

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 644

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO CODE, TO
2 PROVIDE THAT PERSONS PARTICIPATING IN A DIVERSION PROGRAM MAY BE ELIGI-
3 BLE FOR CERTAIN DRIVING PRIVILEGES AND TO MAKE TECHNICAL CORRECTIONS;
4 AMENDING SECTION 18-8002A, IDAHO CODE, TO REVISE PROVISIONS REGARDING
5 CERTAIN INFORMATION GIVEN TO PERSONS UNDERGOING EVIDENTIARY TESTING
6 FOR ALCOHOL, DRUGS OR OTHER INTOXICATING SUBSTANCES, TO PROVIDE FOR
7 DRIVING PRIVILEGES IN A DIVERSION PROGRAM AND TO MAKE TECHNICAL CORREC-
8 TIONS; AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE THE DEFINITION
9 OF IGNITION INTERLOCK SYSTEM AND TO MAKE TECHNICAL CORRECTIONS; AMEND-
10 ING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
11 19-3507, IDAHO CODE, TO DEFINE A TERM AND TO PROVIDE LEGISLATIVE INTENT;
12 AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW
13 SECTION 19-3508, IDAHO CODE, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR
14 A DIVERSION PROGRAM; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE
15 ADDITION OF A NEW SECTION 19-3509, IDAHO CODE, TO ESTABLISH PROVISIONS
16 REGARDING DIVERSION PROGRAMS; AND AMENDING SECTION 20-617, IDAHO CODE,
17 TO PROVIDE THAT PERSONS PARTICIPATING IN DIVERSION PROGRAMS MAY BE RE-
18 QUIRED TO PERFORM CERTAIN LABOR.
19

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

21 SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS
24 OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF
25 TESTS. (1) Any person who drives or is in actual physical control of a motor
26 vehicle in this state shall be deemed to have given his consent to eviden-
27 tiary testing for concentration of alcohol as defined in section 18-8004,
28 Idaho Code, and to have given his consent to evidentiary testing for the
29 presence of drugs or other intoxicating substances, provided that such
30 testing is administered at the request of a peace officer having reasonable
31 grounds to believe that person has been driving or has been in actual phys-
32 ical control of a motor vehicle in violation of the provisions of section
33 18-8004, ~~Idaho Code,~~ or section 18-8006, Idaho Code.

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

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

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

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

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

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

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

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

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

22 (a) He shall be fined a civil penalty of two hundred fifty dollars
23 (\$250);

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

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

45 (d) Notwithstanding the provisions of subsection (4) paragraphs (b)
46 and (c) of this section subsection, if the defendant is enrolled in and
47 is a participant in good standing in a drug court or mental health court
48 approved by the supreme court drug court and mental health court coor-
49 dinating committee under the provisions of chapter 56, title 19, Idaho
50 Code, or other similar problem-solving court utilizing community-based

1 sentencing alternatives, then the defendant shall be eligible for re-
2 stricted noncommercial driving privileges for the purpose of getting
3 to and from work, school or an alcohol treatment program, which may be
4 granted by the presiding judge of the drug court or mental health court
5 or other similar problem-solving court, provided that the defendant
6 has served a period of absolute suspension of driving privileges of at
7 least forty-five (45) days, that a state-approved ignition interlock
8 system is installed, and for repeat offenders it shall be maintained for
9 not less than one (1) year, on each of the motor vehicles ~~owned or oper-~~
10 ~~ated, or both,~~ by the defendant and that the defendant has shown proof
11 of financial responsibility as defined and in the amounts specified in
12 section 49-117, Idaho Code, provided that the restricted noncomm-
13 ercial driving privileges may be continued if the defendant successfully
14 completes the drug court, mental health court or other similar prob-
15 lem-solving court, and that the court may revoke such privileges for
16 failure to comply with the terms of probation or with the terms and
17 conditions of the drug court, mental health court or other similar prob-
18 lem-solving court program; and

19 (e) Notwithstanding the provisions of paragraphs (a), (b) and (c) of
20 this subsection, if a defendant is a participant in good standing in a
21 diversion program pursuant to section 19-3509, Idaho Code, then the de-
22 fendant shall be eligible for restricted noncommercial driving privi-
23 leges for the purpose of getting to and from work, school, medical ap-
24 pointments or a treatment program, which privileges may be granted by
25 the presiding court, provided that the defendant has:

