

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 18, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	Introduction of Committee Members	
	Introduction of Senate Page Sophia Lind, Meridian, Idaho	
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Gubernatorial Appointment of Sean Walsh to the State Public Defense Commission	Sean Walsh
DOCKET NO.: <u>61-0101-2001</u>	Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds p. 10	Presenters Include: Kathleen J. Elliott, PDC Executive Director; Darrell Bolz, PDC Chair; Tammy Zokan, PDC Staff; Eric Fredericksen, PDC Vice Chair; Jonathan Loschi, PDC Commissioner; Sean Walsh, PDC Commissioner
<u>61-0101-2002</u>	General Provisions and Definitions p. 13	
<u>61-0102-2001</u>	Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports p. 18	
<u>61-0102-2002</u>	Requirements and Procedures for Representing Indigent Persons p. 21	
<u>61-0103-2001</u>	Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services p. 35	
<u>61-0103-2002</u>	Records, Reporting and Review p. 38	
<u>61-0104-2001</u>	Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Financial Assistance p. 44	
<u>61-0104-2002</u>	Financial Assistance and Training Resources p. 47	
<u>61-0106-2001</u>	Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards p. 52	
<u>61-0107-2001</u>	Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System p. 55	

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 18, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the Senate Judiciary and Rules Committee (Committee) to order at 1:45 p.m.

PAGE INTRODUCTION: **Chairman Lakey** introduced Sophia Lind to the Committee. She said she is a senior at Rocky Mountain High School in Meridian, Idaho, and the senior representative for the National Honor Society. **Ms. Lind** commented that she has wanted to serve as a Senate page since she heard about the program in her freshman year. She is planning to serve a Mission for her church and attend Brigham Young University - Idaho after she returns home. The Committee members all introduced themselves to Ms. Lind.

GUBERNATORIAL APPOINTMENT HEARING: **Sean Walsh**, having been appointed to the State Public Defense Commission, was introduced to the Committee. **Mr. Walsh** shared that he is a family man and wants to give back to his community through public service. A discussion followed with **Senator Burgoyne** inquiring if Mr. Walsh had been lead council in a capital murder case. The conversation evolved into a discussion of Mr. Walsh's views on issues that may be controversial and have a potential for bias or conflict of interest. **Mr. Walsh** said his goal was to help maintain standards so that the clients were taken care of and provide top-notch counsel. His vision is a conservative one and he expressed that Idaho needs to have Idaho policy answers for Idaho problems.

Chairman Lakey asked Mr. Walsh how he viewed the overlapping relationships with the Legislature and the Commission. **Mr. Walsh** responded that he hoped to see everyone work for a common goal, stay faithful to the laws, and take all ideas into consideration when making decisions. **Senator Burgoyne** questioned Mr. Walsh's interpretation of "legislative intent" and "strict construction." That discussion led to Mr. Walsh assuring Senator Burgoyne that he has recused himself from cases when necessary, and he can be relied upon to use honesty and integrity in fulfilling the responsibilities of his appointment.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Ricks.

**DOCKET NO.
61-0101-2001**

Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds. **Kathleen J. Elliott**, Executive Director of the State Public Defense Commission (PDC) stated the PDC is tasked with standards, oversight, resources, and training, which are geared to ensure that persons receive constitutional representation. **Ms. Elliott** outlined the reasoning behind the changes and explained they were being made to provide more clarity. She added they were a result of stakeholders stating they could not understand some of the current rules, and to comply with the cleanup required by the Red Tape Reduction Act. She pointed out the rules being discussed in these dockets are largely old content in a new location.

Ms. Elliott provided a PDC Current and Pending Rules Page Index and a Comments and Overview document (see Attachment 1) to add clarity and explain definitions. The PDC adhered as close as possible to the statutes in defining what the legislative intent was. The concepts in red are existing but found in new locations. The italicized portions are changes the Commission made after getting public feedback. There were multiple examples given to emphasize that there was confusion in the way the current rules were written. **Ms. Elliott** reiterated that the PDC has tried very hard to use the new rules to clarify and remain true to the statutes and the existing rules.

**PASSED THE
GAVEL:**

Vice Chairman Ricks passed the gavel to Chairman Lakey.

ADJOURNED:

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:05 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

PDC Current and Pending Rules

Page Index for Committee Pending Rules Review Book

Pages	IDAPA 61 - PDC Docket
10-12	Repeal of Current Chapter 1 – Notices
13-14	Adoption of New Chapter 1 – Notices
15-17	Pending Rule Text – Chapter 1 General Provisions and Definitions
18-20	Repeal of Current Chapter 2 – Notices
21-23	Adoption of New Chapter 2 – Notices
23-34	Pending Rule Text – Chapter 2 Requirements and Procedures for Representing Indigent Persons
35-37	Repeal of Current Chapter 3 – Notices
38-40	Adoption of New Chapter 3 – Notices
40-43	Pending Rule Text – Chapter 3 Records, Reporting, and Review
44-46	Repeal of Current Chapter 4 – Notices
47-49	Adoption of New Chapter 4 – Notices
49-51	Pending Rule Text – Chapter 4 Financial Assistance and Training Resources
52-54	Repeal of Current Chapter 6 – Notices
55-57	Repeal of Current Chapter 7 – Notices
58-60	Repeal of Current Chapter 8 – Notices

PDC Current and Pending Rules

Comments and Overview

Words, Chapters & Incorporated Documents				
	Total Words	Total Restrictive Words	Rules Chapters	Documents Incorporated by Reference
Current Rules	21,012	242	7	3
Pending Rules	7,980	40	4	0

Comment: Process

- Rulemaking process was inadequate

2020 Rulemaking Timeline	<p>July 2019 – Negotiated Rulemaking Meetings</p> <ul style="list-style-type: none"> ○ Equity and Independence <p>July 1, 2020 – Negotiated Rulemaking Notice Published</p> <ul style="list-style-type: none"> ○ 2019 Rulemaking Carried Over and ○ 2020 Rulemaking to Simplify and Clarify per Red Tape Reduction <p>July 16, 2020 – Negotiated Rules Outline Approved at PDC Meeting</p> <p>July 17, 2020 – Negotiated Rules Outline and Meeting Notice</p> <ul style="list-style-type: none"> ○ Outline and Notice Link Posted and ○ Outline and Notice Link Emailed to Stakeholders <p>July 23, 2020 – Statewide Negotiated Rulemaking Meeting</p> <p>July 27, 2020 – Written Comment on Negotiated Rulemaking Concluded</p> <p>Sept 14, 2020 – Draft Proposed Rules and Public Hearing Notice</p> <ul style="list-style-type: none"> ○ Draft Rules and Notice Link Posted and ○ Draft Rules and Notice Emailed to Stakeholders <p>Oct 8, 2020 – Proposed Rules and Public Hearing Notice Published</p> <ul style="list-style-type: none"> ○ Proposed Rules and Public Hearing Notice Posted and ○ Proposed Rules and Public Hearing Link Emailed to Stakeholders <p>Oct 14, 2020 – Statewide Public Hearing</p> <p>Oct 28, 2020 – Written Comment on Proposed Rules Concluded</p> <p>Oct 30, 2020 – Pending Rules Adopted at PDC Meeting</p>
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Comments: Vertical Representation	
<ul style="list-style-type: none"> ○ Definition of Vertical Representation in the proposed rule exceeds statute and current rule and leaves no room for scheduling conflicts ○ Vertical representation is essential to constitutional representation and proposed rule represents this and legislative directive to PDC 	
Idaho Code	<ul style="list-style-type: none"> ● IC 19-850(1)(a)(vii) requires the PDC to promulgate rules establishing standards based on certain principles including <ul style="list-style-type: none"> ▪ 6. Attorney assigned to a particular case should, to the extent reasonably practicable, continuously oversee representation of that case and personally appear at every substantive court hearing
Current Rule	<p>2018 Standard VI includes this principle and provides that</p> <ul style="list-style-type: none"> ● A. an attorney should be appointed at initial appearance and shall be immediately available to a client in-person or via technology ● C. “Once assigned to a defendant’s case, to the extent reasonably practicable, a defending attorney shall be present at all critical stages for that defendant. This is sometimes referred to as vertical representation”
Pending Rule	<p>IDAPA 61.01.01.22 further defines Vertical Representation including what is meant by reasonably practicable:</p> <p>A Defending Attorney appointed to represent an Indigent Person shall, to the extent reasonably practicable, continuously and personally oversee the representation of the client’s case through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make all efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, including but not limited to advising the Court of any conflict at the time of setting, providing accurate unavailable dates and in the case of unforeseen absences, filing a motion or stipulation to continue.</p>

Comment: Caseloads	
<ul style="list-style-type: none"> ○ Caseload/workload standards are insufficient 	
Current and Pending Rule	<p>Did not change caseload maximums, clarified existing rules and extended the caseload maximums for one additional year due to the impact of COVID-19 on caseload data. Under the current rules, the caseload maximums will expire on April 30, 2022 and default to the NAS caseload standards</p>

Comments: Funding Requirements	
<ul style="list-style-type: none"> ○ PDC is usurping county BOCC budgeting authority and imposing budget requirements on the county greater than those in statute ○ Pending rules regarding Supported Defense Model and Defending Attorney Resources outline what is necessary to prepare defending attorneys with resources for representation 	
Idaho Code	<ul style="list-style-type: none"> ● IC 19-860(2) requires the county to provide for the maintenance and support the office of public defender (if that is the model the county has chosen) ● IC 19-861(2) requires the county to provide appropriate facilities and supplies necessary for carrying out the public defender's responsibilities ● IC 19-862(1) requires the county to appropriate enough money to fund its indigent defense model and no less than its local share. ● IC 19-862(2) does not require a county to expend its full local share if it can comply with indigent defense standards for less than that share ● IC 19-862A(6)(c) requires county to cure any material breach of the terms of previously approved financial assistance to be eligible for subsequent assistance ● Under IC 19-862A(8) a county may be required to spend more than its local share if the cost to achieve its compliance plan costs more than the amount of the county's local share and awarded financial assistance. ● IC 19-850(1)(c) requires the PDC to review indigent defense providers and defending attorneys to evaluate compliance with standards and the terms of financial assistance ● IC 19-851(8) (local share) requires the PDC to calculate the minimum amount the county must budget for public defense, and for the determination of eligibility for financial assistance, based on information provided and certified by the county clerk
Current Rule	IDAPA 61.01.04.026.06 permits the PDC to review the use, misuse or non-use of financial assistance, and consider this information when determining eligibility. See also 61.01.04.027 (unused funds) and 029 (fraudulent information)
Pending Rule	IDAPA 61.01.03.020 (Defending Attorneys) and 030. (counties) defines information for recordkeeping and reporting of information related to public defense or financial assistance and consolidates these into a single chapter. Pending Rules direct counties/defending attorneys to not provide access to confidential information except when necessary (ie when applying for ELF)

<p>Comments: Deficiencies</p> <ul style="list-style-type: none"> ○ PDC is not authorized to remedy deficiencies at the county's cost and doing so undermines the county's authority to budget and select its own defending attorneys ○ Deficiency standard is too high; PDC is not doing enough and should be doing more monitoring and evaluating of public defender operation, including gathering information from indigent defendants 	
<p>Idaho Code</p>	<ul style="list-style-type: none"> ● IC 19-862A(1) requires all counties, indigent defense providers and defending attorneys to cooperate and participate with the PDC in the review of their indigent defense services ● IC 19-862A(11) requires the PDC to take the following actions if the PDC determines any county has failed to materially comply with indigent defense standards: <ul style="list-style-type: none"> ▪ (a) require the county's upcoming compliance proposal to specifically address cure of material noncompliance ▪ (b) if willful and material noncompliance, notify county of intent to remedy specific deficiencies at the county's expense, and provides for meeting, mediation and administrative review. If the county does not timely appeal or if review affirms the PDC Commission's decision, the PDC shall remedy at the expense of the county. ▪ IC 19-851(5) defines Indigent Defense Provider to include any designee of the PDC to remedy a deficiency under IC 19-862A(11) ▪ IC 19-851(6) defines Indigent Defense Standard as any rule promulgated by the PDC under IC 19-850(1)(a) ● Under IC 19-862A(12) <ul style="list-style-type: none"> ▪ the county shall pay the PDC for amount incurred by the PDC to remedy ▪ If the county does not, the state treasurer shall intercept sales tax payments to the county to reimburse the PDC ● IC 19-850(1) requires the PDC to: <ul style="list-style-type: none"> ▪ (a)(vi) promulgate rules establishing procedures for the oversight, implementation and enforcement of indigent defense standards so the right to counsel is constitutionally delivered ▪ (c) review indigent defense providers and defending attorneys to evaluate compliance with standards and the terms of financial assistance
<p>Current Rule</p>	<ul style="list-style-type: none"> ● Under 2018 Standards IX PDC Regional Coordinators shall report compliance issues to the PDC ● Under IDAPA 61.01.06 <ul style="list-style-type: none"> ▪ .021. the PDC is responsible for overseeing compliance and do things like assess county and attorney compliance, file compliance reports with the state, identify and investigate non-compliance ▪ 021.03.a indigent defense providers and defending attorneys will report compliance issues as soon as reasonably practicable

	<ul style="list-style-type: none"> ▪ .023.07 (defending attorneys) and .08 (counties) must report compliance issues ▪ .026.05 if the PDC finds a deficiency is material and willful, it will take action under IC 19-862A(11), “which may include withholding grant funds or the PDC takeover of an indigent defense delivery system” ▪ .026.06 “the violation of an established rule is material noncompliance” ▪ .026.07 “the violation of an established standard that is done voluntarily with either intentional disregard of, or indifference to, the requirements of these rules will be deemed willful noncompliance.” • IDAPA 61.01.08 <ul style="list-style-type: none"> ▪ .18 defines Deficiency as “violation of established standard for which the timeline for compliance has passed pursuant to IC 19-862A(9) [March 31 for rules in effect as of May 1 the prior year]” ▪ .19 defines Finding of Non-Compliance as “an instance where a county or defending attorney is not in compliance with applicable indigent defense standards and may be related to a deficiency in the provision of indigent defense services.” It also says this finding may not be a Deficiency and “still requires a finding of material and willful non-compliance before the take-over provisions of Section 19-862A, Idaho Code, are invoked.”
<p>Pending Rule</p>	<ul style="list-style-type: none"> • IDAPA 61.01.01.010.12 defines Deficiency as “noncompliance with any Public Defense Rule by a county, Defending Attorney or their employee, contractor, representative or other agent” • IDAPA 61.01.01.010.18 defines Material as “An action or failure to act that could have an immediate and significant negative impact on the effective representation of Indigent Persons or result in the misuse of state funds.” • IDAPA 61.01.01.010.23 defines Willful as “an action or failure to act that is deliberate and with knowledge” • IDAPA 61.01.03.050 provides for a collaborative and less formal process for dealing with Deficiencies at any stage so these can get resolved at the staff level, and a higher threshold for material noncompliance/deficiency. “Taking over” an indigent defense delivery system is not authorized under the pending rules

<p>Comments: Minimum Qualifications</p> <ul style="list-style-type: none"> ○ If Defending Attorneys must be on the PDC Roster, then the PDC is telling counties who they must hire/fire ○ Attorney licensing and competency are in the purview of the ID Supreme Court and Idaho State Bar, not the PDC's ○ PDC minimum qualifications for attorneys are not, and should be, quantifiable 	
<p>Idaho Code</p>	<ul style="list-style-type: none"> ● Under IC 19-855 no person may be given the primary responsibility to represent an indigent person “unless he is licensed to practice law in [Idaho] and is otherwise competent to counsel and defend a person charged with a crime” ● IC 19-860(2) requires that a candidate for public defender be licensed in Idaho “and competent to counsel and defend a person charged with a crime” ● 19-850(1) requires the PDC to: <ul style="list-style-type: none"> ▪ (a)(vi) promulgate rules establishing procedures for the oversight, implementation and enforcement of indigent defense standards so the right to counsel is constitutionally delivered ▪ (a)(vii) promulgate rules establishing standards based on certain principles including defending attorney’s <ul style="list-style-type: none"> ○ 5. abilities, training and experience matching nature and complexity of case ○ 8. continuing legal education relevant to their indigent defense cases ▪ (c) review indigent defense providers and defending attorneys to evaluate compliance with standards and the terms of financial assistance
<p>Current Rule</p>	<ul style="list-style-type: none"> ● 2018 Standards provide minimum standards defending attorneys must meet to represent indigent persons, including <ul style="list-style-type: none"> ▪ V.A the Idaho license and competency requirements in 19-855 ▪ V.B-E familiarity with laws, procedures, evidence and investigations, medical, mental and social issues, and technology ▪ V.F-G appropriate experience for cases and encourage mentoring with more experienced attorneys ▪ V.H requires at least 3 CLE hours of specialized training for certain case assignments ▪ VIII requires at least 7 CLE hours relevant to the representation of indigent defendants ▪ Capital Counsel requirements ● Under IDAPA 61.01.07.020.01.a the PDC will maintain a roster of attorneys/staff who are compliant with current standards ● Under IDAPA 61.01.07.020.01.c the PDC will maintain a roster of non-compliant attorneys/staff, which must include the reason for noncompliance and the date the attorney was removed from the roster for noncompliance. ● Under IDAPA 61.01.02.025 an attorney may be removed from the roster for failing to submit an annual report (and refers to 61.01.06.026) ● Under IDAPA 61.01.06.026.04

	<ul style="list-style-type: none"> ▪ b. a defending attorney who fails to take steps toward correcting a finding of noncompliance will be removed from the roster but may still provide indigent defense services. ▪ c. a defending attorney who is noncompliant after 6 months is prohibited from accepting additional indigent defense cases in the county in which the attorney is not compliant. ▪ Current rules do not provide a process for removal or review, only for PDC authorization to resume work on indigent defense cases on finding of compliance
<p>Pending Rule</p>	<ul style="list-style-type: none"> • IDAPA 61.01.02 subsections 050. (Court Appointment of Competent Attorneys), 060. (Defending Attorney Minimum Requirements) and 070. (Roster Requirements and Procedures) further define the requirements and process for ensuring competent and constitutional representation as follows: <ul style="list-style-type: none"> • 050. Appointment of Competent Defending Attorneys Requires court to appoint attorneys from the Roster except in limited circumstances upon findings by the court • 060. Minimum Qualifications for attorneys representing indigent persons <ul style="list-style-type: none"> • 03.a-n detailed list of minimum qualifications for defending attorneys • 04.a-h detailed list of additional minimum qualifications for capital defending attorneys • 070. Roster: <ul style="list-style-type: none"> ▪ 01. Defending Attorney Roster requirements: <ul style="list-style-type: none"> • Idaho license • Attest in compliance or will be in compliance with rules when representing indigent persons, • Have completed 7 CLEs within previous 1 year or will complete in 60 days, and no longer requires 3 specialized CLE hours • Application • Attorneys must be on roster to represent indigent persons at public expense, unless court appointment with good cause/competency. • Under IDAPA 61.01.02.020.01.a counties may employ or contract attorneys not on the Roster and require them to apply • Ongoing eligibility: <ul style="list-style-type: none"> ▪ 7 CLEs annually ▪ Annual Report required by 19-864 • 02. Capital Roster requirements: <ul style="list-style-type: none"> • Meet minimum requirements in 060.04 • 12 CLEs within previous 2 years • Application • Investigation/Committee/Commission review/decision

	<ul style="list-style-type: none">• Ongoing eligibility:<ul style="list-style-type: none">▪ 12 CLEs every other year▪ Capital Case reporting and authorization form every other year• 080. Process for reviewing denial/removal from Roster<ul style="list-style-type: none">• Emergency review• Non-emergency review• Current and Pending Rules contain same competency requirement:<ul style="list-style-type: none">▪ Under 2018 Standard V “a defending attorney shall minimally meet the requirements in IC 19-855 [Idaho license and competent to represent indigent persons] before representing indigent persons▪ Under pending 61.01.02.060.01 and .02 attorneys need to “be licensed to practice law in Idaho and comply with Bar rules” and” be competent to counsel and represent Indigent Persons”• Current and Pending Rules contain same minimum qualifications and Pending Rules provide more detail about each• Current and Pending Rules give specific direction for meeting some requirements (ie minimum # of CLE credits and minimum # of attorneys appointed to a capital case) and flexible direction for other requirements, thereby giving the counties/defending attorneys discretion to decide how best to meet them in their particular county/office
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<p>Comments: Independence</p> <ul style="list-style-type: none"> ○ PDC's encouragement of the use of independent counsel to review and negotiate public defender contracts is unnecessary and an unreasonable additional expense on the county ○ County prosecutor is statutorily mandated to advise the county and proposed rules interfere with BOCC attorney-client relationship ○ Proposed independence and equity rules are appreciated and needed ○ Proposed independence rule does not go far enough 	
Idaho Code	<ul style="list-style-type: none"> ● IC 19-850(1)(a)(vii) requires the PDC to promulgate rules establishing standards based on certain principles including <ul style="list-style-type: none"> ▪ 1. Delivery of public defense services should be independent of political and judicial influence though judiciary encouraged to contribute info and advice
Current Rule	2018 Standard I contains this principle
Pending Rule	<ul style="list-style-type: none"> ● IDAPA 61.01.02.030 provides rules ensuring public defense is independent of political and judicial influence, these include: <ul style="list-style-type: none"> ▪ 01. Making sure selection of defending attorneys does not involve conflicts of interest ▪ 02. Using an independent committee to select the main providers of public defense, building on requirement in IC 19-860(2); and providing for an independent regional committee to address independence issues ▪ 03. Making sure defending attorneys are not penalized for advocating for indigent persons ▪ 04. Limiting prosecutor involvement in public defense matters that may jeopardize independence of any defending attorney or undermine delivery of public defense ▪ 05. Encouraging counties to use independent legal counsel to negotiate defending attorney contracts ● IDAPA 61.01.04.020.07 limits prosecutor involvement in financial assistance process if the involvement may jeopardize the independence of any defending attorney or undermine the delivery of public defense

Comment	<p>Resource Equity</p> <ul style="list-style-type: none"> ○ Proposed resource equity rule should be conditioned on the state providing financial assistance to the counties to meet it ○ It is not clear how resource equity is reviewed and assessed ○ Proposed independence and equity rules are appreciated and needed ○ Proposed rule may encourage hiring defenders with minimal experience
Idaho Code	<ul style="list-style-type: none"> ● IC 19-860(1) requires that compensation paid to the public defender must not be less than that paid to the county prosecutor for that portion of his practice devoted to criminal law ● IC 19-861(3) entitles a defending attorney to use the same state facilities for the evaluation of evidence as are available to the prosecutor; and if he considers their use impractical the court may authorize the use of private facilities paid for by the county ● IC 19-850(1)(a)(vii) requires the PDC to promulgate rules establishing standards based on certain principles including <ul style="list-style-type: none"> ▪ 7. Reasonable equity between attorneys and prosecuting attorneys with respect to resources, staff and facilities
Current Rule	<p>2018 Standards VII.A requires that a defending attorney have equal access to investigators and experts as prosecuting attorney, and reasonable requests for funds to retain such must be funded as required by law</p>
Pending Rule	<p>IDAPA 61.01.02.040 further defines equitable resourcing and county review of the resource needs of defending and prosecuting attorneys to budget for and equitably meet their needs, including</p> <ul style="list-style-type: none"> ● 01. Equal access to staff and facilities ● 02. Similar compensation as properly funded prosecutor and staff with similar experience ● 03. Equal access to resources necessary to legal representation, including for investigation and evaluation of evidence ● 04. – 05. Makes sure the county frequently reviews equity [the items described in 01-03]. The Rules do not impose specific resource or funding requirements, or a review schedule, on the counties, it's up to the county to remain engaged and informed on defending and prosecuting attorney needs and make sure they are equitably met

