

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 360

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO ASSAULT AND BATTERY; AMENDING SECTION 18-918, IDAHO CODE, TO  
2 PROVIDE A CODE REFERENCE, TO REVISE A PROVISION REGARDING COUNSELING,  
3 TO PROVIDE THAT THE SUPREME COURT SHALL ESTABLISH A CERTAIN RULE, TO  
4 PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AND  
5 AMENDING SECTION 18-923, IDAHO CODE, TO PROVIDE THAT A PERSON GUILTY OF  
6 ATTEMPTED STRANGULATION SHALL UNDERGO A CERTAIN EVALUATION, COUNSELING  
7 AND OTHER TREATMENT.  
8

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

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

12 18-918. DOMESTIC VIOLENCE. (1) For the purpose of this section:

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

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

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

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

27 (3) (a) A household member who commits an assault, as defined in section  
28 18-901, Idaho Code, against another household member which does not re-  
29 sult in traumatic injury is guilty of a misdemeanor domestic assault.

30 (b) A household member who commits a battery, as defined in section  
31 18-903, Idaho Code, against another household member which does not  
32 result in traumatic injury is guilty of a misdemeanor domestic battery.

33 (c) A first conviction under this subsection ~~(3)~~ is punishable by a  
34 fine not exceeding one thousand dollars (\$1,000) or by imprisonment  
35 in a county jail not to exceed six (6) months, or both. Any person who  
36 pleads guilty to or is found guilty of a violation of this subsection ~~(3)~~  
37 who previously has pled guilty to or been found guilty of a violation of  
38 this subsection ~~(3)~~, or of any substantially conforming foreign crim-  
39 inal violation, notwithstanding the form of the judgment or withheld  
40 judgment, within ten (10) years of the first conviction, shall be guilty  
41 of a misdemeanor and shall be punished by imprisonment in the county  
42 jail for a term not to exceed one (1) year or by a fine not exceeding two

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

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

18 (5) Notwithstanding any other provisions of this section, any person  
19 who previously has pled guilty to or been found guilty of a felony violation  
20 of the provisions of this section or of any substantially conforming foreign  
21 criminal felony violation, notwithstanding the form of the judgment or with-  
22 held judgment, and who, within fifteen (15) years, pleads guilty to or is  
23 found guilty of any further violation of this section, shall be guilty of a  
24 felony and shall be punished by imprisonment in the state prison for a term  
25 not to exceed ten (10) years or by a fine not to exceed ten thousand dollars  
26 (\$10,000), or by both such fine and imprisonment.

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

34 (7) (a) Any person who pleads guilty to or is found guilty of a violation  
35 of this section or section 18-923, Idaho Code, shall undergo, at the  
36 person's own expense, an evaluation by a person, agency or organization  
37 approved by the court in accordance with paragraph (c) of this subsec-  
38 tion to determine whether the defendant should be required to obtain  
39 ~~aggression~~ counseling or other appropriate treatment. Such evaluation  
40 shall be completed prior to the sentencing date if the court's list of  
41 approved evaluators, in accordance with paragraph (c) of this subsec-  
42 tion, contains evaluators who are able to perform the evaluation prior  
43 to the sentencing dates. If the evaluation recommends counseling or  
44 other treatment, the evaluation shall recommend the type of counseling  
45 or treatment considered appropriate for the defendant, together with  
46 the estimated costs thereof, and shall recommend any other suitable  
47 alternative counseling or treatment programs, together with the es-  
48 timated costs thereof. The defendant shall request that a copy of the  
49 completed evaluation be forwarded to the court. The court shall take  
50 the evaluation into consideration in determining an appropriate sen-

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

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

37 ~~Each judicial district~~ The supreme court shall by rule estab-  
38 lish a uniform system for the qualification and approval of persons,  
39 agencies or organizations to perform the evaluations required in this  
40 subsection. Only qualified evaluators approved by the court shall be  
41 authorized to perform such evaluations. Funds to establish a system  
42 for approval of evaluators shall be derived from moneys designated  
43 therefor and deposited in the district court fund as provided in section  
44 31-3201A(16), Idaho Code.

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

48 SECTION 2. That Section 18-923, Idaho Code, be, and the same is hereby  
49 amended to read as follows:

1 18-923. ATTEMPTED STRANGULATION. (1) Any person who willfully and un-  
2 lawfully chokes or attempts to strangle a household member, or a person with  
3 whom he or she has or had a dating relationship, is guilty of a felony punish-  
4 able by incarceration for up to fifteen (15) years in the state prison.

5 (2) No injuries are required to prove attempted strangulation.

6 (3) The prosecution is not required to show that the defendant intended  
7 to kill or injure the victim. The only intent required is the intent to choke  
8 or attempt to strangle.

9 (4) "Household member" assumes the same definition as set forth in sec-  
10 tion 18-918(1)(a), Idaho Code.

11 (5) "Dating relationship" assumes the same definition as set forth in  
12 section 39-6303(2), Idaho Code.

13 (6) Any person who pleads guilty to or is found guilty of a violation of  
14 this section shall undergo an evaluation, counseling and other treatment as  
15 provided in section 18-918(7), Idaho Code.