

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 78, As Amended

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002A, IDAHO CODE,
2 TO PROVIDE THAT SUSPENSION OF DRIVING PRIVILEGES SHALL BE VACATED UN-
3 DER CERTAIN CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
4 SECTION 18-8005, IDAHO CODE, TO REVISE PROVISIONS REGARDING PENALTIES;
5 AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE THE DEFINITION OF "IG-
6 NITION INTERLOCK SYSTEM" AND TO MAKE A TECHNICAL CORRECTION; AMENDING
7 SECTION 18-8010, IDAHO CODE, TO PROVIDE THAT A PROSECUTING ATTORNEY
8 WHO ESTABLISHES A DIVERSION PROGRAM MAY USE CERTAIN MONEYS; AMENDING
9 SECTION 19-403, IDAHO CODE, TO PROVIDE THAT CERTAIN MISDEMEANOR CASES
10 SHALL BE REFILED NO LATER THAN TWO YEARS AFTER DISMISSAL AND TO MAKE
11 TECHNICAL CORRECTIONS; AMENDING SECTION 19-3506, IDAHO CODE, TO PRO-
12 VIDE THAT DISMISSED MISDEMEANOR CASES MAY BE REFILED UNDER CERTAIN CIR-
13 CUMSTANCES; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION
14 OF A NEW SECTION 19-3507, IDAHO CODE, TO DEFINE A TERM AND TO PROVIDE
15 LEGISLATIVE INTENT; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE
16 ADDITION OF A NEW SECTION 19-3508, IDAHO CODE, TO PROVIDE ELIGIBILITY
17 REQUIREMENTS FOR A DIVERSION PROGRAM; AMENDING CHAPTER 35, TITLE 19,
18 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3509, IDAHO CODE, TO ES-
19 TABLISH PROVISIONS REGARDING DIVERSION PROGRAMS; AND AMENDING SECTION
20 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS PARTICIPATING IN DIVERSION
21 PROGRAMS MAY BE REQUIRED TO PERFORM CERTAIN LABOR.
22

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

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

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

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

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

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

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

39 (e) "Evidentiary testing" means a procedure or test or series of proce-
40 dures or tests utilized to determine the concentration of alcohol or the
41 presence of drugs or other intoxicating substances in a person, includ-
42 ing additional testing authorized by subsection (6) of this section. An

1 evidentiary test for alcohol concentration shall be based on a formula
2 of grams of alcohol per one hundred (100) cubic centimeters of blood,
3 per two hundred ten (210) liters of breath, or per sixty-seven (67) mil-
4 liliters of urine. Analysis of blood, breath or urine for the purpose
5 of determining alcohol concentration shall be performed by a laboratory
6 operated by the Idaho state police or by a laboratory approved by the
7 Idaho state police under the provisions of approval and certification
8 standards to be set by the Idaho state police, or by any other method ap-
9 proved by the Idaho state police. Notwithstanding any other provision
10 of law or rule of court, the results of any test for alcohol concentra-
11 tion and records relating to calibration, approval, certification or
12 quality control performed by a laboratory operated and approved by the
13 Idaho state police or by any other method approved by the Idaho state po-
14 lice shall be admissible in any proceeding in this state without the ne-
15 cessity of producing a witness to establish the reliability of the test-
16 ing procedure for examination.

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

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

24 (2) Information to be given. At the time of evidentiary testing for
25 concentration of alcohol or for the presence of drugs or other intoxicating
26 substances is requested, the person shall be informed that if the person re-
27 fuses to submit to or fails to complete evidentiary testing, or if the per-
28 son submits to and completes evidentiary testing and the test results indi-
29 cate an alcohol concentration or the presence of drugs or other intoxicating
30 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,
31 the person shall be informed substantially as follows (but need not be in-
32 formed verbatim):

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

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

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

43 (c) If you refused or failed to complete evidentiary testing and do not
44 request a hearing before the court or do not prevail at the hearing, your
45 driver's license will be suspended and you will be required to install,
46 at your expense, a state-approved ignition interlock system on all mo-
47 tor vehicles you operate for a period to end one (1) year following the
48 end of the suspension period. The suspension will be for one (1) year if
49 this is your first refusal. The suspension will be for two (2) years if

1 this is your second refusal within ten (10) years. You will not be able
2 to obtain a temporary restricted license during that period;

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

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

21 (f) After submitting to evidentiary testing, you may, when practica-
22 ble, at your own expense, have additional tests made by a person of your
23 own choosing.

