

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 13, 2015

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Bayer, Souza, Lodge (Johnson, 11), Werk, and Burgoyne

**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:** **Vice Chairman Hagedorn** called the meeting to order at 1:40 p.m. and announced a change in the agenda.

**RS 23270** **Shane Evans**, Sexual Offender Management Board (SOMB), requested that **RS 23270** establishing a proposed tiered registration for sex offenders be printed. He gave the history of sex offender registration leading up to this legislation. He addressed issues involving public safety, gave a summary of the five tiered registration categories and how the matrix compares to the current system, and he explained how the offenders' behaviors are scored. **Mr. Evans** enumerated the statutory modifications involved and the fiscal impact of the legislation.

**Vice Chairman Hagedorn** inquired if the amount of the budget is included in the Governor's budget. **Mr. Evans** affirmed that it is.

**Vice Chairman Hagedorn** asked for examples of the types of crimes related to level one and those related to level five. **Mr. Evans** requested that Kathy Baird, Management Assistant for the SOMB. address this issue.

**Kathy Baird** stated that level one offenses include providing pornography to a juvenile, video voyeurism, and indecent exposures. Level five offenses include murder committed in the perpetration of rape, lewd conduct, infamous crime and ritualized sexual abuse of a child.

**Senator Werk** inquired about the procedure for removal from the sex offender list. **Mr. Evans** explained that each level has a specific minimum and maximum period to serve using ten year increments. At half of the term the offender may petition the SOMB to be considered for removal. There is a review process including an updated psychosexual report, a polygraph, and other documentation to validate that they have completed treatment and a period of supervision. They must also exhibit attitudes and behaviors indicating that they can be crime free when released.

**Senator Werk** asked if the offenders could have legal counsel. **Mr. Evans** declared they would. A hearing officer who will be an advocate to ensure the offender understands the process is included in the proposed staffing. This officer will encourage the use of an attorney if required. He emphasized that the SOMB welcomes anyone to come in and present information.

**Senator Werk** requested that Mr. Evans address the issue of low risk offenders who have already been in the system for a long time and if they would be given consideration. **Mr. Evans** indicated that these low risk offenders would be given consideration.

**Senator Werk** questioned the costs of the full time employees (FTEs) associated with this legislation, asking if there is any flexibility with the \$8.00 increase in fees. **Mr. Evans** stated this increase was based on the increased notification requirements by the sheriffs, so this fee is to meet the fiscal impact on them.

**Senator Souza** requested clarification regarding the amount of time required for adjustment in level.

**Mr. Evans** responded that once the requests come in they will be triaged putting those at low risk as potential removals. Regarding the time involved, the SOMB does not have a frame of reference to determine how many requests will come in. The low risk offenders would be first to be addressed.

**Senator Souza** questioned if a level one offender coming into the system initially at a level four under this process would be treated as a level four rather than a level one. **Mr. Evans** related that level four has specific expectations, so initially a level one offender would be treated the same as a level four offender. The SOMB analyzes aspects other than crime type. They also consider the person's background. There would be different considerations for someone who successfully completes the assessments.

**Senator Tippets** observed that in this legislation authority to exempt an offender from a duty to register as a sexual offender from the courts to the SOMB. He asked if the courts have had input in that decision and if they are supportive.

**Mr. Evans** assured the Committee that the courts are supportive as are other interested parties. If the offender does not like the SOMB's initial determination, they may petition to have their case reviewed. If the offender still is not happy, an appeal to the court can be filed.

**MOTION:**

**Senator Souza** moved to print **RS 23270**. **Senator Werk** seconded the motion. The motion passed by **voice vote**.

**Vice Chairman Hagedorn** announced that the committee would hear the gubernatorial appointments and that the vote on these appointments would be held at the next committee meeting.

**GUBERNATORIAL APPOINTMENT**

**Jean Fisher**, appointed to the Sexual Offender Management Board (SOMB) to serve a term commencing January 1, 2015 and expiring January 1, 2018, introduced herself. She provided a summary of her experience as a deputy prosecutor with Ada County in the Crimes Against Children and the Sexual Assault Divisions. She is now chief deputy in charge of the child abuse, sexual assault, and domestic violence unit. **Ms. Fisher** pointed out that traditionally all sexual offenders were treated the same. After years of experience she has observed that not all are alike. She emphasized the need to classify the offenders according to their crime and their risk. She voiced her desire to continue working in this area, asserting that a lot of progress has been made, and she would like to advance improvements in Idaho's sexual offender registration system.

**Senator Davis** asked if there would be an unfair conflict by having a deputy prosecutor on the SOMB.

**Ms. Fisher** replied that there is a balance with a public defender, psychologist, and officers over parolees and probationers. She expressed a concern that the focus of the SOMB is concentrated on the sexual offender and sometimes the victim is a side issue. She sees the role of the prosecutor as being an advocate for the victims and their rights.

**Senator Davis** inquired if cases wherein a prosecutor has been involved would present a conflict. **Ms. Fisher** replied that such a problem is not likely to arise, but if it did she would recuse herself.

**Senator Davis** asked if there is a right of appeal from the hearing officer to the SOMB. **Ms. Fisher** said they have an appeal process with the court. She yielded to Shane Evans. **Mr. Evans** pointed out that the offender can petition the SOMB for reconsideration of the hearing officer's determination and present any information that was not considered. If the SOMB upholds the hearing officer's judgment, the offender can petition the court.

**Senator Burgoyne** asked how the makeup of the SOMB is determined. **Ms. Fisher** explained certain representatives are designated by statute, and there is a representative that is an interested party.

