



Idaho Prosecuting Attorneys Association

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2011 LEGISLATIVE SESSION REVIEW



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”

CRIMINAL JUSTICE LEGISLATION

I.C. § 37-2705 – Controlled Substances – “Bath Salts”

HB 119

- ✓ Idaho State Police Bill
- ✓ Emergency Clause so already current law
- ✓ Revises the Uniform Controlled Substance Act by classifying a broad structure-based class of cathinones, commonly referred to as “bath salts” as Schedule I controlled substances.

I.C. § 37-2705 – Controlled Substances – “Spice”

S139

- ✓ Idaho State Police Bill
- ✓ Emergency Clause so already current law
- ✓ Revises the Uniform Controlled Substance Act by classifying a broad structure-based class of Tetrahydrocannabinols and synthetic drugs, commonly referred to a “spice” as Schedule I controlled substances.

I.C. §18-8502 - Gangs

HB 235

- ✓ Idaho Criminal Justice Commission Bill
- ✓ Adds gang-related crimes, including those crimes in jail and prisons, additional street crimes and sex crimes, to the Idaho Criminal Gang Enforcement Act, which provides enhanced penalties for convictions of crimes associated with gang-related activity.

I.C. §18-6101 – Rape

SB 1014

- ✓ Senator Darrington’s Bill
- ✓ Revises the definition of rape to include circumstances where a female submits under the belief that the person committing the act is someone other than the accused and clarifying that such circumstance is not limited to a marital relationship.

I.C. §39-604 – HIV testing

SB 1057a

- ✓ Idaho Coalition Against Domestic Violence Bill
- ✓ Provides for the testing, and in certain circumstances expedited testing, for HIV of all persons who are charged with any sex offense in which body fluid has likely been transmitted to another person.

I.C. §19-5502 – DNA testing

SB 1067

- ✓ Senator Darrington's Bill
- ✓ Revises the Idaho DNA Database Act of 1996 to require that, effective July 1 2013, persons convicted of any felony crime shall provide a DNA sample and a right thumbprint impression to the Idaho State Police.

I.C. §18-4017 – Assisted Suicide

SB 1070a

- ✓ Senator Fulcher's Bill
- ✓ Establishes that it is a felony to knowingly and intentionally provide the physical means by which another person commits or attempts to commit suicide or participate in a physical act by which another person commits or attempts to commit suicide.

I.C. §18-8329 – Sex Offender Registration Act

HB 234

- ✓ Representative Eric Simpson Bill
- ✓ Requires adult registered sex offenders to notify school districts in advance of their first visit and annually if the sex offender has a need to be on school grounds or other property used by the school district to pick up their child, is attending an event with their child, or is on school grounds for the purposes of making a delivery

I.C. §18-8301 to 18-8324 – Sex Offender Registration Act

SB 1154 aa

- ✓ Attorney Generals Office Bill
- ✓ Legislation amends Idaho Code Sections 18-8301 to 18-8324 to update and clarify sex offender registration requirements and procedures, to remove the violent sexual predator designation, the process for which was held to be unconstitutional in *Smith v. State*, 146 Idaho 822, and to create a sexual offender management board to advance and oversee sound sexual offender management policies and practices statewide.
- ✓ Amends Idaho Code Sections 19-2520G, 20-219, 67-2345, and 9-340B to eliminate references to the violent sexual predator designation, the sexual offender classification board, and to the repealed section 18-8315.

I.C. §18-501 - Abortion – After 20 weeks postfertilization

SB 1165

- ✓ Senator Winder Bill
- ✓ Creates new chapter 18-501-510
- ✓ 18-507. CRIMINAL PENALTIES. Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of the provisions of section 18-505, Idaho Code, is guilty of a felony. No penalty shall be assessed against the woman upon whom the abortion is performed or attempted to be performed

