



# Idaho Supreme Court

## *Legislative Priorities and Defects in the Law for the 2016 Legislative Session*

The following have been identified as the Court's legislative priorities for the 2016 legislative session:

### *Consider amending Idaho's statutory scheme regarding priority of payments*

Legislation passed over the years has given priority to the monies collected in criminal cases to the following court-ordered payments: (1) court costs; (2) Crime Victims Compensation Account fines; (3) Peace Officer and Detention Officer Temporary Disability Fund fines; (4) felony probation supervision fees and work release reimbursement to county jails; and (5) restitution to crime victims. It has been assumed that "court costs" only refers to the \$17.50 charged for each felony or misdemeanor under I.C. § 31-3201A.

Legislation passed in 1986 gave priority to court costs and felony probation supervision fees. Since then, several fees have been added, and many of these newer fees are identical or similar in nature and purpose to the court costs and probation supervision fees that existed at that time. These include: (1) misdemeanor probation supervision fees; (2) problem solving court fees; (3) the court technology fee; and (4) the surcharge fee. These fees are vital to support our court system, but they now have a lower priority than other payments that have been given priority by statute. Legislation to give higher priority to some or all of these essential fees should be considered.

### *Consider amendments to the Child Protective Act and parental termination statutes*

The Child Protection Committee of the Idaho Supreme Court has drafted proposed amendments to the Child Protective Act (CPA) to reflect changes in federal law. The amendments would bring the CPA into compliance with two Federal acts, the Preventing Sex Trafficking and Strengthening Families Act and the Fostering Connections Act. This is required to maintain federal funding. The Committee has also proposed changes to ensure compliance with guidelines for implementing ICWA that have been adopted by the Bureau of Indian Affairs; to clarify the possible outcomes of a shelter care hearing; to clarify the purpose of status hearings and review hearings; and to require Idaho Department of Health and Welfare (IDHW) to provide information to the court on what psychotropic drugs a child in a CPA case or in foster care is receiving. There are also several proposed general clean-up amendments to the CPA.

### *Consider amending the minor's compromise statute, Idaho Code § 15-5-409a*

The minor's compromise statute, I.C. § 15-5-409a, allows the father or mother of a minor, or both, to compromise a claim on behalf of the minor. In some cases, there may not be a parent available, or it might not be appropriate for the parent to agree to a compromise. The Guardianship and Conservatorship Committee has proposed legislation that would allow a conservator, guardian, or other legal representative of the child, in certain circumstances, to petition for a compromise of a claim. It would set a priority for the authority of such persons to petition for a compromise. The legislation also specifies the information that would need to be included in a petition for a compromise, which will provide greater uniformity and help to ensure that the court receives the necessary facts.

Report to the Governor  
C.L. "Butch" Otter  
and the  
2nd Regular Session of the  
63rd Idaho Legislature



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## OTHER LEGISLATION FOR THE 2016 LEGISLATIVE SESSION

The Court also proposes consideration of Legislation to accomplish the following:

### *Withheld judgments in controlled substance cases*

I.C. § 37-2738(4) places restrictions on the granting of withheld judgments in the most common controlled substance cases – violations of I.C. § 37-2732(a), (b), (c) and (e). This statute provides that the court may grant a withheld judgment only if it finds by a preponderance of the evidence that: (1) the defendant has no prior finding of guilt for any felony, any violation of title 18, chapter 80 (the DUI and DWP chapter), or violation of subsections (a), (b), (c), or (e) of I.C. § 37-2732; (2) the sentencing court has an abiding conviction that the defendant will successfully complete the terms of probation; and (3) the defendant has successfully cooperated with law enforcement in the prosecution of drug related crimes. Several district judges have expressed support for an amendment that would provide that these conditions for granting a withheld judgment do not apply to problem-solving court participants.

### *Possible amendments to I.C. § 19-2524*

Suggestions have been made to address the issue of inadequate mental health evaluations. The cases of particular concern are those in which the screening process does not indicate the presence of a serious mental illness, and consequently there is no further examination, even though the information available to the court clearly reflects the strong possibility of a serious mental illness. The statute could be amended to allow the court to order a full mental health examination when the information before the court merits such an approach. This could be accomplished either by eliminating the current screening process, or by retaining the screening process but allowing the court to order a full mental health examination either prior to any screening or following a screening that indicates no serious mental illness.

## DEFECTS IN THE LAW

Under article I, section 25 of the Idaho Constitution, on or before December 1 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 that provision, we 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 those defects.

### *Consider clarifying the meaning of “neglect” in Idaho Code § 18-1505, the statute defining the crimes of abuse, exploitation, or neglect of a vulnerable adult*

This statute defines the felony and misdemeanor offenses of abuse, exploitation, or neglect of a vulnerable adult. It states that it is a felony to abuse or neglect a vulnerable adult “under circumstances likely to produce great bodily harm or death.” Abuse or neglect of a vulnerable adult under circumstances other than those likely to produce great bodily harm or death is a misdemeanor. I.C. § 18-1505(1) and (2). However, “neglect” is defined as “failure of a caretaker to provide food, clothing, shelter or medical care to a vulnerable adult, in such a manner as to jeopardize the life, health **and** safety of the vulnerable adult.” I.C. § 18-1505(4)(d) (emphasis added). So in order to show that even the misdemeanor has been committed, it would be necessary to show that all three aspects of the vulnerable adult’s welfare were jeopardized: health, safety, and life. But if the actions (or inaction) of the caretaker jeopardize the vulnerable adult’s life, then those actions would also appear to make the offense a felony. It would seem that the legislative intent was to make actions or inactions jeopardizing only the health or safety of a vulnerable adult a misdemeanor. To effectuate this purpose, the “and” should be changed to an “or.”

### *Consider amending Idaho Code § 7-802, the statute concerning petitions for name changes, to make its provisions gender neutral*

This statute states the petition for a name change “must specify the place of birth and residence of such person, his or her present name, the name proposed, and reason for such change of name, and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence.” This should be corrected to refer to “the father or mother of such person.”

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