

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 404

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO MOTOR VEHICLE DRIVERS; AMENDING SECTION 18-101A, IDAHO CODE,
2 TO REVISE DEFINITIONS; AMENDING SECTION 18-8002, IDAHO CODE, TO REVISE
3 PROVISIONS RELATING TO A STATE APPROVED IGNITION INTERLOCK SYSTEM;
4 AMENDING SECTION 18-8002A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO
5 A STATE APPROVED IGNITION INTERLOCK SYSTEM; AMENDING SECTION 18-8004C,
6 IDAHO CODE, TO REVISE PROVISIONS RELATING TO A STATE APPROVED IGNI-
7 TION INTERLOCK SYSTEM; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE
8 PROVISIONS RELATING TO A STATE APPROVED IGNITION INTERLOCK SYSTEM AND
9 TO REVISE PROVISIONS RELATING TO AN ALCOHOL EVALUATION; AND AMENDING
10 SECTION 18-8008, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A COURT
11 ORDER, TO REVISE PROVISIONS RELATING TO A CALIBRATION AND TO REVISE A
12 DEFINITION.
13

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

15 SECTION 1. That Section 18-101A, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 18-101A. DEFINITIONS. As used in titles 18, 19 and 20, Idaho Code,
18 and elsewhere in the Idaho Code, unless otherwise specifically provided or
19 unless the context clearly indicates or requires otherwise, the following
20 terms shall be defined as follows:

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

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

34 (a) Who is being housed in any state, local or private correctional fa-
35 cility, or

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

38 (3) "Local correctional facility" means a facility for the confinement
39 of prisoners operated by or under the control of a county or city. The term
40 shall include references to "county jail," or "jail." The term shall also in-
41 clude a private correctional facility housing prisoners under the custody of

1 the state board of correction, the county sheriff or other local law enforce-
2 ment agency.

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

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

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

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

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

22 (a) Who is being housed in any state, local or private correctional fa-
23 cility, or

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

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

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

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

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

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

49 (11) "State correctional facility" means a facility for the confinement
50 of prisoners, owned or operated by or under the control of the state of Idaho.

1 The term shall include references to "state prison," "state penitentiary"
2 or "state penal institution (facility)." The term shall also include a pri-
3 vate correctional facility housing prisoners under the custody of the board
4 of correction.

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

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

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

14 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS
15 OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF
16 TESTS. (1) Any person who drives or is in actual physical control of a motor
17 vehicle in this state shall be deemed to have given his consent to eviden-
18 tiary testing for concentration of alcohol as defined in section 18-8004,
19 Idaho Code, and to have given his consent to evidentiary testing for the
20 presence of drugs or other intoxicating substances, provided that such
21 testing is administered at the request of a peace officer having reasonable
22 grounds to believe that person has been driving or in actual physical control
23 of a motor vehicle in violation of the provisions of section 18-8004, Idaho
24 Code, or section 18-8006, Idaho Code.

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

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

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

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

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

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

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

47 (4) If the motorist refuses to submit to or complete evidentiary test-
48 ing after the information has been given in accordance with subsection (3)
49 above:

1 (a) He shall be fined a civil penalty of two hundred fifty dollars
2 (\$250);

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

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

24 (d) Notwithstanding the provisions of subsection (4) (b) and (c) of this
25 section, if the defendant is enrolled in and is a participant in good
26 standing in a drug court or mental health court approved by the supreme
27 court drug court and mental health court coordinating committee under
28 the provisions of chapter 56, title 19, Idaho Code, or other similar
29 problem solving court utilizing community-based sentencing alterna-
30 tives, then the defendant shall be eligible for restricted noncommer-
31 cial driving privileges for the purpose of getting to and from work,
32 school or an alcohol treatment program, which may be granted by the pre-
33 siding judge of the drug court or mental health court or other similar
34 problem solving court, provided that the defendant has served a period
35 of absolute suspension of driving privileges of at least forty-five
36 (45) days, that an a state approved ignition interlock device system is
37 installed, and for repeat offenders it shall be maintained for not less
38 than one (1) year, on each of the motor vehicles owned or operated, or
39 both, by the defendant and that the defendant has shown proof of finan-
40 cial responsibility as defined and in the amounts specified in section
41 49-117, Idaho Code, provided that the restricted noncommercial driving
42 privileges may be continued if the defendant successfully completes
43 the drug court, mental health court or other similar problem solving
44 court, and that the court may revoke such privileges for failure to com-
45 ply with the terms of probation or with the terms and conditions of the
46 drug court, mental health court or other similar problem solving court
47 program; and

