

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, February 26, 2018

**TIME:** 1:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Lee, Senators Lakey, Anthon, Foreman, Potts, Burgoyne, and Nye

**ABSENT/ EXCUSED:** Senator Hagedorn

**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 Lodge** called the meeting of the Senate Judiciary and Rules Committee to order at 1:00 p.m.

**RS 26239** **Concurrent Resolution Rejecting Certain Administrative Rules of the Idaho State Police Relating to Peace Officers Standards and Training (POST).**

**Dennis Stevenson**, State Administrative Rules Coordinator, reported **RS 26239** corrects a miscommunication with the Legislative Services Office (LSO) and will omit language that is inconsistent with legislative intent.

**MOTION:** **Senator Anthon** moved to send **RS 26239** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**S 1259** **Relating to POST; That Certain Funds Be Distributed to POST.**

**Victor McCraw**, Division Administrator, POST, stated **S 1259** provides an additional source of funding for POST which would come from the distribution of insurance tax fees under Idaho Code § 41-406. **Mr. McCraw** addressed questions asked previously by the Committee regarding sharing an analysis of POST funding including the FY 19 appropriation based on fines and fees, FY 2019 dedicated funding, and the proposed funding that would result from **S 1259**. **Mr. McCraw** elaborated on the projected underfunding without **S 1259**, where the proposed funding will be spent in FY 2019, and the FY 19 POST dedicated fund appropriation as currently funded (see Attachment 1).

**DISCUSSION:** **Senator Burgoyne** asked how POST covers the shortfall. **Mr. McCraw** replied cost-saving measures are put into place; for example, a vacancy has not been filled, old vehicles have not been replaced, and building of additional training facilities has been put on hold. **Mr. McCraw** indicated Attachment 1, page 3, which states those items will be funded by revenue from **S 1259**, while items on page 4 will wait.

**Senator Burgoyne** perceived \$934,290 as the potential shortfall, and asked if that is a correct estimate. **Mr. McCraw** said Senator Burgoyne was correct. **Senator Burgoyne** asked what underfunding means for public safety in Idaho. **Mr. McCraw** declared the delivery of public safety services will suffer. He emphasized the ability to train officers to current standards is compromised every year POST is underfunded. **Senator Burgoyne** suggested dangers that might arise from POST's underfunding and reduced training; he asked Mr. McCraw if those areas might be compromised. **Mr. McCraw** replied that Senator Burgoyne was correct and identified other areas of potential problems.

**Vice Chairman Lee** asked if moving from the use of fines and user fees to funds from the General Funds for POST is a policy change. An extensive discussion ensued regarding the complexities of funding including:

- JFAC requests as related to funds from insurance premium taxes,
- the need for additional funding for POST,
- other entities that use POST,
- the essential nature of training,
- contradictory policies,
- restrictions on overfunding,
- POST funding shortfall, and
- sustainability.

**MOTION:** **Senator Burgoyne** moved to send **S 1259** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

**SUBSTITUTE MOTION:** **Vice Chairman Lee** moved to **S 1259** to the **14th order**. **Senator Anthon** seconded the motion.

**MOTION:** **Senator Burgoyne** moved to withdraw the original motion. **Senator Lakey** seconded the motion.

**VOICE VOTE:** The substitute motion carried by **voice vote**.

**S 1314** **Relating to Criminal History Records; to Provide for Expungement of Fingerprint and Criminal History in Certain Instances.**

**Senator Burgoyne** indicated **S 1314** addresses expungement and corrects an oversight in Idaho Code § 67-3004. This bill proposes to add expungement for defendants for whom all charges are dismissed. He requested the bill be sent to the 14th Order for amendment. (see Attachment 2)

**Senator Lakey** inquired how the situation would be handled if the charges were refiled. **Senator Burgoyne** replied in the case of a misdemeanor, dismissed charges cannot be refiled. He added when a felony is filed, it is given a new case number and any materials from the original case, including fingerprints, can be put back into the public domain under the new case number.

**TESTIMONY:** **Mark Manweiler**, Idaho Association of Criminal Defense Lawyers, explained various aspects and differences of acquittal and dismissal. He discussed the process through the court system for a person charged with a crime. He identified entities which have the records and are not covered by the current statute; he explained that **S 1314** will allow expunged records to be sealed for those entities. **Mr. Manweiler** emphasized the devastating effects of being charged with a crime, even though you are never convicted, including employability, a variety of financial burdens, and the inability to rent property.

**Senator Nye** asked if this would be retroactive. **Mr. Manweiler**, responded there is no request to make it retroactive.

**Dawn Peck**, Bureau Chief, Bureau of Criminal Identification (BCI), Idaho State Police (ISP), explained fingerprints start the file to create the database for BCI. She noted the courts use the same material under a new file number, but for BCI the information, including the fingerprints, are gone with expungement. She indicated, if a case is going to be refiled, a new set of prints would need to be sent to BCI. **Senator Lakey** inquired if anyone has the fingerprints, or if the person would need to be fingerprinted again. **Ms. Peck** stated it would depend on the agency. **Senator Lakey** requested that Ms. Peck and Senator Burgoyne work together to address that issue in the amending order.

**Senator Burgoyne** assured the Committee he would work with ISP and other concerned agencies to correct difficulties.

**MOTION:** **Senator Nye** moved to send **S 1314** to the **14th Order**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**H 430** **Relating to Address Confidentiality for Victims of Violence.**

**Lisa Mason**, Administrator, Legislative and Executive Affairs, Office of the Secretary of State, explained that the Address Confidentiality Program provides victims of violence a substitute address for interacting with government agencies, in order to prevent their actual address from being revealed to their abusers through a public records request. Currently, a protection order must be in place, but some victims have not obtained one. **Ms. Mason** advised **H 430** expands evidence that may be used in determining eligibility for participants.

**MOTION:** **Senator Anthon** moved to send **H 430** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**HCR 40** **Amendment of Joint Rule 16.**

**Representative Luke Malek**, District 4, pointed out procedures in the chambers are dealt with at the discretion of the Speaker of the House and the President Pro Tem of the Senate. He advised **HCR 40** reflects this current practice.

**Carrie Maulin**, Chief Clerk of the House of Representatives, noted this rule was last revised in 1985. She pointed out **HCR 40** deletes specific times the chambers must be open and gives more latitude to leadership to set the hours.

**MOTION:** **Senator Lee** moved to send **HCR 40** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**APPROVAL OF MINUTES:** **Senator Potts** moved to approve the Minutes of January 17, 2018 as corrected. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT:** There being no further business at this time, **Chairman Lodge** adjourned the meeting at 1:25 p.m.

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Senator Lodge  
Chair

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Anna Wroblewski-Jones  
Secretary

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Carol Cornwall  
Assistant Secretary