

IN THE SENATE

SENATE BILL NO. 1385

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO RAPE; AMENDING SECTION 18-6101, IDAHO CODE, TO REVISE  
2 THE CIRCUMSTANCES THAT CONSTITUTE RAPE, TO PROVIDE THAT CERTAIN  
3 CIRCUMSTANCES CONSTITUTING RAPE DO NOT AFFECT CERTAIN OTHER PROVISIONS  
4 OF LAW AND TO SPECIFY THE METHOD FOR DETERMINING A CERTAIN AGE  
5 DIFFERENCE; AMENDING SECTION 18-6107, IDAHO CODE, TO PROVIDE CORRECT  
6 CODE REFERENCES; AMENDING SECTION 18-6108, IDAHO CODE, TO REVISE  
7 THE CIRCUMSTANCES THAT CONSTITUTE MALE RAPE, TO PROVIDE THAT CERTAIN  
8 CIRCUMSTANCES CONSTITUTING MALE RAPE DO NOT AFFECT CERTAIN OTHER  
9 PROVISIONS OF LAW AND TO SPECIFY THE METHOD FOR DETERMINING A CERTAIN  
10 AGE DIFFERENCE; AMENDING SECTION 18-609A, IDAHO CODE, TO PROVIDE  
11 CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING  
12 SECTION 18-609G, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND  
13 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-8303, IDAHO CODE,  
14 TO REVISE A DEFINITION AND TO MAKE A TECHNICAL CORRECTION; AMENDING  
15 SECTION 18-8304, IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONS ARE NOT  
16 SUBJECT TO THE APPLICATION OF THE SEXUAL OFFENDER REGISTRATION ACT, TO  
17 PROVIDE CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION;  
18 AMENDING SECTION 18-8314, IDAHO CODE, TO PROVIDE AN EXCEPTION RELATING  
19 TO THE DUTIES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD AND TO MAKE  
20 TECHNICAL CORRECTIONS; AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE  
21 CORRECT CODE REFERENCES; AND AMENDING SECTION 20-509, IDAHO CODE, TO  
22 PROVIDE THAT CERTAIN JUVENILES WHO HAVE ALLEGEDLY COMMITTED MALE RAPE  
23 SHALL BE CHARGED, ARRESTED AND PROCEEDED AGAINST AS AN ADULT, TO PROVIDE  
24 A CORRECT CODE REFERENCE AND TO DELETE REFERENCE TO STATUTORY RAPE.  
25

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

27 SECTION 1. That Section 18-6101, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 18-6101. RAPE DEFINED. Rape is defined as the penetration, however  
30 slight, of the oral, anal or vaginal opening with the perpetrator's penis  
31 accomplished with a female under any one (1) of the following circumstances:

32 ~~1-(1)~~ 1-(1) Where the female is under the age of ~~eighteen~~ sixteen (16) years  
33 and the perpetrator is eighteen (18) years of age or older.

34 ~~2-(2)~~ 2-(2) Where the female is sixteen (16) or seventeen (17) years of age  
35 and the perpetrator is three (3) years or more older than the female.

36 (3) Where she is incapable, through any unsoundness of mind, due to any  
37 cause including, but not limited to, mental illness, mental deficiency or  
38 developmental disability, whether temporary or permanent, of giving legal  
39 consent.

40 ~~3-(4)~~ 3-(4) Where she resists but her resistance is overcome by force or  
41 violence.

1        ~~4.~~(5) Where she is prevented from resistance by the infliction,  
2 attempted infliction, or threatened infliction of bodily harm, accompanied  
3 by apparent power of execution; or is unable to resist due to any  
4 intoxicating, narcotic, or anaesthetic substance.

5        ~~5.~~(6) Where she is at the time unconscious of the nature of the act. As  
6 used in this section, "unconscious of the nature of the act" means incapable  
7 of resisting because the victim meets one (1) of the following conditions:

8            (a) Was unconscious or asleep;

9            (b) Was not aware, knowing, perceiving, or cognizant that the act  
10 occurred.