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

26 (a) What testing is required to complete evidentiary testing under this
27 section; and

28 (b) What calibration or checking of testing equipment must be performed
29 to comply with the department's requirements. Any rules of the Idaho
30 state police shall be in accordance with the following: a test for alco-
31 hol concentration in breath as defined in section 18-8004, Idaho Code,
32 and subsection (1) (e) of this section will be valid for the purposes of
33 this section if the breath alcohol testing instrument was approved for
34 testing by the Idaho state police in accordance with section 18-8004,
35 Idaho Code, at any time within ninety (90) days before the evidentiary
36 testing. A test for alcohol concentration in blood or urine as defined
37 in section 18-8004, Idaho Code, that is reported by the Idaho state po-
38 lice or by any laboratory approved by the Idaho state police to perform
39 this test will be valid for the purposes of this section.

40 (4) Suspension and ignition interlock system.

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

1 (i) For a period of ninety (90) days for a first failure of ev-
 2 diciary testing under the provisions of this section. The
 3 first thirty (30) days of the suspension shall be absolute and the
 4 person shall have absolutely no driving privileges of any kind.
 5 Restricted noncommercial vehicle driving privileges applicable
 6 during the remaining sixty (60) days of the suspension may be re-
 7 quested as provided in subsection (9) of this section.

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

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

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

22 (b) The suspension shall become effective thirty (30) days after ser-
 23 vice upon the person of the notice of suspension and notice of the re-
 24 quirement to install, at his expense, a state-approved ignition inter-
 25 lock system for a period to end one (1) year following the end of the sus-
 26 pension period. The notice shall be in a form provided by the department
 27 and shall state:

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

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

32 (iii) The suspension periods to which the person may be subject as
 33 provided in paragraph (a) of this subsection;

34 (iv) The procedures for obtaining restricted noncommercial vehi-
 35 cle driving privileges;

36 (v) The rights of the person to request an administrative hear-
 37 ing on the suspension and that, if an administrative hearing is not
 38 requested within seven (7) days of service of the notice of suspen-
 39 sion and notice of the requirement to install the ignition inter-
 40 lock system, the right to contest the suspension shall be waived;

41 (vi) The procedures for obtaining an administrative hearing on
 42 the suspension;

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

45 (c) Notwithstanding the provisions of paragraph(a)(i) and (ii) of
 46 this subsection, a person who is enrolled in and is a participant in
 47 good standing in a drug court or mental health court approved by the
 48 supreme court drug court and mental health court coordinating commit-
 49 tee under the provisions of chapter 56, title 19, Idaho Code, or other
 50 similar problem solving court utilizing community-based sentencing

1 alternatives shall be eligible for restricted noncommercial driving
2 privileges for the purpose of getting to and from work, school or an al-
3cohol treatment program, which may be granted by the presiding judge of
4the drug court or mental health court or other similar problem solving
5court, provided that the offender has served a period of absolute sus-
6pension of driving privileges of at least forty-five (45) days, that a
7state-approved ignition interlock system is installed, at his expense,
8on all motor vehicles operated by him for a period to end one (1) year
9following the end of the suspension period and that the offender has
10shown proof of financial responsibility as defined and in the amounts
11specified in section 49-117, Idaho Code, provided that the restricted
12noncommercial driving privileges may be continued if the offender
13successfully completes the drug court, mental health court or other
14similar problem solving court, and that the court may revoke such privi-
15leges for failure to comply with the terms of probation or with the terms
16and conditions of the drug court, mental health court or other similar
17problem solving court program.

18 (5) Service of suspension and ignition interlock system by peace of-
19ficer or the department. If the driver submits to evidentiary testing af-
20ter the information in subsection (2) of this section has been provided and
21the results of the test indicate an alcohol concentration or the presence
22of drugs or other intoxicating substances in violation of the provisions of
23section 18-8004, 18-8004C or 18-8006, Idaho Code:

24 (a) The peace officer shall, acting on behalf of the department, serve
25the person with a notice of suspension and notice of the requirement to
26install, at his expense, a state-approved ignition interlock system for
27a period to end one (1) year following the end of the suspension period
28in the form and containing the information required under subsection
29(4) of this section. The department may serve the person with a notice
30of suspension and the requirement to install the ignition interlock
31system if the peace officer failed to do so or failed to include the date
32of service as provided in subsection (4) (b) of this section.

