AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, January 14, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| | Brief meeting of introductions and general information | Chairman Lodge |

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, January 14, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock, and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:35 p.m. and welcomed the members of the Committee.

**Chairman Lodge** introduced Mayor Dale's Nampa Teen Council, comprised of three seniors, a freshman and sophomore, who were visiting the Legislature today. She also introduced the Page, Austin Petellin and the Intern, Dain Johnson.

**Chairman Lodge** instructed the committee to fill out the contact information slip inside their folders so she would be aware of their schedule, phone numbers, and e-mail. She said they would be going on field trips in conjunction with the House Committee leaving around 12:00 p.m. on some days. She stated that Vice Chairman Vick would be handling the Rules, but she encouraged the members to look over the Rules as well as the legislation that corresponds with those rules to gain insight as to why they were written. She hopes to have the Rules hyper-linked so they will be on the screen for the audience to view them. The members may want to have their laptop or iPad available to view the legislation. Some presentations have been scheduled; if you would like others presented to the Committee let the Chairman know.

There will be Gubernatorial Appointments and members will be given handouts on each individual prior to the meeting in order to prepare questions. **Chairman Lodge** said she would be closely reviewing all suggested legislation, the Statement of Purpose and Fiscal Note and would appreciate being made aware of any controversial legislation. She stressed to members that they be courteous and considerate of those who appear before the Committee as they are not judge or jury, but policymakers. **Chairman Lodge** also suggested that they get to know the agencies just as Senator Darrington had done in the past.

**Senator Davis** explained to the Committee (for the benefit of the new members) that the Judiciary and Rules Committee was a privileged committee and not limited to the timeline deadlines for legislation. He said there were policies on how bills were introduced in privileged committees and members should be aware of the additional pressure put on the Committee as the Session proceeds.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 1:52 p.m.

_____
Senator Lodge
Chairman

_____
Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Wednesday, January 16, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| | **RULES REVIEW** | |
| Docket No. | **Idaho State Police** | |
| 11-0201-1201 | Idaho State Brand Board (Fee Rule) | Larry Hayhurst, Brand Inspector |
| 11-0202-1201 | Idaho Livestock Dealer Licensing (Fee Rule) | Larry Hayhurst |
| RS21702 | Relating to Producer Licensing | Michael Henderson, Legal Counsel for the Courts |
| RS21703 | Relating to Proceedings in Magistrate's Division | Michael Henderson |
| RS21704 | Relating to Jury Selection and Service | Michael Henderson |
| Presentation | **Idaho Criminal Justice Update** Overview and Update | Brent Reinke, Chairman |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
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email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Wednesday, January 16, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock, and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:30 p.m. and the Secretary called the roll.

**PASSING OF GAVEL:** **Chairman Lodge** passed the gavel to **Vice Chairman Vick** to present the Rules Review.

**Idaho State Police (Fee Rules)**

**DOCKET NO. 11-0201-1201** **Idaho State Brand Board - Larry Hayhurst**, Brand Inspector, explained that the drop in the number of new brands being recorded and fewer brands being renewed has resulted in a decline of needed revenue. This rulemaking increases fees needed to secure the necessary revenue to properly execute the statutory functions of the Brand Board.
The fees being increased in this rulemaking are as follows:

- Transfer of Brand Fee is increased to $50
- Renewal of a Recorded Brand (every 5 years) is increased to $100
- Ownership and Transportation Certificate fee is increased to $35

There is no negative impact to the general fund as this rule change has the potential to increase revenue approximately $107,000. The increase in revenue will help cover the rising personnel benefit costs, fuel costs, and mileage reimbursement for private vehicle use.

**MOTION:** **Senator Mortimer** moved, seconded by **Senator Lakey**, that the Committee adopt **Docket No. 11-0201-1201**. The motion carried by **voice vote**.

**DOCKET NO. 11-0202-1201** **Idaho Livestock Dealer Licensing - Larry Hayhurst** explained that the number of Idaho Livestock Dealers and Representatives has dropped over the years resulting in a decline of needed revenue. This rulemaking increases fees needed to properly execute the statutory functions of the Brand Board. The fees increased in this rulemaking are as follows:

- Livestock Dealer fees are increased from $40 to $100;
- Livestock Dealer Representative fees are increased from $15 to $35.

**MOTION:** **Senator Lakey** moved, seconded by **Chairman Lodge**, that the Committee adopt **Docket No. 11-0202-1201**. The motion carried by **voice vote**.

**PASSING OF GAVEL:** **Vice Chairman Vick** passed the gavel back to **Chairman Lodge**.

**RS 21702** **Relating to Producer Licensing - Michael Henderson**, Legal Counsel for the Courts, explained this legislation concerns defects and omissions in the laws and removes language providing that a bail agent's license filed with the clerk of the District Court is deemed proof that such bail agent is licensed. This would repeal the obsolete provision in Idaho Code § 41-1039 (3) as it is obsolete.

**MOTION:** **Senator Davis** moved, seconded by **Senator Werk**, to print **RS 21702**. The motion carried by **voice vote**.

**RS 21703** **Relating to Proceedings in Magistrate's Division - Michael Henderson** explained Idaho Code §§ 19-3939 through 19-3944 concern the procedure to be followed when a misdemeanor conviction is appealed from the magistrate division to the district court. They are now obsolete and in conflict with the provisions of the Idaho Criminal Rules governing such appeals. This bill would repeal these outdated statutes, which will help avoid confusion as to the proper procedure to be followed in these appeals.

**MOTION:** **Senator Werk** moved, seconded by **Senator Nuxoll**, to print **RS 21703.** The motion carried by **voice vote**.

**RS 21704** **Relating to Jury Selection and Service - Michael Henderson** explained this bill corrects an erroneous reference to a subsection in Idaho Code § 2-208, a statute that addresses the procedure for summoning prospective jurors. In addition, the language in Idaho Code § 2-208(5) regarding the circumstances in which a prospective juror may be found in contempt of court for failing to report; and the penalty provided for such contempt is in conflict with the language in Idaho Code §§ 7-601 and 7-610. This bill removes that conflict by amending Idaho Code § 2-208(5) to state that prospective jurors who fail to appear may be subject to contempt proceedings as provided in chapter 6, title 7 of the Idaho Code and in applicable Supreme Court rules.

**MOTION:** **Senator Hagedorn** moved, seconded by **Vice Chairman Vick** to print **RS 21704**. The motion carried by **voice vote**.

**PRESENTATION:** **Idaho Criminal Justice Commission - Brent Reinke**, Chairman, began the presentation by stating that the Commission was established in 2005. The 25 members comprised from three branches of government, county, city and citizen representatives are challenged to reach balanced solutions on critical issues facing Idaho's criminal justice system. He called on several different members of the Commission to speak on specific issues.

**Sara Thomas**, Idaho State Appellate Public Defender, spoke about recommendations from the Commission. She referred to **Recommendation 1.** that would provide legislation that would (a) create a uniform appointment of counsel, (b) a juvenile's right to counsel, and (c) the appointment of counsel: Guardian ad litem. **Recommendation 2.** was for the creation of an interim legislative committee. Their tasks would be to determine the best system for Idaho, examine the cost of changes, and identify the appropriate funding mechanisms. **Ms. Thomas** also talked about human trafficking and the fact that it was a growing problem in Idaho. She said there was a gap in current Idaho Law that might not give provide needed protection.

**Ross Mason**, Chairman of Children of Incarcerated Parents Sub-Committee to the Idaho Criminal Justice Commission and Regional Director of Department of Health and Welfare for the ten southwestern counties, spoke about how the Sub-Committee had reformed and was taking another look at what was being done and why. The Committee is designed to improve the lives of children of incarcerated parents and try to stop the cycle of those children going into prison as their mother or father has done in the past. They have provided a tool kit, a document to be used primarily by teachers and counselors, to assist them in answering concerns of children whose parents may be incarcerated for a long period of time. There is also a pilot program that is now underway in the Valley View School District in Canyon County and the Boise School District. This pilot program involves second, third and fourth graders and is an effort to improve the lives of children by socializing in a better way, improving their attendance at school, and improving their behavioral issues if they have any. He said if the pilot works and if there is information that is effective then it can be expanded to other districts. The majority of these children are with a family member and are in elementary school.

**Senator Werk** asked how many families were improverished due to incarceration. **Mr. Mason** said that the lower economic class was the primary cause of prison. **Senator Lakey** questioned **Ms. Thomas** about the financial decision whether to appoint a juvenile and if a reimbursement from the parent is considered in that. Also, if it was similar to the adult criteria. **Ms. Thomas** said it was not the same criteria because one consideration is that the parents interest in the child have changed. The child always has a right to representation. **Senator Lakey** said he was questioning the reimbursement afterward and if there was consistent criteria to determine whether the parents have to reimburse. **Ms. Thomas** replied that it was based on their ability to pay; there were not specific standards. **Senator Lakey** suggested that there should be.

**Sharon Harrigfeld**, Director of Juvenile Corrections, explained the Results First program which uses a model developed by the Washington State Institute for Public Policy but customizes it to Idaho's laws and data. The motivation behind this is to achieve effectiveness and efficiency of the criminal justice system and encourage dialog among respective branches of government . She further stated that Results First was a three step research approach:

1. Locate real world evaluations
2. Estimate the taxpayer and crime victim benefits and costs of programs
3. Determine how alternative programs would affect prison demand, public spending and crime

This analysis will help identify which programs work and which do not; calculate the potential returns on investment of funding alternative programs; rank programs based on their projected benefits, costs and investment risks; identify ineffective programs; and predict the impact of different policy options. The intent is to have better statewide results and a more efficient use of taxpayer dollars.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:40 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, January 21, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| **Docket No.** | **Idaho State Police Pending Rules** | |
| 11-0301-1201 | Alcohol Testing | Matthew Gamette, Forensic Services Quality Manager |
| 11-1101-1201 | Idaho Peace Officer Standards and Training Council | William Flink, Division Administrator |
| 11-1101-1202 | Idaho Peace Officer Standards and Training Council | William Flink |
| 11-1102-1201 | Rules of POST - Detention Officers | William Flink |
| 11-1103-1201 | Rules of POST - Juvenile Probation Officers | William Flink |
| 11-1104-1201 | Rules of POST - Correction Officers and Adult Probation and Parole Officers | William Flink |
| 11-1106-1201 | Rules of POST - Misdemeanor Probation Officers | William Flink |
| Presentation | **Internet Crimes Against Children** | Detective Tim Brady |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, January 21, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:35 p.m. and asked the secretary to call the roll. Chairman Lodge turned the meeting over to Vice Chairman Vick to present the Rules Review.

**DOCKET NO. 11-0301-1201** **Rules Governing Alcohol Testing - Idaho State Police. Matthew Gamette**, Forensic Services Quality Manager, explained that this temporary rule only added "at least" in the proposed language to clarify that blood samples need to only contain a minimal concentration of the preservative sodium fluoride. Regardless of the amount of blood collected in the tube, the concentration of "at least" ten milligrams of sodium fluoride per cubic centimeter of blood (as is proposed) is an adequate amount to maintain the evidentiary value of the sample.

**MOTION:** **Senator Nuxoll** moved, seconded by **Senator Mortimer**, that the committee approve **Docket No. 11-0301-1201**. The motion carried by **voice vote**.

**DOCKET NO. 11-1101-1201** **Idaho Peace Officer Standard and Training (POST) Council - William Flink**, Division Administrator, explained the substance and purpose of the proposed rulemaking.
A brief summary of this docket does the following:

- identifies the specific conduct that may constitute cause for decertification;
- requires an officer charged with a felony or misdemeanor to notify his agency head within five business days;
- requires an agency head to notify POST within fourteen days of learning of the charge;
- allows an agency head intending to hire a decertified officer to petition the Council, ten years after the date the officer was decertified, for reconsideration for law enforcement officer employment; and
- defines and streamlines the POST Council's decertification procedures so the Council and officers under investigation can have allegations of unethical behavior or misconduct resolved more quickly while also protecting the officers' due process rights.

**Senator Davis** questioned why some of the restrictions or standards were "on duty" and some were not. He asked if Mr. Flink was troubled by the fact that some were not specific. **Mr. Flink** answered that most important for any officer serving the public is his honesty and truthfulness always.

**Mr. Flink** continued explaining the text of Pending Rule 032. through 091.04. reading what was added and what was removed. **Senator Mortimer** asked why there was no date certain under 063. regarding the POST Council's Code of Ethics and if it could be changed at any time. He said he would feel more comfortable with a date certain to know which Code of Ethics was being referenced. **Senator Bock** added his agreement with Senator Mortimer. **Senator Davis** also agreed and asked for the Administrator's word that the change would be brought back to the committee. **Mr. Flink** said they would make that change.

**Senator Lakey** said an individual may not be aware they were under an investigation in relation to the additional words under 091.01, Certificates and Awards. **Mr. Flink** said that may be true, and the Council may not know as well. **Senator Lakey** was concerned that an individual might be certified and if later was discovered to be under investigation; the certification would be retracted. **Mr. Flink** said this would not affect a certification they already had, but was a new or higher certification. **Senator Lakey** said he realized the intent, but didn't think the language was clear. **Mr. Flink** said the application form asked if they were being investigated and they would know if they were not eligible for certification.

**Senator Hagedorn** asked regarding the new clause stating "any officer decertified by the Council shall not be eligible for POST certification of any kind for ten (10) years following the date of decertification." if the ten years was standard throughout the states and if felony or murder would have the same punishment. **Mr. Flink** said felony in Idaho was absolute rejection and the ten year period was considered sufficient for rehabilitation. **Senator Hagedorn** also asked if there were records of the negotiated rulemaking. **Mr. Flink** said there was both audio and written minutes of the meetings.

**Mr. Flink** explained Section 092., Due Process Procedures, which were all new additions to the Rules. **Senator Davis** asked if this language was similar to the national language. **Mr. Flink** said yes. **Senator Davis** asked about the role of the Chief of Police or the Sheriff in this discretionary component of whether there should be decertification. **Mr. Flink** replied that there were rules that would go before the full Council on February 7, 2013. **Senator Davis** asked if that was going to be a policy or an administrative rule. **Mr. Flink** replied that at the present time it would be a POST Council policy.

**Senator Davis** referred to page 21, sub-part b. that said "the petition for review by the full POST Council is filed with the Council within twenty-eight (28) days." He further said that in the next paragraph it says "a notice of appeal within twenty-eight (28) days of the filing of the decision." He suggested that the date certain be added to sub-part b. **Senator Davis** also referred to Senator Lakey's point on page 15 that the language does not say what is intended. **Mr. Flink** said that the added language in 091.01 (on page 15) could easily be eliminated. **Senator Hagedorn** referred to page 16, sub-part e. and was concerned about "...shall exercise any law enforcement authority..." and exactly what that encompassed. **Mr. Flick** said law enforcement officers by profession is defined in our rules on page 28.

