

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, March 03, 2016

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow

**ABSENT/
EXCUSED:** Representative(s) Sims, Gannon, Malek

GUESTS: Holly Koole Rebholtz, IPAA; Cassandra Slaven, Ada County Prosecutors Office; John Dinger, IPAA; Alan Malone, Ada County Public Defender; John Burnham, SOMB; Sharon Harrigfeld, IDJC; Marc Crecelins, IDJC; Karin Magnelli, SOMB.

Chairman Wills called the meeting to order at 1:30 PM.

S 1235: **Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC) presented **S 1235**. This bill clarifies the process for granting informal adjustments to juveniles. The statute requires the admission by the juvenile and the granting of the informal adjustment had to occur at the admission or denial hearing. In addition to not being common practice in most juvenile courts, it is impractical for the decision for the juvenile to admit the allegations in the petition, as well as the judge to grant an informal adjustment at the initial stage of the proceedings. The amendment to the statute would allow the admission, as well as the granting of the informal adjustment, to occur at any stage of the proceeding, which is keeping with common practice. Additional changes are proposed effecting the final outcome of the informal adjustment, specifically if the court is shown the terms and conditions of the informal adjustment have been met, there is no longer a need to continue the informal adjustment, and it is compatible with public interest, than the court shall dismiss the case. This was discretionary and the amendment clarifies that if the court, in their discretion, is satisfied that the conditions to dismiss have been met, than the case is required to be dismissed. It doesn't remove the court's discretion, but places the discretion in determining whether the conditions have been met rather than whether or not the case is to be dismissed. The amendment also relieves juveniles of the duty to file an application for dismissal with the court. This is keeping with the common practice in many courts and alleviates the cost and time associated with making application to the court, both for the juvenile and their representing counsel as well as the court.

MOTION: **Rep. Trujillo** made a motion to send **S 1235** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Scott** will sponsor the bill on the floor.

Sharon Harrigfeld presented a Idaho Department of Juvenile Corrections update. IDJC is developing productive citizens in partnership with the community through juvenile crime prevention programs, education, rehabilitation and reintegration. IDJC's strategic plan goals are to ensure juvenile accountability through effective use of evidence-based practices, to ensure community protection through skills improvement of juveniles returning to the community and to strengthen and support all resources within IDJC. Family engagement is a very important component in adolescent success and IDJC is working to better engage families throughout the continuum of care. The recidivism rate in the last fiscal year was 23%. Focusing on the protective factors like family support, school success and stable environments increases the likelihood of the juvenile's success. Positive outcomes include 795 credits earned in the first 6 months of this school year, 47% of eligible juveniles receiving a High School Diploma or a GED, 83% increase in reading scores, 90% increase in math scores and 82,291 hours of community service completed. A multi system integration team comprised of the Department of Health and Welfare, the Courts and the Criminal Justice Commission is working to identify dual involved youth (commonly known as "cross over youth") who were in the child protection system or the mental health system and have now entered the juvenile justice system. The purpose is to determine what steps can be taken earlier to prevent the youth from moving further into the system.

In response to questions from the committee, **Ms. Harrigfeld** explained therapeutic communities in IDJC are different than adult therapeutic communities in the Department of Corrections. There has not been a difference in the mixture of crimes against persons and property but the cases IDJC is encountering are becoming much more complex.

H 555:

Rep. Chaney presented **H 555**. This bill addresses a practice known as sex-ting which is a self created obscene images distributed by electronic means. An estimated 50% of juveniles are expected to be engaged in such activities. High school students in Idaho are as likely to be sex-ting as they are to graduate and go on to college. There is a difference between youthful indiscretion and evil intent and by making this change in code, it will distinguish between the two. Making this change removes the possibility the minor could be required to register as a sex offender and removes it from a section which is specifically exempt from being eligible for expunction. Specifically this bill reduces it to a misdemeanor for the minor creating and sending the image if the image is only sent to one other minor. Charges are also reduced to a misdemeanor for the minor in possession of a self created image sent to them by the minor who created it. If the image is self taken and mass distributed, the first offense is a misdemeanor and each subsequent distribution is a felony. This does not increase the penalty because these charges are already a felony. Leaving the law unchanged may prevent minors from coming forward and asking for help with their indiscretion, because it is a felony.