33 (b) Within five (5) business days following service of a notice of sus-
34pension and notice of the requirement to install the ignition interlock
35system, the peace officer shall forward to the department a copy of the
36completed notice of suspension and notice of the requirement to install
37the ignition interlock system form upon which the date of service upon
38the driver shall be clearly indicated, a certified copy or duplicate
39original of the results of all tests for alcohol concentration, as shown
40by analysis of breath administered at the direction of the peace offi-
41cer, and a sworn statement of the officer, which may incorporate any
42arrest or incident reports relevant to the arrest and evidentiary test-
43ing setting forth:

44 (i) The identity of the person;

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

46 (iii) Stating the officer's legal cause to believe that the per-
47son had been driving or was in actual physical control of a motor
48vehicle while under the influence of alcohol, drugs or other in-
49toxicating substances in violation of the provisions of section
5018-8004, 18-8004C or 18-8006, Idaho Code;

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

4 (v) That the person was lawfully arrested;

5 (vi) That the person was tested for alcohol concentration, drugs
6 or other intoxicating substances as provided in this chapter, and
7 that the results of the test indicated an alcohol concentration or
8 the presence of drugs or other intoxicating substances in viola-
9 tion of the provisions of section 18-8004, 18-8004C or 18-8006,
10 Idaho Code.

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

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

20 (6) Additional tests. After submitting to evidentiary testing at the
21 request of the peace officer, the person may, when practicable, at his own
22 expense, have additional tests for alcohol concentration or for the presence
23 of drugs or other intoxicating substances made by a person of his own choos-
24 ing. The person's failure or inability to obtain additional tests shall not
25 preclude admission of the results of evidentiary tests administered at the
26 direction of the peace officer unless additional testing was denied by the
27 peace officer.

28 (7) Administrative hearing on suspension. A person who has been served
29 with a notice of suspension and notice of the requirement to install the ig-
30 nition interlock system after submitting to an evidentiary test may request
31 an administrative hearing on the suspension before a hearing officer desig-
32 nated by the department. The hearing may be held only on the suspension and
33 not on the requirement to install an ignition interlock system. The request
34 for hearing shall be in writing and must be received by the department within
35 seven (7) calendar days of the date of service upon the person of the notice
36 of suspension and notice of the requirement to install the ignition inter-
37 lock system and shall include what issue or issues shall be raised at the
38 hearing. The date on which the hearing request was received shall be noted
39 on the face of the request.

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

1 The hearing shall be recorded. The sworn statement of the arresting of-
2 ficer, and the copy of the notice of suspension and the notice of the require-
3 ment to install the ignition interlock system issued by the officer shall
4 be admissible at the hearing without further evidentiary foundation. The
5 results of any tests for alcohol concentration or the presence of drugs or
6 other intoxicating substances by analysis of blood, urine or breath adminis-
7 tered at the direction of the peace officer and the records relating to cal-
8 ibration, certification, approval or quality control pertaining to equip-
9 ment utilized to perform the tests shall be admissible as provided in section
10 18-8004(4), Idaho Code. The arresting officer shall not be required to par-
11 ticipate unless directed to do so by a subpoena issued by the hearing offi-
12 cer.

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

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

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

22 (c) The test results did not show an alcohol concentration or the pres-
23 ence of drugs or other intoxicating substances in violation of section
24 18-8004, 18-8004C or 18-8006, Idaho Code; or

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

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

32 If the hearing officer finds that the person has not met his burden of proof,
33 he shall sustain the suspension. The hearing officer shall make findings of
34 fact and conclusions of law and shall enter an order vacating or sustaining
35 the suspension. The findings of fact, conclusions of law and order entered
36 by the hearing officer shall be considered a final order pursuant to the pro-
37 visions of chapter 52, title 67, Idaho Code, except that motions for recon-
38 sideration of such order shall be allowed and new evidence can be submitted.

39 The facts as found by the hearing officer shall be independent of the de-
40 termination of the same or similar facts in the adjudication of any criminal
41 charges arising out of the same occurrence. The disposition of those crim-
42 inal charges shall not affect the suspension and the requirement to install
43 the ignition interlock system required to be imposed under the provisions
44 of this section. If a license is suspended under this section and the per-
45 son is also convicted on criminal charges arising out of the same occurrence
46 for a violation of the provisions of section 18-8004, 18-8004C or 18-8006,
47 Idaho Code, both the suspension under this section and the suspension im-
48 posed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code,
49 shall be imposed, but the periods of suspension shall run concurrently, with
50 the total period of suspension not to exceed the longer of the applicable

1 suspension periods, unless the court ordering the suspension in the criminal
2 case orders to the contrary. If a license is suspended pursuant to this sec-
3 tion and the criminal charges arising out of the same occurrence for a viola-
4 tion of the provisions of section 18-8004, 18-8004C, or 18-8006, Idaho Code,
5 are vacated or dismissed, then both the suspension pursuant to this section
6 and the suspension imposed pursuant to the provisions of section 18-8005 or
7 18-8006, Idaho Code, shall also be vacated. The defendant's driving priv-
8 ileges shall be restored on the effective date the criminal charges are va-
9 vacated or dismissed.

