

IN THE SENATE

SENATE BILL NO. 1277

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO SEX CRIMES; AMENDING CHAPTER 9, TITLE 18, IDAHO CODE, BY THE AD-
2 DITION OF A NEW SECTION 18-924, IDAHO CODE, TO DEFINE TERMS, TO PROHIBIT
3 SEXUAL BATTERY OF AN ADULT AND TO PROVIDE A PUNISHMENT; AMENDING SECTION
4 18-6101, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE A CIRCUMSTANCE
5 WHERE RAPE CAN OCCUR AND TO PROVIDE THAT BOTH MALES AND FEMALES ARE
6 CAPABLE OF COMMITTING RAPE; AMENDING SECTION 18-6107, IDAHO CODE, TO
7 REVISE A CODE REFERENCE; REPEALING SECTION 18-6108, IDAHO CODE, RE-
8 LATING TO MALE RAPE; REPEALING SECTION 18-6109, IDAHO CODE, RELATING
9 TO PUNISHMENT FOR MALE RAPE; AMENDING SECTION 18-8304, IDAHO CODE, TO
10 PROVIDE THAT THE SEXUAL OFFENDER REGISTRATION NOTIFICATION AND COMMU-
11 NITY RIGHT-TO-KNOW ACT SHALL APPLY TO CERTAIN PERSONS WHO COMMIT SEXUAL
12 BATTERY OF AN ADULT, TO REMOVE OBSOLETE CODE REFERENCES AND TO MAKE
13 TECHNICAL CORRECTIONS; AMENDING SECTION 16-1602, IDAHO CODE, TO RE-
14 MOVE AN OBSOLETE CODE REFERENCE; AMENDING SECTION 16-2005, IDAHO CODE,
15 TO REMOVE AN OBSOLETE CODE REFERENCE; AMENDING SECTION 18-310, IDAHO
16 CODE, TO REMOVE AN OBSOLETE CODE REFERENCE, TO PROVIDE CORRECT CODE REF-
17 ERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8303,
18 IDAHO CODE, TO REMOVE OBSOLETE CODE REFERENCES AND TO MAKE TECHNICAL
19 CORRECTIONS; AMENDING SECTION 18-8502, IDAHO CODE, TO REMOVE AN OBSO-
20 LETE CODE REFERENCE; AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE A
21 CORRECT CODE REFERENCE AND TO REMOVE AN OBSOLETE CODE REFERENCE; AMEND-
22 ING SECTION 19-5307, IDAHO CODE, TO REMOVE AN OBSOLETE CODE REFERENCE;
23 AMENDING SECTION 20-509, IDAHO CODE, TO REMOVE AN OBSOLETE CODE REFER-
24 ENCE; AMENDING SECTION 20-525A, IDAHO CODE, TO REMOVE AN OBSOLETE CODE
25 REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-1208,
26 IDAHO CODE, TO REMOVE AN OBSOLETE CODE REFERENCE; AMENDING SECTION
27 39-1113, IDAHO CODE, TO REMOVE AN OBSOLETE CODE REFERENCE; AND AMENDING
28 SECTION 72-1025, IDAHO CODE, TO REMOVE AN OBSOLETE CODE REFERENCE AND TO
29 MAKE TECHNICAL CORRECTIONS.
30

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

32 SECTION 1. That Chapter 9, Title 18, Idaho Code, be, and the same is
33 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
34 ignated as Section 18-924, Idaho Code, and to read as follows:

35 18-924. SEXUAL BATTERY OF AN ADULT. (1) Sexual battery of an adult is
36 any willful physical contact, over or under the clothing, with the intimate
37 parts of any person who has attained the age of eighteen (18) years when the
38 physical contact is done without consent and with the intent to degrade the
39 person touched or with the intent of arousing, appealing or gratifying the
40 lust, passion or sexual desires of the actor or any other person. For pur-
41 poses of this section, "intimate parts" means the genital area, groin, inner
42 thighs, buttocks or breasts.

1 (2) Sexual battery of an adult is a misdemeanor and shall be punishable
 2 by up to one (1) year in jail, a fine of up to one thousand dollars (\$1,000) or
 3 both, except that a person who pleads guilty or is found guilty of more than
 4 two (2) violations of subsection (1) of this section within ten (10) years
 5 is guilty of a felony punishable by up to five (5) years in prison and may be
 6 fined an amount not exceeding fifty thousand dollars (\$50,000).

7 SECTION 2. That Section 18-6101, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 18-6101. RAPE DEFINED. Rape is defined as the penetration, however
 10 slight, of the oral, anal or vaginal opening with ~~the perpetrator's~~ a penis
 11 accomplished ~~with a female~~ under any one (1) of the following circumstances:

12 (1) Where the ~~female~~ victim is under the age of sixteen (16) years and
 13 the perpetrator is eighteen (18) years of age or older.

14 (2) Where the ~~female~~ victim is sixteen (16) or seventeen (17) years
 15 of age and the perpetrator is three (3) years or more older than the ~~female~~
 16 victim.

17 (3) Where ~~she~~ the victim is incapable, through any unsoundness of mind,
 18 due to any cause including, but not limited to, mental illness, mental dis-
 19 ability or developmental disability, whether temporary or permanent, of
 20 giving legal consent.

21 (4) Where ~~she~~ the victim resists but ~~her~~ the resistance is overcome by
 22 force or violence.

23 (5) Where ~~she~~ the victim is prevented from resistance by the inflic-
 24 tion, attempted infliction, or threatened infliction of bodily harm, accom-
 25 panied by apparent power of execution; or is unable to resist due to any in-
 26 toxicating, narcotic, or anaesthetic substance.

27 (6) Where the victim is prevented from resistance due to an objectively
 28 reasonable belief that resistance would be futile or that resistance would
 29 result in force or violence beyond that necessary to accomplish the prohib-
 30 ited contact.

31 (7) Where ~~she~~ the victim is at the time unconscious of the nature of the
 32 act. As used in this section, "unconscious of the nature of the act" means
 33 incapable of resisting because the victim meets one (1) of the following con-
 34 ditions:

35 (a) Was unconscious or asleep;

36 (b) Was not aware, knowing, perceiving, or cognizant that the act oc-
 37 curred.

38 (78) Where ~~she~~ the victim submits under the belief that the person com-
 39 mitting the act is ~~her husband~~ the victim's spouse, and the belief is induced
 40 by artifice, pretense or concealment practiced by the accused, with intent
 41 to induce such belief.

42 (89) Where ~~she~~ the victim submits under the belief that the person com-
 43 mitting the act is someone other than the accused, and the belief is induced
 44 by artifice, pretense or concealment practiced by the accused, with the in-
 45 tent to induce such belief.

46 (910) Where ~~she~~ the victim submits under the belief, instilled by the
 47 actor, that if ~~she~~ the victim does not submit, the actor will cause physical
 48 harm to some person in the future; or cause damage to property; or engage in
 49 other conduct constituting a crime; or accuse any person of a crime or cause

1 criminal charges to be instituted against ~~her~~ the victim; or expose a secret
2 or publicize an asserted fact, whether true or false, tending to subject any
3 person to hatred, contempt or ridicule.

4 The provisions of subsections (1) and (2) of this section shall not af-
5 fect the age requirements in any other provision of law, unless otherwise
6 provided in any such law. Further, for the purposes of subsection (2) of
7 this section, in determining whether the perpetrator is three (3) years or
8 more older than the ~~female~~ victim, the difference in age shall be measured
9 from the date of birth of the perpetrator to the date of birth of the ~~female~~
10 victim.

11 Males and females are both capable of committing the crime of rape as de-
12 finied in this section.

13 SECTION 3. That Section 18-6107, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 18-6107. RAPE OF SPOUSE. No person shall be convicted of rape for any
16 act or acts with that person's spouse, except under the circumstances cited
17 in subsections (4) ~~and~~, (5), (6) and (10) of section 18-6101, Idaho Code.

18 SECTION 4. That Section 18-6108, Idaho Code, be, and the same is hereby
19 repealed.

20 SECTION 5. That Section 18-6109, Idaho Code, be, and the same is hereby
21 repealed.

22 SECTION 6. That Section 18-8304, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 18-8304. APPLICATION OF CHAPTER -- RULEMAKING AUTHORITY. (1) The pro-
25 visions of this chapter shall apply to any person who:

26 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
27 solicitation, or a conspiracy to commit a crime provided for in section
28 18-909 (assault with intent to commit rape, infamous crime against na-
29 ture, or lewd and lascivious conduct with a minor, but excluding mayhem,
30 murder or robbery), 18-911 (battery with intent to commit rape, infa-
31 mous crime against nature, or lewd and lascivious conduct with a minor,
32 but excluding mayhem, murder or robbery), 18-919 (sexual exploitation
33 by a medical care provider), 18-924(2) (sexual battery of an adult,
34 third or more conviction within ten (10) years), 18-1505B (sexual abuse
35 and exploitation of a vulnerable adult), 18-1506 (sexual abuse of a
36 child under sixteen years of age), 18-1506A (ritualized abuse of a
37 child), 18-1507 (sexual exploitation of a child), 18-1508 (lewd conduct
38 with a minor child), 18-1508A (sexual battery of a minor child sixteen
39 or seventeen years of age), 18-1509A (enticing a child over the inter-
40 net), 18-4003(d) (murder committed in perpetration of rape), 18-4116
41 (indecent exposure, but excluding a misdemeanor conviction), 18-4502
42 (first degree kidnapping committed for the purpose of rape, committing
43 the infamous crime against nature or for committing any lewd and las-
44 civious act upon any child under the age of sixteen, or for purposes of
45 sexual gratification or arousal), 18-4503 (second degree kidnapping

1 where the victim is an unrelated minor child), 18-5605 (detention for
 2 prostitution), 18-5609 (inducing person under eighteen years of age
 3 into prostitution), 18-5610 (utilizing a person under eighteen years of
 4 age for prostitution), 18-5611 (inducing person under eighteen years of
 5 age to patronize a prostitute), 18-6101 (rape, but excluding 18-6101(1)
 6 where the defendant is eighteen years of age), ~~18-6108 (male rape, but~~
 7 ~~excluding 18-6108(1) where the defendant is eighteen years of age),~~
 8 18-6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605
 9 (crime against nature), 18-6608 (forcible sexual penetration by use of
 10 a foreign object), 18-6609 (video voyeurism where the victim is a minor
 11 or upon a second or subsequent conviction), 18-7804 (if the racketeer-
 12 ing act involves kidnapping of a minor) or 18-8602(1), Idaho Code, (sex
 13 trafficking).

14 (b) On or after July 1, 1993, has been convicted of any crime, an
 15 attempt, a solicitation or a conspiracy to commit a crime in another ju-
 16 risdiction or who has a foreign conviction that is substantially equiv-
 17 alent to the offenses listed in ~~subsection (1) paragraph~~ (a) of this
 18 subsection and enters this state to establish residence or for employ-
 19 ment purposes or to attend, on a full-time or part-time basis, any pub-
 20 lic or private educational institution including any secondary school,
 21 trade or professional institution or institution of higher education.

22 (c) Has been convicted of any crime, an attempt, a solicitation or a
 23 conspiracy to commit a crime in another jurisdiction, including mili-
 24 tary courts, that is substantially equivalent to the offenses listed in
 25 ~~subsection (1) paragraph~~ (a) of this subsection and was required to reg-
 26 ister as a sex offender in any other state or jurisdiction when he estab-
 27 lished residency in Idaho.

28 (d) Pleads guilty to or has been found guilty of a crime covered in this
 29 chapter prior to July 1, 1993, and the person, as a result of the of-
 30 fense, is incarcerated in a county jail facility or a penal facility or
 31 is under probation or parole supervision, on or after July 1, 1993.

32 (e) Is a nonresident regularly employed or working in Idaho or is a stu-
 33 dent in the state of Idaho and was convicted, found guilty or pleaded
 34 guilty to a crime covered by this chapter and, as a result of such con-
 35 viction, finding or plea, is required to register in his state of resi-
 36 dence.

37 (2) An offender shall not be required to comply with the registration
 38 provisions of this chapter while incarcerated in a correctional institution
 39 of the department of correction, a county jail facility, committed to the de-
 40 partment of juvenile corrections or committed to a mental health institution
 41 of the department of health and welfare.

42 (3) A conviction for purposes of this chapter means that the person has
 43 pled guilty or has been found guilty, notwithstanding the form of the judg-
 44 ment or withheld judgment.

45 (4) The department shall have authority to promulgate rules to imple-
 46 ment the provisions of this chapter.

47 SECTION 7. That Section 16-1602, Idaho Code, be, and the same is hereby
 48 amended to read as follows:

49 16-1602. DEFINITIONS. For purposes of this chapter:

1 (1) "Abused" means any case in which a child has been the victim of:

2 (a) Conduct or omission resulting in skin bruising, bleeding, malnu-
3 trition, burns, fracture of any bone, subdural hematoma, soft tissue
4 swelling, failure to thrive or death, and such condition or death is not
5 justifiably explained, or where the history given concerning such con-
6 dition or death is at variance with the degree or type of such condition
7 or death, or the circumstances indicate that such condition or death may
8 not be the product of an accidental occurrence; or

9 (b) Sexual conduct, including rape, molestation, incest, prostitu-
10 tion, obscene or pornographic photographing, filming or depiction for
11 commercial purposes, or other similar forms of sexual exploitation
12 harming or threatening the child's health or welfare or mental injury to
13 the child.

14 (2) "Abandoned" means the failure of the parent to maintain a normal
15 parental relationship with his child including, but not limited to, reason-
16 able support or regular personal contact. Failure to maintain this rela-
17 tionship without just cause for a period of one (1) year shall constitute
18 prima facie evidence of abandonment.

19 (3) "Adaptive equipment" means any piece of equipment or any item that
20 is used to increase, maintain or improve the parenting capabilities of a par-
21 ent with a disability.

22 (4) "Adjudicatory hearing" means a hearing to determine:

23 (a) Whether the child comes under the jurisdiction of the court pur-
24 suant to the provisions of this chapter;

25 (b) Whether continuation of the child in the home would be contrary to
26 the child's welfare and whether the best interest of the child requires
27 protective supervision or vesting legal custody of the child in an au-
28 thorized agency.

29 (5) "Aggravated circumstances" includes, but is not limited to:

30 (a) Circumstances in which the parent has engaged in any of the follow-
31 ing:

32 (i) Abandonment, chronic abuse or chronic neglect of the child.
33 Chronic neglect or chronic abuse of a child shall consist of abuse
34 or neglect that is so extreme or repetitious as to indicate that
35 return of the child to the home would result in unacceptable risk
36 to the health and welfare of the child.

37 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
38 the purposes of this section, includes any conduct described in
39 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
40 ~~18-6108~~ or 18-6608, Idaho Code.

41 (iii) Torture of a child; any conduct described in the code sec-
42 tions listed in section 18-8303(1), Idaho Code; battery or an
43 injury to a child that results in serious or great bodily in-
44 jury to a child; voluntary manslaughter of a child, or aiding or
45 abetting such voluntary manslaughter, soliciting such voluntary
46 manslaughter or attempting or conspiring to commit such voluntary
47 manslaughter;

48 (b) The parent has committed murder, aided or abetted a murder, so-
49 licited a murder or attempted or conspired to commit murder; or

1 (c) The parental rights of the parent to another child have been termi-
2 nated involuntarily.

3 (6) "Authorized agency" means the department, a local agency, a person,
4 an organization, corporation, benevolent society or association licensed
5 or approved by the department or the court to receive children for control,
6 care, maintenance or placement.

7 (7) "Case plan hearing" means a hearing to approve, modify or reject the
8 case plan as provided in section 16-1621, Idaho Code.

9 (8) "Child" means an individual who is under the age of eighteen (18)
10 years.

11 (9) "Child advocacy center" or "CAC" means an organization that adheres
12 to national best practice standards established by the national membership
13 and accrediting body for children's advocacy centers and that promotes a
14 comprehensive and coordinated multidisciplinary team response to alle-
15 gations of child abuse by maintaining a child-friendly facility at which
16 appropriate services are provided. These services may include forensic in-
17 terviews, forensic medical examinations, mental health services and other
18 related victim services.

19 (10) "Circumstances of the child" includes, but is not limited to, the
20 joint legal custody or joint physical custody of the child.

21 (11) "Commit" means to transfer legal and physical custody.

22 (12) "Concurrent planning" means a planning model that prepares for and
23 implements different outcomes at the same time.

24 (13) "Court" means district court or magistrate's division thereof, or
25 if the context requires, a magistrate or judge thereof.

26 (14) "Custodian" means a person, other than a parent or legal guardian,
27 to whom legal or joint legal custody of the child has been given by court or-
28 der.

29 (15) "Department" means the department of health and welfare and its au-
30 thorized representatives.

31 (16) "Disability" means, with respect to an individual, any mental or
32 physical impairment which substantially limits one (1) or more major life
33 activity of the individual including, but not limited to, self-care, man-
34 ual tasks, walking, seeing, hearing, speaking, learning or working, or a
35 record of such an impairment, or being regarded as having such an impairment.
36 Disability shall not include transvestism, transsexualism, pedophilia,
37 exhibitionism, voyeurism, other sexual behavior disorders, or substance use
38 disorders, compulsive gambling, kleptomania or pyromania. Sexual prefer-
39 ence or orientation is not considered an impairment or disability. Whether
40 an impairment substantially limits a major life activity shall be determined
41 without consideration of the effect of corrective or mitigating measures
42 used to reduce the effects of the impairment.

43 (17) "Family or household member" shall have the same meaning as in sec-
44 tion 39-6303(6), Idaho Code.