<p>Comments: Continuing Legal Education</p> <ul style="list-style-type: none"> ○ CLEs are in the purview of the Idaho State Bar ○ PDC is not authorized to require that CLEs meet PDC requirements ○ PDC training requirements are an unreasonable additional expense on the county ○ Proposed rules should include requirement for specialized training 	
Idaho Code	<ul style="list-style-type: none"> ● IC 19-850(1) requires the PDC to promulgate rules establishing: <ul style="list-style-type: none"> ▪ (a)(i) training and CLE requirements, which shall promote competency and consistency in public defense case types ▪ (a)(vii) standards based on certain principles including ▪ 5. Defending attorney’s abilities, training and experience match nature and complexity of case ▪ 8. Defending attorneys obtain continuing legal education relevant to their indigent defense cases
Current Rule	<ul style="list-style-type: none"> ● Current Rules require attorneys to complete CLEs meeting certain requirements, which means the CLEs are reviewed by the PDC to confirm they qualify. <ul style="list-style-type: none"> ▪ Standard V.H requires attorneys to complete at least 3 CLEs when assigned to a case requiring specialized knowledge, if such training has not been completed in the prior 3 years; and V.J says attorneys must comply with VIII ▪ Standard VIII requires attorneys to complete at least 7 CLEs annually, relevant to the representation of indigent persons (this can include the 3 above) ▪ Standards for Capital Counsel require capital attorneys to complete at least 12 CLEs meeting certain requirements every 2 years
Pending Rule	<ul style="list-style-type: none"> ● IDAPA 61.01.02.090 <ul style="list-style-type: none"> ▪ Consolidates CLE requirements ▪ Includes information about review and approval ▪ No longer includes the requirement for 3 specialized CLE hours ● Notably, CLEs for the PDC do not have to be approved by the ISB

Comments: Protecting Client Confidential Information	
<ul style="list-style-type: none"> ○ Confidentiality requirements imply that a county is required to have separate server and system only for public defense records, a separate IT team and/or a separate human resources department, and these are unreasonable financial obligations 	
Idaho Code	Protecting client confidential information <ul style="list-style-type: none"> • IC 19-850(1)(a)(vii) requires the PDC to promulgate rules establishing standards based on certain principles including <ul style="list-style-type: none"> ▪ Having sufficient time and private space so that attorney-client confidentiality is maintained when meeting with clients
Current Rule	2018 Standard II contains this principle
Pending Rule	<ul style="list-style-type: none"> • IDAPA 61.01.02. provides rules ensuring protection of client confidential information, these include: <ul style="list-style-type: none"> ▪ 020.02 making sure counties provide defending attorneys adequate resources for carrying out their responsibilities, including: <ul style="list-style-type: none"> ▪ a. confidential meeting spaces to protect client confidentiality ▪ b. confidential servers and systems to protect client confidentiality ▪ d. other resources to provide constitutional representation • 020.03.f contract provisions requiring contracting attorneys to safeguard and retain case files as necessary to protect indigent persons ▪ 060.03 <ul style="list-style-type: none"> ▪ b. Protection of client confidentiality, and if breached, notice to client and others when necessary to preserve clients constitutional and statutory rights ▪ k. Sufficient time and private space to meet with clients ▪ l. Confidential and secure information systems to confidentially access and store Indigent Person confidential information • Pending rules do not impose specific administrative, physical or technical controls for safeguarding confidential information, it's up to the county/office to determine the appropriate controls to implement to ensure these requirements are met

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 20, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
VOTE ON GUBERNATORIAL APPOINTMENT:	Vote on the Appointment of Sean Walsh to the State Public Defense Commission	
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Gubernatorial Appointment of Patrick McDonald to the Commission on Pardons and Parole	Patrick McDonald
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Gubernatorial Appointment of Michael Ross to the Commission on Pardons and Parole	Michael Ross
<u>RS28266</u>	Relating to the Wrongful Conviction Act	Senator Doug Ricks
DOCKET NO.: <u>50-0101-2001</u>	Rules of the Commission of Pardons and Parole	Ashley Dowell, Executive Director, Commission of Pardons and Parole
DOCKET NO.: <u>50-0101-2101</u>	Rules of the Commission of Pardons and Parole relating to Persons Convicted of Vehicular Manslaughter or DUI	Ashley Dowell, Executive Director, Commission of Pardons and Parole
DOCKET NO.: <u>11-0000-2000F</u>	Rules Governing Alcohol Beverage Control and Rules Governing State Criminal History Records and Crime Information	Presenter: Major Charlie Spencer, Police Services
DOCKET NO.: <u>11-1001-2000F</u>	Rules Governing Idaho Public Safety and Security Information System	
DOCKET NO.: <u>11-1101-2000F</u>	Rules of the Idaho Peace Officer Standards and Training Council	
DOCKET NO.: <u>21-0000-2000F</u>	Rules Governing Admission, Residency and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure and Rules Governing the Idaho State Veterans Cemetery	
DOCKET NO.: <u>57-0101-2000F</u>	Rules of the Sexual Offender Management Board	Nancy Volle, Program Manager, Sexual Offender Management Board

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 20, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senator Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Thayn** moved to send the gubernatorial appointment of Sean Walsh to the Idaho Public Defense Commission to the floor with a recommendation that he be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment of Patrick McDonald of Boise, Idaho, to the Commission of Pardons and Parole (Commission)**, for a term commencing January 1, 2021, and expiring January 1, 2024. **Patrick McDonald** gave an overview of his background, including his experience as a U.S. Marshal and his close work with the Idaho Department of Corrections (IDOC). These experiences provide a foundation for this position he said. He outlined his duties as a member of the Commission, expressing his concern for the challenges parolees face when attempting to integrate back into society.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment of Michael Ross of Meridian, Idaho, to the Commission of Pardons and Parole**, for a term commencing January 11, 2021, and expiring January 1, 2024. **Michael Ross** discussed his background in the Marine Corps and with the prison ministry. He stated his responsibility as a member of the Commission is to offer parolees hope, improve their self-confidence, and to impact society in a positive way.

RS 28266 **Relating to the Idaho Wrongful Conviction Act.** **Senator Ricks** reminded the Committee that a similar bill was introduced last year, supported by the Legislature, and then vetoed. **RS 28266** alleviates the concerns expressed by the Governor that led to his veto.

MOTION: **Senator Lee** moved to send **RS 28266** to print. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Ricks.

DOCKET NO. 50-0101-2001 **Rules of the Commission of Pardons and Parole (CPP).** **Ashley Dowell**, Executive Director, Commission of Pardons and Parole, noted that this rule relates to the service of process on commissioners and CPP staff. The rule is designed to provide safety by requiring legal process to be conducted through a Deputy Attorney General, and not directly to commissioners or commission staff residences.

- MOTION:** **Senator Lodge** moved to approve **Docket No. 50-0101-2001**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 50-0101-2101** **Rules of the Commission of Pardons and Parole (CPP) relating to Persons Convicted of Vehicular Manslaughter or DUI.** **Ms. Dowell** explained that this is a temporary rule, adopted in November. The purpose of this rule is to extend the time limit allowing the CPP to take the rule through the traditional rule making process. This rule contains changes involving time frames for requesting a pardon for vehicular manslaughter and Driving Under the Influence (DUI) offenses, and for aligning the language between pardons and commutations.
- MOTION:** **Senator Lee** moved to approve **Docket 50-0101-2101**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 11-0000-2000F** **Rules Governing Alcohol Beverage Control and Rules Governing State Criminal History Records and Crime Information.** **Major Charlie Spencer**, Idaho State Police Rule Review Officer, stated the rules presented today have been reviewed to identify and eliminate rules in accordance with the Governor's Red Tape Reduction Act. **Major Spencer** informed the Committee that there are no changes in these rules, and there are no changes to the fee. These rules were previously adopted by the Legislature.
- MOTION:** **Senator Lakey** moved to approve **Docket 11-0000-2000F**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 11-1001-2000F** **Rules Governing Idaho Public Safety and Security Information System.** **Major Spencer** stated there are no changes to the rule nor to the fees in this docket.
- MOTION:** **Senator Burgoyne** moved to approve **Docket 11-1001-2000F**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 11-1101-2000-F** **Rules of the Idaho Peace Officer Standards and Training Council.** **Major Spencer** stated there are no changes to the rule nor to the fees in this docket.
- MOTION:** **Senator Wintrow** moved to approve **Docket No. 11-1101-2000F**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 21-0000-2000F** **Rules Governing Admission, Residency and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure and Rules Governing The Idaho State Veterans Cemetery.** **Major Spencer** informed the Committee that this rule did not fall under his purview. No action was taken.
- DOCKET NO. 57-0101-2000F** **Rules of the Sexual Offender Management Board.** **Nancy Volle**, Program Manager for the Idaho Sexual Offender Management Board (SOMB), gave an overview of the history and makeup of SOMB (see Attachment 1). **Ms. Volle** explained changes to the rules include the following:
- allowing providers to obtain all required continuing education through online educational resources;
 - updating reference information;
 - eliminating redundant documents; and
 - updating documents regarding polygraphs.
- This docket also updates rules to reflect revised standards and guidelines for adult sexual offender management practices; and for practitioners, evaluations, and treatment of juvenile sex offenders.
- MOTION:** **Senator Wintrow** moved to approve **Docket No. 57-0101-2000F**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Ricks passed the gavel to Vice Chairman Lakey.

ADJOURNMENT:

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:30 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Carol Cornwall
Assistant Secretary

1-20-2021

Thank you, Vice Chairman [Ricks].

I'm Nancy Volle from the Idaho Sexual Offender Management Board. I am pleased to present Rule Docket [57-0101-2000F] which is the omnibus rulemaking of the fee rules from our agency.

There is [1] rule chapter in this omnibus action – this is an existing rule that has been previously reviewed by the legislature.

Our approach to the omnibus was in line with the Red Tape Reduction Act from Governor Little. During the summer of 2019 we specifically reviewed our rules to identify and eliminate rules that were obsolete, outdated, or unnecessary. We continued that same review before adopting these omnibus rules.

I am proud of the red tape reduction our agency was able to accomplish over the past 2 rule cycles.

- Examples of the type of red tape changes made to our rules include:
 - Revising Rule 003 to update the incorporated by reference information and allowing providers to obtain all required continuing education training through online educational resources.

Overall, our rules are lighter and easier for Idahoans to navigate.

I will now highlight any substantive changes:

- **The proposed revisions to the SOMB Rules achieve the following:**
 1. **It revises Rule 003 to update the incorporated by reference information by updating effective dates and titles of referenced documents and by eliminating redundant documents. Specifically:**
 - a. **This rulemaking updates the versions of the documents issued by the American Association of Police Polygraphists and the American Polygraph Association incorporated by reference in Rules 003.01 and 003.02 and amends the official names of these documents.**
 - b. **The rulemaking updates Rule 003.03 and 003.04 to reflect the October 2020 version date of the Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices and the Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders.**
 - c. **And we deleted Rules 003.05 and 003.06 as the documents referenced in these rules are included in the Standards Incorporated in Rules 003.03 and 003.04.**
 2. **Finally, the SOMB is Amending the Standards to allow all 40 hours of continuing education to be obtained through online educational resources to give providers more options for fulfilling continuing education requirements. The current December 2019 version of these standards only permit certified providers to**

obtain 10 of the required 40 hours of continuing education through online educational resources.

I would be happy to stand for questions on any of the fee rule chapters that remain as part of the omnibus docket.

I ask for the committee's support of Rule Docket 57-0101-2000F.

Thank you.

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 25, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
VOTE ON GUBERNATORIAL APPOINTMENT:	Vote on the Appointment of Patrick McDonald to the Commission on Pardons and Parole	
VOTE ON GUBERNATORIAL APPOINTMENT:	Vote on the Appointment of Michael Ross to the Commission on Pardons and Parole	
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Gubernatorial Appointment of Shelley Parker to the Commission on Pardons and Parole	Shelley Parker
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Gubernatorial Appointment of Scott Smith to the Commission on Pardons and Parole	Scott Smith
<u>RS28113</u>	Relating to the State Appellate Public Defender Act	Eric Fredericksen, Director Idaho State Appellate Public Defense Commission
<u>RS28243</u>	Relating to Temporary Guardians	Jason Spillman, Idaho Supreme Court
<u>RS28244</u>	Relating to Hospitalization of the Mentally Ill	Jason Spillman, Idaho Supreme Court
DOCKET NO.: <u>21-0000-2000F</u>	Rules Governing Maintenance Charges, Monthly Charges and Allowances for Nursing Care, Residential and Domiciliary Care and Fees for Interment, Disinterment and Reinterment	Pete Koehler, Administrator, Idaho Department of Veterans Services (IDVS)

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lakey	Sen Thayn
Vice Chairman Ricks	Sen Zito
Sen Lodge	Sen Burgoyne
Sen Lee	Sen Wintrow
Sen Anthon	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 25, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senator Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Lodge** moved to send the gubernatorial appointment of Patrick McDonald to the Commission of Pardons and Parole to the floor with a recommendation that he be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the gubernatorial appointment of Michael Ross to the Commission of Pardons and Parole to the floor with a recommendation that he be confirmed by the Senate. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **The Committee Consideration of the Gubernatorial Appointment of Shelly Parker of Boise, Idaho, to the Idaho Commission of Pardons and Parole (Commission) for a term commencing October 2, 2020, and expiring January 1, 2023. Ms. Parker** gave a brief review of her background and expressed her desire to use her experience to continue to serve where she can make a difference. Her goal in serving on the Commission is to recognize each person as an individual who has different strengths and weaknesses and to help them be successful.

GUBERNATORIAL APPOINTMENT: **The Committee Consideration of the Gubernatorial Appointment of Scott Smith of Star, Idaho, to the Idaho Commission of Pardons and Parole (Commission) for a term commencing July 2, 2020, and expiring January 1, 2023. Mr. Smith** indicated that he has spent his life in public service including 32 years working for the FBI, which gave him a wealth of experience to qualify him for this position. One of his focus areas is to help potential parolees recognize their weaknesses and work through them before reassimilating into society. He stated he sees Idaho's penal system being very effective in helping parolees succeed.

RS 28113 **Relating to the Idaho State Appellate Public Defender Act. Eric Fredericksen**, State Appellate Public Defender, stated this legislation would repeal Idaho Code § 19-867 through § 19-872 by adding a new chapter, Idaho Code Chapter 59, Title 19. **Mr. Fredericksen** explained that these changes will allow the Public Defense Commission to have its own chapter in Idaho Code, which will make them, and what they do, more identifiable.

MOTION: **Senator Thayn** moved to introduce **RS 28113** to print. **Senator Lodge** seconded the motion. Motion passed by **voice vote**.

RS 28243 **Relating to Temporary Guardians.** Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts, pointed out that **RS 28243** relates to a time frame of ten days of the request for the appointment of a guardian for persons with a developmental disability. **RS 28243** asks that the time frame be moved to 14 days.

MOTION: **Senator Lodge** moved to introduce **RS 28243** to print. **Senator Thayn** seconded the motion. Motion passed by **voice vote**.

RS 28244 **Relating to Hospitalization of the Mentally Ill.** Mr. Spillman stated **RS 28244** relates to a seven day-increment for the process of the commitment of mentally ill persons. Parties in said cases can request a continuance limited up to five days. **RS 28244** would extend that time period to seven days.

MOTION: **Senator Wintrow** moved to introduce **RS 28244** to print. **Senator Lee** seconded the motion. Motion passed by **voice vote**.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Ricks.

DOCKET NO. 21-0000-2000F **Relating to Rules Governing Maintenance Charges, Monthly Charges and Allowances for Nursing Care and Residential and Domiciliary Care and Fees for Interment, Disinterment, and Reinterment .**Pete Koehler Administrator, Idaho Department of Veterans Services (IDVS) indicated that this is an omnibus rule and each rule was previously reviewed and approved by the Legislature. Their approach was to make changes that were in line with the Red-Tape Reduction Act, such as deleting items deemed obsolete or unnecessary.

MOTION: **Chairman Lakey** moved to approve **Docket No. 21-0000-2000F**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Ricks passed the gavel to Chairman Lakey.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:00 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 27, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
VOTE ON GUBERNATORIAL APPOINTMENT:	Vote on the Appointment of Shelly Parker to the Commission on Pardons and Parole	
VOTE ON GUBERNATORIAL APPOINTMENT:	Vote on the Appointment of Scott Smith to the Commission on Pardons and Parole	
<u>S 1027</u>	Relating to the Idaho Wrongful Conviction Act	Senator Doug Ricks, Idaho District 34

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lakey	Sen Thayn
Vice Chairman Ricks	Sen Zito
Sen Lodge	Sen Burgoyne
Sen Lee	Sen Wintrow
Sen Anthon	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 27, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Anthon** moved to send the appointment of Shelly Parker to the Commission of Pardons and Parole to the floor with a recommendation that she be confirmed by the Senate. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Thayn** moved to send the appointment of Scott Smith to the Commission of Pardons and Parole to the floor with a recommendation that he be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

S 1027 **Relating to the Idaho Wrongful Conviction Act. Vice Chairman Ricks** indicated that similar legislation was presented to the Legislature last year. The bill passed the House and the Senate, but it was vetoed by the Governor's Office. After minor modifications, the Legislation is before the Committee again this year. Those modifications addressed portions that were referred to as an "unfunded mandate." The changes included removal of medical insurance for up to eight years and tuition waivers for college credits up to 120 hours. Those are now being offset by additional financial compensation. Last year's dollar amount was \$60,000 per year for every year a person was forced to be wrongfully committed. The new amount is \$62,000 per year. The amount for those on death row stayed the same at \$75,000 per year. If one is forced to be wrongfully placed on the sex offender list, the amount will remain \$25,000 per year. The victims will receive these funds in a lump sum rather than an annuity. Transitional services will be provided for anyone who has been exonerated. There is a restriction placed on those receiving an additional financial civil reward. An offset clause has been added to cover that circumstance. A requirement was added requiring a district judge to review the charges to make sure the exoneration is valid. An emergency clause becomes effective as soon as both Legislative bodies and the Governor signs off on **S 1027**, allowing the victims to receive their compensation immediately.

Chairman Lakey expressed his appreciation for all the work done on this legislation and for the changes that were made to enable its passage.

TESTIMONY: **Christopher Tapp**, wrongfully convicted victim (see Attachment 1).

Greg Hampikian, PhD, Co-Director, Idaho Innocence Project and Director, Forensic Justice Project, Boise State University (BSU), stated he agrees that this legislation is about justice in its fullest sense. He said he was proud of his organization and happy to have been able to work on this project with the police and all those involved. He explained that Idaho is a leader in the techniques used to help identify other suspects through DNA evidence.

Senator Wintrow asked Mr. Hampikian how he saw Idaho helping to bring justice to all people using a similar kind of evidence. **Dr. Hampikian** responded that he could see the Legislature working with the crime lab to help them adopt some of the new techniques used. He indicated that he had to go to labs outside of Idaho to get the information he needed. **Dr. Hampikian** suggested that he would like to see legislation of uniform rules designed to allow the preservation of biological evidence. There are currently no instructions, rules, or laws about preserving murder evidence.

Terry Shumway, sister of Charles Fain, a wrongly convicted man, voiced that much of what Christopher Tapp described was similar to what her brother had suffered. She stated that Charles was on death row for 18 years. So many things had occurred during that time and Charles was totally lost upon his release. He is currently employed in a low income job that is physically taxing on his 73 year old body. His car is old, the room he lives in is as small as his prison cell, and his social security is meager do to his incarceration years. She reiterated nothing can give these men back their lost lives. The compensation offered through this legislation would make the rest of their lives easier. **Ms. Shumway** commented that she was so thankful for all who were involved in proving Charles's innocence.

Lauren Bramwell, Policy Strategist, American Civil Liberties Union of Idaho, gave testimony supporting the passage of **S 1027** (see Attachment 2).

Tom Arkoosh, Idaho Association of Criminal Defense Lawyers (IACDL). Mr. Arkoosh submitted a statement saying "IACDL Supports **S 1027**."

MOTION:

Senator Anthon moved to send **S 1027** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion passed by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Lakey** adjourned the meeting at 2:45 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

1-27-21

My name is Christopher Tapp

I want to thank Senator Ricks for sponsoring this legislation and all of the members of the committee for considering this important bill today.

Some of you heard testimony from me on this bill last year and I thank you for your support. I sincerely hope that this bill passes again this year and is signed into law. I'm grateful for the opportunity to be here again.

When I heard that the bill had been vetoed I was heartbroken. I thought of Charles Fain, another exonerated Idahoan who is in his 70's and who continues to work to support himself after losing 18 years on death row for a horrible crime he didn't commit. I hope he does not have to wait another year to try again. I ask for your support again this year.

In 1998 I was found guilty of a rape and murder that I did not commit. I spent 20 years and 53 days in prison while the real perpetrator walked free.

In 2017 I was released from prison and 2 years later, in 2019, my innocence was finally confirmed by DNA evidence and the DNA donor admitting he acted alone in this horrible crime.

I am so grateful for the tenacity of Carol Dodge - the mother of the woman who I was wrongfully convicted of raping and murdering - and the relentless efforts of the Idaho Innocence Project, Judges for Justice, my public defender John Thomas, the Innocence Project and countless others that helped me.

Thanks to those like Carol and the Idaho Innocence Project who never gave up, I am able to be here in front of you today and not sitting in a prison cell for a horrible crime that someone else committed.

I cannot put into words the feeling of finally confirming my innocence after more than two decades in prison.

Being in prison is as horrible as you can imagine - and being there when you are innocent is that much worse. I missed out on 20 years of my life. I wasn't able to spend my father's last years with him or go to his funeral when he passed.

I was released from prison with nothing but my freedom. I had no financial resources - no way to rebuild my life or to meet my daily needs. I was released with no more than the clothes on my back, left completely reliant on family and friends to help me while I tried to rebuild my life.

Finding employment was challenging because even though DNA confirmed that I was innocent and the courts recognized this and vacated my conviction, I still had a felony conviction on my record that prevented me from getting most jobs.

I lost 20 years of earning for my future and was left labeled with a felony conviction making it hard to start making up for lost time.

I am humbled to stand here before you today and be able to speak on behalf of all wrongfully convicted innocent people. I am so grateful that you are considering this bill that would provide a way for exonerees to restart their lives once freed. I strongly support this bill so that when an innocent person is exonerated in Idaho they have financial help to start rebuilding their lives.

I thank you for your time and urge you to pass this bill.

Thank you.



1-27-21

ACLU of Idaho
PO Box 1897
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Testimony of Lauren Bramwell
SUPPORT: SB 1027
Before the Senate Judiciary and Rules Committee
January 27, 2021

The American Civil Liberties Union (ACLU) of Idaho stands before you in support of SB 1027 as it creates a financial compensation system for Idahoans wrongfully convicted of a crime they did not commit. The Federal government, the District of Columbia, and 35 states have some form of a wrongful conviction compensation statute. Idaho, however, remains in the minority of states without a financial compensation system in place.¹

Across the country, 2,721 people have been exonerated.² In recent years, Idaho has had six individuals who have been wrongfully convicted and exonerated, including two men – Charles Fain and Donald Paradis – who were both sentenced to death for crimes they did not commit.³ There are numerous contributors to wrongful convictions including eyewitness misidentification, prosecutorial misconduct, misapplication of forensic science, inadequate defense, and unreliable jailhouse informant testimony. Racial bias is also rampant in wrongful convictions. Nationwide, Black defendants are more likely than their white counterparts to be wrongfully convicted, and defendants charged with crimes against white victims are far more likely to be erroneously convicted than defendants charged with crimes involving nonwhite victims.⁴

An exoneree's path to freedom is long, with the timeframe for proving one's innocence through post-conviction DNA testing lasting, on average, more than 14 years.⁵ During that time behind bars, these individuals are unable to develop essential skills for work, they are unable to pay into social security and unemployment benefits, and they are stripped of the opportunity to build their lives. Too often, when these individuals are freed, they are released without housing, transportation, health services or insurance, and they have a criminal record that is rarely cleared.