10 (8) Judicial review. A party aggrieved by the decision of the hearing
11 officer may seek judicial review of the decision in the manner provided for
12 judicial review of final agency action provided in chapter 52, title 67,
13 Idaho Code. Upon motion of the person required to install an ignition in-
14 terlock device pursuant to subsection (4) (a) of this section, a court in its
15 discretion may relieve the person from the installation of the device where
16 the court finds it clear and convincing that the person will not present a
17 danger to the public or that there are exceptional or mitigating circum-
18 stances demonstrating that installation of the device is unnecessary or
19 unwarranted. Financial hardship, standing alone, is not an exceptional or
20 mitigating circumstance. A court may determine that an offender is eligible
21 to utilize available funds from the court interlock device and electronic
22 monitoring device fund, as outlined in section 18-8010, Idaho Code, for the
23 installation and operation of an ignition interlock device, based on evi-
24 dence of financial hardship.

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

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

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

45 SECTION 2. That Section 18-8005, Idaho Code, be, and the same is hereby
46 amended to read as follows:

47 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found
48 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho

1 Code, for the first time is guilty of a misdemeanor; and, except as provided
2 in section 18-8004C, Idaho Code:

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

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

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

10 (d) Shall have his driving privileges suspended by the court for a pe-
11 riod of thirty (30) days, which shall not be reduced and during which
12 thirty (30) day period absolutely no driving privileges of any kind may
13 be granted. After the thirty (30) day period of absolute suspension of
14 driving privileges has passed, the defendant shall have driving privi-
15 leges suspended by the court for an additional period of at least sixty
16 (60) days, not to exceed one hundred fifty (150) days, during which
17 the defendant may request restricted driving privileges that the court
18 may allow, if the defendant shows by a preponderance of the evidence
19 that driving privileges are necessary for his employment or for family
20 health needs; and

21 (e) Unless an exception is granted pursuant to section 18-8002(12),
22 Idaho Code, shall within ten (10) days following the end of the manda-
23 tory suspension period have a state-approved ignition interlock system
24 meeting the requirements of section 18-8008, Idaho Code, installed, at
25 his expense, on all motor vehicles operated by him for a period to end
26 one (1) year following the end of the suspension period. A court may
27 determine that an offender is eligible to utilize available funds from
28 the court interlock device and electronic monitoring device fund, as
29 outlined in section 18-8010, Idaho Code, for the installation and oper-
30 ation of an ignition interlock device, based on evidence of financial
31 hardship.

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

35 (a) The provisions of subsection (1) (a), (b), (c) and (e) of this sec-
36 tion; and

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

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

41 (a) The provisions of subsection (1) (a), (b), (c) and (e) of this sec-
42 tion; and

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

44 (4) Any person who pleads guilty to or is found guilty of a violation of
45 the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, who previ-
46 ously has been found guilty of or has pled guilty to a violation of the provi-
47 sions of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially
48 conforming foreign criminal violation within ten (10) years, notwithstand-
49 ing the form of the judgment(s) or withheld judgment(s), and except as pro-

1 vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-
2 cept as provided in section 18-8004C, Idaho Code:

3 (a) Shall be sentenced to jail for a mandatory minimum period of not
4 less than ten (10) days, the first forty-eight (48) hours of which must
5 be consecutive, and five (5) days of which must be served in jail, as re-
6 quired by 23 U.S.C. 164, and may be sentenced to not more than one (1)
7 year, provided however, that in the discretion of the sentencing judge,
8 the judge may authorize the defendant to be assigned to a work detail
9 program within the custody of the county sheriff during the period of
10 incarceration;

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

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

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

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

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

26 (5) If the person has pled guilty or was found guilty for the sec-
27 ond time within ten (10) years of a violation of the provisions of section
28 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,
29 Idaho Code, shall apply.

30 (6) Except as provided in section 18-8004C, Idaho Code, any person who
31 pleads guilty to or is found guilty of a violation of the provisions of sec-
32 tion 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found
33 guilty of or has pled guilty to two (2) or more violations of the provisions
34 of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially con-
35 forming foreign criminal violation, or any combination thereof, or who has
36 completed a diversion program for driving under the influence, whether or
37 not the person has pled guilty or been found guilty, or any substantially
38 conforming foreign program, and has pled guilty or been found guilty of one
39 (1) or more violations of the provisions of section 18-8004(1)(a), (b), or
40 (c), Idaho Code, or any substantially conforming foreign criminal violation
41 within ten (10) years, notwithstanding the form of the judgment(s) or with-
42 held judgment(s), shall be guilty of a felony and:

43 (a) Shall be sentenced to the custody of the state board of correction
44 for not to exceed ten (10) years; provided that notwithstanding the
45 provisions of section 19-2601, Idaho Code, should the court impose any
46 sentence other than incarceration in the state penitentiary, the de-
47 fendant shall be sentenced to the county jail for a mandatory minimum
48 period of not less than thirty (30) days, the first forty-eight (48)
49 hours of which must be consecutive, and ten (10) days of which must be
50 served in jail, as required by 23 U.S.C. 164; and further provided that

