The Idaho Supreme Court's Legislative Priorities and Defects in the Law for the 2018 Legislative Session

IDAHO JUDICIARY

Idaho Supreme Court
451 W. State Street
P.O. Box 83720
Boise, ID 83720-0101
208.334.2246
FAX 208.334-2146
www.isc.idaho.gov

Sara B. Thomas
Administrative Director
of the Courts
sthomas@idcourts.net

The following have been identified as the Court's legislative priorities for the 2018 legislative session:

1. Consider amending Idaho's statutory priorities for distribution of payments by criminal defendants

Priority of distribution of monies paid by defendants on debts owed from convictions in criminal cases is a policy question for the Idaho Legislature. Over the years legislation has established differing priorities for the distribution of these monies paid by defendants. Legislation passed in 1984 gave priority of monies collected to restitution owed to crime victims. Subsequent legislation passed in 1986 and later gave priority to fees imposed per I.C. § 31-3201A for each felony, misdemeanor and infraction. By statutory formula, these fees are disbursed to the state general fund, counties, cities and the peace officers standards and training fund. In addition, several other statutory fees similar in nature and purpose to the § 31-3201A fees have also been added by the Legislature. These include: (a) misdemeanor probation supervision fees, (b) problem-solving court fees, (c) the court technology fee and (d) the surcharge fee. There are numerous other fees and fines which have also been established by the Legislature. Based upon these competing statutes adopted at various times by different legislatures, the Supreme Court has been required to engage in statutory construction and enter an order establishing a priority. Many of these fees enure to the counties and are vital to support our court system. Because these are policy questions for the Idaho Legislature, legislation establishing a system for prioritizing the distribution of these fees, fines and other statutory, court-ordered obligations should be considered.

2. Consider authorizing supervised pretrial release programs and implementing an appropriate mechanism to fund such programs

A court considering pretrial release must balance the presumption of innocence and defendant's right to bail that is not excessive with ensuring public safety, protection of victims and witnesses, and the appearance of the defendant. The current "Bail, Release on Recognizance and Condition of Release" statute, I.C. § 19-2904, permits courts to impose conditions upon defendants released from custody while awaiting trial. Legislation specifically authorizing counties to operate supervised pretrial release programs should be considered in order to provide courts an additional tool for achieving a balance between the above-mentioned rights and goals. Legislation should also be considered to identify and establish the proper mechanism to offset a county's expense in providing these pretrial supervision services.

3. Consider adopting a process and establishing a fund to reimburse amounts paid by criminal defendants if their conviction is vacated

As a result of criminal convictions, defendants are routinely ordered to pay fines, fees and restitution to Idaho court clerks who then disburse those monies to state funds, counties, cities, and crime victims. In a small number of cases, after a clerk has disbursed the monies paid by the defendant, the conviction is vacated and the defendant is not re-tried. In 2017, the U.S. Supreme Court ruled as unconstitutional Colorado's then existing

process for reimbursing criminal defendants for amounts previously paid to the court when the defendant's conviction is later vacated. While Idaho does not have a specific statutory process governing reimbursements to defendants in these situations, the U.S. Supreme Court's assessment of Colorado's statute provides valuable direction for the establishment of such a process. Accordingly, legislation should be considered to adopt a framework and establish a fund for reimbursing defendants for amounts previously paid to the court when their convictions are subsequently vacated.

Defects in the Law for the 2018 Legislative Session

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 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 are listed below.

1. Consider aligning Idaho Code § 18-918 with state approved minimum standards for domestic violence treatment and encompass the current practice of the Supreme Court which established a uniform system for the qualification of domestic violence evaluators (I.C. § 18-918)

I.C. § 18-918(7)(a) currently requires domestic violence evaluators to determine whether persons convicted of domestic violence should be required to obtain aggression counseling or other appropriate treatment. The term "aggression" is no longer relevant in the field of domestic violence treatment. Removing this term will align the statute with statewide practice and the minimum standards for treatment established by the Idaho Council on Domestic Violence and Victim Assistance. In addition, I.C. § 18-918(7)(c) directs each judicial district to establish a uniform system for the qualification and approval of domestic violence evaluators. In order to create consistency between judicial districts and encompass the current practice of the Administrative Office of the Courts, this subsection should be amended to direct the Supreme Court to establish a uniform system for the qualification and approval of domestic violence evaluators.

