

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 189

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CRIMINAL HISTORY RECORDS; AMENDING SECTION 67-3004, IDAHO CODE,  
2 TO PROVIDE THAT CRIMINAL HISTORY RECORDS SHALL BE SHIELDED FROM DISCLO-  
3 SURE UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 74-105, IDAHO  
4 CODE, TO PROVIDE THAT CERTAIN RECORDS SHALL BE SHIELDED FROM DISCLO-  
5 SURE.  
6

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

8 SECTION 1. That Section 67-3004, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 67-3004. FINGERPRINTING AND IDENTIFICATION -- SHIELDING OF RECORDS  
11 FROM DISCLOSURE. (1) The bureau shall:

12 (a) Obtain and file fingerprints, physical descriptions and any other  
13 available identifying data on persons who have been arrested or served a  
14 criminal summons in this state for a retainable offense;

15 (b) Accept fingerprints and other identifying data taken by a law en-  
16 forcement agency for the purpose of identification or conducting a  
17 records review for criminal justice purposes; and

18 (c) Process latent fingerprints generated from crime scenes, evidence  
19 and law enforcement agencies through the automated fingerprint identi-  
20 fication system for prospective identification.

21 (2) The bureau shall establish policy regarding an arrest fingerprint  
22 card and procedures for the taking of fingerprints under this section.

23 (3) When a person is arrested for a retainable offense, with or with-  
24 out a warrant, fingerprints of the person shall be taken by the law enforce-  
25 ment agency making the arrest. A law enforcement agency may contract or make  
26 arrangements with a jail or correctional facility or other criminal justice  
27 agency to take the required fingerprints from a person who is arrested by the  
28 law enforcement agency.

29 (4) If a person was arrested and is in the custody of a law enforcement  
30 agency, jail or correctional facility and a felony summons or information is  
31 filed for an offense separate from the offense for which the person is in cus-  
32 tody, the agency, jail or correctional facility shall take the fingerprints  
33 of the person in connection with the new offense.

34 (5) At the initial court appearance or arraignment of a person for an  
35 offense pursuant to a felony summons or information, the court, upon notice  
36 from the prosecuting attorney, shall order a law enforcement agency to fin-  
37 gerprint the person if he has not been previously fingerprinted for the same  
38 offense.

39 (6) When a defendant is convicted or otherwise adjudicated for a felony  
40 offense for which the defendant has not been previously fingerprinted, the  
41 court shall order, upon notice from the prosecuting attorney, a law enforce-

1 ment agency to fingerprint the defendant as a condition of sentence, proba-  
2 tion or release.

3 (7) When a person is received by a state correctional facility, the de-  
4 partment of correction shall ensure that legible fingerprints of the person  
5 are taken and submitted to the bureau.

6 (8) When the bureau receives fingerprints of a person in connection  
7 with an arrest or incarceration, the bureau shall make a reasonable ef-  
8 fect to confirm within five (5) working days the identity of the person  
9 fingerprinted. In an emergency situation when an immediate positive identi-  
10 fication is needed, a criminal justice agency may request the department to  
11 provide immediate identification service.

12 (9) If the arresting officer, the law enforcement agency that employs  
13 the officer, or the jail or correctional facility where fingerprints were  
14 taken is notified by the bureau that fingerprints taken under this section  
15 are not legible, the officer, agency or facility shall make a reasonable ef-  
16 fect to obtain a legible set of fingerprints. If legible fingerprints can-  
17 not be obtained within a reasonable period of time, and if illegible finger-  
18 prints were taken under a court order, the officer or agency shall inform the  
19 court, which shall order the defendant to submit to fingerprinting again.

20 (10) Any person who was arrested or served a criminal summons and who  
21 subsequently was not charged by indictment or information within one (1)  
22 year of the arrest or summons and any person who was acquitted of all of-  
23 fenses arising from an arrest or criminal summons, or who has had all charges  
24 dismissed, may have the fingerprint and criminal history record taken in  
25 connection with the incident expunged pursuant to the person's written re-  
26 quest directed to the department and may have the official court file thereof  
27 sealed. This provision shall not apply to any dismissal granted pursuant to  
28 section 19-2604(1), Idaho Code.