45 (18) "Foster care" means twenty-four (24) hour substitute parental care
46 for children placed away from their parents or guardians by persons who may
47 or may not be related to the children and for whom the state agency has place-
48 ment and care responsibility.

49 (19) "Grant administrator" means the supreme court or any organization
50 or agency as may be designated by the supreme court in accordance with such

1 procedures as may be adopted by the supreme court. The grant administrator
2 shall administer funds from the guardian ad litem account in accordance with
3 the provisions of this chapter.

4 (20) "Guardian ad litem" means a person appointed by the court pursuant
5 to a guardian ad litem volunteer program to act as special advocate for a
6 child under this chapter.

7 (21) "Guardian ad litem coordinator" means a person or entity receiving
8 moneys from the grant administrator for the purpose of carrying out any of
9 the duties set forth in section 16-1632, Idaho Code.

10 (22) "Guardian ad litem program" means the program to recruit, train and
11 coordinate volunteer persons to serve as guardians ad litem for abused, ne-
12 glected or abandoned children.

13 (23) "Homeless," as used in this chapter, shall mean that the child is
14 without adequate shelter or other living facilities, and the lack of such
15 shelter or other living facilities poses a threat to the health, safety or
16 well-being of the child.

17 (24) "Idaho network of children's advocacy centers" means an organiza-
18 tion that provides education and technical assistance to child advocacy cen-
19 ters and to interagency multidisciplinary teams developed pursuant to sec-
20 tion 16-1617, Idaho Code.

21 (25) "Law enforcement agency" means a city police department, the pros-
22 ecuting attorney of any county, state law enforcement officers, or the of-
23 fice of a sheriff of any county.

24 (26) "Legal custody" means a relationship created by court order, which
25 vests in a custodian the following rights and responsibilities:

26 (a) To have physical custody and control of the child, and to determine
27 where and with whom the child shall live.

28 (b) To supply the child with food, clothing, shelter and incidental ne-
29 cessities.

30 (c) To provide the child with care, education and discipline.

31 (d) To authorize ordinary medical, dental, psychiatric, psychologi-
32 cal, or other remedial care and treatment for the child, including care
33 and treatment in a facility with a program of services for children; and
34 to authorize surgery if the surgery is deemed by two (2) physicians li-
35 censed to practice in this state to be necessary for the child.

36 (e) Where the parents share legal custody, the custodian may be vested
37 with the custody previously held by either or both parents.

38 (27) "Mental injury" means a substantial impairment in the intellectual
39 or psychological ability of a child to function within a normal range of per-
40 formance and/or behavior, for short or long terms.

41 (28) "Neglected" means a child:

42 (a) Who is without proper parental care and control, or subsistence,
43 medical or other care or control necessary for his well-being because of
44 the conduct or omission of his parents, guardian or other custodian or
45 their neglect or refusal to provide them; however, no child whose parent
46 or guardian chooses for such child treatment by prayers through spiri-
47 tual means alone in lieu of medical treatment shall be deemed for that
48 reason alone to be neglected or lack parental care necessary for his
49 health and well-being, but this subsection shall not prevent the court
50 from acting pursuant to section 16-1627, Idaho Code; or

1 (b) Whose parents, guardian or other custodian are unable to discharge
2 their responsibilities to and for the child and, as a result of such
3 inability, the child lacks the parental care necessary for his health,
4 safety or well-being; or

5 (c) Who has been placed for care or adoption in violation of law; or

6 (d) Who is without proper education because of the failure to comply
7 with section 33-202, Idaho Code.

8 (29) "Permanency hearing" means a hearing to review, approve, reject or
9 modify the permanency plan of the department, and review reasonable efforts
10 in accomplishing the permanency plan.

11 (30) "Permanency plan" means a plan for a continuous residence and main-
12 tenance of nurturing relationships during the child's minority.

13 (31) "Protective order" means an order issued by the court in a child
14 protection case, prior to the adjudicatory hearing, to enable the child to
15 remain in the home pursuant to section 16-1615(5) (f), Idaho Code. Such an
16 order shall be in the same form and have the same effect as a domestic vio-
17 lence protection order issued pursuant to chapter 63, title 39, Idaho Code.
18 A protective order shall be for a period not to exceed three (3) months unless
19 otherwise stated in the order.

20 (32) "Protective supervision" is a legal status created by court order
21 in a child protective case whereby the child is in the legal custody of his or
22 her parent(s), guardian(s) or other legal custodian(s), subject to supervi-
23 sion by the department.

24 (33) "Relative" means a child's grandparent, great grandparent, aunt,
25 great aunt, uncle, great uncle, brother-in-law, sister-in-law, first
26 cousin, sibling and half-sibling.

27 (34) "Residual parental rights and responsibilities" means those
28 rights and responsibilities remaining with the parents after the transfer of
29 legal custody including, but not necessarily limited to, the right of visi-
30 tation, the right to consent to adoption, the right to determine religious
31 affiliation, the right to family counseling when beneficial, and the respon-
32 sibility for support.

33 (35) "Shelter care" means places designated by the department for tem-
34 porary care of children pending court disposition or placement.

35 (36) "Supportive services," as used in this chapter, shall mean ser-
36 vices which assist parents with a disability to compensate for those aspects
37 of their disability which affect their ability to care for their child and
38 which will enable them to discharge their parental responsibilities. The
39 term includes specialized or adapted training, evaluations or assistance
40 with effectively using adaptive equipment and accommodations which allow
41 parents with a disability to benefit from other services including, but not
42 limited to, Braille texts or sign language interpreters.

43 SECTION 8. That Section 16-2005, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 16-2005. CONDITIONS UNDER WHICH TERMINATION MAY BE GRANTED. (1) The
46 court may grant an order terminating the relationship where it finds that
47 termination of parental rights is in the best interests of the child and that
48 one (1) or more of the following conditions exist:

49 (a) The parent has abandoned the child.

1 (b) The parent has neglected or abused the child.

2 (c) The presumptive parent is not the biological parent of the child.

3 (d) The parent is unable to discharge parental responsibilities and
4 such inability will continue for a prolonged indeterminate period and
5 will be injurious to the health, morals or well-being of the child.

6 (e) The parent has been incarcerated and is likely to remain incarcer-
7 ated for a substantial period of time during the child's minority.

8 (2) The court may grant an order terminating the relationship and may
9 rebuttably presume that such termination of parental rights is in the best
10 interests of the child where:

11 (a) The parent caused the child to be conceived as a result of rape,
12 incest, lewd conduct with a minor child under the age of sixteen (16)
13 years, or sexual abuse of a child under the age of sixteen (16) years, as
14 defined in sections 18-6101, 18-1508, 18-1506 and 18-6602, Idaho Code;

15 (b) The following circumstances are present:

16 (i) Abandonment, chronic abuse or chronic neglect of the child.
17 Chronic neglect or chronic abuse of a child shall consist of abuse
18 or neglect that is so extreme or repetitious as to indicate con-
19 tinuing the relationship would result in unacceptable risk to the
20 health and welfare of the child;

21 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
22 the purposes of this section, includes any conduct described in
23 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
24 ~~18-6108~~ or 18-6608, Idaho Code;

25 (iii) Torture of a child; any conduct described in the code sec-
26 tions listed in section 18-8303(1), Idaho Code; battery or an
27 injury to a child that results in serious or great bodily in-
28 jury to a child; voluntary manslaughter of a child, or aiding or
29 abetting such voluntary manslaughter, soliciting such voluntary
30 manslaughter or attempting or conspiring to commit such voluntary
31 manslaughter;

32 (iv) The parent has committed murder, aided or abetted a murder,
33 solicited a murder or attempted or conspired to commit murder; or

34 (c) The court determines the child to be an abandoned infant, except in
35 a parental termination action brought by one (1) parent against another
36 parent.

37 (3) The court may grant an order terminating the relationship if termi-
38 nation is found to be in the best interest of the parent and child.

39 (4) The court may grant an order terminating the relationship where a
40 consent to termination in the manner and form prescribed by this chapter has
41 been filed by the parent(s) of the child in conjunction with a petition for
42 adoption initiated by the person or persons proposing to adopt the child,
43 or where the consent to termination has been filed by a licensed adoption
44 agency, no subsequent hearing on the merits of the petition shall be held.
45 Consents required by this chapter must be witnessed by a district judge or
46 magistrate of a district court, or equivalent judicial officer of the state,
47 where a person consenting resides or is present, whether within or without
48 the county, and shall be substantially in the following form:

1 IN THE DISTRICT COURT OF THE.... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN
2 AND FOR THE COUNTY OF....

3 In the Matter of the termination)
4 of the parental rights of)
5)
6)

7 I (we), the undersigned, being the.... of...., do hereby give my (our)
8 full and free consent to the complete and absolute termination of my (our)
9 parental right(s), to the said...., who was born....., unto...., hereby
10 relinquishing completely and forever, all legal rights, privileges, du-
11 ties and obligations, including all rights of inheritance to and from the
12 said...., and I (we) do hereby expressly waive my (our) right(s) to hear-
13 ing on the petition to terminate my (our) parental relationship with the
14 said...., and respectfully request the petition be granted.