Exonerees can never get that time back that was taken from them. The state can't give back precious time lost with family and loved ones. The state can't give back missed birthday parties and anniversaries.

¹ "Compensating the Wrongly Convicted." *The Innocence Project*. <https://www.innocenceproject.org/compensating-wrongly-convicted/>. Last accessed 27 January 2021.

² "% of Exonerations by Contributing Factor." *The National Registry of Exonerations*. <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>. 27 January 2021.

³ "Idaho Exonerations." *The National Registry of Exonerations*. <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=ID>. 26 January 2021.

⁴ "North Carolina V. White - Advocates for The Wrongfully Convicted Amicus Brief In Support Of Defendant Melvin White's Racial Justice Act Motion." *American Civil Liberties Union*. <https://www.aclu.org/legal-document/north-carolina-v-white-advocates-wrongfully-convicted-amicus-brief-support-defendant?redirect=capital-punishment/north-carolina-v-white-advocates-wrongfully-convicted-amicus-brief-support-defend>. 10 February 2020.

⁵ "Exonerate the Innocent." *The Innocence Project*. <https://innocenceproject.org/exonerate>. Last accessed 27 January 2021.



Idaho

ACLU of Idaho
PO Box 1897
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The state can't give back those years of deprived freedom—but the state *can* offer compensation to mitigate some of the harm and collateral consequences that inevitably flow from a person's wrongful imprisonment. For these reasons, we urge you to vote in favor of SB 1027.

For questions or comments, contact Lauren Bramwell, Policy Strategist, at 208-344-9750 x1204.

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 01, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of January 18, 2021 Minutes	Senator Lodge
MINUTES APPROVAL:	Approval of January 20, 2021 Minutes	Senator Anthon
PRESENTATIONS:	Introduction of Participating Magistrate Judges	Senior District Judge Barry Wood, Deputy Administrative Director, Administrative Office of the Courts
	History of the Magistrate Division of the District Court	Magistrate Judge Megan Marshall Latah County, Second Judicial District
	The Work of Idaho's Magistrate Judges	Magistrate Judge Paul Laggis, Power County, Sixth Judicial District
	Guardianship and Conservatorship	Magistrate Judge Christopher Bieter, Ada County, Fourth Judicial District
<u>S 1036</u>	Relating to Temporary Guardians	Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts
<u>S 1037</u>	Relating to Hospitalization of the Mentally Ill	Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts

Public Testimony Will Be Taken by Registering Through the Following Link:
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If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 01, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Anthon, Lodge, Thayn, Zito, Burgoyne and Wintrow

ABSENT/ EXCUSED: Senator Lee

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Wintrow** moved to approve the minutes of January 18, 2021. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

Senator Wintrow moved to approve the minutes of January 20, 2021. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Senior District Judge Barry Wood**, Deputy Administrative Director, Administrative Office of the Courts, gave a brief introduction of the Magistrate Judges participating in the presentations. He reminded the Committee that 1) Judges cannot discuss a pending case; 2) They are restricted from discussing their ruling on any case; and 3) They are not allowed to give legal advice.

Magistrate Judge Megan Marshall, Latah County, Second Judicial District, presented a brief history of the Magistrate Division of the District Court. **Judge Marshall** began her presentation stating that the Magistrate Court is the gateway to the other courts. Their beginnings were very simple. Court proceedings were held where there was space. The "police" courts were held part-time. Judges were elected on a partisan basis. In 1937 the public sentiment reflected a need for a better lower court structure. In 1962 the reorganization began. Legislation was proposed in 1965 to organize a legislative council to come up with a plan for court reform. It included the Idaho Judicial Council, which currently covers appointments in seven judicial districts. Governor Don Samuelson wasn't convinced a Judicial Council was necessary and vetoed the bill. In 1969 Legislators passed another piece of legislation that Judges created the Magistrates, the required qualifications, and how Magistrates were chosen. The current organization is largely a result of past input and legislation.

DISCUSSION: **Chairman Lakey** asked Judge Marshall to comment on the travel requirements placed on Magistrate Judges. **Judge Marshall** responded that there is much travel required. She indicated that she has other judges who help her with her case load. There are circumstances where the judges will travel for her or there may be a judge in the area who can take a local case. **Judge Marshall** uses Zoom and finds it to be effective.

PRESENTATION: **Magistrate Judge Paul Laggis**, Power County, Sixth Judicial District, reported on The Work of Idaho's Magistrate Judges. **Judge Laggis** introduced himself and stated that he grew up in the Wood River Valley of Idaho and currently resides and works in American Falls. He is one of 97 Magistrate judges in Idaho and President of the Magistrate's Association. He explained that a magistrate judge is unique because every county has at least one. In Idaho the face of the Judiciary is the Magistrate courts. Judges in these positions are connected to their communities and are involved in the lives of the residents. **Judge Laggis** stated that in 2019-2020 the magistrate courts comprised about 90% of cases as they first started out. Any of the cases can turn into a project of its own. He mentioned the many types of cases they work on including custody, divorce, child protection, adoption and many others. The magistrates are involved in the specialty courts including drugs and alcohol, veterans courts and school courts. The magistrates are expected to know and understand the law to be able to help in any cases assigned to them. At times the magistrates will review and help draft legislation and policy.

DISCUSSION: **Senator Wintrow** commented that their workloads are immense. **Judge Laggis** responded that they love their work and the variety it provides.

Chairman Lakey asked Judge Laggis how he was handling trials during covid. **Judge Laggis** responded that because he has a prosecutor who helps resolve issues without going to trial, he has not had a trial since covid began.

PRESENTATION: **Magistrate Judge Christopher Bieter**, Ada County, Fourth Judicial District, discussed Guardianship and Conservatorship. **Judge Bieter** defined Guardianship as a situation when someone is assigned to manage another's affairs. Conservatorship is defined as handling the financial affairs of an adult or a child. Idaho was the first state in the country to adopt probate laws. As Idaho's communities are aging, steps need to be taken to ensure that guardianships and conservatorships are working as they were intended. People from all backgrounds find themselves needing one of these mechanisms to help them function successfully. People designated to be guardians must pass online training prior to a hearing being scheduled. Background checks are made on all guardians. Family guardianships are becoming less common.

Judge Beiter pointed out that there are two important areas needing focus when discussing guardianships. The first area is to be more careful at the beginning of a case, watch for red flags. As the case moves along, take a closer look at the relationship and see how it is doing between the guardian and other person. It is important to check on all cases to see if their reports were filed and have any irregularities that need follow up. In Idaho, every accounting that is filed is reviewed by an accountant with expertise in that area.

Judge Beiter stated that the second area needing focus is the human element. The Legislature provides funds to make sure people who are under a Guardianship are getting the care they need. Sometimes a guardianship or conservatorship is not in the best interest of the people involved. By asking the question, "What would that person do for himself/herself if they could?" would help make the best decision.

DISCUSSION: **Senator Burgoyne** expressed the importance of the judges who are involved in these types of proceedings. Criminal infractions, broken lives, and people unable to care for themselves cause families to struggle. It takes wise people, not just education, to help all involved. **Senator Burgoyne** thanked the judges for their service.

S 1036 **Relating to Temporary Guardians. Jason Spillman**, Legal Counsel, Administrative Office of the Courts, presented **S 1036**. He stated that Idaho Code currently requires courts to hold hearings on appointments of temporary guardianship within 10 days after the initial hearing request. In order to bring those appointments in line with other 7 day increments, and to avoid confusion, it is requested that the time be changed to 14 days.

MOTION: **Senator Lodge** moved to send **S 1036** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

S 1037 **Relating to the Hospitalization of the Mentally Ill. Jason Spillman** explained that the statute for the commitment of the mentally ill limits the continuance of hearings to no more than five (5) days. To reduce confusion, the five (5) day limit on continuances should be changed to seven (7) days.

MOTION: **Senator Wintrow** moved to send **S 1037** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:45 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 03, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	CHAPTER REPEALS	
DOCKET NO.: <u>61-0101-2001</u>	Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds p. 10	Presenters Include: Kathleen J. Elliott, PDC Executive Director; Darrell Bolz, PDC Chair; Tammy Zokan, PDC Staff; Eric Fredericksen, PDC Vice Chair; Sean Walsh, PDC Commissioner
<u>61-0102-2001</u>	Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports p. 18	
<u>61-0103-2001</u>	Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services p. 35	
<u>61-0104-2001</u>	Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Financial Assistance p. 44	
<u>61-0106-2001</u>	Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards p. 52	
<u>61-0107-2001</u>	Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System p. 55	
<u>61-0108-2001</u>	Rules Governing the Administration of Idaho's Indigent Defense Delivery System - Rule Definitions p. 58	
	NEW CHAPTERS	
<u>61-0101-2002</u>	General Provisions and Definitions p. 13	
<u>61-0102-2002</u>	Requirements and Procedures for Representing Indigent Persons p. 21	
<u>61-0103-2002</u>	Records, Reporting and Review p. 38	
<u>61-0104-2002</u>	Financial Assistance and Training Resources p. 47	

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COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 03, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Ricks.

**DOCKET NO.
61-0101-2001** **Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds.** **Kathleen J. Elliott**, Executive Director, Idaho Public Defense Commission (PDC), stated that she had no further presentation since the Committee's last meeting regarding **Docket No. 61-0101-2001**.

Vice Chairman Ricks encouraged Ms. Elliott to take the liberty to lead the Committee through the dockets with an overview, following which he would allow for testimony on specific items.

The meeting minutes will not align with the Agenda due to the nature of the dockets.

**DOCKET NO.
61-0102-2002** **Requirements and Procedures for Representing Indigent Persons.** **Ms. Elliott** emphasized that this section lays out all the stakeholders' responsibilities. Public input confirmed there was concern that the PDC would require counties to purchase separate computer servers and systems to protect client confidentiality. She clarified the new rules do not mandate how the counties provide the confidential protection.

**DOCKET NO.
61.0102-2002.030.02.A** **Public Defense Independent of Political and Judicial Influence. Independent Committees.** **Ms. Elliott** stated that the independent committee for recommendation in the selection of the lead institutional defending attorney is in the existing rule and authorized by statute. The new inclusion of the primary contracting defending attorney was added. **Ms. Elliott** then explained that the PDC added the review of a primary contracting attorney to the independent committee already required under statute.

Ms. Elliott indicated that the Idaho Association of Counties requested certain sections of the docket be struck or revised. The PDC agreed, upon the condition of approval of the pending rules and collaboration to quickly address those sections. The sections were 61.0102.2002.030.02.b, 61.0102.2002.030.05, 61.0102.2002.040.02, and 61.0102.2002.070.03.

**DOCKET NO.
61.0102.2002.050.01**

Court Appointment of Competent Defending Attorneys. Appointment in Non-Capital Cases. Ms. Elliott reiterated that the PDC agreed to the changes in this section in light of the public feedback allowing Court appointments outside the Defending Attorney Roster (Roster).

**DOCKET NO.
61.0102.2002.060.05**

Defending Attorney Minimum Requirements. Caseloads and Workloads. Ms. Elliott stated that the PDC was proposing maximum caseloads and workloads, which are currently in existing rule section (b), to remain in effect with a one-year time extension due to COVID, to April 30, 2023, to be able to obtain an accurate study and data.

**DOCKET NO.
61.0102.2002.080.04**

Review of Roster Decisions. Removal of an Attorney from the Defending Attorney Roster or Capital Defending Attorney Roster for Other Reasons. Ms. Elliott explained that during rule making, language was added so defending attorneys could remain on the Roster pending resolution of an appeal.

**DOCKET NO.
61.0102.2002.090**

Continuing Legal Education. Ms. Elliott addressed the continuing legal education requirements. She advised that the requirements are contained in the existing rules with the exception of three since removed specialized credit requirements. Ms. Elliott also noted the addition of two credits for defending attorneys with supervisory or management credits has been added.

**DOCKET NOS.
61.0103.2002 AND
61.0104.2002**

Docket Nos. 61.0103.2002 Records, Reporting, and Review, and 61.0104.2002 Financial Assistance and Training Resources were not heard at this meeting.

DISCUSSION:

Senator Burgoyne expressed concern with the independent contract review and the potential for conflicts of interest between the county prosecutors and the public defenders. He encouraged a speedy resolution to that potential. Ms. Elliot stated she was in favor of meeting with all involved parties to improve the docket language, make it clearer, and create a collaborative process that will work for all Idaho counties.

Senator Wintrow stated she was concerned whether the public defense offered in Idaho meets the standards in the Constitution. Ms. Elliot pointed out that in 2007 the National Legal Aid and Defender Association (NLADA) released an audit of the State Appellate Public Defender (SAPD) and stated that issues facing the SAPD could be remedied with improvements to the county-based indigent defense systems. In 2010, NLADA issued a report finding that Idaho failed to provide Constitutional representation for indigent persons in its criminal and juvenile courts. Direction was given by NLADA and changes were made to accommodate Idaho's rural areas. Three requirements were given to:

- provide national standards, ie. the ones currently being worked on;
- provide oversight of counties to align all departments in working together; and
- provide resources and training which the Legislature has made possible with their financial assistance to counties.

Ms. Elliott reiterated that in accommodating all those involved, it is paramount that the defendants' needs are met.

Senator Anthon asked if the implementation of standards and rosters have made it more difficult to get attorneys to defend indigent clients, especially in rural areas. **Ms. Elliott** explained that there is no clear way to keep track of indigent providers in the State, even though they are required to do so. PDC's goal is to make a seamless process so judges can appoint an attorney for an indigent defendant. **Senator Anthon** discussed with **Ms. Elliott** that the administrative rules need to be in line with legislative intent, and the difference between policy and statute.

Senator Lee and **Ms. Elliott** discussed how the current and proposed rules apply to vertical representation for indigent persons as it is critical to the Sixth Amendment and an important cost component to public funds.

TESTIMONY:

Tony Geddes, Chief Public Defender for Ada County, testified that he supported a rewrite of these rules as they needed to be refined, clarified, and condensed. He said he appreciated the PDC's efforts to do so.

Andrew Masser, a criminal defense attorney residing in Boise, testified against the rules saying he supports improvements to county-based public defense systems. He further stated that the proposed rules were a reorganization of the structure of the current rules. They are approximately one-third the length of the current rules, and significant guidance for counties and public defenders removed. He said the restructuring of the rules changes the PDC's focus from supporting public defenders through grants and training to regulating them through investigations and enforcement.

Darrell Bolz, Chair, Juvenile Justice Commission, Public Defense Commission, testified virtually that his goal was for the public defense system to meet both federal and Idaho constitutional requirements, and to improve the professionalism of public defenders. He stated the rules at hand are condensed and will be easier for people to understand, and testified that the PDC has cooperatively worked with all its stakeholders.

Eric Fredericksen, Idaho State Appellate Public Defender, fielded questions from the Committee regarding negotiated rule making. He stated the majority of the rules were simplified since they were negotiated over a period of many years.

MOTION:

Senator Burgoyne moved to postpone consideration of the dockets to the Call of the Chair. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Vice Chairman Ricks passed the gavel to Chairman Lakey.

ADJOURNED:

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:05 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Erin Miller
Assistant Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 08, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of January 25, 2021 Minutes	Senator Lee
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Gubernatorial Appointment of Ted Pulver to the Sexual Offender Management Board for a term commencing January 21, 2021 to expire on January 1, 2024	Ted Pulver
PRESENTATIONS:	Introduction of Participating District Judges	Senior District Judge Barry Wood, Deputy Administrative Director, Administrative Office of the Courts
	The Need for Additional Judges in the Third District	Administrative District Judge George Southworth, Third Judicial District
	Idaho's Behavioral Health Initiative	District Judge Gene Petty, Third Judicial District
	The History and Proceedings of Water Adjudications in Idaho	Administrative District Judge Eric Wildman, Fifth Judicial District
<u>H 26</u>	Relating to the Elimination of the Use of Habitual Status Offender Definition	Monty Prow, Director, Department of Juvenile Corrections
<u>H 28</u>	Relating to Providing for Additional, Updated and Clarified Definitions in the Juvenile Corrections Act	Monty Prow, Director, Department of Juvenile Corrections
<u>H 29</u>	Relating to the Changing of the Application of Exemption from the Sexual Offender Classification Board	Nancy Volle, Program Manager, Sexual Offender Management Board
<u>RS28396</u>	Relating to the Submission of the Joint Printing Committee Recommendation on the Publication and Distribution of the Session Laws	Jennifer Novak, Secretary of the Idaho Senate
	Joint Printing Committee Recommendation	Jennifer Novak, Secretary of the Idaho Senate

[RS28401](#)

Relating to the Adoption of the Uniform
Electronic Wills Act

Mike Brassey,
Commissioner,
Uniform Law
Commission

[RS28428](#)

Relating to Death Certificate Recording on
County Property Records

Senator Kelly Anthon,
Senator, District 27

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 08, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senator Lee

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the Minutes of January 25, 2021. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment of Ted Pulver to the Sexual Offender Management Board (SOMB)** for a term commencing January 21, 2021, and expiring on January 1, 2024. **Mr. Pulver** stated he was a military veteran and attended the U. S. Army intelligence school. He became an interrogator, a position that involved using a polygraph. **Mr. Pulver** described his work in law enforcement, which included managing sex offenders in northern Idaho and eastern Washington. He was a member of the American Society of Testing Materials which created standards for polygraph testing and for the management of both criminal and sex offenders. **Mr. Pulver** informed the Committee that he served on a sex offender management board in Spokane County. He is now doing sex offender management and criminal polygraph testing.

Senator Lakey noted the balance Mr. Pulver has maintained as his expertise is used by both prosecutors and defense attorneys, as well as in both the public and private sectors. **Senator Wintrow** asked Mr. Pulver to explain his vision and how he would fit into the SOMB. **Mr. Pulver** replied that he has been a polygrapher for a long time and was basically field-trained. He said he feels it is important that polygraph examiners go into the field and talk to examiners to learn what works for them. **Mr. Pulver** stated that he also wants to share resources that the SOMB has with the examiners working in the field.

Chairman Lakey explained that the vote on Mr. Pulver's appointment will be taken at the next Committee meeting.

PRESENTATION: **Introduction of participating District Judges. Senior District Judge Barry Wood**, Deputy Administrative Director, Administrative Office of the Courts, introduced the three presenters and the topics of their presentations.

The Need for Additional Judges in the Third District. Administrative District Judge George Southworth, Third Judicial District, advised the Committee of the need for additional judges in his district, especially to be seated in Canyon County. **Judge Southworth** noted that Idaho, and Canyon County, are two of the most rapidly growing areas in the nation. He pointed out that the Third Judicial District has the highest caseload in the State, and with continued growth in population, the need for additional judges will increase. **Judge Southworth** emphasized that at least one additional judge is essential.

DISCUSSION:

Chairman Lakey expressed his appreciation for Idaho's Supreme Court Justices who work together in addressing issues around the state. He said he understood the need for an additional judge in Canyon County. **Senator Burgoyne** inquired about the district judges' caseload over the last several years with the last year obviously being an anomaly. **Judge Southworth** replied that civil cases reached a high in 2010 and have gone down slightly since then, but the number of criminal cases has increased substantially. **Senator Burgoyne** asked if the courthouse could accommodate a new district judge and staff in the Third Judicial District. **Judge Southworth** affirmed that such facilities are available.

PRESENTATIONS:

Idaho's Behavioral Health Initiative. District Judge Gene Petty, Third Judicial District, provided an update on the Idaho Behavioral Health Council (IBHC), of which he is a member (see Attachment 1). **Judge Petty** noted that he is the mental health court judge for Canyon County. He shared a brief review of the establishment of the IBHC through a collaboration of the three branches of state government in order to provide an effective behavioral health system. He explained the council was given the task of developing and overseeing a strategic plan to serve individuals with mental illness and/or substance abuse disorders. **Judge Petty** identified the members of the IBHC and outlined the steps they will follow to complete their assigned tasks. He invited the Senators' input.

The History and Proceedings of Water Adjudications in Idaho.

Administrative District Judge Eric Wildman, Fifth Judicial District, provided an overview of Idaho's water adjudications (see Attachment 2). He explained that a water right is the right to divert Idaho's public waters and put them to a beneficial use. **Judge Wildman** highlighted how a water right is established and administered. He related the process of adjudication of water right cases by the state, including federal and tribal water rights. **Judge Wildman** identified the purposes of adjudication of water rights as follows:

- to provide a comprehensive inventory/tabulation
- to establish priority administration
- to determine federal and tribal rights in state court
- to facilitate water markets
- to resolve interstate disputes
- to avoid over appropriation
- to accomplish transfers
- to provide a binding effect of final decree

Judge Wildman shared the history of water rights in Idaho and discussed various adjudications that were conducted, including the Snake River Basin adjudication which was the largest in the United States, covering most of

the State of Idaho. He mentioned some adjudications that are currently in progress.

H 26

Relating to the Elimination of the Use of Habitual Status Offender Definition. **Monty Prow**, Director, Department of Juvenile Corrections (DJC), informed the Committee that few changes have been made to the Juvenile Corrections Act (JCA) since its inception in 1994. Current statistics show that juvenile offenses have continually decreased since that time. **Director Prow** explained that, after being reviewed by juvenile justice stakeholders around Idaho, this bill provides the following changes:

- updates definitions regarding status offenders' placement in secure facilities
- eliminates the use of "habitual status offender" definition in future statutes of the JCA
- ensures the JCA keeps pace with current national practices
- ensures Idaho's system aligns with requirements of the Juvenile Justice and Delivery Prevention Act

Director Prow defined a status offender as a juvenile charged or adjudicated for conduct not considered a crime if carried out by an adult. He shared various causes of this type of offense, as well as negative outcomes derived from treating status offenses as misdemeanors. **Director Prow** asserted that status offenders and their families need more supportive services for prevention and crisis intervention. He related the increase in seriousness of consequences for repeat offenders.

DISCUSSION:

Senator Burgoyne requested clarification of the use of detention or other sentencing options. **Director Prow** responded detention could still be used, but more supportive options would be available to prevent early offenders from being thrust into the criminal justice system. **Senator Anthon** expressed concern regarding a judge's authority to use detention. **Director Prow** indicated that sentencing is at the judge's discretion. He then requested that Jason Stone give additional information.

Jason Stone, Community Operations Division Administrator, DJC, addressed the concerns of Senators Burgoyne and Anthon. He explained that habitual status offenses are low-level offenses, not criminal which would be misdemeanors and felonies. He pointed out that the criminal level of offenses remains the same. **Mr. Stone** stated the main purpose of this legislation is to bring Idaho into compliance with the federal Juvenile Justice Delinquency Prevention Act. He pointed out that Idaho is the only state out of compliance with this act, which deals with holding status offenders in detention. **Mr. Stone** observed that the U. S. Supreme Court previously passed a rule supporting this proposal. He then explained the process for sentencing status offenders. He emphasized that this bill only strikes habitual status, and although detention is still available, diversion programs are more successful for low-level offenders.

