

**Idaho Criminal Justice Commission**  
**Sexual Offenses Subcommittee**  
 October 25, 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  
 Erik Lehtinen, Deputy State Appellate Pub. Defender  
 John Dinger, Deputy Ada County Prosecutor  
 Carol Redding, Idaho State Police  
 Paul Jagosh, Fraternal Order of Police  
 Nancy Volle, Sex Offender Management Board  
 Mark Kubinski, Criminal Chief,  
 Melissa Wintrow, Idaho State Senator

**Members Not Present:**

Scott Grow, Idaho State Senator  
 Louis Hougaard, Office of the Governor  
 Office of the Attorney General  
 Heidi Johnson, Deputy Ada County Public Defender  
 Greg Chaney, Idaho State Representative

**Others Present:**

Amy Campbell  
 Kelli D Brassfield, IAC

<b>Agenda</b>		<b>Due Date</b>
2:00 pm	Call to Order	
	<ul style="list-style-type: none"> <li>• Welcome and roll call</li> </ul>	Meeting called to order at 2:05 pm.
	<ul style="list-style-type: none"> <li>• Approve August 2021 minutes               <ul style="list-style-type: none"> <li>○ ACTION ITEM</li> </ul> </li> </ul>	There was a motion to approve the minutes from August 2021 by Paul Jagosh and was seconded by Mark Kubinski. Motion carried. Jared asked for unanimous consent to amend the minutes to change “counties to countries” on page one. No objection was heard.
	<ul style="list-style-type: none"> <li>• Notification of potential Model Penal Code suggested changes</li> </ul>	Idaho does not adopt the Model Penal Code.

Agenda		Due Date
	<ul style="list-style-type: none"> <li>Review of proposed statutory changes</li> </ul>	<p>Last week, the Nation Association of Attorney’s Generals sent a letter asking states to oppose the changes to the model. Attorney General Wasden may sign onto that letter. This doesn’t have an effect on this group.</p> <p>Scrolled through the document and reviewed:</p> <p><u>Adultery:</u>  Repeal adultery. Reviewed notes in regards to this. Ada County does not have an objection to repealing this. There may be an objection from some legislators because it may appear that we are endorsing adultery.</p> <p><u>Incest:</u>  Amend the definition of incest to include any person who willfully marries, or engages in sexual intercourse as described in 18-1507 (this definition to be consistent with other statutes) with another person known to be...  Suggested to remove subsection (2). Ada County would not like limit to male/female relationships where pregnancy is possible. Ada would like to see this for any relationship of incest. How many of these cases do we really get? Really only a handful over many years but typically it is a child that has been adopted out and once they become an adult they have returned to the home and end up in a sexual relationship with the parent. How do we handle step siblings? It is hard to say. Will need to follow up on this. At the registry, they are seeing it coming from other state quite a bit. It is generally adults. There aren’t too many cases from Idaho.</p> <p>Do we adopt the definition added in what constitutes sexual intercourse?  Seems that most incestual relationships probably have some sort of power component and leads to agreeing with this definition included. The group reviewed different definitions and how they would correlate with other statutes. The group decided to remove the 18-1507 reference from the new language in 18-6602 Incest.</p> <p>What about subsection (3) in regards to the penalty? Should it be a penalty of life in prison? There was discussion about separating incest with an adult or with a child. Most cases would include another charge such as L &amp; L. If other</p>

Agenda	Due Date
	<p>charges are brought those penalties will be used. It may be appropriate to reduce the penalty here. The group agreed to separate children/victims under 18 so the defendant would have a greater penalty.</p> <p><u>Fornication:</u> Repeal fornication. Same as adultery.</p> <p>Opinion Notes: [Idaho’s adultery (18-6601) and fornication (18-6603) statutes criminalize sex outside of one’s marriage. As such, they criminalize conduct which is constitutionally-protected. <i>See Lawrence v. Texas</i>, 539 U.S. 558 (2003) (holding that private sexual conduct, between consenting adults, cannot be criminalized, as there is no “legitimate state interest which can justify its intrusion into the personal and private life of the individual”). Both statutes should be repealed.]</p> <p><u>Crimes against Nature:</u> Suggestion is to repeal current law and have more specific laws that specify bestiality or necrophilia. Some PAs like a catch all statute; however, there are very rare cases that would need the current language. The group agreed to repeal the current language for crime against nature and clarify a couple of items. Foreign object includes tongues and fingers.</p> <p>Opinion Notes: First, the current “crime against nature” is described in outdated, vague, and ambiguous language that provides no guidance as to what conduct is actually prohibited. Second, the statute criminalizes sodomy, <i>i.e.</i>, oral and anal sex, between consenting adults—conduct which is constitutionally-protected. <i>See Lawrence v. Texas</i>, 539 U.S. 558 (2003) (holding that private sexual conduct, between consenting adults, cannot be criminalized, as there is no “legitimate state interest which can justify its intrusion into the personal and private life of the individual”). Because the statute sweeps so broadly—criminalizing all sodomy, without regard to the ages of the participants or whether the activity is consensual, it is plainly unconstitutional as it is written.</p>

Agenda		Due Date
		<p><u>Forcible penetration by use of foreign object:</u> Group agrees with suggested change to change “another person” to “any person.”</p> <p>Opinion Notes: The intent behind this proposed amendment is to cover the scenario where the assailant does not penetrate the victim, but rather compels the victim to penetrate the assailant.</p> <p><u>Sexual abuse of an animal (would be a new section):</u> Bestiality statutes from all 50 states were reviewed and this is from one of the newest laws from Kentucky. Need to update the “sexual intercourse” definition to include penetration. The penalty section needs to be reviewed. A misdemeanor is not appropriate. There are very few of these cases. Nancy will follow up with more information on danger and risk from the SOMB. This section needs more review. Erik, John, and Nancy will work together to rework.</p> <p>Will continue at the next meeting.</p>
	<ul style="list-style-type: none"> <li>Identify topics for November meeting</li> </ul>	<p>Sexual abuse of an animal. Erik, John, and Nancy</p> <p>Continued to reviewed statutes.</p>
	Adjourn- Next Scheduled Meeting, November 15, 2021 at 2pm	There was a motion to adjourn by John Dinger and seconded by Carol Reading. Motion carried.