

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 551

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO DRIVING UNDER THE INFLUENCE; PROVIDING LEGISLATIVE INTENT;  
2 AMENDING SECTION 18-8002, IDAHO CODE, TO REVISE THE PENALTY FOR REFUS-  
3 ING TO SUBMIT TO EVIDENTIARY TESTING, TO REVISE TERMINOLOGY, TO PROVIDE  
4 EXCEPTIONS, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMEND-  
5 ING SECTION 18-8002A, IDAHO CODE, TO REVISE PROVISIONS REGARDING NOTICE  
6 TO CERTAIN PERSONS WHO REFUSE TO SUBMIT TO OR FAIL TO COMPLETE AND PASS  
7 CERTAIN TESTING, TO REVISE A PENALTY, TO PROVIDE FOR THE INSTALLATION  
8 OF AN IGNITION INTERLOCK SYSTEM FOR CERTAIN PERSONS, TO REVISE PROVI-  
9 SIONS REGARDING ADMINISTRATIVE HEARINGS, TO PROVIDE THAT A COURT MAY  
10 CONSIDER CERTAIN FACTORS, TO DEFINE A TERM AND TO MAKE TECHNICAL CORREC-  
11 TIONS; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE PENALTIES, TO  
12 REVISE TERMINOLOGY, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS;  
13 AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE TERMINOLOGY, TO PRO-  
14 VIDE FOR THE INSTALLATION OF AN IGNITION INTERLOCK SYSTEM FOR CERTAIN  
15 PERSONS, TO PROVIDE CODE REFERENCES, TO REMOVE REFERENCE TO ELECTRONIC  
16 MONITORING DEVICES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER  
17 80, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-8008A,  
18 IDAHO CODE, TO PROVIDE THAT A COURT MAY ORDER CERTAIN PERSONS TO USE AN  
19 ELECTRONIC MONITORING DEVICE AND TO PROVIDE FOR CERTAIN FEES; AMENDING  
20 SECTION 18-8010, IDAHO CODE, TO PROVIDE CODE REFERENCES AND TO MAKE  
21 TECHNICAL CORRECTIONS; AMENDING SECTION 18-101A, IDAHO CODE, TO REMOVE  
22 A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN  
23 EFFECTIVE DATE.  
24

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

26 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that  
27 this act shall be implemented in conjunction with the Sobriety and Drug Mon-  
28 itoring Program created in Sections 67-1412 through 67-1416, Idaho Code, and  
29 shall not repeal or modify the Sobriety and Drug Monitoring Program or any  
30 other such program administered by a city, municipality or county in this  
31 state.

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

34 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS  
35 OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF  
36 TESTS. (1) Any person who drives or is in actual physical control of a motor  
37 vehicle in this state shall be deemed to have given his consent to eviden-  
38 tiary testing for concentration of alcohol as defined in section 18-8004,  
39 Idaho Code, and to have given his consent to evidentiary testing for the  
40 presence of drugs or other intoxicating substances, provided that such  
41 testing is administered at the request of a peace officer having reasonable

1 grounds to believe that person has been driving or was in actual physical  
 2 control of a motor vehicle in violation of the provisions of section 18-8004,  
 3 ~~Idaho Code~~, or ~~section 18-8006~~, Idaho Code.

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

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

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

12 (b) He is subject to mandatory installation of a state approved igni-  
 13 tion interlock system, at his expense, on all of the motor vehicles op-  
 14 erated by him for a period to end one (1) year following the end of the  
 15 suspension period;

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

18 (ed) If he does not request a hearing or does not prevail at the hearing,  
 19 the court shall sustain the civil penalty and shall order the required  
 20 installation of a state approved ignition interlock system on all motor  
 21 vehicles operated by him and his driver's license will be suspended ab-  
 22 olutely for one (1) year if this is his first refusal and two (2) years  
 23 if this is his second refusal within ten (10) years;

24 (de) Provided however, if he is admitted to a problem solving court pro-  
 25 gram and has served at least forty-five (45) days of an absolute sus-  
 26 pension of driving privileges, then he may be eligible for a restricted  
 27 permit for the purpose of getting to and from work, school or an alcohol  
 28 treatment program, but only if a state approved ignition interlock sys-  
 29 tem has been installed, at his expense, on all motor vehicles operated  
 30 by him; and

31 (ef) After submitting to evidentiary testing he may, when practicable,  
 32 at his own expense, have additional tests made by a person of his own  
 33 choosing.

34 (4) If the motorist refuses to submit to or complete evidentiary test-  
 35 ing after the information has been given in accordance with subsection (3)  
 36 above of this section:

37 (a) He shall be fined a civil penalty of two hundred fifty dollars  
 38 (\$250);

39 (b) The court shall direct the installation, at his expense, of a state  
 40 approved ignition interlock system meeting the requirements set forth  
 41 in section 18-8008, Idaho Code, on all motor vehicles operated by him  
 42 for a period of one (1) year following the end of the suspension period;

43 (c) A written request may be made within seven (7) calendar days for a  
 44 hearing before the court; if requested, the hearing must be held within  
 45 thirty (30) days of the date of service unless this period is, for good  
 46 cause shown, extended by the court for one (1) additional thirty (30)  
 47 day period. The hearing shall be limited to the question of why the de-  
 48 fendant did not submit to, or complete, evidentiary testing, and the  
 49 burden of proof shall be upon the defendant; the court shall sustain a  
 50 two hundred fifty dollar (\$250) civil penalty immediately ~~and~~, suspend

1 all the defendant's driving privileges immediately for one (1) year for  
2 a first refusal and two (2) years for a second refusal within ten (10)  
3 years and direct the installation, at his expense, of a state approved  
4 ignition interlock system meeting the requirements set forth in section  
5 18-8008, Idaho Code, on all motor vehicles operated by him for a period  
6 to end one (1) year following the end of the suspension period, unless it  
7 finds that the peace officer did not have legal cause to stop and request  
8 him to take the test or that the request violated his civil rights;

9 (ed) If a hearing is not requested by written notice to the court con-  
10 cerned within seven (7) calendar days, upon receipt of a sworn statement  
11 by the peace officer of the circumstances of the refusal, the court  
12 shall sustain a two hundred fifty dollar (\$250) civil penalty and, sus-  
13 pend the defendant's driving privileges for one (1) year for a first  
14 refusal and two (2) years for a second refusal within ten (10) years,  
15 during which time he shall have absolutely no driving privileges of  
16 any kind, and direct the installation of a state approved ignition in-  
17 terlock system, at his expense, meeting the requirements set forth in  
18 section 18-8008, Idaho Code, on all motor vehicles operated by him for a  
19 period to end one (1) year following the end of the suspension period;