**Michael Kane**, representing the Sheriffs Association, said they support this rule and do so because they have been working with the Director and Colonel of ISP trying to channel the discretion of how POST engages in these investigations and hearings. The work before you is still a work in progress. There is a recognizable need for it to be more manageable and understandable for the line officers and the chiefs and sheriffs throughout the state. POST Council's previous rule was wide open and allowed for investigation and decertification proceedings in all sorts of areas. There are some issues that the sheriffs and chiefs can continue to discuss with the Council. He thought this was a great step forward and urged the committee to adopt this rule.

**Vice Chairman Vick** suggested the committee act on this rule at the next meeting. **Senator Davis** mentioned that he would be absent next Wednesday and would like to act today if possible.

**MOTION:** **Senator Davis** moved, seconded by **Senator Werk**, that the committee approve **Docket No. 11-1101-1201** with the exception of the new language in 091.01, on page 15. **Senator Bock** made clarification that the agency would return next year with changes regarding the definition of "law enforcement authority" and the "date certain" per Mr. Flink's promise. The motion carried by **voice vote**.

**Vice Chairman Vick** turned the meeting back over to Chairman Lodge. **Chairman Lodge** called Paul Jagosh to the podium.

**PRESENTATION:** **Internet Crimes Against Children - Paul Jagosh**, Idaho Fraternal Order of Police, explained that the information they were bringing to the committee today was a big issue and as a law enforcement officer for the past 15 years, he has been glad for his involvement. Although some of the information is extremely disturbing, it is necessary to educate this committee on what is happening in Idaho. He cautioned any with small children to please leave the room. **Mr. Jagosh** introduced Detective Tim Brady from Internet Crimes Against Children (ICAC), an investigator that has been working in this area and has given many speeches at other training sessions across the nation.

**Detective Brady** wanted to discuss these things today in preparation for legislation that is forthcoming and also to provide some education and dispel some misconceptions about the term "internet crimes against children". He explained that they have tried to use good judgement in reference to what is being shown today. It is important that as leaders of our state that there is an understanding of what is out there for our children. In Idaho currently, there are 5,000 leads in one particular area that people can access child pornography. Within those 5,000 leads, about 80 percent of those are sexually abusing children. This software can be downloaded in literally minutes with child pornography and is not material that is accidentally gained or put on someone's computer. **Detective Brady** said that of the eighty percent of images and videos of sex acts, 21 percent were of sadistic and torturous sex acts. There is not a community in this state that is immune to this problem. There are even training videos, giving instructions on how to find a child and how to sexually abuse a child. He wanted to alert the committee of this growing trend in Idaho. In the last two years, he and another investigator in his office have rescued 51 children from a sexually abusive environment. None of these children had reported their abuse to law enforcement, parent, counselors or teachers. He stated that was why he was excited about what they were able to do and why they need additional researchers.

**Senator Hagedorn** asked how many of the 80 percent has internet association. **Detective Brady** said that he would estimate 40 to 50 percent would be produced on the internet. **Vice Chairman Vick** asked if there were other crimes these perpetrators were involved in. **Detective Brady** said that they were also finding neglect and drug use.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:00 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

JOINT

# SENATE JUDICIARY & RULES COMMITTEE
# AND
# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**1:30 P.M.**
**EW 42**
**Wednesday, January 23, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| | **OVERVIEW OF CRIMINAL JUSTICE SYSTEM** | |
| | Local Law Enforcement | Sheriff Gary Raney, Ada County Sheriff |
| | Ada County Prosecutors Office | Jan Bennett, Chief of Staff |
| | Ada County Public Defenders Office | Tony Geddes, Public Defender |
| | Courts | Patti Tobias, Administrative Director of the Courts |
| | Department of Corrections | Brent Reinke, Director |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
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MINUTES
JOINT MEETING

# SENATE JUDICIARY & RULES COMMITTEE
# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, January 23, 2013

**TIME:** 1:30 P.M.

**PLACE:** EW 42

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline and Ringo

**ABSENT/ EXCUSED:** Senator Davis

**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 Wills** called the meeting to order at 1:33 p.m.

**Chairman Wills** explained the purpose for this joint meeting was to provide an overview of the criminal justice system and background on legislation these committees will see in the future. He said these panel members are also members of the Idaho Criminal Justice Commission, which acts as a sounding board for the issues surrounding law enforcement, corrections and the courts.

**Patricia Tobias**, Administrative Director of the Courts, thanked the committees for coming together for this educational session. Ms. Tobias and Ms. Holly Koole, Legislative Counsel for the Idaho Prosecuting Attorneys Association, assembled a panel of experienced criminal justice professionals to help the committees understand how a felony case is investigated, prosecuted, defended, adjudicated, and sentenced in Idaho. A document on criminal proceedings and a glossary of legal terms was given to each senator and representative. (See Attachment 1) **Ms. Tobias** asked each panel member to introduce themselves and describe briefly their role in the criminal justice system. She said Ms. Koole will then set the stage for the felony case with a flow chart on the robbery case and each panel member will provide their part in each step along the criminal justice process.

**Gary Raney**, Ada County Sheriff, explained that early in the 1860s in Idaho, the powers were vested in the original thirteen counties and now there were 44 counties and 44 sheriffs to administer law enforcement. Some cities may elect to have their own police departments and tax their local citizens for that additional level of service. He said they work together with the Idaho State Police, particularly in rural Idaho.

**Jan Bennetts**, Chief of Staff for the Ada County Prosecutors Office, explained that just as there are 44 sheriffs, there are also 44 county prosecutors across the state of Idaho. Within their office, there are 64 lawyers and about 150 staff members.

**Tony Geddes**, Deputy Public Defender, said he has been with the Ada County Public Defenders Office about 17 years. There are eight public defender offices in the state of Idaho; areas without a public defender office have services rendered via contract. Ada County is the largest public defender office with about 44 or 45 attorneys and corresponding staff.

**Barry Wood**, retired District Judge of Idaho, said there were 87 magistrate judges and 42 district judges and as it relates to the exercise today, the division of work would be that the magistrate would entertain the initial matters in the criminal case and determination of probable cause. A district judge presides over the arraignment, trial and sentencing.

**Brent Reinke**, Director of the Idaho Department of Corrections (IDOC), said there are 11 prisons in Idaho and IDOC manages one out of every 34 adult men and one out of every 156 adult women in the state. He said they had just over 8,000 incarcerated.

**Olivia Craven**, Director for the Parole Commission, said her agency's role was to conduct parole hearings. There is a staff of 31, with 18 hearing officers, who conduct investigations for a part-time commission that meets monthly.

**Ms. Koole** illustrated the criminal process by taking a fictional felony criminal case from beginning to end. She then went through the facts of the "case." **Sheriff Raney** said law enforcement's first job is to preserve lives. Then they focus on: (1) testimonial evidence, (2) physical evidence, and (3) statements from the suspect's interview. The sheriff will then submit everything to the prosecutor. **Ms. Bennetts** said they would sift through the police reports to determine probable cause and decide on the appropriate charges to file. She then would submit these documents to the magistrate judge, swear to the court and read enough of the compiled information to establish probable cause to keep that person in custody until the preliminary hearing. After the reading of probable cause of this robbery case, they would be prepared to argue bond at the initial appearance where the offender is advised of his rights by the court and explained what he has been charged with. If the accused is in custody, preliminary hearing must occur within 14 days, and if not in custody, it must occur within 21 days. The accused would then be bound over to District Court.

**Mr. Geddes** next explained that the public defender's office is assigned an accused person; he/she begins to develop a relationship with that person, advise him/her of his/her rights and begins to develop viable defenses. The main goal is to educate the client about the system and what they can expect. He indicated it is important to express to the client the seriousness of the situation. **Judge Wood** provided the point of view from the magistrate judge's perspective; the judge has to entertain a probable cause finding within two days. If probable cause is found, bond is issued, and a defendant is scheduled for their initial appearance, which must happen within 24 hours. The defendant is read his/her rights which are explained at the preliminary hearing. If the magistrate does find there is probable cause, the defendant is bound over to district court. **Ms. Bennetts** explained that the defendant next decides whether or not to enter a plea or ask for more time. The public defender will usually ask for more time to talk with the client. **Mr. Geddes** emphasized that he advises his clients on the situation, discovery that he has received from the state and the defendant must then decide to plead guilty or not guilty. If a plea of guilty is entered, then a presentence investigation is held and those findings are then submitted to the state to be used in sentencing.

**Judge Wood** explained that a change of plea before the district judge is really important. When the public defender and the prosecutor come up with a plea agreement, the judge is not required to follow it, but it is a good idea to create it in such a way that the judge will be bound by it. He would then order a presentence report. **Ms. Bennetts** explained that the presentence investigation takes quite a long time to gather all the information. She said it is a confidential document with sensitive information about the offender's background; such as criminal history, health issues, and mental health evaluations. Once they have reviewed the information, it is reviewed by the defense counsel and the defendant. In order to make a significant prison recommendation, all the evidence and supporting paperwork is needed. After the prosecutor's argument and recommendation, the defense counsel would make their argument.

**Mr. Geddes** said it was an extraordinarily important process for the defendant because the presentence report contains everything the judge is going to know about that person. You must advise your client that he has a right not to participate in that process. If the client has been to prison before and for a long time and anything he or she could say in the presentence report would be aggravating, then the advice would be to 'not' cooperate in that process, for it would only hurt them. On the other hand if there has been a bad childhood, drugs and alcohol involved, then the advice would be to be honest and participate in this process. Above all, if the decision is to plead guilty, and the defendant tells the presentence investigator and anyone else that he did nothing wrong, the client would appear to be without remorse.

**Judge Wood** referenced three statutes that govern sentencing in Idaho: Idaho Code § 19-2521 (default sentence guidelines), Idaho Code § 19-2601 (defines sentencing options) and Idaho Code § 19-2513 (unified sentencing statute). He added that every felony sentence has to have a unified sentence which consists of two parts: fixed, and indeterminate portion; the combination of which must total the unified sentence.

**Director Reinke** outlined the flowchart (Attachment 2) that explains the process from the correction's point of view. He emphasized an addition made this year; the "Gain Core Presentence Investigation," which will provide IDOC with the opportunity to make a mental health evaluation much earlier in the process. In regards to specific sentences, there are three options:

- Community Alternative Placement Program (CAP)
- Traditional Rider (Cottonwood - education and programs)
- TC Rider (used if elements of violence are in the person's past)

The individual is incarcerated in accordance with the sentence. If the individual is retained by the court after the treatment program, they will stand before the judge and be on probation. They will be on parole after they have been in a term placement. The courts control probation and the parole commission controls the parole and IDOC controls the incarceration.

**Ms. Craven** elaborated on the parole process and said the parole review hearing is set six months before the inmate's parole eligibility day. At this meeting the hearing officer will meet with inmates and the commission determines whether or not parole will be granted. If inmates do well on parole they can eventually be discharged. She also said that if parolees violate their parole agreement, the problems can be treated or parole may be revoked, depending on the particular violation. She stated that 37 percent of parole violators have committed new felony crimes and emphasized that the parole board's central goal is to keep people in the least degree of incarceration possible.

**Ms. Koole** briefly explained the process for appealing a conviction and reiterated that all of the factions represented by the panel remain involved throughout the criminal felony case, even when an offender is incarcerated. **Chairman Wills** thanked the panel and asked for questions from the committee members.

In response to committee questions, **Mr. Reinke** explained that "TC" stands for Therapeutic Community and is the longest retained jurisdiction option. **Ms. Bennetts** explained that a grand jury is used when there are vulnerable victims involved, such as in a child abuse case. **Judge Wood** added that grand jury usage varies across the state. The purpose of the grand jury proceeding is to determine if there is probable cause to charge the crime, and there is subpoena power for witnesses if necessary. In regards to another question regarding the guilty plea agreement, the state makes an offer to the defense based on their assessment of the seriousness of the offense; they communicate until they can reach an acceptable agreement. He said that a judge is not obligated to accept a plea agreement with the exception of Rule 11, which allows the defendant to withdraw his/her guilty plea if the agreement is not accepted by the judge.

In regards to recidivism, **Ms. Tobias** said communication among agencies had improved. She said agencies have come together through the Idaho Criminal Justice Commission (ICJC), which has appointed a subcommittee to employ the "Results First" model. The subcommittee is working with an economist to understand Idaho specific data and measure specific outcomes. **Director Renke** added that the subcommittee is working with the Pew Charitable Trust and other satellite states for this study. **Sheriff Raney** said there needs to be tools for agencies to use and emphasized there was a serious lack of mental health services in the corrections system.

**Senator Lodge** thanked everyone for being here and thanks to Ms. Koole for putting this together in such a short time. She said it was very informative. There will be other adventures such as field trips for both these committees.

**ADJOURNED:** There being no further business, **Chairman Wills** adjourned the meeting at 2:43 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Friday, January 25, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| RS21744 | Relating to Public Assistance | Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc. |
| RS21745 | Relating to Conservators and Powers of Attorney | Robert L. Aldridge |
| RS21765 | Relating to County Jails; relating to Governor's Authority | Michael J. Kane, Idaho Sheriffs Association |
| RS21768 | Relating to County Jails; relating to Detention Officers Authority | Michael J. Kane |
| RS21770 | Relating to County Jails; relating to Prisoner Reimbursement | Michael J. Kane |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Friday, January 25, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:30 p.m. and asked the secretary to call the roll.

**MINUTES:** **Senator Werk** made a motion to approve the minutes of **January 14, 2013** as written. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**Senator Lakey** made a motion to approve the minutes of **January 16, 2013** as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**RS 21744** **Relating to Public Assistance - Robert L. Aldridge**, representing Trust & Estate Professionals of Idaho, Inc. (TEPI), explained that in 1996, a bill included new provisions regarding the transfer of assets in the Medicaid program and made it a federal crime if a person knowingly and willfully disposed of assets and the result was a period of ineligibility for Medicaid. This became known as the "granny goes to jail" provision. There was much opposition and the provision was removed, but replaced with a similar provision for anyone advising the Medicaid recipient of their legal rights, known as "granny's attorney goes to jail". This bill today, whose language was negotiated with the Department of Health & Welfare, removes that language, while keeping all language needed to prosecute actual fraud.

