

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 78, As Amended, As Amended in the Senate

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002A, IDAHO CODE, TO PROVIDE THAT CERTAIN INFORMATION SHALL BE GIVEN TO PERSONS UNDERGOING EVIDENTIARY TESTING FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE PROVISIONS REGARDING PENALTIES; AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE THE DEFINITION OF "IGNITION INTERLOCK SYSTEM" AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-8010, IDAHO CODE, TO PROVIDE THAT A PROSECUTING ATTORNEY WHO ESTABLISHES A DIVERSION PROGRAM MAY USE CERTAIN MONEYS; AMENDING SECTION 19-403, IDAHO CODE, TO PROVIDE THAT CERTAIN MISDEMEANOR CASES SHALL BE REFILED NO LATER THAN TWO YEARS AFTER DISMISSAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-3506, IDAHO CODE, TO PROVIDE THAT DISMISSED MISDEMEANOR CASES MAY BE REFILED UNDER CERTAIN CIRCUMSTANCES; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3507, IDAHO CODE, TO DEFINE A TERM AND TO PROVIDE LEGISLATIVE INTENT; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3508, IDAHO CODE, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR A DIVERSION PROGRAM; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3509, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING DIVERSION PROGRAMS; AND AMENDING SECTION 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS PARTICIPATING IN DIVERSION PROGRAMS MAY BE REQUIRED TO PERFORM CERTAIN LABOR.

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

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

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

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

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

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

(d) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, includ-

ing additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or per sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

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

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

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be informed substantially as follows (but need not be informed verbatim):

If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

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

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

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period. The suspension will be for one (1) year if 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) However, if you are admitted to a diversion program under section
22 19-3509, Idaho Code, you may be eligible for a restricted permit for the
23 purpose of getting to and from work, school, medical appointments, or
24 a treatment program, but only if you install, at your expense, a state-
25 approved ignition interlock system on all motor vehicles you operate;
26 and

27 (g) After submitting to evidentiary testing, you may, when practica-
28 ble, at your own expense, have additional tests made by a person of your
29 own choosing.

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

32 (a) What testing is required to complete evidentiary testing under this
33 section; and

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

46 (4) Suspension and ignition interlock system.

47 (a) Upon receipt of the sworn statement of a peace officer that there
48 existed legal cause to believe a person had been driving or was in actual
49 physical control of a motor vehicle while under the influence of alco-
50 hol, drugs or other intoxicating substances and that the person submit-

1 ted to a test and the test results indicated an alcohol concentration or
 2 the presence of drugs or other intoxicating substances in violation of
 3 section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall
 4 suspend the person's driver's license, driver's permit, driving privi-
 5 leges or nonresident driving privileges:

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

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

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

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

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

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

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

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

39 (iv) The procedures for obtaining restricted noncommercial vehi-
 40 cle driving privileges;

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

46 (vi) The procedures for obtaining an administrative hearing on
 47 the suspension;

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

(c) Notwithstanding the provisions of paragraph(a)(i) and (ii) of this subsection, a person who is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state-approved ignition interlock system is installed, at his expense, on all motor vehicles operated by him for a period to end one (1) year following the end of the suspension period and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.

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

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

(b) Within five (5) business days following service of a notice of suspension and notice of the requirement to install the ignition interlock system, the peace officer shall forward to the department a copy of the completed notice of suspension and notice of the requirement to install the ignition interlock system form upon which the date of service upon the driver shall be clearly indicated, a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer, which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

(i) The identity of the person;

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

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

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

(v) That the person was lawfully arrested;

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

If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

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

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

(7) Administrative hearing on suspension. A person who has been served with a notice of suspension and notice of the requirement to install the ignition interlock system after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The hearing may be held only on the suspension and not on the requirement to install an ignition interlock system. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension and notice of the requirement to install the ignition interlock system and shall include what issue or issues shall be raised at the hearing. The date on which the hearing request was received shall be noted on the face of the request.

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for a ten (10) day period. Such extension shall not operate as a stay of the suspension, notwithstanding an extension of the hearing date beyond such thirty

(30) day period. Written notice of the date and time of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all hearings by telephone if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

The hearing shall be recorded. The sworn statement of the arresting officer, and the copy of the notice of suspension and the notice of the requirement to install the ignition interlock system issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting officer shall not be required to participate unless directed to do so by a subpoena issued by the hearing officer.

The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

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

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

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

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

(e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

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

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension and the requirement to install the ignition interlock system required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a

1 violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho
 2 Code, both the suspension under this section and the suspension imposed pur-
 3 suant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be
 4 imposed, but the periods of suspension shall run concurrently, with the to-
 5 tal period of suspension not to exceed the longer of the applicable suspen-
 6 sion periods, unless the court ordering the suspension in the criminal case
 7 orders to the contrary.

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

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

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

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

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

45 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found
 46 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho
 47 Code, for the first time is guilty of a misdemeanor; and, except as provided
 48 in section 18-8004C, Idaho Code:

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

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

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

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

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

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

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

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

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

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

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

41 (4) The person who pleads guilty to or is found guilty of a violation of
42 the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previ-
43 ously has been found guilty of or has pled guilty to a violation of the provi-
44 sions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially
45 conforming foreign criminal violation within ten (10) years, notwithstand-
46 ing the form of the judgment(s) or withheld judgment(s), and except as pro-
47 vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-
48 cept as provided in section 18-8004C, Idaho Code:

49 (a) Shall be sentenced to jail for a mandatory minimum period of not
50 less than ten (10) days, the first forty-eight (48) hours of which must

1 be consecutive, and five (5) days of which must be served in jail, as re-
 2 quired by 23 U.S.C. 164, and may be sentenced to not more than one (1)
 3 year, provided however, that in the discretion of the sentencing judge,
 4 the judge may authorize the defendant to be assigned to a work detail
 5 program within the custody of the county sheriff during the period of
 6 incarceration;

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

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

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

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

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

22 (5) If the person has pled guilty or was found guilty for the sec-
 23 ond time within ten (10) years of a violation of the provisions of section
 24 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,
 25 Idaho Code, shall apply.

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

39 (a) Shall be sentenced to the custody of the state board of correction
 40 for not to exceed ten (10) years; provided that notwithstanding the
 41 provisions of section 19-2601, Idaho Code, should the court impose any
 42 sentence other than incarceration in the state penitentiary, the de-
 43 fendant shall be sentenced to the county jail for a mandatory minimum
 44 period of not less than thirty (30) days, the first forty-eight (48)
 45 hours of which must be consecutive, and ten (10) days of which must be
 46 served in jail, as required by 23 U.S.C. 164; and further provided that
 47 notwithstanding the provisions of section 18-111, Idaho Code, a convic-
 48 tion under this section shall be deemed a felony;

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

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

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

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

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

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

43 (9) Notwithstanding the provisions of subsections (4) and (6) of this
44 section, any person who has pled guilty to or has been found guilty of a
45 felony violation of the provisions of section 18-8004, Idaho Code, a felony
46 violation of the provisions of section 18-8004C, Idaho Code, a violation
47 of the provisions of section 18-8006, Idaho Code, a violation of the provi-
48 sions of section 18-4006 3.(b), Idaho Code, notwithstanding the form of the
49 judgment(s) or withheld judgment(s) or any substantially conforming foreign
50 criminal felony violation, notwithstanding the form of the judgment(s) or

1 withheld judgment(s), and within fifteen (15) years pleads guilty to or is
2 found guilty of a further violation of the provisions of section 18-8004,
3 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to
4 subsection (6) of this section.

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

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

1 evaluation be the person or facility that provides the treatment unless this
2 requirement is waived by the sentencing court, with the exception of fed-
3 erally recognized Indian tribes or federal military installations, where
4 diagnosis and treatment are appropriate and available. Nothing herein con-
5 tained shall preclude the use of funds authorized pursuant to the provisions
6 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for
7 indigent defendants.

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

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

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

14 (c) Information as to whether the defendant has pled guilty to or
15 been found guilty of a violation of the provisions of section 18-8004,
16 18-8004C or 18-8006, Idaho Code, or a similar offense within the past
17 five (5) years, notwithstanding the form of the judgment(s) or withheld
18 judgment(s); and