I.C. §18-2803 -18-2815 – Dangerous Dog

SB 1143

- ✓ Senator Corder and Idaho Humane Society Bill
- ✓ This legislation updates Sections 25-2803 – 25-2808 and adds Sections 25-2809 – 25-2815, Idaho Code. The legislation provides statewide minimum standards and definitions and allows counties to be more restrictive. A new category of "at risk" dogs is added and the existing term "vicious" is replaced by "dangerous" dog.
- ✓ Penalties remain the same for dogs running at large and subject to impoundment; however sheriff's responsibility to house and use reasonable effort to locate owners prior to disposition of a dog is clarified. Liabilities and penalties are to provide for dog attacks on humans, and domestic animals including production and companion.
- ✓ Changes to the statute give the court more discretion in the management of dangerous dogs and the ability to differentiate less severe behavior from more dangerous behavior and provide appropriate conditions for keeping the offending dog to ensure public safety.
- ✓ The court is provided the discretion to order a dog destroyed on a first incident resulting in severe injury or death of a human. The statute provides that under certain circumstances aggressive acts by dogs are justifiable, and the dog and its owner exempted from prosecution. Personal responsibility is emphasized as well as the rights of both owners and victims of at risk or dangerous dogs.
- ✓ Misdemeanor penalties are introduced for dangerous dog violations.

I.C. §56-227 – Criminal penalties for abusing food stamps

SB 1049

- ✓ Creates criminal penalties for abusing food stamps, food stamp benefits issues on an Electronic Benefit Transaction Card or any other future issuance method

I.C. §67-7903 – Social security numbers and public benefits

HB 230

- ✓ Amends section 67- 7903, to state that anyone who “knowingly provides a social security number that has not been assigned to him” and uses that information to secure public benefits will be guilty of a misdemeanor for the first two offenses and a felony for each subsequent offense thereafter.

IDAHO SUPREME COURT LEGISLATION

I.C. § 20-519(A)(B)(C)(D) – Juvenile Corrections Act

HB 140a

- ✓ Idaho Supreme Court Bill
- ✓ Creates a new section for Idaho Juvenile Competency
- ✓ Establishes standards for the evaluation of a juvenile's competency to proceed in Juvenile Competency Act proceedings.

I.C. § 19-5604 Drug Court

HB 225

- ✓ Idaho Supreme Court Bill
- ✓ Allows persons charged with or convicted of a felony crime of violence or a felony crime in which the person used either a firearm or a deadly weapon or instrument to participate in drug court after consultation with the drug court team and with the consent of the prosecuting attorney.

I.C. §19-2604 Judgments and Sentencing

HB 226

- ✓ Idaho Supreme Court Bill
- ✓ Removes a requirement that defendants must at all times comply with the terms of probation to be eligible for relief by providing a defendant is eligible for relief if the court did not find, and the defendant did not admit, any violation of the terms of probation in a probation violation proceeding, and also provides the courts the option, where a defendant was placed on probation, of reducing the felony conviction to a misdemeanor.

I.C. §18-8002, 8005 – Driving privileges and Specialty Courts

HB 227

- ✓ Idaho Supreme Court Bill
- ✓ Permits judges to use their discretion to grant restricted driving privileges to repeat DUI offenders who are participants in good standing in mental health courts or other similar problem solving courts utilizing community-based sentencing alternatives. Such privileges may be granted only to those participants who have served at least 45 days of the driver's license suspension with no privileges, have provided proof of liability insurance in the amount required by law and whose vehicles equipped with an ignition interlock system.

I.C. §20-518 – Juvenile justice detention facilities

SB 1003

- ✓ Director of Juvenile Justice Bill
- ✓ Allows juveniles who have been waived to adult court to be placed in the general population of juvenile detention centers rather than be sight and sound separated from other juveniles or from adults in county jail facilities.

I.C. §19-4708 – Supreme Court collection services

HB 67

- ✓ Idaho Supreme Court Bill
- ✓ Idaho Code § 19-4708 authorizes clerks of the district court, with the approval of the administrative district judge, to enter into contracts with collection services for the collection of debts owed to the courts in criminal cases, including fines, court costs, fees, and restitution to victims of crimes.
- ✓ This bill enables the Supreme Court to enter into contracts with collection services for the collection of these debts on a statewide basis. This will provide an option for collecting these debts that may be more efficient and effective. In this way, more of the debts owed to state agencies by criminal offenders may be collected, and more victims of crime may receive the restitution they are owed.