**MOTION:** **Vice Chairman Vick** made a motion to send **RS 21744** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**RS 21745** **Relating to Conservators and Powers of Attorney - Robert L. Aldridge** explained that a change was made in 2008 that the appointment of a conservator revoked existing financial powers of attorney, providing the existing financial powers of attorney would remain, unless otherwise ordered by the court. It has proven to be a major problem in many cases, especially when a temporary conservator is appointed to preserve the assets of the protected person pending permanent appointment of a conservator. In many cases, the existing financial power of attorney is making financial decisions in direct opposition to the appointed conservator. This bill solves that problem by providing that appointment of a temporary or permanent conservator terminates the power of attorney. It also allows the court, in appropriate cases, to limit or continue the power instead of terminating it. This will keep control in the court-appointed, and court-monitored, conservator, while keeping flexibility.

**Senator Davis** asked Mr. Aldridge if Dale Higer approved this. **Mr. Aldridge** said he was on the committee, but he didn't remember specifically. **Senator Davis** said he would like to print the RS, but he would like to have some express understanding on Higer's position as well as the courts. **Mr. Aldridge** did send this to the courts and they were in support of the change. **Senator Lakey** questioned the language regarding the power of attorney that is terminated, limited or continued by the court. **Mr. Aldridge** said they looked at this being helpful if the court was asked to extend the power that was in place, but in a more limited form. **Senator Davis** thought some of the language could be improved. **Mr. Aldridge** said no one had a problem with the way it was written.

**MOTION:** **Senator Davis** made a motion to send **RS 21745** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**INTRODUCTION:** **Chairman Lodge** asked Brian Underwood, U.S. Marshall, who was in the audience to come to the podium. **Mr. Underwood** said he was born and raised in Pocatello, Idaho. He started out as a police officer and joined the Department of Correction; his last position was warden. In 2010, he was confirmed as U.S. Marshall and has since moved from Pocatello to Eagle. His primary responsibility is to work with state and local law enforcement in fugitive apprehension. He said it was an honorable profession. **Senator Hagedorn** asked how many U.S. Marshalls were in Idaho. **Mr. Underwood** said in the district of Idaho there was a total of 65 including deputies and staff.

**RS 21765** **Relating to County Jails; relating to Governor's Authority - Michael J. Kane**, representing the Idaho Sheriffs Association, explained the purpose of this bill is to repeal Idaho Code § 20-625, which is an obsolete statute that requires a sheriff to get written permission from the governor before moving a prisoner from one jail to another.

**MOTION:** **Senator Mortimer** made a motion to send **RS 21765** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**RS 21768** **Relating to County Jails; relating to Detention Officers Authority - Michael J. Kane** explained the purpose of this bill is to allow sheriff's detention deputies to act as peace officers so that they can arrest an individual when there is probably cause to believe a person has committed a crime within the confines of a county jail.

**MOTION:** **Senator Hagedorn** made a motion to send **RS 21768** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**RS 21770** **Relating to County Jails; relating to Prisoner Reimbursement - Michael J. Kane** explained the purpose of this bill is to allow a sheriff to execute a judgment obtained for prisoner reimbursement to a county against an inmate's commissary account. The jails have discovered that there are outstanding judgments and as much as $200 - $300 in these commissary accounts; so they have been sweeping the account. The American Civil Liberties Union (ACLU) has pointed out that the money should not be taken without some statutory allowance. This bill would assure the sheriffs in this state the power to serve these judgments against commissary account monies.

**Senator Davis** was concerned that people gave money to these commissary accounts with the express intent for the limited use of the prisoner. **Mr. Kane** responded that once the money is in the prisoner's account, it is his to use as the prisoner so chooses. The money is used to purchase items in the commissary. **Senator Hagedorn** asked if it was common to sweep all of the account money. **Mr. Kane** said at present it was common for them to take the entire amount. **Senator Bock** said it was like a bank account and creditors could levy against those accounts, but there were limitations. He thought this money might be for survival and to provide good nutrition for the inmate. He thought this might be overreaching. **Mr. Kane** said this account was literally for sundry items, like candy and that sort of thing and not necessary for survival. **Senator Davis** thought perhaps because of his frustrations, they should return the bill to the sponsor, but asked Mr. Kane his opinion of how to proceed. **Mr. Kane** said the judgments were valid and could be served outside of the jail. He said he would prefer to print the bill and would work with the committee and if amendments were needed he would make sure that happened. He said thousands of dollars were outstanding in these judgments from former prisoners who were not going to pay. He also said if he was granted a hearing, he would have better figures as to how much was outstanding and how much they were collecting.

**MOTION:** **Vice Chairman Vick** made a motion to send RS 21770 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:17 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, January 28, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| **Docket No.** | **Idaho State Police - Pending Rules** | |
| 11–1101-1202 | Idaho Peace Officer Standards and Training (POST) Council | William Flink, Division Administrator |
| 11-1102-1201 | Rules of POST - Detention Officers | William Flink |
| 11-1103-1201 | Rules of POST - Juvenile Probation Officers | William Flink |
| 11-1104-1201 | Rules of POST - Correction Officers and Adult Probation and Parole Officers | William Flink |
| 11-1106-1201 | Rules of POST - Misdemeanor Probation Officers | William Flink |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
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email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, January 28, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:38 p.m. and turned the meeting over to Vice Chairman Vick to present the Pending Rules of the Idaho State Police.

**DOCKET NO. 11-1101-1202** **Idaho Peace Office Standards and Training (POST) Council - William Flink**, Division Administrator, explained the substance and purpose of this rule is to add emergency services dispatchers to the definition of "law enforcement profession" as used in two year agreements authorized pursuant to Section 19-5112, Idaho Code. **Mr. Flink** said it established that an applicant who is the subject of an investigation by an agency with competent authority and jurisdiction is not eligible for POST certification of any kind while under investigation. It also allows the POST Division Administrator to extend over one year the validity of an applicant's medical examination under extraordinary conditions and for good cause shown.

The senators discussed 010.27 of this docket entitled Law Enforcement Profession, which added an emergency services dispatcher to the law enforcement profession. They also thought it was broad based and that POST seemed to be expanding through rule rather than code and questioned if this should be done by statute. **Mr. Flink** said he could not answer that question. He said they were only identifying the dispatchers as part of the law enforcement profession. The senators also brought up the fact that 197.01 of this docket had the same added language that they had rejected in the previous rule, Docket No. 11-1101-1201 at the meeting last week. **Senator Davis** commented that he couldn't understand why departments and agencies wanted to redesign what was already in code. If it appears that the definition is inadequate, his impression would be to give a better statutory definition. **Mr. Flink** replied that he thought it was worthy of further discussion due to some of the questions asked today.

**MOTION:** **Senator Hagedorn** made a motion to accept **Docket No. 11-1101-1202** with the exception of the added language in Definitions, 010.27 and the added language in General Provisions, 197.01 of this pending rule. **Senator Davis** seconded the motion. **Vice Chairman Vick** asked if they reject this part, would it preclude the emergency personnel from receiving training. **Mr. Flink** said they would be trained. The motion carried by **voice vote**.

**DOCKET NO. 11-1102-1201** **Rules of POST - Detention Officers - William Flink** explained this rule removed the 'exception of physical disability' in minimum employment standards, as that language is outdated and also conflicts with another provision in the rules. It changes the term "must" to the more appropriate term "shall." It also removes outdated language in reference to height and weight requirements, and establishes the Intermediate Certificate and the requirements for achieving it. He further explained that the Intermediate Certificate was a way for officers to better themselves, get a raise in salary, or possibly be in a supervisory capacity.

All of the senators commented on the chart showing "College Credits, Training Hours, and Experience" as it was difficult for them to understand. **Mr. Flink** said he had also had trouble understanding the chart when he first came to POST Council. **Chairman Lodge** asked if there were specific classes that were required or could they take anything. **Mr. Flink** said they did not have specific classes. **Chairman Lodge** said she thought experience and training in communication and grammar classes were almost a necessity, as well as how to get along with people. **Mr. Flink** said the college courses were not defined.

**MOTION:** **Senator Bock** made a motion to approve **Docket No. 11-1102-1201**. **Senator Lakey** seconded the motion. **Senator Hagedorn** suggested they revisit the chart showing College Credits, Training Hours and Experience (035.03.) as it was difficult to understand. The motion carried by **voice vote**.

**DOCKET NO. 11-1103-1201** **Rules of POST - Juvenile Probation Officers - Mr. Flink** explained that this rule removes exception of physical disability in minimum employment standards, as that language is outdated and also conflicts with another provision in the rules. It also establishes the Intermediate Certificate and the requirements for achieving it.

**MOTION:** **Chairman Lodge** made a motion to approve **Docket No. 11-1103-1201**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 11-1104-1201** **Rules of POST - Correction Officers and Adult Probation and Parole Officers - Mr. Flink** explained that this rule allows the POST Division Administrator to extend over one year the validity of an applicant's medical examination under extraordinary conditions and for good cause shown. It changes the term "will" and "must" to the more appropriate term "shall." He said it allows an Idaho POST certified correction officer or probation and parole officer who transfers to an administration position with the Idaho Department of Correction (IDOC) to retain their POST certification provided they don't leave employment with IDOC and they attend twenty hours of training per year.

**MOTION:** **Senator Hagedorn** made a motion to approve **Docket No. 11-1104-1201**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 11-1106-1201** **Rules of POST - Misdemeanor Probation Officers - Mr. Flink** explained this rule removed the exception of physical disability in minimum employment standards, as that language is outdated and also conflicts with another provision in the rules.

**MOTION:** **Senator Lakey** made a motion to approve **Docket No. 11-1106-1201**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**Vice Chairman Vick** turned the meeting back over to the Chairman. **Vice Chairman Vick** asked Mr. Flink how the House of Representatives ruled on these rules. **Mr. Flink** said the House ruled the same.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:40 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Wednesday, January 30, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| Minutes to Approve | Minutes of January 21, 2013 | Senator Vick<br>Senator Werk |
| | **Rules Review - Idaho State Police** | |
| Docket No. 11-0501-1101 | Rules Governing Alcohol Beverage Control (pending rule) | Lt. Bob Clements, Idaho State Police |
| RS21735 | Relating to Driver's Licenses | Senator Bart Davis |
| S 1016 | Relating to Producer Licensing | Michael Henderson, Legal Counsel for the Courts |
| S 1017 | Relating to Proceedings in Magistrate's Division | Michael Henderson |
| S 1018 | Relating to Jury Selection and Service | Michael Henderson |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

| | |
|---|---|
| **DATE:** | Wednesday, January 30, 2013 |
| **TIME:** | 1:30 P.M. |
| **PLACE:** | Room WW54 |
| **MEMBERS PRESENT:** | Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk |
| **ABSENT/ EXCUSED:** | |
| **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 to order at 1:32 p.m. and asked the secretary to call the roll. |
| **MINUTES:** | **Vice Chairman Vick** made a motion to approve the minutes of January 21, 2013 as written. **Senator Werk** seconded the motion. The motion carried by **voice vote**. |
| **RULES REVIEW** | **Chairman Lodge** turned the meeting over to Vice Chairman Vick to present the pending rule review for the Idaho State Police. **Vice Chairman Vick** introduced Lieutenant Clements to explain the rule. |
| **DOCKET NO. 11-0501-1101** | **Rules Governing Alcohol Beverage Control - Lieutenant Bob Clements**, Idaho State Police, explained this rule was proposed to define a multipurpose arena and provides specific circumstances when minors are permitted or prohibited, considering modern business concepts and the specific types of establishments. This rule also protects public safety by restricting minors from primarily drinking establishments, regulating "over/under" clubs. He said over the years, they have had severe problems in the places called over/under clubs. These rules were established for guidelines to follow, listing definitions of a multipurpose arena, and an adequate security plan that must be documented with local law enforcement approval. There are requirements for basic food information; part of the security plan would be how they are going to keep alcohol away from minors. In the past there were attempts to separate minors in the same establishment where adults were drinking, but that also attracted gang activity.<br><br>**Vice Chairman Vick** asked Lieutenant Clements to refresh his memory of what they did last year when this rule was reviewed. **Lieutenant Clements** said it was held for one year to see if there were more comments on the concern of reporting requirements. **Senator Davis** clarified that there was no difference between last year's rule and this year. **Lieutenant Clements** said that was correct. **Senator Davis** didn't understand the purpose of "holding for a year." **Lieutenant Clements** said they maintained their position as a temporary rule while getting more comments, and if necessary, to consider new changes. They had no complaints or requests for changes. There was concern from Senator Davis that it didn't appear to be a temporary rule. Dennis Stevenson, Administrative Rules Coordinator, was asked to explain this to the committee. **Mr. Stevenson** said it was currently in force as a temporary rule and this year it was proposed as a pending rule. |

A discussion ensued regarding the foods required, the endorsement and type of facility by the director, and the distinction of rodeo grounds or the cultural center. **Senator Lakey** asked what the concern was last year. **Lieutenant Clements** said the biggest concern was the reporting requirements and the time of events on a monthly basis; some felt it was burdensome. He had complaints from people that had gotten endorsements and he said depending on the type of event, it does raise different public safety concerns. **Senator Davis** checked the minutes of last year and saw there was concern, but a motion was made and it did pass by a voice vote in this committee. He also looked at the minutes of last year on the House side and they had three or four different meetings including a subcommittee meeting and while they had similar concerns, the rule was also approved. He questioned Mr. Stevenson as to why, if this was the same rule as last year, it must be heard and voted on again. **Mr. Stevenson** explained that the temporary rule cannot be made final. These are two separate rule making actions and because the way the law is written the temporary rule would expire. The agency brought it back to this body as a pending rule to make it permanent.

**MOTION:** **Senator Hagedorn** made a motion to approve **Docket No. 11-0501-1101**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. **Senators Werk** and **Bock** are recorded as voting **no**.

Vice Chairman Vick turned the meeting back over to Chairman Lodge to continue the meeting.

**RS 21735** **Relating to Driver's Licenses - Senator Bart Davis** explained that he became aware of a case where a drivers license was suspended although someone else in the household had driven the car and got a parking ticket. The parking ticket was unpaid and the owner's drivers license was suspended by the city. No notice was given. This bill places due process sideboards on the suspension of a persons drivers license. It requires proof of due process compliance and restricts suspension to in-state infractions. The senators wanted to make sure that with this bill, the violation is with the driver, not the vehicle. **Senator Davis** also said that senior management of the city did rectify the situation in the case he cited.

**MOTION:** **Senator Mortimer** made a motion to send **RS 21735** to print. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

**S 1016** **Relating to Producer Licensing - Michael Henderson**, Legal Counsel for the Courts, explained that this is one of the defect bills recommended by the Supreme Court. It removes a subsection that deals with bail agents. It is no longer true that a bail agent's license filed with the clerk of the district court is deemed proof that such bail agent is licensed. Checking the Department of Insurance website will always provide current, accurate information on the agent's status. This bill would repeal the obsolete provision.