#### **GUBERNATORIAL APPOINTMENT**

**Debra Field**, appointed to the State Board of Correction (BOC) to serve a term commencing January 15, 2015 and expiring January 1, 2017, described her experience in the House of Representatives including serving as the Chairman of the House Judiciary and Rules Committee. She also served on the Board of Juvenile Corrections. She further explained that she is familiar with the issues and enjoys public service.

**Senator Davis** asked if her health will accommodate this position. **Ms. Field** explained that she has multiple sclerosis and that her current medication allows her to lead a relatively normal life.

**Senator Burgoyne** inquired about her views on contracting with private prisons. **Ms. Field** responded that she is not opposed to privatization if the organization is held accountable. She stated that she feels the State is doing well in managing the state facilities. In the case of upcoming contracts she affirmed that she would be fair and consider the details of the contract, ensuring that the organizations will meet the requirements and will be held accountable.

**Senator Burgoyne** expressed his viewpoint that incarceration is a state act and should be performed by the State.

#### **GUBERNATORIAL APPOINTMENT**

**Jon Burnham**, reappointed to the Sexual Offender Management Board (SOMB) to serve a term commencing January 1, 2015 and expiring January 1, 2018, stated he had been on the SOMB for the last three years. He advised that the SOMB is part of the Department of Juvenile Corrections, and his station is in St. Anthony.

**Vice Chairman Hagedorn** asked if he drove to Boise. **Mr. Burnham** replied that he drives to Boise once a month for the SOMB meetings.

**Senator Werk** pointed out that there may be new responsibilities for the SOMB as a result of some legislation currently being considered. He solicited Mr. Burnham's view of those responsibilities and how the SOMB might implement the new expectations. **Mr. Burnham** indicated that he is familiar with the legislation and the SOMB has been involved in its development. The process will be to send the requests to specific subcommittees to review the risk variables and make determinations for action. These subcommittees will then bring the recommendations to the SOMB for approval. They will also be involved with problem solving as concerns arise.

**Senator Werk** followed up by requesting the number of members on the SOMB. **Mr. Burnham** related that there are 11 appointed positions.

**Senator Davis** inquired if a profession is missing on the SOMB. **Mr. Burnham** explained that a position for a polygraph examiner has been requested. He asserted that the position is a viable one needed for the expertise it would provide.

**Chairman Hagedorn** related that this issue has been addressed in other legislation.

**Senator Davis** asked if there is a professional point of view that Mr. Burnham felt did not need to be represented on the SOMB. **Mr. Burnham** advised that the SOMB has good representation of the professions needed.

**Senator Davis** requested Mr. Burnham's ideas for addressing conflict relating to his prior work with juveniles who may now be coming before the SOMB as adults. **Mr. Burnham** replied that the SOMB bylaws required board member to recuse themselves if they have a conflict of interest.

**GUBERNATORIAL APPOINTMENT**

**Shane Evans**, reappointed to the Sexual Offender Management Board (SOMB) to serve a term commencing January 1, 2015 and expiring January 1, 2018, explained he has worked with at risk populations in various capacities including as a juvenile sex offender officer, probation officer, group home officer, and adult probation and parole officer, and other activities. **Mr. Evans** has served the last three years as chair of the SOMB and he expressed his desire to continue working in this position.

**Vice Chairman Hagedorn** inquired if Mr. Evans considered the SOMB to be unwieldy in size. **Mr. Evans** asserted that based on his experience, he felt there was an appropriate number and a good cross section of personalities, experiences and viewpoints to maintain an effective balance for the SOMB. He enumerated the professions involved indicating the contribution to the SOMB of each.

**Docket No. 11-0301-1401**

**Matthew Gamette**, Forensics Lab Director, Idaho State Police (ISP), announced that in continuation of the February 11 hearing of this rule, the questions of Senators Tippetts and Burgoyne have been answered to their satisfaction.

**MOTION:**

**Senator Burgoyne** moved to approve **Docket No. 11-0301-1401**. **Senator Johnson (11)** seconded the motion. The motion carried by **voice vote**.

**Docket No. 57-0101-1401**

**Kathy Baird**, Management Assistant, Sexual Offender Management Board (SOMB), recounted the rewrite of the adult sexual offender management rules heard last year. The SOMB is charged with the management of both adults and juveniles. This year the standards and qualifications of juvenile sexual offender management are being presented. With this rulemaking the standards will be adopted into IDAPA 57, including a new psychosexual format specific to juvenile sexual offenders. This rulemaking modifies the existing chapter of rules to make them applicable to both adult and juvenile offenders. **Ms. Baird** gave a summary of evaluation and treatment of offenders under the modified standards.

**Senator Davis** asked for clarification on the newly inserted Subpart G. **Ms. Baird** explained it is a cautionary statement for the consideration of a juvenile's mental capacity, growth, and mental age as they effect the appropriateness of polygraphing. Upon Ms. Baird's request, **Jon Burnham** addressed the differing characteristics between adults and juveniles pertinent to polygraphing. **Senator Davis** inquired about the term "when utilizing". **Mr. Burnham** explained that polygraph is not a mandatory assessment for juveniles.

**Ms. Baird** related that the cautionary language was the result of public hearings.

**Senator Johnson (11)** asked how many of the SOMB's providers have the qualifications to do polygraphs on both juveniles and adults. **Ms. Baird** explained that the SOMB has 27 adult treatment providers and she thinks several provide services for juveniles. There are also some who treat juveniles only. This situation applies to evaluators as well. **Senator Johnson (11)** inquired if the rate who do both is at 50 percent. **Ms. Baird** replied that the rate is at least 50 per cent.

**MOTION:** **Senator Werk** moved to approve **Docket No. 57-0101-1401**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** **Vice Chairman Hagedorn** adjourned the meeting at 2:33 p.m.

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Senator Hagedorn  
Vice Chairman

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Carol Cornwall  
Secretary