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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO **Plaintiff,** **V.** **BRYAN C. KOHBERGER,** **Defendant.**	**CASE NUMBER CR29-22-2805** **MOTION TO STRIKE THE DEATH PENALTY ON GROUNDS OF STATE SPEEDY TRIAL PREVENTING EFFECTIVE ASSISTANCE OF COUNSEL**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby moves this honorable Court for an Order striking the State's Notice Pursuant to Idaho Code § 19-4004A on the grounds that Idaho's statutory and constitutional guarantee to a speedy trial prevents effective assistance of counsel in death penalty cases.

ISSUES

I. Idaho requires all criminal defendants to be brought to trial in six months from the arraignment on an Indictment pursuant to statute and its constitution.

   a. In Idaho the right to a speedy trial is defined by I.C. § 19-3501 as it was at the time of the adoption of the Constitution.

      i. The Idaho Constitution guarantees a speedy trial except where there is good cause for a delay or the request for postponement came from the defendant.

      ii. The Idaho Constitution requires a fixed amount of time constitute undue delay. This Court should adopt the six-month line adopted by our legislature.

   b. A defendant in Idaho can never request additional time without losing his right to a speedy trial.

II. A capital case cannot be prepared in ten months.

III. Idaho cannot force a defendant to choose between his rights.

PROCEDURAL HISTORY

On November 13, 2022, law enforcement found the bodies of Madison Mogen, Kaylee Gocalves, Xana Kernodle, and Ethan Chapin. On December 30, 2022, law enforcement arrested Mr. Kohberger at his parents' home in Pennsylvania. Mr. Kohberger's current counsel filed for a limited appearance the same day. His first appearance in court in Idaho was January 5, 2023. On January 12, 2023, Mr. Kohberger filed a Notice of Appearance, Request for Timely Preliminary Hearing, Motion for Bail Reduction and Notice of Hearing, which contained a demand for speedy trial pursuant to Sixth and Fourteenth Amendments to the United States Constitution, Art. I Sections 7, 13 and 18 of the Idaho Constitution, and I.C. § 19-3501.

While Mr. Kohberger prepared for a preliminary hearing, the State convened a grand jury on May 12, and by May 16, 2023, it had an Indictment for Mr. Kohberger on four charges of murder in the first degree and a count of burglary. This Court arraigned Mr. Kohberger on May 22, 2023. On May 23, 2023, pursuant to Mr. Kohberger's right to a speedy trial, this Court set Mr. Kohberger's jury trial for October 2, 2023, a mere ten months from his arrest. On August 23, 2023, Mr. Kohberger waived his right to a speedy trial in order to secure his right to effective assistance of counsel.

ARGUMENT

I. Idaho requires all criminal defendants to be brought to trial in six months from the arraignment on an Indictment pursuant to statute and its constitution.

Pursuant to Idaho Code § 19-3501(2)&(5), a court must order the prosecution or indictment to be dismissed, ***unless good cause to the contrary is shown***, if a defendant, whose trial has not been postponed upon his application, is not brought to trial within six months from the date that information is filed with the court.

When a defendant who invokes their statutory speedy trial right is not brought to trial within six months and shows that the trial was not postponed at his request, the burden then shifts to the state to demonstrate good cause for the delay. *State v. Rodriquez–Perez*, 129 Idaho 29, 38, 921 P.2d 206, 215 (Ct.App.1996). Good cause means that there was a substantial reason for the delay that rises to the level of a legal excuse. *State v. Clark*, 135 Idaho 255, 260 (2000). Previously, there was not a fixed rule for determining good cause for the delay of a trial and the matter was left to the discretion of the trial court. *State v. Johnson*, 119 Idaho 56, 58 (Ct. App. 1990). The Idaho Supreme Court has held that "a thorough analysis of the reasons for the delay represents the soundest method for determining what constitutes good cause" and that a Court may rely in part on the *Barker* factors. *Clark*, 135 Idaho at 260 (*citing Barker v. Wingo*, 407 U.S. 514 (1972)).

Article I Section 13 also protects a defendant's right to a speedy trial. As will be shown, the Idaho Supreme Court has wrongfully deviated from the right as it was defined by the framers. Additionally, one of the underpinnings of the right, what constitutes undue delay, has ceased to exist and must be reinterpreted in the context of the modern court system.

a. In Idaho the right to a speedy trial is defined by I.C. 19-3501 as it was at the time of the adoption of the Constitution.

"When construing the Idaho Constitution, 'the primary object is to determine the intent of the framers.'" *State v. Clarke*, 165 Idaho 393, 397, 446 P.3d 451, 455 (2019). "Provisions of the Idaho Constitution must be construed in light of the law prior to their adoption." *State v. Green*, 158 Idaho 884, 887, 354 P.3d 446, 449 (2015). Even Idaho's Constitution reflects this view. Idaho Const. art. XXI, § 2 ("All laws now in force in the territory of Idaho which are not repugnant to this Constitution shall remain in force…")

In *Clarke*, our Supreme Court found a statute in force at the time our Constitution was ratified to be controlling in its interpretation of Article I, § 17. *Clarke*, 165 Idaho 393.

In *State v. Matthews*, 129 Idaho 865, 934 P.2d 931 (1997), our Court considered the issue of whether search warrants needed to be signed in order to be valid. The Court found that warrants do need to be signed, or else a search pursuant to such a warrant will violate Art. I § 17 of our Constitution. The Court arrived at this conclusion despite the fact that Art. I § 17 is completely silent regarding whether a warrant needs a signature. The reason the Court was able to find a constitutional violation in this case was by acknowledging that the statutes which require a signature (I.C. §§ 19-4401, 4406, 4407), "predate the Constitution of the State of Idaho." *Id*., at 869, 934 P.2d at 935. Because these statutes, which require a signature on warrants, predated the Idaho Constitution, they "create a substantive right" which "existed prior to the adoption of this State's Constitution." *Id*.

In *State v. Rauch*, 99 Idaho 586, 586 P.2d 671 (1978), our Supreme Court found a defendant was entitled to constitutional relief for a violation of I.C. § 19-611 (knock and announce) after finding the rights contained in that statute were long standing at common law and "deeply rooted in our heritage." *Rauch*, at 593, 586 P.2d at 678. The *Rauch* Court was able to trace this deeply rooted heritage all the way back to 1603.

In this case, I.C. § 19-3501 must color this Court's interpretation of Art. I, § 13, because this statutory provision was in effect at the time of ratification. At the time of the adoption of our Constitution, the 1887 Territorial Criminal Practice Act provided:

> The Court, unless good cause to the contrary is shown, must order the prosecution of indictment to be dismissed, in the following cases:
> …
> 2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial at the next term of the Court in which the indictment is triable, after it is found.

R.S. 1887, § 8212. *See* Exhibit A. The right to a speedy trial was certainly well known to the framers of our Constitution. Section 8212 had been in place for nearly three years prior to the our Constitution's adoption. While the framers felt it unnecessary to lay out the amount of time for a speedy trial, the reliance on "terms" of the Court refers to R. S. 1887 § 3831 (Exhibit B), which reads as follows:

> Each term must be held until the business is disposed of, or until a day fixed for the commencement of some other term in the district court.

This Court may require some explanation for what may seem a vague directive that terms, now only used by our Supreme Court, were to be held until there was nothing left to do or the judge needed to be elsewhere. In the days of the territories of our country, it was unnecessary to employ vast numbers of District Judges, as the cases appropriate for them (as defined in Idaho in 1887 by R.S. 1887, § 3830) were typically few. In the Idaho Territory:

> three judges handled all the work of the district courts and supreme court. Each of the three sat as a district judge, and they sat together as the supreme court. They exercised the jurisdiction of local or territorial courts and of federal courts.

