

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 508

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO SEX CRIMES; AMENDING SECTION 18-925, IDAHO CODE, TO PROVIDE A
2 MINIMUM PENALTY; AMENDING SECTION 18-1506, IDAHO CODE, TO PROVIDE A
3 MINIMUM PENALTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
4 18-1508, IDAHO CODE, TO PROVIDE A MINIMUM PENALTY AND TO MAKE TECHNICAL
5 CORRECTIONS; AMENDING SECTION 18-1508A, IDAHO CODE, TO PROVIDE A
6 MINIMUM PENALTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
7 18-6104, IDAHO CODE, TO REVISE A PROVISION REGARDING PUNISHMENT FOR
8 RAPE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-6608, IDAHO
9 CODE, TO PROVIDE A MINIMUM PENALTY; AMENDING SECTION 18-8311, IDAHO
10 CODE, TO PROVIDE MINIMUM PENALTIES AND TO MAKE TECHNICAL CORRECTIONS;
11 AMENDING SECTION 18-8327, IDAHO CODE, TO PROVIDE MINIMUM PENALTIES AND
12 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8329 , IDAHO CODE,
13 TO PROVIDE A MINIMUM PENALTY AND TO MAKE TECHNICAL CORRECTIONS; AMEND-
14 ING SECTION 19-2601, IDAHO CODE, TO PROVIDE CERTAIN EXCEPTIONS AND TO
15 MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PROVIDING
16 AN EFFECTIVE DATE.
17

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

19 SECTION 1. That Section 18-925, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 18-925. AGGRAVATED SEXUAL BATTERY. (1) Aggravated sexual battery is
22 sexual battery as defined in section 18-924, Idaho Code, when the forbidden
23 contact occurs under the circumstances described in section 18-907, Idaho
24 Code.

25 (2) Aggravated sexual battery is a felony and shall be punishable by im-
26 prisonment in the state prison for a period not less than five (5) years and
27 not to exceed twenty (20) years.

28 SECTION 2. That Section 18-1506, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 18-1506. SEXUAL ABUSE OF A CHILD UNDER THE AGE OF SIXTEEN YEARS. (1)
31 It is a felony for any person eighteen (18) years of age or older, with the
32 intent to gratify the lust, passions, or sexual desire of the actor, minor
33 child or third party, to:

34 (a) Solicit a minor child under the age of sixteen (16) years to partic-
35 ipate in a sexual act;

36 (b) Cause or have sexual contact with such minor child, not amounting to
37 lewd conduct as defined in section 18-1508, Idaho Code;

38 (c) Make any photographic or electronic recording of such minor child;
39 or

1 (d) Induce, cause or permit a minor child to witness an act of sexual
2 conduct.

3 (2) For the purposes of this section, "solicit" means any written, ver-
4 bal, or physical act ~~which is~~ intended to communicate to such minor child the
5 desire of the actor or third party to participate in a sexual act or partici-
6 pate in sexual foreplay, by the means of sexual contact, photographing or ob-
7 serving such minor child engaged in sexual contact.

8 (3) For the purposes of this section, "sexual contact" means any physi-
9 cal contact between such minor child and any person ~~, which~~ that is caused by
10 the actor, or the actor causing such minor child to have self contact.

11 (4) For the purposes of this section, "sexual conduct" means human mas-
12 turbation, sexual intercourse, sadomasochistic abuse, or any touching of
13 the genitals or pubic areas of the human, male or female, or the breasts of
14 the female, whether alone or between members of the same or opposite sex or
15 between humans and animals in an act of apparent sexual stimulation or grati-
16 fication.

17 (5) Any person guilty of a violation of the provisions of this section
18 shall be imprisoned in the state prison for a period not less than five (5)
19 years and not to exceed twenty-five (25) years.

20 SECTION 3. That Section 18-1508, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 18-1508. LEWD CONDUCT WITH MINOR CHILD UNDER SIXTEEN. Any person who
23 shall commit any lewd or lascivious act or acts upon or with the body or any
24 part or member thereof of a minor child under the age of sixteen (16) years,
25 including but not limited to ~~, genital-genital contact, oral-genital con-~~
26 ~~tact, anal-genital contact, oral-anal contact, manual-anal contact, or man-~~
27 ~~ual-genital contact, whether between persons of the same or opposite sex, or~~
28 ~~who shall involve such minor child in any act of bestiality or sado-masochism~~
29 sadomasochism as defined in section 18-1507, Idaho Code, when any of such
30 acts are done with the intent of arousing, appealing to, or gratifying the
31 lust or passions or sexual desires of such person, such minor child, or third
32 party, shall be guilty of a felony and shall be imprisoned in the state prison
33 for a term of not less than five (5) years and not more than life.

34 SECTION 4. That Section 18-1508A, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 18-1508A. SEXUAL BATTERY OF A MINOR CHILD SIXTEEN OR SEVENTEEN YEARS
37 OF AGE -- PENALTY. (1) It is a felony for any person at least five (5) years
38 of age older than a minor child who is sixteen (16) or seventeen (17) years of
39 age ~~, who,~~ with the intent of arousing, appealing to or gratifying the lust,
40 passion, or sexual desires of such person, minor child, or third party, to:

41 (a) Commit any lewd or lascivious act or acts upon or with the body or
42 any part or any member thereof of such minor child, including, but not
43 limited to ~~, genital-genital contact, oral-genital contact, anal-geni-~~
44 ~~ital contact, oral-anal contact, manual-anal contact or manual-geni-~~
45 ~~tal contact, whether between persons of the same or opposite sex, or who~~
46 ~~shall involve such minor child in any act of explicit sexual conduct as~~
47 ~~defined in section 18-1507, Idaho Code; or~~

- 1 (b) Solicit such minor child to participate in a sexual act; or
 2 (c) Cause or have sexual contact with such minor child, not amounting to
 3 lewd conduct as defined in paragraph (a) of this subsection; or
 4 (d) Make any photographic or electronic recording of such minor child.

5 (2) For the purpose of subsection (1)(b) of this section, "solicit"
 6 means any written, verbal or physical act ~~which is~~ intended to communicate
 7 to such minor child the desire of the actor or third party to participate in a
 8 sexual act or participate in sexual foreplay, by the means of sexual contact,
 9 photographing or observing such minor child engaged in sexual contact.

10 (3) For the purpose of this section, "sexual contact" means any phys-
 11 ical contact between such minor child and any person or between such minor
 12 children ~~which that~~ is caused by the actor, or the actor causing such minor
 13 child to have self contact.

14 (4) Any person guilty of a violation of the provisions of subsection
 15 (1) (a) of this section shall be imprisoned in the state prison for a period
 16 not less than five (5) years and not to exceed life.

17 (5) Any person guilty of a violation of the provisions of subsections
 18 (1) (b), ~~(1)(c)~~, or ~~(1)(d)~~ of this section shall be imprisoned in the state
 19 prison for a period not less than five (5) years and not to exceed twenty-five
 20 (25) years.

21 SECTION 5. That Section 18-6104, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 18-6104. PUNISHMENT FOR RAPE. Rape is punishable by imprisonment in
 24 the state prison not less than ~~one (1) five (5) years~~, and the imprisonment
 25 may be extended to life in the discretion of the ~~D~~istrict ~~J~~udge, who shall
 26 pass sentence.

27 SECTION 6. That Section 18-6608, Idaho Code, be, and the same is hereby
 28 amended to read as follows:

29 18-6608. FORCIBLE PENETRATION BY USE OF FOREIGN OBJECT. Every person
 30 who willfully causes the penetration, however slight, of the genital or anal
 31 opening of another person, by any object, instrument or device:

32 (1) Against the victim's will by:

33 (a) Use of force or violence; or

34 (b) Duress; or

35 (c) Threats of immediate and great bodily harm, accompanied by apparent
 36 power of execution; or

37 (2) Where the victim is incapable, through any unsoundness of mind,
 38 whether temporary or permanent, of giving legal consent; or

39 (3) Where the victim is prevented from resistance by any intoxicating,
 40 narcotic or anesthetic substance; or

41 (4) Where the victim is at the time unconscious of the nature of the act
 42 because the victim:

43 (a) Was unconscious or asleep; or

44 (b) Was not aware, knowing, perceiving or cognizant that the act oc-
 45 curred;

46 shall be guilty of a felony and shall be punished by imprisonment in the state
 47 prison for not less than five (5) years and not more than life.

1 The provisions of this section shall not apply to bona fide medical,
2 health care or hygiene procedures.

3 SECTION 7. That Section 18-8311, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 18-8311. PENALTIES. (1) An offender subject to registration who know-
6 ingly fails to register, verify his address, or provide any information or
7 notice as required by this chapter shall be guilty of a felony and shall be
8 punished by imprisonment in the state prison system for a period not less
9 than one (1) year and not to exceed ten (10) years and by a fine not to exceed
10 five thousand dollars (\$5,000). If the offender is on probation or other su-
11 pervised release or suspension from incarceration at the time of the viola-
12 tion, the probation or supervised release or suspension shall be revoked and
13 the penalty for violating this chapter shall be served consecutively to the
14 offender's original sentence.

15 (2) An offender, subject to registration under this chapter, who
16 willfully provides false or misleading information in the registration re-
17 quired, shall be guilty of a felony and shall be punished by imprisonment in a
18 state prison for a period not less than one (1) year and not to exceed ten (10)
19 years and a fine not to exceed five thousand dollars (\$5,000).

20 SECTION 8. That Section 18-8327, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 18-8327. ADULT CRIMINAL SEX OFFENDER -- PROHIBITED EMPLOYMENT. (1)
23 Except as provided in section 18-8328, Idaho Code, it is a felony punishable
24 by imprisonment in the state prison system for a period not less than one (1)
25 year for any person: to+ apply for or to accept employment at a day care
26 center, group day care facility or family day care home; or to be upon or to
27 remain on the premises of a day care center, group day care facility or family
28 day care home while children are present, other than to drop off or pick up
29 the person's child or children if the person is currently registered or is
30 required to register under the sex offender registration act as provided in
31 chapter 83, title 18, Idaho Code.

32 (2) The owner or operator of any day care center, group day care facil-
33 ity or family day care home who knowingly employs a person or who knowingly
34 accepts volunteer services from a person, ~~which person~~ who is currently reg-
35 istered or is required to register under the sex offender registration act as
36 provided in chapter 83, title 18, Idaho Code, to work in the day care center,
37 group day care facility or family day care home is guilty of a misdemeanor
38 punishable by imprisonment in the county jail for not less than ninety (90)
39 days unless judicial relief has been granted pursuant to section 18-8328,
40 Idaho Code.

41 SECTION 9. That Section 18-8329, Idaho Code, be, and the same is hereby
42 amended to read as follows:

43 18-8329. ADULT CRIMINAL SEX OFFENDERS -- PROHIBITED ACCESS TO SCHOOL
44 CHILDREN SCHOOLS AND DAYCARES -- EXCEPTIONS. (1) If a person is currently
45 registered or is required to register under the sex offender registration

1 act as provided in chapter 83, title 18, Idaho Code, it is a misdemeanor
 2 punishable by imprisonment in the county jail for not less than ninety (90)
 3 days for such person to:

4 (a) Be upon or to remain on the premises of any school building or school
 5 grounds in this state, upon the premises or grounds of any daycare, or
 6 upon other properties posted with a notice that they are used by a school
 7 or daycare, when the person has reason to believe children under the age
 8 of eighteen (18) years are present and are involved in a school or day-
 9 care activity, or when children are present within thirty (30) minutes
 10 before or after a scheduled school or daycare activity.

11 (b) Knowingly loiter on a public way within five hundred (500) feet from
 12 the property line of school or daycare grounds in this state, includ-
 13 ing properties posted with a notice that they are used by a school or
 14 daycare, when children under the age of eighteen (18) years are present
 15 and are involved in a school or daycare activity, or when children are
 16 present within thirty (30) minutes before or after a scheduled school or
 17 daycare activity.

18 (c) Be in any conveyance owned or leased by a school or daycare to trans-
 19 port students to or from school or daycare or a school- or daycare-re-
 20 lated activity when children under the age of eighteen (18) years are
 21 present in the conveyance.

22 (d) Reside within five hundred (500) feet of the property on which a
 23 school or daycare is located, measured from the nearest point of the ex-
 24 terior wall of the offender's dwelling unit to the school's or daycare's
 25 property line, provided however, that this paragraph shall not apply
 26 if such person's residence was established prior to July 1, 2006, for
 27 a school, and prior to July 1, 2020, for a daycare in existence on that
 28 date. This paragraph shall not apply to such person whose residence is
 29 established prior to the establishment of a daycare within five hundred
 30 (500) feet of his dwelling unit.

31 (e) For purposes of this chapter, "school" means any public or private
 32 school. "Daycare" means any licensed daycare as defined in chapter 11,
 33 title 39, Idaho Code.

34 The posted notices required in this subsection shall be at least one hundred
 35 (100) square inches, shall make reference to this section ~~18-8329, Idaho~~
 36 ~~Code~~, shall include the term "registered sex offender" and shall be placed at
 37 all public entrances to the property.

38 (2) The provisions of subsection (1) (a) and (b) of this section shall
 39 not apply when the person:

40 (a) Is a student in attendance at the school; or

41 (b) Is exercising his right to vote in public elections; or

42 (c) Is taking delivery of his mail through an official post office lo-
 43 cated on school grounds; or

44 (d) Contacts the school district or daycare office annually and prior
 45 to his first visit of a school year and has obtained written permission
 46 from the district or daycare to be on the school or daycare grounds or
 47 upon other property posted with a notice that the property is used by
 48 a school or daycare. For the purposes of this section, "contacts the
 49 school district or daycare office" shall include mail, facsimile ma-

chine, or by computer using the internet. The provisions of this subsection are required for an individual who:

(i) Is dropping off or picking up a child or children and the person is the child's or children's parent or legal guardian; or

(ii) Is attending an academic conference or other scheduled extracurricular school event with school officials present when the offender is a parent or legal guardian of a child who is participating in the conference or extracurricular event. "Extracurricular" means any school-sponsored activity that is outside the regular curriculum, occurring during or outside regular school hours, including but not limited to academic, artistic, athletic or recreational activities; or

(iii) Is temporarily on school or daycare grounds, during school hours, for the purpose of making a mail, food, or other delivery.

(3) The provisions of subsection (1) (d) of this section shall not apply when the person:

(a) Resides at a state-licensed or certified facility for incarceration, health, or convalescent care; or

(b) Stays at a homeless shelter or resides at a recovery facility, if such shelter or facility has been approved for sex offenders by the county sheriff or municipal police chief.

(4) Nothing in this section shall prevent a school district or daycare from adopting more stringent safety and security requirements for employees and nonemployees while they are in district or daycare facilities and/or on district or daycare properties. If adopting more stringent safety and security requirements, the school district or daycare shall provide the requirements to any individual listed in subsection (2) (d) (i) through (iii) by mail, facsimile machine, or by computer using the internet.

SECTION 10. That Section 19-2601, Idaho Code, be, and the same is hereby amended to read as follows:

19-2601. COMMUTATION, SUSPENSION, WITHHOLDING OF SENTENCE -- PROBATION. Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, and for subsection 4. of this section only, those of aggravated sexual battery (section 18-925, Idaho Code), sexual abuse of a child under sixteen (16) years of age (section 18-1506, Idaho Code), lewd conduct with a minor child under sixteen (16) years of age (section 18-1508, Idaho Code), sexual battery of a minor child sixteen (16) or seventeen (17) years of age (section 18-1508A, Idaho Code), rape (section 18-6104, Idaho Code), and forcible penetration by use of a foreign object (section 18-6608, Idaho Code), the court in its discretion may:

1. Commute the sentence and confine the defendant in the county jail, or, if the defendant is of proper age, commit the defendant to the custody of the state department of juvenile corrections;

2. Suspend the execution of the judgment at the time of judgment or at any time during the term of a sentence in the county jail and may place the defendant on probation under such terms and conditions as it deems necessary and appropriate;

1 3. Withhold judgment on such terms and for such time as it may prescribe
2 and may place the defendant on probation under such terms and conditions as
3 it deems necessary and appropriate; or

4 4. Suspend the execution of the judgment at any time during the first
5 three hundred sixty-five (365) days of a sentence to the custody of the state
6 board of correction. The court may retain jurisdiction over the prisoner
7 for a period of up to the first three hundred sixty-five (365) days. Ex-
8 cept as provided for in section 19-2601A, Idaho Code, during the period of
9 retained jurisdiction, the state board of correction shall be responsible
10 for determining the placement of the prisoner and such education, program-
11 ming and treatment as it determines to be appropriate. The prisoner will
12 remain committed to the board of correction if not affirmatively placed on
13 probation by the court. In extraordinary circumstances, where the court
14 concludes that it is unable to obtain and evaluate the relevant information
15 within the period of retained jurisdiction, or where the court concludes
16 that a hearing is required and is unable to obtain the defendant's presence
17 for such a hearing within such period, the court may decide whether to place
18 the defendant on probation or release jurisdiction within a reasonable time,
19 not to exceed thirty (30) days, after the period of retained jurisdiction has
20 expired. Placement on probation shall be under such terms and conditions
21 as the court deems necessary and appropriate. The court in its discretion
22 may sentence a defendant to more than one (1) period of retained jurisdic-
23 tion after a defendant has been placed on probation in a case or following
24 release from commitment to the department of juvenile corrections pursuant
25 to section 19-2601A, Idaho Code. In no case shall the board of correction
26 or its agent, the department of correction, be required to hold a hearing
27 of any kind with respect to a recommendation to the court for the grant or
28 denial of probation. Probation is a matter left to the sound discretion of
29 the court. Any recommendation made by the state board of correction to the
30 court regarding the prisoner shall be in the nature of an addendum to the
31 presentence report. The board of correction and its agency, the department
32 of correction, and their employees shall not be held financially responsible
33 for damages, injunctive or declaratory relief for any recommendation made to
34 the district court under this section.

35 5. If the crime involved is a felony and if judgment is withheld as pro-
36 vided in subsection 3. of this section or if judgment and a sentence of cus-
37 tody to the state board of correction is suspended at the time of judgment in
38 accordance with subsection 2. of this section or as provided by subsection
39 4. of this section, the court may place the defendant on probation. If the
40 court places the defendant on probation to the board of correction, the court
41 shall include in the terms and conditions of probation a requirement that
42 the defendant enter into and comply with an agreement of supervision with the
43 board of correction. The agreement of supervision shall include provisions
44 setting forth the potential sanctions for a violation of the terms or condi-
45 tions imposed and potential rewards for compliance with the terms and con-
46 ditions imposed, as such sanctions and rewards are set forth in rules of the
47 board of correction.

48 6. If the crime involved is a misdemeanor, indictable or otherwise, or
49 if the court should suspend any remaining portion of a jail sentence already

1 commuted in accordance with subsection 1. of this section, the court, if it
2 grants probation, may place the defendant on probation.

3 7. The period of probation ordered by a court under this section under
4 a conviction or plea of guilty for a misdemeanor, indictable or otherwise,
5 may be for a period of not more than two (2) years; provided that the court
6 may extend the period of probation to include the period of time during which
7 the defendant is a participant in a problem solving court program and for a
8 period of up to one (1) year after a defendant's graduation or termination
9 from a problem solving court program. Under a conviction or plea of guilty
10 for a felony, the period of probation may be for a period of not more than the
11 maximum period for which the defendant might have been imprisoned.

12 SECTION 11. An emergency existing therefor, which emergency is hereby
13 declared to exist, this act shall be in full force and effect on and after
14 July 1, 2022.