



# Idaho Prosecuting Attorneys Association

Holly Koole – Legislative Counsel (208) 631-4931 [hkoole@adaweb.net](mailto:hkoole@adaweb.net)

## 2016 LEGISLATIVE SESSION REVIEW



*Caveat: this document includes brief summaries of amendments/enactments. Please review the bill, statute, or amended statute for a complete/exhaustive statement of all detailed changes to the Idaho Code. Both the bill number and code section(s) have been included for your convenience. (This is not an exhaustive summary of all the legislation passed this session.) All the laws are easily accessible on: [www.legislature.idaho.gov](http://www.legislature.idaho.gov) click on either “bill center” or “enacted legislation”*

# CRIMINAL JUSTICE LEGISLATION

## House Bills

### I.C. § 25-3502, 3504, 3520 and 20-511A – Animal Cruelty

**H 399**

<https://www.legislature.idaho.gov/legislation/2016/H0399.pdf>

- Representative Rubel
- Clarifies that pet equines not used for any commercial activity are companion animals.
- Provides that the knowing and willful torture of a companion animal is a felony upon a second offense.
- Provides that the knowing and willful torture of companion animal is a felony upon a first offense if committed in the presence of a minor.
- Provides that a person convicted of animal cruelty may be ordered to participate in animal cruelty prevention or education programs
- Health and Welfare can submit a mental health assessment

### I.C. § 37-2738 – Withheld Judgments in Specialty Courts

**H 429**

<https://www.legislature.idaho.gov/legislation/2016/H0429.pdf>

- Idaho Supreme Court
- Allows Court to grant withheld judgments in specialty court cases.
- Under current law, withheld judgments may be granted in these cases only if the defendant does not have a prior finding of guilt for any felony, controlled substance, driving under the influence, or driving without privileges offense; if the court has an abiding conviction that the defendant will successfully complete probation; and if the defendant has successfully cooperated with law enforcement in the prosecution of drug related crimes.
- Many district judges have voiced support for removing these conditions for withheld judgments for problem-solving court participants. They believe that for some defendants who truly merit withheld judgments, this will induce participation in and successful completion of problem-solving court programs and enhance the prospects for rehabilitation. Whether to grant a withheld judgment in a particular case will remain within the discretion of the court based on the record in the case and after input from the prosecutor and defense counsel.

### I.C. § 19-870 – State Appellate Public Defender

**H 439**

<https://www.legislature.idaho.gov/legislation/2016/H0439.pdf>

- Representative Christy Perry
- Clarifies the role of the State Appellate Public Defender's (SAPD) office in regard to representation in post-conviction relief, as well as, felony appeals.

**I.C. §18-1502, 20-505, 20-516, 23-604, 23-949, 31-3201, 31-3201A, 3201H, 31-3204, 72-1025, 72-1105 – Minor in Possession Penalties**

**H 494**

<https://www.legislature.idaho.gov/legislation/2016/H0494E1.pdf>

- Representative Luker/Senator McKenzie
- Reclassifies a first offense for under age alcohol possession or consumption from a misdemeanor to an infraction.
- Clarifies that section 23-604 Idaho Code governs consumption, possession and purchase offenses while section 23-949, Idaho Code governs underage selling, serving and dispensing offenses. Reference to infraction offenses for alcohol age violations are consolidated into section 18-1502, Idaho Code.
- The infraction offense under section 23-604, Idaho Code is treated as a status offense under section 20-516, Idaho Code allowing a peace officer to place a juvenile in a juvenile shelter care facility, but not a jail facility.
- Provision is also made for payment of certain fees normally associated with a misdemeanor offense to avoid diversion of funds away from the Crime Victims' Fund and Drug and Mental Health Courts normally funded through court fees on misdemeanors and felonies.

**I.C. § 18-1502 – Expungement of Record for Minor in Possession Convictions**

**H 495**

<https://www.legislature.idaho.gov/legislation/2016/H0495.pdf>

- Representative Gannon/Representative Holtclaw
- Provides that a one-time violator of 18-1502, Idaho Code, for the use, possession, or dispensing of alcohol products by a person under 21, may have a finding of guilt vacated and the court records sealed if the violator does not have an alcohol or drug related finding of guilt within 5 years following the violation.

**I.C. § 19-850, 851, 853, 862, 864 and New Section 19-862A – Public Defense Interim Committee**

**H 504**

<https://www.legislature.idaho.gov/legislation/2016/H0504.pdf>

- Representative Christy Perry
- Creates a trial-level indigent defense services by providing funding to counties and creating standards with which counties must comply. It is the product of the Public Defense Reform Interim Committee, which studied the issue for three years at the direction of the Legislative Council. The legislation establishes the guiding principles for provision of public defender services in Idaho.
- Law requires the Public Defense Commission to promulgate rules regarding: procedures for the creation, oversight, implementation, enforcement, and modification of indigent defense standards; requirements for contracts between counties and private attorneys for the provision of indigent defense services; data reporting requirements; procedures for grant applications by which counties can apply for state funds to offset the cost of compliance with indigent defense standards; and procedures for administrative review of commission decisions.

- Law states “there should be reasonable equity between defending attorneys and prosecuting attorneys with respect to re-sources, staff and facilities.”

### **I.C. § 16-1644 New Section – Foster Care Reporting**

#### **H 523**

<https://www.legislature.idaho.gov/legislation/2016/H0523.pdf>

- Representative Christy Perry/Representative Mike Moyle
- The intent of this legislation is to request the Idaho Department of Health and Welfare present an annual report to the germane committees of the Idaho Legislature. The purpose is to highlight and raise awareness of actions being taken to create positive outcomes for our children in our state foster care system.

### **I.C. §25-2805, 25-2808, and New Sections 25-2809, 25-2810, 25-2811, 25-2812 – At Risk Dogs**

#### **H 525**

<https://www.legislature.idaho.gov/legislation/2016/H0525E1.pdf>

- Senator Rice
- Law amends sections of Title 25 Chapter 28, Idaho Code relating to dogs which injure humans. Provides statewide minimum standards and definitions while allowing counties to be restrictive.
- Creates a new category of "at risk" dogs is added, and the existing term "vicious" is replaced by dangerous dog. Liabilities and penalties are provided for dog attacks on humans.
- Amendments give the Court more discretion in the management of dangerous dogs and the ability to differentiate less severe behavior from more dangerous behavior and provide appropriate conditions for keeping the offending dog to ensure public safety. Court ordered conditions for keeping offending dogs expire after a period of time providing no further incidents occur.
- The Court is provided the discretion to order a dog destroyed on a first unprovoked incident resulting in severe injury or death of a human. The statue provides that under certain circumstances, aggressive acts by dogs are justifiable, and the dog and its owner are exempt from prosecution. Personal responsibility is emphasized as well as the rights of both owners and victims of at risk or dangerous dogs. Misdemeanor penalties are introduced for dangerous dog violations.

### **I.C. § 67-2919 New Section – Testing of Rape Kits**

#### **H 528**

<https://www.legislature.idaho.gov/legislation/2016/H0528.pdf>

- Representative Wintrow
- Law creates and codifies a system to be used by law enforcement, health care facilities, and the Idaho State Police (ISP) Forensics Laboratory in the processing of sexual assault evidence kits in the State of Idaho.
- Mandates that all sexual assault evidence kits collected in this state shall be processed by the Idaho state police forensic services laboratory except when there is no evidence to support a crime being committed, when it is no longer being investigated as a crime or when an adult victim expressly indicates that no further forensic examination or testing

occur. Any sexual assault evidence kit that is not examined and tested shall be independently reviewed by the county prosecutor.

- Creates a system of tracking and reporting to require an annual audit and report about the collection of evidence and testing given to the Idaho State Legislature on an annual basis. Currently there are not statutes that address sexual assault kit evidence collection in our state. This legislation would provide a consistent process to better support victims, law enforcement, health care facilities, and the forensics laboratory.

### **I.C. §18-1507A – Sexting**

#### **H 555**

<https://www.legislature.idaho.gov/legislation/2016/H0555E1.pdf>

- Representative Greg Chaney
- Creates a new section to deal with juveniles and “sexting.”
- New language –
  - A minor child who, without being induced by coercion, manipulation or fraud, creates or causes to be created any photographic, electronic or video content of said minor child that would be characterized under any of the classifications defined in section 18-1507(1)(c) through (j), Idaho Code, and knowingly and willfully distributes it in such a way and through such a medium that the minor intended or had reason to believe that multiple parties would receive or have access to the image: Is guilty of a misdemeanor on the first adjudicated offense; and Is guilty of a felony on the second or subsequent adjudicated offense.
  - A minor who is found to be in knowing and willful possession of the content created and sent as described in subsection (1) or (2) of this section is guilty of a misdemeanor if the content depicts a minor who is not greater than three (3) years younger than the minor who is found to be in possession.
  - A minor who is found to be in knowing and willful possession of content described in this subsection that depicts a minor greater than 2 three (3) years younger than themselves is guilty of a violation of section 3 18-1507(2)(a), Idaho Code.
  - A minor who is found to be in possession of content described in subsection (1) or (2) of this section who knowingly and willfully transmits or 6 displays the image to one (1) or more third parties Is guilty of a misdemeanor on the first adjudicated offense; and Is guilty of a felony on any second or subsequent adjudicated offense.
  - A minor who receives content under circumstances described in subsection (1) or (2) of this section and distributes or threatens to distribute the image for the purposes of coercing any action, causing any embarrassment or otherwise controlling or manipulating the sender is guilty of a felony.
  - A minor who receives content under circumstances described in subsection (1) or (2) of this section and distributes the image to a parent, guardian, one having custody of the minor or a law enforcement official for the purpose of reporting the activity is not guilty of a crime under the provisions of this section. Proceedings

for a violation of the provisions of this section shall fall under the jurisdiction of the juvenile corrections act pursuant to section 20-505(1), Idaho Code.

- Governors allows bill to become law without his signature and asks legislature to take more action next session. <http://media.spokesman.com/documents/2016/04/Sexting-statement.pdf>

**I.C. §16-1506, 1619, 1620, 1622, 1629 – Foster Care**

**H 556**

<https://www.legislature.idaho.gov/legislation/2016/H0556E1.pdf>

- Representative Perry/Representative Moyle
- Implements policy changes in regard to the foster care program.
- Attempts to create more rights and placement priority for foster care parents.
- Please read this legislation because there are some rather large changes. Proponents intent is to enhance court participation in the decision making process regarding adoption choices and placement. Also outlines notice requirements for moving foster children to new foster homes under certain circumstances.

**I.C. §18-310, 1602, 2005, 6101, 6107, 6108, 8303, 8304, 8502, 19-401, 19-5307, 20-509, 20-525A, 33-1208, 39-1113, 72-1025 – Idaho's Rape Statutes**

**H 580**

<https://www.legislature.idaho.gov/legislation/2016/H0580.pdf>

- Idaho Criminal Justice Commission
- New law addresses Idaho's current criminal code involving offenses of a sexual nature. A recent decision of the Idaho Supreme Court raised questions about Idaho's rape Statute, Idaho Code § 18-6101. In State v. Jones, 154 Idaho 412 (2013), the Idaho Supreme Court recognized, "Approximately thirty-two states, the Model Penal Code, the District of Columbia Code, and the Uniform Code of Military Justice have done away with the resistance requirement completely, allowing prosecutors to establish a rape without any resistance present."
- Idaho's statute still required some form of resistance from the victim. Amendment provides that a victim of rape need not offer resistance where the victim has a well-founded belief that resistance would be futile or that resistance would result in the use of force or violence.
- Amends Idaho Code § 18-6101 to replace the current female pronouns used for a victim with gender-neutral language. This recognizes the reality that not all rape victims are female, and renders Idaho's rape law the same for both men and women.

## **Senate Bills**

### **I.C. §20-511 – Informal Adjustment**

**S 1235**

<https://www.legislature.idaho.gov/legislation/2016/S1235.pdf>

- Juvenile Department of Corrections
- Amends section 20-511 to define when an informal adjustment can occur and be dismissed, and will align with common practice. Currently, the statute states that the informal adjustment of the petition may only occur when the juvenile enters an admission at the admission or denial hearing when, in fact, that admission may occur at any time during the court process.
- Amends Section (3) to remove the need for the juvenile to petition the court for dismissal of an informal adjustment case and requiring the case to be dismissed by the court if all the three requirements of 20-511(3) have been found met.

### **I.C. §31-2002 – Investigations of Public Officials by AG**

**S 1255**

<https://www.legislature.idaho.gov/legislation/2016/S1255.pdf>

- Senator Rice
- Amends current law regarding the investigative power of the state attorney general as to elected officials of the counties of Idaho.
- Current law has proved problematic, in that the current law only allows for partial prosecutorial power, which means that the investigation must be passed on to another official for further investigation and legal determinations.
- In addition, the current law mandates that the attorney general must involve himself in civil claims, such as employment disputes or matters under the jurisdiction of the human rights commission. This is outside the normal function of a criminal law enforcement agency, and in fact, the law provides no way for the attorney general to actually proceed on behalf of one party or another in civil matters.
- Law rectifies these issues and allows the attorney general full prosecutorial power and discretion in criminal matters involving county elected officials. In addition, relieves the attorney general from becoming involved in county civil matters.

### **I.C. §25-3520A – PSI in Animal Cruelty Cases**

**S 1309**

<https://www.legislature.idaho.gov/legislation/2016/S1309.pdf>

- Senator Rice
- Creates guidelines for presentence psychological evaluations in animal cruelty cases

### **I.C. §18-1505 – Definition of Vulnerable Adult**

**S1327**

<https://www.legislature.idaho.gov/legislation/2016/S1327.pdf>

- Idaho Supreme Court
- The crime of abuse or neglect of a vulnerable adult is defined in I.C. § 18-1505. The offense is a felony if the abuse or neglect is likely to produce great bodily harm or death; otherwise it is a misdemeanor. However, the statute defines "neglect" as a failure of a

caretaker to provide certain basic needs "in such a manner as to jeopardize the life, health and safety of the vulnerable adult." The conjunctive "and" means that proving neglect requires a showing that the life of the vulnerable adult was jeopardized, in addition to his or her health or safety. This appears to make all neglect of a vulnerable adult a felony. It seems more likely that the Legislature intended that acts jeopardizing the health or safety of a vulnerable adult, but not necessarily his or her life, would also be an offense that would be punishable as a misdemeanor.

