

Idaho Criminal Justice Commission
Sexual Offenses Subcommittee
 August 23, 2021

Location: Idaho State Police District 3 Office 700 S. Stratford Dr. Meridian, ID **Time:** 2:00 p.m.–3:30 p.m.

Members Present:

Ashley Dowell, Chair, Idaho Comm. Pardon/Parole
 Jared Larsen, Office of the Governor
 Mark Kubinski, Criminal Chief, Office of the Attorney General
 Erik Lehitnen, Deputy State Appellate Pub. Defender
 Carol Redding, Idaho State Police
 Greg Chaney, Idaho State Representative
 Melissa Wintrow, Idaho State Senator

Members Not Present:

Louis Hougaard, Office of the Governor
 Heidi Johnson, Deputy Ada County Public Defender
 Scott Grow, Idaho State Senator
 Nancy Volle, Sex Offender Management Board
 John Dinger, Deputy Ada County Prosecutor
 Paul Jagosh, Fraternal Order of Police

Others Present:

Kelli D Brassfield, IAC

Minutes		Due Date
2:00 pm	Call to Order	
	<ul style="list-style-type: none"> • Welcome and Roll Call 	Meeting called to order at 2:05 pm.
	<ul style="list-style-type: none"> • Approve July 2021 minutes <ul style="list-style-type: none"> ○ ACTION ITEM 	There was a motion to approve the minutes from July 2021 by Erik Lehitnen and seconded by Mark Kubinski. Motion carried.
	<ul style="list-style-type: none"> • Suggested spousal rape language changes <ul style="list-style-type: none"> ○ ACTION ITEM 	Draft legislation was sent out to the subcommittee. Governor’s transmittal letter: The Governor asked for clarification as to what a “lawful marriage” actually is. He wants to make sure the Idaho laws do not have the effect of exempting bad actors such as sex or human trafficking from criminal liability. There could be other countries with different laws that constitute a lawful marriage but those laws could be considered rape here in Idaho.

Minutes

Due Date

The proposed draft would only address foreign marriages, a couple of issues that aren't lawful in other states (such as bigamy/polygamy), and would also still give prosecutors the ability to prosecute these cases.

There are some concerns with the foreign marriage section. There are arranged marriages and there could be someone under 16 that the parents have authority over. That could be a coerced marriage. This draft would allow for more prosecutions and tries to address some of those issues. If a treaty is in place, how would this impact that? Is addressing marriages that fall into these categories, is that appropriate? Is there consensus that this is worth considering sending this to the legislature. Yes, but it may still need some additional language considerations.

The spirit of the law was to preclude exceptions to rape just because you are married. Some are concerned that if someone is forced to get married and are trafficked, that isn't lawful. We don't want to allow this regardless where someone gets married. We just need to make sure it is constitutionally sound.

Foreign marriage concept... I wonder if we use language that if it was under duress, it might allow for Idaho to prosecute. Where do we want to have the burden of proof? What if some are in a lawful marriage but don't have the proof. How do we address those?

Nancy Volle presented a tiered system based on risk in the prior meeting. As part of that, the group also looked at the SORNA requirements. Idaho is not in compliance. That was based on an assessment done in 2019. This was discussed and there are some concerns about using a risk-based system. Concerns are a greater loss of funding (Burne/Jag funding), it is problematic as being risk based as the assessments used change over time, and it could be very costly (the defendant would have to hire more people to have more assessments done).

- SOMB and SOR tiered registration- Risk vs. Offense Type
 - ACTION ITEM

Minutes

Due Date

- Review of Proposed Statutory Changes in September

The DOJ outlined where Idaho was out of compliance. One area of non-compliance is not publishing the employer's address. This administration (state) probably won't want to move on this issue. The legislature probably won't have an appetite won't either. The subcommittee should focus on the other two.

Something else that needs to be addressed is where the SOMB is housed. It is currently with the Idaho Department of Correction. ICJC gave the SOMB the task to look at a risk-based system. Maybe we should look at moving it to the Sex Offender Registry within ISP so that they work together. Maybe this group could make that a recommendation.

This group will decide on what to take to ICJC.

There has been a request for additional information on how to become compliant. The DOJ took the Idaho information and is working on it.

Why was SOMB put w/ IDOC in the first place and what impact would moving them have? Maybe it had to do with probation and parole or a level of clinical expertise. Should we look to tie in division of occupational license with this?

There hasn't been any opposition to moving the SOMB.

The group has been looking at about six statutes that are outdated and unconstitutional. The first couple are the adultery and fornication laws. May need to look at repealing these two statutes. Reviewing incest law. It isn't necessarily unconstitutional but some changes need to be made. It is currently a registerable offense. If someone is convicted of incest, the conviction is to be placed on the website as an offense on a child. Sometimes the incident has nothing to do with a child. This could lead to other

Minutes

Due Date

- Timeline for ICJC Legislation

issues. The thought is that other criminal acts will catch those crimes that don't fit into the narrowing of the incest law. There could be gaps but those gaps are being worked on. There is a legislator that wants to do this but she wants to make sure that those that read it understand that Idaho does not endorse adultery.

Crime against nature law. It is an old statute and it is being considered for repeal. The sodomy part is the hard section as it is constitutional protected. It could be moved or removed the "mankind" language. This could lead some to think that necrophilia is ok in Idaho. These issues will need to be separated. Another idea is to repeal the law and put the issues elsewhere in law. Has there been recent convictions in regards to this? Yes, it was Blaine County. The conviction was upheld.

Sexual abuse and sexual battery of a minor subsections: making photo or electronic copy of minors. It has been deemed unconstitutional and sweeps too broadly because it could cover artistic work.

Age needs to be addressed/reviewed in a few different statutes as there could be rape of young children based on the current language. Also enticing a minor need to be reviewed as well.

Crimes and vulnerable adults (crimes against children and crimes that only children can commit). Want to look at an organizational change so that juveniles are separated from adults.

This group will make a motion for recommendation for ICJC. There isn't a set timeline for legislation but the administration will want to review any recommendation before it goes to the legislature. It was be good to have a final sign of approval from ICJC at their last meeting of the year.

Minutes		Due Date
	<ul style="list-style-type: none"> Identify Topics for September Meeting 	Rape law draft SOMB discussion
	Adjourn- Next Scheduled Meeting, September 20, 2021 at 2pm	There was a motion to adjourn by Jared Larsen and was seconded by Rep. Greg Chaney. Motion carried.

