

CHAPTER 6

THE OFFICE OF COUNTY SHERIFF

The Idaho Constitution (Article 18, Section 6) and state law (31-2001 and 31-2003) establish the office of sheriff; authorize sheriffs to appoint deputies and clerical assistants. Sheriffs are elected to serve four-year terms. The structure of the office of county sheriff could change if a county chooses to adopt an optional form of county government. Possible changes to the office include: changing the term of office, appointing an individual to the office, or eliminating the office and having the duties and responsibilities performed by other elected officers or appointed persons. If the office is eliminated as a separate office, it cannot be combined with or assigned to the office of the prosecuting attorney or the clerk of the district court (Title 31, Chapters 52-56, *Idaho Code*).

The board of county commissioners in each county is authorized to set the salary of the sheriff (31-3106). The sheriff, as well as deputies and other assistants, normally receive reimbursements for travel and other out-of-pocket expenditures incurred while on county business (31-1801). In some instances, the sheriff or his deputies may draw expenses in advance and receive a sum not exceeding the amount set aside under the provisions of Section 31-1802. A "Revolving Travel Fund" shall be set aside out of which warrants drawn under the provisions of this act shall be paid (31-1802). The board of county commissioners may require an itemized claim of such travel expenses. If certain claims are disallowed, the Sheriff shall repay the fund an amount equal to that disallowed (31-1803). Sheriffs are authorized to receive fees for about two dozen special services listed under Idaho law (31-3203), but these fees must be turned over to the county treasury and not retained by the sheriff as a supplement to his salary (31-3101).

A sheriff, who fails to pay over to the county fees received by virtue of his office, may be subject to monetary penalties or removal from office (31-2207). Provisions for legal termination of powers at the end of a sheriff's term are specified in Sections 31-2222 and 31-2226. Sheriffs and deputies are expressly prohibited from practicing law (31-2014). The coroner may arrest sheriffs upon order of the court when they are a party to a civil action (31-2220). If both are disqualified from acting, an elisor is appointed (31-2218).

The powers and duties of the sheriff may be organized into the following categories: (1) police powers; (2) jail-keeping powers; (3) powers as officer of the court and process server; (4) drivers' licensing; and (5) other miscellaneous powers such as the duty to return to the state fugitives from justice through extradition proceedings.

POLICE POWERS

State law makes clear that the primary duty for enforcing all the penal provisions of Idaho statutes, in any court, is vested in the sheriff and prosecuting attorneys and they are authorized to call on municipal and precinct peace officers for necessary assistance. These local officials are

required to render such assistance. The sheriff may also seek assistance, if necessary, from officials of the Idaho State Police (31-2227).

As the principal law enforcement official in the county, the sheriff has the legal duty to preserve the peace and to "arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense," and to investigate expeditiously and promptly all cases involving missing or runaway children that are reported to the sheriff's office (31-2202, 18-4509). Cases of missing or runaway children will be entered into the Missing Persons Clearinghouse (18-4509). The sheriff also has the duty to "prevent and suppress all affrays, breaches of the peace, riots and insurrections" (31-2202). In the conduct of these duties the sheriff may command the aid of as many adult inhabitants of the county over the age of eighteen as deemed necessary for enforcing the law (31-2202). These general provisions of law give Idaho sheriffs the power to provide police services throughout the entire county. In practice, city police departments provide law enforcement in cities, and sheriffs provide law enforcement in unincorporated areas of the county and in contract cities. In addition, sheriffs assist city and state police, operate the county jails and are primarily responsible for the enforcement of the Idaho Safe Boating Act (67-7028).

Additional police work for Idaho sheriffs includes patrolling county roads for purposes of crime prevention, investigating crimes, pursuing fleeing criminals, and making arrests. Sheriffs are authorized to establish temporary road blocks to apprehend persons wanted for the violation of state or federal laws (19-621). They have the authority to enter another state in hot pursuit of a suspected felon (19-701). Sheriffs and their deputies are occasionally called upon to disperse riots. The sheriff's office or other appropriate law enforcement agency must investigate violent deaths and apparent suicides to determine the cause of death (19-4301(A)). They must keep a record of cars reported stolen within the county and report them to the director of the Idaho State Police (31-2202). The sheriff's office also cooperates with local, state and federal law enforcement officials in crime control or prevention.