20 (de) Notwithstanding the provisions of ~~subsection (4) paragraphs (b) and (c)~~  
21 and (ed) of this subsection, if the defendant is enrolled in and is a  
22 participant in good standing in a drug court or mental health court  
23 approved by the supreme court drug court and mental health court coor-  
24 dinating committee under the provisions of chapter 56, title 19, Idaho  
25 Code, or other similar problem solving court utilizing community-based  
26 sentencing alternatives, then the defendant shall be eligible for re-  
27 stricted noncommercial driving privileges for the purpose of getting  
28 to and from work, school or an alcohol treatment program, which may be  
29 granted by the presiding judge of the drug court or mental health court  
30 or other similar problem solving court, provided that the defendant  
31 has served a period of absolute suspension of driving privileges of at  
32 least forty-five (45) days, that a state approved ignition interlock  
33 system meeting the requirements set forth in section 18-8008, Idaho  
34 Code, is installed, and for repeat offenders it shall be maintained for  
35 not less than one (1) year at his expense, on each of the all motor ve-  
36 hicles owned or operated, or both, by the defendant him for a period to  
37 end one (1) year following the end of the suspension period and that the  
38 defendant has shown proof of financial responsibility as defined and  
39 in the amounts specified in section 49-117, Idaho Code, provided that  
40 the restricted noncommercial driving privileges and the requirement  
41 of a state approved ignition interlock system may be continued if the  
42 defendant successfully completes the drug court, mental health court or  
43 other similar problem solving court, and that the court may revoke such  
44 privileges for failure to comply with the terms of probation or with the  
45 terms and conditions of the drug court, mental health court or other  
46 similar problem solving court program; and

47 (ef) After submitting to evidentiary testing at the request of the  
48 peace officer, he may, when practicable, at his own expense, have ad-  
49 ditional tests made by a person of his own choosing. The failure or  
50 inability to obtain an additional test or tests by a person shall not

1 preclude the admission of results of evidentiary testing for alco-  
2 hol concentration or for the presence of drugs or other intoxicating  
3 substances taken at the direction of the peace officer unless the addi-  
4 tional test was denied by the peace officer.

5 (5) Any sustained ~~civil penalty or suspension of driving privileges~~  
6 sanction under this section or section 18-8002A, Idaho Code, shall be a ~~civil~~  
7 penalty sanction separate and apart from any other ~~suspension~~ sanction im-  
8 posed for a violation of other Idaho motor vehicle codes or for a conviction  
9 of an offense pursuant to this chapter, and may be appealed to the district  
10 court.

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

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

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

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

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

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

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

41 (c) Nothing herein shall limit the discretion of the hospital admin-  
42 istration to designate the qualified hospital employee responsible to  
43 withdraw the blood sample.

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

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

1 (i) In the reasonable judgment of the hospital personnel, with-  
2 drawal of the blood sample may result in serious bodily injury to  
3 hospital personnel or other patients; or

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

7 (7) "Actual physical control" as used in this section and section  
8 18-8002A, Idaho Code, shall be defined as being in the driver's position of  
9 the motor vehicle with the motor running or with the motor vehicle moving.

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

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

17 (10) A person who submits to a breath test for alcohol concentration,  
18 as defined in subsection (4) of section 18-8004, Idaho Code, may also be re-  
19 quested to submit to a second evidentiary test of blood or urine for the pur-  
20 pose of determining the presence of drugs or other intoxicating substances  
21 if the peace officer has reasonable cause to believe that a person was driv-  
22 ing under the influence of any drug or intoxicating substance or the combined  
23 influence of alcohol and any drug or intoxicating substance. The peace of-  
24 ficer shall state in his or her report the facts upon which that belief is  
25 based.

26 (11) Notwithstanding any other provision of law to the contrary, the  
27 civil penalty imposed under the provisions of this section must be paid, as  
28 ordered by the court, to the county justice fund or the county current ex-  
29 pense fund where the incident occurred. If a person does not pay the civil  
30 penalty imposed as provided in this section within thirty (30) days of the  
31 imposition, unless this period has been extended by the court for good cause  
32 shown, the prosecuting attorney representing the political subdivision  
33 where the incident occurred may petition the court in the jurisdiction where  
34 the incident occurred to file the order imposing the civil penalty as an or-  
35 der of the court. Once entered, the order may be enforced in the same manner  
36 as a final judgment of the court. In addition to the civil penalty, attor-  
37 ney's fees, costs and interest may be assessed against any person who fails  
38 to pay the civil penalty.

39 (12) Upon motion of the person required to install an ignition inter-  
40 lock device pursuant to subsection (4)(b) of this section, a court in its  
41 discretion may relieve the person from the installation of the device where  
42 the court finds it clear and convincing that the person will not present a  
43 danger to the public or that there are exceptional or mitigating circum-  
44 stances demonstrating that installation of the device is unnecessary or  
45 unwarranted. Financial hardship, standing alone, is not an exceptional or  
46 mitigating circumstance.

47 (13) A court may determine that an offender is eligible to utilize  
48 available funds from the court interlock device and electronic monitoring  
49 device fund, as outlined in section 18-8010, Idaho Code, for the instal-

1 lation and operation of an ignition interlock device, based on evidence of  
 2 financial hardship.

3 (14) As used in this section, "at his expense" includes the cost of ob-  
 4 taining, installing, using and maintaining an ignition interlock system.

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

7 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF  
 8 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF  
 9 TESTS. (1) Definitions. As used in this section:

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

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

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

18 (d) "Director" means the director of the Idaho transportation depart-  
 19 ment.

20 (e) "Evidentiary testing" means a procedure or test or series of proce-  
 21 dures or tests utilized to determine the concentration of alcohol or the  
 22 presence of drugs or other intoxicating substances in a person, includ-  
 23 ing additional testing authorized by subsection (6) of this section. An  
 24 evidentiary test for alcohol concentration shall be based on a formula  
 25 of grams of alcohol per one hundred (100) cubic centimeters of blood,  
 26 per two hundred ten (210) liters of breath, or per sixty-seven (67) mil-  
 27 liliters of urine. Analysis of blood, breath or urine for the purpose  
 28 of determining alcohol concentration shall be performed by a laboratory  
 29 operated by the Idaho state police or by a laboratory approved by the  
 30 Idaho state police under the provisions of approval and certification  
 31 standards to be set by the Idaho state police, or by any other method ap-  
 32 proved by the Idaho state police. Notwithstanding any other provision  
 33 of law or rule of court, the results of any test for alcohol concentra-  
 34 tion and records relating to calibration, approval, certification or  
 35 quality control performed by a laboratory operated and approved by the  
 36 Idaho state police or by any other method approved by the Idaho state po-  
 37 lice shall be admissible in any proceeding in this state without the ne-  
 38 cessity of producing a witness to establish the reliability of the test-  
 39 ing procedure for examination.

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

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

47 (2) Information to be given. At the time of evidentiary testing for  
 48 concentration of alcohol, or for the presence of drugs or other intoxicat-  
 49 ing substances is requested, the person shall be informed that if the person

1 refuses to submit to or fails to complete evidentiary testing, or if the per-  
2 son submits to and completes evidentiary testing and the test results indi-  
3 cate an alcohol concentration or the presence of drugs or other intoxicating  
4 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,  
5 the person shall be informed substantially as follows (but need not be in-  
6 formed verbatim):

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

9 (a) The peace officer will issue a notice of suspension and you will be  
10 required to install, at your expense, a state approved ignition inter-  
11 lock system on all motor vehicles you operate for a period to end one (1)  
12 year following the end of the suspension period;

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

17 (c) If you refused or failed to complete evidentiary testing and do not  
18 request a hearing before the court or do not prevail at the hearing, your  
19 driver's license will be suspended and you will be required to install,  
20 at your expense, a state approved ignition interlock system on all mo-  
21 tor vehicles you operate for a period to end one (1) year following the  
22 end of the suspension period. The suspension will be for one (1) year if  
23 this is your first refusal. The suspension will be for two (2) years if  
24 this is your second refusal within ten (10) years. You will not be able  
25 to obtain a temporary restricted license during that period;

26 (d) If you complete evidentiary testing and fail the testing and do not  
27 request a hearing before the department or do not prevail at the hear-  
28 ing, your driver's license will be suspended and you will be required to  
29 install, at your expense, a state approved ignition interlock system on  
30 all motor vehicles you operate for a period to end one (1) year following  
31 the end of the suspension period. This suspension will be for ninety  
32 (90) days if this is your first failure of evidentiary testing, but you  
33 may request restricted noncommercial vehicle driving privileges after  
34 the first thirty (30) days. The suspension will be for one (1) year  
35 if this is your second failure of evidentiary testing within five (5)  
36 years. You will not be able to obtain a temporary restricted license  
37 during that period;

38 (e) However, if you are admitted to a problem solving court program and  
39 have served at least forty-five (45) days of an absolute suspension of  
40 driving privileges, you may be eligible for a restricted permit for the  
41 purpose of getting to and from work, school or an alcohol treatment pro-  
42 gram, but only if you install, at your expense, a state approved igni-  
43 tion interlock system on all motor vehicles you operate; and

44 (f) After submitting to evidentiary testing you may, when practicable,  
45 at your own expense, have additional tests made by a person of your own  
46 choosing.

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

49 (a) What testing is required to complete evidentiary testing under this  
50 section; and

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

13 (4) Suspension and ignition interlock system.

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

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

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

35 The department shall also direct the installation, at the offender's  
36 expense, of a state approved ignition interlock system meeting the re-  
37 quirements of section 18-8008, Idaho Code, on all motor vehicles oper-  
38 ated by the offender for a period to end one (1) year following the end of  
39 the suspension period.

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

44 (b) The suspension shall become effective thirty (30) days after ser-  
45 vice upon the person of the notice of suspension and notice of the re-  
46 quirement to install, at his expense, a state approved ignition inter-  
47 lock system for a period to end one (1) year following the end of the sus-  
48 sension period. The notice shall be in a form provided by the department  
49 and shall state:



1 (i) The reason and statutory grounds for the suspension and the  
 2 requirement to install the ignition interlock system;

3 (ii) The effective date of the suspension and the requirement to  
 4 install the ignition interlock system;

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

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

9 (v) The rights of the person to request an administrative hear-  
 10 ing on the suspension and that, if an administrative hearing is not  
 11 requested within seven (7) days of service of the notice of suspen-  
 12 sion and notice of the requirement to install the ignition inter-  
 13 lock system, 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) paragraph~~ (a) (i)  
 19 and (ii) of this subsection, a person who is enrolled in and is a partic-  
 20 ipant in good standing in a drug court or mental health court approved  
 21 by the supreme court drug court and mental health court coordinating  
 22 committee under the provisions of chapter 56, title 19, Idaho Code, or  
 23 other similar problem solving court utilizing community-based sentenc-  
 24 ing alternatives, shall be eligible for restricted noncommercial driv-  
 25 ing 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 repeat~~  
 31 ~~offenders it shall be maintained for not less than one (1) year at his~~  
 32 ~~expense, on each of the all motor vehicles owned or operated, or both, by~~  
 33 ~~the offender him~~ for a period to end one (1) year following the end of the  
 34 suspension period and that the offender has shown proof of financial re-  
 35 sponsibility as defined and in the amounts specified in section 49-117,  
 36 Idaho Code, provided that the restricted noncommercial driving privi-  
 37 leges may be continued if the offender successfully completes the drug  
 38 court, mental health court or other similar problem solving court, and  
 39 that the court may revoke such privileges for failure to comply with the  
 40 terms of probation or with the terms and conditions of the drug court,  
 41 mental health court or other similar problem solving court program.

42 (5) Service of suspension and ignition interlock system by peace of-  
 43 ficer or the department. If the driver submits to evidentiary testing af-  
 44 ter the information in subsection (2) of this section has been provided and  
 45 the results of the test indicate an alcohol concentration or the presence  
 46 of drugs or other intoxicating substances in violation of the provisions of  
 47 section 18-8004, 18-8004C or 18-8006, Idaho Code:

48 (a) The peace officer shall, acting on behalf of the department, serve  
 49 the person with a notice of suspension and notice of the requirement to  
 50 install, at his expense, a state approved ignition interlock system for

1 a period to end one (1) year following the end of the suspension period  
2 in the form and containing the information required under subsection  
3 (4) of this section. The department may serve the person with a notice  
4 of suspension and the requirement to install the ignition interlock  
5 system if the peace officer failed to ~~issue the notice of suspension do~~  
6 so or failed to include the date of service as provided in subsection  
7 (4) (b) of this section.

8 (b) Within five (5) business days following service of a notice of sus-  
9 pension and notice of the requirement to install the ignition interlock  
10 system, the peace officer shall forward to the department a copy of the  
11 completed notice of suspension and notice of the requirement to install  
12 the ignition interlock system form upon which the date of service upon  
13 the driver shall be clearly indicated, a certified copy or duplicate  
14 original of the results of all tests for alcohol concentration, as shown  
15 by analysis of breath administered at the direction of the peace offi-  
16 cer, and a sworn statement of the officer, which may incorporate any  
17 arrest or incident reports relevant to the arrest and evidentiary test-  
18 ing setting forth:

19 (i) The identity of the person;

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

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

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

29 (v) That the person was lawfully arrested;

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

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

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

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

1 direction of the peace officer unless additional testing was denied by the  
2 peace officer.

3 (7) Administrative hearing on suspension. A person who has been served  
4 with a notice of suspension and notice of the requirement to install the ig-  
5 nitiation interlock system after submitting to an evidentiary test may request  
6 an administrative hearing on the suspension before a hearing officer desig-  
7 nated by the department. The hearing may be held only on the suspension and  
8 not on the requirement to install an ignition interlock system. The request  
9 for hearing shall be in writing and must be received by the department within  
10 seven (7) calendar days of the date of service upon the person of the notice  
11 of suspension, and notice of the requirement to install the ignition inter-  
12 lock system and shall include what issue or issues shall be raised at the  
13 hearing. The date on which the hearing request was received shall be noted  
14 on the face of the request.

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

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

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

- 40 (a) The peace officer did not have legal cause to stop the person; or  
41 (b) The officer did not have legal cause to believe the person had been  
42 driving or was in actual physical control of a vehicle while under the  
43 influence of alcohol, drugs or other intoxicating substances in viola-  
44 tion of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho  
45 Code; or  
46 (c) The test results did not show an alcohol concentration or the pres-  
47 ence of drugs or other intoxicating substances in violation of section  
48 18-8004, 18-8004C or 18-8006, Idaho Code; or  
49 (d) The tests for alcohol concentration, drugs or other intoxicating  
50 substances administered at the direction of the peace officer were not

1 conducted in accordance with the requirements of section 18-8004(4),  
2 Idaho Code, or the testing equipment was not functioning properly when  
3 the test was administered; or

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

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

14 The facts as found by the hearing officer shall be independent of the de-  
15 termination of the same or similar facts in the adjudication of any criminal  
16 charges arising out of the same occurrence. The disposition of those crim-  
17 inal charges shall not affect the suspension and the requirement to install  
18 the ignition interlock system required to be imposed under the provisions of  
19 this section. If a license is suspended under this section and the person is  
20 also convicted on criminal charges arising out of the same occurrence for a  
21 violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho  
22 Code, both the suspension under this section and the suspension imposed pur-  
23 suant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be  
24 imposed, but the periods of suspension shall run concurrently, with the to-  
25 tal period of suspension not to exceed the longer of the applicable suspen-  
26 sion periods, unless the court ordering the suspension in the criminal case  
27 orders to the contrary.

28 (8) Judicial review. A party aggrieved by the decision of the hearing  
29 officer may seek judicial review of the decision in the manner provided for  
30 judicial review of final agency action provided in chapter 52, title 67,  
31 Idaho Code. Upon motion of the person required to install an ignition in-  
32 terlock device pursuant to subsection (4) (a) of this section, a court in its  
33 discretion may relieve the person from the installation of the device where  
34 the court finds it clear and convincing that the person will not present a  
35 danger to the public or that there are exceptional or mitigating circum-  
36 stances demonstrating that installation of the device is unnecessary or  
37 unwarranted. Financial hardship, standing alone, is not an exceptional or  
38 mitigating circumstance. A court may determine that an offender is eligible  
39 to utilize available funds from the court interlock device and electronic  
40 monitoring device fund, as outlined in section 18-8010, Idaho Code, for the  
41 installation and operation of an ignition interlock device, based on evi-  
42 dence of financial hardship.

43 (9) Restricted noncommercial vehicle driving privileges. A person  
44 served with a notice of suspension for ninety (90) days pursuant to this  
45 section may apply to the department for restricted noncommercial vehicle  
46 driving privileges, to become effective after the thirty (30) day absolute  
47 suspension has been completed. The request may be made at any time after ser-  
48 vice of the notice of suspension. Restricted noncommercial vehicle driving  
49 privileges will be issued for the person to travel to and from work and for  
50 work purposes not involving operation of a commercial vehicle, to attend an

1 alternative high school, work on a GED, for postsecondary education, or to  
2 meet the medical needs of the person or his family if the person is eligible  
3 for restricted noncommercial vehicle driving privileges. Any person whose  
4 driving privileges are suspended under the provisions of this chapter may be  
5 granted privileges to drive a noncommercial vehicle but shall not be granted  
6 privileges to operate a commercial motor vehicle.

7 (10) As used in this section, "at his expense," "at your expense" and "at  
8 the offender's expense" include the cost of obtaining, installing, using and  
9 maintaining an ignition interlock system.

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

13 SECTION 4. That Section 18-8005, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found  
16 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho  
17 Code, for the first time is guilty of a misdemeanor; and, except as provided  
18 in section 18-8004C, Idaho Code:

19 (a) May be sentenced to jail for a term not to exceed six (6) months;

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

21 (c) Shall be advised by the court in writing at the time of sentencing  
22 of the penalties that will be imposed for subsequent violations of the  
23 provisions of section 18-8004, Idaho Code, which advice shall be signed  
24 by the defendant, and a copy retained by the court and another copy re-  
25 tained by the prosecuting attorney; ~~and~~

26 (d) Shall have his driving privileges suspended by the court for a pe-  
27 riod of thirty (30) days, which shall not be reduced and during which  
28 thirty (30) day period absolutely no driving privileges of any kind may  
29 be granted. After the thirty (30) day period of absolute suspension of  
30 driving privileges has passed, the defendant shall have driving privi-  
31 leges suspended by the court for an additional period of at least sixty  
32 (60) days, not to exceed one hundred fifty (150) days, during which  
33 the defendant may request restricted driving privileges that the court  
34 may allow, if the defendant shows by a preponderance of the evidence  
35 that driving privileges are necessary for his employment or for family  
36 health needs; ~~and~~

37 (e) Unless an exception is granted pursuant to section 18-8002(12),  
38 Idaho Code, shall within ten (10) days following the end of the manda-  
39 tory suspension period have a state approved ignition interlock system  
40 meeting the requirements of section 18-8008, Idaho Code, installed, at  
41 his expense, on all motor vehicles operated by him for a period to end  
42 one (1) year following the end of the suspension period. A court may  
43 determine that an offender is eligible to utilize available funds from  
44 the court interlock device and electronic monitoring device fund, as  
45 outlined in section 18-8010, Idaho Code, for the installation and oper-  
46 ation of an ignition interlock device, based on evidence of financial  
47 hardship.

1 (2) Any person who pleads guilty to or is found guilty of a violation of  
2 the provisions of section 18-8004(1) (b), Idaho Code, for the first time is  
3 guilty of a misdemeanor and subject to:

4 (a) The provisions of subsection 18-8005(1) (a), (b) and, (c), Idaho  
5 Code and (e) of this section; and

6 (b) The provisions of section 49-335, Idaho Code.

7 (3) Any person who pleads guilty to or is found guilty of a violation of  
8 the provisions of section 18-8004(1) (c), Idaho Code, for the first time is  
9 guilty of a misdemeanor and is subject to:

10 (a) The provisions of subsection 18-8005(1) (a), (b) and, (c), Idaho  
11 Code and (e) of this section; and

12 (b) The provisions of section 49-335, Idaho Code.

13 (4) Any person who pleads guilty to or is found guilty of a violation of  
14 the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, who previ-  
15 ously has been found guilty of or has pled guilty to a violation of the provi-  
16 sions of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially  
17 conforming foreign criminal violation within ten (10) years, notwithstand-  
18 ing the form of the judgment(s) or withheld judgment(s), and except as pro-  
19 vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-  
20 cept as provided in section 18-8004C, Idaho Code:

21 (a) Shall be sentenced to jail for a mandatory minimum period of not  
22 less than ten (10) days, the first forty-eight (48) hours of which must  
23 be consecutive, and five (5) days of which must be served in jail, as re-  
24 quired by 23 U.S.C. ~~section~~ 164, and may be sentenced to not more than  
25 one (1) year, provided however, that in the discretion of the sentencing  
26 judge, the judge may authorize the defendant to be assigned to a work de-  
27 tail program within the custody of the county sheriff during the period  
28 of incarceration;

29 (b) May be fined an amount not to exceed two thousand dollars (\$2,000);

30 (c) Shall be advised by the court in writing at the time of sentencing  
31 of the penalties that will be imposed for subsequent violations of the  
32 provisions of section 18-8004, Idaho Code, which advice shall be signed  
33 by the defendant, and a copy retained by the court and another copy re-  
34 tained by the prosecuting attorney;

35 (d) Shall surrender his driver's license or permit to the court;

36 (e) Shall have his driving privileges suspended by the court for an  
37 additional mandatory minimum period of one (1) year after release from  
38 confinement, during which one (1) year period absolutely no driving  
39 privileges of any kind may be granted; and

40 (f) Shall, while operating a motor vehicle, be required to drive only  
41 a motor vehicle equipped with a functioning ignition interlock system,  
42 as provided in section 18-8008, Idaho Code, following the one (1) year  
43 mandatory license suspension period.

44 (5) If the person has pled guilty or was found guilty for the sec-  
45 ond time within ten (10) years of a violation of the provisions of section  
46 18-8004(1) (b) or (c), Idaho Code, then the provisions of section 49-335,  
47 Idaho Code, shall apply.

48 (6) Except as provided in section 18-8004C, Idaho Code, any person who  
49 pleads guilty to or is found guilty of a violation of the provisions of sec-  
50 tion 18-8004(1) (a), (b) or (c), Idaho Code, who previously has been found

1 guilty of or has pled guilty to two (2) or more violations of the provisions  
2 of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially con-  
3 forming foreign criminal violation, or any combination thereof, within ten  
4 (10) years, notwithstanding the form of the judgment(s) or withheld judg-  
5 ment(s), shall be guilty of a felony and:

6 (a) Shall be sentenced to the custody of the state board of correction  
7 for not to exceed ten (10) years; provided that notwithstanding the pro-  
8 visions of section 19-2601, Idaho Code, should the court impose any sen-  
9 tence other than incarceration in the state penitentiary, the defen-  
10 dant shall be sentenced to the county jail for a mandatory minimum pe-  
11 riod of not less than thirty (30) days, the first forty-eight (48) hours  
12 of which must be consecutive, and ten (10) days of which must be served  
13 in jail, as required by 23 U.S.C. ~~section~~ 164; and further provided that  
14 notwithstanding the provisions of section 18-111, Idaho Code, a convic-  
15 tion under this section shall be deemed a felony;

16 (b) May be fined an amount not to exceed five thousand dollars (\$5,000);

17 (c) Shall surrender his driver's license or permit to the court;

18 (d) Shall have his driving privileges suspended by the court for a  
19 mandatory minimum period of one (1) year after release from imprison-  
20 ment, during which time he shall have absolutely no driving privileges  
21 of any kind, and may have his driving privileges suspended by the court  
22 for an additional period not to exceed four (4) years, during which  
23 the defendant may request restricted driving privileges that the court  
24 may allow if the defendant shows by a preponderance of the evidence  
25 that driving privileges are necessary for his employment or for family  
26 health needs; and

27 (e) Shall, while operating a motor vehicle, be required to drive only  
28 a motor vehicle equipped with a functioning ignition interlock system,  
29 as provided in section 18-8008, Idaho Code, following the mandatory one  
30 (1) year license suspension period.

31 (7) Notwithstanding the provisions of subsections (4) (e) and (6) (d)  
32 of this section, any person who is enrolled in and is a participant in good  
33 standing in a drug court or mental health court approved by the supreme  
34 court drug court and mental health court coordinating committee under the  
35 provisions of chapter 56, title 19, Idaho Code, or other similar problem  
36 solving court utilizing community-based sentencing alternatives, shall be  
37 eligible for restricted noncommercial driving privileges for the purpose of  
38 getting to and from work, school or an alcohol treatment program, which may  
39 be granted by the presiding judge of the drug court or mental health court or  
40 other similar problem solving court, provided that the offender has served a  
41 period of absolute suspension of driving privileges of at least forty-five  
42 (45) days, that a state approved ignition interlock system is installed, ~~and~~  
43 ~~for repeat offenders it shall be maintained for not less than one (1) year at~~  
44 ~~his expense, on each of the any motor vehicles owned or operated, or both,~~  
45 by the offender for a period to end one (1) year following the end of the  
46 suspension period and that the offender has shown proof of financial respon-  
47 sibility as defined and in the amounts specified in section 49-117, Idaho  
48 Code, provided that the restricted noncommercial driving privileges may  
49 be continued if the offender successfully completes the drug court, mental  
50 health court or other similar problem solving court, and that the court may

1 revoke such privileges for failure to comply with the terms of probation or  
2 with the terms and conditions of the drug court, mental health court or other  
3 similar problem solving court program.

4 (8) For the purpose of computation of the enhancement period in subsec-  
5 tions (4), (6) and (9) of this section, the time that elapses between the date  
6 of commission of the offense and the date the defendant pleads guilty or is  
7 found guilty for the pending offense shall be excluded. If the determination  
8 of guilt against the defendant is reversed upon appeal, the time that elapsed  
9 between the date of the commission of the offense and the date the defendant  
10 pleads guilty or is found guilty following the appeal shall also be excluded.

11 (9) Notwithstanding the provisions of subsections (4) and (6) of this  
12 section, any person who has pled guilty to or has been found guilty of a  
13 felony violation of the provisions of section 18-8004, Idaho Code, a felony  
14 violation of the provisions of section 18-8004C, Idaho Code, a violation  
15 of the provisions of section 18-8006, Idaho Code, a violation of the provi-  
16 sions of section 18-4006 3.(b), Idaho Code, notwithstanding the form of the  
17 judgment(s) or withheld judgment(s) or any substantially conforming foreign  
18 criminal felony violation, notwithstanding the form of the judgment(s) or  
19 withheld judgment(s), and within fifteen (15) years pleads guilty to or is  
20 found guilty of a further violation of the provisions of section 18-8004,  
21 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to  
22 subsection (6) of this section.

23 (10) For the purpose of subsections (4), (6) and (9) of this section and  
24 the provisions of section 18-8004C, Idaho Code, a substantially conforming  
25 foreign criminal violation exists when a person has pled guilty to or has  
26 been found guilty of a violation of any federal law or law of another state,  
27 or any valid county, city, or town ordinance of another state substantially  
28 conforming to the provisions of section 18-8004, Idaho Code. The determina-  
29 tion of whether a foreign criminal violation is substantially conforming is  
30 a question of law to be determined by the court.

31 (11) Any person who pleads guilty to or is found guilty of a violation of  
32 the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall  
33 undergo, at his own expense, (or at county expense through the procedures  
34 set forth in chapters 34 and 35, title 31, Idaho Code) and prior to the  
35 sentencing date, an alcohol evaluation by an alcohol evaluation facility  
36 approved by the Idaho department of health and welfare; provided however, if  
37 the defendant has no prior or pending charges with respect to the provisions  
38 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the  
39 records and information required under subsection (12)(a), (b) and (c) of  
40 this section or possesses information from other reliable sources relating  
41 to the defendant's use or nonuse of alcohol or drugs which does not give  
42 the court any reason to believe that the defendant regularly abuses alco-  
43 hol or drugs and is in need of treatment, the court may, in its discretion,  
44 waive the evaluation with respect to sentencing for a violation of section  
45 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant.  
46 The court may also, in its discretion, waive the requirement of an alcohol  
47 evaluation with respect to a defendant's first violation of the provisions  
48 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence  
49 the defendant if the court has a presentence investigation report, sub-  
50 stance abuse assessment, criminogenic risk assessment, or other assessment



1 which evaluates the defendant's degree of alcohol abuse and need for alco-  
2 hol treatment conducted within twelve (12) months preceding the date of the  
3 defendant's sentencing. In the event an alcohol evaluation indicates the  
4 need for alcohol treatment, the evaluation shall contain a recommendation  
5 by the evaluator as to the most appropriate treatment program, together with  
6 the estimated cost thereof, and recommendations for other suitable alter-  
7 native treatment programs, together with the estimated costs thereof. The  
8 person shall request that a copy of the completed evaluation be forwarded  
9 to the court. The court shall take the evaluation into consideration in  
10 determining an appropriate sentence. If a copy of the completed evaluation  
11 has not been provided to the court, the court may proceed to sentence the  
12 defendant; however, in such event, it shall be presumed that alcohol treat-  
13 ment is required unless the defendant makes a showing by a preponderance of  
14 evidence that treatment is not required. If the defendant has not made a good  
15 faith effort to provide the completed copy of the evaluation to the court,  
16 the court may consider the failure of the defendant to provide the report  
17 as an aggravating circumstance in determining an appropriate sentence. If  
18 treatment is ordered, in no event shall the person or facility doing the  
19 evaluation be the person or facility that provides the treatment unless this  
20 requirement is waived by the sentencing court, with the exception of fed-  
21 erally recognized Indian tribes or federal military installations, where  
22 diagnosis and treatment are appropriate and available. Nothing herein con-  
23 tained shall preclude the use of funds authorized pursuant to the provisions  
24 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for  
25 indigent defendants.

26 (12) At the time of sentencing, the court shall be provided with the fol-  
27 lowing information:

28 (a) The results, if administered, of any evidentiary test for alcohol  
29 and/or drugs;

30 (b) A computer or teletype or other acceptable copy of the person's  
31 driving record;

32 (c) Information as to whether the defendant has pled guilty to or  
33 been found guilty of a violation of the provisions of section 18-8004,  
34 18-8004C or 18-8006, Idaho Code, or a similar offense within the past  
35 five (5) years, notwithstanding the form of the judgment (s) or withheld  
36 judgment (s); and

37 (d) The alcohol evaluation required in subsection (11) of this section,  
38 if any.

39 (13) A minor may be prosecuted for a violation of the provisions of sec-  
40 tion 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code.  
41 In addition to any other penalty, if a minor pleads guilty to or is found  
42 guilty of a violation of the provisions of section 18-8004(1)(a), (b) or  
43 (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended  
44 or denied for an additional one (1) year following the end of any period of  
45 suspension or revocation existing at the time of the violation, or until  
46 he reaches the age of twenty-one (21) years, whichever period is greater.  
47 During the period of additional suspension or denial, absolutely no driving  
48 privileges shall be allowed.

49 (14) In the event that the alcohol evaluation required in subsection  
50 (11) of this section recommends alcohol treatment, the court shall order

1 the person to complete a treatment program in addition to any other sentence  
 2 which may be imposed, unless the court determines that alcohol treatment  
 3 would be inappropriate or undesirable, in which event, the court shall enter  
 4 findings articulating the reasons for such determination on the record. The  
 5 court shall order the defendant to complete the preferred treatment program  
 6 set forth in the evaluation, or a comparable alternative, unless it appears  
 7 that the defendant cannot reasonably obtain adequate financial resources  
 8 for such treatment. In that event, the court may order the defendant to com-  
 9 plete a less costly alternative set forth in the evaluation, or a comparable  
 10 program. Such treatment shall, to the greatest extent possible, be at the  
 11 expense of the defendant. In the event that funding is provided for or on  
 12 behalf of the defendant by an entity of state government, restitution shall  
 13 be ordered to such governmental entity in accordance with the restitution  
 14 procedure for crime victims, as specified under chapter 53, title 19, Idaho  
 15 Code. Nothing contained herein shall be construed as requiring a court to  
 16 order that a governmental entity shall provide alcohol treatment at govern-  
 17 ment expense unless otherwise required by law.

18 (15) Any person who is disqualified, or whose driving privileges have  
 19 been suspended, revoked or canceled under the provisions of this chapter,  
 20 shall not be granted restricted driving privileges to operate a commercial  
 21 motor vehicle.

22 (16) As used in this section, "at his expense" includes the cost of ob-  
 23 taining, installing, using and maintaining an ignition interlock system.

24 SECTION 5. That Section 18-8008, Idaho Code, be, and the same is hereby  
 25 amended to read as follows:

26 18-8008. IGNITION INTERLOCKS ~~--- ELECTRONIC MONITORING DEVICES~~  
 27 SYSTEMS.

28 (1) (a) If a person is convicted, is found guilty, pleads guilty or re-  
 29 ceives a withheld judgment for violating any of the provisions of this  
 30 chapter relating to driving under the influence and has had any or all of  
 31 a sentence or fine suspended for the violation, the court, ~~in its dis-~~  
 32 ~~cretion, may shall, unless an exception is granted pursuant to section~~  
 33 18-8002 (12), Idaho Code, impose any, some, or all of the sanctions pro-  
 34 vided for in this section in addition to any other penalty or fine im-  
 35 posed pursuant to this chapter.

36 ~~(2) (b) The court shall order the person to have a state approved igni-~~  
 37 ~~tion interlock system installed, at his expense, on each of the all mo-~~  
 38 ~~tor vehicles owned or operated, or both, by the offender. The restric-~~  
 39 ~~tion shall be for a period not in excess of the time the person is on pro-~~  
 40 ~~bation for the offense but not less than one (1) year for repeat offend-~~  
 41 ~~ers him. A court may determine that an offender is eligible to utilize~~  
 42 available funds from the court interlock device and electronic monitor-  
 43 ing device fund, as outlined in section 18-8010, Idaho Code, for the in-  
 44 stallation and operation of an ignition interlock device, based on evi-  
 45 dence of financial hardship.

46 (2) The calibration setting at which the ignition interlock system will  
 47 prevent the motor vehicle from being started shall be .025.

48 (3) As used in this ~~section~~ chapter, the term "ignition interlock sys-  
 49 tem" means breath alcohol ignition interlock device, certified by the trans-

1 portation department, designed to prevent a motor vehicle from being oper-  
2 ated by a person who has consumed an alcoholic beverage.

3 (4) The transportation department shall by rule provide standards for  
4 the certification, installation, repair and removal of the devices.

5 (5) The court shall notify the transportation department of its order  
6 imposing a sanction pursuant to this subsection. The department shall at-  
7 tach or imprint a notation on the driver's license or other document granting  
8 the person restricted driving privileges of any person restricted under this  
9 subsection that the person may operate only a motor vehicle equipped with an  
10 ignition interlock system.

11 ~~(3) The court may order the person to use electronic monitoring devices~~  
12 ~~to record the person's movements if as a condition of probation the person~~  
13 ~~has been given restricted driving privileges between certain times, has been~~  
14 ~~placed under a curfew or has been ordered confined to his residence during~~  
15 ~~times certain. Nothing in this subsection shall restrict the court's usage~~  
16 ~~of electronic monitoring devices to supervise a defendant on probation for~~  
17 ~~other offenses.~~

18 (46) ~~If~~ When a court orders a defendant person to install and use an  
19 ignition interlock system or electronic monitoring device pursuant to this  
20 section, and the court, or its probation department, furnishes the defen-  
21 dant with the device, the court ~~may~~ shall order the defendant person to pay a  
22 ~~reasonable fee the cost for~~ obtaining, installing, utilizing and maintain-  
23 ing the equipment ignition interlock system. All fees collected pursuant to  
24 this section shall be in addition to any other fines or penalty provided by  
25 law and shall be deposited in the court interlock device and electronic moni-  
26 toring device fund created in section 18-8010, Idaho Code.

27 SECTION 6. That Chapter 80, Title 18, Idaho Code, be, and the same is  
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
29 ignated as Section 18-8008A, Idaho Code, and to read as follows:

30 18-8008A. ELECTRONIC MONITORING DEVICES. (1) If a person is con-  
31 victed, is found guilty, pleads guilty or receives a withheld judgment for  
32 violating any of the provisions of this chapter and has had any or all of a  
33 sentence or fine suspended for the violation, the court, in its discretion,  
34 may impose the sanction provided for in this section in addition to any other  
35 penalty or fine imposed pursuant to this chapter.

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

43 (3) If a court orders a defendant to use an electronic monitoring de-  
44 vice pursuant to this section, and the court, or its probation department,  
45 furnishes the defendant with the device, the court may order the defendant  
46 to pay a reasonable fee for utilizing the equipment. All fees collected pur-  
47 suant to this section shall be in addition to any other fines or penalty pro-  
48 vided by law and shall be deposited in the court interlock device and elec-  
49 tronic monitoring device fund created in section 18-8010, Idaho Code.

1 SECTION 7. That Section 18-8010, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 18-8010. SURCHARGE ADDED TO ALL FINES. Every person who is convicted,  
4 found guilty, pleads guilty or receives a withheld judgment for violating  
5 the provisions of this chapter shall be required to pay an additional fif-  
6 teen dollars (\$15.00) in addition to any other fine, penalty or costs the  
7 court may assess. Moneys received pursuant to this section shall be remit-  
8 ted to the county treasurer in the county where the person was adjudicated  
9 for deposit in the "court interlock device and electronic monitoring device  
10 fund," which is hereby created in each county. Moneys in this fund may be  
11 utilized for the purchase of ignition interlock devices and electronic mon-  
12 itoring devices required pursuant to sections 18-8002, 18-8002A, 18-8005,  
13 18-8008 and 18-8008A, Idaho Code. Additionally, any moneys a court charges  
14 a defendant for using an ignition interlock device or electronic monitoring  
15 devices shall be placed in this fund. The court may also utilize moneys in  
16 this fund to assist an indigent defendant to procure an ignition interlock  
17 device or electronic monitoring devices. The court may also utilize moneys  
18 in this fund for alcohol or drug abuse-related probation, treatment or pre-  
19 vention programs for adults or juveniles.

20 SECTION 8. That Section 18-101A, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 18-101A. DEFINITIONS. As used in titles 18, 19 and 20, Idaho Code,  
23 and elsewhere in the Idaho Code, unless otherwise specifically provided or  
24 unless the context clearly indicates or requires otherwise, the following  
25 terms shall be defined as follows:

26 (1) "Correctional facility" means a facility for the confinement of  
27 prisoners or juvenile offenders. The term shall be construed to include  
28 references to terms including, but not limited to, "prison," "state prison,"  
29 "state penitentiary," "governmental detention facility," "penal insti-  
30 tution (facility)," "correctional institution," "juvenile correctional  
31 center," "Idaho security medical program," "detention institution (fa-  
32 cility)," "juvenile detention center (facility)," "county jail," "jail,"  
33 "private prison (facility)," "private correctional facility," or those  
34 facilities that detain juvenile offenders pursuant to a contract with the  
35 Idaho department of juvenile corrections.

36 (2) "In-state prisoner" means any person who has been charged with or  
37 convicted of a crime in the state of Idaho or who is being detained pursuant  
38 to a court order, and:

39 (a) Who is being housed in any state, local or private correctional fa-  
40 cility; or

41 (b) Who is being transported in any manner within or through the state  
42 of Idaho.

43 (3) "Local correctional facility" means a facility for the confinement  
44 of prisoners operated by or under the control of a county or city. The term  
45 shall include references to "county jail," or "jail." The term shall also in-  
46 clude a private correctional facility housing prisoners under the custody of  
47 the state board of correction, the county sheriff or other local law enforce-  
48 ment agency.

1 (4) "Out-of-state prisoner" or "out-of-state inmate" means any person  
 2 who is convicted of and sentenced for a crime in a state other than the state  
 3 of Idaho, or under the laws of the United States or other foreign jurisdic-  
 4 tion, and:

5 (a) Who is being housed in any state, local or private correctional fa-  
 6 cility in the state of Idaho; or

7 (b) Who is being transported in any manner within or through the state  
 8 of Idaho.

9 (5) "Parolee" means a person who has been convicted of a felony and who  
 10 has been placed on parole by the Idaho commission ~~for~~ of pardons and parole or  
 11 similar body of another state, the United States, or a foreign jurisdiction,  
 12 and who is not incarcerated in any state, local or private correctional fa-  
 13 cility, and who is being supervised by employees of the Idaho department of  
 14 correction.

15 (6) "Prisoner" means a person who has been convicted of a crime in the  
 16 state of Idaho or who is being detained pursuant to a court order, or who  
 17 is convicted of and sentenced for a crime in a state other than the state of  
 18 Idaho, or under the laws of the United States or other foreign jurisdiction,  
 19 and:

20 (a) Who is being housed in any state, local or private correctional fa-  
 21 cility; or

22 (b) Who is being transported in any manner within or through the state  
 23 of Idaho.

24 The term shall be construed to include references to terms including, but not  
 25 limited to, "inmate," "convict," "detainee," and other similar terms, and  
 26 shall include "out-of-state prisoner" and "out-of-state inmate."

27 (7) "Private correctional facility" or "private prison (facility)"  
 28 means a correctional facility constructed or operated in the state of Idaho  
 29 by a private prison contractor.

30 (8) "Private prison contractor" means any person, organization, part-  
 31 nership, joint venture, corporation or other business entity engaged in  
 32 the site selection, design, design/building, acquisition, construction,  
 33 construction/management, financing, maintenance, leasing, leasing/pur-  
 34 chasing, management or operation of private correctional facilities or any  
 35 combination of these services.

36 (9) "Probationer" means a person who has been placed on felony proba-  
 37 tion by an Idaho court, or a court of another state, the United States, or a  
 38 foreign jurisdiction, and who is not incarcerated in any state, local or pri-  
 39 vate correctional facility, and who is being supervised by employees of the  
 40 Idaho department of correction.

41 (10) "Repeat offender" means, for the purposes of sections 18-8002,  
 42 18-8002A, 18-8004C, ~~and~~ 18-8005 ~~and 18-8008~~, Idaho Code, a person who has  
 43 been convicted of driving while intoxicated or driving under the influence  
 44 of alcohol and/or drugs more than once in any five (5) year period for the  
 45 purposes of sections 18-8002A and 18-8004C, Idaho Code, or any ten (10) year  
 46 period for the purposes of sections 18-8002 and 18-8005, Idaho Code.

47 (11) "State correctional facility" means a facility for the confinement  
 48 of prisoners, owned or operated by or under the control of the state of Idaho.  
 49 The term shall include references to "state prison," "state penitentiary"  
 50 or "state penal institution (facility)." The term shall also include a pri-

1 vate correctional facility housing prisoners under the custody of the board  
2 of correction.

3 (12) "Supervising officer" means an employee of the Idaho department of  
4 correction who is charged with or whose duties include supervision of felony  
5 parolees or felony probationers.

6 (13) "Juvenile offender" means a person younger than eighteen (18)  
7 years of age or who was younger than eighteen (18) years of age at the time  
8 of any act, omission, or status for which the person is being detained in a  
9 correctional facility pursuant to court order.

10 SECTION 9. This act shall be in full force and effect on and after Jan-  
11 uary 1, 2019.