11        ~~6.~~(7) Where she submits under the belief that the person committing  
12 the act is her husband, and the belief is induced by artifice, pretense or  
13 concealment practiced by the accused, with intent to induce such belief.

14        ~~7.~~(8) Where she submits under the belief, instilled by the actor, that  
15 if she does not submit, the actor will cause physical harm to some person  
16 in the future; or cause damage to property; or engage in other conduct  
17 constituting a crime; or accuse any person of a crime or cause criminal  
18 charges to be instituted against her; or expose a secret or publicize an  
19 asserted fact, whether true or false, tending to subject any person to  
20 hatred, contempt or ridicule.

21 The provisions of subsections (1) and (2) of this section shall not affect  
22 the age requirements in any other provision of law, unless otherwise  
23 provided in any such law. Further, for the purposes of subsection (2) of this  
24 section, in determining whether the perpetrator is three (3) years or more  
25 older than the female, the difference in age shall be measured from the date  
26 of birth of the perpetrator to the date of birth of the female.

27        SECTION 2. That Section 18-6107, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29        18-6107. RAPE OF SPOUSE. No person shall be convicted of rape for any  
30 act or acts with that person's spouse, except under the circumstances cited  
31 in ~~paragraphs 3. and 4.~~ subsections (4) and (5) of section 18-6101, Idaho  
32 Code.

33        SECTION 3. That Section 18-6108, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35        18-6108. MALE RAPE. Male rape is defined as the penetration, however  
36 slight, of the oral or anal opening of another male, with the perpetrator's  
37 penis, for the purpose of sexual arousal, gratification or abuse, under any  
38 of the following circumstances:

39        ~~1.~~(1) Where the victim is under the age of sixteen (16) years and the  
40 perpetrator is eighteen (18) years of age or older.

41        (2) Where the victim is sixteen (16) or seventeen (17) years of age and  
42 the perpetrator is three (3) years or more older than the victim.

43        (3) Where the victim is incapable, through any unsoundness of mind,  
44 whether temporary or permanent, of giving consent.

45        ~~2.~~(4) Where the victim resists but his resistance is overcome by force  
46 or violence.

1       ~~3.~~(5) Where the victim is prevented from resistance by threats of  
2 immediate and great bodily harm, accompanied by apparent power of execution.

3       ~~4.~~(6) Where the victim is prevented from resistance by the use of any  
4 intoxicating, narcotic, or anaesthetic substance administered by or with  
5 the privity of the accused.

6       ~~5.~~(7) Where the victim is at the time unconscious of the nature of the  
7 act, and this is known to the accused.

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

14       SECTION 4. That Section 18-609A, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16       18-609A. CONSENT REQUIRED FOR ABORTIONS FOR MINORS. (1) Except as  
17 otherwise provided in this section, a person shall not knowingly perform an  
18 abortion on a pregnant unemancipated minor unless the attending physician  
19 has secured the written consent from one (1) of the minor's parents or the  
20 minor's guardian or conservator.

21       (2) A judge of the district court shall, on petition or motion, and  
22 after an appropriate hearing, authorize a physician to perform the abortion  
23 if the judge determines, by clear and convincing evidence, that:

24       (a) The pregnant minor is mature and capable of giving informed consent  
25 to the proposed abortion; or

26       (b) The performance of an abortion would be in her best interests.

27       (3) The pregnant minor may participate in the court proceedings on her  
28 own behalf. The court may appoint a guardian ad litem for her. The court  
29 shall provide her with counsel unless she appears through private counsel.

30       (4) Proceedings in the court under this section shall be closed and have  
31 precedence over other pending matters. A judge who conducts proceedings  
32 under this section shall make in writing specific factual findings and legal  
33 conclusions supporting the decision and shall order a confidential record  
34 of the evidence to be maintained including the judge's own findings and  
35 conclusions. The minor may file the petition using a fictitious name. All  
36 records contained in court files of judicial proceedings arising under the  
37 provisions of this section shall be confidential and exempt from disclosure  
38 pursuant to section 9-340G, Idaho Code. Dockets and other court records  
39 shall be maintained and court proceedings undertaken so that the names and  
40 identities of the parties to actions brought pursuant to this section will  
41 not be disclosed to the public.