1 notwithstanding the provisions of section 18-111, Idaho Code, a conviction
2 under this section shall be deemed a felony;

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

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

5 (d) Shall have his driving privileges suspended by the court for a
6 mandatory minimum period of one (1) year after release from imprisonment,
7 during which time he shall have absolutely no driving privileges
8 of any kind, and may have his driving privileges suspended by the court
9 for an additional period not to exceed four (4) years, during which
10 the defendant may request restricted driving privileges that the court
11 may allow if the defendant shows by a preponderance of the evidence
12 that driving privileges are necessary for his employment or for family
13 health needs; and

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

18 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)
19 of this section, any person who is enrolled in and is a participant in good
20 standing in a drug court or mental health court approved by the supreme
21 court drug court and mental health court coordinating committee under the
22 provisions of chapter 56, title 19, Idaho Code, or other similar problem
23 solving court utilizing community-based sentencing alternatives shall be
24 eligible for restricted noncommercial driving privileges for the purpose
25 of getting to and from work, school or an alcohol treatment program, which
26 may be granted by the presiding judge of the drug court or mental health
27 court or other similar problem solving court, provided that the offender
28 has served a period of absolute suspension of driving privileges of at least
29 forty-five (45) days, that a state-approved ignition interlock system is
30 installed, at his expense, on any motor vehicles operated by the offender
31 for a period to end one (1) year following the end of the suspension period
32 and that the offender has shown proof of financial responsibility as defined
33 and in the amounts specified in section 49-117, Idaho Code, provided that
34 the restricted noncommercial driving privileges may be continued if the of-
35 fender successfully completes the drug court, mental health court or other
36 similar problem solving court, and that the court may revoke such privileges
37 for failure to comply with the terms of probation or with the terms and condi-
38 tions of the drug court, mental health court or other similar problem solving
39 court program.

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

47 (9) Notwithstanding the provisions of subsections (4) and (6) of this
48 section, any person who has pled guilty to or has been found guilty of a
49 felony violation of the provisions of section 18-8004, Idaho Code, a felony
50 violation of the provisions of section 18-8004C, Idaho Code, a violation

1 of the provisions of section 18-8006, Idaho Code, a violation of the provi-
2 sions of section 18-4006 3.(b), Idaho Code, notwithstanding the form of the
3 judgment(s) or withheld judgment(s) or any substantially conforming foreign
4 criminal felony violation, notwithstanding the form of the judgment(s) or
5 withheld judgment(s), and within fifteen (15) years pleads guilty to or is
6 found guilty of a further violation of the provisions of section 18-8004,
7 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to
8 subsection (6) of this section.

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

17 (11) Any person who pleads guilty to or is found guilty of a violation of
18 the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall
19 undergo, at his own expense (or at county expense through the procedures set
20 forth in chapters 34 and 35, title 31, Idaho Code) and prior to the sentenc-
21 ing date, an alcohol evaluation by an alcohol evaluation facility approved
22 by the Idaho department of health and welfare; provided however, if the
23 defendant has no prior or pending charges with respect to the provisions
24 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the
25 records and information required under subsection (12) (a), (b) and (c) of
26 this section or possesses information from other reliable sources relating
27 to the defendant's use or nonuse of alcohol or drugs which does not give
28 the court any reason to believe that the defendant regularly abuses alco-
29 hol or drugs and is in need of treatment, the court may, in its discretion,
30 waive the evaluation with respect to sentencing for a violation of section
31 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant.
32 The court may also, in its discretion, waive the requirement of an alcohol
33 evaluation with respect to a defendant's first violation of the provisions
34 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence
35 the defendant if the court has a presentence investigation report, sub-
36 stance abuse assessment, criminogenic risk assessment, or other assessment
37 which evaluates the defendant's degree of alcohol abuse and need for alco-
38 hol treatment conducted within twelve (12) months preceding the date of the
39 defendant's sentencing. In the event an alcohol evaluation indicates the
40 need for alcohol treatment, the evaluation shall contain a recommendation
41 by the evaluator as to the most appropriate treatment program, together with
42 the estimated cost thereof, and recommendations for other suitable alter-
43 native treatment programs, together with the estimated costs thereof. The
44 person shall request that a copy of the completed evaluation be forwarded
45 to the court. The court shall take the evaluation into consideration in
46 determining an appropriate sentence. If a copy of the completed evaluation
47 has not been provided to the court, the court may proceed to sentence the
48 defendant; however, in such event, it shall be presumed that alcohol treat-
49 ment is required unless the defendant makes a showing by a preponderance of
50 evidence that treatment is not required. If the defendant has not made a good