26 (i) Installed a state-approved ignition interlock system, as de-
27 finied in section 18-8008, Idaho Code, in each motor vehicle oper-
28 ated by the defendant in accordance with the presiding court's or-
29 der; and

30 (ii) Presented proof of financial responsibility as defined in
31 section 49-117, Idaho Code, to the presiding court; and

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

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

45 (6) No hospital, hospital officer, agent, or employee, or health care
46 professional licensed by the state of Idaho, whether or not such person has
47 privileges to practice in the hospital in which a body fluid sample is ob-
48 tained or an evidentiary test is made, shall incur any civil or criminal li-
49 ability for any act arising out of administering an evidentiary test for al-
50cohol concentration or for the presence of drugs or other intoxicating sub-

1 stances at the request or order of a peace officer in the manner described in
2 this section and section 18-8002A, Idaho Code; provided that nothing in this
3 section shall relieve any such person or legal entity from civil liability
4 arising from the failure to exercise the community standard of care.

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

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

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

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

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

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

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

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

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

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

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

40 (7) "Actual physical control" as used in this section and section
41 18-8002A, Idaho Code, shall be defined as being in the driver's position of
42 the motor vehicle with the motor running or with the motor vehicle moving.

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

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

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

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

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

25 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF
 26 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF
 27 TESTS. (1) Definitions. As used in this section:

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

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

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

36 (d) "Director" means the director of the Idaho transportation depart-
 37 ment.

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

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

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

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

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

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

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

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

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

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

47 (e) However, if you are admitted to a problem-solving court program and
48 have served at least forty-five (45) days of an absolute suspension of
49 driving privileges, you may be eligible for a restricted permit for the

1 purpose of getting to and from work, school or an alcohol treatment pro-
2 gram; ~~and~~

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

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

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

12 (a) What testing is required to complete evidentiary testing under this
13 section; and

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

26 (4) Suspension.

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

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

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

48 The person may request an administrative hearing on the suspension as
49 provided in subsection (7) of this section. Any right to contest the

1 suspension shall be waived if a hearing is not requested as therein pro-
2 vided.

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

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

7 (ii) The effective date of the suspension;

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

10 (iv) The procedures for obtaining restricted noncommercial vehi-
11 cle driving privileges;

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

16 (vi) The procedures for obtaining an administrative hearing on
17 the suspension;

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

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

43 (d) Notwithstanding the provisions of subsection (4) (a) (i) and (ii)
44 of this section, a person who is enrolled in and is a participant in
45 good standing in a diversion program pursuant to section 19-3509, Idaho
46 Code, shall be eligible for restricted noncommercial driving privi-
47 leges for the purpose of getting to and from work, school, medical
48 appointments or a treatment program, which privileges may be granted by
49 the presiding court, provided that the person has:

1 (i) Installed a state-approved ignition interlock system in each
2 motor vehicle operated by the person, which system shall be main-
3 tained as provided in section 18-8008, Idaho Code; and
4 (ii) Shown proof of financial responsibility as defined and in the
5 amounts specified in section 49-117, Idaho Code, to the presiding
6 court.

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

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

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

28 (i) The identity of the person;

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

30 (iii) Stating the officer's legal cause to believe that the per-
31 son had been driving or was in actual physical control of a motor
32 vehicle while under the influence of alcohol, drugs or other in-
33 toxicating substances in violation of the provisions of section
34 18-8004, 18-8004C or 18-8006, Idaho Code;

35 (iv) That the person was advised of the consequences of taking and
36 failing the evidentiary test as provided in subsection (2) of this
37 section;

38 (v) That the person was lawfully arrested;

39 (vi) That the person was tested for alcohol concentration, drugs
40 or other intoxicating substances as provided in this chapter, and
41 that the results of the test indicated an alcohol concentration or
42 the presence of drugs or other intoxicating substances in viola-
43 tion of the provisions of section 18-8004, 18-8004C or 18-8006,
44 Idaho Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 SECTION 3. That Section 18-8008, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 18-8008. IGNITION INTERLOCKS -- ELECTRONIC MONITORING DEVICES. (1) If
7 a person is convicted, is found guilty, pleads guilty or receives a with-
8 held judgment for violating any of the provisions of this chapter and has had
9 any or all of a sentence or fine suspended for the violation, the court, in
10 its discretion, may impose any, some, or all of the sanctions provided for
11 in this section in addition to any other penalty or fine imposed pursuant to
12 this chapter.