Dennis C. Colson, Idaho's Constitution: The Tie that Binds, 205 (2003 Ed.). So, as a judge put in in Michigan in 1828:

> "Heretofore, & until recently, the Judges of this Territory were required to hold but one Term of the Court annually & that in Detroit. . . . But as the country became more settled, new counties were organized;- and it has been deemed expedient to increase the number of terms, & places too, of holding Courts.-The Legislative Council of the Territory, under the sanction of an Act of Congress of the 29th Jan^{y} 1827, have, at its late session, directed court to be holden in each of the organized counties of the Peninsula-& giving very ample jurisdiction to them, have required that *all or a majority* of the Judges attend each term.-The consequence of this new organization is, that the Judges, collectively, have now to hold *fifteen* Courts annually, instead of one, & to traverse, mostly on horseback, an immense country, over roads not yet half formed &, some of which are exceedingly dangerous.- The principle of this system, is progressive; the number of courts to be holden, will continue to increase with the advancing settlement of the Country."

William Wirt Blume & Elizabeth Gaspar Brown, *Territorial Courts and Law: Unifying Factors in the Development of American Legal Institutions: Part I. Establishment of a Standardized Judicial System* 61 Mich. L. Rev. 1, 96 (Nov., 1962) (*quoting* Letter, Woodbridge to Strong, dated Nov. 28, 1828, Woodbridge Papers, Burton Historical Collection, Public Library, Detroit, Michigan.). Idaho judges were granted the right to set their own terms in 1873. *Id*. at 99; *U.S. v. Kuntze*, 2 Idaho 446, 21 P. 407, 408 (1889). In 1871, the Idaho Territorial Supreme Court found that it determined when these terms were to occur:

> The act of March 2, 1867, amendatory of the fifteenth section of the organic act of Idaho, provides, "that the judges of the supreme court of said territory, or a majority of them, shall, when assembled at the seat of government of said territory, define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and shall also fix the times and places for holding court in the several counties or subdivisions in each of said judicial districts, and alter the times and places of holding the courts, as to them shall seem proper and convenient."

People v. Heed, 1 Idaho 402, 406-07 (1871). District Court terms could be extremely infrequent. *See, Greathouse v. Heed*, 1 Idaho 494, 498 (1873) (noting in some counties there may only be one term a year). It is also worth noting that the legislature set the terms for the probate courts,

which functioned much like the magistrate courts we have now. *See, generally, id*. The importance of terms was more than simply the timing of trials- until a term was adjourned, judgments were not considered final and could be revised. *See, Moore v. Taylor*, 1 Idaho 630, 635 (1876).

When the Constitution was adopted, there was a lot of debate over whether to add additional judges. Colson, at 205-210. A vocal part of the delegation, led by William McConnell of Latah, argued that adding five additional judges to act solely as District Judges was too much expense. *Id*. at 206. When Weldon Heyburn of Shoshone and the judges argued that all courts were month and months behind, McConnell's faction argued it was the lawyers who were to blame. *Id*. at 207. In the end, it was the geography of our state that was to decide the issue. *Id*. at 209. The delegation overwhelmingly supported five new districts and judges. *Id*. They rejected thereby a compromise of four districts, placing two judges in north Idaho and two in the south as clearly unfair to the south, where some would have to travel 1200 miles to get to court. *Id*. The delegation clearly agreed with Judge Morgan, who said:

> "It is ruinous, absolutely ruinous to men to have cases for trial in these courts" because the subject of litigation becomes worthless after such a long time or because they have great amounts of money invested.

Id.at 207.

The upshot was Art. V Section 11, which states:

> The state shall be divided into five judicial districts, for each of which a judge shall be chosen by the qualified electors thereof, whose term of office shall be four years. And there shall be held a district court in each county, at least twice in each year, to continue for such time in each county as may be prescribed by law. But the legislature may reduce or increase the number of districts, district judges and district attorneys. This section shall not be construed to prevent the holding of special terms under such regulations as may be provided by law.

This Court should note that in the Constitution, though the District Judges were provided some leeway over when Court would be held in the various counties, it had to occur at least twice each year and each term would only conclude when the business was done, or the next term was to

begin. Additionally, the legislature had and has the power to require special terms, so whether or not court is held is not up to the judiciary. The right of Idaho citizens to speedy justice guaranteed by Art. I Section 18 of our Constitution is therefore not solely for the judiciary to define, any more than the right to a speedy trial for criminal defendants.

i. The Idaho Constitution guarantees a speedy trial except where there is good cause for a delay or the request for postponement came from the defendant.

Our state's speedy trial right must be as they were when the constitution was adopted. Not only is it clear from *Clarke* and other authorities that courts should first look to the understanding of the framers when considering the meaning of our constitutional rights, but even the Idaho Supreme Court had held that our constitutional right to a speedy trial was defined by I.C. § 19-3501 before the *Barker* test was adopted. *Ellenwood v. Cramer*, 75 Idaho 338, 343 (1954). It was not until *State v. Lindsay*, 96 Idaho 474, 475 (1975), that our Supreme Court held that *Barker* was an appropriate test for speedy trial under the Idaho Constitution. However- the Court held in *Clark* that the good cause test of I.C. §19-3501 was not an exact equivalent to the *Barker* test. 135 Idaho at 260. Therefore, this Court should hold that *Lindsay* and its progeny were wrongly decided, in that they did not properly consider Art. I Sec. 13 by starting from the understanding of our framers.

ii. The Idaho Constitution requires a fixed amount of time constitute undue delay. This Court should adopt the six-month line adopted by our legislature.

All that is left for discussion is what has become of the Idaho constitutional right and the statutory right pursuant to I.C. § 19-106 to a speedy trial after the legislature repealed terms of district courts in 1975. *See*, *State v. Carter*, 103 Idaho 917, 920 (1981). The *Carter* Court thought the question easily resolved by its earlier ruling to rely on the *Barker* test. *See id*. As argued in the preceding paragraph, however, the federal right to a speedy trial and the Idaho right

are not equivalent. Just as the *Barker* test does cannot replace the test for good cause, the *Barker* unreasonable delay test does not replace the next term of court test. This Court must decide what would be equivalent to the next term of court now that they no longer exist.

In *State v. Bennion*, 112 Idaho 32 (1986), the Idaho Supreme Court took up a similar challenge when a defendant demanded a jury trial for an infraction under Art. I Sec. 7. As the Idaho Supreme Court found:

> This Court long and often has stated that Article 1, § 7 preserves the right to jury trial as it existed at the common law and under the territorial statutes when the Idaho Constitution was adopted. *E.g., Burnham, supra,* 35 Idaho at 526, 207 P. at 590; *Christensen v. Hollingsworth,* 6 Idaho 87, 93, 53 P. 211, 212 (1898). This standard of construction holds sway in the criminal as well as civil context. *Dutton v. District Court,* 95 Idaho 720, 723, 518 P.2d 1182, 1185 (1974) (involved criminal contempt); *State v. Jutila,* 34 Idaho 595, 597, 202 P. 566 (1921) (involved robbery). Most jurisdictions interpret their analogous constitutional provisions in an analogous way. *E.g., People v. Collins,* 17 Cal.3d 687, 131 Cal.Rptr. 782, 552 P.2d 742, 745 (1976); *Rothweiler v. Superior Court,* 100 Ariz. 37, 410 P.2d 479, 485 (1966); *see generally,* 47 Am.Jur.2d *Jury,* §§ 7, 17. The standard embodies the common sense notion that, by employing the phrase "shall remain inviolate," the Framers must have intended to perpetuate the right as it existed in 1890. *Burnham, supra,* 35 Idaho at 525–26, 207 P. at 590;*Christensen, supra,* 6 Idaho at 94, 53 P. at 212; *accord, State v. Cousins,* 97 Ariz. 105, 397 P.2d 217, 218 (1964); *Town of Montclair v. Stanoyevich,* 6 N.J. 479, 79 A.2d 288, 293 (1951).
>
> The standard should not be taken to extreme. The Framers did not intend to *literally* freeze the law precisely as it existed in 1890. To do so would yield the absurd result of affording no right to jury trial to those accused of crimes that happened not to be in statutory or common law existence at that arbitrary point in history.