29 (11) (a) In addition to the remedies set forth in subsection (10) of  
30 this section, any person arrested for, prosecuted for, or convicted  
31 of a nonassaultive or nonviolent misdemeanor or felony possession of  
32 a controlled substance under section 37-2732(a), (c), and (e), Idaho  
33 Code, in this state may petition the court to have the person's record be  
34 shielded from disclosure in accordance with rules adopted by the Idaho  
35 supreme court and within the capabilities of its record-keeping system.  
36 Upon the filing of the petition, the court shall set a date for a hearing  
37 and shall notify the prosecuting attorney of the date of the hearing.  
38 Upon receipt of such notification from the court, the prosecuting at-  
39 torney shall provide to any readily identifiable crime victim whatever  
40 notifications are required under section 22, article I, of the consti-  
41 tution of the state of Idaho. The court, in its discretion, may hear  
42 testimony at the hearing from any person who has relevant information  
43 about the petitioner.

44 (b) Assaultive or violent misdemeanors shall include:

45 (i) Assault (18-901, Idaho Code);

46 (ii) Battery (18-903, Idaho Code);

47 (iii) Domestic battery (18-918, Idaho Code);

48 (iv) Stalking in the second degree (18-7906, Idaho Code);

49 (v) Violation of a protection order or no contact order (18-7907  
50 or 18-920, Idaho Code);

1           (vi) Telephone harassment (18-6710, Idaho Code);  
2           (vii) Vehicular manslaughter (18-4006(3)(c), Idaho Code); and  
3           (viii) Excessive driving under the influence (18-8004C, Idaho  
4           Code).

5           (c) To be eligible to have records shielded from disclosure under this  
6           section, a petitioner must file a petition to shield records of the  
7           conviction no earlier than five (5) years after completing the peti-  
8           tioner's sentence, including all ordered probation, parole, fines, and  
9           restitution; provided that during such five (5) year period and until  
10           the time of a hearing on the petition, the petitioner has not had any  
11           subsequent felony or misdemeanor convictions and is not on probation or  
12           parole for a subsequent conviction, has no misdemeanor or felony cases  
13           pending against him, and has no restraining orders against him in effect  
14           at the time of filing the petition to shield the records.

15           (d) If the court finds, after a hearing, that the petitioner is el-  
16           igible to have his records shielded from disclosure pursuant to this  
17           subsection and further finds to its satisfaction that the petitioner  
18           has been held accountable and that shielding the petitioner's record  
19           from disclosure would not compromise public safety or the safety of  
20           any victims, the court shall order all records in the petitioner's  
21           case in the custody of the court to be shielded from disclosure and un-  
22           available for public viewing. Upon such a shielding from disclosure of  
23           the petitioner's records, the court shall notify the Idaho state po-  
24           lice of the shielding and, upon receipt of the notification, the Idaho  
25           state police shall make any law enforcement investigatory reports and  
26           fingerprint records unavailable for public viewing. The court shall  
27           further order all references to the arrest, prosecution, or convic-  
28           tion to be removed from all indexes maintained by government entities  
29           and all other records maintained by government entities available to  
30           the public. However, a special index of the shielding proceedings and  
31           records shall be kept by the court ordering the shielding of records,  
32           which shall not be available to the public unless otherwise ordered by  
33           a court of competent jurisdiction. Copies of the order shielding the  
34           records from disclosure shall be sent by the court clerk to each agency  
35           or official named in the order. Except as provided in paragraphs (i)  
36           and (j) of this subsection and other than in a judicial proceeding or as  
37           part of the licensing process for peace officers, upon the entry of the  
38           order, the proceedings in the petitioner's case shall be deemed never to  
39           have occurred, and the petitioner may lawfully reply accordingly to any  
40           inquiry in the matter.

41           (e) A proceeding to shield records from disclosure under the provisions  
42           of this subsection shall be a civil matter. A petitioner may be repre-  
43           sented by an attorney but shall not be provided an attorney at public ex-  
44           penditure.

45           (f) A court ordering records to be shielded from disclosure pursuant to  
46           this subsection shall notify the supreme court of the shielding, and the  
47           supreme court shall, within the capabilities of its record-keeping sys-  
48           tem, maintain a record of all records shielded, searchable by the name  
49           of the person whose records are shielded. To the extent not prohibited  
50           by federal law, it shall be the policy of the state of Idaho that the

1 records shielded from disclosure shall not be available to the public  
 2 but may be accessed at any time by the subject of the petition, by law en-  
 3 forcement personnel, and by court officers. The record shall otherwise  
 4 remain shielded from disclosure to the public. Nothing in this para-  
 5 graph shall be construed to limit a law enforcement agency or court of-  
 6 ficer from accessing any records or databases created or maintained by  
 7 law enforcement or prosecutors.

8 (g) A person whose records are shielded from disclosure pursuant to  
 9 this subsection:

10 (i) Shall, upon a subsequent felony conviction and upon request by  
 11 the prosecutor, have such shielding from disclosure revoked; and

12 (ii) May, upon a subsequent misdemeanor conviction and upon re-  
 13 quest by the prosecutor, have such shielding revoked by the court  
 14 as part of his sentencing.

15 (h) A law enforcement agency or prosecuting attorney shall not incur  
 16 any civil or criminal liability for the unintentional or negligent re-  
 17 lease, or the release by a third party, of a record shielded from disclo-  
 18 sure pursuant to this subsection.

19 (i) The shielding from disclosure of records under this subsection  
 20 shall have no effect on the operation of sections 18-310 and 18-3316,  
 21 Idaho Code.

22 (j) A POST-certified peace officer or prosecuting attorney shall have  
 23 complete access to and use of all records shielded from disclosure pur-  
 24 suant to this subsection for purposes including but not be limited to  
 25 communicating with crime victims, all in-court purposes and hearings,  
 26 investigations, and enhancements.

27 (k) A person may have only one (1) petition granted during such person's  
 28 lifetime to have one (1) of the crimes eligible under this subsection,  
 29 or more than one (1) eligible crime under this subsection if committed  
 30 in a single incident or transaction, shielded from disclosure pursuant  
 31 to this subsection.

32 SECTION 2. That Section 74-105, Idaho Code, be, and the same is hereby  
 33 amended to read as follows:

34 74-105. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS,  
 35 INVESTIGATORY RECORDS OF AGENCIES, EVACUATION AND EMERGENCY RESPONSE PLANS,  
 36 WORKER'S COMPENSATION. The following records are exempt from disclosure:

37 (1) Investigatory records of a law enforcement agency, as defined in  
 38 section 74-101(7), Idaho Code, under the conditions set forth in section  
 39 74-124, Idaho Code.

40 (2) Juvenile records of a person maintained pursuant to chapter 5,  
 41 title 20, Idaho Code, except that facts contained in such records shall be  
 42 furnished upon request in a manner determined by the court to persons and  
 43 governmental and private agencies and institutions conducting pertinent  
 44 research studies or having a legitimate interest in the protection, welfare  
 45 and treatment of the juvenile who is thirteen (13) years of age or younger.  
 46 If the juvenile is petitioned or charged with an offense which would be a  
 47 criminal offense if committed by an adult, the name, offense of which the  
 48 juvenile was petitioned or charged and disposition of the court shall be sub-  
 49 ject to disclosure as provided in section 20-525, Idaho Code. Additionally,

1 facts contained in any records of a juvenile maintained under chapter 5,  
2 title 20, Idaho Code, shall be furnished upon request to any school district  
3 where the juvenile is enrolled or is seeking enrollment.

4 (3) Records of the custody review board of the Idaho department of ju-  
5 venile corrections, including records containing the names, addresses and  
6 written statements of victims and family members of juveniles, shall be ex-  
7 empt from public disclosure pursuant to section 20-533A, Idaho Code.

8 (4) (a) The following records of the department of correction:

9 (i) Records of which the public interest in confidentiality, pub-  
10 lic safety, security and habilitation clearly outweighs the pub-  
11 lic interest in disclosure as identified pursuant to the authority  
12 of the Idaho board of correction under section 20-212, Idaho Code;

13 (ii) Records that contain any identifying information, or any in-  
14 formation that would lead to the identification of any victims or  
15 witnesses;

16 (iii) Records that reflect future transportation or movement of a  
17 prisoner;

18 (iv) Records gathered during the course of the presentence inves-  
19 tigation;

20 (v) Records of a prisoner, as defined in section 74-101(10),  
21 Idaho Code, or probationer shall not be disclosed to any other  
22 prisoner or probationer.