MOTION:

Senator Wintrow moved to send **H 26** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

- H 28** **Relating to Providing for Additional, Updated, and Clarified Definitions in the Juvenile Corrections Act.** **Monty Prow, Director, DJC**, detailed the main purposes of **H 28** as:
- to update and clarify definitions of the JCA
 - to update the definition of diversion
 - to add a screening definition to inform the court of the level of criminogenic risk of a youth
- Mr. Prow** went on to explain how a diversion is processed.
- DISCUSSION:** Director Prow and the Senators discussed possible components of a diversion and how diversion programs may differ among offenders.
- MOTION:** **Senator Lodge** moved to send **H 28** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion.
- DISCUSSION:** **Senator Burgoyne** advocated that **H 28** be sent to the 14th Order to change "should" to "shall." **Senator Lakey** said that the process in question is a diversion, and the local authorities should have more leeway in handling the diversion. General discussion regarding the use of "should" or "shall" continued.
- MOTION VOTE:** The motion carried by **voice vote**. **Senator Burgoyne** voted nay.
- H 29** **Relating to the Changing of the Application of Exemption from the Sexual Offender Classification Board.** **Nancy Volle**, Program Manager, Sexual Offender Management Board (SOMB), reported that the SOMB maintains the records of the Sexual Offender Classification Board (SOCB), which no longer exists. She stated the purpose of this bill is to change the application of the Public Defense Commission exemption of these records to the SOMB.
- MOTION:** **Senator Thayn** moved to send **H 29** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
- Chairman Lakey** announced that consideration of **RS 28396** will be moved to the last item of business.
- RS 28401** **Relating to the Adoption of the Uniform Electronic Wills Act.** **Mike Brassey**, Commissioner, Uniform Law Commission, was present virtually to answer questions. There were none.
- MOTION:** **Senator Anthon** moved to send **RS 28401** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- RS 28428** **Relating to Death Certificate Recording on County Property Records.**
- MOTION:** **Senator Anthon** moved to send **RS 28428** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- RS 28396** **Relating to the Submission of the Joint Printing Committee (JPC) Recommendation on the Publication and Distribution of the Session Laws.** **Jennifer Novak**, Secretary of the Idaho Senate, reported that the JPC recommended the continued endorsement of limiting the printing of the Idaho session laws to a total of 100 copies, given the decrease in demand for physical copies due to online access. The JPC acknowledged a decrease in the publishing price from \$15,860 in 2016 to \$1,800 in 2020.
- RECOMMENDATION:** **Joint Printing Committee Recommendation.** **Jennifer Novak**, Secretary of the Idaho Senate, requested the Committee accept the JPC recommendation.

MOTION: **Senator Burgoyne** moved to accept the JPC recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:00 p.m.

Senator Lakey, Chairman

Sharon Pennington, Secretary

Carol Cornwall, Assistant Secretary

Idaho Behavioral Health Council

Idaho Senate Judiciary and Rules Committee

February 8, 2021



Senate Concurrent Resolution No. 126

“WHEREAS, tremendous social and economic value will inure to the people of Idaho with the strategic development of a more effective behavioral health system that is devised, implemented, and sustained statewide...”

Senate Concurrent Resolution No. 126

“NOW, THEREFORE, BE IT RESOLVED...that we support and encourage a collaboration among all three branches of the state government, local governments, and community partners to develop and implement a statewide strategic plan to inventory, assess, and materially improve the Idaho behavioral health system to the benefit of all Idahoans.”

Senate Concurrent Resolution No. 126

“BE IT FURTHER RESOLVED that to effectuate this statewide strategic plan, the Legislature endorses and supports the creation of a Behavioral Health Council by the Honorable Brad Little, Governor of the State of Idaho.”

In the Supreme Court of the State of Idaho

IN RE: IDAHO BEHAVIORAL)
HEALTH COUNCIL)
_____)

ORDER and
PROCLAMATION

*Executive Department
State of Idaho*



*State Capitol
Boise*

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2020-04-A

CREATING THE IDAHO BEHAVIORAL HEALTH COUNCIL

The Statewide Strategic Action Plan

Define a Plan

- Inventory current expenditures, utilization, and accessibility

Assess System

- Effectiveness and efficiency of the current system, including where more efficient organization and effective coordination of existing resources could create better outcomes

Determine Needs

- Broad stakeholder input and known best practices

Recommend Actions

- Actions that will materially improve Idaho's behavioral health system

Members of the Behavioral Health Council

Ex Officio

- Administrative Director of Courts - Sara Omundson
- IDOC Director- Josh Tewalt
- IDHW Director- Dave Jeppesen
- IDJC- Monty Prow

Members appointed by the Governor

- Department of Education - Eric Studebaker
- County elected official – Comm. Brent Mendenhall
- One member of the public - Jennifer Griffis

Members appointed by Court

- Presiding judge of treatment court - Judge Gene Petty
- Public Member – Dr. David Pate

Legislators

- Members of the House of Representatives: Rep. Laurie Lickley and Rep. Brooke Green
- Members of the Senate: Sen. Jeff Agenbroad and Sen. David Nelson

Idaho Behavioral Health Council

Develops and oversees the implementation of a statewide strategic action plan designed to ensure an effective, efficient, recovery-oriented behavioral healthcare system for all Idahoans.

Co-Chairs

Appointed Members

Advisory Board

Assists and advises the Council by providing subject matter expertise and collective recommendations based on the outcomes of the individual workgroups.

Workgroups

Supports the development of the statewide strategic action plan by studying the current landscape, identifying barriers, researching potential solutions and preparing recommendations for Advisory Board review.

Children & Youth

Commitments

Clinical Care

Criminal Justice

Housing

Prevention / Early Intervention

Programs & Services

Strategy & Operational Support Team

Provides operational support, logistics and strategic planning guidance to the Council, Advisory Board and Workgroups.

Convening & Facilitation

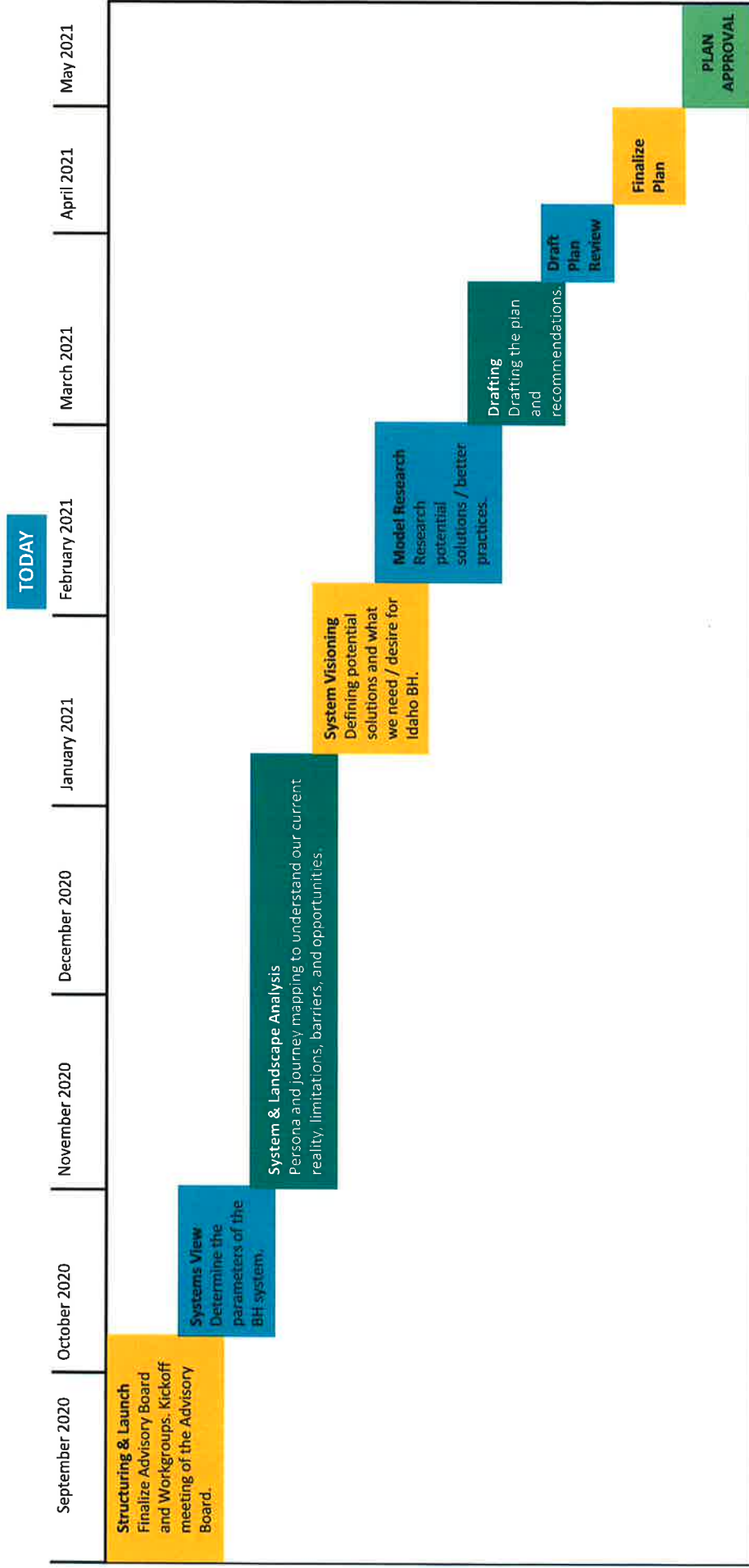
Meeting & Project Management

Data & Analytics

Communications

Adult Consumer of Behavioral Health Services	Ekhoff, Martha
Family of a Child Consumer of Behavioral Health Services	Hokanson, Kim
Idaho Medical Association Primary Care representative	Davis, Keith
Idaho Psychiatric Association representative	Fox, Nicole
Idaho Hospital Association representative	Lawson, Toni
Substance Use Disorder Provider	Thomas, Debbie
Mental Health Provider	Scuri, Laura
Public Health District representative	Whalen, Lora
Idaho Sheriff's Association representative	Hulse, Sam
Idaho Chiefs of Police Association representative	Estess, Mark
Idaho Prosecuting Attorney's Association representative	Oxendine, Keisha
State Appellate Public Defender	Fredericksen, Eric
Office of Drug Policy representative	Smyser, Melinda
Tribal representative	Broncho, Krissy
Tribal representative	Ward, Craig
Idaho Primary Care Association	Ketchum-Ward, Yvonne
Magistrate Judge	Evans, Michelle
State Hospital Administrator	Hurt, Todd
Suicide Prevention representative	Louangketh, Palina
Idaho Health Care Association	Vande Merwe, Robert
Public Defender	Taylor, Anne
Victims of Crimes Expert	Bostaph, Lisa
NAMI	Sandvig, Michael
EMS	Rae, Dawn
University Leadership	Niece, Matthew

STRATEGIC PLANNING TIMELINE



Engagement and Ideas

- All meetings are streamed live on Youtube
- Website: <https://healthandwelfare.idaho.gov/about-dhw/boards-councils-committees/idaaho-behavioral-health-council-ibhc>
- Meeting agendas, materials, and recordings are available on the website
- Future Council Meetings:
 - 2/12/2021
 - 3/12/2021
 - 3/26/2021
 - 4/9/2021
 - 4/23/2021
 - 5/7/2021
 - 5/21/2021
 - 6/4/2021
- Comments: IBHC@dhw.idaho.gov

THANK YOU



What is a water right?

- Right to divert waters of state.
 - Diversion.
 - Application to beneficial use.
- “first in time is first in right.”
- Property right.
- Necessary to divert water.

What is a general adjudication?

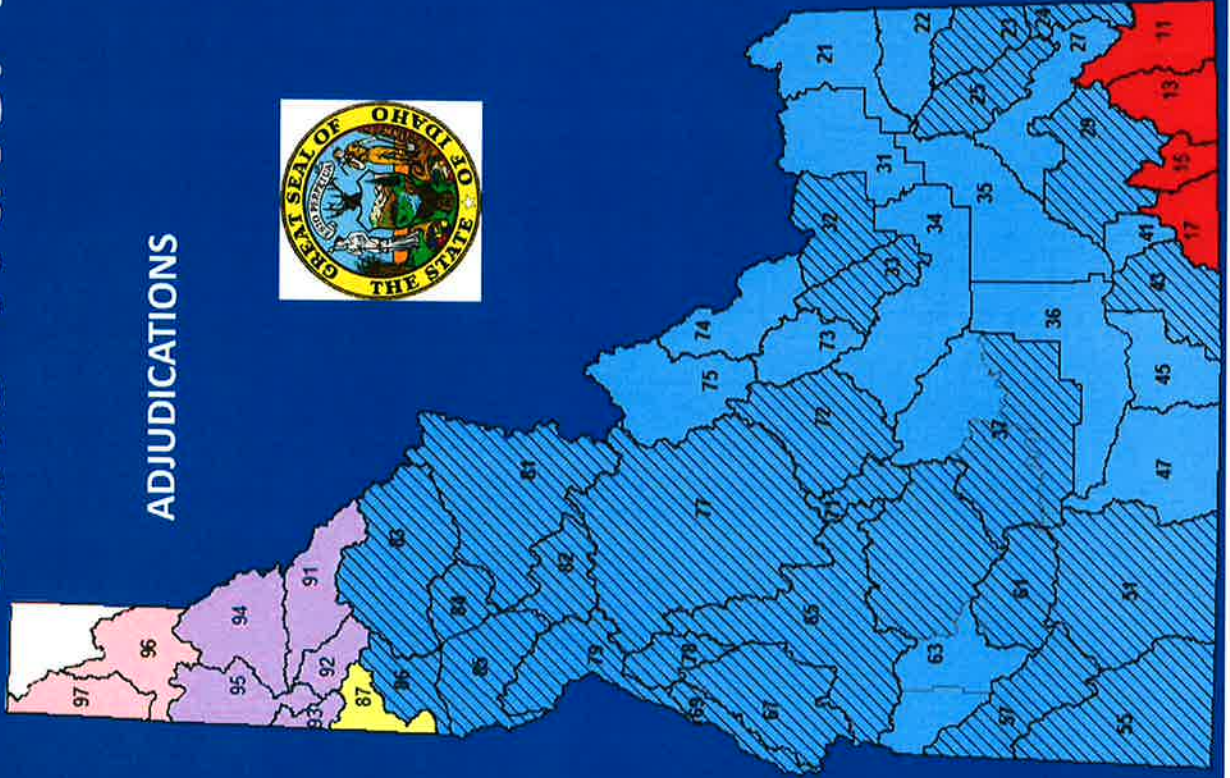
- Comprehensive determination all claims on a source.
- Single lawsuit joining everyone claiming right to use water
- McCarran Amendment.
- Forfeit claim if fail to file.
 - Exception for small domestic and stockwater.

Why adjudicate water rights?

- Comprehensive inventory/tabulation.
- Avoid over appropriation.
- Priority administration.
- Address accomplished transfers.
- Determine federal and tribal rights in state court.
- Binding effect of final decree.
- Facilitate water markets
- Resolution interstate disputes.

Idaho Water Rights Adjudications

ADJUDICATIONS



Sub-basin Boundaries

Snake River Basin (1987 - 2014)

Coeur d'Alene-Spokane River Basin (2008)

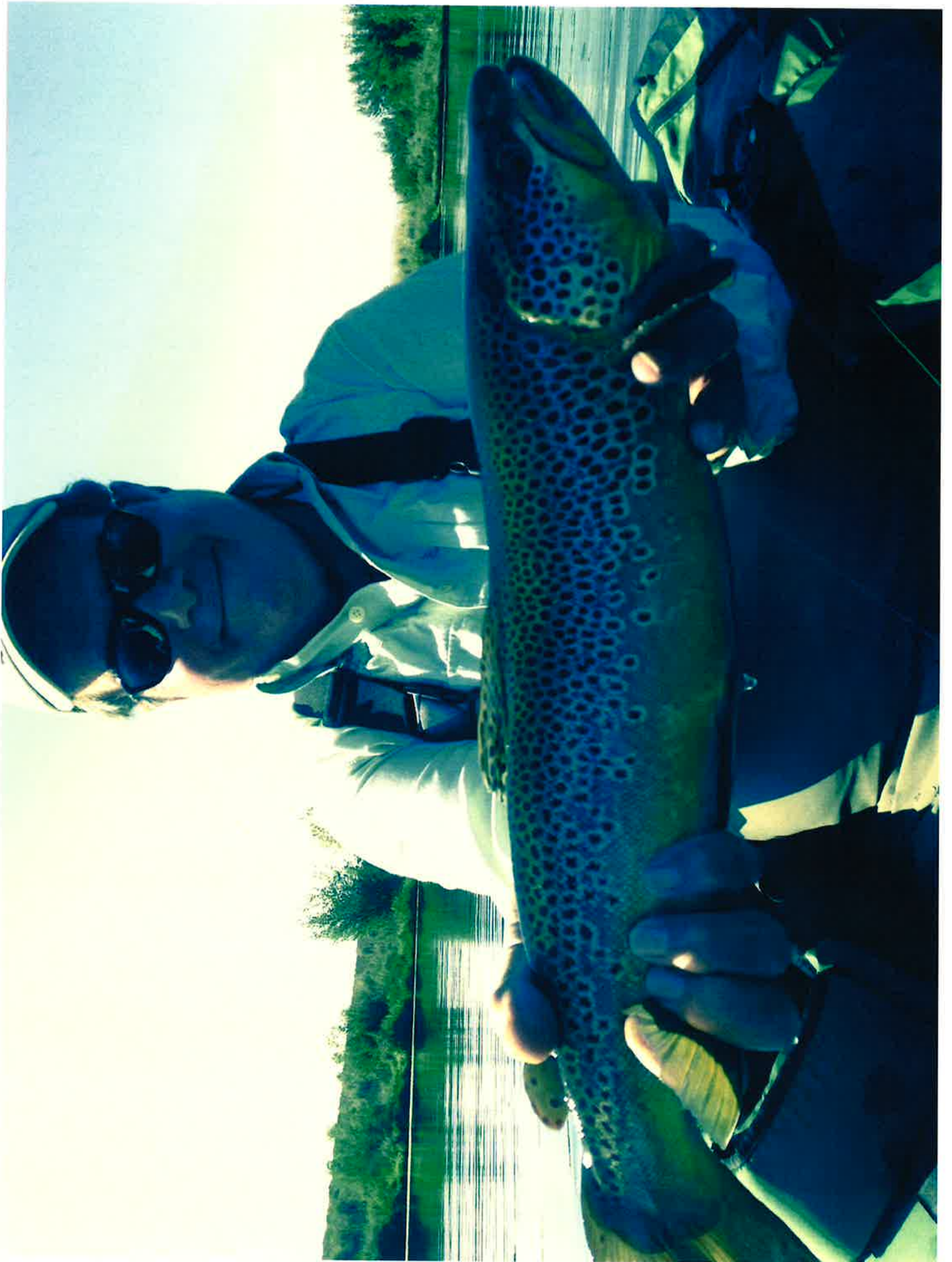
Palouse River Basin (2017)

Clark Fork-Pend Oreille River Basin (pending)

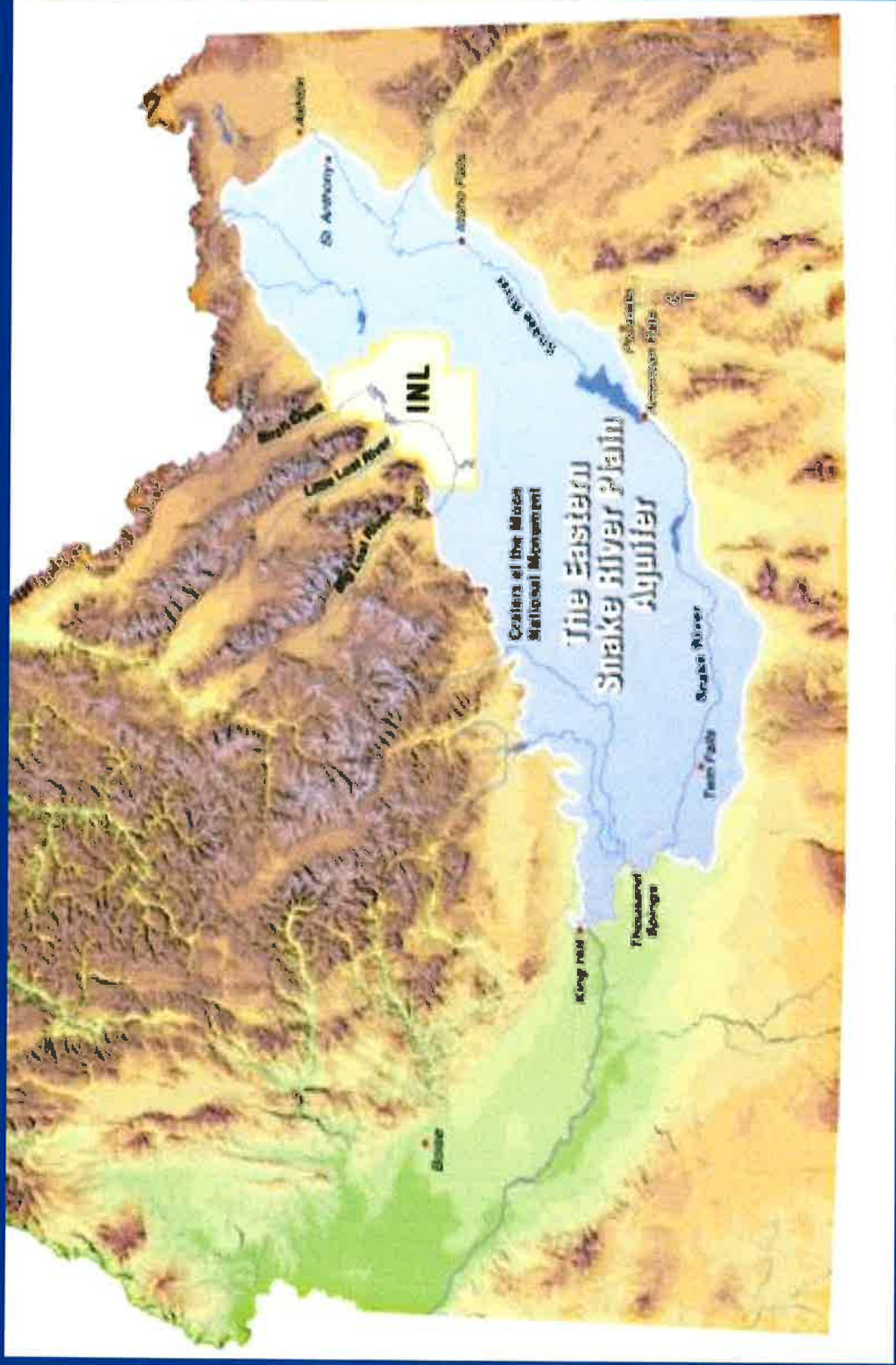
Bear River Basin Adjudication (pending)

Kootnai River Basin (not authorized)



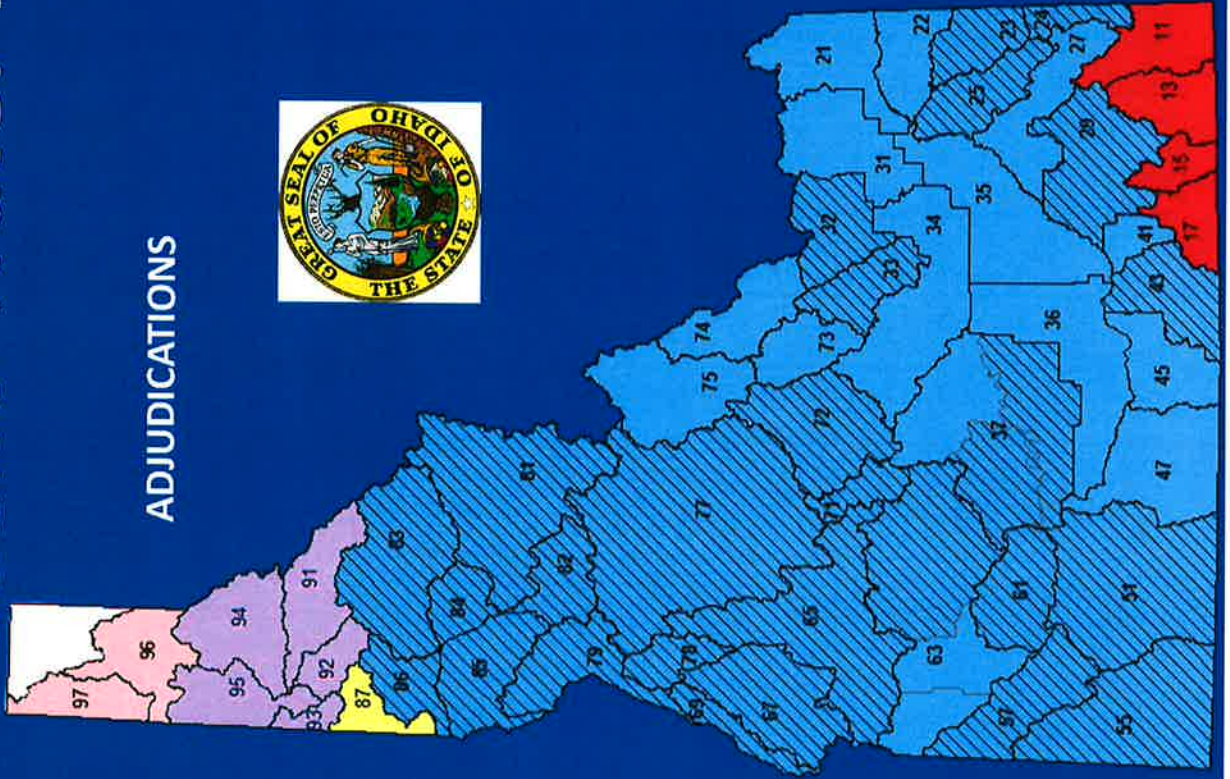


Administrative Appeals



Idaho Water Rights Adjudications

ADJUDICATIONS



Sub-basin Boundaries

Snake River Basin (1987 - 2014)

Coeur d'Alene-Spokane River Basin (2008)

Palouse River Basin (2017)

Clark Fork-Pend Oreille River Basin (pending)

Bear River Basin Adjudication (pending)

Kootnai River Basin (not authorized)

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 10, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of January 27, 2021 Minutes	Senator Ricks
VOTE ON GUBERNATORIAL APPOINTMENT:	Vote on the Appointment of Ted Pulver to the Sexual Offender Management Board for a term commencing January 21, 2021 to expire on January 1, 2024	
<u>H 27</u>	Relating to the Appointment of one additional District Judge Position with resident Chambers in Canyon County	Chairman Lakey
<u>RS28430</u>	Relating to an Amendment to the United States Constitution Asking that the Supreme Court be Comprised of Nine Justices	Senator Steve Vick
<u>RS28451C1</u>	Relating to the Definition of Rape Based on the Relationship of the Parties	Senator Melissa Wintrow
<u>RS28500</u>	Relating to Fees for Residential Tenants	Senator Ali Rabe

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 10, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senator Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

MINUTES APPROVAL: **Senator Ricks** moved to approve the Minutes of January 27, 2021. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Thayn** moved to send the Gubernatorial Appointment of Ted Pulver to the Sexual Offender Management Board for a term commencing January 21, 2021, and expiring on January 1, 2024, to the floor with a recommendation that he be confirmed by the Senate. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Ricks.

H 27 **Relating to the Appointment of One Additional District Judge Position With Resident Chambers in Canyon County.** **Chairman Lakey** stated that this legislation would provide for another district judge in Canyon County, helping to lessen the current heavy case loads. Each time a judge is added, the statute must be changed.

MOTION: **Senator Burgoyne** moved to send **H 27** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Senator Lee** asked that the record show that her husband is currently serving as a magistrate judge.

Senator Lee encouraged the judges to share personnel, such as court reporters, among each other and not have an individual assigned to one specific judge. She stated that is a better use of resources.

PASSED THE GAVEL: Vice Chairman Ricks passed the gavel to Chairman Lakey.

- RS 28430** **Relating to an Amendment to the United States Constitution Asking That the Supreme Court Be Comprised of Nine Justices.** **Senator Steve Vick** explained that the Supreme Court has been comprised of nine judges for more than 150 years and this legislation would put that number in the Constitution, encouraging Congress to make that change. Former Attorney General Eric Holder, who worked for President Obama, has asked the new Biden administration to use their new majority to impact federal courts. There are Legislators from both sides of the political aisle that are opposed to court packing. **Senator Vick** stated that our system of checks and balances has worked for a long time and court packing would disrupt that system.
- DISCUSSION:** **Senator Burgoyne** commented that he was concerned about the potential for political games that could occur if the court numbers were to change. He stated that limiting the justices to nine only addresses part of the issue. The other issue is assuring that any advantages one side or the other now has is not permanently locked in.
- MOTION:** **Senator Burgoyne** moved to send **RS 28430** to print. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.
- RS 28451C1** **Relating to the Definition of Rape Based on the Relationship of the Parties.** **Senator Melissa Wintrow** stated that this legislation would repeal Idaho Code § 18-6107 that provides certain limitations on the crime of rape involving a married couple. **Senator Wintrow** indicated that she sought an Attorney General's opinion and the repeal would not negatively impact any other part of Code as long as section 18-6101 is amended to exclude anyone lawfully married in subsection 1 and 2 where statutory rape is defined. This amendment recognizes lawful marriages of minors who could otherwise be charged with statutory rape.
- MOTION:** **Senator Lee** moved to send **RS 28451C1** to print. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.
- RS 28500** **Relating to Fees for Residential Tenants.** **Senator Ali Rabe** explained that this legislation encourages landlords to enumerate all fees in lease agreements and make sure those fees are reasonable. It is intended to ensure that industry practices are complied with in code, and that all parties are protected upon signing a lease agreement.
- MOTION:** **Senator Ricks** moved to send **RS 28500** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- ADJOURNED:** There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:54 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 15, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Approval of February 1, 2021 Minutes	Senator Burgoyne
<u>RS28277</u>	Relating to Elimination of Phantom Insurance and Reduced Payments for Benefits Paid by Others	Senator Peter Riggs
<u>RS28516</u>	Relating to Time Line for Unclaimed Property	Senator Doug Ricks
<u>RS28567</u>	Relating to Providing for Collective Bargaining Rights of Peace Officers	Mike Miraglia, Fraternal Order of Police
<u>S 1035</u>	Relating to the State Appellate Public Defender Act	Eric Fredericksen, Director Idaho State Appellate Public Defense Commission
<u>S 1076</u>	Relating to the Submission of the Joint Printing Committee Recommendation on the Publication and Distribution of the Session Laws	Senator Todd Lakey

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey	Sen Thayn
Vice Chairman Ricks	Sen Zito
Sen Lodge	Sen Burgoyne
Sen Lee	Sen Wintrow
Sen Anthon	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 15, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senator Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the Minutes of February 1, 2021. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

RS 28277 **Relating to the Elimination of Phantom Insurance and Reduced Payments for Benefits Paid by Others.** **Senator Peter Riggs** explained that currently, insurance laws state if the liable person's insurance coverage is a certain amount and personal under-insured motorist coverage is of an equal or lesser amount, then there is no additional insurance support from the personal insurance company. This legislation would change the laws to reflect that in addition to what the liable party would pay, the personal under-insured motorist coverage, paid monthly, would cover the needs of the cost of damages to person and property.

MOTION: **Senator Wintrow** moved to send **RS 28277** to the floor to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 28516 **Relating to Time Line for Unclaimed Property.** **Senator Doug Ricks** stated the purpose of **RS 28516** is to shorten the length of time law enforcement is required to retain unclaimed properties. This bill would shorten the time from 6 months to 90 days for most items. Bicycle retention would go from 6 months to 60 days.

DISCUSSION: **Senator Lee** questioned why the legislation should be made by the State of Idaho rather than local jurisdictions. **Senator Ricks** remarked that at the next hearing there would be representatives from the Idaho Sheriffs Association who could answer her question.

MOTION: **Senator Lee** moved to send **RS 28516** to the floor to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 28567 **Relating to Providing for Collective Bargaining Rights of Peace Officers.** **Mike Miraglia**, representing the Idaho Fraternal Order of Police, introduced his history in law enforcement. **Mr. Miraglia** said **RS 28567** provides a framework for discussions on issues that directly affect the livelihoods, safety, and the future of law enforcement. The bill asks leadership to recognize the voices of officers and bargain in good faith while finding local solutions with local control. **Mr. Miraglia** concluded by mentioning that the decisions being made now will effect policing in Idaho for years to come.

DISCUSSION: **Senators Thayn, Lee, and Wintrow** all had questions relating to **RS 28567**. **Chairman Lakey** indicated that this legislation would be referred to the Commerce and Resources Committee where their concerns could be addressed.

MOTION: **Senator Burgoyne** moved to send **RS 28567** to the floor to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

S 1035 **Relating to the State Appellate Public Defender Act**. **Eric Fredrickson**, Idaho State Appellate Public Defender, stated there are no substantive changes in the State Appellate Public Defender Act in **S 1035**. It simply moves § 19-067 into a chapter of its own, making it easier for public defenders, the public, the prosecutors, and judges to be able to find the statute.

MOTION: **Senator Lee** moved to send **S 1035** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Ricks.

S 1076 **Relating to the Submission of the Joint Printing Committee (JPC) Recommendation on the Publication and Distribution of the Session Laws**. **Chairman Lakey** explained that he and Senator Burgoyne serve on the JPC with colleagues from the House. He stated that **S 1076** simplifies some of the language in existing Idaho Code, basically consolidating verbiage into publication and distribution instead of going into details on specifics. It allows the OPC Committee to meet in the first term of each session and establish printing numbers and guidelines but gives the JPC Committee an opportunity to meet additional times if needed.

MOTION: **Senator Lodge** moved to send **S 1076** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

INTRODUCTIONS: **Chairman Lakey** asked Sophia Lind, the Committee's page, to introduce her family.

ADJOURNED: There being no further business at this time, Chairman Lakey adjourned the meeting at 2:00 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 17, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Presentation of Status of the Department of Corrections	Josh Tewalt, Director, Idaho Department of Corrections
<u>RS28576</u>	Relating to Incorrect Label as "Phantom Insurance"	Senator Jim Guthrie
<u>RS28588</u>	Relating to Commercial Burglary	Senator Todd Lakey
<u>RS28613</u>	Relating to Financial Institution Garnishment Fees	Trent Wright, Idaho Bankers Association
<u>S 1078</u>	Relating to Death Certificates	Randy Lofgran, Intern for Senator Anthon
<u>S 1088</u>	Relating to Rental Fees	Senator Ali Rabe
<u>S 1089</u>	Relating to Spousal Rape	Senator Melissa Wintrow
Page Graduation	Senate Page Graduation of Sophia Lind, Meridian, Idaho	

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 17, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate and Judiciary Rules Committee (Committee) to order at 1:30 p.m.

PRESENTATION: **Presentation of Status of the Department of Corrections (IDOC).** **Josh Tewalt**, Director, Idaho Department of Corrections, stated that on March 1, 2020, the IDOC was experiencing record growth. He also gave statistics reflecting the decline in prison population and the growth in number of individuals on felony supervision approximately one year later. The Covid-19 pandemic has disrupted jury trials significantly, but it has not stopped the IDOC from receiving newly incarcerated individuals. When jury trials resume, IDOC anticipates an uptick in people being placed in IDOC programs. The IDOC has continued to facilitate keeping programs moving throughout their system. The hard work of many people employed by the IDOC has allowed their system to keep flowing, and the investments the Legislature made last year are starting to pay off.

Director Tewalt explained that one of the IDOC's main focuses is the principle that the community is safer when former inmates find subsequent success in the community. Today there is a complete reorientation of how the program is approached. In the past, the goal was to penalize every reoffense. The current program focuses on finding what it takes to make each individual successful and ways to make that happen. Historically, the IDOC spent over five times as much on prisons as on community resources. In the last year that trend has changed.

Director Tewalt stated that the IDOC is currently using three community-based strategic initiatives. One of those initiatives is Connection & Intervention Stations. The background on this is the realization that high risk offenders need individualized case management to assess their unique risks. High-risk offenders need to be connected to people who can help them find the resources they need to get on a more positive trajectory and learn to be more accountable for their actions.

Another strategic initiative, Dosage Probation, determines the amount of individualized programming specific to a person's need that gives the most beneficial results. Boise State University (BSU) is evaluating a Dosage Probation model, and they will have a control group that can be compared to the traditional supervision model.

The third Initiative is Reentry Grants. The grants are divided into three categories including crisis services, forensic peers, and trauma services. Partnerships with other groups operating in these areas have been formed and the IDOC is anxious to see how they will be most effective in working with incarcerated individuals. This area seeks to provide an understanding of root causes which have contributed to inmates circumstances. A new emphasis has been placed on females entering the corrections system. An Adverse Childhood Experience Study has been used with the female IDOC population. The goal of the study is to help address underlying trauma which will allow better impacts on precursors to crime in the community. In addition to the Reentry Grants, the IDOC is working on a pilot program relating to the challenges of finding suitable transitional housing.

Director Tewalt said that his department is dedicated to ensuring that reentry starts on the first day they enter the prison system. This goal has prompted IDOC to ensure that the programs offered are purpose-driven. They are intended to help ease the transition back into the community and to have added impact on public safety.

DISCUSSION:

Senator Burgoyne asked what the recidivism rate was for the IDOC. **Director Tewalt** stated that the numbers may be very misleading because they need context. Idaho defines the type of crime at the time of arrest and the time of conviction differently.

Director Tewalt said that roughly three-quarters of new term commitments were people who had failed other opportunities to be successful in the community and roughly two-thirds of the existing prison population were there because they failed on supervision. **Senator Burgoyne** expressed that he feels like all the efforts of the Legislature and the IDOC are not making a difference. **Director Tewalt** responded that while the IDOC was not the decision-maker in areas such as sentencing and releases, they did have the ability to influence the confidence level of those who do. Results of the intervention stations were being realized and discussions with the Judiciary were changing the perceptions of those organizations.

Senator Lee indicated that she was concerned about the court trials that have stopped due to Covid 19. Jury trials should be opening up, and she questioned whether everyone will be prepared to handle a large increase in trials, sentencing and an increase in the prison population. **Director Tewalt** stated that since the pandemic began, law enforcement has taken a different view of imminent public safety. They believe that if crime rates drop or stay flat during the pandemic, why should they increase after the pandemic. He stated that the expected increase in new crime has not risen, and he added they feel confident they will be able to handle the inmates when sentencing resumes.

Senator Wintrow asked how the Legislature could help support IDOC with community connections. **Director Tewalt** shared the steps taken to make the community connections. He explained that the first step the IDOC took was to find subject matter expertise. The department identified a challenge they saw, provided pertinent information and contacted the appropriate organization and asked for recommendations on how to solve the problem. The IDOC worked with organizations who were research based and could help them achieve the desired outcomes. The community connections main purpose is not to provide the service, but to connect the IDOC to those who are experts in the needed areas. **Director Tewalt** added that it is the responsibility of the IDOC to measure results of their programs and bring the results to the Legislature.

Senator Lodge and **Chairman Lakey** thanked Director Tewalt and his staff for their work and the great progress the IDOC has made.

RS 28576 **Relating to Incorrect Label as "Phantom Insurance."** **Senator Jim Guthrie** stated that **RS 28576** deals with uninsured and underinsured motorist coverage. It provides that any underinsured motor vehicle coverage with limits of liability less than two times the Idaho minimum limits for bodily injury or death shall be construed to provide coverage in excess of the liability coverage of any underinsured motor vehicle involved in the accident. He requested the Committee send the legislation to print and then be referred to the Commerce and Human Resources Committee.

MOTION: **Senator Lee** moved to send **RS 28576** to print. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Senator Lodge who was serving as Vice Chairman in Vice Chairman Ricks' absence.

RS 28588 **Relating to Commercial Burglary.** **Chairman Lakey** explained that **RS 28588** is a correction to SB 1352 passed in the 2020 Legislature. Commercial burglary was defined as burglaries committed in stores during business hours involving theft of property worth less than \$300.00 and was a felony. The 2020 legislation provided for a misdemeanor offense if it met the mentioned criteria. There was misinterpretation by some courts that the 2020 bill may have excluded burglaries outside of the current statute from commercial locations. This RS changes the language to address that misinterpretation but does not change the original intent.

MOTION: **Senator Burgoyne** moved to send **RS 28588** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 28613 **Relating to Financial Institution Garnishment Fees.** **Trent Wright**, CEO and President, Idaho Bankers Association, stated that **RS 28613** proposes a fee increase of \$5 to \$7 for execution fees and an increase of \$10 to \$12 for the one-time search fees. It seeks to clarify lookback procedures to match federal guidelines. Lookback refers to how far back in time you would look at someone's banking, checking or savings accounts for either wages or assets. This legislation would provide the judgement creditor with the 30-day provision to accept the answer of the garnishee for insufficient funds.

MOTION: **Senator Anthon** moved to send **RS 28613** to print. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Senator Lodge passed the gavel to Chairman Lakey.

S 1078 **Relating to Death Certificates.** **Randy Lofgran**, Extern, College of Law, University of Idaho, stated this legislation provides that a death certificate may be included in the list of instruments to be recorded on county property records and clarifies the discretion of the county recorders in determining which type of documents are received. He stated **S 1078** would not create liability for the county clerk. Death certificates need to be filed in the county records to clarify property ownership. A recorded death certificate may be used in the administration and distribution of trust assets. The clarification provided in this legislation will align the statute with existing court instructions.

MOTION: **Senator Burgoyne** moved to send **S 1078** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1088

Relating to the Rental Fees. **Senator Ali Rabe** explained that **S 1088** would require that rental fees be enumerated in lease agreements or other written agreements between landlords and tenants and the fees be reasonable. The proposed changes to code reflect industry best practices and also State best practices. The changes will prevent landlords from imposing overly burdensome, punitive late fees on renters who are already struggling to make ends meet. **Senator Rabe** commented these fees are sometimes used in an exploitative way to punish tenants who are struggling.

Senator Rabe pointed out that housing costs in Idaho are outpacing any other state. Renters are at the mercy of the landlords and the housing demand far outweighs the supply, especially for affordable housing. With more population growth, more tenant/landlord disputes occur. This change to current code would ensure that tenants can pay their rent, and stay in their housing without trying to make up for fees about which they may not have known.

DISCUSSION:

Senator Anthon asked how one measures "reasonableness" when an agreement is disputed. **Senator Rabe** stated that it is a common term used in courts all over the country signifying an agreement is appropriate, fair or sensible. Also the term is consistent with Idaho Code. **Senator Anthon** expressed concern that this legislation could alter the principle of the statute of frauds in Idaho law. **Senator Rabe** responded that **S 1088** does not require that lease agreements be a year long. It only requires that the agreement be written down, and that is currently in line with another part of the landlord tenant code. She added that the legislation does not require all lease agreements be in writing. The bill only requires that fees are written down in a separate agreement.

Senator Wintrow asked the range of fees in the Treasure Valley and what purpose they serve. **Senator Rabe** stated there are late fees of up to \$100 per day. Late fees are meant to be an incentive for rent to be paid on time. Research shows that beyond one small fee, no additional incentive is derived.

TESTIMONY:

The following people testified In Support of **S 1088**:

Doug Taylor, representing the Idaho Apartment Association, Boise, Idaho

Cassandra Swanson, CEO, Paramount Property Management, Boise

Reverend Sara LaWall, Minister, representing Interfaith Equality Coalition, Boise

Kendra Knighten, Policy Associate, Idaho Voices for Children, Boise

Betsy Carver, Landlord, Boise

Margie Baker, Effective Activision Idaho (EAI), Nampa, Idaho

Senator Rabe said she felt the concerns with "reasonable" would be handled by the courts.

MOTION:

Senator Wintrow moved to send **RS 1088** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion.

SUBSTITUTE MOTION:

Senator Anthon moved that **RS 1088** be sent to the 14th Order of Business for possible amendment. **Senator Lee** seconded the motion.

DISCUSSION:

Senator Anthon stated his reasons for making the substitute motion. He indicated that he was concerned the bill may cause confusion in terms of the statute of fraud definition, and he also identified some drafting errors that need to be addressed. He said he could see a problem with the State telling landlords what they could or could not do with their own property. **Senator Lee** seconded the substitute motion.

MOTION:

The motion to send **S 1088** to the 14th Order of Business for possible amendment passed by **voice vote**.

S 1089 **Relating to Spousal Rape.** **Senator Wintrow** stated that **S 1089** is a housekeeping bill which repeals the entirety of Idaho Code § 60-107. Since Idaho recognizes that 16 and 17-year-olds can be legally married, she addressed that in the bill. She indicated that recognizing lawful marriage should also be in subsection 1, and requested that it be sent to the 14th Order of Business to be corrected. **Senator Wintrow** gave a brief history of the spousal rape bill and the dates changes were made. She commented that the world has changed and the current spousal rape provision would not be used.

MOTION: **Senator Anthon** moved to send **S 1089** to the 14th Order of Business for possible amendment. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

PAGE GRADUATION: **Senator Lakey** thanked Sophia Lind for her service to the Committee. **Ms. Lind** shared her experience of recently singing "How Great Thou Art" in the Capitol Rotunda for Legislators and staff, and the spirit of peace that she felt there. She said that experience summed up her time as a page with the feeling that what is done in the Capitol is special and right. She stated that she has had an amazing six weeks at the Idaho State Capitol. The things she learned, the people she met, and the relationships she formed will be an unforgettable part of her life.

ADJOURNMENT: There being no further business at this time, Chairman Lakey adjourned the meeting at 3:20 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 22, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
NEW PAGE INTRODUCTION:	Introduction of New Page, Ella Luekenga, Nampa, Idaho	Ella Luekenga
MINUTES APPROVAL:	Approval of February 10, 2021 Minutes	Senator Lee
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Gubernatorial Reappointment of Melissa Hultberg to the Sexual Offender Management Board for a term commencing January 1, 2021 to expire on January 1, 2024	Melissa Hultberg
<u>RS28595</u>	Relating to Judicial Salaries	Sara Omundson, Administrative Director of the Courts
<u>S 1119</u>	Relating to Time Line for Unclaimed Property	Senator Doug Ricks
<u>S 1120</u>	Motion to Return Legislation to the Floor for Possible Rereferral	Chairman Lakey
<u>S 1130</u>	Relating to Commercial Burglary	Senator Todd Lakey
<u>S 1131</u>	Relating to Financial Institution Garnishment Fees	Trent Wright, Idaho Bankers Association

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 22, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

PAGE INTRODUCTION: **Chairman Lakey** introduced Ella Luekenga as the new Judiciary and Rules Committee page. **Ms. Luekenga** introduced herself and indicated her long-time desire to be a page. She is interested in government and this experience will give her a first-hand view of government affairs. She sees the potential for law to be part of a profession she pursues.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Reappointment of Melissa Hultberg** to the Sexual Offender Management Board (Board) for a term commencing January 1, 2021, and expiring on January 1, 2024. **Ms. Hultberg** briefly explained her background and professional experience. She indicated that she felt her employment with the Idaho Department of Juvenile Corrections gave her added perspective for this position.

Senator Lee asked Ms. Hultberg to share a previous challenge or experience she has had with the Board. **Ms. Hultberg** responded that she was pleased with the consistency and certification processes in which she participated.

Chairman Lakey questioned what factors help in the successful transition of juveniles into the community. **Ms. Hultberg** stated families, even those who are not very supportive, are still essential to the success of the programs used for introducing juveniles back into society.

MINUTES APPROVAL: **Senator Zito** moved to approve the Minutes of February 10, 2021. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 28595 **Relating to Judicial Salaries.** **Sara Omundson**, Administrative Director of the Courts, stated that on February 17, 2021, the Joint Finance-Appropriations Committee (JFAC) approved a 2 percent merit increase for the Idaho judiciary based on Change in Employment Compensation (CEC) approval. The judicial salaries are set in Idaho Code 59-502. She listed what percentage and dollar amount each layer of judges would receive.

DISCUSSION: **Senator Burgoyne** questioned why the legislation does not move up each justice's salary a full 2 percent. **Ms. Omundson** replied the differing salary amounts prevent salary compression.

MOTION: **Senator Wintrow** moved to send **RS 28595** to print. **Senator Thayn** seconded the motion.

Senator Lee stated that her husband is a magistrate judge and declared Rule 39 H.

MOTION VOTE: The motion carried by **voice vote**.

S 1119

Relating to Time Line for Unclaimed Property. Vice Chairman Ricks, on behalf of the Idaho Sheriff's Association, brought this bill which asks for time line adjustments. County sheriffs and city police departments are required by law to keep unclaimed property for six months before the item can be auctioned or destroyed. For bicycles, the law requires 90 days. He introduced Murphy Olmstead and indicated that he would present the legislation.

Murphy Olmstead, Idaho Sheriffs Association, said the amount of storage of unclaimed property had almost doubled what it was in 1957 when the original statute was written. The handout (see Attachment 1) shows how Idaho compares to neighboring states. This legislation hopes to bring Idaho Code into alignment with Oregon, Washington and Utah by decreasing its time line. Idaho is retaining property for 6 months and the other noted states' time lines are 90 days.

DISCUSSION:

Chairman Lakey asked from where all of the property comes. **Mr. Olmstead** responded that much of it is abandoned bicycles, backpacks, and miscellaneous items that are found on the Greenbelt in Ada County. **Senator Wintrow** inquired as to what happens to the unclaimed property. **Mr. Olmstead** said most of the property is eventually returned to its owner. In 2020, 91 percent of total bookings were reclaimed.

Senator Lee questioned why this issue wasn't being handled on a local level. **Mr. Olmstead** explained that this legislation would be a starting point where cities and counties could specify how to fit it into their individual needs.

MOTION:

Senator Anthon moved to send **S 1119** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1120

Relating to Motion to Return Legislation to the Floor for Possible Re-Referral. Chairman Lakey announced that **S 1120** was printed in this Committee at the request of Chairman Patrick and was inadvertently referred back to the Committee. **S 1120** was sent back to the floor for possible re-referral to the Commerce and Human Resources Committee.

MOTION:

Senator Anthon moved to send **S 1120** back to the floor for possible re-referral to another committee. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Chairman Lakey passed the gavel to Vice Chairman Ricks.

S 1130

Relating to Commercial Burglary. Chairman Lakey indicated this legislation is an effort to make a language correction to a prior bill relating to commercial burglary. Commercial burglary was defined as burglaries committed in stores during business hours involving theft of property worth less than \$300.00 and was a felony. The 2020 Legislation allowed for a misdemeanor offense if it met the mentioned criteria. Some courts interpreted this to mean that burglary of a commercial establishment outside of those specified in this context was precluded.

MOTION:

Senator Lee moved to send **S 1130** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Vice Chairman Ricks passed the gavel to Chairman Lakey.

S 1131

Relating to Financial Institution Garnishment Fees. **Trent Wright**, President and CEO, Idaho Bankers Association, explained that this legislation makes changes in three different areas. The first area is fees. The bill requires an increase in the financial institution search fees from \$5 to \$7 and execution fees from \$10 to \$12. The second area relates to the amount of time for a look back procedure when served with a garnishment. Look back is defined as the amount of time the financial institution can look into savings, checking, or trust accounts to see if assets are available or if wages are available for continuing garnishments. A change was made in 2017 to the look back time period to say sixty-four days. Financial institutions have asked repeatedly to go back to the original language which states two months, matching the Federal guidelines. The last area provides the judgment creditor with a 30-day provision to accept the answer of the garnishee for insufficiency.

DISCUSSION: **Senator Anthon** asked Mr. Wright when the last time the dollar amounts were changed. **Mr. Wright** stated that it was in 1979.

TESTIMONY: **Ryan Fitzgerald**, Northwest Credit Union, stated the requested changes would significantly impact small financial institutions. Smaller institutions have a hard time keeping up with monthly garnishment requests and the added work they require. **Mr. Fitzgerald** asked for this bill to pass so small institutions will not be burdened with excess paper work.

MOTION: **Senator Anthon** moved to send **S 1131** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT: There being no further business at this time, Chairman Lakey adjourned the meeting at 2:15 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

County sheriff and city police departments are required by law to keep unclaimed property for currently 180 days (6 months), before the item can be auctioned or destroyed. For bicycles, the law requires 90 days (3 months).

Idaho Code 55-403, “any personal property which has come into the possession or custody of the sheriff of any county in this state or the city police department having been abandoned shall be taken into custody for more than 180 days from the date of abandonment.” There is a separate section in this code that deals with unclaimed or lost bicycles to be in possession of the city of county office for 90 days. This bill aims to decrease Idaho’s timeline for retaining these abandoned and/ or unclaimed found property, in order to match other states.

Currently, Idaho’s county or city law enforcement offices have to hang on to these items for twice the amount of time of surrounding states, such as Utah, Washington, Oregon or Wyoming.

STATE	FOUND BICYCLES	FOUND PROPERTY	SAFEKEEPING
IDAHO	90 DAYS	6 MONTHS	6 MONTHS
S1119 Changes →	60 DAYS	90 DAYS	
OREGON	60 DAYS	90 DAYS	90 DAYS
WASHINGTON	60 DAYS	60 DAYS	60 DAYS
UTAH	90 DAYS	90 DAYS	90 DAYS

This piece of statute was put into Idaho code in 1957. The Idaho Legislature added in an amendment in 1986 for lost or unclaimed bicycles to be set at 90 days. With Idaho’s increasing population, many offices are bringing in a lot more unclaimed items than 1957 when this was put into code. This bill could save cities and counties money and would help with the increasing storage problem that law enforcement offices are seeing.

This piece of legislation before you today, is simply updating and aligning Idaho Code to help our city and county offices.

Question:

Why can’t a city or county just decide this on the local level?

Answer:

Due to this being put into Idaho Code back in 1957, our county/ city offices have to hang onto these items for the current minimum days in set in code. A city or county could hang onto items for as long as they want but we are wanting to provide a minimum for those counties or city departments that are running out of space.

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 24, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of Minutes of February 8, 2021	Senator Lee
MINUTES APPROVAL:	Approval of Minutes of February 15, 2021	Senator Thayn
VOTE ON GUBERNATORIAL REAPPOINTMENT:	Vote on the Reappointment of Melissa Hultberg to the Sexual Offender Management Board for a term commencing January 1, 2021 to expire on January 1, 2024	
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Gubernatorial Reappointment of John Dinger to the Sexual Offender Management Board for a term commencing January 1, 2021 to expire on January 1, 2024	John Dinger, Boise, Idaho
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Gubernatorial Reappointment of Moira Lynch to the Sexual Offender Management Board for a term commencing January 1, 2021 to expire on January 1, 2024	Moira Lynch, Boise, Idaho
<u>S 1133</u>	Relating to the Guardians of Minors	Senator Abby Lee
<u>S 1137</u>	Relating to Judicial Salaries	Sara Omundson, Administrative Director of the Courts
<u>H 41</u>	Relating to Private Foundations and Charitable Trusts	Representative Kevin Andrus

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey
Vice Chairman Ricks
Sen Lodge
Sen Lee
Sen Anthon

Sen Thayn
Sen Zito
Sen Burgoyne
Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 24, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

Chairman Lakey stated that **H 41** would be moved to the beginning of the Committee rather than the end.

H 41 **Relating to Private Foundations and Charitable Trusts. Representative Kevin Andrus** stated **H 41** would ensure that foundations and charitable trusts have a secure framework on which they can rely for disclosing information. He added that there is a current trend in which government officials require more information than previously requested from private organizations, and this legislation would preclude that from happening to private foundations and charitable trusts in Idaho. **H 41** would make it so that a government agency's request for more information would have to go through the Legislature and that the government agencies could not request any more information than is required by law.

DISCUSSION: **Senator Burgoyne** expressed concern that there is not a need to tell public officers they can't exceed their legal authority. He also stated that this legislation could be put in every chapter of the Idaho Code and would establish precedent that is unacceptable. He could see this same principle being applied to many other organizations other than charitable trusts. **Representative Andrus** explained that private foundations and charitable trusts are very private about their donors, salaries, and other personal information, whereas some other private entities are not.

Kate Haas representing the Philanthropy Roundtable, assured the Committee that whatever information is public, **H 41** will not retract anything that is currently available to the public. This bill is designed to cover a specific purpose for filing and reporting, and informs regulators they must comply with the statute. **Senator Lee** stated that she feels the legislation would reduce transparency. **Ms. Haas** responded that transparency is a priority relating to campaign finance, and this Legislation does not impact campaign finance.

Senator Anthon questioned what prompted this legislation. **Ms. Haas** stated that there were specific situations across the country where private foundations and charitable trusts were being asked to disclose more information. **H 41** would create some certainty for foundations and trusts of their responsibilities to disclose information to government agencies in the event those requirements change.

Senator Lodge asked where one would find information about an organization such as the Philanthropy Roundtable if everything is confidential. **Ms. Haas** suggested using GuideStar, a database of information from federal filings that are specific to foundations and charitable trusts.

Vice Chairman Ricks asked whether the nonprofits at issue are 501(c)(3) corporations. **Ms. Haas** stated that since she is not an accountant, she wasn't sure if they were. She said these foundations and trusts typically receive their funds through a large gift or a series of gifts rather than typical nonprofit fundraising efforts. She suggested they would be a subset of a 501(c)(3) corporation. A discussion was held relating to the differences between foundational and charitable trusts and the more common nonprofit corporations. **Ms. Haas** reiterated that this legislation applies only to foundations and trusts, which by their very nature are nonprofits, but it would not impact other types of nonprofits. Simply adding "foundation" to a name would not provide any company the same coverage granted by **H 41**.

Senator Burgoyne added that the legislation sounds as if someone is saying, "An official must obey the law and cannot break the law." If public officials request more information and the foundation or trust denies the request, the dispute will go to the courts for resolution without this legislation. Senator Burgoyne's second concern was that **H 41** may open up other areas where it may become appropriate for officials to ask for more information. There could be a balance of power issue involved.

MOTION: **Senator Thayn** moved to send **H 41** to the floor with a **do pass** recommendation. The motion was seconded by **Senator Zito**. The motion failed, with Senators Lee, Anthon, Burgoyne, Wintrow and Chairman Lakey voting nay.

MINUTES APPROVAL: **Senator Zito** moved to approve the Minutes of February 8, 2021. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Senator Lee** commented that she saw Judge Southworth's name misspelled. The error was corrected prior to the meeting.

MINUTES APPROVAL: **Senator Thayn** moved to approve the Minutes of February 15, 2021. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial Reappointment of Melissa Hultberg to the Sexual Offender Management Board to the floor with a recommendation that she be confirmed by the Senate. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment of John Dinger of Boise, Idaho, to the Sexual Offender Management Board (SOMB)**, for a term commencing on January 1, 2021, to expire on January 1, 2024. **Mr. Dinger** outlined his education and employment experience. He spent 12 years working with the Internet Crimes Against Children task force and eight years ago he started doing the hands-on child and adult sex abuse cases. He also served as a member of the ICAC Sex Offender Subcommittee and the Human Trafficking Subcommittee. He said he takes pride in being able to serve on the SOMB because it helps to keep Idaho and its children safe.

DISCUSSION: **Senator Wintrow** asked Mr. Dinger what he felt made him so ideal for this position. **Mr. Dinger** replied that he is bringing a prosecutor's viewpoint to the varied SOMB.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment of Moira Lynch of Boise, Idaho, to (SOMB)**, for a term commencing on January 1, 2021, to expire on January 1, 2024. **Ms. Lynch** indicated that she started on the SOMB in 2015 and became employed by the Department of Corrections in 1997. She is the District Manager for Probation and Parole in Boise, covering Ada, Boise, Elmore, and Valley Counties.

DISCUSSION: **Senator Wintrow** asked Ms. Lynch to share why she was a good match for the SOMB. **Ms. Lynch** replied that she feels a kinship with SOMB's goal of eliminating sexual violence in Idaho's communities. She stated the SOMB calls upon her to give insight because of her position with the Parole and Probation Department, and for insight on budgeting issues resulting from her management skills.

Chairman Lakey asked Ms. Lynch to discuss SOMB's future areas of focus.

Ms. Lynch said SOMB is focusing on quality assurance. SOMB is making sure that the practices it uses, the evaluators, and the treatment providers are all doing their jobs with the best practices in mind in regard to therapy, treatment, evaluation, and the assessment of sex offenders. They will focus on educating providers and potentially the community.

S 1133 **Relating to the Guardians of Minors.** **Senator Lee** explained that current statute states that the temporary guardianship authority may not exceed six months unless extended for good cause. **S 1133** requests the opportunity to have one additional six month period added if reasonable cause is shown to the Courts. The intention of a temporary guardianship is to be used in an emergency situation and can be court ordered without proof that a child is in danger. At the end of 12 months, a permanent guardianship must be established. **Senator Lee** requested an emergency clause be added to manage the backlog of cases caused by COVID. She requested that **S 1133** be sent to the 14th Order for possible amendment.

DISCUSSION: **Senator Wintrow** questioned why any temporary guardianships would go on for a time exceeding a year. **Senator Lee** suggested it may be because of judicial discretion and a lack of clarity in the statute and to prevent guardianships to become indefinite. **Senator Burgoyne** asked if Senator Lee was aware of a case where a permanent guardian could not be found. **Senator Lee** responded that if a guardian is not found or a temporary guardian is not able, willing, or deemed appropriate by the court, then Child Protective Services would get involved. **Senator Lee** stated this rarely happens.

MOTION: **Senator Lodge** moved to send **S 1133** to the 14th Order for possible amendment. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

S 1137 **Relating to Judicial Salaries.** **Sara Omundson**, Administrative Director of the Courts, said she would answer three questions regarding judicial compensation:

1. Why is it important to attract the best and the brightest of Idaho's attorneys to the bench?
2. How does judicial compensation affect recruitment of the best and brightest?
3. How is a request for judicial compensation developed?

Ms. Omundson said Idahoans deserve to have the very best people as judges. Each day they face critical decisions affecting Idaho's population. They face decisions that tear families apart and other times they get the opportunity to improve people's lives. Idaho attorneys recognize the judicial compensation is instrumental in the recruitment and retention of highly qualified, experienced judicial officers with a variety of experiences. Decisions regarding who can serve without economic hardship and with dependents unaffected by financial concern

are often apparent. In a survey conducted by the Idaho Supreme Court in 2018 approximately 65 percent of attorneys list increasing judicial compensation for judges in Idaho as the most common professional consideration. Many of the best and the brightest attorneys already have lucrative law careers and are making a high rate of compensation. To accept a judicial position may, in some cases, cause a decrease of income.

Ms. Omundson explained that the Idaho Supreme Court asked her to seek a salary increase similar to the one already approved for other State employees. The Joint Finance and Appropriations Committee approved a 2 percent merit-based increase for state employees for the next fiscal year. Judicial salaries are set in Idaho Code 59-502 and must be staggered to avoid salary compression. Ultimately the increase will be a 1.8 percent raise to the Statewide judicial payroll.

DISCUSSION:

Senator Burgoyne expressed concern that the judges had reduced salaries last year as a result of the coronavirus and questioned whether the judges would be reimbursed for those funds. **Ms. Omundson** clarified that since Idaho judicial compensation is set in statute, only the Legislature can reduce it. She explained that the Chief Justice asked each judge if they would volunteer to have a portion of their salary withheld to help with a potential financial problem. Nearly every judge volunteered to do so. As 2020 went on, money continued to come into the State and the expected revenue loss did not occur. The court made a retroactive implementation of the judicial salaries effective July 1. All judges were paid exactly what is in statute.

Senator Lee stated that her husband is a magistrate judge and asked to have her **39 H** disclosure recorded.

MOTION:

Senator Anthon moved to send **S 1137** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Lakey** adjourned the Committee at 2:55 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 01, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL REAPPOINTMENT VOTE:	Vote on the Reappointment of John Dinger to the Sexual Offender Management Board for a term commencing January 1, 2021 to expire on January 1, 2024	
GUBERNATORIAL REAPPOINTMENT VOTE:	Vote on the Reappointment of Moira Lynch to the Sexual Offender Management Board for a term commencing January 1, 2021 to expire on January 1, 2024	
<u>H 94</u>	Relating to the Criminal Justice Integrated Data System	Rep. Caroline Nilsson Troy
<u>H 95</u>	Relating to the District Magistrates Commissions	Rep. Caroline Nilsson Troy
<u>H 96</u>	Relating to the Family Law License Suspensions	Rep. Caroline Nilsson Troy

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 01, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:45 p.m.

VOTE ON GUBERNATORIAL REAPPOINTMENT: **Senator Anthon** moved to send the Gubernatorial Reappointment of John Dinger to the Sexual Offender Management Board to the floor with a recommendation that he be confirmed by the Senate for a term commencing January 1, 2021, to expire on January 1, 2024. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL REAPPOINTMENT: **Senator Wintrow** moved to send the Gubernatorial Reappointment of Moira Lynch to the Sexual Offender Management Board to the floor with a recommendation that she be confirmed by the Senate for a term commencing January 1, 2021, to expire on January 1, 2024. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

H 94 **Relating to the Criminal Justice Integrated Data System. Representative Caroline Nilsson Troy** explained that in 2020 the Legislature created the Criminal Justice Integrated Data System (CJIDS) and the Data Oversight Council (Council) to protect information involving CJIDS. Under the Legislation, personnel from the State Department of Education moved to the State Board of Education. **H 94** allows the education representative on the Council to be a member of the State Board of Education. In addition, this bill allows the group to have a vice chairman.
Ashley Dowell, Chair, Criminal Justice Integrated Data System Oversight Council, stated she supports **H 94**.

MOTION: **Vice Chairman Ricks** moved to send **H 94** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 95 **Relating to the District Magistrates Commissions. Representative Caroline Nilsson Troy** stated that in 2020 the Legislature added a County Clerk to the Magistrates Commissions. They failed to set forth what would happen if a vacancy occurred. **H 95** stipulates that the structure of Commissions will be divided into three sections: members, terms, and vacancies. There are five members, all appointed by the Governor: three mayors and two at-large individuals. This Legislation staggers the dates of their appointments so they do not all happen at the same time. **H 95** also specifies that there will only be one appointment from a city of over 10,000 people, giving rural areas sufficient representation. To avoid confusion over which mayor was appointed when, they will be assigned in A, B, and C positions.

MOTION: **Senator Lee** moved to send **H 95** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

H 96 **Relating to Family Law License Suspensions. Representative Caroline Nilsson Troy** stated that last year the House passed this Legislation but not the Senate. Work was done during the summer by the stakeholders and **H 96** is a result of that. This bill deals with people who do not pay their child support and have their driver's licenses suspended. It allows an individual who has lost their driver's license because of unpaid child support to ask the courts, and show good cause, to be granted a temporary restricted license to get them to their employment. The judge will have complete control over the restrictions.

DISCUSSION: Committee members discussed how the temporary restricted license would be used and regulated. **Senator Lee** asked what would happen if the individual gets their license returned and continues to not pay their child support. **Senator Troy** responded that she assumed their license would be revoked again and they would have to go back to the courts.

Senator Burgoyne said he had experience in child support enforcement and saw how judges let people get away with not paying it. He saw instances when people have the money to pay child support and they choose not to pay because, in their mind, they are giving the money to their divorced spouse.

MOTION: **Senator Anthon** moved to send **H 96** to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion.

DISCUSSION: **Senator Anthon** commented that Representative Nilsson Troy provided good reasons for passage of this bill. People living in rural areas must be able to drive to get to their jobs. He expressed confidence in the magistrate judges' judgment.

Senator Lee expressed how difficult child support issues can be. She stated that child support should be one of the first things paid when budgeting, and she is sympathetic to people who must drive to get to their jobs. **Senator Lee** commented that this a complex bill but it needs to be heard.

Senator Wintrow agreed that child support is hard. She said she could not support **H 96** because of the concerns expressed by Senator Burgoyne.

Chairman Lakey commented that he would support **H 96** recognizing that in order to pay child support one must have a job. He cautioned that this legislation needs to be watched.

MOTION VOTE: The motion carried by **voice vote**. **Senator Burgoyne** and **Senator Wintrow** voted **nay**.

ADJOURNMENT: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:15 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 03, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
H 149	Relating to the Coronavirus Limited Immunity Act	Chairman Lakey

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 03, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lee, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senators Lodge and Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Ricks.

H 149 **Relating to the Coronavirus Limited Immunity Act.** **Chairman Lakey**, District 12, explained that **H 149** extends the sunset clause regarding civil immunity granted to individuals or organizations affected by the coronavirus for one more year.

DISCUSSION: **Ken McClure**, Idaho Liability Reform Coalition (Coalition), stated **H 149** is not the Coalition's draft, but because the coronavirus is still a concern, the sunset clause should be extended for another year until the disease can be controlled.

MOTION: **Senator Thayn** moved to send **H 149** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

DISCUSSION: **Senator Burgoyne** stated he would vote no, even though he appreciates the work done on **H 149**. He explained that he does not favor liability immunity legislation. He pointed out that **H 149** is simple, easy to understand and some contentious issues have been resolved.

Senator Lee noted that she preferred to not have a sunset clause, but she appreciates having another year to find a solution to provide assurance against litigious people.

Senator Wintrow pointed out that although she opposed this bill in the special session, she felt it would be appropriate if only the sunset clause is changed.

Chairman Lakey expressed his appreciation for the support of this bill.

VOICE VOTE: The motion to send **H 149** to the floor with a **do pass** recommendation passed by **voice vote** with **Senator Burgoyne** requesting that he be recorded as voting nay.

PASSED THE GAVEL: Vice Chairman Ricks passed the gavel to Chairman Lakey.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:45 p.m.

Senator Lakey, Chair

Sharon Pennington, Secretary

Carol Cornwall, Assistant Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 08, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	The Rules may be presented at the discretion of the Chair.	
DOCKET NO.:	Chapter Repeals	
<u>61-0101-2001</u>	Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds p. 10	Kathleen Elliott, Executive Director, Idaho Public Defense Commission
<u>61-0102-2001</u>	Rules Governing Uniform Data Reporting Requirements and Forms for Defending Attorney Annual Reports p. 18	
<u>61-0103-2001</u>	Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services p. 35	
<u>61-0104-2001</u>	Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Financial Assistance p. 44	
<u>61-0106-2001</u>	Rules Governing Procedures for the Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards p. 52	
<u>61-0107-2001</u>	Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System p. 55	
<u>61-0108-2001</u>	Rules Governing the Administration of Idaho's Indigent Defense Delivery System - Rule Definitions p. 58	
	New Chapters	
<u>61-0101-2002</u>	General Provisions and Definitions p. 13	
<u>61-0102-2002</u>	Requirements and Procedures for Representing Indigent Persons p. 21	
<u>61-0103-2002</u>	Records, Reporting, and Review p. 38	
<u>61-0104-2002</u>	Financial Assistance and Training Resources p. 47	

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 08, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Lee

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules (Committee) to order at 1:38 p.m.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Ricks.