2. Consider adding a requirement for a domestic violence evaluation for persons convicted of attempted strangulation (I.C. § 18-923)

Under I.C. § 18-918, any person convicted of domestic battery or domestic assault is required to undergo an evaluation to determine whether he or she should be required to obtain counseling or other appropriate treatment. The court is required to take the evaluation into account in determining the appropriate sentence. If counseling or treatment is recommended, the court orders the defendant to complete counseling or treatment in addition to any other sentence that is imposed. There is no such requirement for persons convicted of the felony of attempted strangulation under I.C. § 18-923, even though this crime, by definition, is committed against a household member or a person with whom the defendant has or had a dating relationship. Adding the requirement of an evaluation to I.C. § 18-923 would assist courts in sentencing and help to ensure that persons who commit this serious offense receive appropriate counseling and treatment.

3. Clarify the period during which a court may retain jurisdiction (I.C. § 19-2601)

The sentencing alternatives available to a court in a criminal case are set out in I.C. § 19-2601. Subsection (4) of the statute provides that one of those alternatives is retained jurisdiction, which gives the court the option of suspending the execution of the judgement and placing the defendant on probation at any time during the first 365 days of a sentence to the custody of the Board of Correction. The second sentence of subsection (4) states, "The court shall retain jurisdiction over the prisoner for a period of up to the first three hundred sixty-five (365) days." Because of the use of the word "shall", this can be taken to mean that the sentencing court is required to retain jurisdiction over every person convicted of a felony. The "shall" should be amended to "may," such that a period of retained jurisdiction is not mandatory.

4. Consider clarifying the requirements for a complaint in a forcible detainer action (I.C. § 6-310)

During the 2017 session the Legislature enacted SB 1120, making substantial changes in the forcible detainer provisions. These changes were intended to provide a speedy remedy for real property owners who discover that other persons have unlawfully entered their property and refuse to leave. One of the requirements for a complaint in a forcible detainer action, as set out in I.C. § 6-310(3), is "[t]hat all notices required by law have been served upon the defendant in the required manner." This appears to have been copied from subsection (1)(d) of the same statute, which states that a complaint in an unlawful detainer action – that is, an ordinary eviction – must include a statement that all notices required by law have been served upon the defendant. Notice in writing of nonpayment of rent is required to pursue an unlawful detainer action. I.C. § 6-303(2). But there is no such requirement in a forcible detainer action. Rather, what is required is that the defendant, after demand for surrender has been made, refused to surrender the property to the former occupant or property owner. I.C. § 6-302(2). There is no requirement that the demand be in the form of a notice or even be in writing. So it appears that I.C. § 6-310(3)(e) should say that the complaint must state that demand for surrender of the property was made and the defendant refused to surrender the property.

5. Consider changing the time for filing an answer to a small claim action to twenty-one (21) days (I.C. § 1-2303)

I.C. § 1-2303 sets the time period for default in small claims cases at twenty (20) days. In order to bring this default period in line with the court's efforts to set time periods in seven (7) day increments, the time for answering a small claim should be expanded from twenty (20) to twenty-one (21) days.

For further information, contact Sara B. Thomas
Administrative Director of the Courts
Email: sthomas@idcourts.net // Phone: 208-334-2246

Mission Statement of the Idaho Courts

As the Third Branch of Government, we provide access to justice by ensuring fair processes and the timely, impartial resolution of cases.

The Idaho Courts stand for:
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Independence
Respect
Excellence
Innovation

The Idaho Courts strive to:

Provide Timely, Impartial Case Resolution through Legally Fair Procedures

Ensure Access to Justice

Promote Effective, Innovative Services

Increase Public Trust and Confidence in Idaho Courts

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