

November 30, 2022

The Honorable Brad Little  
Governor of the State of Idaho  
Boise, Idaho 83702  
STATEHOUSE MAIL

Re: Defects in the Laws

Dear Governor Little:

Under article V, section 25 of the Idaho Constitution, on or before December 1<sup>st</sup> of each year, the Supreme Court shall submit to the Governor, for transmission to the Legislature, such defects and omissions in the laws as the Court may find to exist.

In keeping with this constitutional provision, I submit the following defects in the law found by the Court or submitted to the Court by the trial bench, along with suggested changes to remedy the defects.

1. **Consider amending the statute which requires newly admitted attorneys to sign the Supreme Court's roll of attorneys before they can receive a license to practice (I.C. § 3-103).**

I.C. § 3-103 currently requires persons admitted to practice law to sign the Supreme Court's roll of attorneys before they can receive a license to practice. This requirement creates an unnecessary impediment to the swearing-in of attorneys via a remote process. Therefore, in order to remove this procedural hurdle and preserve the signature requirement, it is recommended that I.C. § 3-103 be amended to permit the signing of the roll to occur per court rule.

2. **Suggest removing the requirement that all court appointed interpreters be served with a subpoena (I.C. § 9-205).**

Courts are required to appoint qualified interpreters for witnesses and parties who are unable to hear or speak the English language. I.C. § 9-205 also requires that upon such appointment the court shall have the interpreter served with a subpoena. Since a subpoena requiring attendance is not necessary in every instance, we recommend this section be amended to permit but not require the service of a subpoena upon court appointed interpreters.

3. **Suggest adding persons supporting child witnesses and persons reporting the proceedings to the statutory listing of who may be present during grand jury proceedings (I.C. § 19-1111).**

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I.C. § 19-1111 recognizes the confidential nature of grand jury proceedings by explicitly limiting who may be present during such proceedings. This statutory listing currently only allows the grand jurors, prosecutors, witnesses, and interpreters to be present. However, a record of the proceeding is required, and thus, a person must also be present to report the proceeding. In addition, I.C. § 19-3023 specifically permits child witnesses to be accompanied by a support person when testifying in a criminal matter. Accordingly, support persons for child witnesses and persons designated to report the proceeding should be added to I.C. § 19-1111's listing of persons who may be present during grand jury proceedings.

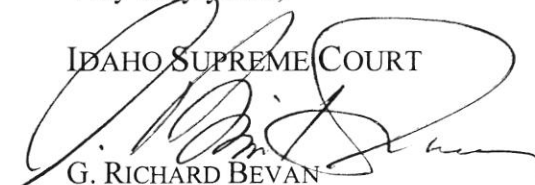
4. **Recommend amending the arrest provision of the electioneering at polls statute (I.C. § 18-2318).**

I.C. § 18-2318 sets forth the misdemeanor crime of electioneering, limits punishment for such a violation to a fine ranging from \$25 to \$1,000, and authorizes the arrest of any person suspected of such a violation. In 2019, the Idaho Supreme Court recognized in *State v. Clarke* that the Idaho Constitution prohibits warrantless arrests for misdemeanors that are committed outside the presence of the arresting officer. As a result, the broad authorization to arrest contained in I.C. § 18-2318 runs afoul of this constitutional principle. Therefore, we recommend the arrest provision of I.C. § 18-2318 be amended to comport with the requirements of the Idaho Constitution.

Finally, we note that amending the statute to fix this identified defect necessarily involves a policy choice. Specifically, and for purposes of example only, the defect could be remedied by entirely removing the arrest provision, limiting the authorization to arrest only to offenses committed in the presence of the officer, or by some other constitutionally compliant amendment. Since policy decisions such as these are properly the province of the Legislature, we make no recommendation regarding the particular manner in which this defect should be addressed.

Very truly yours,

IDAHO SUPREME COURT



G. RICHARD BEVAN

Chief Justice

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Cc: President Pro Tem  
Speaker of the House  
Administrative Director of the Courts