42       (5) The court shall hold the hearing within forty-eight (48) hours,  
43 excluding weekends and holidays, after the petition is filed, and shall  
44 issue its ruling at the conclusion of the hearing. If the court fails to  
45 issue its ruling at the conclusion of the hearing, the petition is deemed to  
46 have been granted and the consent requirement is waived.

47       (6) An expedited confidential appeal is available to a pregnant  
48 minor for whom the court denies an order authorizing an abortion without  
49 parental consent. A minor shall file her notice of appeal within five (5)

1 days, excluding weekends and holidays, after her petition was denied by  
 2 the district court. The appellate court shall hold the hearing within  
 3 forty-eight (48) hours, excluding weekends and holidays, after the notice  
 4 of appeal is filed and shall issue its ruling at the conclusion of the  
 5 hearing. If the appellate court fails to issue its ruling at the conclusion  
 6 of the hearing, the petition is deemed to have been granted and the consent  
 7 requirement is waived. Filing fees are not required of the pregnant minor at  
 8 either the district court or the appellate level.

9 (7) Parental consent or judicial authorization is not required under  
 10 this section if either:

11 (a) The pregnant minor certifies to the attending physician that the  
 12 pregnancy resulted from rape as defined in section 18-6101, Idaho Code,  
 13 excepting subsections (1-) and (2) thereof, or sexual conduct with the  
 14 minor by the minor's parent, stepparent, uncle, grandparent, sibling,  
 15 adoptive parent, legal guardian or foster parent.

16 (b) A medical emergency exists for the minor and the attending  
 17 physician records the symptoms and diagnosis upon which such judgment  
 18 was made in the minor's medical record.

19 SECTION 5. That Section 18-609G, Idaho Code, be, and the same is hereby  
 20 amended to read as follows:

21 18-609G. STATISTICAL RECORDS. (1) The bureau of vital statistics of  
 22 the department of health and welfare shall, in addition to other information  
 23 required pursuant to section 39-261, Idaho Code, require the complete and  
 24 accurate reporting of information relevant to each abortion performed upon a  
 25 minor which shall include, at a minimum, the following:

26 (a) Whether the abortion was performed following the physician's  
 27 receipt of:

28 (i) The written informed consent of a parent, guardian or  
 29 conservator and the minor; or

30 (ii) The written informed consent of an emancipated minor for  
 31 herself; or

32 (iii) The written informed consent of a minor for herself pursuant  
 33 to a court order granting the minor the right to self-consent; or

34 (iv) The court order which includes a finding that the performance  
 35 of the abortion, despite the absence of the consent of a parent, is  
 36 in the best interests of the minor; or

37 (v) Certification from the pregnant minor to the attending  
 38 physician pursuant to section 18-609A, Idaho Code, that parental  
 39 consent is not required because the pregnancy resulted from rape  
 40 as defined in section 18-6101, Idaho Code, excepting subsections  
 41 (1-) and (2) thereof, or sexual conduct with the minor by  
 42 the minor's parent, stepparent, uncle, grandparent, sibling,  
 43 adoptive parent, legal guardian or foster parent.

44 (b) If the abortion was performed due to a medical emergency and  
 45 without consent from a parent, guardian or conservator or court order,  
 46 the diagnosis upon which the attending physician determined that the  
 47 abortion was immediately necessary due to a medical emergency.

48 (2) The knowing failure of the attending physician to perform any one  
 49 (1) or more of the acts required under this section is grounds for discipline

1 pursuant to section 54-1814(6), Idaho Code, and shall subject the physician  
2 to assessment of a civil penalty of one hundred dollars (\$100) for each month  
3 or portion thereof that each such failure continues, payable to the bureau  
4 of vital statistics of the department of health and welfare, but such failure  
5 shall not constitute a criminal act.

