

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 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: 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) to order at 1:38 p.m.

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

DOCKETS: **Kathleen Elliott**, Executive Director, Idaho Public Defense Commission (PDC), gave Committee members a handout to more easily explain the seven docket chapter repeals and the four new chapters (see Attachment 1). **Ms. Elliott** reminded the Committee that the PDC had previously presented four chapters of pending rules. Attachment 1 shows the sections the PDC suggests striking or rejecting in the left-hand column. The right-hand column contains the temporary rules that the PDC is prepared to adopt. This information is for transparency purposes. The Public Defense Commission has approved the temporary rules overlaying what is rejected from the four chapters of the pending rules. There are no changes in chapters 3 and 4. Ms. Elliott went through the changes in Chapters 1 and 2 with the Committee.

DISCUSSION: **Senator Wintrow** expressed concerns that there may be a discrepancy in the purpose of the rule changes. She questioned if the changes would benefit civil or criminal defense verses the stakeholder approval. **Ms. Elliott** explained that the PDC held numerous meetings and contacted all of the stakeholders involved. The interactions with the interested parties revealed that many defense attorneys and counties didn't know about the rules. Further discussions revealed misconceptions about the role of the PDC in working with counties and public defenders.

Senator Burgoyne said he approved of the proposed temporary rule because it gets rid of the vertical representation issue and provides a more definitional approach. He believes the temporary language removes the option to focus on the should/shall argument.

Chairman Lakey stated he would support the proposed temporary rules and the progress toward full compliance with the 6th Amendment. He added that it is important to be realistic about public defense in Idaho and the challenges of working with 44 different jurisdictions. **Chairman Lakey** stated that if the PDC can get the rules approved on a temporary basis, it will fall to the Legislature to pass a resolution through the House and the Senate to continue their implementation.

Brad Hunt, Administrative Rules Office, Department of Financial Management, stated he would answer any questions relating to the rule-making process.

Darrell Bolz, Chairman, Public Defense Commission, was available for questions as well.

MOTION: **Chairman Lakey** moved for the approval of pending **Docket Nos. 61-0101-2001, 61-0102-2001, 61-0103-2001, 61-0104,2001, 61-0106-2001, 61-0107-2001, and 61-0108-2001**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**, with **Senator Zito** requesting that she be recorded as voting nay.

MOTION: **Chairman Lakey** moved for the approval of pending **Docket No. 61-0101-2002** with the exception of **Subsection 010.22 (page 17)**. **Senator Thayn** seconded the motion.

DISCUSSION: **Senator Anthon** asked what the motion meant. **Chairman Lakey** indicated that it was a rejection of the existing vertical representation provision.

Senator Zito explained her vote stating that she was contacted by county commissioners and prosecuting attorneys regarding the changes. Their concern was related to the structure and the costs involved in complying with the changes. She told them she would vote against changes which would require additional costs to those already incurred.

Senator Burgoyne explained that the temporary rules cannot be formally acted on, and for that reason he is comfortable voting in favor of the motion.

VOICE VOTE: The motion carried by **voice vote**, with **Senator Zito** requesting that she be recorded as voting nay.

MOTION: **Chairman Lakey** moved for the approval of **Docket No. 61-0102-2002** with the following exceptions: Paragraph 020.01.a. (page 24), Paragraph 030.02.a. (page 25), Paragraph 030.02.b. (page 25), Subsection 030.05 (page 25), Subsection 040.02 (page 25), Subparagraph 050.02.a.ii. (page 26), Subsection 060.03 in its entirety (pages 27-28), Paragraph 060.04.a. (page 28), Subsection 070.01 in its entirety (page 31), Subparagraph 070.02.a.iii. (page 32) Subsection 070.03 (page 32), Paragraph 080.03.a. in its entirety (page 33), Paragraph 080.03.c. (page 33), Subsection 090.01 (page 33). **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Thayn** moved for the approval of **Docket No. 61-0103-2002**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Thayn** moved for the approval of **Docket No. 61-0104-2002**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:30 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary