

Legislative Initiatives for 2019 for ISA

1) Amend 18-310 to include 18-1508A.

At this time a person with a criminal conviction for 18-1508A (Sexual Battery of a Child Age 16 or 17) is allowed to possess a weapon once their probation is completed as 18-310 does not list this crime as one where civil rights are not automatically restored. This also entitles the person to apply for and be issued a license to carry a concealed weapon. This issue has come up for ACSO this year as a person with this specific conviction applied for an enhanced concealed weapon license. I do not know if 18-1508A was left off this list by the legislature in error or not, but the crimes listed below are all included in 18-310 making it strange that 18-1508A is not included.

- 18-1501 (Felony Injury to a Child)
- 18-1506 (Sexual Abuse of a Child Under 16)
- 18-1506A (Ritualized Abuse of a Child)
- 18-1507 (Sexual Exploitation of a Child)
- 18-1508 (Lewd Conduct with a Child under 16)
- 18-1509 (Felony Enticement)

2) Probation and Parole Fourth Waiver Consistency

Have the legislature put in place a new statute that if any judge orders a Fourth Amendment Waiver, then the waiver has to have:

- The same conditions for all felony convictions (and misdemeanors if they order it) as to what can and cannot be searched in terms of person, vehicle and residence.
- That any waiver will apply to any Idaho peace officer and not just P&P.
- Be published to peace officers in a manner such that an officer making a traffic stop is aware of the Fourth Waiver and any conditions on it. (VIA the MDT like Driving or CCW status is the best option).

California's penal code from 2012 has specific provisions that could be used as a model to work for Idaho. The law states: "Parole: A condition of all parolees, after the parolee has been released from prison, is that the parolee submit to searches by his or her parole officer, or other peace officer at any time of the day or night, with or without a search warrant and with or without cause." (Cal. Code of Regs, Title 15, § 2511; P.C. § 3067(a). It goes on to state specifically, "you and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer." (Cal. Code of Regs, Title 15 § 2511).

3) Costs of Inmate Medical Care – Fix for St. Al's v. Raney (2018).

The court's ruling in this new Supreme Court case says that the legislature intended the amendments to I.C. 20-605 and 20-612 in 1994 to mean that a sheriff must pay for post-incarceration medical bills of an inmate if the inmate was released from jail for the purposes of receiving medical care.

Problems with this ruling:

- No temporal limitations on this ruling. Arguably, the payment obligation could extend for the remainder of the patient's life.
- Medical Care for non-incarcerated persons is already provided for under the county medical indigency statutes. (This ruling now says that the sheriff is also obligated to pay for these bills, but without all of the rules and safeguards built into the medical indigency rules.)
- This ruling is arguably not limited to non-indigent persons.
- This ruling could cover pre-existing medical conditions.

- The county will now need to budget for medical care of non-incarcerated persons in addition to those in the sheriff's custody.

The court stated in its ruling that it believed that I.C. § 20-605 says that the sheriff has to pay for post-release medical bills of inmates housed in other counties in cases where the inmate was released to receive medical treatment. Based on this interpretation, the court reasoned that the reference to these bills in I.C. § 20-612 shows legislative intent for the sheriff to pay for post-incarceration medical bills in all cases where the inmate was released from custody for the purposes of receiving medical care. Striking both of these provisions would make it clear that the medical indigency statutes are the sole remedy for a hospital to seek reimbursement from the county for medical bills of non-incarcerated persons.

a. Strike the following words from I.C. 20-612: "The sheriff must receive all persons committed to jail by competent authority except mentally ill persons not charged with a crime and juveniles. It shall be the duty of the board of county commissioners to furnish all persons committed to the county jail with necessary food, clothing and bedding, and medical ~~care as provided in section 20-605, Idaho Code~~, and the board of county commissioners is authorized to pay therefor out of the county treasury under such rules and regulations as they may prescribe."

b. To completely fix this problem, some language in I.C. § 20-605 should also be struck. The Supreme Court believed that because I.C. § 20-612 contains a reference to I.C. § 20-605, this shows the legislature intended to obligate county sheriffs to pay for post release medical bills of all inmates (not just those housed in other counties). Also striking this language from I.C. § 20-605 would further clarify that this is not a general obligation of the county and would leave the medical indigency statutes as the proper remedy for medical care providers wanting reimbursement for medical bills of non-incarcerated persons.

I.C. § 20-605 Costs of confinement: "The county wherein any court has entered an order pursuant to section 20-604, Idaho Code, shall pay all direct and indirect costs of the detention or confinement of the person to the governmental unit or agency owning or operating the jail or confinement facilities in which the person was confined or detained. The amount of such direct and indirect costs shall be determined on a per day per person basis by agreement between the county wherein the court entered the order and the county or governmental unit or agency owning or operating such jail or confinement facilities. In the absence of such agreement or order fixing the cost as provided in section 20-606, Idaho Code, the charge for each person confined or detained shall be the sum of thirty-five dollars (\$35.00) per day, plus the cost of any medical or dental services paid at the rate of reimbursement as provided in chapter 35, title 31, Idaho Code, unless a rate of reimbursement is otherwise established by contract or agreement; provided, however, that the county may determine whether the detained or confined person is eligible for any local, state, federal or private program that covers dental, medical and/or burial expenses. That person will be required to apply for those benefits, and any such benefits obtained may be applied to the detained or confined person's incurred expenses, and in the event of the death of such detained or confined person, the county wherein the court entered the order shall pay all actual burial costs. ~~Release from an order pursuant to section 20-604, Idaho Code, for the purpose of a person receiving medical treatment shall not relieve the county of its obligation of paying the medical care expenses imposed in this section.~~ In case a person confined or detained was initially arrested by a city police officer for violation of the motor vehicle laws of this state or for violation of a city ordinance, the cost of such confinement or detention shall be a charge against such city by the county wherein the order of confinement was entered. All payments under this section shall be acted upon for each calendar month by the second Monday of the month following the date of billing."

4) Public Record Exemptions Designed to Better Protect Sheriff/PA

Criminal Discovery Exemption: The discovery exemption in I.C. § 74-115 (originally §9-343(3)) was intended to cover criminal, civil, and administrative proceedings and even says so in the 2001 bill's statement of purpose. However, the code doesn't expressly mention criminal proceedings and as a result, we get a lot of public information request from criminal defense attorneys trying to circumvent discovery in an attempt to keep their documents hidden from the PA. I think it would be helpful for Sheriff's and Prosecutors if this provision was clarified to say: "...nor shall this chapter be available to supplement, augment, substitute or supplant discovery procedures in criminal proceedings or any other federal, civil or administrative proceeding."

5) Public Record Exemptions Designed to Better Protect Sheriff/PA

The exemptions given to IDOC in I.C. § 74-105(4) need to be extended to the sheriff, where applicable. The same public policy applies to the keeping of both state and county prisoners, but the language does not specifically include jails.

I.C. § 74-105 (4)

"(a): The following records of the department of correction or county sheriff, where applicable:

- (i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code, or the county sheriff under sections 31-2202(6) and 20-601 et seq., Idaho Code;
- (ii) Records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses;
- (iii) Records that reflect future transportation or movement of a prisoner;
- (iv) Records gathered during the course of the presentence investigation;
- (v) Records of a prisoner, as defined in section 9-337 (10), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(b) Records of buildings, facilities, infrastructures and systems held by or in the custody of any public agency only when the disclosure of such information would jeopardize the safety of persons or the public safety. Such records may include emergency evacuation, escape or other emergency response plans, vulnerability assessments, operation and security manuals, plans, blueprints or security codes. For purposes of this section "system" shall mean electrical, heating, ventilation, air conditioning and telecommunication systems."

6) Corrections to Civil Code Re-write

The following are corrections to mistakes made during the recent re-wrtie to civil code. The Controller's office, the ISA, and the Ada County Sheriff's Office all have interests in getting these flaws fixed.

Issue 1:

Before the new legislation, I.C. § 11-20 allowed garnishment of funds held by the state "by service by the sheriff of Ada county, Idaho, on the state controller..." That was correct in that the Controller's office is in Ada County, so the Ada County sheriff would be the only sheriff with the power to execute on the funds which were held in Ada County. However, the statute had another defect in that it didn't allow the state to hold tax return garnishments until the return became due. In other words, if the plaintiff wasn't lucky enough to garnish the tax return the moment it became due, then it was a waste of money and time. To fix this, we need to change the process that allowed the controller to hold the writ open for 150 days so there was a realistic chance that the tax return would be caught as it came through. A draft of this legislation that was presented incorrectly allowed any sheriff in the state to serve the controller. This is not lawful as a sheriff only has power to execute on property in the sheriff's own county. This was to be fixed and was in three of the four references to sheriff in

this statute were changed to specify “Ada county sheriff”. Unfortunately, the bill was presented with one clause that still said the state could be garnished “by service by the sheriff of the debtor’s county of residence in Idaho, upon the state controller...” (See I.C. § 11-718(1)). This is not only unlawful, but it contradicts the subsequent three references in this same section that specify the Ada County Sheriff. We need corrective legislation to change this reference in I.C. § 11-718(1) from “the sheriff of the debtor’s county of residence in Idaho” to “the Ada county sheriff”.

Issue 2:

Three other statutes were supposed to be repealed and replaced with new versions, however, when new versions were adopted, the former versions were not repealed, creating significant confusion because of the duplicate versions of these statutes and the fact that the new versions were changed and now the old and new statutes conflict. This inadvertent oversight needs to be fixed by completing the process and repealing the old versions as originally intended:

- 1) I.C. § 11-206 (Definitions) was to have been repealed when it was replaced with I.C. § 11-701 (Definitions).
- 2) I.C. § 11-103(b) (Continuous execution or garnishment for child support) was to have been repealed when it was replaced with I.C. § 11-705 (Sheriff’s return on continuous wage garnishment and continuous garnishment for child support); and
- 3) I.C. § 11-207 (Restrictions on Garnishments - Maximum) was to have been repealed when it was replaced by I.C. § 11-712 (Restrictions on Wage Garnishments – Maximum).