

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.

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Senator Lakey, Chairman

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Sharon Pennington, Secretary

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Carol Cornwall, Assistant Secretary