

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO)
CRIMINAL RULE (I.C.R.) 33.3) ORDER

The Court having reviewed a recommendation from the Domestic Assault and Battery Evaluator Advisory Board to amend the Idaho Criminal Rules, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Criminal Rules as they appear in the volume published by the Idaho Code Commission be, and they are, amended as follows:

1. That Rule 33.3 is amended as follows:

Rule 33.3. Evaluation of Persons Guilty of Domestic Assault or Domestic Battery
Persons who plead guilty or are found guilty of domestic assault, ~~or~~ domestic battery or attempted strangulation, may be ordered to undergo an evaluation under Idaho Code § 18-918(7) by an evaluator approved by the Domestic Assault and Battery Evaluator Advisory Board.

(a) Scope of Report. The scope and content of the evaluator's report must be as follows:

- (1) *Identifying Information.* The report must contain the following identifying information about the defendant:
 - (A) name;
 - (B) address;
 - (C) date of birth;
 - (D) gender;
 - (E) education;
 - (F) occupation;
 - (G) current incident, including the county where the incident occurred, the original charge, convicted charge and case number;
 - (H) marital status, current intimate partners, and prior marriages;
 - (I) children, including the number of children, ages of the children and custodial relationships; and

- (J) military service, including branch of service, unit designation, exposure to combat and type of discharge.
- (2) *Risk Assessment*. The report must include a risk assessment containing the following information:
- (A) current and past violent behavior;
 - (B) exposure to violence of any type, including but not limited to physical, sexual or emotional violence in the past or present;
 - (C) threats of homicide, suicide, or violence;
 - (D) ideation of homicide, suicide, or violence;
 - (E) access to weapons, participation in weapon related activities, past or present;
 - (F) obsession with or dependent on the victim (psychopathic and stalking traits);
 - (G) history of rage and impulsivity;
 - (H) history of sexual abuse (as perpetrator or victim);
 - (I) history of child abuse (as perpetrator or victim);
 - (J) access to the victim;
 - (K) Criminal History Record Information (CHRI) through a National Criminal History Background Check System from local law enforcement or any other authorized individual or agency and CHRI from the state repository. Evaluators must follow local protocols for obtaining CHRI from authorized agencies;
 - (L) cultural factors;
 - (M) history of domestic violence protection orders (civil and/or criminal);
 - (N) prior treatment for violence, sexual abuse, and/or child abuse as a perpetrator or victim;
 - (O) danger of reoffending; and
 - (P) a listing of the screening or assessment tools utilized in the evaluation together with the results. The use of at least one risk screening or assessment tool approved by the Domestic Assault and Battery Evaluator Advisory Board is mandatory.
- (3) *Behavioral and Physical Health*. The report must include the following information about substance use, mental health, and physical health:

Substance Use

- (A) present use of drugs, alcohol or mind altering substances;
- (B) history of use of drugs, alcohol or mind altering substances;
- (C) prior treatment for drug abuse or addiction;
- (D) family history of drugs, alcohol or mind altering substances;
- (E) involvement of drugs, alcohol or mind altering substances in incident;
- (F) ~~if utilized~~, a listing of the screening and/or assessment tools related to substance use utilized in the evaluation together with the results. The use of at least one substance abuse screening or assessment tool approved by the Domestic Assault and Battery Evaluator Advisory Board is mandatory;

Mental Health

- (G) present mental health concerns, including any current diagnoses, prescriptions and treatment;
- (H) history of mental illness, including past diagnoses, prescriptions and treatment;
- (I) family history of mental illness;
- (J) a listing of the screening or assessment tools utilized in the evaluation together with the results. The use of at least one personality-mental health screening or assessment tool approved by the Domestic Assault and Battery Evaluator Advisory Board is mandatory;

Physical Health

- (K) present health concerns, including any current diagnoses, prescriptions and treatment;
- (L) history of illness, brain trauma, and learning difficulties, including past diagnoses, prescriptions and treatment; and
- (M) family history of illness.

- (4) *Self-Assessment*. The report must include the defendant's self-assessment, including:
 - (A) description of current incident in person's own words including a description of what lead up to the incident, the incident, police notification and the arrest;
 - (B) person's acceptance of responsibility for incident;
 - (C) person's current view of the victim and relationship with the victim;
 - (D) remorse evidenced by the person;
 - (E) person's own view of need for treatment; and
 - (F) person's willingness to get treatment.
- (5) *Collateral Information*. The report must contain the following collateral information:
 - (A) police report including statements given by the defendant and victim;
 - (B) victim interview (If a victim interview cannot be completed, the evaluator will document attempts to contact the victim and provide an explanation for not interviewing the victim);
 - (C) review of past treatment records; and
 - (D) any other additional information.
- (6) *Clinical Observations and Cognitive Functioning*. The report must contain the evaluator's statement of clinical observations and cognitive functioning, including:
 - (A) level of cooperativeness; and
 - (B) general present cognitive functioning.

(7) *Contact with Counsel.* The report must contain the number of contacts with counsel for the state or the defendant and the nature of the contact, if any.

(8) *Clinical Summary and Recommendation.* The evaluator's recommendation must include:

- (A) a summary formulation that identifies the factors causing or contributing to the defendant's domestic violence that form the basis for the evaluator's opinion as to the treatment recommendation;
- (B) further assessment;
- (C) treatment recommendations;
- (D) providers available to treat;
- (E) cost of treatment (estimate); and
- (F) cost of alternate treatment resources available to defendant.

(b) Distribution of the Evaluation. The defendant must request that a copy of the completed evaluation be forwarded to the sentencing court. The evaluator will follow local protocols regarding how to submit the completed evaluation directly to the court. The court will ~~seal a copy of the completed report in the file and will~~ provide copies of the evaluation to the parties in the case. Evaluations contain Criminal History Record Information through a National Criminal History Background Check System protected by federal law. This information can only be released by the court not the evaluator.

(c) Conflict of Interest. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available.

(d) Non-Compliant Reports. If the evaluator submits an evaluation that is not in compliance with this rule, the court may return the evaluation with instructions to prepare an evaluation in compliance with this Rule at no additional cost to the defendant. An evaluation may be forwarded to the Board for review of compliance with this rule. The evaluation must be sent as a sealed confidential document along with a written explanation of the evaluator's failure to comply. If the Board determines the evaluation fails to meet the requirements of this Rule, the evaluator may be removed from the roster.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July, 2018.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 3 day of April, 2018.

By Order of the Supreme Court

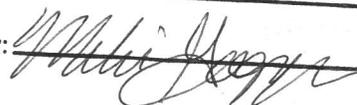


Roger S. Burdick, Chief Justice

ATTEST: 

Clerk

Karel A. Lehrman, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
certify that the above is a true and correct copy of
the Order
entered in the above entitled cause and now on
record in my office.
WITNESS my hand and the Seal of this Court Apr 4, 2018

KAREL A. LEHRMAN _____ Clerk
By:  _____ Chief Deputy