48 (e) After submitting to evidentiary testing at the request of the peace
49 officer, he may, when practicable, at his own expense, have additional
50 tests made by a person of his own choosing. The failure or inability to

1 obtain an additional test or tests by a person shall not preclude the ad-
2 mission of results of evidentiary testing for alcohol concentration or
3 for the presence of drugs or other intoxicating substances taken at the
4 direction of the peace officer unless the additional test was denied by
5 the peace officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF
42 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF
43 TESTS. (1) Definitions. As used in this section:

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

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

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

4 (d) "Director" means the director of the Idaho transportation depart-
5 ment.

6 (e) "Evidentiary testing" means a procedure or test or series of proce-
7 dures or tests utilized to determine the concentration of alcohol or the
8 presence of drugs or other intoxicating substances in a person, includ-
9 ing additional testing authorized by subsection (6) of this section. An
10 evidentiary test for alcohol concentration shall be based on a formula
11 of grams of alcohol per one hundred (100) cubic centimeters of blood,
12 per two hundred ten (210) liters of breath, or sixty-seven (67) millili-
13 ters of urine. Analysis of blood, breath or urine for the purpose of de-
14 termining alcohol concentration shall be performed by a laboratory op-
15 erated by the Idaho state police or by a laboratory approved by the Idaho
16 state police under the provisions of approval and certification stan-
17 dards to be set by the Idaho state police, or by any other method ap-
18 proved by the Idaho state police. Notwithstanding any other provision
19 of law or rule of court, the results of any test for alcohol concentra-
20 tion and records relating to calibration, approval, certification or
21 quality control performed by a laboratory operated and approved by the
22 Idaho state police or by any other method approved by the Idaho state po-
23 lice shall be admissible in any proceeding in this state without the ne-
24 cessity of producing a witness to establish the reliability of the test-
25 ing procedure for examination.

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

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

33 (2) Information to be given. At the time of evidentiary testing for
34 concentration of alcohol, or for the presence of drugs or other intoxicat-
35 ing substances is requested, the person shall be informed that if the person
36 refuses to submit to or fails to complete evidentiary testing, or if the per-
37 son submits to and completes evidentiary testing and the test results indi-
38 cate an alcohol concentration or the presence of drugs or other intoxicating
39 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,
40 the person shall be informed substantially as follows (but need not be in-
41 formed verbatim):

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

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

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

49 (c) If you refused or failed to complete evidentiary testing and do not
50 request a hearing before the court or do not prevail at the hearing, your

1 driver's license will be suspended. The suspension will be for one (1)
2 year if this is your first refusal. The suspension will be for two (2)
3 years if this is your second refusal within ten (10) years. You will not
4 be able to obtain a temporary restricted license during that period;

5 (d) If you complete evidentiary testing and fail the testing and do not
6 request a hearing before the department or do not prevail at the hear-
7 ing, your driver's license will be suspended. This suspension will be
8 for ninety (90) days if this is your first failure of evidentiary test-
9 ing, but you may request restricted noncommercial vehicle driving privi-
10 leges after the first thirty (30) days. The suspension will be for one
11 (1) year if this is your second failure of evidentiary testing within
12 five (5) years. You will not be able to obtain a temporary restricted
13 license during that period;

14 (e) However, if you are admitted to a problem solving court program and
15 have served at least forty-five (45) days of an absolute suspension of
16 driving privileges, you may be eligible for a restricted permit for the
17 purpose of getting to and from work, school or an alcohol treatment pro-
18 gram; and

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

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

24 (a) What testing is required to complete evidentiary testing under this
25 section; and

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

38 (4) Suspension.

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

48 (i) For a period of ninety (90) days for a first failure of ev-
49 identiary testing under the provisions of this section. The
50 first thirty (30) days of the suspension shall be absolute and the

1 person shall have absolutely no driving privileges of any kind.
 2 Restricted noncommercial vehicle driving privileges applicable
 3 during the remaining sixty (60) days of the suspension may be re-
 4 quested as provided in subsection (9) of this section.