DATED:....., 20..
.....

17 STATE OF IDAHO)
18) ss.
19 COUNTY OF....)

20 On this.... day of...., 20.., before me, the undersigned.....
21 (Judge or Magistrate) of the District Court of the.... Judicial District of
22 the state of Idaho, in and for the county of...., personally appeared....,
23 known to me (or proved to me on the oath of....) to be the person(s) whose
24 name(s) is (are) subscribed to the within instrument, and acknowledged to me
25 that he (she, they) executed the same.

26 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
27 seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

29 The court shall accept a consent or a surrender and release executed in
30 another state if:

- 31 (1) It is witnessed by a magistrate or district judge of the state where
32 signed; or
- 33 (2) The court receives an affidavit or a certificate from a court of
34 comparable jurisdiction stating that the consent or the surrender and
35 release was executed in accordance with the laws of the state in which it
36 was executed, or the court is satisfied by other showing that the con-
37 sent or surrender and release was executed in accordance with the laws
38 of the state in which it was executed; or
- 39 (3) The court shall accept a termination or relinquishment from a sis-
40 ter state that has been ordered by a court of competent jurisdiction un-
41 der like proceedings; or in any other manner authorized by the laws of a
42 sister state. In a state where the father has failed to file notice of
43 claim to paternity and willingness to assume responsibility as provided
44 for pursuant to the laws of such state, and where such failure consti-
45 tutes an abandonment of such child and constitutes a termination or re-
46 linquishment of the rights of the putative father, the court shall ac-
47 cept such failure as a termination in this state without further hearing
48 on the merits, if the court is satisfied that such failure constitutes

1 a termination or relinquishment of parental rights pursuant to the laws
2 of that state.

3 (5) Unless a consent to termination signed by the parent(s) of the child
4 has been filed by an adoption agency licensed in the state of Idaho, or unless
5 the consent to termination was filed in conjunction with a petition for adop-
6 tion of the child, the court shall hold a hearing.

7 (6) If the parent has a disability, as defined in this chapter, the par-
8 ent shall have the right to provide evidence to the court regarding the man-
9 ner in which the use of adaptive equipment or supportive services will enable
10 the parent to carry out the responsibilities of parenting the child. Nothing
11 in this section shall be construed to create any new or additional obligation
12 on state or local governments to purchase or provide adaptive equipment or
13 supportive services for parents with disabilities.

14 SECTION 9. That Section 18-310, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 18-310. IMPRISONMENT -- EFFECT ON CIVIL RIGHTS AND OFFICES. (1) A
17 sentence of custody to the Idaho state board of correction suspends all the
18 civil rights of the person so sentenced, including the right to refuse treat-
19 ment authorized by the sentencing court, and forfeits all public offices and
20 all private trusts, authority or power during such imprisonment: provided
21 that any such person may bring an action for damages or other relief in the
22 courts of this state or have an action brought against such person; and pro-
23 vided further that any such person may lawfully exercise all civil rights
24 that are not political during any period of parole or probation, except the
25 right to ship, transport, possess or receive a firearm, and the right to
26 refuse treatment authorized by the sentencing court.

27 (2) Upon final discharge, a person convicted of any Idaho felony shall
28 be restored the full rights of citizenship, except that for persons con-
29 victed of treason or those offenses enumerated in paragraphs (a) through
30 (~~jjj~~i) of this subsection the right to ship, transport, possess or receive a
31 firearm shall not be restored. As used in this subsection, "final discharge"
32 means satisfactory completion of imprisonment, probation and parole as the
33 case may be.

- 34 (a) ~~a~~Aggravated assault (18-905, 18-915, Idaho Code);
35 (b) ~~a~~Aggravated battery (18-907, 18-915, Idaho Code);
36 (c) ~~a~~Assault with intent to commit a serious felony (18-909, 18-915,
37 Idaho Code);
38 (d) ~~b~~Battery with intent to commit a serious felony (18-911, 18-915,
39 Idaho Code);
40 (e) ~~b~~Burglary (18-1401, Idaho Code);
41 (f) ~~e~~Crime against nature (18-6605, Idaho Code);
42 (g) ~~d~~Domestic battery, felony (18-918, Idaho Code);
43 (h) ~~e~~Enticing of children, felony (18-1509, Idaho Code);
44 (i) ~~f~~Forcible sexual penetration by use of a foreign object (18-6608,
45 Idaho Code);
46 (j) ~~h~~Indecent exposure, felony (18-4116, Idaho Code);
47 (k) ~~h~~Injury to child, felony (18-1501, Idaho Code);
48 (l) ~~h~~Intimidating a witness, felony (18-2604, Idaho Code);

1 (m) ~~l~~Lewd conduct with a minor or child under sixteen (18-1508, Idaho
 2 Code);
 3 (n) ~~s~~Sexual abuse of a child under sixteen (18-1506, Idaho Code);
 4 (o) ~~s~~Sexual exploitation of a child (18-1507, Idaho Code);
 5 (p) ~~f~~Felonious rescuing prisoners (18-2501, Idaho Code);
 6 (q) ~~e~~Escape by one charged with, convicted of or on probation for a
 7 felony (18-2505, Idaho Code);
 8 (r) ~~u~~Unlawful possession of a firearm (18-3316, Idaho Code);
 9 (s) ~~d~~Degrees of murder (18-4003, Idaho Code);
 10 (t) ~~v~~Voluntary manslaughter (18-4006(1), Idaho Code);
 11 (u) ~~a~~Assault with intent to murder (18-4015, Idaho Code);
 12 (v) ~~a~~Addministering poison with intent to kill (18-4014, Idaho Code);
 13 (w) ~~k~~Kidnapping (18-4501, Idaho Code);
 14 (x) ~~m~~Mayhem (18-5001, Idaho Code);
 15 (y) ~~r~~Rape (18-6101, Idaho Code);
 16 (z) ~~m~~ale ~~r~~ape (18-6108, Idaho Code);
 17 ~~(aa)~~ ~~r~~Robbery (18-6501, Idaho Code);
 18 ~~(bbaa)~~ ~~r~~Ritualized abuse of a child (18-1506A, Idaho Code);
 19 ~~(eebb)~~ ~~e~~Cannibalism (18-5003, Idaho Code);
 20 ~~(ddcc)~~ ~~f~~Felonious manufacture, delivery or possession with the intent
 21 to manufacture or deliver, or possession of a controlled or counterfeit
 22 substance (37-2732, Idaho Code);
 23 ~~(eedd)~~ ~~t~~Trafficking (37-2732B, Idaho Code);
 24 ~~(ffee)~~ ~~t~~Threats against state officials of the executive, legislative
 25 or judicial branch, felony (18-1353A, Idaho Code);
 26 ~~(ggff)~~ ~~u~~Unlawful discharge of a firearm at a dwelling house, occupied
 27 building, vehicle or mobile home (18-3317, Idaho Code);
 28 ~~(hhgg)~~ ~~u~~Unlawful possession of destructive devices (18-3319, Idaho
 29 Code);
 30 ~~(iihh)~~ ~~u~~Unlawful use of destructive device or bomb (18-3320, Idaho
 31 Code);
 32 ~~(jjii)~~ ~~a~~Atttempt (18-306, Idaho Code), conspiracy (18-1701, Idaho
 33 Code), or solicitation (18-2001, Idaho Code), to commit any of the
 34 crimes described in paragraphs (a) through ~~(iihh)~~ of this subsection.
 35 ~~(kkjj)~~ The provisions of this subsection shall apply only to those per-
 36 sons convicted of the enumerated felonies in paragraphs (a) through
 37 ~~(jjii)~~ of this subsection on or after July 1, 1991, except that per-
 38 sons convicted of the felonies enumerated in paragraphs (s) and (t) of
 39 this subsection, for any degree of murder or voluntary manslaughter,
 40 shall not be restored the right to ship, transport, possess or receive
 41 a firearm, regardless of the date of their conviction if the conviction
 42 was the result of an offense committed by use of a firearm.
 43 (3) A person not restored to the civil right to ship, transport, pos-
 44 sess or receive a firearm may make application to the commission of pardons
 45 and parole to restore the civil right to ship, transport, possess or receive
 46 a firearm. The commission shall not accept any such application until five
 47 (5) years after the date of final discharge. The commission shall conduct
 48 the proceeding upon such application pursuant to rules adopted in accordance
 49 with the law. The commission shall not restore the right to ship, transport,
 50 possess or receive a firearm to any person convicted of murder in the first

1 degree (18-4003, Idaho Code), murder in the second degree (18-4003, Idaho
 2 Code), or any felony enumerated in paragraphs (a) through (~~jjj~~ii) of subsec-
 3 tion (2) of this section, upon which the sentence was enhanced for the use of
 4 a firearm during the commission of said felony.