Bennion, 112 Idaho at 37. The Court then reviewed the history of the right to a jury trial in the common law of England, other jurisdictions, and in Idaho at the time of statehood. *Id*. at 38-41. The Court found: "At the time of statehood, the territory of Idaho made two specific exceptions to an otherwise all-encompassing grant of the right to jury trial in criminal actions." *Id*. at 41. The Court then looked to the framers and the Constitution itself for meaning. *Id*.at 42. The Court found that the Framers had imprisonment and punitive measures in mind. *Id*. The Court

determined that this history permitted "summary proceedings if the sanction is decriminalized." *Id*. at 45.

Here, as argued above, the history of terms of court at the time of the adoption of our Constitution would permit this Court to find that the framers did not wish for people to languish in jail awaiting trial. The courts were not to have fewer than two terms- meaning that stretching those terms to their limits, a person could not have sat for more than a year. Additionally, this requirement did not permit the judge to close court and leave the district without having tried the defendant's case. One can imagine the psychological effect that would have on a defendant- to wait in jail and have the only person with the power to release them pack up and leave the area.

The framers also would have been aware of the history of the right to a speedy trial. As found by the United States Supreme Court:

> We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written, 'We will sell to no man, we will not deny or defer to any man either justice or right';[8] but evidence of recognition of the right to speedy justice in even earlier times is found in the Assize of Clarendon (1166). By the late thirteenth century, justices, armed with commissions of gaol delivery and/or oyer and terminer were visiting the countryside three times a year. These justices, Sir Edward Coke wrote in Part II of his Institutes, 'have not suffered the prisoner to be long detained, but at their next coming have given the prisoner full and speedy justice, * * * without detaining him long in prison.' To Coke, prolonged detention without trial would have been contrary to the law and custom of England; but he also believed that the delay in trial, by itself, would be an improper denial of justice. In his explication of Chapter 29 of the Magna Carta, he wrote that the words 'We will sell to no man, we will not deny or defer to any man either justice or right' had the following effect:
>
> 'And therefore, every subject of this realme, for injury done to him in bonis terris, vel persona, by any other subject, be he ecclesiasticall, or temporall, free, or bond, man, or woman, old, or young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the law, and have justice, and right for the injury done to him, freely without sale, fully without any deniall, and speedily without delay.'

> Coke's Institutes were read in the American Colonies by virtually every student of the law. Indeed, Thomas Jefferson wrote that at the time he studied law (1762—1767), 'Coke Lyttleton was the universal elementary book of law students.' And to John Rutledge of South Carolina, the Institutes seemed 'to be almost the foundation of our law.' To Coke, in turn, Magna Carta was one of the fundamental bases of English liberty. Thus, it is not surprising that when George Mason drafted the first of the colonial bills of rights, he set forth a principle of Magna Carta, using phraseology similar to that of Coke's explication: '(I)n all capital or criminal prosecutions,' the Virginia Declaration of Rights of 1776 provided, 'a man hath a right * * * to a speedy trial * * *.' That this right was considered fundamental at this early period in our history is evidenced by its guarantee in the constitutions of several of the States of the new nation, as well as by its prominent position in the Sixth Amendment. Today, each of the 50 States guarantees the right to a speedy trial to its citizens.
>
> The history of the right to a speedy trial and its reception in this country clearly establish that it is one of the most basic rights preserved by our Constitution.

Klopfer, 386 U.S. at 223-26 (footnotes omitted).

Since 1975, no defendant needs to worry that a judge will become unavailable, leaving them detained essentially incommunicado. All the same, the weight of imprisonment and awaiting trial cannot be made much easier by having a judge available who does not hear your case though you ask him or her to. To some extent, the feeling of begging for one's freedom and having it fall on deaf ears as time drags on might be worse. In 1980, the Idaho legislature amended I.C. § 19-3501 to not permit a trial to be prolonged beyond six months. *Carter*, 103 Idaho at 920, n. 2; *see also*, S1369 Statement of Purpose (1980) (explaining adoption of six month bright line was to provide citizens with the speediest trial that was possible under previous statute) (Exhibit C). This Court may consider the opinion of the legislature, which is also reflected in other states. *See*, Francis C. Amendola, *et al*., *State Provisions Regarding Speedy Trials, Generally*, 23 C.J.S. CRIMINAL PROCEDURE AND THE RIGHTS OF THE ACCUSED § 820 (2020).

This Court should draw a firm line at six months in conformity with the legislature and those of other states. In *Roper v. Simmons*, 543 U.S. 551, 574 (2005), the Court held:

> Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. The plurality opinion in *Thompson* drew the line at 16. In the intervening years the *Thompson* plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of *Thompson* extends to those who are under 18. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.

Similarly, here, where Idaho's framers intended a fixed line for when a defendant had waited to long for trial, but the foundation for that line has been erased, it is for the courts to do their duty and ensure that the intentions of the Constitution and its protections remain.

b. A defendant in Idaho can never request additional time without losing his right to a speedy trial.

As noted, I.C. § 19-3501 and its territorial predecessor that fixed the right to a speedy trial for the Idaho Constitution R.S. 1887, § 8212 do not permit a speedy trial claim when the trial was "postponed upon [the defendant's] application." This language could have been interpreted any number of different ways, but in *State v. Kysar*, 116 Idaho 992, 999 (1989), the Idaho Supreme Court, with no analysis, declared that any request for delay from a defendant waived the statutory right entirely. As the territorial statute defining the constitutional right has the same language, this Court can safely presume that the Idaho Supreme Court, if it ever revisits the issue of what the constitutional right consists of, will hold the same as to it. Thus, no defendant may ever request a delay in Idaho if they want to preserve their right to a speedy trial.

II. A capital case cannot be prepared in ten months.

With this six months to trial as a backdrop, modern death penalty work becomes impossible. Undersigned counsel is unable to fulfill the requirements of the ABA Guidelines For

the Appointment and Performance of Defense Counsel in Death Penalty Proceedings[1] (hereinafter "Performance Guidelines") and the Supplementary Guidelines for Mitigation Function of Defense Teams in Death Penalty Cases[2] which have been adopted by Idaho and accepted by the U.S. Supreme Court as the defining standard for effective representation in capital cases. *See Wiggins v. Smith*, 539 U.S. 510, 524 (2003); IDAPA 61.01.02.070.02; Public Defense Commission, Capital Defending Attorney Qualifications and Roster, https://pdc.idaho.gov/capital-counsel-qualifications-and-roster/ (last visited August 22, 2023).