RULES OF THE ROAD – DRIVERS LICENSE LEGISLATION

I.C. §18-8002 and 18-8002a – Administrative License Suspensions

HB 61

- ✓ Idaho Department of Transportation Bill
- ✓ Brings the Administrative License Suspension (ALS) program as contained in Sections 18-8002 and 18-8002a, Idaho Code, into compliance with a 2010 Idaho Court of Appeals ruling regarding the seizure of the license and the issuance of temporary permit to an out-of-state licensed driver who refuses to submit to, or submits to and fails, evidentiary testing for the presence of alcohol or drugs, in violation of Section 18-8004, Idaho Code.
- ✓ In addition, by removing the requirement to seize any license and issue a temporary permit, the ALS procedure will be less complex and more efficient for law enforcement officers and the department to administer. It will also allow the driver (whether licensed in-state or out-of-state) whose license is otherwise valid and current, to proceed with a photo ID in their possession that remains valid and current until a starting suspension date.
- ✓ A May 1, 2011 effective date is proposed to enact the legislation in a timely manner and on a specific date to allow for a coordinated deployment with law enforcement.

I.C. §49-624 – Rules of the Road – Emergency Vehicles

SB 1011

- ✓ Idaho Supreme Court Bill
- ✓ Corrects the language of Idaho Code § 49-624, which requires drivers who approach stopped emergency vehicles with flashing lights to take certain precautions.
- ✓ When the highway has two or more lanes carrying traffic in the same direction, the driver is required to change lanes as soon as possible in a manner that is reasonable and prudent. The intent is to require drivers to change lanes out of the lane that is adjacent to the emergency vehicle.
- ✓ The statute, however, does not make this clear, and drivers who have changed lanes into the lane that is adjacent to the stopped emergency vehicle have asserted that they complied with the statute by making this lane change.
- ✓ Amends the statute to make it clear that drivers must change lanes out of the lane adjacent to the stopped emergency vehicle in a reasonable and prudent manner.

I.C. §18-8001 – Driving Without Privileges

SB 1116

- ✓ Senator Corder Bill
- ✓ This legislation amends Idaho Code Title 18 to give the court more latitude in sentencing those convicted of Driving Without Privileges (DWP).
- ✓ Essentially changes all the “shall(s)” in the statute to “may(s)”

I.C. §49-326 – Drivers license and Doctors liability

HB 160

- ✓ Idaho Medical Association
- ✓ Amends code to include the language “Any physician who has reason to believe that a patient is incompetent to drive a motor vehicle as defined in this subsection, may submit a report to the department. Before submitting a report, a physician should notify the patient or the patient's family of the physician's concerns about the patient's ability to drive. If the physician submits a report, the physician shall provide a copy of the report to the patient or to a member of the patient's family. If a physician submits a report in good faith, no professional disciplinary procedure, no monetary liability and no cause of action may arise against the physician for submission of the report.”

IDAHO DEPARTMENT OF CORRECTIONS LEGISLATION

I.C. §19-501A and 20-209C – Correction officers – Rights and duties of peace officers

SB 1029

- ✓ Department of Corrections Bill
- ✓ Amends Title 19, Chapter 5, section 501A and amending Title 20, Chapter 2, section 209C.
- ✓ Allows the Board of Correction to empower both classified and non-classified employees the rights and duties of peace officers in certain circumstances. Currently, the laws only allow for classified employees to be designated by the Board. Trained officers who currently hold non-classified positions sometimes assist in the field as part of their management duties.
- ✓ Allows the Board to designate the non-classified employees' peace officer status to effectively carry out their assigned duties. There is also a need to have peace officer trained employees assist law enforcement during emergencies when employees may be in the presence of law enforcement officials.
- ✓ Allows employees designated as peace officers by the Board the ability to assist law enforcement agencies in situations when an employee is in the presence of a law enforcement official on matters, which are not specifically related to the IDOC.
- ✓ Extends peace officer status to Board designated IDOC employees present during times when law enforcement needs their assistance. Amendment is only applicable to those employees who have peace officer training.

I.C. §18-2516 – PSI fees

SB 1097

- ✓ Department of Corrections Bill
- ✓ Allows the Idaho Department of Correction to recoup a portion of the preparation cost of presentence investigation reports ("PSI").
- ✓ Requires that the court order such payment at the time the presentence investigation report is ordered and include the order in the judgment against a defendant in a case in which a PSI was prepared.
- ✓ A defendant will now pay a PSI fee of up to one hundred dollars (\$100), as ordered by the court. The exact amount of the defendant's portion of the PSI cost would be determined by the Idaho Department of Correction based on the defendant's ability to pay.
- ✓ This new statute follows Idaho Code § 19-2516, which deals with the incorporation of fines in judgments.

