

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 383

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE SEXUAL ASSAULT PROTECTION ACT; AMENDING TITLE 39, IDAHO  
2 CODE, BY THE ADDITION OF A NEW CHAPTER 97, TITLE 39, IDAHO CODE, TO PRO-  
3 VIDE A SHORT TITLE, TO PROVIDE A STATEMENT OF PURPOSE, TO DEFINE TERMS,  
4 TO PROVIDE AN ACTION FOR PROTECTION, TO PROVIDE THAT CERTAIN FEES SHALL  
5 BE WAIVED, TO PROVIDE FOR A HEARING ON A PETITION FOR A PROTECTION ORDER  
6 AND FOR RELIEF, TO PROVIDE FOR AN EX PARTE TEMPORARY PROTECTION ORDER,  
7 TO PROVIDE FOR THE ISSUANCE, SERVICE, AND TRANSMITTAL OF A PROTEC-  
8 TION ORDER, TO PROVIDE FOR THE VIOLATION OF AN ORDER AND PENALTIES, TO  
9 PROVIDE FOR THE MODIFICATION OF AN ORDER, TO PROVIDE CERTAIN IMMUNITY  
10 FOR PEACE OFFICERS, TO PROVIDE FOR CERTAIN ADDITIONAL PROCEEDINGS, TO  
11 PROVIDE SEVERABILITY, AND TO PROVIDE FOR THE TRANSFER OF WIRELESS TELE-  
12 PHONE SERVICE IN CERTAIN INSTANCES.  
13

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

15 SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended  
16 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
17 ter 97, Title 39, Idaho Code, and to read as follows:

18 CHAPTER 97

19 SEXUAL ASSAULT PROTECTION ACT

20 39-9701. SHORT TITLE. This chapter shall be known and may be cited as  
21 the "Sexual Assault Protection Act."

22 39-9702. STATEMENT OF PURPOSE. It is the intent of the legislature to  
23 expand the ability of the courts to assist victims by providing a legal means  
24 for victims of sexual assault to seek protection orders. It is the intent of  
25 the legislature that the official response to cases of sexual assault shall  
26 stress the enforcement of the laws to protect the victim and shall commu-  
27 nicate the attitude that sexual assault is criminal behavior and will not  
28 be tolerated. It is the intent of the legislature to presume the validity  
29 of protection orders issued by courts in all states, the District of Colum-  
30 bia, United States territories, and all federally recognized Indian tribes  
31 within the United States, and to afford full faith and credit to those or-  
32 ders.

33 39-9703. DEFINITIONS. As used in this chapter:

- 34 (1) "Intimate parts" means the genital area, groin, inner thighs, but-  
35 tocks, or breasts.
- 36 (2) "Judicial day" means any day on which court business may be trans-  
37 acted as provided in sections 1-1606 and 1-1607, Idaho Code.
- 38 (3) "Protected party" means a person on whose behalf a protection order  
39 is sought or issued, whether an adult or minor child.

1 (4) "Protection order" means any order issued for the purpose of pre-  
2 venting sexual assault, or threats of sexual assault, or contact or communi-  
3 cation with, or physical proximity to, another person, where the order was  
4 issued:

5 (a) Pursuant to this chapter;

6 (b) In another jurisdiction pursuant to a provision similar to section  
7 39-9706, Idaho Code; or

8 (c) In any criminal or civil action, as a temporary or final order, and  
9 where the order was issued in a response to a criminal complaint, peti-  
10 tion, or motion filed by or on behalf of a person seeking protection from  
11 sexual assault, and issued after giving notice and an opportunity to re-  
12 spond to the person being restrained.

13 (5) "Respondent" means the individual against whom enforcement of a  
14 protection order is sought.

15 (6) "Sexual assault" means sexual conduct, or threats thereof, between  
16 at least two (2) people where one (1) person does not consent or sexual pene-  
17 tration, or threats thereof, without the consent of one (1) person.

18 (7) "Sexual conduct" means any of the following:

19 (a) Any act as defined in section 18-924, Idaho Code, on the petitioner  
20 or the minor child on whose behalf a protection order is being sought;

21 (b) Any act as defined in section 18-924, Idaho Code, that the peti-  
22 tioner or minor child on whose behalf the protection order is being  
23 sought is forced to perform by the respondent with another person or the  
24 respondent; or

25 (c) Any forced display of the petitioner's intimate parts, or those of  
26 the minor child on whose behalf a protection order is being sought, by  
27 the respondent with the intent to degrade, humiliate, or demean the pe-  
28 titioner or the minor child or with the intent of arousing, appealing  
29 to, or gratifying the lust, passion, or sexual desires of the respondent  
30 or any other person.

