

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 20, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, and Werk

ABSENT/ EXCUSED: Senators Davis and Bock

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 Lodge** called the meeting to order at 1:30 p.m.

PASSING THE GAVEL: Chairman Lodge passed the gavel to Vice Chairman Vick to present the Rules Review.

DOCKET NO. 05-0102-1301 **Department of Juvenile Corrections Pending Rule Rules and Standards for Secure Juvenile Detention Centers-Sharon Harrigfeld**, Director, stated the legislative intent of the Juvenile Corrections Act was a continuum of care, as well as working with juveniles in the least restrictive environment possible. This rule defines their responsibility to develop minimum standards for detention care and certification for approved detention facilities that are based on those standards. **Ms. Harrigfeld** stated they would then adopt administrative rules pursuant to the procedures of the act, which focused on safety and security of juveniles in detention facilities by adopting a zero-tolerance policy towards sexual assault while in detention. The development of the rules was in collaboration with the county commissioner and administrators, changes included staffing patterns, a 1 to 16 ratio during sleeping hours, increased frequency of criminal background checks (every 5 years) and more thorough standards for detection, prevention, reduction and response to sexual harassment.

Senator Hagedorn inquired as to the staffing ratio and how it affected their FTP count. Ms. Harrigfeld replied that it did not appear to affect the FTP count. **Stephen Jett**, Administrator of the Southwest Idaho Juvenile Detention Center, said that the 1 to 8 ratio will stand during waking hours and the 1 to 16 ratio will apply during sleeping hours.

Senator Davis inquired as to the criminal background check and the application of it as it coincided with the Prison Rape Elimination Act (PREA) Standard. **Ms. Harrigfeld** replied that the PREA Standards took ten years to create and would not likely change in the near future. **Senator Davis** asked if the rule was written with the reference to the PREA Standard in order to avoid the expense of outlining what the standards are during a background check. **Ms. Harrigfeld** responded that the rule was implemented in order to catch individuals who had committed a crime after the initial background check was conducted. **Senator Davis** said he understood the action of referencing outside standards for ease of communication, however, he stated his concern for deferring to third parties the ability to rewrite the Committee's administrative rules by rewriting their own.

Senator Lakey inquired about the staffing ratio in the detention facilities, to which **Ms. Harrigfeld** responded that they were moving from a staffing ratio which entailed 2 awake to a ratio where if there was less than 16 juveniles than there would only be 1 awake.

Senator Hagedorn referenced page 12 line G – Classification Records and inquired about the information from a resident’s personal history and behavior to reduce the risk of abuse. **Ms. Harrigfeld** responded that the more they knew about a juvenile’s history, the easier it was to place them in the appropriate section of the facility. **Mr. Jett** cited the PREA Standard which outlined the list of information obtained for appropriate placement in the facility. He also stated that the PREA Standards are available at priasourcecenter.org.

MOTION: **Senator Davis** moved to approve **Docket No. 05-0102-1301**. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

57-0101-1201 **Sexual Offender Management Board Pending Rule Rules of Sexual Offender Management Board- Kathy Baird**, Management Assistant, explained this docket is a repeal of the previous IDAPA 57 rules that were initially promulgated by the Sex Offender Classification Board in 2005. She explained that due to the extensive changes, necessary for the Sex Offender Management Board, it was decided to repeal Section 57 and start with a new set of rules.

Senator Bock inquired as to the effect of the repeal of the existing rules. **Ms. Baird** explained that the next docket is a complete rewrite of IDAPA 57, and the repeal was necessary in order to implement the new rules. **Senator Bock** then stated that it was advisable to consider both dockets together.

Senator Davis asked if there were any current, pending civil matters that rely upon, either in whole or in part, for the advantage or disadvantage of the Board, that by this repeal would be affected. **Ms. Baird** responded that there was no current or pending matter that she was aware of.

57-0101-1202 **Sexual Offender Management Board Fee Rules Rules of the Sexual Offender Management Board- Kathy Baird** than introduced **Docket No. 57-0101-1202** and explained that it was a complete rewrite of IDAPA 57. **Ms. Baird** stated that the Board adopted, as temporary rules, the current pending rules in October 2013 so they could implement the procedures that are now before the Committee for final approval. The rulemaking was initiated to implement procedures mandated by the Sex Offender Management Board (Board), and the rewrite revolved around the Board’s standards adult, Sex-Offender Management. **Ms. Baird** said that the standards would create a higher level of consistency and continuity among Idaho’s sex offender service practitioners, as well as, establishing statewide standards for sex offender treatment – heretofore nonexistent.

Ms. Baird stated the Board conducted negotiated rulemaking for the process and enlisted the services of a nationally recognized expert in the field Sex Offender Management. Statewide provider input was solicited, and there were open hearings incorporated into the rule. The standards and administrative rules cover psychosexual evaluations, evaluator qualifications, sex offender treatment and treatment provider qualifications, as well as post-conviction, sex offender polygraph examiner standards. The rules also include disciplinary and complaint procedures along with a quality assurance process. **Ms. Baird** explained they adopted the Attorney General’s Administrative Procedures Act processes related to contested cases due to the size of the Board. The Board created three levels of certification status for psychosexual evaluators and treatment providers, which are: Senior, Associate and Provisional. There was a deficit of treatment providers

and evaluators and the levels provide a pathway for an individual just beginning their career. All providers are required to have specialized training. Prior to the implementation of the levels all they had was a single certification. Post-conviction sex offender specialized polygraph standards only apply to that specific group as there was no licensure or certification for polygraph examiners in the state of Idaho, and that the standards incorporated the tenets of the American Polygraph Association's model policy.

Ms. Baird outlined the Fee Rule – a statute that allows the Board to collect up to \$150 for both initial certification and renewal certification processing fees, which is set in rule as well as in the standards. The Board incorporated renewal certification fees that would be assessed in the event that a provider wanted to change their certification status.

The psychosexual evaluation format has been modified considerably from the old format and includes specific psychological and risk assessment testing requirements and a checklist of static and dynamic risk factor variables.

The sex offender treatment standards incorporate assessment-guided treatment targets and goals to ensure that an offender's treatment is geared toward their specific areas of risks. By utilizing research-supported treatment methods and required documentation, such as treatment session notes, plus a monthly status reporting form that would be delivered to the probation and parole officers.

Senator Hagedorn inquired as to certification and asked if any of the definitions that were changed will affect any of the certified providers currently working. **Ms. Baird** responded that currently they only have certified evaluators and that the standard is somewhat different, though none of the current providers are impacted. She said there was a form for them to renew according to the new standard that differed from the initial application form, but there is little to no impact to existing providers. **Senator Hagedorn** then asked about the differing application fees and inquired as to the process that went into the formulation of those fees. **Ms. Baird** clarified that they are currently charging \$75 and \$50 fees. The major change is the insertion of the provisional provider and the Board decided not to charge as much for an individual just starting up a practice. **Senator Hagedorn** asked if the fee covered the related clerical costs of granting the certification to which **Ms. Baird** responded that was correct.

MOTION: **Senator Bock** moved to approve both **Docket Nos. 57-0101-1201 and 57-0101-1202**. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

PASSING OF THE GAVEL: Vice Chairman Vick passed the gavel back to Chairman Lodge.

ADJOURNED: There being no further business, the meeting adjourned at 1:52 p.m.

Senator Lodge
Chair

Carol Deis
Secretary

David Ayotte
Majority Staff Assistant