1 faith effort to provide the completed copy of the evaluation to the court,
2 the court may consider the failure of the defendant to provide the report
3 as an aggravating circumstance in determining an appropriate sentence. If
4 treatment is ordered, in no event shall the person or facility doing the
5 evaluation be the person or facility that provides the treatment unless this
6 requirement is waived by the sentencing court, with the exception of fed-
7 erally recognized Indian tribes or federal military installations, where
8 diagnosis and treatment are appropriate and available. Nothing herein con-
9 tained shall preclude the use of funds authorized pursuant to the provisions
10 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for
11 indigent defendants.

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

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

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

18 (c) Information as to whether the defendant has pled guilty to or
19 been found guilty of a violation of the provisions of section 18-8004,
20 18-8004C or 18-8006, Idaho Code, or a similar offense within the past
21 five (5) years, notwithstanding the form of the judgment(s) or withheld
22 judgment(s); and

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

25 (13) A minor may be prosecuted for a violation of the provisions of sec-
26 tion 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code.
27 In addition to any other penalty, if a minor pleads guilty to or is found
28 guilty of a violation of the provisions of section 18-8004(1)(a), (b) or
29 (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended
30 or denied for an additional one (1) year following the end of any period of
31 suspension or revocation existing at the time of the violation, or until
32 he reaches the age of twenty-one (21) years, whichever period is greater.
33 During the period of additional suspension or denial, absolutely no driving
34 privileges shall be allowed.

35 (14) In the event that the alcohol evaluation required in subsection
36 (11) of this section recommends alcohol treatment, the court shall order
37 the person to complete a treatment program in addition to any other sentence
38 which may be imposed, unless the court determines that alcohol treatment
39 would be inappropriate or undesirable, in which event the court shall enter
40 findings articulating the reasons for such determination on the record. The
41 court shall order the defendant to complete the preferred treatment program
42 set forth in the evaluation, or a comparable alternative, unless it appears
43 that the defendant cannot reasonably obtain adequate financial resources
44 for such treatment. In that event, the court may order the defendant to com-
45 plete a less costly alternative set forth in the evaluation, or a comparable
46 program. Such treatment shall, to the greatest extent possible, be at the
47 expense of the defendant. In the event that funding is provided for or on
48 behalf of the defendant by an entity of state government, restitution shall
49 be ordered to such governmental entity in accordance with the restitution
50 procedure for crime victims, as specified under chapter 53, title 19, Idaho

1 Code. Nothing contained herein shall be construed as requiring a court to
2 order that a governmental entity shall provide alcohol treatment at govern-
3 ment expense unless otherwise required by law.

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

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

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

12 18-8008. IGNITION INTERLOCK SYSTEMS.

13 (1) (a) If a person is convicted, is found guilty, pleads guilty or re-
14 ceives a withheld judgment for violating any of the provisions of this
15 chapter relating to driving under the influence and has had any or all of
16 a sentence or fine suspended for the violation, the court shall, unless
17 an exception is granted pursuant to section 18-8002(12), Idaho Code,
18 impose the sanction provided for in this section in addition to any
19 other penalty or fine imposed pursuant to this chapter.

20 (b) The court shall order the person to have a state-approved ignition
21 interlock system installed, at his expense, on all motor vehicles op-
22 erated by him. A court may determine that an offender is eligible to
23 utilize available funds from the court interlock device and electronic
24 monitoring device fund, as outlined in section 18-8010, Idaho Code, for
25 the installation and operation of an ignition interlock device, based
26 on evidence of financial hardship.

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

29 (3) As used in this chapter, the term "ignition interlock system" means
30 breath alcohol ignition interlock device, including a camera, certified by
31 the transportation department, designed to prevent a motor vehicle from be-
32 ing operated by a person who has consumed an alcoholic beverage.

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

35 (5) The court shall notify the transportation department of its order
36 imposing a sanction pursuant to this section. The department shall attach
37 or imprint a notation on the driver's license or other document granting the
38 person restricted driving privileges of any person restricted under this
39 section that the person may operate only a motor vehicle equipped with an
40 ignition interlock system.

41 (6) When a court orders a person to install and use an ignition inter-
42 lock system pursuant to this section, the court shall order the person to pay
43 the cost for obtaining, installing, utilizing and maintaining the ignition
44 interlock system. All fees collected pursuant to this section shall be in
45 addition to any other fines or penalty provided by law and shall be deposited
46 in the court interlock device and electronic monitoring device fund created
47 in section 18-8010, Idaho Code.

1 SECTION 4. 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 or a prosecuting attorney who
16 establishes a diversion program pursuant to section 19-3509, Idaho Code, may
17 also utilize moneys in this fund to pay for drug testing for an indigent di-
18 version participant or to assist an indigent defendant or indigent diversion
19 participant to procure an ignition interlock device or electronic monitor-
20 ing devices. The court may also utilize moneys in this fund for alcohol or
21 drug abuse-related probation, treatment or prevention programs for adults
22 or juveniles.

23 SECTION 5. That Section 19-403, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 19-403. MISDEMEANORS. (1) Except as otherwise provided in ~~subsections~~
26 ~~(2) and (3) of~~ this section, a prosecution for any misdemeanor must be com-
27 menced by the filing of the complaint or the finding of an indictment within
28 one (1) year after its commission.

29 (2) A prosecution for failure to report or failure to cause to be re-
30 ported the abuse, abandonment, or neglect of a child as provided for in sec-
31 tion 16-1605, Idaho Code, must be commenced by the filing of the complaint or
32 the finding of an indictment within four (4) years after its commission.

33 (3) A prosecution for misuse of funds as provided for in section
34 18-5702(1), Idaho Code, must be commenced by the filing of the complaint or
35 the finding of an indictment within five (5) years after its commission.

36 (4) A prosecution for a misdemeanor that was dismissed pursuant to sec-
37 tion 19-3509, Idaho Code, must be refiled no later than two (2) years after
38 its dismissal.

39 SECTION 6. That Section 19-3506, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 19-3506. EFFECT OF DISMISSAL AS BAR -- DISMISSAL FOR DIVERSION PARTIC-
42 IPANT. (1) An order for the dismissal of the action, as provided in this chap-
43 ter, is a bar to any other prosecution for the same offense, if it is a misde-
44 meanor, except as provided in subsection (2) of this section; but it is not a
45 bar if the offense is a felony.

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

6 SECTION 7. That Chapter 35, Title 19, Idaho Code, be, and the same is
7 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
8 ignated as Section 19-3507, Idaho Code, and to read as follows:

9 19-3507. DIVERSION PROGRAMS -- LEGISLATIVE INTENT. (1) For purposes
10 of this section and sections 19-3508 and 19-3509, Idaho Code, "diversion
11 program" means the use of local community resources, churches, substance
12 abuse counseling, informal probation, community service work, voluntary
13 restitution, or other available services or programs as an alternative to
14 adjudication of a criminal case in court.

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

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

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

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

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

31 SECTION 8. That Chapter 35, Title 19, Idaho Code, be, and the same is
32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
33 ignated as Section 19-3508, Idaho Code, and to read as follows:

34 19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. A person is eligible to
35 participate in a diversion program if:

36 (1) The person has been charged with driving under the influence pur-
37 suant to section 18-8004 or 18-8004A, Idaho Code;

38 (2) No other person is alleged to have been physically injured as a re-
39 sult of the conduct underlying such charge; and

40 (3) The person charged has not been convicted of driving under the in-
41 fluence or a substantially conforming foreign criminal violation within the
42 past ten (10) years and has not previously participated in a diversion pro-
43 gram pursuant to section 19-3509, Idaho Code.

44 SECTION 9. That Chapter 35, Title 19, Idaho Code, be, and the same is
45 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
46 ignated as Section 19-3509, Idaho Code, and to read as follows:

1 19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) A prosecuting attorney
2 may, at the prosecuting attorney's discretion, establish a diversion pro-
3 gram and may refer a defendant eligible to participate in a diversion pro-
4 gram pursuant to section 19-3508, Idaho Code, to such program within thirty
5 (30) calendar days of a citation being issued or charges being filed against
6 the defendant. Before entering an agreement to participate in the diver-
7 sion program, a defendant may obtain advice from a defense attorney on the
8 requirements and consequences of participating in the diversion program and
9 must undergo a drug or alcohol evaluation, or both, if requested by the pros-
10 ecuting attorney. The terms and conditions of the diversion program shall
11 be set forth in a written agreement signed by the prosecuting attorney and
12 the defendant as well as the defendant's attorney, if the defendant is repre-
13 sented by an attorney. If the defendant agrees to participate in the diver-
14 sion program, then the prosecuting attorney shall move for dismissal of the
15 action against the defendant pursuant to section 19-3506, Idaho Code.

