## IN THE SENATE

## SENATE BILL NO. 1151

## BY JUDICIARY AND RULES COMMITTEE

1	AN ACT
2	RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-2604, IDAHO CODE, TO RE-
3	VISE PROVISIONS WHEN RELIEF FROM A FELONY CONVICTION MAY BE GRANTED ANI
4	TO PROVIDE PROCEDURES.

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

SECTION 1. That Section 19-2604, Idaho Code, be, and the same is hereby amended to read as follows:

19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT. (1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that:

- (a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or
- (b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction. This shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

- (2) If sentence has been imposed but suspended for any period during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in subsection 4. of section 19-2601, Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that:
  - (a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or
  - (b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during

any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

- (3) (a) In addition to the circumstances in which relief from a felony conviction may be granted under subsections (1) and (2) of this section, a defendant who has been convicted of a felony and who has been discharged from probation may apply to the sentencing court for a reduction of the conviction from a felony to a misdemeanor as provided in this subsection.
- (b) If less than five (5) years have elapsed since the defendant's discharge from probation, the application may be granted only if the prosecuting attorney stipulates to the reduction.
- (c) If at least five (5) years have elapsed since the defendant's discharge from probation, and if the defendant was convicted of any of the following offenses, the application may be granted only if the prosecuting attorney stipulates to the reduction:
  - (i) Assault with intent to commit a serious felony (18-909, 18-915, Idaho Code);
  - (ii) Battery with intent to commit a serious felony (18-911, 18-915, Idaho Code);
  - (iii) Enticing of children (18-1509, Idaho Code);
  - (iv) Murder in the first or second degree (18-4003, Idaho Code);
  - (v) Voluntary manslaughter (18-4006(1), Idaho Code);
  - (vi) Assault with intent to commit murder (18-4015, Idaho Code);
  - (vii) Administering poison with intent to kill (18-4014, Idaho Code);
  - (viii) Kidnapping in the first degree (18-4502, Idaho Code);
  - (ix) Robbery (18-6501, Idaho Code);
  - (x) Trafficking (37-2732B, Idaho Code);
  - (xi) Threats against state officials of the executive, legislative or judicial branch, felony (18-1353A, Idaho Code);
  - (xii) Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home (18-3317, Idaho Code);
  - (xiii) Cannibalism (18-5003, Idaho Code);

  - (xv) Attempt, conspiracy or solicitation to commit any of the
    crimes described in paragraph (c) (i) through (xiv).
- (d) The decision as to whether to grant such an application shall be in the discretion of the district court, provided that the application may be granted only if the court finds that:
  - (i) The defendant has not been convicted of any felony committed after the conviction from which relief is sought;
  - (ii) The defendant is not currently charged with any crime;

(iii) The reduction in sentence would be compatible with the public interest; and

- (iv) In those cases where the stipulation of the prosecuting attorney is required under paragraph (b) or (c) of this subsection, the prosecuting attorney has so stipulated.
- (e) If the court grants the application, the court shall reduce the felony conviction to a misdemeanor and amend the judgment of conviction for a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to the judgment of conviction.
- (4) Subsections (2) and (3) of this section shall not apply to any judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code. A judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code, shall not be subject to dismissal or reduction under this section. A conviction for the purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.