

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, February 21, 2022

**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 Zito** moved to approve the minutes of January 24, 2022. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Lee** moved to approve the minutes of January 31, 2022. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL REAPPOINTMENT VOTE:** **Senator Lodge** moved to send the Gubernatorial Reappointment of Mike Matthews to the Commission of Pardons and Parole with a recommendation that he be confirmed by the Senate. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

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

**RS 29603** **Chairman Lakey** explained **RS 29603** was previously printed but additional comments were received from those in the media and from the trial lawyers. Language on immunity was modified to say there was not an obligation to respond to the public records requests unless they went through the designated custodian. Language was added that the agency or local government entity would list on their website the custodian if they had one. For clarification, the term "independent body" was included in the definition of public agency.

**MOTION:** **Senator Thayn** moved to send **RS 29603** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

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

**RS 29614** **Pam Eaton, President and CEO of the Idaho Retailers Association**, stated **RS 29614** added language to the definition of owner in regard to theft. In a recent Idaho Supreme Court case, a decision held that a person who takes possession of goods based upon fraudulent intent and by using false promises of payment becomes owner of those goods immediately upon receipt of the goods. The use of fraud makes the acts not qualify as theft. **RS 29614** adds language to clarify theft so that those false promises and fraudulent ways of taking items can be considered theft.

**MOTION:** **Senator Lodge** moved to send **RS 29614** to print. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**S 1320**

**Senator Vick, Idaho Senate District 2**, presented **S 1320** which relates to vital statistics involving adoptions. He commented that he had an adopted daughter and seven adopted nieces and nephews, and had seen the good that comes from adoption. **S 1320** was an attempt to update birth records and give adoptees access to their original birth certificate and move towards transparency. A similar bill was presented last year and concerns were expressed that if birth records were automatically opened when the adoptee turned 18 years old, it may discourage adoptions. This legislation corrects that concern. The records could be opened, but would not be required to be opened. In the event of a match on the voluntary adoption registry, a minimum 30 day waiting period would apply, during which time a registered birth parent may choose from a list of preferred methods of contact, open the record, or request no contact. The legislation was then broken into two sections, persons born in Idaho and persons born in foreign countries. There were other minor changes in referencing and getting the correct numbers in place.

**DISCUSSION:**

**Representative Julianne Young** explained the legislation process relied on the birth parent to be proactive in working with the adoption community. It gave them the opportunity to have a more direct way to contact their birth child at the time the birth child was interested in obtaining their birth records. It also gave them a direct and private way to express their feelings about any contact that might follow the release of those records. An adoptee was required to use the existing voluntary adoption registry which was already in place. The birth parent indicated one of several options for contact, the last of which was that their name be redacted from the record. On that request, a redaction gave the adoptee an opportunity to reach out again through the same process after five years had lapsed.

**Senators Burgoyne and Lee** questioned some mechanics of the process. **Representative Young** explained that this procedure only works if the birth parent was proactive in maintaining their contact information with the voluntary adoption registry. The default position was that the adoptee who requested the records had full access to their records. Page 3 of the bill lists the information that was available to be released from the Department of Vital Statistics to an adoptee who requested their records. That information would be specific to the adoptee and would be released to them when they requested their records. The only thing that can be kept private is the name of the birth parent should he/she decide to have it redacted.

**TESTIMONY:**

**Kirk Adams, Middleton, Idaho**, testified in support of **S 1320**. He explained that he had concerns about the legislation proposed last year, but he was very happy with the current bill.

**Senator Vick** added that this legislation would only be effective for adoptions starting July 1, 2022 and going forward. Any existing adoptions would stay under existing law.

**MOTION:**

**Senator Thayn** moved to send **S 1320** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

**Chairman Lakey, Senator Wintrow** and **Director Dowell** discussed the need for **S 1322, S 1323, S 1324, and S 1325** to be moved to the end of the agenda due to the sensitive nature of the subjects of those bills.

**S 1333**

**Jason Spillman, Legal Counsel, Administrative Office of the Courts**, explained that **S 1333** would add one more judge to the 12 judges who were serving in Elmore, Valley, Boise, and Ada counties. The other change this bill required was to have one judge have resident chambers in Elmore County. **Mr. Spillman** stated the workload supported the request.

- MOTION:** **Vice Chairman Ricks** moved to send **S 1333** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.
- S 1334** **Senator Lodge** introduced **S 1334** relating to the Idaho Correctional Industries Act. **Senator Lodge** was instrumental in the adoption of the Agricultural Work program and had seen how successful it was. The inmates had been able to save money of their own, pay off their court costs, pay restitution costs, send some money home to their families and help with child support.
- TESTIMONY:** **Josh Tewalt, Director, Idaho Department of Correction**, agreed with everything Senator Lodge said about the Agriculture Work program. He continued that **S 1334** would extend the same opportunities given to the agricultural industry to the proposed call and contact centers. The centers would include the safeguards put around the previous program to ensure the local workforce would not be displaced and ensure that people would be paid the prevailing wage. It would also ensure that trainees who were able to benefit from the program would put resources to help honor their court obligations. The program would help to fill the need for finding training opportunities for residents to have jobs when they leave custody. Maintaining employment as they transition through a community reentry center or upon release makes the chance of successful release much greater.
- DISCUSSION:** **Senator Wintrow** asked details relating to the call center and how it operated. **Director Tewalt** explained there were three different areas the inmates worked in. They included outbound calling, customer service and support and the third was a live person who gave directions or referrals. Each inmate was screened and technology controls were used to insure people did not have access to sensitive information. The salaries paid were dependent on the type of work, length of time employed and the work quality. **Director Tewalt** said they had worked with the Department of Labor to make sure they did not displace a local workforce.
- TESTIMONY:** **John Elliott, Owner, All American Publishing, Boise, Idaho**, described the commitment of his company to being a second chance employer. He indicated that it was a great opportunity to work with the State agencies to seek to provide a good work situation for people who needed a second chance. **Chairman Lakey** added that for individuals to be successful upon release, they needed transportation, housing and employment. He continued that programs such as these gave inmates a chance to be successful and productive.
- MOTION:** **Vice Chairman Ricks** moved to send **S 1334** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion passed by **voice vote**.
- INTRODUCTION:** **Ashley Dowell, Executive Director, Commission of Pardons and Parole, Chair of the Sexual Offenses Subcommittee**, explained the goal of the subcommittee was to remove statutes that were unclear or likely unconstitutional, create new statutes to address issues that would be left after removal and create consistency between statutes. She stated the Subcommittee was organized to represent a variety of experts ensuring that all voices were heard. **Director Dowell** introduced John Dinger, Ada County Prosecutor's Office and the Sex Offender Management Board and Erik Lehtinen, Chief of the Appellate Unit for the State Appellate Public Defender's Office.

