CODE, TO  
11 PROVIDE AN EXCEPTION; AMENDING SECTION 19-3506, IDAHO CODE, TO PROVIDE  
12 FOR A CONDITIONAL DISMISSAL; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE,  
13 BY THE ADDITION OF A NEW SECTION 19-3507, IDAHO CODE, TO DEFINE A TERM  
14 AND TO PROVIDE LEGISLATIVE INTENT; AMENDING CHAPTER 35, TITLE 19, IDAHO  
15 CODE, BY THE ADDITION OF A NEW SECTION 19-3508, IDAHO CODE, TO PROVIDE  
16 ELIGIBILITY REQUIREMENTS FOR DIVERSION PROGRAMS; AMENDING CHAPTER 35,  
17 TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3509, IDAHO  
18 CODE, TO ESTABLISH PROVISIONS REGARDING DIVERSION PROGRAMS; AND AMEND-  
19 ING SECTION 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS PARTICIPATING  
20 IN DIVERSION PROGRAMS MAY BE REQUIRED TO PERFORM CERTAIN LABOR.  
21

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

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

25 18-8001. DRIVING WITHOUT PRIVILEGES. (1) Any person who drives or is  
26 in actual physical control of any motor vehicle upon the highways of this  
27 state with knowledge or who has received legal notice pursuant to section  
28 49-320, Idaho Code, that his driver's license, driving privileges or permit  
29 to drive is revoked, disqualified or suspended in this state or any other ju-  
30 risdiction is guilty of a misdemeanor.

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

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

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

38 (c) Notice of the suspension, disqualification or revocation of his li-  
39 cense, driving privileges or permit to drive was mailed by first class  
40 mail to his address pursuant to section 49-320, Idaho Code, as shown in  
41 the transportation department records, and he failed to receive the no-  
42 tice or learn of its contents as a result of his own unreasonable, in-

1           tentional or negligent conduct or his failure to keep the transporta-  
2           tion department apprised of his mailing address as required by section  
3           49-320, Idaho Code; or

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

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

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

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

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

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

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

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

46          (c) May have his driving privileges suspended by the court for a period  
47          not to exceed one (1) year following the end of any period of suspension,  
48          disqualification or revocation existing at the time of the second vio-  
49          lation. The defendant may request restricted driving privileges during  
50          the period of the suspension, which the court may allow if the defen-

1           dant shows by a preponderance of the evidence that driving privileges  
2           are necessary for his employment, education or for family health needs.

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

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

17           (b) May be fined an amount not to exceed three thousand dollars  
18 (\$3,000); and

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

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

28           (7) If a person is convicted for a violation of section 18-8004,  
29 18-8004C or 18-8006, Idaho Code, and at the time of arrest had no driving  
30 privileges, the penalties imposed by this section shall be in addition to  
31 any penalties imposed under the provisions of section 18-8005, 18-8004A,  
32 18-8004C or 18-8006, Idaho Code, and not in lieu thereof.

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

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

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

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

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

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

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

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

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

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

49           (j) Section 49-1401, Idaho Code, reckless driving;

50           (k) Section 49-1404, Idaho Code, eluding a police officer;

1 (1) Section 49-1428, Idaho Code, operating a vehicle without liability  
2 insurance;  
3 or any substantially conforming foreign criminal violation.

4 (9) In no event shall a person be granted restricted driving privileges  
5 unless the person shows proof of liability insurance or other proof of finan-  
6 cial responsibility, as provided in chapter 12, title 49, Idaho Code.

7 (10) In no event shall a person who is disqualified or whose driving  
8 privileges are suspended, revoked or canceled under the provisions of this  
9 chapter be granted restricted driving privileges to operate a commercial  
10 motor vehicle.

11 (11) Notwithstanding the provisions of this section, a person admitted  
12 to a diversion program pursuant to section 19-3509, Idaho Code, may be eligi-  
13 ble for restricted driving privileges for the purpose of getting to and from  
14 work, school, medical appointments or a treatment program according to the  
15 terms and conditions of the diversion agreement.

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

18 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS  
19 OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF  
20 TESTS. (1) Any person who drives or is in actual physical control of a motor  
21 vehicle in this state shall be deemed to have given his consent to eviden-  
22 tiary testing for concentration of alcohol as defined in section 18-8004,  
23 Idaho Code, and to have given his consent to evidentiary testing for the  
24 presence of drugs or other intoxicating substances, provided that such  
25 testing is administered at the request of a peace officer having reasonable  
26 grounds to believe that person has been driving or in actual physical control  
27 of a motor vehicle in violation of the provisions of section 18-8004, Idaho  
28 Code, or section 18-8006, Idaho Code.

29 (2) Such person shall not have the right to consult with an attorney be-  
30 fore submitting to such evidentiary testing.

31 (3) At the time evidentiary testing for concentration of alcohol, or  
32 for the presence of drugs or other intoxicating substances is requested, the  
33 person shall be informed that if he refuses to submit to or if he fails to com-  
34 plete, evidentiary testing:

35 (a) He is subject to a civil penalty of two hundred fifty dollars (\$250)  
36 for refusing to take the test;

37 (b) He has the right to request a hearing within seven (7) days to show  
38 cause why he refused to submit to, or complete evidentiary testing;

39 (c) If he does not request a hearing or does not prevail at the hearing,  
40 the court shall sustain the civil penalty and his driver's license will  
41 be suspended absolutely for one (1) year if this is his first refusal and  
42 two (2) years if this is his second refusal within ten (10) years;

43 (d) Provided however, if he is admitted to a problem solving court pro-  
44 gram and has served at least forty-five (45) days of an absolute sus-  
45 pension of driving privileges, then he may be eligible for a restricted  
46 permit for the purpose of getting to and from work, school or an alcohol  
47 treatment program; and

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

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

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

11           (a) He shall be fined a civil penalty of two hundred fifty dollars  
12 (\$250);

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

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

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

1 section 49-117, Idaho Code, provided that the restricted noncommer-  
2 cial driving privileges may be continued if the defendant successfully  
3 completes the drug court, mental health court or other similar problem  
4 solving court, and that the court may revoke such privileges for failure  
5 to comply with the terms of probation or with the terms and conditions  
6 of the drug court, mental health court or other similar problem solving  
7 court program; and

8 (e) Notwithstanding the provisions of subsection 4(a), (b) and (c) of  
9 this section, if the defendant is a participant in good standing in a di-  
10 version program pursuant to section 19-3509, Idaho Code, then the de-  
11 fendant shall be eligible for restricted noncommercial driving privi-  
12 leges for the purpose of getting to and from work, school, medical ap-  
13 pointments or a treatment program, which privileges may be granted by  
14 the person administering the diversion program, provided that the de-  
15 fendant has:

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

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

24 Restricted noncommercial driving privileges may be continued once the  
25 defendant has successfully completed the diversion program. The per-  
26 son administering the diversion program may revoke restricted noncom-  
27 mercial driving privileges for failure to comply with the terms and con-  
28 ditions of the diversion program; and

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

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

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

1 section shall relieve any such person or legal entity from civil liability  
2 arising from the failure to exercise the community standard of care.

3 (a) This immunity extends to any person who assists any individual to  
4 withdraw a blood sample for evidentiary testing at the request or order  
5 of a peace officer, which individual is authorized to withdraw a blood  
6 sample under the provisions of section 18-8003, Idaho Code, regardless  
7 of the location where the blood sample is actually withdrawn.

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

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

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

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

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

23 (c) Nothing herein shall limit the discretion of the hospital admin-  
24 istration to designate the qualified hospital employee responsible to  
25 withdraw the blood sample.

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

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

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

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

38 (7) "Actual physical control" as used in this section and section  
39 18-8002A, Idaho Code, shall be defined as being in the driver's position of  
40 the motor vehicle with the motor running or with the motor vehicle moving.

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

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

48 (10) A person who submits to a breath test for alcohol concentration,  
49 as defined in subsection (4) of section 18-8004, Idaho Code, may also be re-  
50 quested to submit to a second evidentiary test of blood or urine for the pur-

1 pose of determining the presence of drugs or other intoxicating substances  
2 if the peace officer has reasonable cause to believe that a person was driv-  
3 ing under the influence of any drug or intoxicating substance or the combined  
4 influence of alcohol and any drug or intoxicating substance. The peace of-  
5 ficer shall state in his or her report the facts upon which that belief is  
6 based.

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

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

22 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF  
23 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF  
24 TESTS. (1) Definitions. As used in this section:

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

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

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

33 (d) "Director" means the director of the Idaho transportation depart-  
34 ment.

35 (e) "Evidentiary testing" means a procedure or test or series of proce-  
36 dures or tests utilized to determine the concentration of alcohol or the  
37 presence of drugs or other intoxicating substances in a person, includ-  
38 ing additional testing authorized by subsection (6) of this section. An  
39 evidentiary test for alcohol concentration shall be based on a formula  
40 of grams of alcohol per one hundred (100) cubic centimeters of blood,  
41 per two hundred ten (210) liters of breath, or sixty-seven (67) millili-  
42 ters of urine. Analysis of blood, breath or urine for the purpose of de-  
43 termining alcohol concentration shall be performed by a laboratory op-  
44 erated by the Idaho state police or by a laboratory approved by the Idaho  
45 state police under the provisions of approval and certification stan-  
46 dards to be set by the Idaho state police, or by any other method ap-  
47 proved by the Idaho state police. Notwithstanding any other provision  
48 of law or rule of court, the results of any test for alcohol concentra-



1 tion and records relating to calibration, approval, certification or  
2 quality control performed by a laboratory operated and approved by the  
3 Idaho state police or by any other method approved by the Idaho state po-  
4 lice shall be admissible in any proceeding in this state without the ne-  
5 cessity of producing a witness to establish the reliability of the test-  
6 ing procedure for examination.

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

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

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

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

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

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

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

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

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

1           (f) However, if you are admitted to a diversion program under section  
2 19-3509, Idaho Code, you may be eligible for a restricted permit for the  
3 purpose of getting to and from work, school, medical appointments or a  
4 treatment program; and

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

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

10           (a) What testing is required to complete evidentiary testing under this  
11 section; and

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

24           (4) Suspension.

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

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

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

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

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

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

5 (ii) The effective date of the suspension;

6 (iii) The suspension periods to which the person may be subject as  
7 provided in subsection (4) (a) of this section;

8 (iv) The procedures for obtaining restricted noncommercial vehi-  
9 cle driving privileges;

10 (v) The rights of the person to request an administrative hear-  
11 ing on the suspension and that if an administrative hearing is not  
12 requested within seven (7) days of service of the notice of suspen-  
13 sion the right to contest the suspension shall be waived;

14 (vi) The procedures for obtaining an administrative hearing on  
15 the suspension;

16 (vii) The right to judicial review of the hearing officer's deci-  
17 sion on the suspension and the procedures for seeking such review.

18 (c) Notwithstanding the provisions of subsection (4) (a) (i) and (ii)  
19 of this section, a person who is enrolled in and is a participant in  
20 good standing in a drug court or mental health court approved by the  
21 supreme court drug court and mental health court coordinating commit-  
22 tee under the provisions of chapter 56, title 19, Idaho Code, or other  
23 similar problem solving court utilizing community-based sentencing  
24 alternatives, shall be eligible for restricted noncommercial driving  
25 privileges for the purpose of getting to and from work, school or an  
26 alcohol treatment program, which may be granted by the presiding judge  
27 of the drug court or mental health court or other similar problem solv-  
28 ing court, provided that the offender has served a period of absolute  
29 suspension of driving privileges of at least forty-five (45) days, that  
30 a state-approved ignition interlock system is installed, and for re-  
31 peat offenders it shall be maintained for not less than one (1) year, on  
32 each of the motor vehicles owned or operated, or both, by the offender  
33 and that the offender has shown proof of financial responsibility as  
34 defined and in the amounts specified in section 49-117, Idaho Code,  
35 provided that the restricted noncommercial driving privileges may be  
36 continued if the offender successfully completes the drug court, mental  
37 health court or other similar problem solving court, and that the court  
38 may revoke such privileges for failure to comply with the terms of pro-  
39 bation or with the terms and conditions of the drug court, mental health  
40 court or other similar problem solving court program.

41 (d) Notwithstanding the provisions of subsection (4) (a) (i) and (ii)  
42 of this section, a person who is enrolled in and is a participant in  
43 good standing in a diversion program pursuant to section 19-3509, Idaho  
44 Code, shall be eligible for restricted noncommercial driving privi-  
45 leges for the purpose of getting to and from work, school, medical  
46 appointments or a treatment program, which privileges may be granted  
47 by the person administering the diversion program, provided that a  
48 state-approved ignition interlock system is installed in each motor  
49 vehicle owned or operated, or both, by the offender, which system shall  
50 be maintained for not less than six (6) months or for the duration of

1        the diversion program, whichever is longer; and provided further, that  
2        the offender has shown proof of financial responsibility as defined and  
3        in the amounts specified in section 49-117, Idaho Code, to the person  
4        administering the diversion program. Restricted noncommercial driving  
5        privileges may be continued if the offender successfully completes the  
6        diversion program. The person administering the diversion program may  
7        revoke such privileges for failure to comply with the terms and condi-  
8        tions of the diversion agreement.

9        (5) Service of suspension by peace officer or the department. If the  
10       driver submits to evidentiary testing after the information in subsection  
11       (2) of this section has been provided and the results of the test indicate  
12       an alcohol concentration or the presence of drugs or other intoxicating  
13       substances in violation of the provisions of section 18-8004, 18-8004C or  
14       18-8006, Idaho Code:

15       (a) The peace officer shall, acting on behalf of the department, serve  
16       the person with a notice of suspension in the form and containing the in-  
17       formation required under subsection (4) of this section. The depart-  
18       ment may serve the person with a notice of suspension if the peace of-  
19       ficer failed to issue the notice of suspension or failed to include the  
20       date of service as provided in subsection (4) (b) of this section.

21       (b) Within five (5) business days following service of a notice of  
22       suspension the peace officer shall forward to the department a copy of  
23       the completed notice of suspension form upon which the date of service  
24       upon the driver shall be clearly indicated, a certified copy or dupli-  
25       cate original of the results of all tests for alcohol concentration, as  
26       shown by analysis of breath administered at the direction of the peace  
27       officer, and a sworn statement of the officer, which may incorporate  
28       any arrest or incident reports relevant to the arrest and evidentiary  
29       testing setting forth:

- 30       (i) The identity of the person;
- 31       (ii) Stating the officer's legal cause to stop the person;
- 32       (iii) Stating the officer's legal cause to believe that the per-  
33       son had been driving or was in actual physical control of a motor  
34       vehicle while under the influence of alcohol, drugs or other in-  
35       toxicating substances in violation of the provisions of section  
36       18-8004, 18-8004C or 18-8006, Idaho Code;
- 37       (iv) That the person was advised of the consequences of taking and  
38       failing the evidentiary test as provided in subsection (2) of this  
39       section;
- 40       (v) That the person was lawfully arrested;
- 41       (vi) That the person was tested for alcohol concentration, drugs  
42       or other intoxicating substances as provided in this chapter, and  
43       that the results of the test indicated an alcohol concentration or  
44       the presence of drugs or other intoxicating substances in viola-  
45       tion of the provisions of section 18-8004, 18-8004C or 18-8006,  
46       Idaho Code.

47       If an evidentiary test of blood or urine was administered rather than  
48       a breath test, the peace officer or the department shall serve the no-  
49       tice of suspension once the results are received. The sworn statement

1 required in this subsection shall be made on forms in accordance with  
2 rules adopted by the department.

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

7 (6) Additional tests. After submitting to evidentiary testing at the  
8 request of the peace officer, the person may, when practicable, at his own  
9 expense, have additional tests for alcohol concentration or for the presence  
10 of drugs or other intoxicating substances made by a person of his own choos-  
11 ing. The person's failure or inability to obtain additional tests shall not  
12 preclude admission of the results of evidentiary tests administered at the  
13 direction of the peace officer unless additional testing was denied by the  
14 peace officer.

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

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

33 The hearing shall be recorded. The sworn statement of the arresting of-  
34 ficer, and the copy of the notice of suspension issued by the officer shall  
35 be admissible at the hearing without further evidentiary foundation. The  
36 results of any tests for alcohol concentration or the presence of drugs or  
37 other intoxicating substances by analysis of blood, urine or breath adminis-  
38 tered at the direction of the peace officer and the records relating to cal-  
39 ibration, certification, approval or quality control pertaining to equip-  
40 ment utilized to perform the tests shall be admissible as provided in section  
41 18-8004(4), Idaho Code. The arresting officer shall not be required to par-  
42 ticipate unless directed to do so by a subpoena issued by the hearing offi-  
43 cer.

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

- 47 (a) The peace officer did not have legal cause to stop the person; or  
48 (b) The officer did not have legal cause to believe the person had been  
49 driving or was in actual physical control of a vehicle while under the  
50 influence of alcohol, drugs or other intoxicating substances in viola-

1 tion of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho  
2 Code; or

3 (c) The test results did not show an alcohol concentration or the pres-  
4 ence of drugs or other intoxicating substances in violation of section  
5 18-8004, 18-8004C or 18-8006, Idaho Code; or

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

11 (e) The person was not informed of the consequences of submitting to ev-  
12 identiary testing as required in subsection (2) of this section.

13 If the hearing officer finds that the person has not met his burden of proof,  
14 he shall sustain the suspension. The hearing officer shall make findings of  
15 fact and conclusions of law on each issue and shall enter an order vacating  
16 or sustaining the suspension. The findings of fact, conclusions of law and  
17 order entered by the hearing officer shall be considered a final order pur-  
18 suant to the provisions of chapter 52, title 67, Idaho Code, except that mo-  
19 tions for reconsideration of such order shall be allowed and new evidence can  
20 be submitted.

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

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

38 (9) Restricted noncommercial vehicle driving privileges. A person  
39 served with a notice of suspension for ninety (90) days pursuant to this  
40 section may apply to the department for restricted noncommercial vehicle  
41 driving privileges, to become effective after the thirty (30) day absolute  
42 suspension has been completed. The request may be made at any time after ser-  
43 vice of the notice of suspension. Restricted noncommercial vehicle driving  
44 privileges will be issued for the person to travel to and from work and for  
45 work purposes not involving operation of a commercial vehicle, to attend an  
46 alternative high school, work on a GED, for postsecondary education, or to  
47 meet the medical needs of the person or his family if the person is eligible  
48 for restricted noncommercial vehicle driving privileges. Any person whose  
49 driving privileges are suspended under the provisions of this chapter may be

1 granted privileges to drive a noncommercial vehicle but shall not be granted  
2 privileges to operate a commercial motor vehicle.

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

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

8 18-8008. IGNITION INTERLOCKS -- ELECTRONIC MONITORING DEVICES. (1) If  
9 a person is convicted, is found guilty, pleads guilty or receives a with-  
10 held judgment for violating any of the provisions of this chapter and has had  
11 any or all of a sentence or fine suspended for the violation, the court, in  
12 its discretion, may impose any, some, or all of the sanctions provided for  
13 in this section in addition to any other penalty or fine imposed pursuant to  
14 this chapter.

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

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

39 (4) If a court orders a defendant to use an ignition interlock system  
40 or electronic monitoring device pursuant to this section, and the court, or  
41 its probation department, furnishes the defendant with the device, the court  
42 may order the defendant to pay a reasonable fee for utilizing the equipment.  
43 All fees collected pursuant to this section shall be in addition to any  
44 other fines or penalty provided by law and shall be deposited in the court  
45 interlock device and electronic monitoring device fund created in section  
46 18-8010, Idaho Code.

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1 SECTION 5. That Section 18-8011, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 18-8011. STAY OF SUSPENSION OF DRIVERS' LICENSES OR DRIVING PRIVI-  
4 LEGES UPON REINCARCERATION. A court-ordered suspension of an individual's  
5 driver's license or driving privileges issued pursuant to this chapter  
6 that is to commence after that individual's release from confinement or  
7 imprisonment, shall cease to run if the individual is reincarcerated. The  
8 court-ordered suspension will be stayed for the entire period the individ-  
9 ual is reincarcerated and will recommence as of the date the individual is  
10 rereleased from confinement or imprisonment. Upon the individual's release  
11 from confinement or imprisonment, the suspension period will run for the  
12 number of days remaining on the suspension as of the date of the individual's  
13 reincarceration. This stay may be waived by the prosecuting attorney if the  
14 individual is admitted to a diversion program pursuant to section 19-3509,  
15 Idaho Code.

16 SECTION 6. That Section 19-3503, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 19-3503. DEFENDANT TO BE DISCHARGED. If the court directs the action  
19 to be dismissed, the defendant must, if in custody, be discharged therefrom;  
20 or if admitted to bail, his bail is exonerated, or money deposited instead of  
21 bail must be refunded to him. Provided however, that if a defendant partic-  
22 ipates in a diversion program pursuant to section 19-3509, Idaho Code, the  
23 defendant may be required to forfeit bond by the person administering the di-  
24 version program.

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 -- CONDITIONAL DISMISSAL. (1) An  
28 order for the dismissal of the action, as provided in this chapter, is a bar  
29 to any other prosecution for the same offense, if it is a misdemeanor, except  
30 as provided in subsection (2) of this section; but it is not a bar if the of-  
31 fense is a felony.

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

38 SECTION 8. 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 19-3507, Idaho Code, and to read as follows:

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



1 abuse counseling, informal probation, community service work, voluntary  
2 restitution or other available services or programs as an alternative to  
3 adjudication of a criminal case in court.

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

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

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

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

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

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

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

25 (1) Driving under the influence offenses charged pursuant to section  
26 18-8004 or 18-8004A, Idaho Code, if the person has not previously been con-  
27 victed of a driving under the influence offense;

28 (2) Controlled substances offenses as set forth in sections  
29 37-2732(c), 37-2732C, 37-2732(d) and 37-2734A, Idaho Code; or

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

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

38 19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) A prosecuting attorney  
39 may, at the prosecuting attorney's discretion, establish a diversion pro-  
40 gram and may refer a criminal defendant to such program within thirty (30)  
41 calendar days of a citation being issued or charges being filed against the  
42 defendant. Before entering an agreement to participate in the diversion  
43 program, a defendant may obtain advice from a defense attorney on the re-  
44 quirements and consequences of participating in the diversion program and  
45 must undergo a drug or alcohol evaluation, or both, if requested by the pros-  
46 ecuting attorney. If the defendant agrees to participate in the diversion

1 program, the prosecuting attorney shall move for conditional dismissal of  
2 the action against the defendant pursuant to section 19-3506, Idaho Code.

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

7 (3) A diversion program may be administered by the prosecuting attor-  
8 ney or by the prosecuting attorney's designee. The diversion program may re-  
9 quire participation in activities including, but not limited to, the follow-  
10 ing:

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

21 (4) If community service work or inmate labor detail work will be in-  
22 cluded in a diversion program established pursuant to this section, then the  
23 prosecuting attorney who established the diversion program may collect a fee  
24 from the defendant and remit the fee to the state insurance fund for the pur-  
25 pose of securing worker's compensation insurance for the defendant perform-  
26 ing community service work or inmate labor detail work. The fee collected  
27 must be reasonably related to the cost of worker's compensation insurance.  
28 If a county is self-insured and provides worker's compensation insurance for  
29 persons performing community service work or inmate labor detail work pur-  
30 suant to the provisions of this section, then remittance to the state insur-  
31 ance fund is not required.

32 (5) A defendant participating in a diversion program due to an under-  
33 lying charge of driving under the influence of alcohol, drugs or another in-  
34 toxicating substance may be granted driving privileges by the person admin-  
35 istering the diversion program, in which case the defendant shall be issued  
36 a restricted driving permit by the Idaho transportation department, but to  
37 qualify for such permit, the defendant must have an ignition interlock sys-  
38 tem, as defined in section 18-8008, Idaho Code, installed in each vehicle  
39 owned or operated by the defendant and must pay an ignition interlock fee of  
40 fifteen dollars (\$15.00) to be deposited in the court interlock device and  
41 electronic monitoring device fund created by section 18-8010, Idaho Code.  
42 The ignition interlock system shall remain in each vehicle owned or oper-  
43 ated by the defendant for six (6) months or for the duration of the diversion  
44 program, whichever is longer. If the defendant refused evidentiary testing  
45 pursuant to section 18-8002, Idaho Code, the ignition interlock system shall  
46 remain in each vehicle owned or operated by the defendant for one (1) year or  
47 for the duration of the diversion program, whichever is longer. The ignition  
48 interlock system shall not be removed until the prosecuting attorney who es-  
49 tablished the diversion program receives a declaration from the defendant's  
50 ignition interlock system vendor, on a form provided or approved by the pros-

1 ecuting attorney, certifying that none of the following incidents occurred  
2 while the system was installed in the vehicle:

3 (a) An attempt to start the vehicle with a breath alcohol concentration  
4 of 0.04 or more, unless a subsequent test performed within ten (10) min-  
5 utes registers a breath alcohol concentration lower than 0.04 and a dig-  
6 ital image from the system's camera confirms the same person provided  
7 both samples;

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

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

16 (d) Failure of the defendant to appear at the ignition interlock system  
17 vendor's place of business when required for maintenance, repair, cali-  
18 bration, monitoring, inspection or replacement of the system.

19 (6) If the defendant fails to complete the terms of the diversion agree-  
20 ment to the satisfaction of the prosecuting attorney who established the di-  
21 version program, then the prosecuting attorney may refile the action against  
22 the defendant pursuant to section 19-3506, Idaho Code.

23 (7) Diversion may not be used more than once for the same underlying  
24 charge.

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

27 20-617. LABOR OF PRISONERS ON PUBLIC WORKS. Persons confined in the  
28 county jail under a judgment of conviction, suspended sentence or withheld  
29 judgment rendered in any criminal case, either under a judgment of imprison-  
30 ment or a judgment for the payment of a fine and costs, or persons partici-  
31 pating in a diversion program pursuant to section 19-3509, Idaho Code, may be  
32 required to perform labor on federal, state or other governmental projects  
33 or community service projects.