CIVIL LEGISLATION

I.C. Public Records

HB 239

- ✓ Effective 4-8-11
- ✓ Clarifies the law concerning exemptions for confidential information provided to taxing agencies for property tax assessment purposes, and to prescribe procedures for identify documents considered confidential and for the treatment of requests for claims for confidential documents
- ✓ Confidential documents are already protected from disclosure by the trade secrets provisions of section 9-340D (1).
- ✓ However clarity and uniformity in the application of the law would be promoted by referencing such documents in the subsection of section 9-340D that applies to assessors, the state tax commission, county boards of equalization and the state board of tax appeals.

I.C. §9-337 and 9-338 – Public Records

HB 328

- ✓ Representative Gayle Batt's Bill
- ✓ This legislation clarifies the law's fee provisions by" (1) authorizing government entities to help requesters narrow the scope of requests; (2) providing that no fee may be charged for the first one hundred (100) pages or the first two (2) hours of labor in responding to a request; (3) requiring fee waivers only for requests that serve the public's interest in understanding government operations; (4) limiting the rate that may be charged for labor; (5) requiring public entities to itemize fee statements; (6) prohibiting requesters from segregating their public records requests in order to avoid paying fees and (7) specifying the maximum amount of an advance fee payment that a requester may be required to pay.
- ✓ This legislation does not affect a government entity's obligation to provide and copy public records for requesters who pay for costs of their requests, nor does it affect the ability of an individual, news organization or other organization to obtain a fee waiver if they can demonstrate that the request will contribute significantly to the public's understanding of government.

I.C. TITLE 34 - Elections

HB 275a

- ✓ Secretary of State's Bill
- ✓ Legislation addresses the administration of elections in the state. The bill extends the ability to request a recount of ballots to issue elections and political subdivisions, identifies how long specific election records are to be retained, and clarifies in the statutes various election administration procedures.
- ✓ Removes election records from the county records retention statute and puts them in Title 34;

- ✓ Removes obsolete language requiring the county clerk to appoint precinct registrars;
- ✓ Requires people running for the office of precinct committeeman to be registered voters;
- ✓ Addresses requirements for people who want to run for President of the United States;
- ✓ Addresses rotation of candidates for people running in political subdivisions – candidates will be placed on the ballot based on a random alphabet.
- ✓ Allows another poll worker, besides the chief judge, to accept and sign for election supplies;
- ✓ Clarifies the language dealing with absentee ballots the make it clear that absentee ballots can be counted at a central location;
- ✓ Codifies the Secretary of State’s directive about opening optical scan ballot envelopes prior to election day;
- ✓ Allows hand count paper ballots to be counted at a central location;
- ✓ Allows for the modification of election procedures for joint taxing district elections upon submittal of a plan and approval of the plan by the Secretary of State;
- ✓ Extends to ability to request a recount to elections on measures and taxing districts.
- ✓ It also requires an audit of automated tabulation equipment prior to a recount. If the accuracy of the equipment, based on the audit, exceeds certain thresholds, a hand recount will be conducted.

I.C. TITLE 34 – Primary Elections

HB 351

- ✓ Pro Tem Hill and Speaker Denny
- ✓ Purpose of the bill is to comply with a federal court ruling regarding the constitutionally required rights of association by legally recognized political parties in a partisan primary election.
- ✓ Adds to and amends existing law relating to elections to revise provisions relating to mail ballot precincts, to provide provisions relating to electors who have designated a political party affiliation and to provide provisions relating to "unaffiliated" electors;
- ✓ Revises provisions relating to the registration of electors and to provide provisions relating to primary elections;
- ✓ Provides provisions relating to an elector's change of party affiliation or an elector's designation as "unaffiliated" and to provide provisions relating to "unaffiliated" electors' selection of political party affiliation;
- ✓ Sets forth provisions relating to the eligibility to vote in primary elections, to provide provisions relating to notification to the Secretary of State, to provide provisions relating to the declaration by certain electors of choice of primary ballot and to provide provisions relating to the application of law on certain electors designated as "unaffiliated."