Death penalty cases must be considered differently compared to non-death penalty cases. They must be subjected to heightened constitutional scrutiny. Put simply, so long as Mr. Kohberger's execution is a possible result in this case, the State of Idaho must take basic, if not "extraordinary measures" to protect his constitutional rights. *Caldwell v. Mississippi*, 472 U.S. 320, 329 (1985). This is abundantly clear from the 6th and 14th Amendments and is enunciated precisely in the case of *Ake v. Oklahoma*:

> This Court has long recognized that when a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. This elementary principle, grounded in significant part on the Fourteenth Amendment's due process guarantee of fundamental fairness, derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake.

Ake v. Oklahoma, 470 U.S. 68, 76 (1985).

Unquestionably, the prosecution's intent to seek the death penalty ratchets up the demands on defense counsel. *See, e.g.*, *Sawyer v. Whitley,* 505 U.S. 333, 343 (1992); *see also State v. Young*, 172 P.3d 138, 141 (N.M. 2007). Nowhere are these demands more clearly

[1] American Bar Association, ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003), *available at* https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2003guidelines.pdf.
[2] American Bar Association, ABA Supplementary Guidelines for Mitigation Function of Defense Teams in Death Penalty Cases (2008) *available at* https://pdc.idaho.gov/wp-content/uploads/2016/06/ABASupp.MitigationGuidelines2008.pdf.

enunciated than in the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Proceedings. Defense counsel incurs the immediate obligation to conduct a thorough investigation at every stage of the case, and this "duty is intensified (as are many duties) by the unique nature of the death penalty, [as] has been emphasized by recent statutory changes, and is broadened by the bifurcation of capital trials." *Id.* at 1016 (footnotes omitted). The breadth and scope of this duty is such that it routinely results in findings of ineffective assistance after the fact (and after all sides have sunk enormous costs). *See id.* at 1016 n.197 (collecting inadequate investigation cases).

The duty to investigate of course includes all the numerous issues related to the guilt phase of homicide charges carrying the possibility of capital punishment: witness interviews, forensic analysis, crime scene investigation, charging documents, police conduct, codefendants, alibi, etc. *See id.* at 1016-21. However, the penalty phase alone can necessitate an even wider investigation. With virtually limitless avenues for mitigating evidence, all of which must be pursued, *see* I.C. § 19-2515(6); *Lockett v. Ohio*, 438 U.S. 586, 608 (1978), the penalty phase investigation "requires [an] extensive and generally unparalleled" look into the defendant's "personal and family history . . . . begin[ning] with the moment of conception." Performance Guidelines, at 1022. Just the starting point for defense counsel includes:

> (1) Medical history (including hospitalizations, mental and physical illness or injury, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage); (2) Family and social history (including physical, sexual, or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighborhood environment, and peer influence); other traumatic events such as exposure to criminal violence, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e. g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities); (3) Educational history (including achievement, performance, behavior, and activities), special educational needs (including cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities; (4) Military service, (including length and type of service, conduct, special training, combat exposure, health and mental health services); (5)

> Employment and training history (including skills and performance, and barriers to employability); (6) Prior juvenile and adult correctional experience (including conduct while under supervision, in institutions of education or training, and regarding clinical services)[.]

Id. at 1022-23. None of this material is necessarily easy to procure: His most personal experiences "may be extremely difficult for the client to discuss." *Id.* at 1024. Indeed, defense counsel must build a special rapport with his client for all proceedings; he is asking the client to trust counsel *with his life*. And even the information defense counsel *can* collect then requires "[t]he collection of corroborating information from multiple sources—a time-consuming task . . . to ensure the reliability and . . .persuasiveness of the evidence." *Id.* at 1024.

That is not the type of investigation that can wait until the week, or even month, before trial. To the contrary, the very possibility of the *penalty* phase proceedings weighs heavily on defense counsel's preparations from the moment they begin to work on the case. *See id.* at 1023 ("The mitigation investigation should begin as quickly as possible, because it may affect the investigation of first phase defenses . . . decisions about the need for expert evaluations . . . motion practice, and plea negotiations."). The "penalty phase" is in that sense a misnomer; for the defendant, the penalty phase begins as soon as the possibility of a death sentence arises, whether or not he has yet been found guilty. The mitigation investigation, furthermore, runs in parallel with the many tasks of defense counsel to prevent or prepare for trial on the original charges. *See id.* at 1028-1054 (Guidelines 10.8-10.10.2 discussing motion practice, negotiations with the prosecution, pleading, trial preparation, and jury selection).

It is no surprise, then, that one study estimates that the average capital trial consumes nearly 1,900 hours of defense counsel's time—over *sixteen times* the average hours spent on non-capital *homicide* cases.[3] That estimate itself is not an indictment of the capital punishment

[3] Hon. James R. Spencer, et al., Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* 11 tbl. (1998), *available at*

system; it reflects in part the "extraordinary measures" required to ensure a fair hearing for a defendant accused of a capital crime. *Caldwell*, 472 U.S. at 329. However, the demands on capital counsel become a constitutional problem when, as in Idaho, the State's speedy trial requirement hamstrings defense counsel's ability to commit the requisite time.

The state, with its one hand, can dramatically escalate the demands on Mr. Kohberger and defense counsel by noticing intent to seek death. Yet with its other hand, it rigs the system so that it can be assured that defense counsel cannot meet those demands or must counsel a client to give up his right to a speedy trial.

III. Idaho cannot force a defendant to choose between his rights.

As "the first line of defense for individual liberties," this Court's foremost duty is to safeguard the rights of Idaho citizens and "deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay[.]" *State v. Randolph*, 800 N.W.2d 150, 159 (Minn. 2011) (internal quotation marks omitted). Any number of remedies is available to the Court through the use of its inherent powers to supervise cases. *See, e.g.*, *State v. Blank*, 33 Idaho 730, 822 (1921). Among these powers is the ability to preclude prosecution and imposition of the death penalty. *See Furman v Georgia*, 408 U.S. 238, 239 (1972) (per curiam). The Court also has authority to stay proceedings in the interests of justice. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

"There are.. circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *United States v. Cronic*, 466 U.S. 648, 658 (1984). The hallmark of such situations is that, "although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into

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http://www.americanbar.org/content/dam/aba/uncategorized/Death_Penalty_Representation/Standards/National/federal_judicial_conference_recommendations.authcheckdam.pdf .

the actual conduct of the trial." *Cronic*, 466 U.S. at 659-60 (citing *Powell v. Alabama*, 287 U.S. 45 (1932)). In such cases the defendant has been constructively denied his right to counsel and need not wait to assert his claim in post-conviction proceedings. *See*, *e.g.*, *Hurrel-Harring v. State*, 930 N.E.2d 217, 224-26 (N.Y. 2010); *State v. Peart*, 621 So. 2d 780, 787 (La. 1993) ("For example, ineffective assistance of counsel claims based on allegations that the attorney is faced with a conflict of interest are routinely brought . . . before trial.").

The United States Supreme Court has had few opportunities to opine on the full array of circumstances that give rise to a presumption of prejudice, but it has applied that presumption when counsel has a definite conflict of interest with the defendant. *Holloway v. Arkansas*, 435 U.S. 475, 490 (1978). The *Holloway* Court explained that a presumption is necessary in such cases because the prejudice inquiry "would not be susceptible of intelligent, evenhanded application." 435 U.S. at 490. Courts would face the intractable problem of identifying, after the fact, what counsel "*refrain[ed]* from doing" both before and during trial. *Id.* at 490-91. Because the record on appeal rarely illuminates the reason for inaction, "assess[ing] the impact of a conflict of interests on the attorney's options, tactics, and decisions . . . would be virtually impossible." *Id.* at 491.