6 SECTION 6. That Section 18-8303, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 18-8303. DEFINITIONS. As used in this chapter:

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

27 (2) "Board" means the sexual offender classification board described  
28 in section 18-8312, Idaho Code.

29 (3) "Central registry" means the registry of convicted sexual  
30 offenders maintained by the Idaho state police pursuant to this chapter.

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

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

40 (6) "Employed" means full-time or part-time employment exceeding  
41 ten (10) consecutive working days or for an aggregate period exceeding  
42 thirty (30) days in any calendar year, or any employment which involves  
43 counseling, coaching, teaching, supervising or working with minors in any  
44 way regardless of the period of employment, whether such employment is  
45 financially compensated, volunteered or performed for the purpose of any  
46 government or education benefit.

47 (7) "Incarceration" means committed to the custody of the Idaho  
48 department of correction or department of juvenile corrections, but  
49 excluding cases where the court has retained jurisdiction.

1 (8) "Offender" means an individual convicted of an offense listed and  
2 described in section 18-8304, Idaho Code, or a substantially similar offense  
3 under the laws of another state or in a federal, tribal or military court or  
4 the court of another country.

5 (9) "Offense" means a sexual offense listed in section 18-8304, Idaho  
6 Code.

7 (10) "Predatory" means actions directed at an individual who was  
8 selected by the offender for the primary purpose of engaging in illegal  
9 sexual behavior.

10 (11) "Psychosexual evaluation" means an evaluation which specifically  
11 addresses sexual development, sexual deviancy, sexual history and risk of  
12 reoffense as part of a comprehensive evaluation of an offender.

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

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

16 (14) "Student" means a person who is enrolled on a full-time or  
17 part-time basis, in any public or private educational institution,  
18 including any secondary school, trade or professional institution or  
19 institution of higher education.

20 (15) "Violent sexual predator" means a person who has been convicted of  
21 an offense listed in section 18-8314, Idaho Code, and who has been determined  
22 to pose a high risk of committing an offense or engaging in predatory sexual  
23 conduct.

24 SECTION 7. That Section 18-8304, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26 18-8304. APPLICATION OF CHAPTER. (1) The provisions of this chapter  
27 shall apply to any person who:

28 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a  
29 solicitation, or a conspiracy to commit a crime provided for in section  
30 18-909 (assault with attempt to commit rape, infamous crime against  
31 nature, or lewd and lascivious conduct with a minor, but excluding  
32 mayhem, murder or robbery), 18-911 (battery with attempt to commit  
33 rape, infamous crime against nature, or lewd and lascivious conduct  
34 with a minor, but excluding mayhem, murder or robbery), 18-919 (sexual  
35 exploitation by a medical care provider), 18-1505B (sexual abuse and  
36 exploitation of a vulnerable adult), 18-1506 (sexual abuse of a child  
37 under sixteen years of age), 18-1506A (ritualized abuse of a child),  
38 18-1507 (sexual exploitation of a child), 18-1507A (possession of  
39 sexually exploitative material for other than a commercial purpose),  
40 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of  
41 a minor child sixteen or seventeen years of age), 18-1509A (enticing a  
42 child over the internet), 18-4003(d) (murder committed in perpetration  
43 of rape), 18-4116 (indecent exposure, but excluding a misdemeanor  
44 conviction), 18-4502 (first degree kidnapping committed for the  
45 purpose of rape, committing the infamous crime against nature or  
46 for committing any lewd and lascivious act upon any child under the  
47 age of sixteen, or for purposes of sexual gratification or arousal),  
48 18-4503 (second degree kidnapping where the victim is an unrelated  
49 minor child), 18-5609 (inducing person under eighteen years of age into

1 prostitution), 18-6101 (rape, but excluding 18-6101~~(1-)~~ where the  
2 defendant is eighteen years of age ~~or younger~~ or where the defendant is  
3 exempted under subsection (4) of this section), 18-6108 (male rape, but  
4 excluding 18-6108(1) where the defendant is eighteen years of age or  
5 where the defendant is exempted under subsection (4) of this section),  
6 18-6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605  
7 (crime against nature), 18-6608 (forcible sexual penetration by use of  
8 a foreign object), upon a second or subsequent conviction under 18-6609  
9 (video voyeurism) or 18-8602(1), Idaho Code, (sex trafficking).

10 (b) On or after July 1, 1993, has been convicted of any crime,  
11 an attempt, a solicitation or a conspiracy to commit a crime in  
12 another state, territory, commonwealth, or other jurisdiction of the  
13 United States, including tribal courts and military courts, that is  
14 substantially equivalent to the offenses listed in subsection (1) (a) of  
15 this section and enters the state to establish permanent or temporary  
16 residence.

17 (c) Has been convicted of any crime, an attempt, a solicitation or a  
18 conspiracy to commit a crime in another state, territory, commonwealth,  
19 or other jurisdiction of the United States, including tribal courts  
20 and military courts, that is substantially equivalent to the offenses  
21 listed in subsection (1) (a) of this section and was required to register  
22 as a sex offender in any other state or jurisdiction when he established  
23 permanent or temporary residency in Idaho.

24 (d) Pleads guilty to or has been found guilty of a crime covered in  
25 this chapter prior to July 1, 1993, and the person, as a result of the  
26 offense, is incarcerated in a county jail facility or a penal facility  
27 or is under probation or parole supervision, on or after July 1, 1993.

28 (e) Is a nonresident regularly employed or working in Idaho or is a  
29 student in the state of Idaho and was convicted, found guilty or pleaded  
30 guilty to a crime covered by this chapter and, as a result of such  
31 conviction, finding or plea, is required to register in his state of  
32 residence.

33 (2) An offender shall not be required to comply with the registration  
34 provisions of this chapter while incarcerated in a correctional institution  
35 of the department of correction, a county jail facility, committed to  
36 the department of juvenile corrections or committed to a mental health  
37 institution of the department of health and welfare.

38 (3) A conviction for purposes of this chapter means that the person  
39 has pled guilty or has been found guilty, notwithstanding the form of the  
40 judgment or withheld judgment.

41 (4) When a defendant is convicted of rape under section 18-6101~~(1-)~~(2)  
42 or 18-6108(2), Idaho Code, and at the time of the offense the defendant is  
43 nineteen (19) or twenty (20) years of age and not more than three (3) years  
44 older than the victim of the rape, the court may order that the defendant  
45 is exempt from the requirements of this chapter upon a finding by the court  
46 that:

47 (a) All parties have stipulated to the exemption; or

48 (b) The defendant has demonstrated by clear and convincing evidence  
49 that he is not a risk to commit another crime identified in subsection

50 (1) of this section and in the case there were no allegations by the

1 victim of any violation of section 18-6101~~2~~(3) through ~~7~~(8) or  
2 18-6108(3) through (7), Idaho Code.

3 SECTION 8. That Section 18-8314, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5 18-8314. POWERS AND DUTIES OF THE SEXUAL OFFENDER CLASSIFICATION  
6 BOARD. (1) The board shall consider for review offenders scheduled for  
7 release from incarceration who are referred by the department of correction  
8 or parole commission to determine whether the offender should be designated  
9 as a violent sexual predator presenting a high risk of reoffense. Only  
10 offenders who were sentenced and convicted for one (1) or more of the crimes  
11 set forth in sections 18-1506, 18-1506A, 18-1507, 18-1508, 18-4003(d),  
12 18-4502, 18-6101 (but excluding subsection 1-) of such section when the  
13 offender is eighteen (18) years of age ~~or younger~~, 18-6108 (but excluding  
14 subsection (1) of such section when the offender is eighteen (18) years of  
15 age), 18-6602, 18-6605 and 18-6608, Idaho Code, or any violation of the duty  
16 to register as provided in this chapter, or are recidivists as defined in  
17 this chapter, are eligible for review by the board.

18 (2) The board shall consider for review offenders who were sentenced  
19 and convicted for one (1) or more crimes enumerated in subsection (1) of  
20 this section, or any violation of the duty to register as provided in this  
21 chapter, or offenders who are recidivists as defined in this chapter, who  
22 have been released under supervision, for the purpose of determining whether  
23 the offender should be designated as a violent sexual predator presenting  
24 a high risk of reoffense. Such review shall be undertaken upon request of  
25 the district court having jurisdiction over the offender on probation or of  
26 the parole commission if the offender has been released on parole regardless  
27 of whether the offender has been reviewed by the board prior to release  
28 from incarceration. For purposes of seeking a board review pursuant to  
29 this subsection, the court or parole commission may consider all relevant  
30 evidence including, but not limited to, the probation or parole official's  
31 observations and opinions of these offenders while under supervision, in  
32 light of the circumstances of the underlying offense.

33 (3) The board shall consider for review offenders living in Idaho  
34 who were sentenced and convicted for one (1) or more crimes enumerated  
35 in subsection (1) of this section, or substantially equivalent to those  
36 enumerated in subsection (1) of this section and committed in another  
37 state, territory, commonwealth or other jurisdiction of the United States,  
38 including tribal courts and military courts, and who have been released  
39 under federal or tribal court supervision. Such review shall be for the  
40 purpose of determining whether the offender should be designated as a  
41 violent sexual predator presenting a high risk of reoffense, and shall be  
42 undertaken upon request of the federal or tribal court having jurisdiction  
43 over the offender. For purposes of seeking a board review pursuant to this  
44 subsection, the federal or tribal court may consider all relevant evidence  
45 including, but not limited to, the probation official's observations  
46 and opinions of these offenders while under supervision, in light of the  
47 circumstances of the underlying offense.

48 (4) The board shall by rule:



1 (a) Establish standards for psychosexual evaluations and the  
2 qualifications for certified evaluators performing evaluations  
3 pursuant to sections 18-8316 and 18-8317, Idaho Code.

4 (b) Set forth procedures for the approval, certification and quality  
5 assurance of evaluators pursuant to this section.

6 (c) Establish a nonrefundable initial certification processing fee not  
7 to exceed one hundred fifty dollars (\$150) and a nonrefundable annual  
8 recertification processing fee not to exceed one hundred fifty dollars  
9 (\$150).

10 (5) The board shall establish guidelines to determine whether an  
11 offender who meets the criteria of this section is a violent sexual predator  
12 presenting a high risk of reoffense. The guidelines shall be established  
13 with the assistance of sexual offender treatment and law enforcement  
14 professionals who have, by education, experience or training, expertise in  
15 the assessment and treatment of sexual offenders.

16 (a) Factors to be used in establishment of the guidelines must  
17 be supported in the sexual offender assessment field as criteria  
18 reasonably related to the risk of reoffense and be objective criteria  
19 that can be gathered in a consistent and reliable manner.

20 (b) The guidelines shall include, but are not limited to, the following  
21 general categories for risk assessment: seriousness of the offense,  
22 offense history, whether the offense was predatory, characteristics  
23 of the offender, characteristics of the victim, the relationship of  
24 the offender to the victim, the number of victims and the number of  
25 violations of each victim.

26 (6) If the offender has indicated an intention to reoffend if released  
27 into the community and the available record reveals credible evidence to  
28 support this finding, then the offender shall be deemed a violent sexual  
29 predator regardless of application of the guidelines.

30 (7) Once the board has made its determination, it shall set forth  
31 written findings which shall include:

32 (a) The board's risk assessment and the reasons upon which the risk  
33 assessment was based; and

34 (b) The board's determination whether the offender should be  
35 designated as a violent sexual predator and the reasons upon which  
36 the determination was based.

37 (8) The board shall have authority to promulgate rules to carry out the  
38 provisions of this chapter.

39 SECTION 9. That Section 19-401, Idaho Code, be, and the same is hereby  
40 amended to read as follows:

41 19-401. NO STATUTE OF LIMITATIONS FOR CERTAIN FELONIES. Notwithstanding  
42 any other provision of law, there is no limitation of time within which a  
43 prosecution for the following crimes must be commenced:

44 (1) Murder;

45 (2) Voluntary manslaughter;

46 (3) Rape pursuant to section 18-6101 ~~2., 3., 4., 5. or 7.~~ (3) through  
47 (8), or section 18-6108 (3) through (7), Idaho Code;

48 (4) Sexual abuse of a child or lewd conduct with a child as set forth in  
49 sections 18-1506 and 18-1508, Idaho Code; or

1 (5) An act of terrorism as set forth in sections 18-8102, 18-8103,  
2 18-3322, 18-3323 and 18-3324, Idaho Code.

3 SECTION 10. That Section 20-509, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

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

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

13 (b) Robbery;

14 (c) ~~Rape, but excluding statutory rape~~ as defined in section 18-6101,  
15 Idaho Code;

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

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

18 (~~ef~~) Infamous crimes against nature, committed by force or violence;

19 (~~fg~~) Mayhem;

20 (~~gh~~) Assault or battery with the intent to commit any of the above  
21 serious felonies;

22 (~~hi~~) A violation of the provisions of section 37-2732(a)(1)(A),  
23 (B) or (C), Idaho Code, when the violation occurred on or within one  
24 thousand (1,000) feet of the property of any public or private primary  
25 or secondary school, or in those portions of any building, park, stadium  
26 or other structure or grounds which were, at the time of the violation,  
27 being used for an activity sponsored by or through such a school;

28 (~~ij~~) Arson in the first degree and aggravated arson;

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

38 (2) Once a juvenile has been formally charged or indicted pursuant to  
39 this section or has been transferred for criminal prosecution as an adult  
40 pursuant to the waiver provisions of section 20-508, Idaho Code, or this  
41 section, the juvenile shall be held in a county jail or other adult prison  
42 facility unless the court, after finding good cause, orders otherwise.

43 (3) Except as otherwise allowed by subsection (4) of this section,  
44 once a juvenile has been found to have committed the offense for which the  
45 juvenile was charged, indicted or transferred pursuant to this section  
46 or section 20-508, Idaho Code, or has been found guilty or pled guilty to  
47 a lesser offense or amended charge growing out of or included within the  
48 original charge, whether or not such lesser offense or amended charge is  
49 included within the acts enumerated in subsection (1) of this section, the

1 juvenile shall thereafter be handled in every respect as an adult. For any  
2 subsequent violation of Idaho law, the juvenile shall be handled in every  
3 respect as an adult.

4 (4) Upon the conviction of a juvenile pursuant to this section, the  
5 sentencing judge may, if a finding is made that adult sentencing measures  
6 would be inappropriate:

7 (a) Sentence the convicted person in accordance with the juvenile  
8 sentencing options set forth in this chapter; or

9 (b) Sentence the convicted person to the county jail or to the  
10 custody of the state board of correction but suspend the sentence  
11 or withhold judgment pursuant to section 19-2601, Idaho Code, and  
12 commit the defendant to the custody of the department of juvenile  
13 corrections for an indeterminate period of time in accordance with  
14 section 20-520(1)(r), Idaho Code. The court, in its discretion, may  
15 order that the suspended sentence or withheld judgment be conditioned  
16 upon the convicted person's full compliance with all reasonable  
17 program requirements of the department of juvenile corrections. Such a  
18 sentence may also set terms of probation, which may be served under the  
19 supervision of county juvenile probation. However, in no event may the  
20 total of the actual time spent by the convicted person in the custody  
21 of the department plus any adult sentence imposed by the court exceed  
22 the maximum period of imprisonment that could be imposed on an adult  
23 convicted of the same crime.

24 (c) If a convicted person is given a suspended sentence or withheld  
25 judgment conditioned upon the convicted person's compliance with  
26 all reasonable program requirements of the department pursuant to  
27 paragraph (b) of this subsection, and if the department reasonably  
28 believes that the convicted person is failing to comply with all  
29 reasonable program requirements, the department may petition the  
30 sentencing court to revoke the commitment to the department and  
31 transfer the convicted person to the county jail or to the custody of the  
32 state board of correction for the remainder of the sentence.