DOCKETS: **Kathleen Elliott**, Executive Director, Idaho Public Defense Commission (PDC), gave Committee members a handout to more easily explain the seven docket chapter repeals and the four new chapters (see Attachment 1). **Ms. Elliott** reminded the Committee that the PDC had previously presented four chapters of pending rules. Attachment 1 shows the sections the PDC suggests striking or rejecting in the left-hand column. The right-hand column contains the temporary rules that the PDC is prepared to adopt. This information is for transparency purposes. The Public Defense Commission has approved the temporary rules overlaying what is rejected from the four chapters of the pending rules. There are no changes in chapters 3 and 4. Ms. Elliott went through the changes in Chapters 1 and 2 with the Committee.

DISCUSSION: **Senator Wintrow** expressed concerns that there may be a discrepancy in the purpose of the rule changes. She questioned if the changes would benefit civil or criminal defense verses the stakeholder approval. **Ms. Elliott** explained that the PDC held numerous meetings and contacted all of the stakeholders involved. The interactions with the interested parties revealed that many defense attorneys and counties didn't know about the rules. Further discussions revealed misconceptions about the role of the PDC in working with counties and public defenders.

Senator Burgoyne said he approved of the proposed temporary rule because it gets rid of the vertical representation issue and provides a more definitional approach. He believes the temporary language removes the option to focus on the should/shall argument.

Chairman Lakey stated he would support the proposed temporary rules and the progress toward full compliance with the 6th Amendment. He added that it is important to be realistic about public defense in Idaho and the challenges of working with 44 different jurisdictions. **Chairman Lakey** stated that if the PDC can get the rules approved on a temporary basis, it will fall to the Legislature to pass a resolution through the House and the Senate to continue their implementation.

Brad Hunt, Administrative Rules Office, Department of Financial Management, stated he would answer any questions relating to the rule-making process.

Darrell Bolz, Chairman, Public Defense Commission, was available for questions as well.

MOTION: **Chairman Lakey** moved for the approval of pending **Docket Nos. 61-0101-2001, 61-0102-2001, 61-0103-2001, 61-0104,2001, 61-0106-2001, 61-0107-2001, and 61-0108-2001**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**, with **Senator Zito** requesting that she be recorded as voting nay.

MOTION: **Chairman Lakey** moved for the approval of pending **Docket No. 61-0101-2002** with the exception of **Subsection 010.22 (page 17)**. **Senator Thayn** seconded the motion.

DISCUSSION: **Senator Anthon** asked what the motion meant. **Chairman Lakey** indicated that it was a rejection of the existing vertical representation provision.

Senator Zito explained her vote stating that she was contacted by county commissioners and prosecuting attorneys regarding the changes. Their concern was related to the structure and the costs involved in complying with the changes. She told them she would vote against changes which would require additional costs to those already incurred.

Senator Burgoyne explained that the temporary rules cannot be formally acted on, and for that reason he is comfortable voting in favor of the motion.

VOICE VOTE: The motion carried by **voice vote**, with **Senator Zito** requesting that she be recorded as voting nay.

MOTION: **Chairman Lakey** moved for the approval of **Docket No. 61-0102-2002** with the following exceptions: Paragraph 020.01.a. (page 24), Paragraph 030.02.a. (page 25), Paragraph 030.02.b. (page 25), Subsection 030.05 (page 25), Subsection 040.02 (page 25), Subparagraph 050.02.a.ii. (page 26), Subsection 060.03 in its entirety (pages 27-28), Paragraph 060.04.a. (page 28), Subsection 070.01 in its entirety (page 31), Subparagraph 070.02.a.iii. (page 32) Subsection 070.03 (page 32), Paragraph 080.03.a. in its entirety (page 33), Paragraph 080.03.c. (page 33), Subsection 090.01 (page 33). **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Thayn** moved for the approval of **Docket No. 61-0103-2002**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Thayn** moved for the approval of **Docket No. 61-0104-2002**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Ricks passed the gavel to Chairman Lakey.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:30 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

3-8-2021

Idaho State Public Defense Commission

Strike/Reject PDC Pending Rules Approved on March 5, 2021 for Presentation to Legislature	Draft PDC Temporary Rules Approved on March 5, 2021 for Presentation to Legislature
Chapter 1 – 61.01.01	
<p>61.01.01.010.22. Vertical Representation. A Defending Attorney appointed to represent an Indigent Person shall, to the extent reasonably practicable, continuously and personally oversee the representation of the client's case through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make all efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, including but not limited to advising the Court of any conflict at the time of setting, providing accurate unavailable dates and in the case of unforeseen absences, filing a motion or stipulation to continue.</p>	<p>61.01.01.010.22 Vertical Representation. A Defending Attorney is responsible for the continuous and personal representation and oversight of an Indigent Person's case, to the extent reasonably practicable, through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, provide unavailable dates at the time of setting and seek continuances in the case of unforeseen absences. The Indigent Person may consent to have another Defending Attorney appear at a hearing. Each county is responsible to support and provide resources as necessary to ensure Vertical Representation.</p>
Chapter 2 – 61.01.02	
<p>61.01.02.020.01.a. Employ or contract with attorneys to provide public defense services from the Defending Attorney Roster or require the attorney to apply for the Roster under Subsection 070.03 of these rules;</p>	<p>61.01.02.020.01.a Employ or contract with attorneys to provide public defense services from the Defending Attorney Roster or if the attorney is not yet on the Defending Attorney Roster, have the attorney complete and submit to the PDC the Roster form within thirty (30) days from the date of their employment or contract under Subsection 070. of these rules;</p>
<p>61.01.02.030.02.a. The county will use an independent committee from within the county or region for recommendations to the Board of County Commissioners for the selection of the lead institutional Defending Attorney or primary contracting Defending Attorneys as the main providers of public defense services as set forth in Sections 19-859 and 19-860(2), Idaho Code; and</p>	<p>61.01.02.030.02.a. Selection Recommendation Committee. The county will use an independent committee from within the county or region for recommendations to the Board of County Commissioners for the selection of the lead institutional Defending Attorney or primary contracting Defending Attorneys as the main providers of public defense services as set forth in Sections 19-859 and 19-860(2), Idaho Code; and</p>
<p>61.01.02.030.02.b. Each judicial district will establish an independent committee of one (1) attorney for each county who practices public defense in or who is familiar or will become familiar with public defense in the county and who is not a Defending Attorney for the appointing county and who is not a prosecutor, to act as a liaison in independence issues between Defending Attorneys and county stakeholders. The Administrative District Judge (ADJ) or Trial Court Administrator (TCA) will identify the members of the committee for their District, and if the ADJ or TCA does not, the Commission will identify committee members.</p>	<p>61.01.02.030.02.b. Independence Working Group. Each judicial district may establish an independent working group of one (1) attorney for each county who practices public defense in or who is familiar or will become familiar with public defense in the county and who is not a Defending Attorney for the appointing county and who is not a prosecutor, to act as a liaison in independence issues between Defending Attorneys and county stakeholders. The Administrative District Judge (ADJ) or Trial Court Administrator (TCA) will identify the members of the working group for their District, and if the ADJ or TCA does not, the Commission will identify group members.</p>
<p>61.01.02.030.05. Independent Contract Review. The county should engage independent legal counsel to negotiate Defending Attorney Contracts.</p>	<p>61.01.02.030.05. Independent Contract Negotiation. The county should consider engaging independent legal counsel to negotiate Defending Attorney Contracts.</p>
<p>61.01.02.040.02. Pay. Defending Attorneys and their staff will receive similar compensation as a properly funded prosecutor and staff with similar experience.</p>	<p>61.01.02.040.02. Pay. So far as is possible, Defending Attorneys and their staff will not be compensated less than a properly funded prosecutor and staff with similar experience and performing similar duties.</p>
<p>61.01.02.050.02.a.ii. Assess the Defending Attorney's Workload to ensure compliance with the Public Defense Rules;</p>	<p>61.01.02.050.02.a.ii. Inquire about the Defending Attorney's Workload to ensure compliance with the Public Defense Rules;</p>

	<p>61.01.02.050.04. Except as provided in Subsection 050.01.a of these rules, attorneys who are not approved for inclusion on the applicable Roster are not eligible to represent Indigent Persons at public expense.</p>
<p>61.01.02.060.03. Qualifications. Have demonstrated ability, training, experience and understanding regarding representing Indigent Persons and do the following:</p> <ol style="list-style-type: none"> a. Apply laws, rules, procedures and practices to the case and perform thorough legal research and analysis; b. Protect client confidentiality, and if breached, notify the client and any other entities when necessary to preserve the client's constitutional and statutory rights; c. Ensure Vertical Representation from the time a Defending Attorney is appointed in each Case. Defending Attorneys who are unable to comply with this rule will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources; d. Dedicate sufficient time to each Case; e. Promptly and independently investigate the Case; f. Request funds as needed to retain an investigator; g. Request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case; h. Continually evaluate the case for defense investigations or expert assistance; i. Be present at the Initial Appearance and available to the Indigent Person in person or via technology, and: <ol style="list-style-type: none"> i. Preserve the client's constitutional and statutory rights; ii. Discuss the charges, case and potential and collateral consequences with the client; iii. Obtain information relevant to Idaho Criminal Rule 46 (bail or release on own recognizance) and if appropriate, seek release; iv. Encourage the entry of a not guilty plea at Initial Appearance except in extraordinary circumstances where a guilty plea is constitutionally appropriate; j. Work within Caseload or Workload limits, defined in Subsection 060.05 of these rules. If a Defending Attorney's Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards; k. Have sufficient time and private space to confidentially meet with Indigent Persons; l. Have confidential and secure information systems for Indigent Person's confidential information; m. Identify and resolve conflicts of interests in compliance with Idaho Rules of Professional Conduct (IRCP) and other applicable laws and rules; n. Be familiar with and competent to identify or use: <ol style="list-style-type: none"> i. Forensic and scientific methods used in prosecution and defense; ii. Mental, psychological, medical, environmental issues and impacts; iii. Written and oral advocacy; 	<p>61.01.02.060.03. Qualifications. Have the ability, training, experience and understanding necessary for their appointed Cases to do the following:</p> <ol style="list-style-type: none"> a. Apply laws, rules, procedures and practices to the case and perform thorough legal research and analysis; b. Protect client confidentiality, and if breached, notify the client and any other entities when necessary to preserve the client's constitutional and statutory rights; c. Ensure Vertical Representation from the time a Defending Attorney is appointed in each Case. Nothing in this rule is intended to prohibit a different Defending Attorney from representing the client at Initial Appearance. Defending Attorneys who are unable to comply with this rule will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources; d. Dedicate sufficient time to each Case; e. Promptly and independently investigate the Case; f. Request funds as needed to retain an investigator; g. Request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case; h. Continually evaluate the case for defense investigations or expert assistance; i. Be present at the Initial Appearance and available to the Indigent Person in person or via technology, and: <ol style="list-style-type: none"> i. Preserve the client's constitutional and statutory rights; ii. Discuss the charges, case and potential and collateral consequences with the client; iii. Obtain information relevant to Idaho Criminal Rule 46 (bail or release on own recognizance) and if appropriate, seek release; iv. Encourage the entry of a not guilty plea at Initial Appearance except in circumstances where a guilty plea is constitutionally appropriate; j. Work within Caseload or Workload limits, defined in Subsection 060.05 of these rules. If a Defending Attorney's Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards; k. Have sufficient time and private space to confidentially meet with Indigent Persons; l. Have confidential and secure information systems for Indigent Person's confidential information; m. Identify and resolve conflicts of interests in compliance with Idaho Rules of Professional Conduct (IRCP) and other applicable laws and rules; n. Be familiar with and competent to identify or use: <ol style="list-style-type: none"> i. Forensic and scientific methods used in prosecution and defense; ii. Mental, psychological, medical, environmental issues and impacts; iii. Written and oral advocacy;

<p>iv. Motions practice to exhaust good faith procedural and substantive defenses; v. Evidence presentation and direct and cross examination; vi. Experts as consultants and witnesses and expert evidence; vii. Forensic investigations and evidence; viii. Mitigating factors and evidence; ix. Jury selection methods and procedures; x. Electronic filing, discovery and evidence and systems; xi. Constitutional representation; and xii. Understand their own professional limitations and seek the advice of experienced attorneys or decline appointments when necessary.</p>	<p>iv. Motions practice to exhaust good faith procedural and substantive defenses; v. Evidence presentation and direct and cross examination; vi. Experts as consultants and witnesses and expert evidence; vii. Forensic investigations and evidence; viii. Mitigating factors and evidence; ix. Jury selection methods and procedures; x. Electronic filing, discovery and evidence and systems; xi. Constitutional representation; and xii. When a Defending Attorney's abilities do not match the nature and complexity of the Case, they will seek the advice of experienced attorneys, training, or decline appointments.</p>
<p>61.01.02.060.04.a. Have advanced familiarity and competence with the above minimum requirements for Defending Attorneys; and</p>	<p>61.01.02.060.04.a Have advanced familiarity and demonstrated competence with the above minimum requirements for Defending Attorneys; and as lead appellate or lead post-conviction counsel will meet or exceed the following experience levels:</p>
<p>61.01.02.070.01. Defending Attorney Roster</p> <p>a. For inclusion on the Defending Attorney Roster, attorneys must:</p> <p>i. Have an active license to practice law in Idaho; ii. Attest they are in compliance with the Public Defense Rules or will comply with the Rules when appointed and representing an Indigent Person; iii. New attorneys admitted to the Idaho State Bar within the previous year will name and be mentored by an experienced Defending Attorney on the Defending Attorney Roster; iv. Have completed the minimum continuing legal education ("CLE") requirements in Paragraph 090.03 of these rules within the previous year or within the next sixty (60) days of being placed on the Roster; v. Have completed the Defending Attorney Roster application and authorization forms.</p>	<p>61.01.02.070.01. Defending Attorney Roster.</p> <p>a. Attorneys who complete the PDC form verifying they meet the items in this Subsection 070.01 will be automatically included and remain on the Defending Attorney Roster until they request removal or are removed for failing to comply with Public Defense Rules. Attorneys who are unable to verify the items in this Subsection 070.01 may submit a new verification form at any time.</p> <p>i. Have an active license to practice law in Idaho; ii. Attest they are in compliance with the Public Defense Rules or will comply with the Rules when appointed and representing an Indigent Person; iii. New attorneys admitted to the Idaho State Bar within the previous year will name and be mentored by an experienced Defending Attorney on the Defending Attorney Roster; iv. Have completed the minimum continuing legal education ("CLE") requirements in Paragraph 090.03 of these rules within the previous year or within the next ninety (90) days of being placed on the Roster; v. Attorneys on the Defending Attorney Roster will complete Annual Reports as set forth in IDAPA 61.01.03, "Records, Reporting and Review," Paragraph 020.01.a. Attorneys who at the time of inclusion on the Defending Attorney Roster are not under contract with a county will promptly provide PDC Staff notice and copy of any county contracts entered after inclusion.</p>
<p>vi. Attorneys on the Defending Attorney Roster will complete Annual Reports as set forth in IDAPA 61.01.03, "Records, Reporting and Review," Paragraph 020.01.a. Attorneys who at the time of inclusion on the Defending Attorney Roster are not under contract with a county will promptly provide PDC Staff notice and copy of any county contracts entered after inclusion.</p> <p>b. Attorneys who meet the requirements in Subsection 070.01.a. of these rules will be included and remain on the Defending Attorney Roster until they request removal or are removed for failing to comply with Public Defense Rules under written findings of the Executive Director; c. Continuing Eligibility. To remain on the Defending Attorney Roster attorneys must comply with the Public Defense Rules and:</p>	<p>b. Continuing Eligibility.</p> <p>i. To remain on the Defending Attorney Roster attorneys must</p> <p>(a) Comply with the Public Defense Rules and: (b) Have completed the minimum CLE requirements under Subsection 090.03 of these rules; and (c) Have completed an Annual Report.</p> <p>ii. To address Defending Attorney Deficiencies:</p>

<p>i. Have completed the minimum CLE requirements under Subsection 090.03 of these rules; and</p> <p>ii. Have completed an Annual Report.</p>	<p>(a) PDC Staff will review reported Defending Attorney Deficiencies and work directly with the Defending Attorney, and the county when appropriate, to resolve them.</p> <p>(b) If the Deficiency cannot be resolved at the review, PDC Staff may ask the Defending Attorney to submit a plan to cure the Deficiency with proposed detailed action items and completion dates.</p> <p>(c) If a plan is requested and is not submitted or completed, or if the Defending Attorney Deficiency is not cured, it will be referred to the Commission with the Executive Director's order of removal, which the Defending Attorney may appeal as set forth in Subsection 080.04 of these rules. County Deficiencies, which are not Defending Attorney Deficiencies, are the responsibility of the counties and not the Defending Attorney. County responsibilities are set forth in these rules including without limitation Subsection 020. of these rules and subject to the county Deficiency process set forth in IDAPA 61.01.03, "Records, Reporting and Review," Paragraphs 050.-060.</p>
<p>61.01.02.070.02.a.iii. Have completed Capital Defending Attorney Roster application and authorization forms.</p>	<p>61.01.02.070.02.a.iii. Have completed Capital Defending Attorney Roster forms.</p>
<p>61.01.02.070.03. Attorneys Engaged Prior to Roster Membership. Attorneys who are not on the Defending Attorney Roster at the time of employment or contract to provide representation at public expense must apply for Roster membership within thirty (30) days from the date of their employment or contract. Except as provided in Subsection 050 of these rules, attorneys who are not approved for inclusion on the applicable Roster are not eligible to represent Indigent Persons at public expense.</p>	
<p>61.01.02.080.03.a. To prevent or avoid immediate danger when:</p> <p>i. An attorney's Idaho license to practice law is suspended;</p> <p>ii. An attorney is disbarred in Idaho;</p> <p>iii. An attorney's Idaho license status is inactive; or</p> <p>iv. An attorney is convicted of a serious crime as defined in IRPC 501(p);</p>	<p>61.01.02.080.03.a. To prevent or avoid immediate danger when:</p> <p>i. An attorney's Idaho license to practice law is suspended;</p> <p>ii. An attorney is disbarred in Idaho; or</p> <p>iii. An attorney's Idaho license status is inactive;</p>
<p>61.01.02.080.03.c. An appeal of the removal under Subsection 080.03 of these rules, may be reviewed by the Commission in an emergency proceeding under Section 67-5247, Idaho Code;</p>	<p>61.01.02.080.03.c. An appeal of the removal under Subsection 080.03 of these rules, will be reviewed by the Commission in an emergency proceeding under Section 67-5247, Idaho Code;</p>
<p>61.01.02.090.01. Approval. CLE credits that meet the requirements in Subsection 090.02 of these rules will count toward minimum requirements. Courses that are not pre-approved by PDC Staff will not be approved in they do not meet these requirements.</p>	<p>61.01.02.090.01 Approval. CLE credits that meet the requirements in Subsection 090.02 of these rules will count toward minimum requirements. Roster members have the option, but are not required, to request advance of approval of a CLE course to confirm the course meets minimum requirements. Courses that are not pre-approved by PDC Staff will not be approved if they do not meet these requirements.</p>

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 10, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
<u>RS28749</u>	Senate Joint Memorial	Senator Peter Riggs
<u>RS28755</u>	Relating to Employment Security Law	Senator Christy Zito
<u>H 59</u>	Relating to Birth Certificates and Adoption Records	Representative Julianne Young
<u>H 150</u>	Relating to the Idaho Commission of Pardons and Parole	Representative Caroline Nilsson Troy
<u>H 152</u>	Relating to Security Deposits	Representative Caroline Nilsson Troy
<u>H 191</u>	Relating to Domestic Relations	Representative Sage Dixon
<u>H 246</u>	Relating to Domestic Relations Involving Parental Rights in Extreme Emergencies	Representative Sage Dixon

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 10, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

RS 28749 **Senate Joint Memorial. Senator Riggs**, District 3, explained this joint memorial requests that the President of the United States and the U.S. Congress respect the 10th Amendment of the United States Constitution and avoid federalizing crime policy by withholding state funding as a penalty for state policy choices. He stated It reaffirms state sovereignty in dealing with matters related to prisons and crime.

DISCUSSION: **Senator Burgoyne** expressed his concern with the bill language referring to the Biden administration; he questioned, when the administration changes in the future, whether the sponsor intends for the bill to cease or remain. **Senator Riggs** said he noted Senator Burgoyne's point.

MOTION: **Senator Thayn** moved to send **RS 28749** to print. **Senator Zito** seconded the motion. The motion carried by **voice vote**.

RS 28755 **Relating to Employment Security Law. Senator Zito** explained this bill would change the employment security law benefit formula so it would be depend on the overall health of the economy to determine the number of weeks an applicant receives unemployment. This bill would take effect July 2022.

DISCUSSION: **Senator Burgoyne** inquired if this bill would cut unemployment benefits. **Senator Zito** responded that it would limit the number of weeks an individual could receive benefits, protecting the insurance pool fund, and encouraging people to find employment.

MOTION: **Senator Lee** moved to send **RS 28755** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**, with **Senators Burgoyne** and **Wintrow** requesting that they be recorded as voting nay.

Chairman Lakey announced to the Committee that due to limited time schedules, he was going to rearrange the agenda's order.

H 191 **Relating to Domestic Relations. Representative Sage Dixon**, District 1, described this bill as dealing with temporary care givers and temporary care assistance programs used to help families in crisis before they need to enter the foster care system. He further advised that these programs are completely voluntary and parental driven.

DISCUSSION: **Senator Wintrow** and **Representative Dixon** discussed changes and how they will benefit children, and how the already existing program is being codified in statute.

Senator Burgoyne and **Representative Dixon** discussed the process for the qualification system that ensures the safety of the children in the program.

TESTIMONY: **Christine Denova**, Executive Director, IdaHope Families, testified virtually about the services their nonprofit organization provided to the northern Idaho community. She then fielded general questions from the Committee.

Jessica Ruehrwein, District Director, Lutheran Community Services Northwest, testified virtually that her nonprofit organization operates the Safe Families program in the Treasure Valley. She informed the Committee they support both the families in need and host families before the children need to go into foster care. She discussed child abuse prevention in times of crisis.

Dr. Karen Bergstrom, National Regional Director, Safe Families for Children, testified virtually that the average stay for placed children is 44 days, and beyond 90 days is rare. She would not oppose adding to the bill that temporary guardianship would be limited to a maximum of six months. She fielded questions from the Committee.

Representative Dixon concluded testimony about the bill and answered various Committee questions that had previously arisen regarding religious affiliation, background checks, the health and welfare system, and protection of the caregiver infrastructure.

MOTION: **Senator Lee** moved to send **H 191** to the 14th Order of Business for amendment. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 59 **Relating to Birth Certificates and Adoption Records.** **Representative Julianne Young**, District 31, informed the Committee that the bill was built upon the premise that adoptees ought to have equal access to their birth records as adults who have not been adopted. She indicated the two primary policy changes relate to adoptions that will take place on or after July 1, 2021. **H 59** allows the Idaho Vital Statistics to accurately record, with a number or letter designation, the relationship of the birth parents to the child, and details how the information may be obtained by the adoptee. The second issue it covers is foreign adoption birth certificates. **Representative Young** stated this bill does not affect the existing adoption registry. The predominant difference is that a parent would no longer have a veto over an adult adoptee's request to access their own birth records compiled by the adoption registry. She discussed the strong support for this bill within the adoption community.

DISCUSSION: **Senator Burgoyne** and **Representative Young** discussed whether this bill would disincentivize adoptions. **Representative Young** pointed out that adoption is no longer something to be ashamed of in our society.

TESTIMONY: **Kirk Adams**, from Middleton, Idaho, noted he was adopted and testified in opposition to the bill with one request. He asked the Committee's page to distribute a letter he had written to his birth mother (see Attachment 1). He clarified that his civil rights as an adoptee do not supersede his mother's right for privacy. He stated his belief that legislators should add a birth mother's consent provision to the bill.