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

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

31 (14) In the event that the alcohol evaluation required in subsection
32 (11) of this section recommends alcohol treatment, the court shall order
33 the person to complete a treatment program in addition to any other sentence
34 which may be imposed, unless the court determines that alcohol treatment
35 would be inappropriate or undesirable, in which event the court shall enter
36 findings articulating the reasons for such determination on the record. The
37 court shall order the defendant to complete the preferred treatment program
38 set forth in the evaluation, or a comparable alternative, unless it appears
39 that the defendant cannot reasonably obtain adequate financial resources
40 for such treatment. In that event, the court may order the defendant to com-
41 plete a less costly alternative set forth in the evaluation, or a comparable
42 program. Such treatment shall, to the greatest extent possible, be at the
43 expense of the defendant. In the event that funding is provided for or on
44 behalf of the defendant by an entity of state government, restitution shall
45 be ordered to such governmental entity in accordance with the restitution
46 procedure for crime victims, as specified under chapter 53, title 19, Idaho
47 Code. Nothing contained herein shall be construed as requiring a court to
48 order that a governmental entity shall provide alcohol treatment at govern-
49 ment expense unless otherwise required by law.

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

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

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

9 18-8008. IGNITION INTERLOCK SYSTEMS.

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

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

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

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

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

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

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

45 SECTION 4. That Section 18-8010, Idaho Code, be, and the same is hereby
46 amended to read as follows:

18-8010. SURCHARGE ADDED TO ALL FINES. Every person who is convicted, found guilty, pleads guilty or receives a withheld judgment for violating the provisions of this chapter shall be required to pay an additional fifteen dollars (\$15.00) in addition to any other fine, penalty or costs the court may assess. Moneys received pursuant to this section shall be remitted to the county treasurer in the county where the person was adjudicated for deposit in the "court interlock device and electronic monitoring device fund," which is hereby created in each county. Moneys in this fund may be utilized for the purchase of ignition interlock devices and electronic monitoring devices required pursuant to sections 18-8002, 18-8002A, 18-8005, 18-8008 and 18-8008A, Idaho Code. Additionally, any moneys a court charges a defendant for using an ignition interlock device or electronic monitoring devices shall be placed in this fund. The court or a prosecuting attorney who establishes a diversion program pursuant to section 19-3509, Idaho Code, may also utilize moneys in this fund to assist an indigent defendant or indigent diversion participant to procure an ignition interlock device or electronic monitoring devices. The court may also utilize moneys in this fund for alcohol or drug abuse-related probation, treatment or prevention programs for adults or juveniles.

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

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

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

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

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

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

19-3506. EFFECT OF DISMISSAL AS BAR -- DISMISSAL FOR DIVERSION PARTICIPANT. (1) An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor, except as provided in subsection (2) of this section; but it is not a bar if the offense is a felony.

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

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

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

10 (2) It is the intent of the legislature and the policy of the state of
11 Idaho that a diversion program created pursuant to sections 19-3508 and
12 19-3509, Idaho Code, should:

13 (a) Provide an opportunity to incorporate statistics and empirical re-
14 search into decision-making in the criminal justice system in a way that
15 enhances public safety and reduces recidivism, while also saving tax-
16 payer dollars;

17 (b) Provide individuals with the opportunity to rectify criminal con-
18 duct through early rehabilitative services or supervision, when such
19 services or supervision can reasonably be expected to deter future
20 criminal behavior by such individuals; and

21 (c) Provide an alternative to the imposition of criminal sanctions when
22 such an alternative can be expected to serve as sufficient sanction to
23 deter criminal conduct.

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

27 19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. A person is eligible to
28 participate in a diversion program if:

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

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

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

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

40 19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) A prosecuting attorney
41 may, at the prosecuting attorney's discretion, establish a diversion pro-
42 gram and may refer a defendant eligible to participate in a diversion pro-
43 gram pursuant to section 19-3508, Idaho Code, to such program within thirty
44 (30) calendar days of a citation being issued or charges being filed against
45 the defendant. Before entering an agreement to participate in the diver-
46 sion program, a defendant may obtain advice from a defense attorney on the

1 requirements and consequences of participating in the diversion program and
2 must undergo a drug or alcohol evaluation, or both, if requested by the pros-
3 ecuting attorney. The terms and conditions of the diversion program shall
4 be set forth in a written agreement signed by the prosecuting attorney and
5 the defendant as well as the defendant's attorney, if the defendant is repre-
6 sented by an attorney. If the defendant agrees to participate in the diver-
7 sion program, then the prosecuting attorney shall move for dismissal of the
8 action against the defendant pursuant to section 19-3506, Idaho Code.

9 (a) A diversion program may be administered by the prosecuting attorney
10 or by the prosecuting attorney's designee. The diversion agreement
11 shall specify the person administering the program and shall set out the
12 requirements for successful completion of the program and the duration
13 of the diversion agreement. The duration of the period a person is re-
14 quired to participate in a diversion program under this section shall
15 be no shorter than twelve (12) months. All persons participating in
16 a diversion program shall be required to install and maintain, at the
17 participant's expense, an ignition interlock system in each vehicle
18 such person operates for the duration of the program, as further pro-
19 vided in subsection (5) of this section. A person participating in a
20 diversion program for a charge unrelated to alcohol shall, in addition
21 to installing and maintaining an ignition interlock system, be required
22 to undergo drug testing at the person's expense for at least twelve (12)
23 months. If the person is indigent, the prosecuting attorney may order
24 the use of moneys from the court interlock device and electronic moni-
25 toring device fund created by section 18-8010, Idaho Code, to assist the
26 person in procuring an ignition interlock device. The participant in a
27 diversion program must also complete at least thirty-two (32) hours of
28 sheriff inmate labor detail or approved community service and at least
29 twenty-four (24) hours of drug and alcohol counseling, therapy, or ed-
30 ucation from an approved provider.

31 (b) At the end of the diversion period, the prosecuting attorney shall
32 determine whether the participant complied with the requirements of the
33 diversion agreement. If the prosecuting attorney finds that the par-
34 ticipant failed to comply with the requirements of the diversion agree-
35 ment, then the prosecuting attorney may refile the case pursuant to sec-
36 tion 19-3506, Idaho Code.

37 (2) A prosecuting attorney may require, as a condition of entering a di-
38 version program, that a person execute a sworn affidavit stating the facts
39 that gave rise to the charge of driving under the influence. Such affidavit
40 may be used as evidence of guilt during an adjudicative proceeding in a re-
41 filed case. No other statement made by the person in diversion activities or
42 proceedings, such as in a counseling or therapy session, is admissible as ev-
43 idence of guilt during an adjudicative proceeding in a refiled case.

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

- 46 (a) Informal supervision with the probation department;
- 47 (b) Community service work;
- 48 (c) Inmate labor detail work;
- 49 (d) A community-based diversion program;
- 50 (e) Restitution to a victim;

- 1 (f) Alcohol monitoring and testing;
- 2 (g) Individual therapy and counseling;
- 3 (h) Group therapy and counseling; and
- 4 (i) Drug monitoring and testing.

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

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

14 (b) Ten dollars (\$10.00) to be distributed as provided in section
15 31-3201(3), Idaho Code;

16 (c) Ten dollars (\$10.00) to be distributed as provided in section
17 31-3201(5), Idaho Code;

18 (d) Fifteen dollars (\$15.00) to be distributed as provided in section
19 31-3201B, Idaho Code;

20 (e) Fifty dollars (\$50.00) to be distributed as provided in section
21 31-3201H, Idaho Code;

22 (f) Fifteen dollars (\$15.00) to be distributed as provided in section
23 31-3204, Idaho Code;

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

26 (h) Three dollars (\$3.00) to be distributed as provided in section
27 72-1105, Idaho Code.

28 (5) A participant in a diversion program whose driving privileges
29 have been suspended may be granted driving privileges by the administrator
30 of the diversion program, in which case the participant shall be issued a
31 restricted driving permit by the Idaho transportation department. Prior
32 to being granted restricted driving privileges, the participant must show
33 to the administrator proof of financial responsibility as defined and in
34 the amounts specified in section 49-117, Idaho Code. If a person is par-
35 ticipating in a diversion program under this section, then the participant
36 must have an ignition interlock system as defined in section 18-8008, Idaho
37 Code, installed in each vehicle operated by the participant and must pay an
38 ignition interlock fee of fifteen dollars (\$15.00) to be deposited in the
39 court interlock device and electronic monitoring device fund created by
40 section 18-8010, Idaho Code. The ignition interlock system shall be removed
41 once the participant successfully completes diversion, provided that such
42 removal shall not occur, and the program shall not be considered success-
43 fully completed, until the administrator of the diversion program receives
44 a declaration from the participant's ignition interlock vendor, on a form
45 provided or approved by the administrator, certifying that none of the fol-
46 lowing incidents occurred while the system was installed in the vehicle:

47 (a) An attempt to start the vehicle with an alcohol concentration of
48 0.04 or more;

49 (b) Failure to take any random test;

1 (c) Failure to pass any random retest with an alcohol concentration of
2 0.025 or lower; or

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

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

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