16 (a) A diversion program may be administered by the prosecuting attor-
17 ney or by the prosecuting attorney's designee. The diversion agreement
18 shall specify the person administering the program and shall set out the
19 requirements for successful completion of the program and the duration
20 of the diversion agreement. The duration of the period a person is re-
21 quired to participate in a diversion program under this section shall
22 be no shorter than twelve (12) months. A person participating in a di-
23 version program for an alcohol-related charge shall be required to in-
24 stall and maintain, at the participant's expense, an ignition interlock
25 system in each vehicle such person operates for the duration of the pro-
26 gram, as further provided in subsection (5) of this section. A person
27 participating in a diversion program for a charge unrelated to alcohol
28 shall be required to undergo drug testing at the person's expense for
29 at least twelve (12) months. If the person is indigent, the prosecut-
30 ing attorney may order the use of moneys from the court interlock device
31 and electronic monitoring device fund created by section 18-8010, Idaho
32 Code, to assist the person in procuring an ignition interlock device or
33 to pay for drug testing. The participant in a diversion program must
34 also complete at least thirty-two (32) hours of sheriff inmate labor de-
35 tail or approved community service and at least twenty-four (24) hours
36 of drug and alcohol counseling, therapy, or education from an approved
37 provider.

38 (b) At the end of the diversion period, the prosecuting attorney shall
39 determine whether the participant complied with the requirements of the
40 diversion agreement. If the prosecuting attorney finds that the par-
41 ticipant failed to comply with the requirements of the diversion agree-
42 ment, then the prosecuting attorney may refile the case pursuant to sec-
43 tion 19-3506, Idaho Code.

44 (2) If a person participates in a diversion program pursuant to this
45 section, then any statement made by the person in diversion activities or
46 proceedings is inadmissible as substantive evidence of guilt during an adju-
47 dicative proceeding in the refiled case.

48 (3) The requirements for successful completion of a diversion program
49 may include, but are not limited to:

50 (a) Informal supervision with the probation department;

- 1 (b) Community service work;
- 2 (c) Inmate labor detail work;
- 3 (d) A community-based diversion program;
- 4 (e) Restitution to a victim;
- 5 (f) Alcohol monitoring and testing;
- 6 (g) Individual therapy and counseling;
- 7 (h) Group therapy and counseling; and
- 8 (i) Drug monitoring and testing.

9 (4) The administrator of a diversion program may require payment of
10 restitution and fees to cover the costs of the diversion program. Any moneys
11 collected shall be reasonably related to program costs. The administrator
12 shall assess a diversion fee of one hundred fifty-seven dollars and fifty
13 cents (\$157.50) to each diversion participant. If the participant is indi-
14 gent, the diversion fee may be waived. The diversion fee shall be paid to the
15 clerk of the district court and distributed as follows:

- 16 (a) Seventeen dollars and fifty cents (\$17.50) to be distributed as
17 provided in section 31-3201A(2), Idaho Code;
- 18 (b) Ten dollars (\$10.00) to be distributed as provided in section
19 31-3201(3), Idaho Code;
- 20 (c) Ten dollars (\$10.00) to be distributed as provided in section
21 31-3201(5), Idaho Code;
- 22 (d) Fifteen dollars (\$15.00) to be distributed as provided in section
23 31-3201B, Idaho Code;
- 24 (e) Fifty dollars (\$50.00) to be distributed as provided in section
25 31-3201H, Idaho Code;
- 26 (f) Fifteen dollars (\$15.00) to be distributed as provided in section
27 31-3204, Idaho Code;
- 28 (g) Thirty-seven dollars (\$37.00) to be distributed as provided in sec-
29 tion 72-1025, Idaho Code; and
- 30 (h) Three dollars (\$3.00) to be distributed as provided in section
31 72-1105, Idaho Code.

32 (5) If a person is participating in a diversion program due to a charge
33 involving alcohol, then the participant must have an ignition interlock
34 system as defined in section 18-8008, Idaho Code, installed in each vehi-
35 cle operated by the participant and must pay an ignition interlock fee of
36 fifteen dollars (\$15.00) to be deposited in the court interlock device and
37 electronic monitoring device fund created by section 18-8010, Idaho Code.
38 The ignition interlock system shall be removed once the participant suc-
39 cessfully completes diversion, provided that such removal shall not occur,
40 and the program shall not be considered successfully completed, until the
41 administrator of the diversion program receives a declaration from the par-
42 ticipant's ignition interlock vendor, on a form provided or approved by the
43 administrator, certifying that none of the following incidents occurred
44 while the system was installed in the vehicle:

- 45 (a) An attempt to start the vehicle with an alcohol concentration of
46 0.04 or more;
- 47 (b) Failure to take any random test;
- 48 (c) Failure to pass any random retest with an alcohol concentration of
49 0.025 or lower; or

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

4 (6) If criminal charges against the participant are refiled pursuant
5 to section 19-3506, Idaho Code, then an ignition interlock system installed
6 pursuant to this section shall be removed.

7 SECTION 10. That Section 20-617, Idaho Code, be, and the same is hereby
8 amended to read as follows:

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