Representative John McCrostie, District 16, testified as an adoptee and why adoptees need their original birth certificate. He further testified the joy he found finding his birth family and important medical information. He is in favor of this bill to give other adoptees in Idaho the chance to learn about their birth family.

Steven Keyser, from Boise, testified in favor of this bill, supporting adoptees' rights.

MOTION: **Senator Wintrow** moved to send **H 59** to the floor with a do pass recommendation. **Senator Thayne** seconded the motion.

DISCUSSION: **Chairman Lakey** expressed that he supported the ability of adoptees to access medical records at 18 years old; and noted that the birth mother needed to consent to being identified.

Senator Anthon stated that he thought a woman would be more likely to give up her child for adoption with the certainty that her identity would be concealed if she did so.

Senator Burgoyne explained that the issue of consent to identity disclosure may mislead young women into the belief that their identify will be kept private. DNA sites make that impossible. He supports the bill in its current form.

ROLL CALL VOTE: **Chairman Lakey** called for a roll call vote. **Senators Lee, Zito, Burgoyne,** and **Wintrow** voted aye. **Senators Lodge, Anthon, Vice Chairman Ricks,** and **Chairman Lakey** voted nay. Senator Thayne was absent/excused. The motion failed.

MOTION: **Senator Lodge** moved that **H 59** be sent to the 14th Order of Business for amendment. **Senator Lee** seconded the motion.

DISCUSSION: **Senator Lodge** expressed her concern about access to adoptees' medical records, even before they turn 18 years old.

Senator Wintrow stated that she felt this bill will not have any affect on a woman's choice to have an abortion.

VOICE VOTE: The motion to send **H 59** to the 14th Order of Business for possible amendment passed by **voice vote**.

Chairman Lakey stated the Committee will take up the remaining bills on the agenda on Monday, March 15, 2021.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:15 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Erin Miller
Assistant Secretary

Dear Donna:

I will start with some general facts. I am six foot two with red hair, hazel eyes and weigh 185 pounds. I have a BA in Economics and ran track for the four years I was in college. I have one adopted sister. I am married with two sons, 6 years and 20 months. I love the outdoors and spend over a month each year hunting. We live on a small ranch where we raise and train Tennessee Walking Horses. I work in the transportation industry and am currently a senior account representative.

Life for me has been great. My earliest memories are growing up in western Washington on a small farm, raising animals and big gardens. My sister and I started our college funds by selling fruit and produce. With the animals 4H was a big part of our lives. Although it was a small farm, we didn't lack for animals. Each spring was filled with new babies of all shapes and sizes. Probably one of the earliest and fondest lessons I learned then was the reoccurring theme of "the miracle of life". Pertaining to the life cycles that started each spring. That is what you gave to my parents, sister, wife and friends. For that I thank you for your choice.

If the events of my birth already have closure in your life or are too much to relive then just let them lie. My purpose for looking you up is driven mostly by a desire to thank you for choosing life and giving me a chance to live it. A lesser reason for me starting this search is family health history. My youngest son has had some heart problems but is doing great now. Another is that I only have one parent left and no grandparents. The last reason is probably felt by all adoptees. That is the wonderment of "who am I". The basic curiosity of where did I come from and what are "they" like? Why do I do things a certain way or feel so strongly about certain issues?

In closing know that all the secondary reasons for this search pale in the heart felt "thank you" I send to you in this letter.

Love your son:

Kirk

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 15, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
<u>H 150</u>	Relating to the Idaho Commission on Pardons and Parole	Representative Caroline Nilsson Troy
<u>H 152</u>	Relating to Security Deposits	Representative Caroline Nilsson Troy
<u>H 246</u>	Relating to Domestic Relations Involving Parental Rights in Extreme Emergencies	Representative Sage Dixon
<u>H 193</u>	Relating to Child Support	Representative Kevin Andrus

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey	Sen Thayn
Vice Chairman Ricks	Sen Zito
Sen Lodge	Sen Burgoyne
Sen Lee	Sen Wintrow
Sen Anthon	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 15, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senator Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

H 150 **Relating to the Idaho Commission of Pardons and Parole (Commission).** **Representative Caroline Nilsson Troy**, District 5, explained that approximately ten years ago, the Commission became a separate agency from the State Board of Correction (Board). The change was made to ensure there would be no undue influence on the Commission for the release of inmates who might compromise public safety. Since that time, the statutes for pardons and parole are scattered throughout the Department of Corrections. The Commission determined putting all the statutes together in one chapter would make it much easier to understand and use.

DISCUSSION: **Senator Wintrow** asked if Representative Troy would explain the substantive changes being made. **Representative Troy** enumerated them. Section 1 clarifies the Commission and the Board are two separate entities. The Board has no supervisory role over the Commission. Section 2 creates a new chapter combining everything. Section 3 creates the commissions, appointments, and compensations. Section 4 contains new language about open-meeting requirements and the authorization of specific executive sessions. It allows the executive director to designate a staff person to be physically present when a pardon or parole hearing is held. Section 5 clarifies the Commission's rulemaking authority. Section 6 moves a section on legislative intent and a report requirement to two sections in Chapter 10. Section 7 removes obsolete language from rules governing parole and legislative intent. Section 13 protects the Commission employees from personal liability stemming from injuries caused by a parolee after their release. Sections 14, 15, and 16 add to the section and removes obsolete language. Section 17 ensures that the Constitutional provisions are followed. Section 18 relates to commutations and pardons. Section 19 is part of a new chapter and removes obsolete language. It establishes the notice requirements for inmates who get a hearing for a pardon or commutation. Section 20 contains the language added in legislation last year. Sections 21 through 26 are minor technical corrections.

Ashley Dowell, Executive Director, Idaho Commission on Pardons and Parole, thanked Representative Troy for her work on **H 150** and explained how difficult it was to sort through the statutes looking for the ones that applied to the Commission.

Chairman Lakey asked why the language relating to reasonable payment for technical and professional advisors and consultants was deleted. **Director Dowell** indicated that it is unnecessary language. The Commission may obtain whatever services it requires to accomplish their responsibilities. **Chairman Lakey** asked where to find notice requirement language for inmates granted a hearing for pardon or commutation. **Director Dowell** said that the Constitution establishes the notice requirement.

Jared Larsen, Criminal Justice Policy Advisor for the Governor, expressed the Governor's support for **H 150**. He gave a brief history of the Idaho Commission on Pardons and Parole, and the nearly 70 years of statutes accumulated over that time. **Mr. Larsen** concurred with Director Dowell that most of the changes would remove archaic language and streamline the remaining statutes. He stated that one of the Governor's principles is to foster confidence in State government. If the public cannot access and understand the rules for parole and the accompanying process, they are not going to have that confidence. **Mr. Larsen** added that the legislative intent is intact.

MOTION: **Senator Ricks** moved to send **H 150** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 152 **Relating to Security Deposits.** **Representative Troy** explained that she had worked with a property management company who fled the state with all the deposit funds, and that experience prompted her to propose this Legislation. **H 152** requires property management companies to set up a separate bank account for rental security deposits. The bill applies only to property management companies who are managing other people's properties. **Representative Troy** stated that traditionally a lease is made out in the name of the tenant and the property owner, making it an agreement on the owner's behalf. This is done to ensure that the lease can be transferable if there's a sale of the property or a termination of the management services. **Representative Troy** said the agreement obligates the owner to the terms of the lease including the value of any security deposit funds held on the tenant's behalf. The reason for having a separate bank account is that the deposits belong to either the tenant or the landlord. They never belong to the property management company.

DISCUSSION: **Chairman Lakey** questioned if the account Representative Troy referred to was a trust account. **Representative Troy** clarified that it is not a trust account, just a separate account to keep the funds from commingling. The account could be used for accounting purposes and would create a money trail if needed.

MOTION: **Senator Burgoyne** moved to send **H 150** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

H 246 **Relating to Domestic Relations Involving Parental Rights in Extreme Emergencies.** **Representative Sage Dixon**, District 1, explained public concerns were expressed during the COVID-19 pandemic when the Governor suspended some of the rules under his purview relating to parental rights. Some parents said they felt that Child Protective Services would be able to come into homes and remove their children. This legislation addresses those issues and lists many circumstances which, by themselves, would not be considered a compelling government interest that would allow parental rights to be bridged. **H 246** lists different situations where other additions include language that would prevent any suspension of an existing order or if there was another emergency declaration, this bill would not suspend it or create a new one by itself. The bill does not limit first responders from entering a home to save a child's life in an emergency situation. The addition of the term "extreme peril" creates questions about what actually constitutes extreme peril.

DISCUSSION: **Senator Burgoyne** asked for clarification that any governmental authority ordering a community evacuation cannot override a parental decision. **Representative Dixon** responded that was his understanding of the law. He stated that the courts agreed that the order does not change the balance or approach in a child custody or protection case. **Chairman Lakey** asked if this order specifically references the government or covers declarations issued by other governmental bodies. **Representative Dixon** responded that he assumes it would not be limited to just the Governor.

Senator Wintrow expressed concern that clarity is needed whether **H 246** would interfere with a valid child protection issue and how "extreme peril" would be viewed in reference to the child protection issue. **Representative Dixon** stated he used "extreme peril" because it is used in child protection statutes. He indicated that if there was a case of child abuse in which the government needed to intervene in the best interests of the child, that it would not be forbidden.

Senator Lee asked if the proposed language would imply that a governmental agency could not isolate or quarantine a child. **Representative Dixon** explained that this legislation would protect the rights of parents in an emergency similar to the pandemic. It would not allow Child Protective Services to override parental rights.

Chairman Lakey, Senators Burgoyne and Lee, and Representative Dixon had a lengthy discussion of the definition of "compelling government interest."

MOTION: **Senator Zito** moved to send **H 246** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion.

DISCUSSION: **Senator Wintrow** stated she feels the language in **H 246** is too vague and the potential conflict with the definition of "extreme peril" jeopardizes the safety of children.

Senator Burgoyne indicated he would vote against **H 246**.

SUBSTITUTE MOTION: **Senator Lee** moved that **H 246** be sent to the **14th Order of Business** for possible amendment. **Senator Lodge** seconded the motion.

DISCUSSION: **Senator Lee** said she feels **H 246** is important legislation and necessary for uncertain times. She recommended working together with the stakeholders to fix the "extreme peril" language. She suggested the intersection between parental rights and children's rights is clear in this legislation. **Chairman Lakey** and **Senator Burgoyne** also supported the substitute motion.

SUBSTITUTE MOTION VOTE: The motion carried by **voice vote**. **Senator Zito** requested that she be recorded as voting **nay**.

Chairman Lakey announced that **H 193** will be heard on Wednesday, March 17.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:25 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 17, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of February 3, 2021 Minutes	Senator Thayn
MINUTES APPROVAL:	Approval of February 17, 2021 Minutes	Senator Lee
MINUTES APPROVAL:	Approval of February 22, 2021 Minutes	Senator Lodge
MINUTES APPROVAL:	Approval of February 24, 2021 Minutes	Senator Ricks
MINUTES APPROVAL:	Approval of March 1, 2021 Minutes	Senator Anthon
MINUTES APPROVAL:	Approval of March 3, 2021 Minutes	Senator Wintrow
GUBERNATORIAL APPOINTMENT AND VOTE:	Relating to the Appointment of Marianne King as Administrator of the Office of Drug Policy commencing March 8, 2021 and will serve at the pleasure of the Governor	Marianne King, Boise, Idaho
<u>H 193</u>	Relating to Child Support	Representative Kevin Andrus
<u>H 241</u>	Relating to Motor Vehicles, Ignition Interlock	Senator Grant Burgoyne
<u>H 148</u>	Relating to Driver's License Suspension	Representative Ryan Kerby
GEO GROUP TOUR INVITATION:	Tour the Boise, Idaho Connection and Intervention Station	
PAGE GRADUATION:	Senate Page Graduation of Ella Luekenga, Nampa, Idaho	

Public Testimony Will Be Taken by Registering Through the Following Link:
[Registry to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Thayn

Sen Zito

Sen Burgoyne

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Sen Lee
Sen Anthon

Sen Wintrow

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 17, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senator Thayn

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the Minutes of February 3, 2021. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Senator Lee moved to approve the Minutes of February 17, 2021. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

Senator Lodge moved to approve the Minutes of February 22, 2021. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Senator Ricks moved to approve the Minutes of February 24, 2021. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

Senator Anthon moved to approve the Minutes of March 1, 2021. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Senator Wintrow moved to approve the Minutes of March 3, 2021. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Appointment of Marianne King** as Administrator of the Office of Drug Policy (ODP) commencing March 8, 2021, and will serve at the pleasure of the Governor. **Ms. King** stated that her career began working in juvenile corrections. She later became a probation officer and then became the Executive Director of DrugFree Idaho Inc., a non profit community coalition. In 2013 she became a Grant Project Director for the State's Office of Drug Policy (ODP). She quickly realized the value of pulling together community stakeholders, and developing front-end programming and policies that focus on ways to help combat drug abuse before it happens.

Ms. King listed three goals of the ODP. The first is to build upon their established work and expand their impact by strengthening their current connections with underserved populations. Second, to continue to focus on primary prevention, and to include the identification and implementation of school-based curriculum in middle schools. Third, to revisit and relaunch strategic plans with expanded substance abuse focus. **Ms. King** concluded by stating her personal goal is to make sure that the ODP continues to make a difference.

DISCUSSION: **Senators Burgoyne, Wintrow, and Lodge** asked questions relating to drug usage and ODP's programs. **Ms. King** said the Department of Health and Welfare handles research relating to tobacco products and their connection to illegal drug use. She said her personal opinion is that any substance that changes the way adolescents think or feel is dangerous and opens the door to experimentation. She indicated that getting necessary information to kids and parents is key to helping reduce drug use and abuse.

Ms. King mentioned a grant on teen vaping and stated she would provide more information to Senator Lodge to present to the Millennium Fund Committee.

MOTION: **Senator Wintrow** moved to send the Gubernatorial appointment of Marianne King as Administrator of the ODP to the floor with a recommendation that she be confirmed by the Senate. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

H 193 **Relating to Child Support.** **Representative Kevin Andrus**, District 28, explained that **H 193** relates to a custody situation where one of the parents who is supposed to be paying child support is self-employed. An individual is able to make it appear on tax documents that there is no revenue from their business, thereby exempting him from paying the support. This legislation deals with liens applied to the property and allowing a judge to ask for an accountant-approved audit of the adjusted gross income for the individual responsible for the child support. **Representative Andrus** stated that Connor Stein, sponsor of the bill, would answer questions.

DISCUSSION: **Senator Lee** asked if the self-employed person always has to pay for the audit. **Mr. Stein** responded that the decision of who pays for the audit could be determined by a judge. **Mr. Stein** explained that his family dealt with child-support issues from a self-employed person for several years. This legislation would help clarify the process, and the information provided to the Department of Health and Welfare and Child Support Services. His opinion is that whether one is employed or self-employed, the costs should be shared equally between both parties. **H 193** addresses the process for individuals who disregard their obligation to pay child support.

Chairman Lakey added that additional clarity in regard to the foreclosure of liens should be included in the legislation.

Senator Wintrow asked in writing the legislation what formal sources were used. **Mr. Stein** responded that Chairman Chaney worked on the verbigge and several other attorneys who practice family law provided input on the bill. Their goal was for the legislation to be fair to all those involved.

Representative Andrus recommended **H 193** be sent to the 14th Order of Business for resolution of the question regarding the payment of fees for audits.

MOTION: **Senator Burgoyne** moved to send **H 193** to the floor with a **do pass** recommendation.

DISCUSSION: **Senator Lee** stated that she would not be able to support the bill as it is currently written. Committee members discussed the timing of **H 193** in relation to the time of the Session. The general consensus was to go the 14th Order of Business.

SUBSTITUTE MOTION: **Senator Wintrow** moved that **H 193** be sent to the 14th Order of Business for possible amendment. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 241

Relating to Motor Vehicles, Ignition Interlock. **Senator Burgoyne** presented **H 241**. **Senator Burgoyne** indicated that the legislation originated with a request for an amendment from the Idaho Department of Transportation (ITD) to the State's ignition interlock law. The legislation would include the following waiver provisions: 1.) If no civil or criminal case is pending relating to the order to install the ignition interlock device, a person may file a waiver petition in the magistrate court within 30 days of the installation order; 2.) The installation requirement is stayed while a waiver petition is pending or being appealed; 3.) The ITD is not a party to the waiver proceeding; and 4.) A court order granting a waiver petition applies to all statutory installation requirements. **Senator Burgoyne** explained details of the legislation. The amendment states that if a criminal case is pending, this amendment does not apply. Relating to the court order to install the ignition interlock device, a person may file a petition for relief in magistrate court under this section in his county of residence. If the petition is filed within 30 days of the order and the order reflects a refusal to blow or if the limit is exceeded, the interlock is required for a year. If there is no contest, then certainty is created. If any petition for judicial review in the district court or motion of petition before a magistrate court is pending, the ignition interlock device requirement shall be stayed. The IDT shall not be a party to any petition for interlock relief before a court.

Representative David Cannon, co-sponsor of the legislation, summarized **H 241**, stating that there is a gap in the terms and procedures that are outlined for a waiver petition in cases where a lawsuit is not pending. This legislation would address that and provide for the procedural approach to filing a petition.

TESTIMONY:

Elisa Massoth, Criminal Defense Attorney, testified she helped work on the revisions included in **H 241**. **Ms. Massoth** explained that this legislation helps with the disparity between someone who can hire a private practitioner versus someone who would qualify for a public defender. This legislation equalizes that disparity. Originally, the legislation did not make it clear when the waiver was effective.

Tom Arkoosh, Idaho Association of Criminal Defense Lawyers (IACDL), indicated that he did not know of anyone he previously worked with (police, prosecutors, sheriffs, and ITD) who had any objection to **H 241**. **Mr. Arkoosh** said the IACDL supports the passage of **H 241**.

MOTION:

Senator Wintrow moved to send **H 241** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

H 148

Relating to Driver's License Suspension. **Representative Greg Chaney**, standing in for Representative Ryan Kerby, stated the purpose of this legislation is to correct an inherent inequity in the dual application of two Idaho statutes relating to the charges for a criminal driving under the influence (DUI) charge. **Representative Chaney** explained the details of this legislation. If the defendant driver is found innocent of the criminal DUI charge, the current law requires the administrative suspension of the defendant's driver's license to continue for the original time prescribed. The proposed legislation corrects this inequity by providing that if a person's license is suspended for a criminal DUI charge and the same criminal DUI charge is subsequently vacated or dismissed, then the administrative suspension of the driver's license shall also be vacated. The defendant's driving privileges shall be restored on the effective date that the criminal DUI charges are vacated or dismissed.

DISCUSSION:

Senator Wintrow asked Representative Chaney if Idaho Code 18-8004, 18-8004C and 18-8006 would all be treated in the same manner in their interpretations. **Representative Chaney** stated that if there are no charges, then the same philosophical rationale applies. It is a separate decision by a judge or prosecuting attorney to vacate any charges. The legislation defines what sort of charge, once vacated, no longer requires the ignition interlock.

Holly Rebholtz, representing the Idaho Prosecuting Attorney's Association, stated that they are opposed to **H 148**. She stated there is a public safety concern and administrative license suspensions (ALS) make the roads and communities safer. Drunk driving is one of the most dangerous crimes that law enforcement and prosecutors encounter. The administrative license suspension is tied to a chemical test. **Ms. Rebholtz** testified the Idaho Prosecuting Attorney's Association sees ALS as a deterrent. People do not want their driver's licenses taken away. If the test result is over .08, the suspension happens immediately. Due process is given to challenge the suspension if the individual believes the test was inaccurate. Idaho handles the license suspension issue similar to most other states. Suspension is a deterrent and the loss of driving privileges reduces recidivism and causes people to think twice before driving drunk in Idaho.

Bruce Wong, Director, Ada County Highway District, stated his focus with **H 148** is on safety operations. **Mr. Wong** testified that he believes this legislation should be passed and driving privileges returned to those found innocent of the DUI charges.

Michael Kane, representing AAA of Idaho, stated that previous legislation required that when an individual exceeds a .08 limit, it is not prudent for the courts to wait for a year after the criminal proceedings are finished to impose restrictions to protect the public. Administrative License Suspension (ALS) gives the individual an opportunity to have a hearing. If the person does not take the opportunity, then their license will be suspended for 30 days. After that, for another 60 days, the individual can have a work permit or school permit or whatever is needed to go on with their regular activities. The purpose of ALS is to get the person into treatment and install an interlock device. AAA is concerned about two provisions that are included in **H 148**. The first one involves a driver who exceeds .20 or higher and gets a plea bargain or somehow manages to get the charges removed. Those individuals need immediate treatment. The second concern is that when someone is drunk and injures or disables another, that should not be a reason to get rid of the required suspension.

Carlie Foster, representing the Ada County Highway District, explained that the Ada County Highway District asked for feedback on language in the bill relating to what procedures were needed if the machine used in testing was not calibrating correctly and the individual is found not guilty. **Ms. Foster** stated that Ada County believes that a person found not guilty should not receive the associated penalties that a guilty party receives.

Elisa Massoth, Criminal Defense Attorney, stated that she supports **H 148**. **Ms. Massoth** commented that administrative license due process does exist but is very limited and difficult to defend. She continued that this legislation focuses on someone who has been found not guilty. By the time an individual would get that dismissal or not guilty notice, the driver's license suspension most likely will have already been in effect for months.

Chairman Chaney concluded saying that for those individuals who feel wronged by their results, there is not time under the current guidelines to begin an investigation. By the time a dismissal is made, one would probably be outside of the 90 day period. **Chairman Chaney** stated that it is unjust to withhold licenses from people who are found not guilty.

Senator Burgoyne pointed out that relating to **H 148**, the proof in a civil case and criminal case is different. He stated that a preponderance of the evidence is not proof beyond a reasonable doubt. The distinction is important when the criminal case is dismissed or vacated. **Senator Burgoyne** continued that when a DUI charge turns into a plea bargain to reckless driving, the potential for getting out of the automatic license suspension and the interlock is concerning to him.

MOTION: **Senator Zito** moved to send **H 148** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion.

DISCUSSION: **Chairman Lakey** stated that he would not vote to pass **H 148**. He commented that he sees the importance of recognizing the difference between criminal and civil proceedings. Often plea bargains are made to lesser crimes which cause the DUI charges to be reduced. He feels the legislation goes too far.

VOICE VOTE: The motion to send **H 148** to the floor with a **do pass** recommendation failed to pass by **voice vote**. **H 148** will be held in Committee.

Chairman Lakey briefly discussed the proposed tour to the Boise Connection and Intervention Station. The tour was to see the facility, meet the staff and learn about the services offered at the center.

PAGE GRADUATION: **Chairman Lakey** thanked Ella Luekenga for her work as a Senate page during the second half of the 2021 Legislative Session. **Ms. Luekenga** shared that her experience at the Senate was "awesome" and she appreciated the opportunity to participate in the page program.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:10 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Wednesday, April 07, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
<u>RS28900</u>	Relating to the Idaho Wrongful Conviction Act to Revise Provisions Regarding Compensation Related to a Wrongful Conviction; and Declaring an Emergency	Senator Doug Ricks

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Ricks

Sen Lodge

Sen Lee

Sen Anthon

Sen Thayn

Sen Zito

Sen Burgoyne

Sen Wintrow

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, April 07, 2021

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.

RS 28900 **Relating to the Idaho Wrongful Conviction Act to Revise Provisions Regarding Compensation Related to a Wrongful Conviction, Vice Chairman Ricks** stated the legislation reflect that the victim shall receive compensation for a wrongful conviction including the time spent waiting for the verdict.

MOTION: **Senator Anthon** moved for the bill to be introduced and to the extent possible, for the rules to be suspended to allow the bill to be sent to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:10 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary