

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-third Legislature First Regular Session - 2015

IN THE SENATE

SENATE BILL NO. 1026

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE A PROVISION RELATING TO THE SUSPENSION OF DRIVING PRIVILEGES FOLLOWING CONVICTION FOR FELONY DUI AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 18-8005, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), and except as provided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

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

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

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

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

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

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

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

(6) Except as provided in section 18-8004C, Idaho Code, any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony; and:

(a) Shall be sentenced to the custody of the state board of correction for not to exceed ten (10) years; provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive, and ten (10) days of which must be served

1 in jail, as required by 23 U.S.C. section 164; and further provided that  
2 notwithstanding the provisions of section 18-111, Idaho Code, a convic-  
3 tion under this section shall be deemed a felony;

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

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

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

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

20 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)  
21 of this section, any person who is enrolled in and is a participant in good  
22 standing in a drug court or mental health court approved by the supreme  
23 court drug court and mental health court coordinating committee under the  
24 provisions of chapter 56, title 19, Idaho Code, or other similar problem  
25 solving court utilizing community-based sentencing alternatives, shall be  
26 eligible for restricted noncommercial driving privileges for the purpose of  
27 getting to and from work, school or an alcohol treatment program, which may  
28 be granted by the presiding judge of the drug court or mental health court or  
29 other similar problem solving court, provided that the offender has served a  
30 period of absolute suspension of driving privileges of at least forty-five  
31 (45) days, that a state approved ignition interlock system is installed, and  
32 for repeat offenders it shall be maintained for not less than one (1) year,  
33 on each of the motor vehicles owned or operated, or both, by the offender and  
34 that the offender has shown proof of financial responsibility as defined  
35 and in the amounts specified in section 49-117, Idaho Code, provided that  
36 the restricted noncommercial driving privileges may be continued if the of-  
37 fender successfully completes the drug court, mental health court or other  
38 similar problem solving court, and that the court may revoke such privileges  
39 for failure to comply with the terms of probation or with the terms and condi-  
40 tions of the drug court, mental health court or other similar problem solving  
41 court program.

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

49 (9) Notwithstanding the provisions of subsections (4) and (6) of this  
50 section, any person who has pled guilty or has been found guilty of a felony

1 violation of the provisions of section 18-8004, Idaho Code, a felony viola-  
2 tion of the provisions of section 18-8004C, Idaho Code, a violation of the  
3 provisions of section 18-8006, Idaho Code, a violation of the provisions of  
4 section 18-4006 3.(b), Idaho Code, notwithstanding the form of the judg-  
5 ment(s) or withheld judgment(s) or any substantially conforming foreign  
6 criminal felony violation, notwithstanding the form of the judgment(s) or  
7 withheld judgment(s), and within fifteen (15) years pleads guilty or is  
8 found guilty of a further violation of the provisions of section 18-8004,  
9 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to  
10 subsection (6) of this section.

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

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

1 ment is required unless the defendant makes a showing by a preponderance of  
2 evidence that treatment is not required. If the defendant has not made a good  
3 faith effort to provide the completed copy of the evaluation to the court,  
4 the court may consider the failure of the defendant to provide the report  
5 as an aggravating circumstance in determining an appropriate sentence. If  
6 treatment is ordered, in no event shall the person or facility doing the  
7 evaluation be the person or facility that provides the treatment unless this  
8 requirement is waived by the sentencing court, with the exception of fed-  
9 erally recognized Indian tribes or federal military installations, where  
10 diagnosis and treatment are appropriate and available. Nothing herein con-  
11 tained shall preclude the use of funds authorized pursuant to the provisions  
12 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for  
13 indigent defendants.

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

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

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

20 (c) Information as to whether the defendant has pled guilty to or  
21 been found guilty of violation of the provisions of section 18-8004,  
22 18-8004C or 18-8006, Idaho Code, or a similar offense within the past  
23 five (5) years, notwithstanding the form of the judgment(s) or withheld  
24 judgment(s); and

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

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

37 (14) In the event that the alcohol evaluation required in subsection  
38 (11) of this section recommends alcohol treatment, the court shall order  
39 the person to complete a treatment program in addition to any other sentence  
40 which may be imposed, unless the court determines that alcohol treatment  
41 would be inappropriate or undesirable, in which event, the court shall enter  
42 findings articulating the reasons for such determination on the record. The  
43 court shall order the defendant to complete the preferred treatment program  
44 set forth in the evaluation, or a comparable alternative, unless it appears  
45 that the defendant cannot reasonably obtain adequate financial resources  
46 for such treatment. In that event, the court may order the defendant to com-  
47 plete a less costly alternative set forth in the evaluation, or a comparable  
48 program. Such treatment shall, to the greatest extent possible, be at the  
49 expense of the defendant. In the event that funding is provided for or on  
50 behalf of the defendant by an entity of state government, restitution shall

1 be ordered to such governmental entity in accordance with the restitution  
2 procedure for crime victims, as specified under chapter 53, title 19, Idaho  
3 Code. Nothing contained herein shall be construed as requiring a court to  
4 order that a governmental entity shall provide alcohol treatment at govern-  
5 ment expense unless otherwise required by law.

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