State courts have applied this wisdom to conflicts created by resource shortages. When States have failed to provide adequate funding to public defenders courts have recognized this results in "a conflict of interest is inevitably created" when a public defender's "excessive caseload forces [him] to choose between the rights of the various indigent criminals he represents[.]" *In re Order on Prosecution of Crim. Apps. by the Tenth Jud. Cir. Public Defender*, 561 So. 2d 1130, 1135 (Fla. 199); *accord In re Edward S.*, 92 Cal. Rptr. 3d 725, 746-47 (Cal. Ct. App. 2009).

Here, the choice of the prosecution to seek the death penalty, in conjunction with the requirements for a defense in a capital case as required by Idaho, essentially forced Mr.

Kohberger to abandon his right to a speedy trial. Courts in Idaho have long recognized that forcing citizens to choose between their rights is the same as depriving them of those rights. *See, e.g.*, *Bartosz v. Jones*, 146 Idaho 449, 462 (2008); *Osteraas v. Osteraas*, 124 Idaho 350, 355 (1992). The United States Supreme Court has held the same. *See, e.g.*, *Lefkowitz v. Cunningham*, 431 U.S. 801, 807-08 (1977); *Simmons v. U.S.*, 390 U.S. 377, 393-394 (1968) ("When [the choice between testifying and giving up a benefit] is applied to a situation in which the 'benefit' to be gained is that afforded by another provision of the Bill of Rights, an undeniable tension is created."). The State of Idaho may not force this "Hobson's Choice" on Mr. Kohberger. However, it did, and now the Court has a "waiver" of a right based upon it. A waiver, however, must be voluntary, "and courts should indulge ever reasonable presumption against waiver." *State v. Lopez*, 144 Idaho 349, 352 (Ct.App.2007) (*citing Barker*, 407 U.S. at 525). Thus, this situation has created an "undeniable tension" within this case.

Without question, the surest way to safeguard Mr. Kohberger's rights is to strike the death penalty and restore his right to a speedy trial. Striking the death penalty will balance Mr. Kohberger's right to effective assistance of counsel with his right to a speedy trial. *Cf. Young*, 172 P.3d at 143-44 (discussing the balance). Furthermore, a death penalty structure that violates the constitution is, by its nature, unconstitutional. Idaho's system of obtaining death convictions is unconstitutional at this time. This was recently recognized in *State v. Vallow*, Fremont County Case No. CR22-21-1624 (2023) (Order Granting Defendant's Motion to Dismiss the Death Penalty and Order Striking the Notice of Intent to Seek Death Penalty). In that matter, it was recognized that within the time limits required for a speedy trial, neither the State nor the Defense could appropriately function and a just outcome be reached. See, Rett Nelson, *Judge Removes Death Penalty, Addresses Evidence Motions in Lori Daybell Murder Case*, EASTIDAHONEWS.COM (Mar. 21, 2023) (available at https://www.eastidahonews.com/2023/03/judge-removes-death-penalty-addresses-evidence-

motions-in-lori-daybell-murder-case/). The same result should be obtained here.

CONCLUSION

Based upon the foregoing and argument to be presented at the hearing hereon, this Court is respectfully requested to grant this Motion that:

(a) the State's Notice of Intent to Seek Death Penalty be struck;

(b) the Court seat a jury which is not "death-qualified";

(c) the Court preclude the admission of any evidence of aggravating circumstances during the trial of this case; and,

(d) the Court not instruct the jury on any aggravated punishment.

DATED this __4____ day of September, 2024.

BY: _____
JAY WESTON LOGSDON
INTERIM CHIEF PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the ___5____ day of September, 2024 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov
Elisa Massoth – via Email: legalassistant@kmrs.net

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A

1887 Revised Statutes (R.S.)

to a return of any money he may have deposited as bail.

When defendant becomes sane, etc. Cr. P., 674.

SEC. 8199. If the defendant is received into the asylum, he must be detained there until he becomes sane. When he becomes sane, the superintendent must give notice of that fact to the sheriff and District Attorney of the county. The sheriff must thereupon, without delay, take the defendant from the asylum, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.

Expenses, etc., where chargeable. Cr. P., 676.

SEC. 8200. The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he has any, or from a relative, town, city, or county bound to provide for and maintain him elsewhere.

CHAPTER VII.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF COURT.

Compromising certain offenses. Cr. P., 661.

SECTION 8205. When a defendant is held to answer for a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while engaged in the execution of the duties of his office;
2. Riotously;
3. With an intent to commit a felony.

To be by permission of court. Cr. P., 662, 663.

SEC. 8206. If the party injured appears before the magistrate to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

No other compromise lawful. Cr. P., 664.

SEC. 8207. No public offense can be compromised, nor can any proceeding or prosecution for the punishment of crime upon a compromise be stayed, except as provided in this Chapter.

CHAPTER VIII.

DISMISSAL OF THE ACTION FOR WANT OF PROSECUTION OR OTHERWISE.

When action may be dismissed. Cr. P., 676, 677.

SECTION 8212. The Court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

1. When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the Court at which he is held to answer;
2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial at the next term of the Court in which the indictment is triable, after it is found.

Action continued and defendant discharged on his own recognizance. Cr. P., 678.

SEC. 8213. If the defendant is not indicted or tried, as provided in the last section, and sufficient reason therefor is shown, the Court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

When defendant discharged. Cr. P., 679.

SEC. 8214. If the Court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

Dismissal of action. Cr. P., 680.

SEC. 8215. The Court may, either of its own motion or upon the application of the District Attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

Nolle prosequi abolished. Cr. P., 681.

SEC. 8216. The entry of a nolle prosequi is abolished, and neither the Attorney General nor the District Attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Dismissal, when a bar. Cr. P., 682.

SEC. 8217. An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor; but it is not a bar if the offense is a felony.

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

Summons upon information. Cr. P., 683.

SECTION 8222. Upon an information or presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corpor-

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possession of real estate; or the legality of any tax, unjust assessment, toll, or municipal fine, or in which the demand or the value of the property in controversy exceeds one hundred dollars;

4. To all special proceedings;

5. To the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its powers;

6. To the trial of all indictments;

7. Its appellate jurisdiction extends to all cases arising in Probate or Justices' Courts; and to all other matters and cases wherein an appeal is allowed by law.

Duration of term.

SEC. 3831. Each term must be held until the business is disposed of, or until a day fixed for the commencement of some other term in the district.

Adjournments.

SEC. 3832. The court may adjourn from time to time during the term, and may, when the public convenience requires, adjourn the term over the time fixed by law for the commencement of another term in the same district.

Judgments and orders entered in vacation.

SEC. 3833. Judgments and orders of this court may be entered either in term or vacation.

CHAPTER IV.

OF THE PROBATE COURT.

Court in each county.

SECTION 3840. There must be a Probate Court held in each of the counties.

Jurisdiction of probate court.

SEC. 3841. The Probate Court has jurisdiction:

1. To open and receive proof of last wills and testaments and to admit them to proof;

2. To grant letters testamentary of administration and of guardianship, and to revoke the same;

3. To appoint appraisers of estates of deceased persons;

4. To compel executors, administrators and guardians to render accounts;

5. To order the sale of property of estates, or belonging to minors;

6. To order the payment of debts due from estates;

7. To order and regulate all distributions of property or estates of deceased persons;

8. To compel the attendance of witnesses and the production of title deeds, papers and other property of an estate or of a minor;

9. To make such orders as may be necessary to the exercise of the powers conferred upon it.

In addition to their probate jurisdiction to hear and determine all civil causes wherein the damage or debt claimed does not exceed the sum of five hundred dollars, exclusive of interest, and concurrent jurisdiction with Justices of the Peace in criminal cases.

Presumptions as to probate proceedings.

SEC. 3842. The proceedings of this court are construed in the same manner and with like intendments as the proceedings of courts of general jurisdiction, and to its records, orders, judgments and decrees there is accorded like force,

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1980

Legislature of the State of Idaho]

[Second Regular Session
[Forty-fifth Legislature

IN THE SENATE

SENATE BILL NO. 1369

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO DISMISSALS OF ACTIONS; AMENDING SECTION 19-3501, IDAHO CODE, TO PROVIDE FOR THE DISMISSAL OF A CRIMINAL CHARGE AGAINST A PERSON IF CHARGES HAVE NOT BEEN FILED WITHIN SIX MONTHS OF THE DATE OF HIS ARREST AND TO PROVIDE THAT A CRIMINAL CHARGE, AGAINST A DEFENDANT WHOSE TRIAL HAS NOT BEEN POSTPONED UPON HIS OWN APPLICATION, MUST BE BROUGHT WITHIN SIX MONTHS FROM THE DATE THE INDICTMENT OR INFORMATION IS FILED WITH THE COURT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-3501, Idaho Code, be, and the same is hereby amended to read as follows:

19-3501. WHEN ACTION MAY BE DISMISSED. The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

1. When a person has been held to answer for a public offense, if an indictment or information is not found against him ~~at the next term of the court at which he is held to answer~~ and filed with the court within six (6) months from the date of his arrest.

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial ~~at the next term of the court in which the indictment is triable, after it is found~~ within six (6) months from the date that the indictment or information is filed with the court.

S1369 1980

STATEMENT OF PURPOSE

This bill would amend section 19-3501, Idaho Code, which presently provides the time limit within which a defendant must be charged and brought to trial. Idaho Code §19-3501 supplements the constitutional provision for a speedy trial contained in Art. 1, Section 13, Idaho Constitution. (State v. Hobson, 99 Idaho 200 (1978)).

Because the present statute requires that the criminal action be filed against the defendant in the next "term of court" and thereafter his trial must be had in the "next term of court," his speedy trial requirement can vary tremendously depending upon when he is arrested during a "term of court." For example, if he is arrested at the beginning of one term of court, the formal charges do not have to be formalized in an indictment or information until the end of the next term which could be one day less than twelve months later. However, in the event formal charges in the form of an indictment or information is filed on the last day of one term of court, his trial must be held by the end of the next term of court which is only six (6) months away.

This bill would enact a uniform time limit of six (6) months, which was the shortest time within which a defendant must have a trial under the present statute, and eliminate the reference to "terms of court" which have become outdated and archaic in the modern practice of the courts. In fact, the courts are in continuous session in all locations, and terms of court are no longer needed.

The primary benefit which would be derived by this amendment to section 19-3501, Idaho Code, would be that criminal defendants would have a uniform fixed period of six (6) months within which they must have a speedy trial rather than a variable period depending upon when charges were filed against them during a term of court of the district court.

FISCAL NOTE

This bill has no fiscal impact on the state general fund.

1980 Final Daily Data

2/8 Senate intro - 1st rdg - to printing
2/11 Rpt prt - to HEW
3/14 Rpt out - to 14th Ord
3/17 Rpt out amen - to engros
3/19 Rpt engros - to 1st rdg as amen
3/19 1st rdg - to 2nd rdg as amen
3/20 Amens rpt prt
3/20 2nd rdg - to 3rd rdg as amen
3/21 3rd rdg as amen - PASSED - 33-0-2
NAYS -- none.
Absent and excused -- Swenson, Van Engelen.
Title apvd - to House
3/22 House intro - 1st rdg as amen - to Health/Wel
3/24 Rpt out - rec d/p - to 2nd rdg as amen
3/24 2nd rdg - to 3rd rdg as amen
3/26 3rd rdg as amen - PASSED - 59-10-1
NAYS -- Barlow, Brackett, Brooks, Harlow, Hollifield, Infanger, Jones, Stivers, Ungricht, Winchester.
Absent and excused -- Kennevick.
Title apvd - to Senate
3/26 To enrol
3/27 Rpt enrol - Pres signed
3/27 Sp signed
3/31 To Governor
4/2 Governor signed
Session Law Chapter 325
Effective: 4-2-80

S1365aa SHELTER HOMES - Amends existing law to clarify the authority of the Boards of County Commissioners to provide shelter homes and shelter care facilities for the care of sick or indigent persons.
By.....Health, Education & Welfare

2/8 Senate intro - 1st rdg - to printing
2/11 Rpt prt - to HEW
2/18 Rpt out - to 14th Ord
2/19 Rpt out amen - to engros
2/20 Amens rpt prt
2/21 Rpt engros - to 1st rdg as amen
2/21 1st rdg - to 2nd rdg as amen
2/22 2nd rdg - to 3rd rdg as amen
2/26 3rd rdg as amen - PASSED - 34-0-1
NAYS -- none.
Absent and excused -- Bilyeu.
Title apvd - to House
2/27 House intro - 1st rdg as amen - to Rev/Tax
3/13 Rpt out - rec d/p - to 2nd rdg as amen
3/14 2nd rdg - to 3rd rdg as amen
3/17 3rd rdg as amen - PASSED - 67-2-1
NAYS -- Reardon, Stephenson.
Absent and excused -- Tibbitts.
Title apvd - to Senate
3/18 To enrol
3/19 Rpt enrol - Pres signed
3/20 Sp signed
3/21 To Governor
3/26 Governor signed
Session Law Chapter 185
Effective: 7-1-80

S1366 SALES TAX - Amends existing law to increase the amount of sales tax revenue distributed to counties and cities on the basis of a population factor and tax charges factor.
By.....Local Government & Taxation

2/11 Senate intro - 1st rdg - to printing
2/12 Rpt prt - to Loc Gov

S1367 TAX AND TAXATION - Amends existing law to increase the schedule of income limits for the circuit breaker and property tax relief.
By.....Local Government & Taxation

--CONTINUED--

2/11 Senate intro - 1st rdg - to printing
2/12 Rpt prt - to Loc Gov

S1368 EQUIPMENT SUPPLIERS - Amends existing law to provide equipment suppliers the same protection afforded suppliers of labor and material under performance bonds of public work contractors.
By.....Judiciary & Rules

2/11 Senate intro - 1st rdg - to printing
2/12 Rpt prt - to Jud
2/28 Rpt out - rec d/p - to 2nd rdg
2/29 2nd rdg - to 3rd rdg
3/3 3rd rdg - PASSED - 34-0-1
NAYS -- none.
Absent and excused -- Little.
Title apvd - to House
3/4 House intro - 1st rdg - to Jud
3/14 Rpt out - rec d/p - to 2nd rdg
3/17 2nd rdg - to 3rd rdg
3/18 3rd rdg - PASSED - 65-2-3
NAYS -- Hale, Stoicheff.
Absent and excused -- Davidson, Horsch, Reardon.
Title apvd - to Senate
3/19 To enrol
3/20 Rpt enrol - Pres signed
3/21 Sp signed
3/22 To Governor
3/28 Governor signed
Session Law Chapter 199
Effective: 7-1-80

S1369 CRIMINAL OFFENSES AND PROCEDURES - Amends existing law to provide that criminal charges must be filed within six months from a defendant's arrest or when the indictment or information is filed with the court.
By.....Judiciary & Rules

