

Idaho Prosecuting Attorneys Association

2010 Legislative Update
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IPAA Bills

RS 19438 Aggravated Reckless Driving – Amending Idaho Code section 49-1401 to provide a reference to penalty provisions for aggravated reckless driving and amending chapter 14, Title 49, by the addition of a new section 49-1401A, to provide for the crime of aggravated reckless driving and to provide penalties.

- ✓ Purpose of the legislation was to create a statute that would appropriately address individuals who cause serious injury to others by driving recklessly.
- ✓ Legislation would have created a felony penalty for reckless driving that caused great bodily harm, permanent disability or permanent disfigurement to another.
- ✓ Bill was not printed. Judiciary and Rules committee got hung up on the definition of “shall” in 49-1401A(1) saying that the word “shall” created a mandatory minimum and should be changed to “may.”

I.C. 20-507 Retention of Jurisdiction of a former juvenile.

HB 523

- ✓ The purpose of this legislation was to amend IC 20-507 to authorize juvenile court to address timely filed probation violations after a former juvenile turns twenty-one. As the statute stands now, the Idaho Supreme Court has determined that because the plain language of the statute requires termination of juvenile court jurisdiction once the juvenile reaches age 21 even if the state files a timely probation violation before the juvenile’s 21 birthday the court does not have jurisdiction.
- ✓ This bill was printed and a hearing was held in front of the House Judiciary and Rules committee. Testimony was provided and examples were given as to the importance of holding juvenile offenders accountable for probation violations.
- ✓ Committee sent the bill to the amending order because they wanted a cap on the courts jurisdiction. They amended the bill to state, “the court retains jurisdiction over a juvenile until age twenty-five (25) for violations of probation or informal dispositions filed prior to the former juvenile’s twenty-first birthday.
- ✓ Bill passed the House 65 ayes, 1 nay, 4 absent or excused.
- ✓ IPAA felt that this was essentially the same statute we had currently and did not fix the problem of creating an incentive for a former juvenile to violate his/her

probation terms or abscond from probation because there can be no penalty once he/she turns, in this case, 25.

- ✓ HB 523 was held in the Senate Judiciary and Rules committee

Felony Murder Rule – Unlawful discharge of a Firearm

- ✓ Legislation was presented to all members of the Senate Judiciary and Rules Committee and it was clear from discussions with the committee members that this bill did not have support and would not make it out of committee and therefore IPAA decided not to present the bill.

CRIMINAL OFFENSES LEGISLATION

I.C. § 18-3318; 18-3319A Hoax destructive device

HB 543

- ✓ Adds to and amends existing law relating to firearms, explosives and other deadly weapons to provide for unlawful acts relating to a hoax destructive device and to provide penalties.
- ✓ New law provides descriptions that involve bomb threats and other such acts to include “hoax destructive devices” and makes it a felony (term of imprisonment not to exceed 5 years) for any person selling, giving, or mailing or using such device with the intent of causing fear or serious bodily injury or death.
- ✓ Persons who use a “hoax destructive device” in the commission or attempted commission of a felony be guilty of a felony punishable by a term of imprisonment not to exceed 15 years and a fine of up to \$15,000.00

I.C. § 18-8005 DUI penalty provision

S1398

- ✓ Amends existing law relating to motor vehicles and crimes and punishment to revise certain penalty provisions specifically 18-8005(9).
- ✓ New language includes, “notwithstanding the form of the judgment(s) or withheld judgment(s) or any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment(s) or withheld judgment(s), and within fifteen...”
- ✓ New language ensures that a person who is convicted and placed on probation or receives a withheld judgment for felony driving under the influence and has the case dismissed after successfully completing probation can be charged with another felony if, within 15 years, they receive another driving under the influence charge.

I.C. § 67-3003 Petitions for relief from orders and removal of a person's firearms-related disabilities

HB 631

- ✓ Amends Chapter 3, Title 66 by the addition of a new section 66-356 to provide that courts shall make a finding as to whether certain federal law applies to persons in specified cases, to provide requirements in the event specified federal law is found by the court to apply to provide for action by sheriffs in certain cases, to provide for dissemination of orders, to provide for petitions for relief and to remove firearms related disabilities.
- ✓ Adds to and amends existing law relating to firearms to provide for a determination as to whether specified federal firearms law applies in certain cases and to provide for petitions for relief from orders and removal of a person's firearms-related disabilities
- ✓ Basically this introduces another mental health commitment hearing to determine if a person who was mentally committed should get their right to possess firearms reinstated.
- ✓ While Idaho Code Section 67-3003 sets forth the duties of the Bureau of Criminal Identification relative to criminal history records and crime information, it is silent on the transmittal of records from the Idaho Supreme Court database to the NICS for the purpose of determining eligibility to purchase weapons under federal law. This proposal gives clear authority to ISP/BCI to transmit records from the Idaho Supreme Court database to the NICS for the purpose of determining eligibility to purchase weapons under federal law.
- ✓ The changes by this new amendment may enable the state to apply for a share of federal grant funding available to states for improvements of the criminal history repository and the court system. Idaho does not currently qualify for any grants because a qualifying relief from disabilities program is not in place.

I.C. § 19-4902 Uniform Post Conviction Procedure Act – DNA testing

HB 498

- ✓ Amends existing law relating to the Uniform Post-Conviction Procedure Act to revise provisions relating to a petition for the performance of certain fingerprint or DNA testing and to provide that petitioner may choose certain DNA testing laboratories to perform DNA testing and that such testing shall be at petitioner's expense.
- ✓ The Innocence Project brought this legislation. Essentially this legislation deletes the one-year time limitation for filing a post-conviction petition for fingerprint or DNA testing and adds language to provide the right to petition for testing to those inmates who made either pleas or confessions.