31 (8) "Sexual penetration" means any intrusion, however slight, of an ob-  
32 ject or any part of the body of the respondent into the sex organ or anus of  
33 another person or the placement of a penis, however slight, into the mouth of  
34 the petitioner or minor child on whose behalf the protection order is being  
35 sought.

36 39-9704. ACTION FOR PROTECTION. (1) There shall exist an action known  
37 as a "petition for a protection order" in cases of sexual assault or threats  
38 thereof.

39 (2) A person may seek relief from sexual assault by filing a petition  
40 based on a sworn affidavit with the magistrate division of the district  
41 court, alleging that the person is the victim of sexual assault or threats  
42 thereof. A custodial or noncustodial parent or guardian may file a petition  
43 on behalf of a minor child who is the victim of sexual assault or threats  
44 thereof.

45 (3) A petition shall be filed in the county of the respondent's resi-  
46 dence, the petitioner's residence, where the petitioner is temporarily re-  
47 siding, or the residence of the minor child on whose behalf the protection  
48 order is being sought.

1           39-9705. FEES WAIVED. No filing fee, service fee, hearing fee, or bond  
2 shall be charged for proceedings seeking only the relief provided under this  
3 chapter.

4           39-9706. HEARING ON PETITION FOR PROTECTION ORDER -- RELIEF PROVIDED  
5 AND REALIGNMENT OF DESIGNATION OF PARTIES. (1) Upon filing of a petition  
6 based on a sworn affidavit for a protection order, the court shall hold a  
7 hearing within fourteen (14) days to determine whether the relief sought  
8 shall be granted. If either party is represented by counsel at a hearing  
9 seeking entry of a protection order, the court shall permit a continuance,  
10 if requested, of the proceedings so that counsel may be obtained by the other  
11 party. If the court finds that it is necessary for both parties to be repre-  
12 sented by counsel, the court shall enter appropriate orders to ensure that  
13 counsel is retained. The order entered may require the petitioner or the  
14 person acting on behalf of the minor child or the respondent, or both, to pay  
15 for costs of counsel. Upon a showing that there is an immediate and present  
16 danger to the petitioner or the minor child as a result of contact with the  
17 respondent, the court may, if requested, order for a period not to exceed one  
18 (1) year that:

19           (a) A party be restrained from committing acts of sexual assault;

20           (b) Exclude the respondent from the residence of the petitioner or the  
21 protected party;

22           (c) The respondent be required to pay service fees and reimburse the pe-  
23 titioner for costs incurred in bringing the action, including a reason-  
24 able attorney's fee;

25           (d) The respondent be restrained from harassing, annoying, disturbing  
26 the peace of, telephoning, contacting, or otherwise communicating, di-  
27 rectly or indirectly, with the protected party;

28           (e) The respondent be restrained from entering any premises when it  
29 appears to the court that such restraint is necessary to prevent the  
30 respondent from contacting, harassing, annoying, disturbing the peace  
31 of, or telephoning the protected party; or

32           (f) The respondent be restrained from knowingly coming within one thou-  
33 sand five hundred (1,500) feet or other appropriate distance of the pro-  
34 tected party, the protected party's residence, the school or place of  
35 employment of the protected party, or any specified place frequented by  
36 the protected party.

37           (2) Immediate and present danger under this section includes but is  
38 not limited to situations in which the respondent has recently sexually as-  
39 sailed or threatened sexual assault against the protected party.

40           (3) Relief shall not be denied because the protected party used reason-  
41 able force in self-defense against respondent or because the protected party  
42 or respondent was a minor at the time of the incident of sexual assault.

43           (4) The court, when determining whether to issue a sexual assault pro-  
44 tection order, shall not require proof of physical injury on the petitioner  
45 or minor child on whose behalf the order is sought, but a judge may consider  
46 if the petitioner's affidavit is consistent with any evidence of physical  
47 injuries.

48           (5) Any relief granted by the protection order, other than a judgment  
49 for costs, shall be for a fixed period not to exceed one (1) year; provided,

1 that an order obtained pursuant to this chapter may, upon motion and good  
2 cause shown, continue for an appropriate time period as directed by the court  
3 or be made permanent if the requirements of this chapter are met. The order  
4 may be terminated or modified by further order of the court either on written  
5 stipulation filed with the court or on the motion of a party and after a hear-  
6 ing on the motion. The motion to renew an order may be granted without a hear-  
7 ing if not timely objected to by the party against whom the order was entered.

8 39-9707. EX PARTE TEMPORARY PROTECTION ORDER. (1) Where an applica-  
9 tion under this section alleges that irreparable injury could result due to a  
10 recent sexual assault or threatened sexual assault if an order is not issued  
11 immediately without prior notice to the respondent, the court may grant an ex  
12 parte temporary protection order based on the affidavit submitted or other-  
13 wise shall hold a hearing which may be ex parte on the day a petition is filed  
14 or on the following judicial day to determine whether the court should grant  
15 an ex parte temporary protection order, pending a full hearing, including an  
16 order:

17 (a) Restraining any party from committing acts of sexual assault;  
18 (b) Excluding the respondent from the residence of the protected party  
19 until further order of the court;  
20 (c) Restraining the respondent from contacting, molesting, interfer-  
21 ing with, or menacing the petitioner or minor child on whose behalf the  
22 protection order is sought; or  
23 (d) Restraining the respondent from willfully entering any premises  
24 when it appears to the court that such restraint is necessary to prevent  
25 the respondent from contacting, molesting, interfering with, or men-  
26 acing the petitioner or the minor child on whose behalf the protection  
27 order is being sought.

28 (2) An ex parte hearing to consider the issuance of a temporary protec-  
29 tion order may be conducted by telephone in accordance with procedures es-  
30 tablished by the Idaho supreme court.

31 (3) Irreparable injury under this section includes but is not limited  
32 to situations in which the respondent has recently threatened the petitioner  
33 with sexual assault or has recently engaged in acts of sexual assault against  
34 the petitioner or minor child on whose behalf the protection order is being  
35 sought.

36 (4) The court shall hold an ex parte hearing on the day the petition is  
37 filed or on the following judicial day.

38 (5) An ex parte temporary protection order shall be effective for a  
39 fixed period not to exceed fourteen (14) days, but may be reissued. A full  
40 hearing, as provided in this chapter, shall be set for no later than fourteen  
41 (14) days from the issuance of the temporary order. The respondent shall be  
42 served with a copy of the ex parte order along with a copy of the petition and  
43 notice of the date set for the hearing. If the ex parte temporary protection  
44 order substantially affects the respondent's rights to enter the domicile  
45 and the ends of justice so require, the respondent may move the court for an  
46 order shortening the time period within which the hearing required under the  
47 provisions of section 39-9706, Idaho Code, must be held. Motions seeking an  
48 order shortening the time period must be served on the petitioner at least  
49 two (2) days prior to the hearing on the motion.

1           39-9708.   ISSUANCE OF ORDER -- ASSISTANCE OF PEACE OFFICER -- DESIGNA-  
2   TION OF APPROPRIATE LAW ENFORCEMENT AGENCY. Issuance of a protection order,  
3   the assistance of a peace officer, and the designation of an appropriate law  
4   enforcement agency shall take place in the same manner as described in sec-  
5   tion 39-6309, Idaho Code.

6           39-9709.   ORDER AND SERVICE. Service of protection orders shall take  
7   place in the manner prescribed in section 39-6310, Idaho Code.

8           39-9710.   ORDER -- TRANSMITTAL TO LAW ENFORCEMENT AGENCY -- RECORD IN  
9   IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM -- ENFORCEABILITY. The  
10  form of a protection order, transmittal to law enforcement agencies, record-  
11  ing the Idaho public safety and security information system, and enforce-  
12  ability shall be in accordance with section 39-6311, Idaho Code.

13          39-9711.   VIOLATION OF ORDER -- PENALTIES. (1) Whenever a protection  
14  order is granted and the respondent or person to be restrained had notice  
15  of the order, a violation of the provisions of the order or of a provision  
16  excluding the person from a residence shall be a misdemeanor punishable by  
17  up to one (1) year in jail and a fine not to exceed five thousand dollars  
18  (\$5,000).

19          (2) The person against whom a protection order has been issued by an  
20  out-of-state court is presumed to have notice of the order if the protected  
21  party presents to the officer proof of service of the order.

22          39-9712.   ORDER -- MODIFICATION -- TRANSMITTAL. Modification of pro-  
23  tection orders shall take place in the manner prescribed in section 39-6313,  
24  Idaho Code.

25          39-9713.   PEACE OFFICERS -- IMMUNITY. No peace officer may be held  
26  criminally or civilly liable for actions or omissions in the performance of  
27  the duties of his office under this chapter, including the enforcement of  
28  out-of-state protection orders, if the peace officer acts in good faith and  
29  without malice.

30          39-9714.   PROCEEDINGS ADDITIONAL. Any proceedings under this chapter  
31  are in addition to other civil or criminal remedies.

32          39-9715.   SEVERABILITY. The provisions of this act are hereby declared  
33  to be severable and if any provision of this act or the application of such  
34  provision to any person or circumstance is declared invalid for any reason,  
35  such declaration shall not affect the validity of remaining portions of this  
36  act.

37          39-9716.   ORDER FOR TRANSFER OF WIRELESS TELEPHONE SERVICE. An order  
38  for the transfer of wireless telephone service may be granted to a request-  
39  ing party in accordance with section 39-6318, Idaho Code.