In response to a question from the committee, **Rep. Chaney**, explained the use of "willful" is intended to protect those who received an unsolicited text or e-mail. Willful possession must be determined by the finder of fact.

MOTION:

Rep. Kerby made a motion to send **H 555** to the floor with a **DO PASS** recommendation.

Holly Koole Rebholtz, IPAA, stated their **support** of **H 555**.

John Dinger, IPAA, testified in **support** of **H 555**. This bill protects children and makes an important update to the statute.

In response to questions from the committee, **Mr. Dinger** explained a simple point a to point b distribution is often handled by involving the parents. If distribution is beyond a single intended minor, the minor who sent the image is taken through a diversion case, which includes removal of their phone and sexual boundaries counseling. If the original conduct is very severe, or if the conduct continues after a diversion case, the minor is referred to the juvenile division. Juvenile prosecutors typically will not charge the minor under 18-1507 and will instead charge them with dissemination of harmful material to a minor. Occasionally, cases are charged under 18-1507 because of concern for the juvenile. This bill is a good bill to assist with cases charged under 18-1507. It is unlikely there will be an increase of charges after the implementation of this bill. The types of cases which have been charged under dissemination of harmful material to a minor, may begin to be charged under 18-1507a with the passage of this bill. This bill is likely to assist with bullying surrounding sex-ting as the minor is likely to be more comfortable coming forward.

Alan Malone, Ada County Public Defender, testified in support of **H 555**. There are times when a child is prosecuted with the only remaining prosecutable crime, which in many cases results in a felony charge. This felony charge subjects them to registration and is not able to be expunged.

In response to a question from the committee, **Mr. Malone**, explained the interpretation of a first offense and second offense, could be one "sext" followed by another and another. It would provide more clarity if it stated a second offense would follow the first adjudicated offense.

Rep. Chaney, the only scenario in which this escalates to a felony status is a second offense of mass distribution. The first offense misdemeanor is an exception to the mass distribution rule. The targeted behavior of the bill is misdemeanor status.

VOTE ON MOTION:

Motion carried by voice vote. Rep. Chaney will sponsor the bill on the floor.

Jon Burnham, Chair, Sexual Offender Management Board, presented an update from the Sexual Offender Management Board (SOMB). The Sexual Offender Management Board appreciates the new polygraph member position approved last session and the voice this member brings to the table. The board is currently in the process of reviewing the standards previously developed for certification of post-conviction sex offender polygraph examiners and is utilizing the board member's expertise. The set of standards for providers of services to adult sex offenders developed in 2014 has been modified to apply to psychosexual evaluators and treatment providers for juveniles who have been adjudicated for sexual offenses. Certification of juvenile providers began last year. An ongoing charge of the board is development of risk-based, tiered sex offender registration systems for adults and juveniles. In 2015, the SOMB presented **S 1095** to implement a five-tiered adult registration system. Although the bill did not proceed through both houses, the board is working to modify the proposed system to identify initially only the high risk or more serious offenders for enhanced registration requirements from the rest of the registered sex offender population. Once the process has been implemented the board will take a period of time to gather data and address identified issues before reintroducing the measure. The goal is to introduce the identified system to the 2018 legislature with implementation set for 2019. The direction for a tiered juvenile registration system has changed from a system largely driven by the courts to a system driven by the Sex Offender Management Board. A proposal is being reworked to involve 3 registration tiers which would limit public access to the registration information of only the highest risk or more serious juvenile offenders who have been adjudicated for sexual offenses. The board is working to develop a set of continuing education workshops for community providers across the state due to specialized training being difficult and costly to obtain. A review

is being conducted of the previously established quality assurance procedures for feasibility. The polygraph member is developing quality assurance procedures to correspond with the post-conviction sex offender polygraph examiner standards.

In response to a question from the committee, **Mr. Burnham** explained in regard to the tiered juvenile sex offender registration, when the juvenile is released at age 21 the juvenile will be automatically off of the registry. Juveniles may be moved among the tiers and after review they may be moved to a lower tier. The use of polygraph is voluntary unless court ordered because it is a good tool for treatment. At this time there are no specialty courts for sex offenders and the idea of sex offender speciality court are not promoted or suggest on a national level.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:41 PM.

Representative Wills
Chair

Katie Butcher
Secretary