

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 387

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO DOMESTIC VIOLENCE; AMENDING SECTION 18-918, IDAHO CODE, TO RE-
VISE A PENALTY AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMER-
GENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-918, Idaho Code, be, and the same is hereby
amended to read as follows:

18-918. DOMESTIC VIOLENCE. (1) For the purpose of this section:

(a) "Household member" means a person who is a spouse, former spouse,
or a person who has a child in common, regardless of whether they have
been married, or a person with whom a person is cohabiting, whether or
not they have married or have held themselves out to be husband or wife.

(b) "Traumatic injury" means a condition of the body, such as a wound
or external or internal injury, whether of a minor or serious nature,
caused by physical force.

(2) (a) Any household member who in committing a battery, as defined
in section 18-903, Idaho Code, inflicts a traumatic injury ~~upon~~ on any
other household member is guilty of a felony.

(b) A conviction of felony domestic battery is punishable by imprison-
ment in the state prison for a term not to exceed ten (10) years or by a
fine not to exceed ten thousand dollars (\$10,000) or by both fine and im-
prisonment.

(3) (a) A household member who commits an assault, as defined in section
18-901, Idaho Code, against another household member ~~which~~ that does
not result in traumatic injury is guilty of a misdemeanor domestic as-
sault.

(b) A household member who commits a battery, as defined in section
18-903, Idaho Code, against another household member ~~which~~ that does
not result in traumatic injury is guilty of a misdemeanor domestic bat-
tery.

(c) A first conviction under this subsection is punishable by a fine
not ~~exceeding~~ to exceed one thousand dollars (\$1,000) or by imprison-
ment in a county jail not to exceed ~~six (6) months~~ one (1) year, or both.
Any person who pleads guilty to or is found guilty of a violation of this
subsection who previously has pled guilty to or been found guilty of a
violation of this subsection, or of any substantially conforming for-
eign criminal violation, notwithstanding the form of the judgment or
withheld judgment, within ten (10) years of the first conviction, shall
be guilty of a misdemeanor ~~and shall be punished~~ punishable by imprison-
ment in the county jail for a term not to exceed one (1) year or by a fine
not ~~exceeding~~ to exceed two thousand dollars (\$2,000) or by both fine
and imprisonment. Any person who pleads guilty to or is found guilty

1 of a violation of this subsection who previously has pled guilty to or
2 been found guilty of two (2) violations of this subsection, or of any
3 substantially conforming foreign criminal violation or any combination
4 thereof, notwithstanding the form of the judgment or withheld judgment,
5 within fifteen (15) years of the first conviction, shall be guilty of
6 a felony ~~and shall be punished~~ punishable by imprisonment in the state
7 prison for a term not to exceed five (5) years or by a fine not to exceed
8 five thousand dollars (\$5,000) or by both fine and imprisonment.

9 (4) The maximum penalties provided in this section shall be doubled
10 where the act of domestic assault or battery for which the person is con-
11 victed or pleads guilty took place in the presence of a child. For purposes
12 of this section, "in the presence of a child" means in the physical presence
13 of a child or knowing that a child is present and may see or hear an act of
14 domestic assault or battery. For purposes of this section, "child" means a
15 person under sixteen (16) years of age.

16 (5) Notwithstanding any other provisions of this section, any person
17 who previously has pled guilty to or been found guilty of a felony violation
18 of the provisions of this section or of any substantially conforming foreign
19 criminal felony violation, notwithstanding the form of the judgment or with-
20 held judgment, and who, within fifteen (15) years, pleads guilty to or is
21 found guilty of any further violation of this section shall be guilty of a
22 felony ~~and shall be punished~~ punishable by imprisonment in the state prison
23 for a term not to exceed ten (10) years or by a fine not to exceed ten thousand
24 dollars (\$10,000), or by both such fine and imprisonment.

25 (6) For the purposes of this section, a substantially conforming for-
26 eign criminal violation exists when a person has pled guilty to or been found
27 guilty of a violation of any federal law or law of another state, or any valid
28 county, city or town ordinance of another state, substantially conforming
29 with the provisions of this section. The determination of whether a foreign
30 criminal violation is substantially conforming is a question of law to be de-
31 termined by the court.

32 (7) (a) Any person who pleads guilty to or is found guilty of a viola-
33 tion of this section or section 18-923, Idaho Code, shall undergo, at
34 the person's own expense, an evaluation by a person, agency or organ-
35 ization approved by the court in accordance with paragraph (c) of this
36 subsection to determine whether the defendant should be required to
37 obtain counseling or other appropriate treatment. Such evaluation
38 shall be completed prior to the sentencing date if the court's list of
39 approved evaluators, in accordance with paragraph (c) of this subsec-
40 tion, contains evaluators who are able to perform the evaluation prior
41 to the sentencing dates. If the evaluation recommends counseling or
42 other treatment, the evaluation shall recommend the type of counseling
43 or treatment considered appropriate for the defendant, together with
44 the estimated costs thereof, and shall recommend any other suitable
45 alternative counseling or treatment programs, together with the es-
46 timated costs thereof. The defendant shall request that a copy of the
47 completed evaluation be forwarded to the court. The court shall take
48 the evaluation into consideration in determining an appropriate sen-
49 tence. If a copy of the completed evaluation has not been provided to
50 the court, the court may proceed to sentence the defendant; however, in

1 such event, it shall be presumed that counseling is required unless the
2 defendant makes a showing by a preponderance of evidence that counsel-
3 ing is not required. If the defendant has not made a good faith effort
4 to provide the completed copy of the evaluation to the court, the court
5 may consider the failure of the defendant to provide the report as an
6 aggravating circumstance in determining an appropriate sentence. If
7 counseling or other treatment is ordered, in no event shall the person,
8 agency or organization doing the evaluation be the person, agency or
9 organization that provides the counseling or other treatment unless
10 this requirement is waived by the sentencing court, with the exception
11 of federally recognized Indian tribes or federal military installa-
12 tions, where diagnosis and treatment are appropriate and available.
13 Nothing herein contained shall preclude the use of funds authorized
14 for court-ordered counseling or treatment pursuant to this section for
15 indigent defendants as provided by law. In the event that funding is
16 provided for or on behalf of the defendant by a governmental entity,
17 the defendant shall be ordered to make restitution to such governmental
18 entity in accordance with the restitution procedure for crime victims,
19 as specified under chapter 53, title 19, Idaho Code.

20 (b) If the evaluation recommends counseling or other treatment, the
21 court shall order the person to complete the counseling or other treat-
22 ment in addition to any other sentence ~~which~~ that may be imposed. If the
23 court determines that counseling or treatment would be inappropriate
24 or undesirable, the court shall enter findings articulating the rea-
25 sons for such determination on the record. The court shall order the
26 defendant to complete the preferred counseling or treatment program
27 set forth in the evaluation, or a comparable alternative, unless it
28 appears that the defendant cannot reasonably obtain adequate financial
29 resources for such counseling or treatment. In that event, the court
30 may order the defendant to complete a less-costly alternative set forth
31 in the evaluation or a comparable program. Nothing contained in this
32 subsection shall be construed as requiring a court to order that coun-
33 seling or treatment be provided at government expense unless otherwise
34 required by law.

35 (c) The supreme court shall by rule establish a uniform system for the
36 qualification and approval of persons, agencies or organizations to
37 perform the evaluations required in this subsection. Only qualified
38 evaluators approved by the court shall be authorized to perform such
39 evaluations. Funds to establish a system for approval of evaluators
40 shall be derived from moneys designated therefor and deposited in the
41 district court fund as provided in section 31-3201A(16), Idaho Code.

42 (d) Counseling or treatment ordered pursuant to this section shall be
43 conducted according to standards established or approved by the Idaho
44 council on domestic violence and victim assistance.

45 SECTION 2. An emergency existing therefor, which emergency is hereby
46 declared to exist, this act shall be in full force and effect on and after
47 July 1, 2024.