5 (4) Persons convicted of felonies in other states or jurisdictions
 6 shall be allowed to register and vote in Idaho upon final discharge which
 7 means satisfactory completion of imprisonment, probation and parole as the
 8 case may be. These individuals shall not have the right restored to ship,
 9 transport, possess or receive a firearm, in the same manner as an Idaho felon
 10 as provided in subsection (2) of this section.

11 SECTION 10. That Section 18-8303, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

13 18-8303. DEFINITIONS. As used in this chapter:

14 (1) "Aggravated offense" means any of the following crimes: 18-1506A
 15 (ritualized abuse of a child); 18-1508 (lewd conduct); 18-4003(d) (murder
 16 committed in the perpetration of rape); 18-4502 (first-degree kidnapping
 17 committed for the purpose of rape, committing an infamous crime against na-
 18 ture, committing any lewd and lascivious act upon any child under the age of
 19 sixteen years or for purposes of sexual gratification or arousal); 18-4503
 20 (second-degree kidnapping where the victim is an unrelated minor child and
 21 the kidnapping is committed for the purpose of rape, committing an infamous
 22 crime against nature, committing any lewd and lascivious act upon any child
 23 under the age of sixteen years or for purposes of sexual gratification or
 24 arousal); 18-6101 (rape, but excluding section 18-6101(1) where the victim
 25 is at least twelve years of age or the defendant is eighteen years of age);
 26 ~~18-6108 (male rape, but excluding section 18-6108(1) where the victim is at~~
 27 ~~least twelve years of age or the defendant is eighteen years of age);~~ 18-6608
 28 (forcible sexual penetration by use of a foreign object); 18-8602(1) (sex
 29 trafficking); and any other offense set forth in section 18-8304, Idaho
 30 Code, if at the time of the commission of the offense the victim was below the
 31 age of thirteen (13) years or an offense that is substantially similar to any
 32 of the foregoing offenses under the laws of another jurisdiction or military
 33 court or the court of another country.

34 (2) "Board" means the sexual offender management board described in
 35 section 18-8312, Idaho Code.

36 (3) "Central registry" means the registry of convicted sexual offend-
 37 ers maintained by the Idaho state police pursuant to this chapter.

38 (4) "Certified evaluator" means either a psychiatrist licensed by this
 39 state pursuant to chapter 18, title 54, Idaho Code, or a master's or doctoral
 40 level mental health professional licensed by this state pursuant to chap-
 41 ter 23, chapter 32, or chapter 34, title 54, Idaho Code. Such person shall
 42 have by education, experience and training, expertise in the assessment and
 43 treatment of sexual offenders, and such person shall meet the qualifications
 44 and shall be approved by the board to perform psychosexual evaluations in
 45 this state, as described in section 18-8314, Idaho Code.

46 (5) "Department" means the Idaho state police.

47 (6) "Employed" means full-time or part-time employment exceeding ten
 48 (10) consecutive working days or for an aggregate period exceeding thirty
 49 (30) days in any calendar year, or any employment ~~which~~ that involves coun-

1 selling, coaching, teaching, supervising or working with minors in any way
2 regardless of the period of employment, whether such employment is finan-
3 cially compensated, volunteered or performed for the purpose of any govern-
4 ment or education benefit.

5 (7) "Foreign conviction" means a conviction under the laws of Canada,
6 Great Britain, Australia or New Zealand, or a conviction under the laws of
7 any foreign country deemed by the U.S. department of state, in its country
8 reports on human rights practices, to have been obtained with sufficient
9 safeguards for fundamental fairness and due process.

10 (8) "Incarceration" means committed to the custody of the Idaho de-
11 partment of correction or department of juvenile corrections, but excluding
12 cases where the court has retained jurisdiction.

13 (9) "Jurisdiction" means any of the following: a state, the District of
14 Columbia, the commonwealth of Puerto Rico, Guam, American Samoa, the North-
15 ern Mariana Islands, the United States Virgin Islands, the federal govern-
16 ment or a federally recognized Indian tribe.

17 (10) "Minor" means an individual who has not attained the age of eigh-
18 teen (18) years.

19 (11) "Offender" means an individual convicted of an offense listed and
20 described in section 18-8304, Idaho Code, or a substantially similar offense
21 under the laws of another jurisdiction or military court or the court of an-
22 other country deemed by the U.S. department of state, in its country reports
23 on human rights practices, to have sufficient safeguards for fundamental
24 fairness and due process.

25 (12) "Offense" means a sexual offense listed in section 18-8304, Idaho
26 Code.

27 (13) "Psychosexual evaluation" means an evaluation ~~which~~ that specif-
28 ically addresses sexual development, sexual deviancy, sexual history and
29 risk of reoffense as part of a comprehensive evaluation of an offender.

30 (14) "Recidivist" means an individual convicted two (2) or more times of
31 any offense requiring registration under this chapter.

32 (15) "Residence" means the offender's present place of abode.

33 (16) "Student" means a person who is enrolled on a full-time or
34 part-time basis, in any public or private educational institution, includ-
35 ing any secondary school, trade or professional institution or institution
36 of higher education.

37 (17) "Violent sexual predator" means a person who was designated as a
38 violent sexual predator by the sex offender classification board where such
39 designation has not been removed by judicial action or otherwise.

40 SECTION 11. That Section 18-8502, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 18-8502. DEFINITIONS. As used in this chapter:

43 (1) "Criminal gang" means an ongoing organization, association, or
44 group of three (3) or more persons, whether formal or informal, that has a
45 common name or common identifying sign or symbol, whose members individually
46 or collectively engage in or have engaged in a pattern of criminal gang ac-
47 tivity, having as one (1) of its primary activities the commission of one (1)
48 or more of the criminal acts enumerated in subsection (3) of this section.

1 (2) "Criminal gang member" means any person who engages in a pattern of
2 criminal gang activity and who meets two (2) or more of the following crite-
3 ria:

4 (a) Admits to gang membership;

5 (b) Is identified as a gang member;

6 (c) Resides in or frequents a particular gang's area and adopts its
7 style of dress, its use of hand signs, or its tattoos, and associates
8 with known gang members;

9 (d) Has been arrested more than once in the company of identified gang
10 members for offenses that are consistent with usual gang activity;

11 (e) Is identified as a gang member by physical evidence such as pho-
12 tographs or other documentation; or

13 (f) Has been stopped in the company of known gang members four (4) or
14 more times.

15 (3) "Pattern of criminal gang activity" means the commission, at-
16 tempted commission or solicitation of two (2) or more of the following
17 offenses, provided that the offenses are committed on separate occasions or
18 by two (2) or more gang members:

19 (a) Robbery, as provided in section 18-6501, Idaho Code;

20 (b) Arson, as provided in sections 18-801 through 18-804, Idaho Code;

21 (c) Burglary, as provided in sections 18-1401, 18-1403, 18-1405 and
22 18-1406, Idaho Code;

23 (d) Murder or manslaughter, as provided, respectively, in sections
24 18-4001 and 18-4006, Idaho Code;

25 (e) Any violation of the provisions of chapter 27, title 37, Idaho Code;

26 (f) Any unlawful use or possession of a weapon, bomb or destructive de-
27 vice pursuant to chapter 33, title 18, Idaho Code;

28 (g) Assault and battery, as provided in chapter 9, title 18, Idaho Code;

29 (h) Criminal solicitation, as provided in section 18-2001, Idaho Code;

30 (i) Computer crime, as provided in section 18-2202, Idaho Code;

31 (j) Theft, as provided in sections 18-2401 and 18-2403, Idaho Code;

32 (k) Evidence falsified or concealed and witnesses intimidated or
33 bribed, as provided in sections 18-2601 through 18-2606, Idaho Code;

34 (l) Forgery and counterfeiting, as provided in sections 18-3601
35 through 18-3603 and sections 18-3605 through 18-3616, Idaho Code;

36 (m) Gambling, as provided in section 18-3802, Idaho Code;

37 (n) Kidnapping, as provided in sections 18-4501 through 18-4503, Idaho
38 Code;

39 (o) Mayhem, as provided in section 18-5001, Idaho Code;

40 (p) Prostitution, as provided in sections 18-5601 through 18-5614,
41 Idaho Code;

42 (q) Rape, as provided in sections 18-6101, ~~18-6108~~ and 18-6110, Idaho
43 Code;

44 (r) Racketeering, as provided in section 18-7804, Idaho Code;

45 (s) Malicious harassment, as provided in section 18-7902, Idaho Code;

46 (t) Terrorism, as provided in section 18-8103, Idaho Code;

47 (u) Money laundering and illegal investment, as provided in section
48 18-8201, Idaho Code;

49 (v) Sexual abuse of a child under the age of sixteen years, as provided
50 in section 18-1506, Idaho Code;

- 1 (w) Sexual exploitation of a child, as provided in section 18-1507,
2 Idaho Code;
- 3 (x) Lewd conduct with minor child under sixteen, as provided in section
4 18-1508, Idaho Code;
- 5 (y) Sexual battery of a minor child sixteen or seventeen years of age, as
6 provided in section 18-1508A, Idaho Code;
- 7 (z) Escape or rescue of prisoners, as provided in sections 18-2501
8 through 18-2506, Idaho Code;
- 9 (aa) Riot, as provided in sections 18-6401 and 18-6402, Idaho Code;
- 10 (bb) Disturbing the peace, as provided in section 18-6409, Idaho Code;
- 11 (cc) Malicious injury to property, as provided in section 18-7001,
12 Idaho Code;
- 13 (dd) Injuring jails, as provided in section 18-7018, Idaho Code;
- 14 (ee) Injury by graffiti, as provided in section 18-7036, Idaho Code; or
- 15 (ff) Human trafficking, as provided in sections 18-8602 and 18-8603,
16 Idaho Code.

