

IN THE SENATE

SENATE BILL NO. 1373

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO PROTECTION ORDERS; AMENDING CHAPTER 79, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-7907, IDAHO CODE, TO PROVIDE AN ACTION FOR A PROTECTION ORDER AGAINST HARASSMENT AND STALKING, TO PROVIDE PROCEDURES FOR A FILING AND HEARING FOR A PROTECTION ORDER, TO PROVIDE FOR CONDUCT TO BE PROHIBITED IN A PROTECTION ORDER, TO PROVIDE FOR HOW A PETITION AND PROTECTION ORDER SHALL BE SERVED, TO PROVIDE FOR NOTICE TO LAW ENFORCEMENT AGENCIES, TO PROVIDE THAT LAW ENFORCEMENT AGENCIES SHALL TAKE CERTAIN ACTIONS FOLLOWING RECEIPT OF NOTICE, TO AUTHORIZE RENEWAL, MODIFICATION OR RESCINDING OF A PROTECTION ORDER, TO PROVIDE A PENALTY, TO PROVIDE FOR WHERE A PETITION SHALL BE FILED, TO AUTHORIZE A SINGLE PETITION WHEN A DOMESTIC VIOLENCE PROTECTION ORDER IS ALSO SOUGHT, TO DEFINE TERMS AND TO AUTHORIZE A HEARING BY ELECTRONIC MEANS IN CERTAIN INSTANCES; AMENDING CHAPTER 79, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-7908, IDAHO CODE, TO PROVIDE AN ACTION FOR AN EX PARTE TEMPORARY PROTECTION ORDER AGAINST HARASSMENT AND STALKING, TO PROVIDE FOR REQUIREMENTS TO PETITION FOR AN EX PARTE ORDER, TO PROVIDE FOR HEARINGS, TO PROVIDE FOR THE EFFECTIVENESS OF AN EX PARTE ORDER, TO PROVIDE FOR A MOTION SEEKING AN ORDER SHORTENING THE TIME PERIOD OF AN EX PARTE ORDER AND TO PROVIDE A CODE REFERENCE; AND AMENDING CHAPTER 79, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-7909, IDAHO CODE, TO PROVIDE THAT CERTAIN FEES SHALL BE WAIVED.

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

SECTION 1. That Chapter 79, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-7907, Idaho Code, and to read as follows:

18-7907. ACTION FOR PROTECTION. (1) There shall exist an action known as a "petition for a protection order" in cases where conduct constitutes malicious harassment as described in section 18-7902, Idaho Code, stalking in any degree as described in section 18-7905 or 18-7906, Idaho Code, or telephone harassment as described in section 18-6710, Idaho Code.

(2) A person may seek relief from such conduct for himself, his children or his ward by filing a petition for a protection order based on a sworn affidavit with the magistrates division of the district court, alleging specific facts that a person for whom protection is sought was the victim of such conduct within the ninety (90) days immediately preceding the filing of the petition and that such conduct is likely to occur in the future thereby causing irreparable injury. Evidence of such conduct occurring prior to such ninety (90) day period shall be admissible to show that conduct committed within the ninety (90) day period is part of a course or pattern of conduct constituting malicious harassment, stalking or telephone harassment, and admissible as otherwise permitted in accordance with court rule and decisional law.

1 (3) Upon the filing of a petition based upon a sworn affidavit for a pro-
2 tection order, the court shall hold a hearing within fourteen (14) days to
3 determine whether the relief sought shall be granted. If either party is
4 represented by counsel at such hearing, the court shall grant a request for
5 a continuance of the proceedings so that counsel may be obtained by the other
6 party. Such order may require either the petitioner or respondent, or both,
7 to pay for costs, including reasonable attorney's fees.

8 (4) Upon a showing by a preponderance of the evidence that a person for
9 whom protection is sought in the petition was the victim of conduct commit-
10 ted by the respondent that constitutes malicious harassment as described in
11 section 18-7902, Idaho Code, stalking in any degree as described in section
12 18-7905 or 18-7906, Idaho Code, or telephone harassment as described in sec-
13 tion 18-6710, Idaho Code, within ninety (90) days immediately preceding the
14 filing of the petition, and that such conduct is likely to occur in the future
15 thereby causing irreparable injury to such person, the court may issue a pro-
16 tection order for a period not to exceed one (1) year. Such protection order
17 may:

18 (a) Direct the respondent to refrain from conduct that constitutes
19 malicious harassment as described in section 18-7902, Idaho Code,
20 stalking in any degree as described in section 18-7905 or 18-7906, Idaho
21 Code, or telephone harassment as described in section 18-6710, Idaho
22 Code;

23 (b) Order the respondent to refrain from contacting the petitioner or
24 any other person for whom the petition sought protection; and

25 (c) Grant such other relief and impose such other restrictions as the
26 court deems proper, that may include a requirement that the respondent
27 not knowingly remain within a certain distance of the protected person,
28 which distance restriction may not exceed one thousand five hundred
29 (1,500) feet.

30 (5) The petition and the court's protection order shall be served on the
31 respondent in the manner provided in section 39-6310, Idaho Code.

32 (6) (a) Notice of a protection order shall be forwarded by the clerk of
33 the court, on or before the next judicial day, to the appropriate law en-
34 forcement agency.

35 (b) Upon receipt of such notice, the law enforcement agency shall
36 forthwith enter the order into the Idaho law enforcement telecommunica-
37 tions system available in this state used by law enforcement agencies
38 to list outstanding warrants. Entry into the Idaho law enforcement
39 telecommunications system constitutes notice to all law enforcement
40 agencies of the existence of the order. The order is fully enforceable
41 in any county in the state.

42 (c) Law enforcement agencies shall establish procedures reasonably ad-
43 equate to assure that an officer approaching or actually at the scene of
44 an incident may be informed of the existence of such protection order.

45 (7) Following a hearing, and for good cause shown, the court's protec-
46 tion order may be renewed in increments not to exceed one (1) year or may be
47 modified or rescinded at any time if the court finds it appropriate to do so.

48 (8) Whenever a protection order, or an ex parte temporary protection
49 order issued pursuant to this chapter is granted and the respondent or person
50 to be restrained was served a copy of the order in the manner provided in sec-

1 tion 39-6310, Idaho Code, a violation of the provisions of the order shall be
2 a misdemeanor punishable by not to exceed one (1) year in jail and a fine not
3 to exceed five thousand dollars (\$5,000). A peace officer may arrest without
4 a warrant and take into custody a person who the peace officer has probable
5 cause to believe has violated such order.

6 (9) A petition shall be filed in the county of the respondent's resi-
7 dence, the petitioner's residence or where the petitioner is temporarily re-
8 siding.

9 (10) A person may file a single petition seeking relief pursuant to this
10 chapter and section 39-6304, Idaho Code. Such petition shall separately set
11 forth the matters pertaining to each such provision of law. All procedural
12 and substantive requirements governing petitions for domestic violence pro-
13 tection orders under chapter 63, title 39, Idaho Code, shall apply with re-
14 spect to the issuance of such domestic violence protection orders.

15 (11) As used in this section:

16 (a) "Contact" means any actual physical contact; contact or attempted
17 contact, directly or indirectly, by telephone, pager, e-mail, facsim-
18 ile or other oral, written or electronic means of communication; and

19 (b) "Irreparable injury" includes, but is not limited to, situations
20 in which the respondent has or is likely to threaten or commit bodily
21 injury or has or is likely to engage in acts constituting malicious ha-
22 rassment as described in section 18-7902, Idaho Code, stalking in any
23 degree as described in section 18-7905 or 18-7906, Idaho Code, or tele-
24 phone harassment as described in section 18-6710, Idaho Code, against
25 any person for whom protection is sought in the petition.

26 (12) Any hearing conducted pursuant to the provisions of this section
27 may be conducted by telephone or other electronic means in accordance with
28 any procedures authorized by the Idaho supreme court.

29 SECTION 2. That Chapter 79, Title 18, Idaho Code, be, and the same is
30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
31 ignated as Section 18-7908, Idaho Code, and to read as follows:

32 18-7908. EX PARTE TEMPORARY PROTECTION ORDER. (1) Where a petition for
33 a protection order under this chapter alleges that irreparable injury could
34 result from conduct that constitutes malicious harassment as described in
35 section 18-7902, Idaho Code, stalking in any degree as described in section
36 18-7905 or 18-7906, Idaho Code, or telephone harassment as described in sec-
37 tion 18-6710, Idaho Code, if an order is not immediately issued without prior
38 notice to the respondent, the court may grant an ex parte temporary protec-
39 tion order based upon the affidavit submitted or hold an ex parte hearing
40 on the day a petition is filed or on the following judicial day to determine
41 whether the court should grant an ex parte temporary protection order pend-
42 ing a full hearing. An ex parte temporary protection order may grant the same
43 relief as specified in section 18-7907(4), Idaho Code.

44 (2) An ex parte hearing to consider the issuance of an ex parte tem-
45 porary protection order may be conducted by telephone or other electronic
46 means in accordance with any procedures authorized by the Idaho supreme
47 court.

48 (3) An ex parte temporary protection order shall be effective for a
49 fixed period not to exceed fourteen (14) days, and a full hearing, as pro-

1 vided in this chapter, shall be set for not later than fourteen (14) days from
2 the issuance of the ex parte temporary protection order. An ex parte tempo-
3 rary protection order may, following a hearing and for good cause shown, be
4 reissued for a period not to exceed fourteen (14) days. Motions seeking an
5 order shortening the time period must be served upon the petitioner at least
6 two (2) days prior to the hearing on the motion.

7 (4) Except as otherwise provided in this section, the provisions of
8 section 18-7907, Idaho Code, are applicable to a petition for protective
9 order seeking an ex parte temporary protection order and to any ex parte tem-
10 porary restraining order issued pursuant to this section.

11 SECTION 3. That Chapter 79, Title 18, Idaho Code, be, and the same is
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
13 ignated as Section 18-7909, Idaho Code, and to read as follows:

14 18-7909. FEES WAIVED. No filing fee, service fee, hearing fee or bond
15 shall be charged for proceedings seeking only the relief provided under sec-
16 tions 18-7907 and 18-7908, Idaho Code.