23 (b) Records, other than public expenditure records, related to pro-  
24 posed or existing critical infrastructure held by or in the custody  
25 of any public agency only when the disclosure of such information is  
26 reasonably likely to jeopardize the safety of persons, property or the  
27 public safety. Such records may include emergency evacuation, escape  
28 or other emergency response plans, vulnerability assessments, oper-  
29 ation and security manuals, plans, blueprints or security codes. For  
30 purposes of this paragraph, "system" includes electrical, computer  
31 and telecommunication systems, electric power (including production,  
32 generating, transportation, transmission and distribution), heating,  
33 ventilation, and air conditioning. For purposes of this subsection,  
34 "critical infrastructure" means any system or asset, whether physical  
35 or virtual, so vital to the state of Idaho, including its political sub-  
36 divisions, that the incapacity or destruction of such system or asset  
37 would have a debilitating impact on state or national economic secu-  
38 rity, state or national public health or safety or any combination of  
39 those matters.

40 (c) Records of the commission of pardons and parole shall be exempt from  
41 public disclosure pursuant to section 20-213A, Idaho Code, and section  
42 20-223, Idaho Code. Records exempt from disclosure shall also include  
43 those containing the names, addresses and written statements of vic-  
44 tims.

45 (5) Voting records of the sexual offender management board. The writ-  
46 ten record of the vote to classify an offender as a violent sexual predator by  
47 each board member in each case reviewed by that board member shall be exempt  
48 from disclosure to the public and shall be made available upon request only  
49 to the governor, the chairman of the senate judiciary and rules committee,

1 and the chairman of the house of representatives judiciary, rules and admin-  
2 istration committee, for all lawful purposes.

3 (6) Records of the sheriff or Idaho state police received or maintained  
4 pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating  
5 to an applicant or licensee except that any law enforcement officer and law  
6 enforcement agency, whether inside or outside the state of Idaho, may access  
7 information maintained in the license record system as set forth in section  
8 18-3302K(16), Idaho Code.

9 (7) Records of investigations prepared by the department of health and  
10 welfare pursuant to its statutory responsibilities dealing with the protec-  
11 tion of children, the rehabilitation of youth, adoptions and the commitment  
12 of mentally ill persons. For reasons of health and safety, best interests of  
13 the child or public interest, the department of health and welfare may pro-  
14 vide for the disclosure of records of investigations associated with actions  
15 pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by  
16 the department of health and welfare pursuant to its statutory responsibili-  
17 ties dealing with the protection of children except any such records regard-  
18 ing adoptions shall remain exempt from disclosure.

19 (8) Records including, but not limited to, investigative reports,  
20 resulting from investigations conducted into complaints of discrimination  
21 made to the Idaho human rights commission unless the public interest in  
22 allowing inspection and copying of such records outweighs the legitimate  
23 public or private interest in maintaining confidentiality of such records.  
24 A person may inspect and copy documents from an investigative file to which  
25 he or she is a named party if such documents are not otherwise prohibited from  
26 disclosure by federal law or regulation or state law. The confidentiality of  
27 this subsection will no longer apply to any record used in any judicial pro-  
28 ceeding brought by a named party to the complaint or investigation, or by the  
29 Idaho human rights commission, relating to the complaint of discrimination.

30 (9) Records containing information obtained by the manager of the Idaho  
31 state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on  
32 behalf of employers or employees contained in underwriting and claims for  
33 benefits files.

34 (10) The worker's compensation records of the Idaho industrial commis-  
35 sion provided that the industrial commission shall make such records avail-  
36 able:

37 (a) To the parties in any worker's compensation claim and to the indus-  
38 trial special indemnity fund of the state of Idaho; or

39 (b) To employers and prospective employers subject to the provisions of  
40 the Americans with disabilities act, 42 U.S.C. 12112, or other statu-  
41 tory limitations, who certify that the information is being requested  
42 with respect to a worker to whom the employer has extended an offer of  
43 employment and will be used in accordance with the provisions of the  
44 Americans with disabilities act, 42 U.S.C. 12112, or other statutory  
45 limitations; or

46 (c) To employers and prospective employers not subject to the provi-  
47 sions of the Americans with disabilities act, 42 U.S.C. 12112, or other  
48 statutory limitations, provided the employer presents a written autho-  
49 rization from the person to whom the records pertain; or

1 (d) To others who demonstrate that the public interest in allowing in-  
2 spection and copying of such records outweighs the public or private in-  
3 terest in maintaining the confidentiality of such records, as deter-  
4 mined by a civil court of competent jurisdiction; or

5 (e) Although a claimant's records maintained by the industrial commis-  
6 sion, including medical and rehabilitation records, are otherwise ex-  
7 empt from public disclosure, the quoting or discussing of medical or re-  
8 habilitation records contained in the industrial commission's records  
9 during a hearing for compensation or in a written decision issued by the  
10 industrial commission shall be permitted; provided further, the true  
11 identification of the parties shall not be exempt from public disclo-  
12 sure in any written decision issued and released to the public by the in-  
13 dustrial commission.

14 (11) Records of investigations compiled by the commission on aging in-  
15 volving vulnerable adults, as defined in section 18-1505, Idaho Code, al-  
16 leged to be abused, neglected or exploited.

17 (12) Criminal history records and fingerprints, as defined in section  
18 67-3001, Idaho Code, and compiled by the Idaho state police. Such records  
19 shall be released only in accordance with chapter 30, title 67, Idaho Code.

20 (13) Records furnished or obtained pursuant to section 41-1019, Idaho  
21 Code, regarding termination of an appointment, employment, contract or  
22 other insurance business relationship between an insurer and a producer.

23 (14) Records of a prisoner or former prisoner in the custody of any state  
24 or local correctional facility, when the request is made by another prisoner  
25 in the custody of any state or local correctional facility.

26 (15) Except as provided in section 72-1007, Idaho Code, records of the  
27 Idaho industrial commission relating to compensation for crime victims un-  
28 der chapter 10, title 72, Idaho Code.

29 (16) Records or information identifying a complainant maintained by the  
30 department of health and welfare pursuant to section 39-3556, Idaho Code,  
31 relating to certified family homes, unless the complainant consents in writ-  
32 ing to the disclosure or the disclosure of the complainant's identity is re-  
33 quired in any administrative or judicial proceeding.

34 (17) Records of any certification or notification required by federal  
35 law to be made in connection with the acquisition or transfer of a firearm,  
36 including a firearm as defined in 26 U.S.C. 5845(a).

37 (18) The following records of the state public defense commission:

38 (a) Records containing information protected or exempted from disclo-  
39 sure under the rules adopted by the Idaho supreme court, attorney work  
40 product, attorney-client privileged communication, records containing  
41 confidential information from an individual about his criminal case or  
42 performance of his attorney, or confidential information about an in-  
43 quiry into an attorney's fitness to represent indigent defendants.

44 (b) Records related to the administration of the extraordinary litiga-  
45 tion fund by the state public defense commission, pursuant to section  
46 19-850(2)(e), Idaho Code, to the extent that such records contain in-  
47 formation protected or exempted from disclosure under rules adopted  
48 by the Idaho supreme court, attorney work product or attorney-client  
49 privileged communication. This exemption does not include the amount  
50 awarded based upon an application for extraordinary litigation funds.

1 (19) Records and information received by the office of the state con-  
2 troller from any local government, state agency and department, or volunteer  
3 nongovernmental entity for purposes of entry into the criminal justice  
4 integrated data system pursuant to section 19-4803, Idaho Code, and all  
5 records created by persons authorized to research and analyze information  
6 entered into the criminal justice integrated data system, regardless of  
7 whether such records were previously exempted from disclosure or redacted  
8 pursuant to state or federal law or court order. This exemption does not  
9 apply to projects, reports, and data analyses approved for release by the  
10 data oversight council and issued by persons authorized to conduct research  
11 and analysis as set forth in chapter 48, title 19, Idaho Code. Records and  
12 information relating to the management of the criminal justice integrated  
13 data system shall not be exempt from disclosure except as otherwise provided  
14 in law.

15 (20) Any index, report, or records of any person arrested for, prose-  
16 cuted for, or convicted of a crime in this state who has successfully peti-  
17 tioned a court to have his records shielded from disclosure pursuant to sec-  
18 tion 67-3004(11), Idaho Code.