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

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

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

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

18 (ii) The effective date of the suspension;

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

21 (iv) The procedures for obtaining restricted noncommercial vehi-
 22 cle driving privileges;

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

27 (vi) The procedures for obtaining an administrative hearing on
 28 the suspension;

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

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

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

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

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

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

25 (i) The identity of the person;

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

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

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

35 (v) That the person was lawfully arrested;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 SECTION 4. That Section 18-8004C, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 18-8004C. EXCESSIVE ALCOHOL CONCENTRATION -- PENALTIES. Notwith-
4 standing any provision of section 18-8005, Idaho Code, to the contrary:

5 (1) Any person who pleads guilty to or is found guilty of a violation of
6 the provisions of section 18-8004(1) (a), Idaho Code, for the first time, but
7 who has an alcohol concentration of 0.20, as defined in section 18-8004(4),
8 Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a
9 test requested by a police officer, shall be guilty of a misdemeanor; and:

10 (a) Shall be sentenced to jail for a mandatory minimum period of not
11 less than ten (10) days, the first forty-eight (48) hours of which must
12 be consecutive, and may be sentenced to not more than one (1) year;

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

14 (c) Shall be advised by the court in writing at the time of sentencing,
15 of the penalties that will be imposed for subsequent violations of the
16 provisions of this section and violations of the provisions of section
17 18-8004, Idaho Code, which advice shall be signed by the defendant, and
18 a copy retained by the court and another copy retained by the prosecut-
19 ing attorney;

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

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

25 (2) Any person who pleads guilty to or is found guilty of a violation of
26 the provisions of section 18-8004, Idaho Code, and who has an alcohol concen-
27 tration of 0.20, as defined in section 18-8004(4), Idaho Code, or more, as
28 shown by an analysis of his blood, breath or urine by a test requested by a po-
29 lice officer, and who previously has been found guilty of or has pled guilty
30 to one (1) or more violations of the provisions of section 18-8004, Idaho
31 Code, in which the person had an alcohol concentration of 0.20 or more, or any
32 substantially conforming foreign criminal violation wherein the defendant
33 had an alcohol concentration of 0.20 or more, or any combination thereof,
34 within five (5) years, notwithstanding the form of judgment or withheld
35 judgment shall be guilty of a felony; and:

36 (a) Shall be sentenced to the custody of the state board of correction
37 for a term not to exceed five (5) years; provided that notwithstanding
38 the provisions of section 19-2601, Idaho Code, should the court impose
39 any sentence other than incarceration in the state penitentiary, the
40 defendant shall be sentenced to the county jail for a mandatory mini-
41 mum period of not less than thirty (30) days; and further provided that
42 notwithstanding the provisions of section 18-111, Idaho Code, a convic-
43 tion under this section shall be deemed a felony;

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

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

46 (d) Shall have his driving privileges suspended by the court for a
47 mandatory minimum period of one (1) year after release from imprison-
48 ment, and may have his driving privileges suspended by the court for a
49 period not to exceed five (5) years after release from imprisonment,

1 during which time he shall have absolutely no driving privileges of any
2 kind; and

3 (e) Shall, while operating a motor vehicle, be required to drive only
4 a motor vehicle equipped with a functioning ignition interlock system,
5 as provided in section 18-8008, Idaho Code, following the mandatory li-
6 cense suspension period.

7 (3) Notwithstanding the provisions of subsections (1) (e) and (2) (d) of
8 this section, a person who is enrolled in and is a participant in good stand-
9 ing in a drug court or mental health court approved by the supreme court drug
10 court and mental health court coordinating committee under the provisions of
11 chapter 56, title 19, Idaho Code, or other similar problem solving court uti-
12 lizing community-based sentencing alternatives, shall be eligible for re-
13 stricted noncommercial driving privileges for the purpose of getting to and
14 from work, school or an alcohol treatment program, which may be granted by
15 the presiding judge of the drug court or mental health court or other simi-
16 lar problem solving court, provided that the offender has served a period of
17 absolute suspension of driving privileges of at least forty-five (45) days,
18 that ~~an~~ a state approved ignition interlock device system is installed, and
19 for repeat offenders it shall be maintained for not less than one (1) year, on
20 each of the motor vehicles owned or operated, or both, by the offender, and
21 that the offender has shown proof of financial responsibility as defined and
22 in the amounts specified in section 49-117, Idaho Code, provided that the re-
23 stricted noncommercial driving privileges may be continued if the offender
24 successfully completes the drug court, mental health court or other simi-
25 lar problem solving court, and that the court may revoke such privileges for
26 failure to comply with the terms of probation or with the terms and condi-
27 tions of the drug court, mental health court or other similar problem solving
28 court program.