17 SECTION 12. That Section 19-401, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 19-401. NO STATUTE OF LIMITATIONS FOR CERTAIN FELONIES. Notwithstand-
20 ing any other provision of law, there is no limitation of time within which a
21 prosecution for the following crimes must be commenced:

- 22 (1) Murder;
- 23 (2) Voluntary manslaughter;
- 24 (3) Rape pursuant to section 18-6101(3) through (910), ~~or section~~
25 ~~18-6108(3) through (7)~~, Idaho Code;
- 26 (4) Sexual abuse of a child or lewd conduct with a child as set forth in
27 sections 18-1506 and 18-1508, Idaho Code; or
- 28 (5) An act of terrorism as set forth in sections 18-8102, 18-8103,
29 18-3322, 18-3323 and 18-3324, Idaho Code.

30 SECTION 13. That Section 19-5307, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 19-5307. FINES IN CASES OF CRIMES OF VIOLENCE. (1) Irrespective of any
33 penalties set forth under state law, and in addition thereto, the court, at
34 the time of sentencing or such later date as deemed necessary by the court,
35 may impose a fine not to exceed five thousand dollars (\$5,000) against any
36 defendant found guilty of any felony listed in subsection (2) of this sec-
37 tion.

38 The fine shall operate as a civil judgment against the defendant, and
39 shall be entered on behalf of the victim named in the indictment or infor-
40 mation, or the family of the victim in cases of homicide or crimes against
41 children, and shall not be subject to any distribution otherwise required
42 in section 19-4705, Idaho Code. The clerk of the district court may collect
43 the fine in the same manner as other fines imposed in criminal cases are col-
44 lected and shall remit any money collected in payment of the fine to the vic-
45 tim named in the indictment or information or to the family of the victim in a
46 case of homicide or crimes against minor children, provided that none of the
47 provisions of this section shall be construed as modifying the provisions of

1 chapter 6, title 11, Idaho Code, chapter 10, title 55, Idaho Code, or section
2 72-802, Idaho Code. A fine created under this section shall be a separate
3 written order in addition to any other sentence the court may impose.

4 The fine contemplated in this section shall be ordered solely as a puni-
5 tive measure against the defendant, and shall not be based upon any require-
6 ment of showing of need by the victim. The fine shall not be used as a substi-
7 tute for an order of restitution as contemplated in section 19-5304, Idaho
8 Code, nor shall such an order of restitution or order of compensation en-
9 tered in accordance with section 72-1018, Idaho Code, be offset by the entry
10 of such fine.

11 A defendant may appeal a fine created under this section in the same man-
12 ner as any other aspect of a sentence imposed by the court. The imposition of
13 a fine created under this section shall not preclude the victim from seeking
14 any other legal remedy; provided that in any civil action brought by or on be-
15 half of the victim, the defendant shall be entitled to offset the amount of
16 any fine imposed pursuant to this section against any award of punitive dam-
17 ages.

18 (2) The felonies for which a fine created under this section may be im-
19 posed are those described in:

20 Section 18-805, Idaho Code (Aggravated arson);

21 Section 18-905, Idaho Code (Aggravated assault);

22 Section 18-907, Idaho Code (Aggravated battery);

23 Section 18-909, Idaho Code (Assault with intent to commit a serious
24 felony);

25 Section 18-911, Idaho Code (Battery with intent to commit a serious
26 felony);

27 Section 18-913, Idaho Code (Felonious administration of drugs);

28 Section 18-1501, Idaho Code (Felony injury to children);

29 Section 18-1506, Idaho Code (Sexual abuse of a child under the age of
30 sixteen);

31 Section 18-1506A, Idaho Code (Ritualized abuse of a child);

32 Section 18-1507, Idaho Code (Sexual exploitation of a child);

33 Section 18-1508, Idaho Code (Lewd conduct with a child under the age of
34 sixteen);

35 Section 18-1508A, Idaho Code (Sexual battery of a minor child sixteen or
36 seventeen years of age);

37 Section 18-4001, Idaho Code (Murder);

38 Section 18-4006, Idaho Code (Felony manslaughter);

39 Section 18-4014, Idaho Code (Administering poison with intent to kill);

40 Section 18-4015, Idaho Code (Assault with intent to murder);

41 Section 18-4502, Idaho Code (First degree kidnapping);

42 Section 18-5001, Idaho Code (Mayhem);

43 Section 18-5501, Idaho Code (Poisoning food, medicine or wells);

44 Section 18-6101, Idaho Code (Rape);

45 ~~Section 18-6108, Idaho Code (Male rape);~~

46 Section 18-6501, Idaho Code (Robbery).

47 SECTION 14. That Section 20-509, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 20-509. VIOLENT OFFENSES, CONTROLLED SUBSTANCES VIOLATIONS NEAR
2 SCHOOLS AND OFFENDERS. (1) Any juvenile, age fourteen (14) years to age eigh-
3 teen (18) years, who is alleged to have committed any of the following crimes
4 or any person under age fourteen (14) years who is alleged to have committed
5 any of the following crimes and, pursuant to section 20-508, Idaho Code, has
6 been ordered by the court to be held for adult criminal proceedings:

7 (a) Murder of any degree or attempted murder;

8 (b) Robbery;

9 (c) Rape as defined in section 18-6101, Idaho Code;

10 (d) ~~Male rape as defined in section 18-6108, Idaho Code;~~

11 ~~(e)~~ Forcible sexual penetration by the use of a foreign object;

12 ~~(f)~~ Infamous crimes against nature, committed by force or violence;

13 ~~(g)~~ Mayhem;

14 (h) Assault or battery with the intent to commit any of the above seri-
15 ous felonies;

16 (i) A violation of the provisions of section 37-2732(a) (1) (A), (B) or
17 (C), Idaho Code, when the violation occurred on or within one thousand
18 (1,000) feet of the property of any public or private primary or sec-
19 ondary school, or in those portions of any building, park, stadium or
20 other structure or grounds which were, at the time of the violation, be-
21 ing used for an activity sponsored by or through such a school;

22 (j) Arson in the first degree and aggravated arson;

23 shall be charged, arrested and proceeded against by complaint, indictment
24 or information as an adult. All other felonies or misdemeanors charged in
25 the complaint, indictment or information, which are based on the same act
26 or transaction or on one (1) or more acts or transactions as the violent
27 or controlled substances offense shall similarly be charged, arrested and
28 proceeded against as an adult. Any juvenile proceeded against pursuant to
29 this section shall be accorded all constitutional rights, including bail and
30 trial by jury, and procedural safeguards as if that juvenile were an adult
31 defendant.

32 (2) Once a juvenile has been formally charged or indicted pursuant to
33 this section or has been transferred for criminal prosecution as an adult
34 pursuant to the waiver provisions of section 20-508, Idaho Code, or this sec-
35 tion, the juvenile shall be held in a county jail or other adult prison facil-
36 ity unless the court, after finding good cause, orders otherwise.

37 (3) Except as otherwise allowed by subsection (4) of this section,
38 once a juvenile offender has been found to have committed the offense for
39 which the juvenile offender was charged, indicted or transferred pursuant
40 to this section or section 20-508, Idaho Code, or has been found guilty or
41 pled guilty to a lesser offense or amended charge growing out of or included
42 within the original charge, whether or not such lesser offense or amended
43 charge is included within the acts enumerated in subsection (1) of this sec-
44 tion, the juvenile offender shall thereafter be handled in every respect as
45 an adult. For any subsequent violation of Idaho law, the juvenile offender
46 shall be handled in every respect as an adult.

47 (4) Upon the conviction of a juvenile offender pursuant to this sec-
48 tion, the sentencing judge may, if a finding is made that adult sentencing
49 measures would be inappropriate:

1 (a) Sentence the convicted person in accordance with the juvenile sen-
2 tencing options set forth in this chapter; or

3 (b) Sentence the convicted person to the county jail or to the custody
4 of the state board of correction but suspend the sentence pursuant to
5 section 19-2601A, Idaho Code, and commit the defendant to the dual cus-
6 tody of the department of juvenile corrections and the state board of
7 correction.

8 SECTION 15. That Section 20-525A, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 20-525A. EXPUNGEMENT OF RECORD -- HEARING -- FINDINGS NECESSARY --
11 SPECIAL INDEX -- EFFECT OF ORDER. (1) Any person who has been adjudicated in
12 a case under this act and found to be within the purview of the act for having
13 committed a felony offense or having been committed to the department of ju-
14 venile corrections may, after the expiration of five (5) years from the date
15 of termination of the continuing jurisdiction of the court, or, in case the
16 juvenile offender was committed to the juvenile correctional center, five
17 (5) years from the date of his release from the juvenile correctional center,
18 or after reaching age eighteen (18) years, whichever occurs last, petition
19 the court for the expungement of his record. Upon the filing of the petition,
20 the court shall set a date for a hearing and shall notify the prosecuting
21 attorney of the pendency of the petition and of the date of the hearing. The
22 prosecuting attorney and any other person who may have relevant information
23 about the petitioner may testify at the hearing.

24 (2) Any person who has been adjudicated in a case under this act and
25 found to be within the purview of the act for having committed misdemeanor or
26 status offenses only and not having been committed to the department of ju-
27 venile corrections may, after the expiration of one (1) year from the date
28 of termination of the continuing jurisdiction of the court or after reaching
29 age eighteen (18) years, whichever occurs later, petition the court for the
30 expungement of his record. Upon the filing of the petition, the court shall
31 set a date for a hearing and shall notify the prosecuting attorney of the pen-
32 dency of the petition and the date of the hearing. The prosecuting attorney
33 and any other person who may have relevant information about the petitioner
34 may testify at the hearing.

35 (3) In any case where the prosecuting attorney has elected to utilize
36 the diversion process or the court orders an informal adjustment pursuant to
37 section 20-511, Idaho Code, the person may, after the expiration of one (1)
38 year from the date of termination of the continuing jurisdiction of the court
39 or after reaching age eighteen (18) years, whichever occurs later, petition
40 the court for the expungement of his record. Upon the filing of the peti-
41 tion, the court shall set a date for a hearing and shall notify the prosecut-
42 ing attorney of the pendency of the petition and the date of the hearing. The
43 prosecuting attorney and any other person who may have relevant information
44 about the petitioner may testify at the hearing.

45 (4) The court may not expunge a conviction for any of the following
46 crimes from a juvenile offender's record:

47 (a) Administering poison with intent to kill (18-4014, Idaho Code);

48 (b) Aggravated battery (18-907, Idaho Code);

49 (c) Armed robbery (chapter 65, title 18, Idaho Code);

1 (d) Arson (chapter 8, title 18, Idaho Code);
2 (e) Assault with intent to commit a serious felony (18-909, Idaho
3 Code);
4 (f) Assault with intent to murder (18-4015, Idaho Code);
5 (g) Assault or battery upon certain personnel, felony (18-915, Idaho
6 Code);
7 (h) Forcible sexual penetration by use of a foreign object (18-6608,
8 Idaho Code);
9 (i) Infamous crime against nature, committed by force or violence (18-
10 6605, Idaho Code);
11 (j) Injury to child, felony (18-1501, Idaho Code);
12 (k) Kidnapping (18-4501, Idaho Code);
13 (l) Murder of any degree (18-4001 and 18-4003, Idaho Code);
14 (m) Rape, excluding statutory rape (18-6101 and ~~18-6108~~, Idaho Code);
15 (n) Ritualized abuse of a child (18-1506A, Idaho Code);
16 (o) Sexual exploitation of a child (18-1507, Idaho Code);
17 (p) Unlawful use of destructive device or bomb (18-3320, Idaho Code);
18 (q) Voluntary manslaughter (18-4006 1., Idaho Code);
19 (r) A violation of the provisions of section 37-2732(a) (1) (A), (B) or
20 (C), Idaho Code, when the violation occurred on or within one thousand
21 (1,000) feet of the property of any public or private primary or sec-
22 ondary school, or in those portions of any building, park, stadium or
23 other structure or grounds which were, at the time of the violation, be-
24 ing used for an activity sponsored by or through such a school;
25 (s) A violation of the provisions of section 37-2732B, Idaho Code, re-
26 lated to drug trafficking or manufacturing of illegal drugs.
27 (5) If the court finds after hearing that the petitioner has not been
28 adjudicated as a juvenile offender for any of the crimes identified in sub-
29 section (4) of this section, and has not been convicted of a felony, or of a
30 misdemeanor wherein violence toward another person was attempted or commit-
31 ted since the termination of the court's jurisdiction or his release from
32 the juvenile correctional center, and that no proceeding involving such
33 felony or misdemeanor is pending or being instituted against him, and if the
34 court further finds to its satisfaction that the petitioner has been held
35 accountable, is developing life skills necessary to become a contributing
36 member of the community and that the expungement of the petitioner's record
37 will not compromise public safety, it shall order all records in the peti-
38 tioner's case in the custody of the court and all such records, including law
39 enforcement investigatory reports and fingerprint records, in the custody
40 of any other agency or official sealed; and shall further order all refer-
41 ences to said adjudication, diversion or informal adjustment removed from
42 all indices and from all other records available to the public. However, a
43 special index of the expungement proceedings and records shall be kept by the
44 court ordering expungement, which index shall not be available to the public
45 and shall be revealed only upon order of a court of competent jurisdiction.
46 Copies of the order shall be sent to each agency or official named in the
47 order. Upon the entry of the order the proceedings in the petitioner's case
48 shall be deemed never to have occurred and the petitioner may properly reply
49 accordingly upon any inquiry in the matter. Inspection of the records may
50 thereafter be permitted only by the court upon petition by the person who is

1 the subject of the records, or by any other court of competent jurisdiction,
2 and only to persons named in the petition.

3 SECTION 16. That Section 33-1208, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 33-1208. REVOCATION, SUSPENSION, DENIAL, OR PLACE REASONABLE CONDI-
6 TIONS ON CERTIFICATE -- GROUNDS. 1. The professional standards commission
7 may deny, revoke, suspend, or place reasonable conditions on any certificate
8 issued or authorized under the provisions of section 33-1201, Idaho Code,
9 upon any of the following grounds:

- 10 a. Gross neglect of duty;
- 11 b. Incompetency;
- 12 c. Breach of the teaching contract;
- 13 d. Making any material statement of fact in the application for a cer-
14 tificate, which the applicant knows to be false;
- 15 e. Revocation, suspension, denial or surrender of a certificate in an-
16 other state for any reason constituting grounds for revocation in this
17 state;
- 18 f. Conviction, finding of guilt, withheld judgment or suspended sen-
19 tence, in this or any other state of a crime involving moral turpitude;
- 20 g. Conviction, finding of guilt, withheld judgment, or suspended sen-
21 tence in this state or any other state for the delivery, manufacture or
22 production of controlled substances or simulated controlled substances
23 as those terms are defined in section 37-2701, Idaho Code;
- 24 h. A guilty plea or a finding of guilt, notwithstanding the form of the
25 judgment or withheld judgment in this or any other state, of the crime
26 of involuntary manslaughter, section 18-4006 2. or section 18-4006 3.,
27 Idaho Code;
- 28 i. Any disqualification which would have been sufficient grounds for
29 refusing to issue or authorize a certificate, if the disqualification
30 existed or had been known at the time of its issuance or authorization;
- 31 j. Willful violation of any professional code or standard of ethics or
32 conduct, adopted by the state board of education;
- 33 k. The kidnapping of a child, section 18-4503, Idaho Code;
- 34 l. Conviction, finding of guilt, withheld judgment, or suspended sen-
35 tence, in this state or any other state of any felony, the commission of
36 which renders the certificated person unfit to teach or otherwise per-
37 form the duties of the certificated person's position.

38 2. The professional standards commission shall permanently revoke any
39 certificate issued or authorized under the provisions of section 33-1201,
40 Idaho Code, and shall deny the application for issuance of a certificate of
41 a person who pleads guilty to or is found guilty of, notwithstanding the form
42 of the judgment or withheld judgment, any of the following felony offenses
43 against a child:

- 44 a. The aggravated assault of a child, section 18-905, Idaho Code, or the
45 assault with intent to commit a serious felony against a child, section
46 18-909, Idaho Code.
- 47 b. The aggravated battery of a child, section 18-907, Idaho Code, or the
48 battery with intent to commit a serious felony against a child, section
49 18-911, Idaho Code.

- 1 c. The injury or death of a child, section 18-1501, Idaho Code.
 2 d. The sexual abuse of a child under sixteen (16) years of age, section
 3 18-1506, Idaho Code.
 4 e. The ritualized abuse of a child under eighteen (18) years of age,
 5 section 18-1506A, Idaho Code.
 6 f. The sexual exploitation of a child, section 18-1507, Idaho Code.
 7 g. Lewd conduct with a child under the age of sixteen (16) years, sec-
 8 tion 18-1508, Idaho Code.
 9 h. The sexual battery of a minor child sixteen (16) or seventeen (17)
 10 years of age, section 18-1508A, Idaho Code.
 11 i. The sale or barter of a child for adoption or other purposes, section
 12 18-1511, Idaho Code.
 13 j. The murder of a child, section 18-4003, Idaho Code, or the voluntary
 14 manslaughter of a child, section 18-4006 l., Idaho Code.
 15 k. The kidnapping of a child, section 18-4502, Idaho Code.
 16 l. The importation or exportation of a juvenile for immoral purposes,
 17 section 18-5601, Idaho Code.
 18 m. The abduction of a person under eighteen (18) years of age for pros-
 19 titution, section 18-5610, Idaho Code.
 20 n. The rape of a child, section 18-6101 ~~or 18-6108~~, Idaho Code.

21 The general classes of felonies listed in subsection 2. of this section
 22 shall include equivalent laws of federal or other state jurisdictions. For
 23 the purpose of this subsection, "child" means a minor or juvenile as defined
 24 by the applicable state or federal law.

25 3. The professional standards commission may investigate and follow
 26 the procedures set forth in section 33-1209, Idaho Code, for any allegation
 27 of inappropriate conduct as defined in this section, by a holder of a cer-
 28 tificate whether or not the holder has surrendered his certificate without a
 29 hearing or failed to renew his certificate. In those cases where the holder
 30 of a certificate has surrendered or failed to renew his certificate and it
 31 was found that inappropriate conduct occurred, the commission shall record
 32 such findings in the permanent record of the individual and shall deny the
 33 issuance of a teaching certificate.

34 4. Any person whose certificate may be or has been revoked, suspended
 35 or denied under the provisions of this section shall be afforded a hearing
 36 according to the provisions of section 33-1209, Idaho Code.

37 5. The professional standards commission may deny the issuance of a
 38 certificate for any reason that would be a ground for revocation or suspen-
 39 sion.

40 SECTION 17. That Section 39-1113, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

42 39-1113. DENIAL, SUSPENSION OR REVOCATION OF LICENSE. (1) A license
 43 may be denied, suspended or revoked by the department if the department finds
 44 that the applicant or licensee does not comply with the provisions of this
 45 chapter.

46 (2) No person who pleads guilty to, has been found guilty of or received
 47 a withheld judgment for any offense involving neglect or any physical injury
 48 to, or other abuse of a child including the following offenses or a similar

1 provision in another jurisdiction, shall be eligible for a license under the
2 provisions of this chapter:

- 3 (a) Felony injury of a child, section 18-1501, Idaho Code.
- 4 (b) The sexual abuse of a child under sixteen years of age, section
5 18-1506, Idaho Code.
- 6 (c) The ritualized abuse of a child under eighteen years of age, section
7 18-1506A, Idaho Code.
- 8 (d) The sexual exploitation of a child, section 18-1507, Idaho Code.
- 9 (e) Sexual abuse of a child under the age of sixteen years, section
10 18-1506, Idaho Code.
- 11 (f) Lewd conduct with a child under the age of sixteen years, section
12 18-1508, Idaho Code.
- 13 (g) The sale or barter of a child for adoption or other purposes, sec-
14 tion 18-1511, Idaho Code.
- 15 (h) Murder in any degree, section 18-4001 or 18-4003, Idaho Code.
- 16 (i) Assault with intent to murder, section 18-4015, Idaho Code.
- 17 (j) Voluntary manslaughter, section 18-4006, Idaho Code.
- 18 (k) Rape, section 18-6101 ~~or 18-6108~~, Idaho Code.
- 19 (l) Incest, section 18-6602, Idaho Code.
- 20 (m) Forcible sexual penetration by use of foreign object, section
21 18-6608, Idaho Code.
- 22 (n) Abuse, neglect or exploitation of a vulnerable adult, section
23 18-1505, Idaho Code.
- 24 (o) Aggravated, first degree, second degree and third degree arson,
25 sections 18-801 through 18-805, Idaho Code.
- 26 (p) Crimes against nature, section 18-6605, Idaho Code.
- 27 (q) Kidnapping, sections 18-4501 through 18-4503, Idaho Code.
- 28 (r) Mayhem, section 18-5001, Idaho Code.
- 29 (s) Poisoning, section 18-4014 or 18-5501, Idaho Code.
- 30 (t) Robbery, section 18-6501, Idaho Code.
- 31 (u) Stalking in the first degree, section 18-7905, Idaho Code.
- 32 (v) Video voyeurism, section 18-6609, Idaho Code.
- 33 (w) Enticing of children, section 18-1509 or 18-1509A, Idaho Code.
- 34 (x) Inducing individuals under eighteen years of age into prostitu-
35 tion, section 18-5609, Idaho Code.
- 36 (y) Inducing person under eighteen years of age to patronize a prosti-
37 tute, section 18-5611, Idaho Code.
- 38 (z) Any felony punishable by death or life imprisonment.
- 39 (aa) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701,
40 Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to
41 commit any of the crimes designated in this subsection.
- 42 (3) No person who has pleaded guilty to, been found guilty of or re-
43 ceived a withheld judgment for any offense involving neglect or any physi-
44 cal injury to, or other abuse of a child, including the following offenses or
45 a similar provision in another jurisdiction shall be eligible for a license
46 for a period of five (5) years under the provisions of this chapter.
 - 47 (a) Aggravated assault, section 18-905, Idaho Code.
 - 48 (b) Aggravated battery, section 18-907(1), Idaho Code.
 - 49 (c) Burglary, section 18-1401, Idaho Code.
 - 50 (d) Felony theft, sections 18-2403 and 18-2407(1), Idaho Code.

- 1 (e) Forgery of a financial transaction card, section 18-3123, Idaho
2 Code.
- 3 (f) Fraudulent use of a financial transaction card or number, section
4 18-3124, Idaho Code.
- 5 (g) Forgery or counterfeiting, chapter 36, title 18, Idaho Code.
- 6 (h) Misappropriation of personal identifying information, section
7 18-3126, Idaho Code.
- 8 (i) Insurance fraud, section 41-293, Idaho Code.
- 9 (j) Damage to or destruction of insured property, section 41-294, Idaho
10 Code.
- 11 (k) Public assistance fraud, section 56-227, Idaho Code.
- 12 (l) Provider fraud, section 56-227A, Idaho Code.
- 13 (m) Attempted strangulation, section 18-923, Idaho Code.
- 14 (n) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701,
15 Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to
16 commit any of the crimes designated in this subsection.
- 17 (o) Misdemeanor injury to a child, section 18-1501(2), Idaho Code.
- 18 (4) A daycare facility license may be denied, suspended or revoked by
19 the department if the department finds that the daycare facility is not in
20 compliance with the standards provided for in this chapter or criminal ac-
21 tivity that threatens the health or safety of a child.
- 22 (5) A daycare facility license or privilege to operate a family daycare
23 home shall be denied or revoked if a registered sex offender resides on the
24 premises where daycare services are provided.
- 25 (6) The denial, suspension or revocation of a license under this chap-
26 ter may be appealed to the district court of the county in which the affected
27 daycare facility is located and the appeal shall be heard de novo in the dis-
28 trict court.

29 SECTION 18. That Section 72-1025, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 72-1025. FINES -- REIMBURSEMENTS -- PRIORITY -- DISPOSITION. (1) In
32 addition to any other fine which may be imposed upon each person found guilty
33 of criminal activity, the court shall impose a fine or reimbursement accord-
34 ing to the following schedule, unless the court orders that such fine or re-
35 imbursement be waived only when the defendant is indigent and at the time of
36 sentencing shows good cause for inability to pay and written findings to that
37 effect are entered by the court:

38 (a) For each conviction or finding of guilt of each felony count, a fine
39 or reimbursement of not less than seventy-five dollars (\$75.00) per
40 felony count;

41 (b) For each conviction or finding of guilt of each misdemeanor count, a
42 fine or reimbursement of thirty-seven dollars (\$37.00) per misdemeanor
43 count;

44 (c) In addition to any fine or reimbursement ordered under ~~subsection~~
45 paragraph (a) or (b) above of this subsection, the court shall impose
46 a fine or reimbursement of not less than three hundred dollars (\$300)
47 per count for any conviction or finding of guilt for any sex offense,
48 including, but not limited to, offenses pursuant to sections 18-1506,

1 18-1507, 18-1508, 18-1508A, 18-6101, ~~18-6108~~, 18-6605 and 18-6608,
2 Idaho Code.

3 (2) The fine or reimbursement imposed under the provisions of this sec-
4 tion shall have priority over all other judgments of the court, except an or-
5 der to pay court costs.

6 (3) Notwithstanding the provisions of section 19-4705, Idaho Code, the
7 fines or reimbursements imposed under the provisions of this section shall
8 be paid into the crime victims compensation account.