Liquor Law Enforcement

Sheriffs and other local police officers are charged with the primary duty of enforcing Idaho liquor laws (23-801) and must cooperate with the Idaho State Police in this activity (23-805). Under Idaho liquor laws, licenses are required for the sale of liquor, closing hours are established (23-927), and no persons under the age of 21 may be sold liquor (23-929). The application process for liquor licenses includes a criminal background check (23-907). Alcohol Beverage Catering Permits are required for the sale of alcoholic beverages at parties or conventions, and are limited to three consecutive days in length (23-934A). Sheriffs and their deputies have the authority at any time to make an examination of the premises to determine whether liquor laws or regulations are being violated (23-930). While making inspections of taverns to enforce closing laws, sheriffs and their deputies often use persuasion or warnings to try to keep intoxicated persons from attempting to drive.

Highway Safety Law Enforcement

The law enforcement work of sheriffs and their deputies also includes accident prevention and

investigation. They cooperate with the Idaho State Police to enforce the law "requiring all persons using the highways in the state to do so carefully, safely, and with exercise of care for the persons, property, and safety of others" (31-2202). In preventing accidents, the sheriff is also authorized to work with the State Police "to safeguard and protect the surface and other physical portions of the state highways" (31-2202). Sheriffs may take action, for example, to prevent tracked vehicles from causing damage to paved highways.

Sheriffs and their deputies also have the duty of regulating traffic, responding to calls following automobile accidents, and investigating the cause of accidents (31-2202). Many accident reports are received by sheriffs' offices, and frequently the sheriff or a deputy is the first law enforcement officer to arrive on the scene. The sheriff or deputy must see to it that the injured are given emergency medical care and taken, if necessary, to hospitals. The sheriff also must route traffic around the wreckage and investigate the cause of the accident.

In addition, sheriffs and their deputies notify the families of those injured in traffic accidents. They deliver death messages to the families of accident victims and support the families in making arrangements for the deceased. They also attend autopsies to help determine the causes of death in traffic accidents for investigatory purposes. It is also the duty of the sheriff to report to the county commissioners or other appropriate agency any road hazard or damage to roads under their supervision.

Idaho Safe Boating Law Enforcement

The Idaho Safe Boating Act requires safety equipment on each boat (67-7015) and prohibits grossly negligent operation of boats that endangers the life or limb of other persons (67-7016). It also prohibits negligent operation of boats (67-7017), unlicensed or unnumbered vessels (67-7018), excessive speed (67-7019), incapacity of the operator (67-7020), overloading (67-7022), and overpowering (67-7023). There are provisions that require vessels approaching a diver to reduce speed (67-7021) and provisions to enforce safety in water skiing (67-7024). Interference with navigation (67-7025) and operating a vessel in restricted areas such as bathing beaches is also unlawful (67-7026). The county sheriff may also stop any water vessel operator when the sheriff has "reasonable grounds to believe" the operator is intoxicated or has been using drugs. Operation of a water vessel is seen as giving consent for evidentiary testing (67-7037). The vessel operator must report collisions or accidents involving injury or damage in excess of \$1,500 to the county sheriff, and a boating accident report must be completed and submitted (67-7027). Adults guilty of transporting a minor while operating a vessel while intoxicated are guilty of a misdemeanor; if a minor suffers bodily injury or death due to operating a vessel while intoxicated, the violation is a felony (18-1501). (Prior to the passage of amendments to this section in 2001, there was no law protecting children transported on a vessel.) Enforcement of these and other boat safety laws are the responsibility of the county sheriff and the sheriff may stop and board any vessel in the exercise of this authority (67-7028).

JAIL KEEPING POWERS

Jail Standards

Nearly all counties in Idaho have a county jail (20-601). County jails are required by law to have a sufficient number of rooms so that males are housed separately from females. Juveniles charged, as adults must be housed separately from adults and inmates' safety should be addressed through development of a classification system (20-602). When a juvenile turns eighteen, he or she may be transferred from juvenile detention to the county jail (20-518). A prisoner must be jailed within the judicial district unless there is an agreement with a governmental unit or agency outside the judicial district permitting otherwise and the court agrees to housing the inmate out of district (20-604).

The sheriff takes charge of the county jail and keeps the prisoners therein (31-2202). The sheriff must provide them with necessary food, clothing, and bedding (20-612). The sheriff may charge the State for those costs when they are not chargeable to the county or to a private party (31-2219). The state shall pay the county for housing state sentenced prisoners in the county jail at a minimum rate of forty dollars per day, per inmate (20-237A). The state shall also pay all ordinary and necessary medical and dental expenses for state prisoners housed in county jails. The sheriff may also seek reimbursement from persons, sentenced to the county jail, for the expense of their incarceration up to \$25 per day or a maximum of \$500 (20-607). The sheriff must ensure that the county jail is used for only the following purposes:

1. The detention of persons who have been committed to the jail to secure their attendance as witnesses in criminal cases;
2. The detention of persons charged with crime and committed to jail awaiting trial;
3. The confinement of persons committed for contempt of court, upon civil processes or by other authority of law;
4. The confinement of persons sentenced to imprisonment in the jail upon criminal conviction (20-601).

Most persons detained in county jails are awaiting trial or serving sentences for misdemeanors. Prisoners confined to the county jail after conviction in criminal cases may be required to perform labor for the county or other units of government by an order of the board of county commissioners (20-617). Prisoners committed to the county jail for trial or upon conviction, must be physically confined to jail until they are legally discharged (20-614). Inmate workers may be allowed outside the jail under the supervision of jail staff. In addition, work release inmates are allowed to work at their normal job, but must remain in custody during non-work times. Other exceptions may be delineated by order of the court. In counties with no federal jail facilities, the county jail is often used to detain federal prisoners.

Minimum Jail Standards

It is the objective of the sheriffs to operate the county jails in such a manner as to protect the general public by securely detaining persons who present a danger to the community. The sheriff also has to ensure that prisoners' rights are not violated. Sheriffs must be aware of constantly changing standards that develop as the result of court cases.

The logical place to start to improve local jails is through adoption of the Minimum Jail Standards which have been approved by the Idaho Sheriffs' Association and the Idaho Association of Counties. Two sets of standards are provided. Each Idaho jail is classified as either a detention facility or holding facility. Detention facility jails are able to detain inmates for up to a year or more, holding facility jails are only allowed to hold inmates for 48 hours or 72 hours on holidays and weekends. If a jail is allowed to deteriorate to a point where it can no longer provide the services of a detention facility, it may be lowered to the appropriate class. Each individual county is encouraged to adopt these standards, by resolution, to govern their jails.

POWERS AS OFFICER OF THE COURT AND PROCESS SERVER

State law requires the sheriff to attend all courts within the county including the magistrate's division when ordered by a district judge (31-2202). In fact, the sheriff or a deputy usually serves as bailiff for the district court while it is in session to keep order, guard prisoners and carry out the directives of the judge. The sheriff is court crier and calls witnesses and other persons to appear in court (31-2215). Some of the actions taken by the sheriff's office in its work for courts include the following:

1. Attaching a defendant's property upon a writ issued by the clerk of the court (8-504);
2. Selling attached property to satisfy a judgment (8-528);
3. Enforcing execution of foreclosure decrees (6-105);
4. Enforcing warrants of distraint against persons delinquent in paying personal property taxes. The sheriff may be ordered to seize the property of delinquent taxpayers, sell a sufficient amount to pay the tax, and return the proceeds to the county tax collector (63-1012; 63-1013);
5. Serving all processes and notices in a manner prescribed by law (31-2202 and 31-2213);
6. Collecting delinquent income taxes on warrants issued by the state tax commission (63-3060);
7. The sheriff may demand and receive certain fees for providing these

- services (63-1013).
8. Bailiffs appointed by the court/administrative judge are enumerated in 1-907 and 1-210, Idaho Code.

DRIVERS' LICENSING RESPONSIBILITIES

Examining applicants for drivers' licenses is another important function of Idaho sheriffs (49-317). This examination can be conducted in any county convenient to the applicant (49-316). It must include a test of the applicant's eyesight, hearing, ability to understand and read highway signs and, at the discretion of the examiner, ability to handle a car (31-2202 and 49-316). In addition, first time applicant's knowledge of Idaho traffic laws must be tested by a written examination or, at the discretion of the examiner, the prescribed written examination may be conducted orally (49-313). Drivers ages 21-62 have the option of renewing their license for four or eight years ((49-306). In many counties separate office space is used for issuing drivers' licenses, and deputy sheriffs spend most of their time carrying out this function. The sheriff's office receives a fee for each application for a motor vehicle operator's or chauffeur's license. This fee is five dollars (\$5.00) for four year licenses and ten dollars (\$10.00) for eight year licenses and goes into the current expense fund (49-306(6)). The sheriff's office is also responsible for issuing "commercial driver's licenses". "A commercial driver's license means a class A, class B, or class C driver's license as defined in section 49-105, *Idaho Code*." "The board shall adopt and enforce administrative rules and regulations and designate agencies as may be necessary to carry the provisions of this Title (49-201)". See also:

Duties of Department: 49-202;
Powers of Local Authorities: 49-208;
Drivers to be Licensed: 49-301;
Persons Exempt from License: 49-302;
Persons Who Shall not be Licensed: 49-303;
Instruction Permits, Temporary and Special Licenses: 49-305;
Fee for Driver's Training Instruction Permit: 49-307;
Examination of Applicants: 49-313;
Local Examiners Appointed by Department: 49-314;
Duplicate Drivers' Licenses: 49-318;
Expiration and Renewal: 49-319;
Suspending Privileges of Non-residents and Reporting Convictions: 49-323;
Suspending Resident's Driver's License Upon Conviction in Another State: 49-324;
Authority of Department to Suspend, Disqualify or Revoke Drivers' Licenses:
49-326;
Reinstatement of Revoked, Disqualified or Suspended Drivers' Licenses: 49-328;
Right of Appeal to Court: 49-330;
Unlawful Use of Driver's License: 49-331;
Non-resident Commercial Driver's License: Ch. 4, Title 3;
Suspension for Nonpayment of Judgments: Ch. 49, Title 3;
Identification Cards: 49-2442;
Application: 49-2443;

Issuance:
Fraudulent Misrepresentation: 49-2446;
Driving Under the Influence:
 Driving Without Privileges: 18-8001;
 Testing for Alcohol, Drugs or Intoxicating Substances: 49-8002;
 Guidelines for Under the Influence: 18-8005.
 Penalties: 18-8005;
 Aggravated Driving: 18-8006;
 Abandoned Vehicles: 31-3201F;

OTHER POWERS

Other functions which Idaho sheriffs perform include:

1. Duties with respect to stray or unlicensed animals: If the board of county commissioners requires the licensing of dogs, the sheriff has the responsibility for seizing unlicensed dogs (25-2804). Owners of vicious dogs, (any dog which without physical provocation attacks any person not trespassing), must keep the dog in a secure enclosure or face a misdemeanor charge, any liability as provided by law, and upon the second violation have the dog destroyed (25-2805). The sheriff or state brand inspector also has the responsibility of notifying owners of stray livestock and of attempting to get them to pay the charges on these animals. If the owner refuses to pay or cannot be found, the sheriff or brand inspector must advertise and sell the stray livestock (25-2302). If a recognized brand or mark is found on stray livestock, the owner is notified by the best method available (25-2303). If an unrecognizable brand or mark is found on stray livestock, the local brand inspector or State Brand Board is notified by the best method available (25-2303). At the request of the governor or a designated agent, the sheriff prevents the unauthorized importation of wild omnivores and carnivores capable of injuring people or their property, and may use whatever force is necessary to protect the public from these animals (31-2202).
2. Brand inspection law enforcement: Sheriffs and their deputies are responsible for the enforcement of state law enacted for the identification, inspection, and transportation of livestock as well as for the enforcement of state laws designed to prevent the theft of livestock (31-2202). These include laws relating to branding and transportation of cattle and other livestock. Sheriffs and their deputies are also required to perform the duties of ex officio brand inspectors under guidelines set forth by the state brand board and state law (25-1103).
3. Enforcing the State Motor Vehicle Licensing Act (49-205), including inspection of out-of-state cars: The assessor's office may perform this function in a few counties as part of the procedure for licensing out-of-state cars. The sheriff or his deputies inspect these cars and determine their identification numbers. The number is compared to the number of the owner's out-of-state title. The sheriff's inspection slip is necessary to obtain an Idaho motor vehicle title (49-507). Idaho sheriffs have

reported that this inspection process is helpful in apprehending stolen cars in their counties.

4. Taking mentally ill persons into protective custody by court order (66-329(b));
5. Finding people lost in mountains and wilderness areas: In some counties much of this work is done by a search and rescue unit under the direction of the sheriff's office (46-1009). Any person, who enters an area that has been closed to the public by competent authority for any reason, where the closure is posted, is liable for all costs relating to their search and rescue (6-2401);
6. Directing searches for drowning victims or plane crashes;
7. Serving on community coordinating committees for emergency management, youth projects, and other civic projects relating to law enforcement. The sheriff may create a self-perpetuating youth programs fund for prevention and early intervention for at-risk youth in the county (31-2228).
8. Certifying and administering oaths (31-2011);
9. Enforcing fish and game laws (36-1301);
10. Enforcing laws within port districts (70-1607 and 70-1608);
11. Coordinating all search and rescue operations within the county and preparing and keeping current a search and rescue plan (31-2229);
12. Seizing, destroying and storing illegal drugs (37-2744);
13. Issuing a license to carry a concealed weapon sixty (60) days after the filing of an application, providing the applicant is in compliance with Section 18-3302, and Section 18-3302, A, B, and C.
14. Transmitting convicted persons to state penitentiary or custody of board of corrections (20-237).
15. Funding per diem costs of state prisoners housed in county jails, related additional expenses and manner of payment (20-237A).
16. Registering sex offenders in the county and if the offender moves, forwarding the information to the law enforcement agency where the offender would be required to register (18-8307).
17. Enforcing the statute that is unlawful to intentionally discharge firearms in homes, occupied vehicles, and occupied buildings (18-3317).