**S 1322**                    **Director Dowell** presented **S 1322**. She stated the legislation aims to accommodate issues with more frequent postal delays. It changed the deadlines to seven days for required action after a mailing from the sex offender registry, and to 14 days to receive and mail back a required address verification. If an address verification was not returned within seven days of the registry's mailing, they were required to notify the sheriff to check on the individual. The checks were happening more frequently because of the postal service delays in getting verifications back on time. The legislation changed check ins at the sheriff's office for individuals with no address to register from seven to fourteen days.

**MOTION:**                **Senator Burgoyne** moved to send **S 1322** to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**S 1323**                    **Director Dowell** presented **S 1323**. She explained in 2016, the Idaho Criminal Justice Commission (ICJC) brought HB 580 to the legislature. The bill repealed the male rape offense and consolidated all rape laws into one set of statutes that apply to everyone, regardless of gender. The bill passed unanimously. An oversight neglected § 18-6103, which used antiquated language alluding to rape only applying to female victims. **S 1323** removes that sentence.

**MOTION:**                **Senator Wintrow** moved to send **S 1323** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**S 1324**                    **Director Dowell** introduced **S 1324**. She stated that in 2002, a court determined that 18-1508A(1)(d), making photographic or electronic recordings of a minor child, criminalizes conduct protected under the first amendment, and is therefore unenforceable. Due to the court's ruling, prosecutors did not change this offense. Identical language exists in 18-1506(1)(c). The section had not been litigated because the language was identical to the unenforceable language listed. Prosecutors did not charge this offense. This legislation removed those two provisions. It was important to note that Idaho law still criminalizes this conduct in the statutes addressing possession of sexually exploitative material and video voyeurism which are both constitutionally enforceable.

**DISCUSSION:**        **Senator Lee** asked Director Dowell to confirm that since the pictures being discussed were of children rather than adults, it would allow the prosecution at the higher level used before the Bonner court ruling. **Director Dowell** asked Mr. Dinger to respond. **Mr. Dinger** explained that prosecution could still be done through the Child Pornography Statute Sexual Exploitation of a Child law and through the video voyeurism statute. **Senator Burgoyne** asked why the making of any photographic or electronic recording for that purpose is unconstitutional. **Mr. Lehtinen** stated the Court of Appeals in the Bonner decision addressed that issue. Their decision was that if someone was aroused by simply looking at children, it is far too expansive to be charged with a felony under Idaho law. **Mr. Lehtinen** continued that ultimately the question of constitutionality would fall to the Court of Appeals to determine what the intent was at the time the pictures were taken. **Senator Lee** and **Senator Burgoyne** both had questions and concerns relating to the loss of the right to prosecute child pornography as a result of this legislation. **Mr. Dinger** assured the Committee he felt he would continue to be able to protect children as they had been.

**MOTION:**                **Senator Lee** moved to send **S 1324** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion passed by **voice vote**.

**S 1325**                    **Director Dowell** said that **S 1325** updated Chapter 66, Title 18 in Idaho Code. It removed the unenforceable offenses of fornication and adultery that are unconstitutional. It amended the crime of incest to include language about prohibited sexual contact to be consistent with other statutes and updated the incest penalty. The bill repealed the Infamous Crime Against Nature statute which was likely unconstitutional and gave judges the charge to determine what was a violation of the statute. **S 1325** added two offenses previously covered under the Infamous Crimes Against Nature; Sexual Abuse of an Animal and Sexual Abuse of Human Remains. It amended Forcible Penetration to apply to cases where the perpetrator forces another to penetrate the assailant or a third party. The rest of the bill had technical corrections to include correcting references throughout code to the changes in Chapter 66.

**DISCUSSION:**        **Senator Lee** questioned how life in prison was arrived at in relation to the three year age differential. **Mr. Dinger** responded that statutory rape and other parts of Idaho code have an age differential but he was not sure it was specifically discussed in relation to **S 1325**. Several questions were asked regarding age and familial relationship issues. Both Mr. Dinger and Mr. Lihtinen were not able to answer the questions.

**Chairman Lakey** encouraged the Committee members to take their questions to Director Dowell, and she would get them to either Mr. Dinger or Mr. Lihtinen. **Chairman Lakey** asked for a motion to continue **S 1325** at the Committee meeting held March 23, 2022.

**MOTION:**            **Senator Burgoyne** moved to continue **S 1325** at the next Committee meeting. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

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

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary