

IN THE SENATE

SENATE BILL NO. 1117

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO MALICIOUS HARASSMENT; AMENDING SECTION 18-7907, IDAHO CODE, TO  
2 REVISE PROVISIONS REGARDING CONDUCT FOR A PETITION FOR A PROTECTION OR-  
3 DER, TO PROVIDE FOR A VERIFIED PETITION, TO PROVIDE THAT CERTAIN EVI-  
4 DENCE MAY BE ADMISSIBLE, TO REVISE A PROVISION REGARDING HEARINGS FOR A  
5 PROTECTION ORDER, TO REVISE PROVISIONS REGARDING ISSUANCE OF A PROTEC-  
6 TION ORDER, TO PROVIDE FOR THE IDAHO PUBLIC SAFETY AND SECURITY INFOR-  
7 MATION SYSTEM, TO REVISE A PROVISION REGARDING THE DURATION OF A PROTEC-  
8 TION ORDER, TO REMOVE A DEFINITION, TO REMOVE A PROVISION REGARDING HOW  
9 CERTAIN HEARINGS ARE CONDUCTED, AND TO MAKE TECHNICAL CORRECTIONS; AND  
10 AMENDING SECTION 18-7908, IDAHO CODE, TO PROVIDE FOR A VERIFIED PETI-  
11 TION, TO REVISE PROVISIONS REGARDING GRANTING OF AN EX PARTE TEMPORARY  
12 PROTECTION ORDER, AND TO REVISE A PROVISION REGARDING THE DURATION OF AN  
13 EX PARTE TEMPORARY PROTECTION ORDER.  
14

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

16 SECTION 1. That Section 18-7907, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 18-7907. ACTION FOR PROTECTION. (1) There shall exist an action known  
19 as a "petition for a protection order" in cases where a person intentionally  
20 engages in the following conduct constitutes malicious harassment as de-  
21 scribed in section 18-7902, Idaho Code, stalking in any degree as described  
22 in section 18-7905 or 18-7906, Idaho Code, or telephone harassment as de-  
23 scribed in section 18-6710, Idaho Code:

24 (a) Stalks, in any degree, as described in sections 18-7905 and  
25 18-7906, Idaho Code;

26 (b) Telephones another with the intent to terrify, threaten, or intim-  
27 idate such other person and addresses to such other person any threat  
28 to inflict injury or physical harm to the person addressed or any mem-  
29 ber of his family and engages in such conduct with any device that pro-  
30 vides transmission of messages, signals, facsimiles, video images, or  
31 other communication by means of telephone, telegraph, cable, wire, or  
32 the projection of energy without physical connection between persons  
33 who are physically separated from each other; or

34 (c) Based upon another person's race, color, religion, ancestry, or  
35 national origin, intimidates or harasses another person or causes, or  
36 threatens to cause, physical injury to another person or damage to any  
37 real or personal property of another person.

38 (2) A person may seek relief from such conduct for himself, his chil-  
39 dren or his ward by filing a verified petition for a protection order ~~based~~  
40 ~~on a sworn affidavit~~ with the magistrates division of the district court,  
41 alleging specific facts that a person for whom protection is sought was the  
42 victim of such conduct within the ninety (90) days immediately preceding the

1 filing of the petition and that such conduct is likely to occur in the fu-  
2 ture ~~thereby causing irreparable injury~~. Evidence of such conduct occur-  
3 ring prior to such ninety (90) day period ~~shall~~ may be admissible to show that  
4 conduct committed within the ninety (90) day period is part of a course or  
5 pattern of conduct ~~constituting malicious harassment, stalking or telephone~~  
6 ~~harassment, as described in subsection (1) of this section and may be admis-~~  
7 sible as otherwise permitted in accordance with court rule and decisional  
8 law.

9 (3) Upon the filing of a verified petition ~~based upon a sworn affidavit~~  
10 for a protection order, the court shall hold a hearing within fourteen (14)  
11 days to determine whether the relief sought shall be granted unless the court  
12 determines that the petition fails to state sufficient facts to warrant re-  
13 lief authorized by this section. If either party is represented by counsel  
14 at such hearing, the court shall grant a request for a continuance of the pro-  
15 ceedings so that counsel may be obtained by the other party. Such order may  
16 require either the petitioner or respondent, or both, to pay for costs, in-  
17 cluding reasonable attorney's fees.

18 (4) Upon a showing by a preponderance of the evidence that a person  
19 for whom protection is sought in the petition was the victim of conduct  
20 committed by the respondent that constitutes malicious harassment conduct  
21 as described in ~~section 18-7902, Idaho Code, stalking in any degree as de-~~  
22 ~~scribed in section 18-7905 or 18-7906, Idaho Code, or telephone harassment~~  
23 ~~as described in section 18-6710, Idaho Code~~ subsection (1) of this section,  
24 within ninety (90) days immediately preceding the filing of the petition,  
25 and that such conduct is likely to occur in the future ~~thereby causing ir-~~  
26 ~~reparable injury~~ to such person, the court may issue a protection order ~~for a~~  
27 ~~period not to exceed one (1) year~~. Such protection order may:

28 (a) Direct the respondent to refrain from conduct ~~that constitutes~~  
29 ~~malicious harassment as described in section 18-7902, Idaho Code,~~  
30 ~~stalking in any degree as described in section 18-7905 or 18-7906, Idaho~~  
31 ~~Code, or telephone harassment as described in section 18-6710, Idaho~~  
32 ~~Code~~ subsection (1) of this section;

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

35 (c) Grant such other relief and impose such other restrictions as the  
36 court deems proper, that may include a requirement that the respondent  
37 not knowingly remain within a certain distance of the protected person,  
38 which distance restriction may not exceed one thousand five hundred  
39 (1,500) feet.