2/11 Senate intro - 1st rdg - to printing
2/12 Rpt prt - to Jud
2/19 Rpt out - rec d/p - to 2nd rdg
2/20 2nd rdg - to 3rd rdg
2/21 3rd rdg - PASSED - 35-0-0
NAYS -- none.
Absent and excused -- none.
Title apvd - to House
2/22 House intro - 1st rdg - to Jud
3/6 Rpt out - rec d/p - to 2nd rdg
3/7 2nd rdg - to 3rd rdg
3/10 3rd rdg - PASSED - 64-4-2
NAYS -- Fitz, Ingram, Reardon, Stoicheff.
Absent and excused -- Tibbitts, Winchester.
Title apvd - to Senate
3/11 To enrol
3/12 Rpt enrol - Pres signed
3/13 Sp signed
3/14 To Governor
3/19 Governor signed
Session Law Chapter 102
Effective: 7-1-80

S1370 LIENS - Amends existing law to provide suppliers, renters, and leasors of equipment the same lien rights as materialmen.
By.....Judiciary & Rules

2/11 Senate intro - 1st rdg - to printing
2/12 Rpt prt - to Jud
2/28 Rpt out - rec d/p - to 2nd rdg
2/29 2nd rdg - to 3rd rdg
3/3 3rd rdg - PASSED - 34-0-1
NAYS -- none.
Absent and excused -- Little.
Title apvd - to House

--CONTINUED--

Senate

MINUTES

JUDICIARY AND RULES COMMITTEE

February 8, 1980

Chairman High called the meeting to order at 2:25 p.m. in Room 430, Statehouse, on Friday, February 8.

ROLL CALL — All members present with the exception of Senator Dobler, absent and excused.

VISITORS — Carl Bianchi, Idaho Supreme Court
Scott Campbell, Ada County Prosecutor's Office
Pam Bengson, Attorney General's Office
Sheila Riley, Dept. of Insurance
Senator Watkins
Ray Burns, Pocatello

MINUTES — Upon a motion by Senator Klein, seconded by Senator Leese, the minutes of February 6 were approved as printed, by voice vote.

CLARIFICATION REQUEST — The Chairman brought before the committee a request from the Senate for clarification of the paired voting procedure. Provided were sample forms of how the procedure might be improved. It was pointed out that the form should include signatures of both Senators involved in the paired vote.

ACTION — Chairman High asked unanimous consent that a form be drafted and presented to the President of the Senate for approval. There being no objection, it was so ordered. A letter to that effect will be provided to the Secretary of the Senate.

RS 5589 — RELATING TO SERVICE OF SUBPOENAS IN LEGISLATIVE MATTERS
Senator Risch explained that this is a redraft of RS 5247 previously before the committee with the language change as discussed.

MOTION — Moved by Senator Klein, seconded by Senator Leese, to introduce RS 5589. By voice vote, the motion carried.

RS 5320 — PROVIDING FOR REPEAL OF SENATE RULE 11 (B) Senator Risch stated that the redraft of this RS has not yet been received from the data center but would be brought before the committee hopefully by the next meeting.

RS 5470 — RELATING TO EXEMPTION FROM JURY SERVICE FOR DENTISTS
Carl Bianchi explained that when the state enacted the "Uniform Jury Selection and Service Act" in 1971 this section of the Idaho Code was apparently overlooked and should be repealed to avoid misunderstanding.

MOTION — Moved by Senator Klein, seconded by Senator Verner, to introduce RS 5470. By voice vote, the motion carried.

RS 5471 — RELATING TO GROUNDS FOR REMOVAL, SUSPENSION, OR REPRIMAND OF ATTORNEYS Carl Bianchi explained that since Idaho Code 3-301 no longer describes the method by which practicing attorneys are disciplined, this section of the Code should be repealed in its entirety to conform to present day law and practices.

MOTION — Moved by Senator Klein, seconded by Senator Hartvigsen, to introduce RS 5471. By voice vote, the motion carried.

RS 5421 — RELATING TO DISMISSALS OF ACTIONS Mr. Bianchi explained that this proposed bill would amend section 19-3501 of the Idaho Code which presently provides the time limit within which a defendant must be charged and brought to trial. Further, that the primary benefit which would be derived by this amendment would be that criminal defendants would have a uniform fixed period of six months within which they must have a speedy trial rather than a variable period depending upon when charges were filed against them during a term of court of the district court. Two possible language changes were discussed; adding "or filed" on line 16 and adding "or trial commenced" on line 20.

MOTION — Moved by Senator Mitchell, seconded by Senator Verner, to introduce RS 5421. By voice vote, the motion carried.

RS 5426C1 — RELATING TO LIEN LAWS Senator Watkins introduced Mr. Ray Burns of Pocatello who spoke to the committee about the purpose of the proposed legislation. Mr. Burns said the intent is to provide that renters, leasors, and suppliers of equipment, which perform labor in connection with any land or building development or improvement, or to establish boundaries, shall be entitled to the same lien rights on such property as the materialmen.

MOTION — Moved by Senator Mitchell, seconded by Senator Verner, to introduce RS 5426C1. By voice vote, the motion carried.

RS 5427C1 — RELATING TO PERFORMANCE BONDS OF PUBLIC WORKS CONTRACTORS Mr. Burns stated that the purpose of this proposed legislation is to provide that suppliers of equipment shall be protected and have the same claim rights with respect to performance and payment bonds as suppliers of labor and materials.

MOTION — Moved by Senator Risch, seconded by Senator Mitchell, to introduce RS 5427C1. By voice vote, the motion carried.

Senate

MINUTES

JUDICIARY & RULES COMMITTEE

February 18, 1980

Chairman High called the meeting to order at 1:45 p.m. on Monday, February 18, Room 430, Statehouse.

ROLL CALL — All members present.

VISITORS — Carl Bianchi, Supreme Court
Bill Crowl, Dept. of Correction
Darrol Gardner, Dept. of Correction
Senator Bradshaw
Robert Koontz, Boise Attorney
Hal Ryan, Boise Attorney
Jay Webb, Boise Attorney

MINUTES — Upon a motion by Senator Leese, seconded by Senator Verner, the minutes of February 15 were approved as printed, by voice vote.

S 1324 — RELATING TO THE SALARIES OF JUDGES
Available to answer questions on this bill were Hal Ryan and Robert Koontz. Provided to the committee were charts showing the ranking of judicial salaries in all states, as well as information on salaries to paid to other state employees in Idaho.

MOTION — Moved by Senator Klein, seconded by Senator Verner, to send S 1324 out of committee with a do pass recommendation. By voice vote, the motion carried. Senator Verner was asked to be the floor sponsor for S 1324.

S 1325 — RELATING TO THE SALARY OF COURT REPORTERS
Jay Webb spoke to the committee in favor of the bill. Also present to respond to questions were court reporters Mr. Bumpus and Mr. Gambee.

MOTION — Moved by Senator Mitchell, seconded by Senator Klein, to send S 1325 out of committee with a do pass recommendation. By voice vote, the motion carried. Senator Mitchell was asked to be the floor sponsor for S 1325.

S 1372 — RELATING TO EXEMPTION FROM JURY SERVICE FOR DENTISTS (Repealer)
Carl Bianchi was present to respond to questions.

MOTION — Moved by Senator Mitchell, seconded by Senator Barker, to send S 1372 out of committee with a do pass recommendation. By voice vote, the motion carried. Senator Barker was asked to be the floor sponsor for S 1372.

S 1371 — RELATING TO GROUNDS FOR REMOVAL, SUSPENSION OR REPRIMAND OF ATTORNEYS (Repealer)
Carl Bianchi was present to respond to questions.

MOTION — Moved by Senator Mitchell, seconded by Senator Verner, to send S 1371 out of committee with a do pass recommendation. By voice vote, the motion carried. Senator Dobler was asked to be floor sponsor for S 1371.