- Law corrects the statute by requiring only that the act of neglect jeopardized the life, health or safety of the vulnerable adult.

### **I.C. §16-1602, 1619, 1621, 1622, 1623 and 16-2002 – Child Protective Act**

#### **S 1328**

<https://www.legislature.idaho.gov/legislation/2016/S1328E1.pdf>

- Idaho Supreme Court
- Law makes the following changes to the Child Protective Act:
  - Clarifies the possible outcomes at shelter care hearings.
  - Clarifies the procedure for redispotion hearings.
  - Promotes educational stability for children in foster care, by requiring the Department of Health and Welfare (DHW) to report and the court to inquire about efforts to maintain foster children in the same school.
  - Addresses concerns about treatment of children in foster care with psychotropic drugs, by requiring DHW to report and the court to inquire when foster children are receiving treatment with psychotropic drugs.
  - Promotes connections between siblings, requiring DHW to report and the court to inquire about efforts to place siblings in the same foster home, or efforts for visitation among siblings in different foster placements, unless joint placement or visitation is not in the best interest of one or more of the siblings.
  - Clarifies that DHW is to prepare a transition plan for assisting the youth with the transition to successful adulthood beginning at age 14.
  - Requires DHW to inform foster youth about their rights, and document that the information has been provided.
  - Provides for the court to ask the youth about the youth's desires regarding permanency.
  - Promotes outcomes for foster youth 16 and older who have a permanency goal of another permanent planned living arrangement, by encouraging enrichment activities and clarifying DHW's duty to make efforts to finalize a more permanent goal for the youth.
  - Avoids disruptions in child protection cases and placement of Indian children by requiring DHW to report and the court to make findings about DHW's efforts to identify Indian children as early as possible in a child protection case.
  - Amends the definition of a protective order to clarify that protective orders are not limited to orders issued prior to an adjudicatory hearing.

### **I.C. § 20-229B – Parole Violations**

#### **S 1343**

<https://www.legislature.idaho.gov/legislation/2016/S1343.pdf>



- Parole Commission
- Amendment allows the hearing officer to not impose the 90/180 day sanctions where the violation is sexual or violent in nature, or the violator has been formally charged with a new felony or violent misdemeanor to remain in custody for safety of the public while the charge is being adjudicated.

**I.C. §19-862, 31-3403, 63-805 – Public Defense Fund**

**S 1361**

<https://www.legislature.idaho.gov/legislation/2016/S1361.pdf>

- Senator Todd Lakey
- Amendment provides that counties may cover the cost of public defense services for indigent individuals out of the justice fund, the current expense fund or the indigent fund. This clarifies a difference of interpretation among some counties but more importantly provides the countries with additional needed flexibility to pay for the required public defense services from one or more of these funds.

**I.C. §18-7907 New Section – Civil Protection Orders**

**S 1373**

<https://www.legislature.idaho.gov/legislation/2016/S1373.pdf>

- Senator Burgoyne
- Law permits a victim of malicious harassment, stalking or telephone harassment, as defined in Idaho law, to file a civil petition in court seeking a protective order on behalf of himself, his children or his ward.
- The court may grant the petition and issue a protective order if it is shown that such conduct occurred within ninety (90) days immediately preceding the filing of the petition and that such conduct is likely to occur in the future thereby causing irreparable injury. The protective order may not exceed one (1) year and may
  - (a) Direct the respondent to refrain from such conduct;
  - (b) Order the respondent to refrain from contacting the protected person; and
  - (c) Grant such other relief and impose such other restrictions as the court deems proper, including a requirement that the respondent not knowingly remain within a distance of up to 1,500 feet of the protected person.
- Other provisions include
  - (i) permitting the order to be renewed in one (1) year increments for good cause shown;
  - (ii) waiving the court filing fee so Idaho continues to receive federal victim services funding; and
  - (iii) making it a misdemeanor to violate a protective order.

**I.C. §18-3302, 3302C**

**S 1389**

<https://www.legislature.idaho.gov/legislation/2016/S1389.pdf>

- Senator McKenzie/Representatives Bedke, Moyle, Loertscher, Boyle
- Amends law to allow citizens to carry concealed within the city limits without a permit