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

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

45 (b) Upon receipt of such notice, the law enforcement agency shall  
46 forthwith enter the order into the Idaho ~~law enforcement telecommu-~~  
47 ~~nications public safety and security information~~ system available in  
48 this state used by law enforcement agencies to list outstanding war-  
49 rants. Entry into the Idaho ~~law enforcement telecommunications~~ public  
50 safety and security information system constitutes notice to all law

1 enforcement agencies of the existence of the order. The order is fully  
2 enforceable in any county in the state.

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

6 ~~(7) Following a hearing, and for good cause shown, the court's Any re-~~  
7 ~~lief granted by a protection order, other than a judgment for costs, may be~~  
8 ~~renewed in increments shall be for a fixed period not to exceed one (1) year~~  
9 ~~or may be modified or rescinded at any time if the court finds it appropriate~~  
10 ~~to do so; provided that a protection order obtained pursuant to this section~~  
11 ~~may, upon motion and upon good cause shown, be renewed, modified, or termi-~~  
12 ~~nated by further order of the court with notice to all parties and after a~~  
13 ~~hearing or written stipulation filed with the court.~~

14 (8) Whenever a protection order, or an ex parte temporary protection  
15 order issued pursuant to this chapter, is granted and the respondent or per-  
16 son to be restrained was served a copy of the order in the manner provided  
17 in section 39-6310, Idaho Code, a violation of the provisions of the order  
18 shall be a misdemeanor punishable by not to exceed one (1) year in jail and a  
19 fine not to exceed five thousand dollars (\$5,000). A peace officer may ar-  
20 rest without a warrant and take into custody a person who the peace officer  
21 has probable cause to believe has violated such order.

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

25 (10) A person may file a single verified petition seeking relief pur-  
26 suant to this chapter and section 39-6304, Idaho Code. Such petition shall  
27 separately set forth the matters pertaining to each such provision of law.  
28 All procedural and substantive requirements governing petitions for domes-  
29 tic violence protection orders under chapter 63, title 39, Idaho Code, shall  
30 apply with respect to the issuance of such domestic violence protection or-  
31 ders.

32 (11) As used in this section:

33 ~~(a) "Contact" means any actual physical contact; contact or attempted~~  
34 ~~contact, directly or indirectly, by telephone, pager, e-mail, facsimile~~  
35 ~~or other oral, written or electronic means of communication; and~~

36 ~~(b) "Irreparable injury" includes, but is not limited to, situations~~  
37 ~~in which the respondent has or is likely to threaten or commit bodily~~  
38 ~~injury or has or is likely to engage in acts constituting malicious ha-~~  
39 ~~arrassment as described in section 18-7902, Idaho Code, stalking in any~~  
40 ~~degree as described in section 18-7905 or 18-7906, Idaho Code, or tele-~~  
41 ~~phone harassment as described in section 18-6710, Idaho Code, against~~  
42 ~~any person for whom protection is sought in the petition.~~

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

46 SECTION 2. That Section 18-7908, Idaho Code, be, and the same is hereby  
47 amended to read as follows:

48 18-7908. EX PARTE TEMPORARY PROTECTION ORDER. (1) Where a verified pe-  
49 tition for a protection order under this chapter alleges that irreparable

1 ~~injury could result from~~ seeks an ex parte temporary protection order, such  
 2 ~~an ex parte temporary protection order may be granted to the petitioner if~~  
 3 ~~the court finds that present harm could result if an order is not immediately~~  
 4 ~~issued without prior notice to the respondent and that the respondent has in-~~  
 5 ~~tentionally engaged in the conduct that constitutes malicious harassment as~~  
 6 ~~described in section 18-7902(1), Idaho Code, stalking in any degree as de-~~  
 7 ~~scribed in section 18-7905 or 18-7906, Idaho Code, or telephone harassment~~  
 8 ~~as described in section 18-6710, Idaho Code, if an order is not immediately~~  
 9 ~~issued without prior notice to the respondent.~~

10 (2) ~~The~~ court may grant an ex parte temporary protection order based  
 11 upon the ~~affidavit~~ verified petition submitted ~~or~~ and set the matter for a  
 12 full hearing under section 18-7907, Idaho Code. If the court does not grant  
 13 an ex parte temporary protection order based upon the petition, the court may  
 14 hold an ex parte hearing on the day a petition is filed or on the following ju-  
 15 dicial day to determine whether the court should grant an ex parte temporary  
 16 protection order and set the matter for a full hearing under section 18-7907,  
 17 Idaho Code, dismiss the verified petition, or deny the ex parte temporary  
 18 protection order pending and set the matter for a full hearing under section  
 19 18-7907, Idaho Code. An ex parte temporary protection order may grant the  
 20 same relief as specified in section 18-7907(4), Idaho Code.

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

25 (34) An ex parte temporary protection order shall be effective for a  
 26 fixed period not to exceed fourteen (14) days, ~~and a~~ but may be reissued for  
 27 good cause shown. A full hearing, as provided in this chapter, shall be set  
 28 for not later than fourteen (14) days from the issuance of the ex parte tempo-  
 29 rary protection order. ~~An ex parte temporary protection order may, follow-~~  
 30 ~~ing a hearing and for good cause shown, be reissued for a period not to exceed~~  
 31 ~~fourteen (14) days.~~ Motions seeking an order shortening the time period must  
 32 be served upon the petitioner at least two (2) days prior to the hearing on  
 33 the motion.

34 (45) Except as otherwise provided in this section, the provisions of  
 35 section 18-7907, Idaho Code, are applicable to a petition for protective or-  
 36 der seeking an ex parte temporary protection order and to any ex parte tempo-  
 37 rary restraining order issued pursuant to this section.