I.C. §18-3808- Gambling Law

HB 422

- ✓ Repeals existing law relating to officers enforcing the laws against gaming
- ✓ This bill repeals I.C. §18-3808, which prohibits law enforcement officers and prosecutors from using reasonable discretion in enforcing gambling laws and makes it misdemeanors should they decline enforcement in any case.

I.C. §18-6101 – Statutory Rape

S1385

- ✓ Amends existing law to revise the circumstances that constitute rape and male rape.
- ✓ This bill amends the definition of statutory rape to include such acts when the offender is age 18 or older and the victim is under age 16 (rather than 18), or the victim is 16 or 17 and the offender is 3 or more years older than the victim. Changes are also made to the male rape statute at 18-6108 to bring it into conformity with the provisions of the female rape statute in 18-6101.

CORRECTIONS LEGISLATION

I.C. §19-2601 – Retain Jurisdiction

S1383

- ✓ Amends existing law relating to the suspension of judgment and sentence to extend the period of time the court retains jurisdiction over a prisoner, to provide that the State Board of Correction shall be responsible for determining the appropriate placement, education, programming and treatment of prisoners during the period of retained jurisdiction; and to review provisions relating to the amendment of judgment.
- ✓ Amends current law to give Idaho Judges and the Department of Corrections the ability to retain jurisdiction up to 365 days.
- ✓ The Department of Correction in the Statement of Purpose says that the purpose of the statutory change is not intended to extend the period of incarceration for a traditional retained jurisdiction program but rather the statutory change makes clear that during the retained jurisdiction period, the Department of Correction is responsible for determining the defendant's placement and treatment/programming needs.

I.C. §18-2505; 18-2506 – Escape of Prisoners

S1255

- ✓ Amends existing law relating to the escape of prisoners to revise provisions relating to the escape by a juvenile from custody.
- ✓ The crime of escape is defined in Idaho Code § 182505, pertaining to persons charged with or convicted of felonies, and Idaho Code § 182506, pertaining to persons charged with or convicted of misdemeanors. A provision was added to

both statutes in 2007 that states that the crime of escape includes "the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a persons own recognizance with electronic or global positioning system tracking, monitoring and detention or the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care." The words "and detention" are superfluous. The crime consists of leaving the area of restriction as set forth in the court order where there is electronic or GPS monitoring. The words "and detention" make it appear that there is another undefined element of detention possibly home detention that must be proven to establish the commission of this crime. This could lead to confusion and an ability to hold persons to account who left the area of restriction in violation of a court order. This bill would remove the superfluous words from these statutes.

COURT LEGISLATION

I.C. §1-1623; 1-1625; 31-3201H - Emergency Surcharge Fee **HB 687**

- ✓ Amends and adds to existing law relating to fees to provide an additional source of moneys for the Idaho Statewide Trial Court Automated Records System (ISTARS) Technology fund; to provide n additional source of moneys for the Drug Court, Mental Health Court and Family Court Services Fund; and to establish an emergency surcharge fee and to require the deposit of such fees into certain funds.
- ✓ This bill creates an emergency surcharge to be paid by persons who commit crimes and infractions. The surcharge would enable the Judicial Branch, during the current financial crisis, to continue to fulfill its constitutional responsibilities and to provide services that benefit the people of the State of Idaho and help to reduce the burden on the state budget. Each person who is found guilty or pleads guilty to a criminal offense or infraction, committed between April 15, 2010, and June 30, 3013, would pay a fee for each offense or infraction. The fee for each felony offense would be \$100.00, the fee for each misdemeanor offense would be \$50.00, and the fee for each infraction would be \$10.00. Eighty percent (80%) of the fees collected would be deposited in the Drug Court, Mental Health Court and Family Court Services Fund, and twenty percent (20%) would be deposited in the Idaho Statewide Trial Court Automated Records System (ISTARS) Fund.
- ✓ The funds raised through the emergency surcharge will be used solely to continue court operations and to fund needed services and programs as provided by Idaho Code §§ 11623 and 11625. This bill includes an emergency clause that will permit the application of the emergency surcharge to crimes and infractions occurring on or after April 15, 2010. It also provides, through what amounts to a sunset provision, that the emergency surcharge will not apply to offenses committed after June 30, 2013. This will permit further review over the next three years of the financial outlook and the needs of the Judicial Branch.

LAW ENFORCEMENT LEGISLATION

I.C. §9-340C – Public records exemption for law enforcement

S1378

- ✓ Amends and adds to existing law relating to public writings to provide a public records exemption relating to the Idaho residential street address and telephone number of an eligible law enforcement officer
- ✓ This Legislation provides residential address and telephone number public record confidentiality for judges, prosecutors, peace officers, federal peace officers, correction officers, probation officers and parole officers living in Idaho, who voluntarily participate in the Address Confidentiality For Law Enforcement Officers Program. Officers would provide a personally coordinated mailing address that would be used for public disclosure if they elect to participate in the program.
- ✓ Statute has a new chapter – Chapter 58 – Address Confidentiality for Law Enforcement Officers that sets forth Definitions, exceptions and eligibility.
- ✓ Fraternal Order of Police brought this legislation and they are working on a form/application that will be available through the POST website. This application will have to be submitted to each public agency requesting an alternative Idaho Mailing address.

*****UNLESS otherwise indicated all laws are effective July 1, 2010*****

Caveat: this document includes brief summaries of amendments/enactments. Please review the bill, statute, or amended statute for a complete/exhaustive statement of all detailed changes to the Idaho Code. Both the bill number and code section(s) have been included for your convenience. (This is not an exhaustive summary of all the legislation passes this session.) All the laws are easily accessible on:

www.legislature.idaho.gov click on either “bill center” or “enacted legislation”