29 (4) All the provisions of section 18-8005, Idaho Code, not in conflict
30 with or otherwise provided for in this section, shall apply to this section.

31 (5) Notwithstanding any other provision of law, any evidence of convic-
32 tion under this section shall be admissible in any civil action for damages
33 resulting from the occurrence. A conviction for the purposes of this section
34 means that the person has pled guilty or has been found guilty, notwithstand-
35 ing the form of the judgment or withheld judgment.

36 SECTION 5. That Section 18-8005, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found
39 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho
40 Code, for the first time is guilty of a misdemeanor; and, except as provided
41 in section 18-8004C, Idaho Code:

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

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

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

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

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

15 (a) The provisions of section 18-8005(1) (a), (b) and (c), Idaho Code;
16 and

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

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

21 (a) The provisions of section 18-8005(1) (a), (b) and (c), Idaho Code;
22 and

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

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

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

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

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

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

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

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

5 (5) If the person has pled guilty or was found guilty for the sec-
6 ond time within ten (10) years of a violation of the provisions of section
7 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,
8 Idaho Code, shall apply.

9 (6) Except as provided in section 18-8004C, Idaho Code, any person who
10 pleads guilty to or is found guilty of a violation of the provisions of sec-
11 tion 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found
12 guilty of or has pled guilty to two (2) or more violations of the provisions
13 of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially con-
14 forming foreign criminal violation, or any combination thereof, within ten
15 (10) years, notwithstanding the form of the judgment(s) or withheld judg-
16 ment(s), shall be guilty of a felony; and

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

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

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

29 (d) Shall have his driving privileges suspended by the court for a
30 mandatory minimum period of one (1) year after release from imprison-
31 ment, and may have his driving privileges suspended by the court for not
32 to exceed five (5) years after release from imprisonment, during which
33 time he shall have absolutely no driving privileges of any kind; and

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

38 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)
39 of this section, any person who is enrolled in and is a participant in good
40 standing in a drug court or mental health court approved by the supreme
41 court drug court and mental health court coordinating committee under the
42 provisions of chapter 56, title 19, Idaho Code, or other similar problem
43 solving court utilizing community-based sentencing alternatives, shall be
44 eligible for restricted noncommercial driving privileges for the purpose of
45 getting to and from work, school or an alcohol treatment program, which may
46 be granted by the presiding judge of the drug court or mental health court or
47 other similar problem solving court, provided that the offender has served a
48 period of absolute suspension of driving privileges of at least forty-five
49 (45) days, that ~~an~~ a state approved ignition interlock device system is in-
50 stalled, and for repeat offenders it shall be maintained for not less than

1 one (1) year, on each of the motor vehicles owned or operated, or both, by the
2 offender and that the offender has shown proof of financial responsibility
3 as defined and in the amounts specified in section 49-117, Idaho Code, pro-
4 vided that the restricted noncommercial driving privileges may be continued
5 if the offender successfully completes the drug court, mental health court
6 or other similar problem solving court, and that the court may revoke such
7 privileges for failure to comply with the terms of probation or with the
8 terms and conditions of the drug court, mental health court or other similar
9 problem solving court program.

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

17 (9) Notwithstanding the provisions of subsections (4) and (6) of this
18 section, any person who has pled guilty or has been found guilty of a felony
19 violation of the provisions of section 18-8004, Idaho Code, a felony viola-
20 tion of the provisions of section 18-8004C, Idaho Code, a violation of the
21 provisions of section 18-8006, Idaho Code, a violation of the provisions of
22 section 18-4006 3.(b), Idaho Code, notwithstanding the form of the judg-
23 ment(s) or withheld judgment(s) or any substantially conforming foreign
24 criminal felony violation, notwithstanding the form of the judgment(s) or
25 withheld judgment(s), and within fifteen (15) years pleads guilty or is
26 found guilty of a further violation of the provisions of section 18-8004,
27 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to
28 subsection (6) of this section.

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

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

1 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant.
2 The court may also, in its discretion, waive the requirement of an alcohol
3 evaluation with respect to a defendant's first violation of the provisions
4 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence
5 the defendant if the court has a presentence investigation report, sub-
6 stance abuse assessment, criminogenic risk assessment, or other assessment
7 which evaluates the defendant's degree of alcohol abuse and need for alco-
8 hol treatment conducted within twelve (12) months preceding the date of the
9 defendant's sentencing. In the event an alcohol evaluation indicates the
10 need for alcohol treatment, the evaluation shall contain a recommendation
11 by the evaluator as to the most appropriate treatment program, together with
12 the estimated cost thereof, and recommendations for other suitable alter-
13 native treatment programs, together with the estimated costs thereof. The
14 person shall request that a copy of the completed evaluation be forwarded
15 to the court. The court shall take the evaluation into consideration in
16 determining an appropriate sentence. If a copy of the completed evaluation
17 has not been provided to the court, the court may proceed to sentence the
18 defendant; however, in such event, it shall be presumed that alcohol treat-
19 ment is required unless the defendant makes a showing by a preponderance of
20 evidence that treatment is not required. If the defendant has not made a good
21 faith effort to provide the completed copy of the evaluation to the court,
22 the court may consider the failure of the defendant to provide the report
23 as an aggravating circumstance in determining an appropriate sentence. If
24 treatment is ordered, in no event shall the person or facility doing the
25 evaluation be the person or facility that provides the treatment unless this
26 requirement is waived by the sentencing court, with the exception of fed-
27 erally recognized Indian tribes or federal military installations, where
28 diagnosis and treatment are appropriate and available. Nothing herein con-
29 tained shall preclude the use of funds authorized pursuant to the provisions
30 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for
31 indigent defendants.

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

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

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

38 (c) Information as to whether the defendant has pled guilty to or
39 been found guilty of violation of the provisions of section 18-8004,
40 18-8004C or 18-8006, Idaho Code, or a similar offense within the past
41 five (5) years, notwithstanding the form of the judgment (s) or withheld
42 judgment (s); and

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

45 (13) A minor may be prosecuted for a violation of the provisions of sec-
46 tion 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code.
47 In addition to any other penalty, if a minor pleads guilty to or is found
48 guilty of a violation of the provisions of section 18-8004(1)(a), (b) or
49 (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended
50 or denied for an additional one (1) year following the end of any period of

1 suspension or revocation existing at the time of the violation, or until
2 he reaches the age of twenty-one (21) years, whichever period is greater.
3 During the period of additional suspension or denial, absolutely no driving
4 privileges shall be allowed.

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

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

28 SECTION 6. That Section 18-8008, Idaho Code, be, and the same is hereby
29 amended to read as follows:

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

37 (2) The court shall order the person ~~while operating a motor vehicle to~~
38 ~~drive only a motor vehicle equipped with a functioning~~ to have a state ap-
39 proved ignition interlock device, and the system installed on each of the mo-
40 tor vehicles owned or operated, or both, by the offender. The restriction
41 shall be for a period not in excess of the time the person is on probation for
42 the offense but not less than one (1) year for repeat offenders. ~~The court~~
43 ~~shall establish a specific~~ calibration setting at which the ignition inter-
44 lock device system will prevent the motor vehicle from being started ~~and the~~
45 ~~period of time that the person shall be subject to the restriction shall be~~
46 .025. As used in this section, the term "ignition interlock device system"
47 means breath alcohol ~~analyzed~~ equipment interlock device, certi-
48 fied by the transportation department, designed to prevent a motor vehicle
49 from being operated by a person who has consumed an alcoholic beverage. The

1 transportation department shall by rule provide standards for the certifi-
2 cation, installation, repair and removal of the devices. The court shall no-
3 tify the transportation department of its order imposing a sanction pursuant
4 to this subsection. The department shall attach or imprint a notation on the
5 driver's license or other document granting the person restricted driving
6 privileges of any person restricted under this subsection that the person
7 may operate only a motor vehicle equipped with an ignition interlock ~~device~~
8 system.

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

16 (4) If a court orders a defendant to use an ignition interlock ~~device~~
17 system or electronic monitoring device pursuant to this section, and the
18 court, or its probation department, furnishes the defendant with the device,
19 the court may order the defendant to pay a reasonable fee for utilizing the
20 equipment. All fees collected pursuant to this section shall be in addition
21 to any other fines or penalty provided by law and shall be deposited in the
22 court interlock device and electronic monitoring device fund created in sec-
23 tion 18-8010, Idaho Code.