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

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

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

45 SECTION 4. That Chapter 35, Title 19, Idaho Code, be, and the same is
46 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
47 ignated as Section 19-3507, Idaho Code, and to read as follows:

1 19-3507. DIVERSION PROGRAMS -- LEGISLATIVE INTENT. (1) For purposes
2 of this section and sections 19-3508 and 19-3509, Idaho Code, "diversion
3 program" means the use of local community resources, churches, substance
4 abuse counseling, informal probation, community service work, voluntary
5 restitution or other available services or programs as an alternative to
6 adjudication of a criminal case in court.

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

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

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

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

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

23 SECTION 5. That Chapter 35, Title 19, Idaho Code, be, and the same is
24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
25 ignated as Section 19-3508, Idaho Code, and to read as follows:

26 19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. A person is eligible to
27 participate in a diversion program if the person has been charged with driv-
28 ing under the influence pursuant to section 18-8004 or 18-8004A, Idaho Code,
29 and if the person has not been convicted of driving under the influence or
30 a substantially conforming foreign criminal violation within the past ten
31 (10) years and has not previously had a charge dismissed upon successful com-
32 pletion of a diversion program pursuant to section 19-3509, Idaho Code.

33 SECTION 6. That Chapter 35, Title 19, Idaho Code, be, and the same is
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
35 ignated as Section 19-3509, Idaho Code, and to read as follows:

36 19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) No later than thirty
37 (30) days after a defendant's initial appearance before the presiding court
38 in a case meeting the criteria set forth in section 19-3508, Idaho Code, the
39 presiding court may, on motion by the prosecuting attorney and with the con-
40 sent of the defendant, order a defendant to participate in a diversion pro-
41 gram. A criminal defendant's consent to participate in a diversion program
42 shall be deemed to be a waiver of the defendant's right to a speedy trial.

43 (a) The order directing a defendant to participate in a diversion pro-
44 gram shall specify the person overseeing the defendant's participation
45 in the program and shall set out the requirements for successful comple-
46 tion of the program and the duration of the order. The duration of the
47 period a defendant is required to participate in a diversion program un-

1 der this section shall be no shorter than six (6) months and no longer
2 than twelve (12) months. A defendant participating in a diversion pro-
3 gram shall be required to install an ignition interlock device in each
4 vehicle such defendant operates.

5 (b) Upon issuing an order for diversion, the presiding court shall hold
6 the case in abeyance until the duration prescribed in the order for di-
7 version has been satisfied, unless the court determines that the defen-
8 dant has failed to comply with the requirements of the diversion order.
9 At the end of the diversion period, the court shall determine whether
10 the defendant complied with the requirements of the diversion order and
11 shall dismiss the case with prejudice if the court finds that the defen-
12 dant has complied with the requirements of the diversion order.

13 (c) If the court finds that the defendant failed to comply with the re-
14 quirements of the diversion order, the court may:

15 (i) Order the defendant to spend an additional period of time in
16 the diversion program, with terms consistent with this section and
17 with the consent of the defendant, provided that in no case may
18 the total amount of time the defendant participates in a diversion
19 program exceed twelve (12) months; or

20 (ii) Enter any other order or schedule any other proceeding avail-
21 able to the court for the administration and adjudication of a case
22 properly before it on the charges originally filed or as amended if
23 the prosecuting attorney has properly amended the charges.

24 (d) The court shall have the authority to set aside an order for diver-
25 sion at any time irrespective of the duration set forth in the origi-
26 nal order, but no order for diversion may be set aside without affording
27 the defendant a hearing before the presiding court. Such hearing may be
28 initiated by the court or on a motion filed by either the prosecuting at-
29 torney or the defendant. Notice shall be provided to all parties in ac-
30 cordance with the Idaho criminal rules or other applicable court rule.