S 1369 — RELATING TO DISMISSALS OF ACTIONS
Present to respond to questions was Carl Bianchi.

MOTION — Moved by Senator Verner, seconded by Senator Klein, to send S 1369 out of committee with a do pass recommendation. By voice vote, the motion carried. Senator Risch was asked to be floor sponsor for S 1369.

S 1398 — RELATING TO RESIDENT CHAMBERS OF THE FIFTH JUDICIAL DISTRICT Senator Bradshaw was present to explain the purpose of S 1398.

MOTION — Moved by Senator Klein, seconded by Senator Mitchell, to send S 1398 out of committee with a do pass recommendation. By voice vote, the motion carried. Senator Bradshaw was asked to be floor sponsor for S 1398.

S 1340 — RELATING TO THE PEACE OFFICER STATUS OF EMPLOYEES OF THE BOARD OF CORRECTION Darrol Gardner was present to respond to questions regarding S 1340.

MOTION — Moved by Senator Mitchell, seconded by Senator Verner, to send S 1340 out of committee with a do pass recommendation. By voice vote, the motion carried.

S 1341 — RELATING TO THE PEACE OFFICER STATUS OF EMPLOYEES OF THE BOARD OF CORRECTION It was pointed out the S 1340 and S 1341 are companion bills.

MOTION — Moved by Senator Mitchell, seconded by Senator Barker, to send S 1341 out of committee with a do pass recommendation. By voice vote, the motion carried. Senator Verner was asked to be floor sponsor for both S 1340 and S 1341.

S 1342 — RELATING TO CORRECTIONAL INDUSTRIES Present to respond to questions were Darrol Gardner and Bill Crowl.

MOTION — Moved by Senator Hartvigsen, seconded by Senator Mitchell, to send S 1342 out of committee with a do pass recommendation. By voice vote, the motion carried. Senator Hartvigsen was asked to be floor sponsor for S 1342.

House

MINUTES OF THE

JUDICIARY, RULES & ADMINISTRATION COMMITTEE

MARCH 5, 1980

The meeting was called to order by Chairman Stivers on March 5, 1980 at 4:05 p.m. in Room 406.

PRESENT Stivers, Chairman; Wesche; Smith; Paxman; Ungricht; Harris; McDermott; Horvath; Marley

EXCUSED Boyd

GUESTS Carl Bianchi, Hal Ryan, Roy Vance, Robert Horton, Rep. Dan D. Emery, Scott Campbell, Darrol Gardner

INTERNS Kris Gauss

MOTION Rep. Paxman moved that the minutes of the meeting held March 3, 1980 be approved as written. Rep. Ungricht seconded the motion. By voice vote, the motion carried.

RS 5769 Rep. Emery briefed the committee on this RS which relates to mandatory minimum prison sentences and the Uniform Controlled Substances Act; amending section 37-2732, Idaho Code, to provide mandatory minimum prison sentences for felony violations of the Uniform Controlled Substances Act regarding controlled and counterfeit substances and a certain amount of marihuana.

MOTION Committee discussion followed. Rep. Ungricht moved that RS 5769 be approved by the committee and sent to the Ways and Means Committee with a request that it be introduced for printing. Rep. Harris seconded the motion. By roll call vote, the motion carried. AYES: Stivers, Wesche, Smith, Harris, Paxman, Ungricht, Marley. NAYS: McDermott, Horvath. EXCUSED: Boyd.

RS 5722 Rep. Paxman introduced Mr. Robert Horton who briefed the committee on this RS which relates to embezzlement; amending section 18-2403A, Idaho Code, to add that failure to return a motor vehicle to its owner according to the terms of a rental agreement within forty-eight hours of the time specified shall constitute prima facie evidence of intent to commit embezzlement.

MOTION Committee discussion followed. Rep. Paxman moved that RS 5722 be approved by the committee and sent to the Ways and Means Committee with a request that it be introduced for printing. Rep. Smith seconded the motion. By roll call vote, the motion carried. AYES: Stivers, Wesche, Smith, Harris, Paxman, McDermott, Horvath, Marley. NAYS: None. EXCUSED: Boyd. ABSENT: Ungricht.

RS 5607 Rep. McDermott briefed the committee on this RS relating to the legal rate of interest; amending section 28-22-104, Idaho Code, to increase the statutory rate of interest, and to provide a time for interest to start to accrue on judgments.

MOTION Committee discussion followed. Chairman Stivers recommended removal of some of the archaic language in the RS. Rep. McDermott moved that RS 5607 be approved by the committee and introduced through Ways and Means for printing after changing some of the language to update it. Rep. Horvath seconded the motion. By voice vote, the motion carried.

RS 5608 Withdrawn by sponsor.

H 633 — Mr. Scott Campbell, Ada County Prosecutor's Office, briefed the committee on this bill relating to jurisdiction for criminal prosecutions for offenses committed while in transit; amending section 19-306, Idaho Code, to provide that offenses committed while in transit in a boat, motor vehicle or aircraft be under the jurisdiction of certain counties.

MOTION — Committee discussion followed. Rep. Horvath moved that H 633 be sent to the floor with a "do pass" recommendation. Rep. McDermott seconded the motion. By voice vote, the motion carried. Rep. Horvath will carry on the floor.

S 1324 — Mr. Hal Ryan, attorney, briefed the committee on S 1324 relating to the salaries of judges; amending section 59-502, Idaho Code, to provide for the salaries of justices and judges. (See attached materials).

MOTION — Committee discussion followed. Rep. McDermott moved that S 1324 be sent to the floor with a "do pass" recommendation. Rep. Smith seconded the motion. By voice vote, the motion carried. The Chairman will appoint someone to carry this bill on the floor. Rep. Stivers requested that a "no" vote be recorded for him on S 1324.

S 1340 & S 1341 — Mr. Darrol Gardner, Department of Corrections, briefed the committee on S 1340 and S 1341 which revise certain portions of the Idaho Code to grant peace officer status of employees of the Board of Corrections.

MOTION — Committee discussion followed on both bills. Rep. Wesche moved that S 1340 be sent to the floor with a "do pass" recommendation. Rep. Horvath seconded the motion. By voice vote, the motion carried. Rep. Paxman to carry on the floor.

MOTION — Rep. Harris moved that S 1341 be sent to the floor with a "do pass" recommendation. Rep. Marley seconded the motion. By voice vote, the motion carried. Rep. Marley will carry on the floor.

S 1342 — Mr. Darrol Gardner, Department of Corrections briefed the committee on S 1342 which amends sections 20-403 through 20-418, Idaho Code, to eliminate the Correctional Industries Commission and create the governing body which shall consist of members of the Board of Corrections.

MOTION — Committee discussion followed. Rep. McDermott moved that S 1342 be sent to the floor with a "do pass" recommendation. Rep. Harris seconded the motion. By voice vote, the motion carried. Rep. Harris will carry on the floor.

S 1369 — Mr. Carl Bianchi, Administrator for the Courts, briefed the committee on S 1369 which relates to dismissals of actions; amending section 19-3501, Idaho Code, to provide for the dismissal of a criminal charge against a person if charges have not been filed within six months of the date of his arrest and to provide that a criminal charge, against a defendant whose trial has not been postponed upon his own application, must be brought within six months from the date the indictment or information is filed with the court.

MOTION — Committee discussion followed. Rep. Horvath moved that S 1369 be sent to the floor with a "do pass" recommendation. Rep. Marley seconded the motion. By voice vote, the motion carried. Rep. Horvath will carry on the floor.