31 (e) If the presiding court concludes that the defendant has failed to
32 comply with the requirements of the diversion order, then the court
33 shall determine whether the ignition interlock device or devices in-
34 stalled in the defendant's vehicle or vehicles shall be removed or
35 whether such device or devices shall remain in place under other ap-
36 plicable law. The court shall also determine the extent to which the
37 defendant is entitled to driving privileges, whether full, restricted
38 or suspended.

39 (f) At a hearing held to determine compliance with an order for diver-
40 sion, the court may consider any evidence relevant to determining the
41 defendant's compliance with the diversion order, including evidence
42 from the ignition interlock vendor of:

43 (i) An attempt to start the vehicle with an alcohol concentration
44 of 0.04 or more;

45 (ii) Failure to take any random test;

46 (iii) Failure to pass any random retest with an alcohol concentra-
47 tion of 0.025 or lower; or

48 (iv) Failure of the defendant to appear at the ignition interlock
49 system vendor's place of business when required for maintenance,

1 repair, calibration, monitoring, inspection or replacement of the
2 system.

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) The requirements for successful completion of a diversion program
8 ordered under this section may include, but are not limited to:

9 (a) Informal supervision with the probation department;

10 (b) Community service work;

11 (c) Inmate labor detail work;

12 (d) Restitution to the victim;

13 (e) A community-based diversion program;

14 (f) Alcohol monitoring and testing;

15 (g) Individual therapy and counseling;

16 (h) Group therapy and counseling; and

17 (i) Drug monitoring and testing.

18 (4) The court may require the defendant to pay restitution and fees for
19 any classes or activities required as part of the diversion program. The
20 court shall assess a diversion fee of one hundred fifty-seven dollars and
21 fifty cents (\$157.50) to the defendant, which fee shall be distributed as
22 follows:

23 (a) Seventeen dollars and fifty cents (\$17.50) to be distributed as
24 provided in section 31-3201A(2), Idaho Code;

25 (b) Ten dollars (\$10.00) to be distributed as provided in section
26 31-3201(3), Idaho Code;

27 (c) Ten dollars (\$10.00) to be distributed as provided in section
28 31-3201(5), Idaho Code;

29 (d) Fifteen dollars (\$15.00) to be distributed as provided in section
30 31-3201B, Idaho Code;

31 (e) Fifty dollars (\$50.00) to be distributed as provided in section
32 31-3201H, Idaho Code;

33 (f) Fifteen dollars (\$15.00) to be distributed as provided in section
34 31-3204, Idaho Code;

35 (g) Thirty-seven dollars (\$37.00) to be distributed as provided in sec-
36 tion 72-1025, Idaho Code; and

37 (h) Three dollars (\$3.00) to be distributed as provided in section
38 72-1105, Idaho Code.

39 (5) A defendant participating in a diversion program whose driving
40 privileges have been suspended may be granted driving privileges by the
41 presiding court, in which case the defendant shall be issued a restricted
42 driving permit by the Idaho transportation department. To qualify for a
43 restricted driving permit, the defendant must have an ignition interlock
44 system, as defined in section 18-8008, Idaho Code, installed in each vehicle
45 operated by the defendant and must pay an ignition interlock fee of fifteen
46 dollars (\$15.00) to be deposited in the court interlock device and elec-
47 tronic monitoring device fund created by section 18-8010, Idaho Code.

48 (6) Upon successful completion of the diversion program, the court's
49 order of dismissal shall reflect that the dismissal is based upon successful
50 completion of the diversion program.

1 SECTION 7. That Section 20-617, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 20-617. LABOR OF PRISONERS ON PUBLIC WORKS. Persons confined in the
4 county jail under a judgment of conviction, suspended sentence or withheld
5 judgment rendered in any criminal case, either under a judgment of imprison-
6 ment or a judgment for the payment of a fine and costs, or persons partici-
7 pating in a diversion program pursuant to section 19-3509, Idaho Code, may be
8 required to perform labor on federal, state or other governmental projects
9 or community service projects.