**MOTION:** **Senator Nuxoll** made a motion to send **S 1016** to the floor with a **do pass** recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**S 1017** **Relating to Proceedings in Magistrate's Division - Michael Henderson** explained the next defect bill. He said Idaho Code §§ 19-3939 through 19-3944 concern the procedure to be followed when a misdemeanor conviction is appealed from the magistrate division to the district court. These statutes are now obsolete and in conflict with the provisions of the Idaho Criminal Rules governing such appeals. This bill would repeal these outdated statutes, which will help to avoid confusion as to the proper procedure to be followed in these appeals.

**MOTION:** **Senator Mortimer** moved to send **S 1017** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**S 1018** **Relating to Jury Selection and Service - Mr. Henderson** explained this defect actually does two things; (1) it corrects an erroneous reference to a subsection within Idaho Code § 2-208, a statute that addresses the procedure for summoning prospective jurors, and (2) the language regarding the circumstances in which a prospective juror may be found in contempt of court for failing to report and the penalty provided for such contempt is in conflict with the language in Idaho Code §§ 7-601 and 7-610, the statutes defining what constitutes contempt and establishing the punishment for that offense. This bill would remove that conflict by amending Idaho Code § 2-208(5) to state that prospective jurors who fail to appear may be subject to contempt proceedings as provided in chapter 6, title 7 of the Idaho Code and in applicable Supreme Court rules.

**MOTION:** **Senator Bock** moved to send **S 1018** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED** There being no further business, **Chairman Lodge** adjourned the meeting at 2:20 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, February 04, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| | **Minutes to Approve**: Minutes of January 25, 2013 | Senator Hagedorn<br>Senator Bock |
| S 1032 | Relating to Public Assistance | Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc. |
| S 1033 | Relating to Conservators and Powers of Attorney | Robert L. Aldridge |
| **Gubernatorial Appointment** | **Kimberly Jo Simmons** of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing April 17, 2012 and expiring January 1, 2014. | |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, February 04, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:30 p.m. and asked the secretary to call the roll.

**MINUTES:** **Senator Hagedorn** moved to approve the minutes of January 25, 2013 as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**S 1032** **Relating to Public Assistance - Robert L. Aldridge**, representing Trust & Estate Professionals of Idaho, Inc., explained that during the Clinton administration, there was a bill called the "Health Insurance Portability and Accountability Act of 1996," otherwise known as the Kennedy-Kassebaum bill. In that bill, there was a very controversial provision, commonly referred to as "granny goes to jail." It said that if you did Medicaid planning that involved a transfer of assets, you could go to jail. That ran into a fire storm and was withdrawn. Then a bill was drawn up called "granny's attorney goes to jail." In other words, if an attorney helps someone to plan and point out legal ways to do this, the attorney could go to jail. That also ran into a fire storm. Medicaid law has clear terms on allowable transfers and provides appropriate penalties for certain types of transfers. At the same time, provisions were put into the Idaho Code which still remain even though they are not enforced. The language in this bill was negotiated with the Department of Health and Welfare and is adequate to prosecute actual fraud. **Mr. Aldridge** stated that the bill adds the term "public assistance," which encompasses everything. There are two additions to the language in subsections (2) and (3) that takes care of the "granny goes to jail" and the "granny's attorney goes to jail" provisions.

**Senator Lakey** said it appeared that an attorney might be giving good or bad advice and how was that handled. **Mr. Aldridge** said if they were giving advice on what the federal or state statutes or regulations were, it should not be a criminal matter. If they were improperly advising them, there could be a malpractice suit. **Senator Davis** had comments about the wording, specifically how the word "provision" was used. **Mr. Aldridge** said that Legislative Services felt that was the correct reference in that paragraph.

**MOTION:** **Senator Bock** moved to send **S 1032** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**S 1033** **Relating to Conservators and Powers of Attorney - Mr. Aldridge** explained this bill amends Section 15-12-108, Idaho Code, to provide that responsibilities relating to an agent's accountability to certain fiduciaries and principals shall also apply to appointed temporary conservators, and to provide that under certain conditions powers of attorney are terminated unless limited or continued by the court. It also provides an effective date. **Mr. Aldridge** stated that at the print hearing there was discussion about some of the language and they checked with Professor Dave English about the appropriate language. The alternate language that was passed out to the committee is the new language for a possible amendment. **Mr. Aldridge** said this statute would be effective as to appointments of temporary or permanent conservators made on or after July 1, 2013 only and not apply to existing cases. **Mr. Aldridge** felt the new language had more clarity.

**MOTION:** **Vice Chairman Vick** moved that **S 1033** be referred to the 14th Order for amendment. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**GUB APPT:** **Chairman Lodge** asked Kathy Baird to come forward and give a brief summary on the Sex Offender Management Board (Board). **Ms. Baird**, Management Assistant for the Board, explained that the Board was created in 2011 to replace the Sex Offender Classification Board that had been in place since 1998. The new Board is responsible for a broader range of sex offender management issues. She said this Board has been empowered to create standards for sex offender treatment, treatment providers, polygraph providers as well as sex offender evaluations and evaluators. Last year when most of the Board members were confirmed by this committee, they lacked one member, the defense attorney position. **Ms. Baird** stated that this Board had expanded on the previous board's format by adding more risk assessment type measures and also trying to standardize reports for the courts. **Senator Lakey** asked if this did a better job of protecting the community. **Ms. Baird** said she believed that by having the standardized reporting to the courts, they would gain information needed to make better decisions on sentencing.

**Kimberly Jo Simmons** appointed to the Sex Offender Management Board, said she was a native Texan, transplanted to Boise, Idaho in 2003. She said she had a graduate degree in Psychology from Missouri, and received her law degree from Tulane Law School in 2003. She had worked in the State Appellate Public Defender's office and has been with the Ada County Public Defender's office since 2006. Sara Thomas had recommended her for this appointment. She said her passion was the rehabilitation of others in general, and she thought she had a lot to offer by being a member on this Board. **Senator Davis** suggested that she check with colleagues in other states and see how they have handled these situations, not just on a management board, but within their practice. **Senator Bock** asked about changes that were required and how she would address the purpose of creating the Board in the first place. **Ms. Simmons** said the changes that she saw had a lot to do with due process. She said the Violent Sexual Predator classification, or at least the process, was found to be unconstitutional. She saw many positive changes on how to classify and treat sex offenders. **Chairman Lodge** thanked Ms. Simmons and said they would vote on the confirmation at the Wednesday meeting.

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

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Wednesday, February 06, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| **Minutes** | Approval of Minutes of January 23, 2013 | Senators Mortimer and Nuxoll |
| | Approval of Minutes of January 28, 2013 | Senators Vick and Lakey |
| Confirmation Vote | Vote on the confirmation of **Kimberly Simmons** of Boise, Idaho to the Sexual Offender Management Board. | |
| **Gubernatorial Appointment** | **David A. McClusky** of Twin Falls, Idaho was appointed to the State Board of Correction to serve a term commencing January 2, 2013 and expiring January 1, 2019. | |
| **Docket No.** 06-0101-1202 | **Board of Correction Rules** Rules of the Board of Correction (Proclamation) | Lorenzo Washington Policy Coordinator |
| RS21687C1 | Relating to Prostitution; to establish a felony for utilizing a person under eighteen years of age for prostitution and to provide penalties | Sara Thomas, State Appellate Public Defender |
| RS21581 | Relating to the Control of Venereal Diseases; in prisons | Shane Evans Dept. of Correction |
| **Presentation** | **Department of Correction Overview and Update** | Brent Reinke, Director |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Wednesday, February 06, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:30 p.m. and asked the secretary to call the roll. She then asked for a motion on the gubernatorial appointment of Kimberly Simmons.

**CONFIRMATION:** **Senator Bock** moved to send the gubernatorial appointment of **Kimberly Simmons** to the Sex Offender Management Board to the floor with recommendation that she be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**MINUTES:** **Senator Mortimer** moved to approve the minutes of January 23, 2013 as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**Senator Lakey** moved to approve the minutes of January 28, 2013 as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**GUB APPT:** **David A. McClusky, M.D.** of Twin Falls, Idaho was appointed to the State Board of Correction to serve a term commencing January 2, 2013 and expiring January 1, 2019. Dr. McClusky said he was a general surgeon by trade and also has a huge family practice. He is a third generation doctor from the Magic Valley and his son, a fourth generation doctor, tells him that most of what he does is of historic interest only because the new generation does it better. Dr. McClusky went to the University of Idaho, served in the U.S. Air Force for five years as a military officer, went to Northwestern Medical School, did his internship and residency in Atlanta, Georgia and returned to Idaho to set up practice. He is now employed by the St. Lukes Medical Regional Center of Magic Valley. He has been involved with the Boy Scouts of America, the American Cancer Society, and founded Camp Rainbow Gold (a children's camp). He has fought the battles for tobacco control and also started the Wellness Free Clinic in Magic Valley. He said it was possibly there that he became interested in working with the prison system or the parole board to help people that were coming back into society and have health care problems. He said when the opportunity came to accept this job, he saw an opportunity as a physician to help solve some of the mental health problems coming into society.

In response to questions from the senators, **Dr. McClusky** said his work in the free clinic would be similar to that of the prisoners making the transition into society. He knew that mental health was a huge challenge and he hoped to bring together the people he works with in the health field so building institutions would not be necessary. The senators congratulated him for his community work and thanked him for his leadership. **Chairman Lodge** said they would vote on his confirmation next Monday and asked Robin Sandy to come to the podium. **Robin Sandy**, Chairman of the Board of Correction, said she appreciated the consideration for Dr. McClusky. She has the utmost respect for him. He brings to the board a logical, business-like supervisory experience.

Chairman Lodge turned the meeting over to Vice Chairman Vick to present the rules review of the Board of Correction. **Director Reinke** came forward to introduce other members of the department; subject matter expert, Lorenzo Washington; Chief Deputy Attorney General, Mark Kubinski; as well as Henry Atencio, Probation and Parole Division Chief. He said any of the four could answer questions, but Mr. Washington would present the rule.

**DOCKET NO. 06-0101-1202**

**Rules of the Board of Correction (Proclamation) - Lorenzo Washington**, Acting Policy Coordinator, explained that he moved on to a new position in the department. The new Policy Coordinator is Lisa Jones. He reminded the committee members that the Board of Correction rulemaking process is different from most Idaho agencies. In Idaho Code § 20-212, the Department of Corrections is exempted from two sections of the Idaho Administrative Procedure Act in that the department is exempted from holding public meetings and holding negotiated rulemaking. Their rulemaking was reviewed by the Legislative Services Office on September 27, 2012 and there were no objections.

**Mr. Washington** explained the proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. The Board of Correction rule changes are summarized as follows:

- 013. Department Fee Structure - This new section describes fees that IDOC may charge to help defray the cost of services provided to offenders. (Mr. Washington said these fees have always been charged to offenders, but this will codify them. Attachment 1.)
- 117. Department Visitor - This amendment ensures better identification and accountability of IDOC visitors and puts in place restrictions from bringing firearms and other deadly weapons into secured areas of IDOC property.
- 312. Deceased Offenders - Revisions in this section relates to the disposition of a deceased offender's money and property.
- 510. Searches of Persons and Vehicles Entering Department Facilities - This section is deleted as it is combined with section 511.
- 511. Access to Department Properties - The amendment of this rule is necessary for the purpose of protecting staff and offenders from harm. The amendment ensures better identification and accountability of IDOC visitors from bringing contraband and controlled substances into IDOC correctional facilities, community work centers, and district probation and parole offices.

**MOTION:**

**Senator Nuxoll** moved to approve **Docket No. 06-0101-1202**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Vick turned the meeting back to Chairman Lodge. **Chairman Lodge** recognized Sara Thomas to present RS 21687C1.

**RS 21687C1** **Relating to Prostitution - Sara Thomas**, State Appellate Public Defender, representing Idaho Criminal Justice Commission (ICJC), explained the purpose of this legislation is to:

1. ensure that an act of exchanging anything of value for sexual conduct or contact with a minor is a felony carrying a potential life sentence;
2. require those convicted of doing so, or attempting to do so, to register as a sex offender; and
3. provide that those who induce a minor into prostitution or procure a person for use as a prostitute forfeit the proceeds gained and/or property used to commit the crime.

**Vice Chairman Vick** asked where the forfeitures would go. **Ms. Thomas** said that was not covered in this legislation and they are looking at a few options, it may be put in the victim's compensation fund. **Senator Bock** would be interested in a discussion about these people registering as sex offenders. He wanted to make sure they were not overreaching on the sexual offender registry. **Ms. Thomas** said the sex offender registration is for anyone that engages in sex with a minor and would be consistent with all other sex crimes. **Senator Werk** asked if under Section 18-5610, what are the standards for someone that they knowingly understood that the person was over the age of 18. **Ms. Thomas** stated that currently in Idaho, if you commit a sex crime with a minor, lack of knowledge of the victim's age is not a defense. **Senator Werk** said incarceration was quite broad, from two years to a life sentence. **Ms. Thomas** said she would address this when she came back with the bill. **Senator Nuxoll** asked if this was standard language compared to other states or was it Idaho specific. **Ms. Thomas** said the language for Idaho Code § 18-5610 came out of Idaho's prostitution statute. The change is to stress that not only exchanging sexual conduct for a fee, but for "anything of value," which is taken out of the federal human trafficking statute. **Senator Hagedorn** asked for the logic behind not identifying where the funding goes; why the forfeiture was not in this bill. **Ms. Thomas** said it was overlooked in the beginning. She said they plan to fix that. **Senator Hagedorn** proposed another option would be an amendment when the bill is brought back.

**MOTION:** **Senator Bock** moved to introduce **RS 21687C1** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**RS 21581** **Relating to the Control of Venereal Diseases; in prisons - Shane Evans**, Chief Education Treatment and Reentry for the Idaho Department of Correction (IDOC), explained the purpose of this minor modification to Idaho Code § 39-604 is to update the venereal disease examination and testing process of Idaho's incarcerated population from mandatory to opt-in testing upon release. These modifications are based on medical best practices and a fiscally-responsible approach to testing. **Senator Werk** said that on admission to the facility, they test and treat; and now on release will they test and treat. **Mr. Evans** said he thought that was inconsistent language to their practice. At intake, thorough and exhaustive health care and mental health screenings are administered and all emerging medical issues are treated. **Senator Werk** said he was trying to get an idea if a high percentage of the population being released from the facility would have diseases that could become a problem within the community. **Mr. Evans** said if anyone was diagnosed with a progressive or chronic disease, they connect them to the community health services. **Senator Bock** asked about the scope of the problem and why it's important to retest when released; and if it was such a problem, it should be part of a larger presentation. **Mr. Evans** asked if he wanted current numbers of the folks that have been identified with a disease. **Senator Hagedorn** said the statute currently reads that you are required to test before release. The change you are requesting is upon offender's request. He added that the Fiscal Note on

the Statement of Purpose indicates that if five percent of the population requests the opt-in testing, our costs would increase by approximately $7,720 with a total impact of $360,000. **Mr. Evans** said they do not test everyone coming out and they intended to make current practice in alignment with statute. Based on what is known nationally, correctional agencies have an opt-in policy for most unless identified at the beginning and then they are treated throughout. **Senator Bock** reiterated that if it was a significant problem perhaps everyone should be tested and he expected a full discussion at a later date. **Mr. Evans** said they would bring back proposals for the adoption of the full testing and the significant impact on the department.

**MOTION:** **Senator Mortimer** moved to introduce **RS 21581** to print. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**PRESENTATION:** **IDOC Overview and Update - Brent Reinke**, Director of IDOC, directed the committee's attention to the Annual Report FY12 (Attachment 2) and also the brochure (Attachment 3) which is a simple overview that can be provided to give to constituents. **Director Reinke** said they were a staff of 1,557 and managed 22,000 individuals statewide in the correction facilities and communities. The three topics focused on this year were that of staff, population, and the Balla or mental health settlement at the Idaho State Institution. They have some significant needs regarding staff issues. He mentioned that probation, parole, and correction officers have to go through at least a five week academy at the POST facility. He said they are trying to retain the individuals that they have done background work on and recruited. He pointed out the eleven facilities, including three which are contract facilities plus four community work centers, and 34 county jails. The incarcerated population in June 2012 was 8,097 with an average bed cost of $53.24/ per day. They have seen an increase in terms, but a decrease in Riders and Parole Violators and are attempting to better manage the population.

**Vice Chairman Vick** asked why there was a decrease in Riders and Parole Violators. **Director Reinke** said they were evaluating all violations in district offices around the state and trying to understand what practices they have changed and the outcomes of decisions that were made. **Senator Bock** asked of the increase, what percentage of those were perpetrators of victimless crimes. **Director Reinke** said he would research that information and supply the committee the answer.

**Director Reinke** reminded the committee that in the last ten years, they have gone from a bed driven system in Idaho to a program driven system and they have learned a tremendous amount from problem solving courts and specialty courts. They are going to see irregularity in their forecasting practice. Ten years ago, offenders just did their time; now the department is focusing on rehabilitation. He also pointed out how they were driving down population by use of the following: (1) Violation Survey, (2) Limited Supervision Unit, (3) Substance Use Disorder Funding, and (4) Community Transition Program. Finally, the Balla stipulated agreement is critical; the suit was filed 31 years ago and there is finally an agreement to settle in the next 30 to 40 days.

**Senator Werk** said he was tired of reading about issues with the Correction Corporation of America (CCA) in the newspaper and would like to know when the contract with CCA ends. **Director Reinke** said the current contract has a five year life with a year and a half left on this contract and a possibility of a four year renewal. **Senator Werk** asked who made the decision of a renewal, the department or CCA. **Director Reinke** said it would be up to the Board of Correction to make that determination. **Senator Werk** asked how many people oversee the work at CCA and what is the cost. **Director Reinke** said they now have three full-time staff to monitor that facility. The goal is to monitor and audit all three shifts and they expect better outcomes in the future. **Senator Werk** mentioned the papers stated irregularities of time sheets and staffing levels which were also identified by the department, but has not been acted upon in a number of months. He asked if

they had determined that an investigation was in order if violations were occurring. **Director Reinke** said the investigation was being conducted on several levels and the Idaho State Police have been involved in the investigation. **Senator Werk** asked if any of the liability from lawsuits will flow down to the state. **Director Reinke** replied that would be a question for the Attorney General.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:55 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, February 11, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| **Minutes** | Approval of minutes of January 30, 2013 | Senators Hagedorn and Werk |
| **Confirmation Vote** | Vote on the confirmation of **David A. McClusky** of Twin Falls, Idaho to the State Board of Correction. | |
| **Gubernatorial Appointment** | **Lisa Growette Bostaph** of Boise, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing June 21, 2012 and expiring January 1, 2015. | |
| **Gubernatorial Reappointments** | **Anna Jane "Janie" Dressen** of Coeur d'Alene, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2013 and expiring January 1, 2016. | |
| | **Mike H. Matthews** of Declo, Idaho was appointed to the Commission of Pardons and Parole to serve a term commencing January 1, 2013 and expiring January 1, 2016. | |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, February 11, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 2:03 p.m. and asked the secretary to call the roll.

**MINUTES:** **Senator Hagedorn** moved to approve the minutes of January 30, 2013 as written. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**MINTUES:** **Senator Bock** moved to approve the minutes of February 4, 2013 as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**CONFIRMATION:** **Chairman Lodge** stated the committee would vote on the recommendation to confirm the appointment of David A. McClusky, M.D., to the State Board of Correction to serve a term commencing January 2, 2013 and expiring January 1, 2019.

**MOTION:** **Vice Chairman Vick** moved to send the gubernatorial appointment of **David A. McClusky** to the State Board of Correction to the floor with recommendation that he be confirmed by the Senate. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

**GUB APPT:** **Lisa Growette Bostaph** of Boise, Idaho was appointed to the Commission on Pardons and Parole (Commission) to serve a term commencing June 21, 2012 and expiring January 1, 2015. **Dr. Bostaph** explained she is the Associate Professor of Criminal Justice at Boise State University. She said she came to Idaho in 2003 from Cincinnati where she received her Ph.D. in Criminal Justice at the University of Cincinnati. She said she was born and raised in northern Minnesota and her family had all been in criminal justice. Prior to becoming an academic, she worked for regional corrections in Duluth, Minnesota. She also worked at the Duluth Domestic Abuse Intervention, on the battery treatment side and later was hired by police chiefs outside of Minneapolis, Minnesota to create a Crime Scene Crisis and Intervention Program.

**Senator Werk** commented on her valued experience and asked her if she had seen the performance evaluations on the Division of Pardons and Parole and the related issues. **Dr. Bostaph** replied that she had. **Senator Werk** said those reports for over a decade have detailed discrepancies and difficulties with record keeping and procedures that have an impact on the Commission. He asked what her role might be to move the agency forward. **Dr. Bostaph** said she was not concerned with how the office was run as that was the job of the Executive Director and in regard to the operative reports which she has reviewed, many agencies may be behind because of the advancement of technology. She didn't feel the ability of the office to access information was delaying anybody's ability to make parole.

**Senator Davis** asked if she was aware of colleagues in other states where a university professor had chosen to actively participate in a parole commission of their state or similar assignments. **Dr. Bostaph** did not know of any university faculty or professors who had been offered the opportunity to serve in that capacity; however she did know there were people in other states that hold Ph.D.'s who serve on parole boards. **Senator Davis** also asked Dr. Bostaph if she would be able to handle all the reading required and also handle her faculty work. **Dr. Bostaph** said it did involve a lot of work; an individual file can range anywhere from 20 pages up to 100 or more pages, but she could handle the assignments. **Senator Davis** questioned Dr. Bostaph on her philosophy on granting parole and what type of bias does she bring to this process. **Dr. Bostaph** said we must recognize that we all have biases and must be aware of them so they can be set aside. She said her philosophy was that parole is not a right, but a privilege, a privilege to be earned by someone inside the institution in order to demonstrate to the public at large, for whom the Commission represents, that they are ready and willing to return to society, to maintain public safety and to not hurt others or themselves.

**Vice Chairman Vick** asked her philosophy on the criminal understanding of how to deal with the victim and whether the criminal was eligible for parole. He also asked what was the role of restitution as part of the process. **Dr. Bostaph** said that for persons to stand before family, a board or other body and say that they truly understand that what they did was wrong and that they are truly willing to change, their behavior could then move beyond their offence. **Vice Chairman Vick** asked if that was part of the formal process that the Commission uses. **Dr. Bostaph** said that one person was assigned to be primary and lead the questioning, then others may ask questions. Victims are also allowed to come to hearings and make statements.

**GUB APPT:** **Anna Jane "Janie" Dressen** of Coeur d'Alene, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2013 and expiring January 1, 2016. **Ms. Dressen** said she was an Idaho native from Moscow. She moved to Boise in 1988 and was hired into the Warden's office in the Idaho Department of Correction. She moved to North Idaho in 1992 and was appointed to the Commission in 1997. She enjoys the job although the work is hard and sometimes disturbing. She commended the Director, Olivia Craven and the good work she has done. **Senator Werk** asked about the Office of Performance Evaluations (OPE) and their reports that data was not provided in a timely manner. He asked if she had any experience in working through those issues in the agency. **Ms. Dressen** said they had excellent information furnished to the Commission. **Senator Werk** asked if during her time on the Commission she engaged with the Director and staff in trying to address concerns about operations in the office. **Ms. Dressen** said if there was any problem with information that is received, they speak to Ms. Craven about getting those issues fixed. As a result, the mental health evaluations were being redeveloped to be more concise and provide the information the Commission needs.

**GUB APPT:** **Mike H. Matthews** of Declo, Idaho was appointed to the Commission of Pardons and Parole to serve a term commencing January 1, 2013 and expiring January 1, 2016. **Mr. Matthews** said this would be his fourth appointment and noted it had been a privilege to serve. He said there was never a dull moment and while it may be the same information, it was still different. He first thought all offenders could be fixed, but that was not always the case. **Senator Davis** asked if during his service time had he been shortchanged in information that was needed. **Mr. Matthews** replied no, and added that hearings had been stopped if necessary to get the information that was needed, but that did not happen often. **Senator Davis** asked what type of information was not available. **Mr. Matthews** said that mental health evaluations may not always be there, especially in the case of a sex offender who must have a sex offender risk assessment done before they can be considered for

parole and that information may not have gotten through the pipeline from the Department of Correction. **Senator Werk** asked if they worked with a check list to know that a packet is complete. **Mr. Matthews** said there was not a check list, but the hearing officers spend an immense amount of time organizing files with input from us on how the files are best read by us. There is a sequence of items including criminal history, synopsis of the crime, educational background, familial background, mental health background, and various professional assessments and any other relevant material for that particular inmate. He said they would also have information on behavior within the institution, the classes, the pathways the individual has taken, their parole plan and the interview summary with the hearing officer. **Senator Lakey** asked about the success he has seen over time. **Mr. Matthews** said they were dealing with human beings and human beings do not always make good choices, but he has seen some real changes in the process. He believed they have made progress because of the programs that have been added.

**Chairman Lodge** said the committee would be voting on these three appointments on Friday, February 15, 2013. She said that on Wednesday, the meeting would consist of a tour of the prison, run by Correction Corporation of America (CCA). She noted that vans would be in front of the Capitol at 12:00 p.m., and box lunches would be provided at the prison. She suggested that it would be an interesting tour and to let her know if they would be attending.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:57 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

JOINT

# SENATE JUDICIARY & RULES COMMITTEE
# AND
# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**12:00 P.M.**

**Wednesday, February 13, 2013**

**box lunches provided and shuttle in front of Capitol**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| | **TOUR OF PRIVATE PRISON**<br>CORRECTION CORPORATION OF AMERICA (CCA) | |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
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MINUTES
JOINT MEETING

# SENATE JUDICIARY & RULES COMMITTEE
# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, February 13, 2013

**TIME:** 12:00 P.M.

**PLACE:**

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock, and Werk

Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, and Ringo

**ABSENT/ EXCUSED:**

**NOTE:** 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.

**PRISON TOUR:** Senators and Representatives from the Senate and House Judiciary and Rules Committees were invited to tour the prison run by Correction Corporation of America (CCA). Those who went were welcomed by the Warden and other prison officials. They provided the attached handouts.

Senator Lodge
Chairman

Leigh Hinds
Secretary

**AMENDED** AGENDA #1

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Friday, February 15, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| **RS22038** | Relating to Annuity Contracts | Senator Bart Davis |
| **RS21945** | Relating to Attorney's Fees when an insurer fails to pay a person entitled | Lyn Darrington |
| **Confirmaiton Vote** | Vote on the confirmation of **Lisa Growette Bostaph** of Boise, Idaho to the Commission on Pardons and Parole<br>Vote on the confirmation of **Anna Jane "Janie" Dressen** of Coeur d'Alene, Idaho to the Commission on Pardons and Parole<br>Vote on **Mike H. Matthews** of Declo, Idaho to the Commission of Pardons and Parole | |
| S 1034 | Relating to County Jails; relating to the Governor's Authority to order removal of prisoners | Michael J. Kane, Idaho Sheriffs Association |
| S 1035 | Relating to County Jails; relating to the authority to designate detention officers to act as Peace Officers | Michael J. Kane |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Friday, February 15, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:37 p.m. and asked the secretary to call the roll. **Chairman Lodge** called attention to the letter from Director Reinke of Idaho Department of Correction with answers to questions asked of him at the last meeting and also a calendar of Commission Hearings from the Parole Commission in the event a member wants to attend a hearing.

**RS 22038** **Relating to Annuity Contracts - Senator Davis** explained that Idaho law allows you to retain some of your property regardless of how destitute. There are also allowances for retaining wages, household goods and furnishings, equity of their home, all within statutory limits. There is also an exemption in Title 41, which provides for the protection of annuity contracts. However, the purpose of this legislation is to put a limit on the annuitant, to prevent the dumping of money or property inside an annuity to safely protect them and avoid the filing of just claims. This concept comes from a couple of other states and shall not allow the exemption and protections to apply to any annuity contract that allows the annuitant to receive or begin receiving monthly or other periodic payment on or before the age of 58 years or to receive payment over a period of 60 months or less. **Senator Bock** said he had some concerns for an annuity that would provide for earlier payments due to a disability or something to that affect. **Senator Davis** had the same concern and would like to have this printed even if an amendment is needed.

**MOTION:** **Senator Mortimer** moved to print **RS 22038**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**RS 21945** **Relating to Attorney's Fees when an Insurer Fails to pay a Person Entitled - Lyn Darrington**, representing State Farm Insurance Company, explained this legislation relates to insurers liability for attorney fees. It provides first-party insurers up to 60 days to make claim payment decisions on uninsured motorist and underinsured motorist claims. It also eliminates requirement that insurers deposit a claim settlement offer into court before an insured commences suit for benefits recovery. It sets settlement offer standard for consideration of attorney fees related to uninsured motorist and underinsured motorist claims. **Ms. Darrington** said it was a complicated issue and she would like to have the RS printed as they continue to work with interested parties. **Senator Davis** asked if she had agreement with Idaho Trial Lawyers Association (ITLA) on this issue. **Ms. Darrington** said they have had meetings, but have not come to an agreement.

**MOTION:** **Senator Davis** moved to print **RS 21945**. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**. **Senator Bock** voiced his concern that if he had a claim against his insurance policy, typically he would not be expected to litigate that claim to get insurance coverage. He asked why it would take 60 days to resolve the issue. He would like some answers to these questions when it is presented as a bill.

**Chairman Lodge** said the next order of business was to vote on the three gubernatorial appointments to the Commission of Pardons and Parole.

**CONFIRMATION:** **Senator Davis** moved to send the gubernatorial appointment of **Lisa Growette Bostaph** to the Commission on Pardons and Parole be sent to the floor with the recommendation that she be confirmed. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**Senator Davis** moved to send the gubernatorial appointment of **Anna Jane "Janie" Dressen** to the Commission on Pardons and Parole be sent to the floor with the recommendation that she be confirmed. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**Senator Mortimer** moved to send the gubernatorial appointment of **Mike H. Matthews** to the Commission on Pardons and Parole be sent to the floor with the recommendation that he be confirmed. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

**S 1034** **Relating to County Jails; relating to the Governor's Authority to order removal of prisoners - Michael J. Kane**, Idaho Sheriffs Association, explained the purpose of this bill is to repeal Idaho Code § 20-625, which is an obsolete statute that requires a sheriff to get written permission from the governor before moving a prisoner from one jail to another. This was adopted in 1864, but has not been followed. There are many reasons why prisoners might be moved;

- there may be a federally imposed cap on the number of prisoners,
- they may need mental health treatment,
- they may be in one jail, but are prosecuted in another county,
- there may be programs available in one jail and not another,
- the reason may be to break up a gang.

**Senator Davis** asked if this statute was repealed, what are the codified standards for moving a prisoner or will there be none. **Mr. Kane** said he knew of none. **Senator Davis** asked if there should be some codified standards. **Mr. Kane** said he didn't know if there needed to be a law to move prisoners; the sheriff is the authority and the responsible party. There were questions from the senators as to who set the jail standards. **Mr. Kane** said the Idaho jail standards are the creation of the Sheriffs' Association in conjunction with counties and corrections and are adopted on national standards and reviewed on a regular basis. They are adopted statewide, self-imposed and follow federal laws as well.

**TESTIMONY:** **Monica Hopkins**, Executive Director of American Civil Liberty Union (ACLU), said she was here to oppose the bill. While she recognizes the burden of having the Governor sign off on the transfer of prisoners, without codifying something in law that oversees that transfer, they have concerns about the special transfer situations that raise constitutional concerns and liberty interest. She voiced concerns of prisoners who were transferred to a mental hospital; they were entitled to a review. Prisoners can challenge transfers if they show that the transfer decision was made in retaliation for filing a grievance lawsuit, or for exercising their other constitutional rights. Pretrial detainees have a greater constitutional protection if the transfer interferes with their 6th amendment right to effective assistance of counsel and to a speedy trial. Therefore, she said, repealing statute 20-625 leaves you with the following questions:

- Who statutorily has the current authority to authorize?
- How is the transfer going to be documented to ensure constitutional compliance?

- Is there an opportunity for the inmate to object to the transfer ensuring their due process rights?

**Ms. Hopkins** challenged the fiscal note as not having the impact on the state, counties, or cities. She cited a case of Young vs. Smith where inmate Harris was transferred to solitary confinement and he was told by the jailer that drove him that he was being moved because he was writing to the ACLU.

**Senator Davis** asked Ms. Hopkins, since the statute had never been modified, was she aware of its current application or use. **Ms. Hopkins** did not know that it was on the books, but she would seek to have a record created and also some authority outside of the sheriff's department for moving prisoners. Jail standards are not codified and can be changed. She said she would be happy to work with the Sheriffs' Association and other bodies to craft a solution. **Senator Davis** suggested that they hold Section 20-625 open and asked if she could come back next year with provided language. **Ms. Hopkins** said she would be fine with that as long as she had the commitment from the Sheriffs' Association.

**Mr. Kane** said they had a good relationship with the ACLU. They would certainly agree to work with them on this matter. **Senator Bock** noted that the legislature was in the sixth week and asked if it was possible to work out a solution in the next couple of weeks that would satisfy the ACLU. **Mr. Kane** said they had already met with sheriffs all over the state in February and could only work on it for next session.

**MOTION:** **Senator Hagedorn** moved to send **S 1034** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**S 1035** **Relating to County Jails; relating to the authority to designate detention officers to act as Peace Officers - Mr. Kane** said this bill deals with the powers of arrest by detention deputies. He explained that there had been a law for the last 15 years that detention deputies who were certified by POST may be appointed as peace officers for arrest powers in limited circumstances, i.e. transportation of prisoners, apprehension of escapees, someone who has violated probation or they can serve court orders or arrest warrants. He said that in a jail setting, it is not unusual for prisoners to need to be arrested or confined and it can be a burden to bring in a deputy from outside of the jail to make the arrest. He said when the bill was done originally, nothing was addressed in the case of a crime that occurred inside of the jail. The detention officer did not have the ability to arrest the prisoner. That is what this bill will address. An outside deputy will still be called to do the investigation and then it goes to a prosecuting attorney for independent investigation and possible prosecution.

**Senator Nuxoll** said she received an email that suggested that the detention officer should arrest only when the officer was not a victim. **Mr. Kane** said the bill does not speak to investigation. He thought the email was referencing inmate violence. **Senator Bock** wondered why someone already in custody would be arrested. **Mr. Kane** said while they were confined they had rights or privileges. However, when a crime was committed, privileges could not be denied so they would be arrested and put in a holding cell pending investigation and hearing. **Senator Werk** said if there was an assault that was witnessed was there leeway within the jail to apply sanctions to the guilty party immediately. **Mr. Kane** said administrative sanctions, yes, but not criminal sanctions. He was speaking of criminal activity that rises to a level of battery on an officer or another inmate and of a significant nature. **Senator Werk** said he had concerns about a prisoner that has a longstanding relationship with a particular guard that might use abuse of authority to make this arrest. He asked for an explanation of what would occur after the arrest. **Mr. Kane** said in any criminal case, if there is an arrest, they have 48 hours to have a probable cause hearing and a formal complaint filed. **Senator Werk** said he was inclined to believe

that someone could use the arrest process as a type of harassment of a prisoner with whom they have a poor relationship. **Mr. Kane** said if the guard was found to be harassing prisoners by unlawfully arresting them, it would end his career and even create a civil rights action. **Senator Davis** said why not be patient and let the investigation occur and then make the arrest. He understood that with these guidelines, it would provide some constitutional protections for the prisoner. **Mr. Kane** said there were all kinds of criminal activities occurring in jails from sexual violations, violence, contraband and to the manufacture of weaponry. This is a way to stop the violation immediately. Otherwise, the detention officer would need to make a citizen's arrest. **Senator Davis** said while that process exists, have the sheriffs around the state found those to be inadequate. **Mr. Kane** said that they are familiar with cases going back in time where reserve deputies even in uniform were not considered to be peace officers and only capable of making citizen's arrest. However, then they were told it was not a citizen's arrest since they were in uniform.

**MOTION:** **Senator Nuxoll** moved to send **S 1035** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. **Senators Bock** and **Werk** voted no and asked to be recorded in the minutes.

**GRADUATION:** **Austin Petellin** was graduated from his page duties. He said he appreciated the opportunity of working with the committee. He has possible plans to attend Northwest Nazarene College. He wants to stay connected and thanked everyone for having him. **Chairman Lodge** presented him with a gift and a letter signed by all the committee with a letter of recommendation to follow. She thanked him for his service and for Vice Chairman Vick sponsoring him.

**INTRODUCTION:** **Chairman Lodge** introduced Madeline Breen and welcomed her to the committee as the new Page for the rest of the session. She said many would know Madeline's mother who had been before the committee on many occasions as the State Appellate Public Defender, and was now Judge Molly Huskey.

There being no further business, **Chairman Lodge** adjourned the meeting at 2:40 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, February 18, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| Minutes | Approval of Minutes of February 6, 2013 | Senators Vick and Lakey |
| RS22054 | A Concurrent Resolution stating findings of the Legislature and Rejecting a Certain Rule of the Idaho State Police Relating to Rules of the Idaho Peace Officer Standards and Training Council. | Senator Steve Vick |
| RS22055 | A Concurrent Resolution stating findings of the Legislature and Rejecting a Certain Rule of the Idaho State Police Relating to Rules of the Idaho Peace Officer Standards and Training Council. | Senator Steve Vick |
| S 1048 | Relating to Driver's Licenses | Senator Bart Davis |
| S 1022 | Relating to Mandatory Income Withholding for Child Support | Kandace Yearsley, Department of Health and Welfare |
| H 29 | Relating to Judicial Districts; Increase of Judges and Resident Chambers | Patricia Tobias, Administrative Director of the Courts |
| Presentation | Recruitment of Judges | Patricia Tobias and Barry Wood, Sr. Judge |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

| | |
|---|---|
| **DATE:** | Monday, February 18, 2013 |
| **TIME:** | 1:30 P.M. |
| **PLACE:** | Room WW54 |
| **MEMBERS PRESENT:** | Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk |
| **ABSENT/ EXCUSED:** | |
| **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 to order at 1:30 p.m. and asked the secretary to call the roll. |
| **MINUTES:** | **Senator Lakey** moved to approve the minutes of February 6, 2013 as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. |
| **RS 22054** | **Vice Chairman Vick** presented the Concurrent Resolution stating the rejection of certain rules of the Idaho State Police relating to the rules of the Idaho Peace Officer Standards and Training Council, Section 010, Subsection 27 and Section 197, Subsection 01, only, adopted as pending rules under Docket Number 11-1101-1202. |
| **MOTION:** | **Senator Davis** moved to print **RS 22054**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**. |
| **RS 22055** | **Vice Chairman Vick** presented the Concurrent Resolution stating the rejection of certain rules of the Idaho State Police relating to the rules of the Idaho Peace Officer Standards and Training Council, Section 091, Subsection 01, only, adopted as pending rules under Docket Number 11-1101-1201. |
| **MOTION:** | **Senator Davis** moved to print **RS 22055**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. |
| **S 1048** | **Relating to Driver's Licenses - Senator Bart Davis** explained that a constituent had their drivers license suspended for failure to pay a parking ticket when another person unlawfully parked the car. Since the print hearing, **Senator Davis** said he met with members of the Court, a representative of the Department of Transportation and a representative from the Association of Cities. He would like to send this bill to the floor and to the 14th Order for possible amendment. He provided the anticipated amendment with an option of adding the word "...the parking or bicycle violation..." In case this does not have the phraseology that includes "...an infraction for failure to pay" he would also add that. He reminded the committee that the state of Idaho and also state parks issue parking tickets and this would apply to them as well as the municipalities. |
| **MOTION:** | **Senator Lakey** moved to send **S 1048** to the floor to the 14th Order for amendment. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**. |

**S 1022** **Relating to Mandatory Income Withholding for Child Support - Kandace Yearsley**, Child Support Bureau Chief, explained this bill was about the use of the federally approved income withholding form and is a requirement under the Social Security Act and mandated by the Administration of Health and Human Services. This federal mandate requires states to utilize the federally approved Income Withholding for Support form in all IV-D child support cases with child support orders initially issued in the state on or after January 1, 1994. The rule also requires states to administer all withholding payments through the State Disbursement Unit with an effective date of May 31, 2012.

**Senator Mortimer** asked if these garnishments were held if their child support is current. **Ms. Yearsley** said the income withholding they were talking about in this situation was about a person who gets a divorce or a withholding order on their own, not a case from Health and Welfare. So, the answer to the question is yes. **Senator Mortimer** asked if they were requiring that income come to the department for disbursement even though it hasn't originally gone through the department. **Ms. Yearsley** said that was correct. **Senator Mortimer** asked if she was indicating that was a federal requirement for medicaid. **Ms. Yearsley** said that was a federal requirement for the child support program and also a requirement for the Social Security Act.

**Senator Davis** asked if it was required by the federal government, why put it in Idaho code. **Ms. Yearsley** said part of that requirement was that it was in state code so the federal government knows it is being followed. **Senator Davis** asked if the federal government was not just requiring that their form is used, but they are requiring that Idaho statute be amended to require the use of that form. **Ms. Yearsley** said the requirement came into effect in May of 2012 and it should have been brought to the legislature in the previous session. She said the state plan is at risk if they do not bring it forward now. **Senator Davis** asked why they use the word "federally" when they are complying by using the income withholding form required by the federal government. **Ms. Yearsley** said the form itself has the word federal as part of the header on the form which is why it has been identified as such. **Senator Davis** said he did not like codifying federal law and Idaho law may adopt federal standards, but not say in statute what is already law. **Ms. Yearsley** said the program they operate is important to the kids in this state. She would be glad to go back and see if "federally" could be taken out without a risk to the program.

**Senator Hagedorn** asked what the risk was if this was not passed. **Ms Yearsley** said the grant money would be in jeopardy. **Senator Hagedorn** followed up by asking if the child support program was paid for by federal dollars. **Ms. Yearsley** said the child support program was funded sixty-six percent federal and thirty-four percent state. **Senator Hagedorn** said the money for the children comes from the divorced parents through a court order so what kind of numbers actually fund the program. **Ms. Yearsley** said somewhere in the vicinity of eighteen million dollars.

**Senator Lakey** asked what was the state plan she had described. **Ms. Yearsley** said states must have a plan run a certain way, federally complied, with medical support in all child support orders and signed off by the Governor. **Vice Chairman Vick** pointed out some discrepancies as the word "for" was in one place and not in another. **Ms. Yearsley** said she would look into that.

**MOTION:** **Vice Chairman Vick** moved to hold **S 1022** in Committee until Ms. Yearsley can return with answers. **Senator Davis** seconded the motion. The motion carried by **voice vote**. **Senator Hagedorn** asked that she clearly identify the risk to the program when she returns.

**H 29** **Relating to Judicial Districts; Increase of Judges and Resident Chambers -** **Patricia Tobias**, Administrative Director of the Courts, explained this bill would add three new district judge positions; one district judge to be chambered in Canyon County (3rd District), one district judge in Ada County (4th District) and one district judge with resident chambers in Jefferson County (7th District). She said the effective date is on or after October 1, 2013 to correspond to the fiscal year of county government. She pointed out that after careful analysis, the data clearly shows new judgeships have not kept pace with population, caseload trends and the increasing complexity of court complexity. (See Attachment 1). The Court has deferred requests for new judgeships the last five years due to the economic decline and senior judges have helped to fill the gap. She stated that Idaho's economy and local communities demand that business and property disputes are resolved efficiently and timely. She also said that tax payers' money would be saved by reducing the time that defendants spend in jail awaiting trial and sentencing. **Ms. Tobias** asked Senior Retired Judge Barry Wood to describe the work of district judges across the state.

**Judge Wood** explained the jurisdictional levels of district judges in Idaho. These judges hear all trials and sentencing's in felony cases, which could be punishable with death or by imprisonment, all civil cases where the amount in controversy exceeds ten thousand dollars, and appeals from all administrative agencies and the decisions of the magistrate judges. **Judge Wood** said that in his experience, sentencing decisions can be the most difficult part of the job. District judges also hear, on the Civil Law side, complex business cases, monetary and property claims, commercial disputes. One of the district judges adjudicates ownership of water related disputes and appeals from the Idaho Department of Water Resources. On the appellate side, district judges hear: criminal and civil appeals from the magistrate's division, appeals from rulings of county commissioners and Idaho administrative agencies. The appeals from these boards and agencies are no trivial matter as they can affect entire communities, counties or regions. The fiscal note of this bill includes the annualized costs for three new district judges and three court reporters.

**Senator Nuxoll** asked why the request for district judges rather than magistrate judges. **Ms. Tobias** said the need was greatest first for the three district judge positions, and secondly adding two judges to the magistrate judge caseload. The 87 magistrate judges have a very broad jurisdiction and they will better handle their increased workload with the two additional judges that are included in the budget.

**Senator Hagedorn** asked Ms. Tobias why the numbers of caseload by judge were not equitable between districts as shown on the handout. **Ms. Tobias** said they would have to take the overall caseload and divide by the number of district judges, but include the new additional judges. Then it would be more equitable. She said they did an extensive analysis looking at far more than is shown on Attachment 1. They analyze by case type, by whether they are serving as a problem-solving judge, by number of miles they are driving within their judicial districts, by the number of senior judges that would be pulled out if a district judge was added. **Senator Hagedorn** asked if there were economies of scale where there are more judges for districts. **Ms Tobias** said that some judges, as those in the Ada County Courthouse, were not spending time on the road as part of their overall workload as compared to the 7th Judicial District that travels to ten counties.

**Senator Bock** asked if there was a difference in cases in counties and is there a different level of complexity and if so, how is it measured. **Ms. Tobias** said she could not describe by any objective measure any variations in the complexity of cases based upon the jurisdiction, but there are differences in composition of caseload across the state. She deferred to Judge Wood for further comment. **Judge Wood** said the examples that came to mind were Ada County where most of the appeals came from big business and also the prison is located there. The degree and level of their civil work is significantly different from what other judges elsewhere will see. The criminal load can vary widely by jurisdiction. Canyon County, for example has had more than their share of criminal cases. In Jefferson and Blaine County, nothing gets built without a lawsuit. Blaine County has less criminal load, but appeals from various agencies is significantly higher. In that sense, the workload isn't the same because it changes all the time.

**MOTION:** **Senator Davis** moved to send **H 29** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**PRESENTATION:** **Recruitment of Judges** - **Ms. Tobias** and **Judge Wood** described a serious and persistent problem the 3rd branch of Government is experiencing. When the Court has encountered a problem that it cannot resolve, the Executive, Legislative and Judicial branches come together to solve the problems. The problem they are now facing is that a sufficient number of highly-qualified individuals are 'not' applying for District Judge positions when vacancies occur. She turned the presentation over to Senior District Judge Barry Wood to describe why this issue is important and to understand the results of their study of recruitment challenges. **Judge Wood** expressed two reasons why the quality of the district judge bench is so critical:

1. A district judge hears the most heinous crimes, but ensures that procedural requirements, according to the constitution, were met including that the defendant was presumed to be innocent until proven guilty and the trial was conducted fairly so any conviction will be upheld on appeal.
2. A district judge also hears the complex and often protracted business cases that provide a forum for organizations to resolve their disputes timely and fairly so they can keep doing business and allows commerce to continue.

**Judge Wood** added that while the right to an appeal to a higher court is an important tenant of the judicial system, it is no substitute for a high quality trial bench. He reminded the committee of the critical work of a district judge as the consequences are huge and they need competent people, well trained people to protect the constitutional rights of everyone involved. **Judge Wood** gave a couple of examples of real life cases from some of Idaho's district judges. He said the recruiting problem was one of urgency. There are 42 district judges and 60 percent that are currently serving will be eligible to retire within the next five years. There are more applicants for magistrate judge vacancies than for district judge vacancies. The concern is that judges who are selected today will be Idaho's Judiciary for years to come. The work they perform is of critical importance today, tomorrow and well into the future. **Judge Wood** said it was imperative that they are able to recruit the best and the brightest to meet the long-term constitutional mandates of the Judiciary. While money alone is not the sole reason for seeking a judgeship, salaries will determine both the number and the caliber of applicants applying for these openings.

**Ms. Tobias** shared with the committee what the Judiciary has done to try to address this problem. She said they had surveyed the Idaho State Bar in 2009 and the top three impediments to judicial recruitment in were:

- inadequate compensation
- perceived unfairness in the initial selection process - through the Judicial Council and Governor
- the prospect of a contested election

They instituted a recruitment committee chaired by two Court of Appeals judges. They conducted recruitment outreach programs in districts where vacancies have existed. They traveled the state to all seven judicial districts and asked for ideas to address the issue. The judges (appellate, district and magistrate) identified the following:

- salary compression - not enough difference between the four levels of judges
- inadequate salaries for all judges
- excessive workload and the need for additional judgeships in some districts
- smaller pools of qualified applicants among lawyers for the case work performed by district judges
- the need to bolster recruiting efforts
- concerns about the initial selection process
- the prospect of a contested judicial election

She said the one identified solution that the Judiciary cannot address are the salary concerns; both compression and salary levels. The Idaho Constitution provides that judicial salaries are set by the Idaho legislature. The Court cannot provide merit, longevity, recruitment incentives, or any other variance from the pay as established by law. Lastly, she said they can't address this part of the problem without the help of the legislature.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:47 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Wednesday, February 20, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| RS22035 | Relating to Behavioral Health Services | from the Health & Welfare Committee |
| RS22050 | Relating to Radiologic Imaging | from the Health & Welfare Committee |
| RS22060 | Relating to Organ Donor Notification | from the Health & Welfare Committee |
| Presentation | Department of Juvenile Correction Update | Sharon Harrigfeld, Director |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Wednesday, February 20, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Senators Davis, Mortimer, Hagedorn, Bock and Werk

**ABSENT/ EXCUSED:** Vice Chairman Vick, Senators Nuxoll and Lakey

**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 to order at 1:30 p.m. and asked the secretary to call the roll.

**RS 22035** **Relating to Behavioral Health Services**; with letter of unanimous consent from the Health and Welfare Committee to introduce for print.

**RS 22050** **Relating to Radiologic Imaging**; with letter of unanimous consent from the Health and Welfare Committee to introduce for print.

**RS 22060** **Relating to Organ Donor Notification**: with letter of unanimous consent from the Health and Welfare Committee to introduce for print.

**MOTION:** **Senator Werk** moved to print RS **22035, RS 22050**, and **RS 22060**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**PRESENTATION:** **Department of Juvenile Correction Update** - **Sharon Harrigfeld**, Director, stated they had 394 staff members that were working in partnership with Idaho communities to reduce juvenile crime. She told the committee about the history of the Idaho Juvenile Justice by showing a timeline from 1899 to 1995 and then from 1995, when the department was established, to 2013. **Ms. Harrigfeld** discussed the continuum of care, using prevention, intervention and rehabilitation. The goal being to have a productive citizen to make the transition into the community. She expounded on the behavioral health resources and their system goals. They are to:

- serve juveniles at the community level
- intervene early to address mental health and substance use disorder issues
- maximize positive outcomes
- evaluate the results

She described the institutions that the agency operates in Lewiston, Nampa and St. Anthony and said they operate 24 hours a day, 7 days a week. Last year they graduated 48 with high school diplomas, 29 received their GEDs and of those, 30 percent are attending college. One of the outcomes that creates a positive productive adult is education. Their day is structured and they go to school 52 weeks a year. Many of the juveniles have been involved with other systems, developmental disabilities (4.4 percent), problem solving court (6.6 percent), children's mental health (35.2 percent) and child protection services (53.8 percent). Ms. Harrigfeld's presentation and Legislative Update for 2013 are attached (See Attachment 1). In the last ten years, their population has grown in the age group of 10 to 17, eight percent, but they arrested 5,000 less juveniles in that same ten years.

**Chairman Lodge** commented that families are appreciative of the treatment that their children have received. She has received emails after custody review hearings from families thanking the staff for helping to change the life of their child.

**Senator Werk** asked about children with academic capabilities and how they might get through the education system more rapidly and attend college. **Ms. Harrigfeld** said they had an honor society in some of the facilities. The kids also have the ability to do online classes for college credits. **Senator Werk** said it was not so simple to get kids in the facility online access because it comes with other potential issues. He asked if she was able to work through those problems to make it easier for her charges to get online access and perhaps take more than one class. **Ms. Harrigfeld** said it was an ongoing process, but they are working on it in spite of the difficulty of making sure their charges are safe and keeping them from sites they should not be on.

In closing, and in light of the last comment, **Ms. Harrigfeld** said that one of the things they were looking at is positive outcomes. She said she understood recidivism numbers and Idaho ranks with many other states in that 70 percent of the kids make it. They don't commit another crime within the first year they are out of the department's custody. She would like for these children to be proud of their accomplishments, whether school or jobs. She is proud of the direction they are going.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:03 p.m

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Friday, February 22, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| RS22081 | Relating to Mandatory Income Withholding for Child Support | Kandace Yearsley, Department of Health and Welfare |
| S 1059 | Relating to the Control of Venereal Diseases; treatment of persons confined in any state prison facility in Idaho | Shane Evans, Education, Treatment and Reentry Chief, Department of Correction |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Friday, February 22, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Senators Davis, Mortimer, Nuxoll, Hagedorn and Lakey

**ABSENT/ EXCUSED:** Vice Chairman Vick, Senators Bock and Werk

**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 to order at 1:35 p.m. and asked the secretary to call the roll.

**RS 22081** **Relating to Mandatory Income Withholding for Child Support - Kandace Yearsley**, Department of Health and Welfare, advised that this legislation approves the income withholding form under the Social Security Act and mandated by the Administration of Health and Human Services. This federal mandate requires states to utilize the approved Income Withholding for Support form in all IV-D child support cases and in non-IV-D child support cases with child support orders initially issued in the state. The rule also requires states to administer all withholding payments through the State Disbursement Unit. In school year 2012 the child support program contributed more than $198 million of which over $97 million came through income withholding system.

**MOTION:** **Senator Davis** moved to print **RS 22081**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**S 1059** **Relating to the Control of Venereal Diseases - Shane Evans**, Education, Treatment and Reentry Chief, Department of Correction, (IDOC) explained this bill is to update the venereal disease examination and testing process of Idaho's incarcerated population from a mandatory to opt-in testing upon release. These modifications are based on medical best practices and a fiscally responsible approach to the testing. **Mr. Evans** distributed charts inclusive of years 2010-2012 (Attachment 1) to give the Committee a sense of the current population over the last several years with the current status of venereal disease and/or HIV. Idaho has a very small percentage on the intake testing of these identifiable diseases. The inmates identified with any of these diseases then receive comprehensive treatment while in custody. **Mr. Evans** belongs to a national correctional health group and of these health authorities they determined that only two other states in the country's correction system include an intake as well as outtake testing program. A standard has been adopted for the frequency of positive testing and the ongoing medical care they receive. This opt-in adjustment to this code meets the best practices as it relates to personal health care and does not pose any public health concern.

**Senator Davis** asked if the department has an affirmative duty to proceed with the treatment before an inmate is released or if the test is administered and they are released, does the department still have a duty post-released to provide the treatment.

**Mr. Evans** advised the opt-out testing is one of their concerns with the language as it was written. The timing of testing and return of the results is a duty of the state to be liable for that treatment on release. When they reviewed the legislation they found that the practices across the nation were not in alignment with the language intent for the mandatory release testing.

**Senator Davis** stated if they did not include the language in 39-604, as written, can you compel an inmate to do what this statue currently provides? **Mr. Evans** replied he believed that they would not have the authority to compel them to seek treatment. There are federal protections where they can refuse care.

**Senator Mortimer** stated that there seems to be some inherent liability in releasing an inmate that does not want the test and has an infection. **Mr. Evans** said they test every inmate that comes into their system. They identify any emerging issues that they have and treat them aggressively while they are in the correctional facility. An inmate's normal stay is usually 28 months so they have time to identify, treat and stabilize whatever ailment may show up on intake. Those that are not captured during intake would be HIV which may emerge while the inmate is in the facility. If an inmate refuses testing or treatment, they make notifications to Idaho Public Health Association. **Senator Motimer** asked if IDOC has the right to test inmates who are incarcerated for any of these diseases. **Mr. Evans** replied that most of the inmate population is fairly compliant and welcoming of any intake blood tests. If they believe that an inmate is a health risk, they will quarantine them.

**Senator Mortimer** asked if there been cases where the state has been held liable for infectious diseases that an inmate has contracted while being incarcerated.

**Senator Hagedorn** asked why this legislation was being modified. **Mr. Evans** advised that they had formed a legislative committee to thoroughly review all current statutes for compliance. The committee came across this legislation and wanted to make sure that they were not putting the state in jeopardy. They sought national information and decided to bring this legislation forward.

**Senator Davis** asked if he believed that the language that is proposed in this bill would limit the duty to treat and provide care after an inmate is released. **Mr. Evans** answered yes he believed that would be true. **Senator Davis** stated he does not see language in the bill that stipulates there is no duty to provide treatment after release. **Mark Kubinski**, Attorney General, Idaho Department of Corrections, answered that language is not expressly contained in this statute. Once the offender is discharged from IDOC custody there would be no continuing jurisdiction over that offender.

**MOTION:** **Senator Mortimer** moved to send **S 1059** to the 14th Order for Amendment. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote.**

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:00 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, February 25, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| RS22051 | Relating to Child Custody; during deployment | Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc. |
| RS22087 | Relating to Prostitution; property subject to forfeiture | Sara Thomas, State Appellate Public Defender |
| RS22025 | Relating to Uniform Controlled Substances | Elisha Figueroa, Idaho Office of Drug Policy |
| Gubernatorial Appointment | **Elizabeth "Liz" Susan Chavez** of Lewiston, Idaho was appointed to the Judicial Council to serve a term commencing July 26, 2012 and expiring July 1, 2017. | |
| Gubernatorial Appointment | **Elisha D. Figueroa** of Eagle, Idaho was appointed Administrator of the Office of Drug Policy to serve a term commencing April 2, 2012 and she will serve at the pleasure of the Governor. | |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, February 25, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:30 p.m. and asked the secretary to call the roll.

**RS 22051** **Relating to Child Custody; during deployment - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc. (TEPI), explained he was presenting this legislation for Mark San Souci, Regional Director for Pacific Northwest with the Department of Defense. Last year, Mr. San Souci presented a bill which was modified and sent out for comments. This bill is a result of those comments and modifications. The new section is created to place some specific and special circumstances when one of the parents in a custody case is deployed. Certain protections are already in federal law under the Servicemembers Civil Relief Act and the court must determine if the Act applies. The list of Best Practices include these substantive points:

1. No permanent orders altering existing custody arrangements should be entered while the custodial servicemember is unavailable due to military service. This provides protection in 1(a) by requiring that any modification while the servicemember is deployed can only be a temporary order during the deployment expiring 60 days after completion of deployment with notification to the courts and interested persons that it has ended.
2. The custody order in place before the absence of a military parent should be reinstated within a set time upon their return.
3. A servicemember with visitation rights should be allowed to petition the court to allow those visitation rights to be delegated to a third person during the servicemember's absence.
4. States frequently include: (1) allowing expedited hearings upon the request of a servicemember, and (2) allowing the court to use electronic testimony when the servicemember is unavailable.

**Senator Davis** asked if this new section applies if a petition for modification is filed at anytime during the point of deployment. **Mr. Aldridge** said yes. **Senator Davis** asked if the court is precluded from entering any change in a custody order that is more than a temporary order. **Mr. Aldridge** said yes. **Senator Davis** then asked if there is a pending petition for modification of child custody prior to the date of deployment would this Act impact the court's review and determination of what is in the best interest of the child. **Mr. Aldridge** said his understanding was that this only applies to orders while they are subject to the Act. They don't have to actually be deployed at that time.

**Senator Davis** clarified that the court's only power is to enter a temporary order which will automatically expire after the sum of two events: (1) 60 days plus (2) notice to the court that they are home. **Mr. Aldridge** said when the temporary order expires, the order prior to the temporary order would be effective.

**MOTION:** **Senator Hagedorn** moved to print **RS 22051**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**RS 22087** **Relating to Prostitution: property subject to forfeiture - Sara Thomas**, State Appellate Public Defender, said she was here on behalf of the Idaho Criminal Justice Commission. **Ms. Thomas** explained that this legislation was a supplement to S 1060, the human trafficking statute that was proposed earlier. These are procedures on how innocent third parties could be protected, outlining the process for forfeiture as well as what would happen to those funds. These statutes were actually modelled on criminal forfeiture statutes from the Uniformed Controlled Substances Act. **Ms. Thomas** said this was done because the courts have previously interpreted this language so they had some guidance on how this process would work. She walked the committee through each section of the proposed legislation.

Section 1 - Defines what property is subject to forfeiture, both real and personal
Section 2 - Covers written inventory sent to Idaho State Police within five days of seizure
Section 3 - Addresses the rebuttable presumption, which is the standard to be met for forfeiture
Section 4 - Preservation of property, warrant of seizure and protective orders
Section 5 - Deals with innocent third parties and the process of notification
Section 6 - Deals with innocent third parties regarding personal property
Section 7 - Deals with innocent third parties regarding real property
Section 8 - Deals with proportionality; shall not be unfairly disproportionate
Section 9 - Authority of the Attorney General and appropriate prosecuting attorney
Section 10 - Limitation of third party rights to the process outlined in the statute
Section 11 - Addresses jurisdiction by the Idaho courts
Section 12 - Addresses disposition of property
Section 13 - Forfeiture of substitute property
Section 14 - Addresses the statutory construction of the statutes

**Senator Bock** said he had concerns about forfeitures and asked why this was needed for this particular crime. **Ms. Thomas** stated this was designed to take the profit away from people who are selling women and children. The procurement statute applies to anyone who is inducing an adult into prostitution or someone who uses a person under the age of 18 for prostitution. It addresses the people who are profiting from and encouraging them into this profession.

**Senator Bock** said he could understand the forfeiture statutes as they related to drug trafficking. He asked what the criteria was for establishing a relationship between this crime and the property forfeited. **Ms. Thomas** explained in S 1060, under the proposed statute 18-5612, it says any property constituting or derived from the proceeds the person attained directly or indirectly as a result of the violation, or any part of the person's property used or intended to be used, in any manner or part to commit or to facilitate the commission of such violation.

**Senator Bock** asked about a situation where the judge has the authority to designate a portion of the property to be seized or forfeited. He asked how a judge would deal with an office in a major office building that was being used for so called 'marketing.' **Ms. Thomas** said the forfeiture would be dependent on whether or not they owned the building or were leasing a portion of the building. An innocent third party owner could appear and none of it would be forfeited. **Senator Bock** asked how a car would be treated if it had been involved unbeknownst to a spouse and the spouse was potentially deprived of a vehicle to go to work or to take the children to school. He thought giving the prosecutor the discretion to decide the remedies was not fair. **Ms. Thomas** stated that the innocent spouse would have the same protections as any other innocent party.

**Senator Davis** asked what "...a separate Part II forfeiture request..." was referring to in Section 3, line 27. **Ms. Thomas** explained that it refers to Part II of the Criminal Information or Indictment. She said it is the same process used for felony driving under the influence charges. Part II outlines prior convictions; this separate Part II wouldn't go to the jury, but would be dealt with after the jury decides on the criminal charge. **Senator Davis** asked if the court was troubled that the legislation would be setting rules of procedure. **Ms. Thomas** noted that there were representatives from the court on the Criminal Justice Commission who having seen the legislation, did not raise any concerns. **Senator Davis** noted that under Section 6, (3) (b), the owners or claimant may prove his right, title or interest was created without any knowledge or reason to believe that the property had been used, or was intended to be used, for the purpose alleged. However, romanette (i) says "In the event of such proof, the court shall order that portion or interest released..." He reiterated Senator Bock's concerns about fairness. **Senator Davis** continued that romanette (ii) discusses what occurs if the amount due to such person was less than the value of the property. He asked if there should be evidences the court has to make a finding of forfeiture to somebody before it is ordered sold. He did not see that in the statute. **Ms. Thomas** stated that Section 18-5609 required the court to make the finding that the property was used in violation of the relevant provision of the chapter. The judge has to make the proportionality analysis. **Senator Davis** suggested that structurally romanette (ii) may need to be worded differently, and it also is not a subpart of romanette (i). He then directed Ms. Thomas to page 6, lines 28 and 29 and noted that there were many similar statutes. He asked what the court was supposed to do with so many statutes saying that the proceeding will have priority over other civil cases. **Ms. Thomas** answered that without a statute that lays out the priority of cases, the court would do its best to get it in as soon as possible.

**Senator Werk** asked to better understand procurement. **Ms. Thomas** stated that the Criminal Justice Commission did not want to apply forfeiture to the person obtaining the services of a prostitute. Rather, it was looking at the people who were selling the girls. The Idaho Supreme Court has defined procurement as: "the procurement of the prostitution statute is meant to punish those who entice or compel others to act as a prostitute, while the prostitution statute is meant to punish those who are engaging in the prostitution." This forfeiture statute would apply to the pimps, not the johns.

**Senator Lakey** asked about the implications on real property. He noted that on page 7, line 23, it appeared the court may be making a determination to divide a parcel of land. **Ms. Thomas** said there were provisions where the property could be divided. **Senator Lakey** asked how that would affect local ordinances on minimum parcel size, setbacks and building permits. He gave an example of an 80 acre farm with a house on it. **Ms. Thomas** said the legislation addresses those situations by allowing for forfeiture of substitute property when the property is being commingled with other property that cannot be divided without difficulty. The entire property may have to be sold with a return of that portion of the proceeds not subject to forfeiture to the defendant.

**Senator Vick** asked if there was a determination that only 25 percent of the value of the property came from the illegal activity and the innocent third party had a 75 percent interest in it, could the house be sold whereby the innocent spouse was out on the street. **Ms. Thomas** recognized that this could happen if the property was forfeited and that was the only way to get the value out of it. The prosecutor has the discretion not to do that. **Senator Lakey** noted that Ms. Thomas had referred to a section regarding commingled property, but he didn't think that applied when the issue was a single parcel of real estate. **Ms. Thomas** believed that the property would be tied together or commingled from the beginning, although not necessarily like the commingling of funds by putting them into the same bank account. In this circumstance it would be difficult to separate it out or divide it. **Senator Lakey** raised the issue of having a smaller portion of the property involved in criminal activity and is commingled with the remainder of the property. He questioned how a single parcel of real estate could be divided by forfeiture from the remainder of property. It doesn't appear to meet the commingling test. **Ms. Thomas** agreed to review the questions from Senators Davis and Lakey.

**Senator Bock** asked that Ms. Thomas look at the fact that the legislation says property subject to criminal forfeiture in this chapter includes all of chapter 56. He wanted to know if this was limited to trafficking of minors. **Ms. Thomas** stated that the forfeiture legislation is for both minors and adults. The procurement statute relates to adults and the inducing statute applies to those under the age of 18. **Senator Bock** asked if the forfeiture statutes apply if someone is a pimp for adult prostitutes. **Ms. Thomas** stated yes, it would apply.

**MOTION:** **Senator Davis** moved to print **RS 22087**. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**GUB APPT:** **Elizabeth "Liz" Susan Chavez** was appointed to the Judicial Council (Council). **Ms. Chavez** said she was a lifelong resident of Idaho, lives in Lewiston and was a former middle school social studies teacher. She has also served two terms in the House of Representatives and was very aware of the role of the Judiciary branch of government. As a citizen member of the Council, she has been pleased to see the work of the Idaho Judiciary and Council regarding transparency, fairness for all parties, the time required in being prepared for court and the on-going professional performance evaluation. She explained that as a Council they receive updates about what is happening in the judiciary in other states; everything from misconduct on the bench, to discussing cases with other elected officials in a hallway or social setting. She feels confident that the majority of the members of the Idaho judiciary are of sterling quality and conduct themselves professionally. When dealing with criticism or a complaint of the judiciary or an individual judge, it is her responsibility to read the material and, from the facts, determine if the criticism has merit. Lastly, she is given the opportunity for a challenging role as she continues in public service.

**Senator Davis** asked if she believes it is important for the Council in these judicial proceedings to maintain confidentiality. He asked further why and when does she think it is appropriate for the discipline to become public. **Ms. Chavez** said that confidentiality is extremely important because the complainant needs to have their privacy protected and not every complaint has a basis for merit. If the Council determines that the complaint has merit, there could be a private reprimand to a judge. In her experience, if the reprimand is private, the judge can take advantage of the mediation, mentoring and the support system meant to encourage the judges so some complaints go no further. **Senator Davis** asked if there are moments of partisanship or if the Council members work together independent of any political belief. **Ms. Chavez** said she had no idea what parties make up the Council and she doesn't care. She believes they would always only look at problems as Idaho issues.

**GUB APPT:** **Elisha D. Figueroa** appointed as Administrator of the Office of Drug Policy. Her family was with her and she introduced her husband and three children. **Ms. Figueroa** said it was a great privilege to be able to serve the state in this capacity. She has worked at the community level in Meridian to address substance abuse issues by engaging passionate community leaders and implementing innovative, sustainable prevention strategies. She directed a Coalition from 2008 to 2012, and they were able to bring together people from all sectors of the community; law enforcement, educators, business people, youth and parents. She mentioned her predecessor, Debbie Field, who had formed the state prevention planning committee which brought interested folks to the table to work on prevention efforts. They have gone a step further and identified the three main substance abuse issues they are facing in Idaho according to the data. They are: underage drinking, marijuana use, and prescription drug abuse. They have reached out not only to different occupational experiences, but people that live in different communities of the state.

**Senator Hagedorn** asked if the city won any particular awards while she was in Meridian. **Ms. Figueroa** said they won a national award from the National Prevention partnerships, for bringing people together and setting a good example. They also won the Northwest Alcohol Conference Award and awards from the Meridian School District. **Senator Davis** asked what successes were brought about in this fairly new office and what confidence can Idaho have that the money spent and will be spent hit some of the targets that are important to you and the members of this committee. **Ms. Figueroa** said it is important to ensure that they make a difference and are able to measure it. She began in April 2012 and the goal for this year was to lay the foundation to build upon. They are trying to identify the strategies that are going to be most effective in Idaho and also at the local level. They have assigned measurable goals with baseline data, and they have set a deadline of two years to reach those goals. **Ms. Figueroa** said she has been traveling around the state and medical marijuana is a huge issue right now. **Senator Davis** asked if the methadone media project had been a measurable benefit to the office. **Ms. Figueroa** said she had confidence in this program.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:00 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

**AMENDED** AGENDA #1

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Wednesday, February 27, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| **Minutes** | Approval of minutes of February 11, 2013 | Senators Nuxoll and Bock |
| | Approval of minutes of February 13, 2013 | Senators Vick and Hagedorn |
| **Confirmation Vote** | Vote on the Confirmation of **Elizabeth "Liz" Susan Chavez** of Lewiston, Idaho to the Judicial Council | |
| | Vote on the Confirmation of **Elisha D. Figueroa** of Eagle, Idaho as Administrator of the Office of Drug Policy. | |
| RS22067 | Relating to security and safety in K-12 schools and transportation systems | Unanimous consent request from the Education Committee |
| H 153 | Relating to Jury Selection and Service; relating to mileage and per diem of jurors | Representatives John Gannon and Kathleen Sims |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

| | |
|---|---|
| **DATE:** | Wednesday, February 27, 2013 |
| **TIME:** | 1:30 P.M. |
| **PLACE:** | Room WW54 |
| **MEMBERS PRESENT:** | Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk |
| **ABSENT/ EXCUSED:** | Senator Davis |
| **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 to order at 1:37 p.m. and asked the secretary to call the roll. |
| **MINUTES:** | **Senator Nuxoll** moved to approve the minutes of February 11, 2013 as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**. |
| | **Vice Chairman Vick** moved to approve the minutes of February 13, 2013 as written. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**. |
| **RS 22067** | A unanimous consent request was received from the Education Committee to print RS 22067 relating to security and safety in K-12 schools and transportation systems. |
| **MOTION:** | **Senator Mortimer** moved to print **RS 22067**. **Senator Werk** seconded the motion. The motion carried by **voice vote**. |
| **H 153** | **Relating to Jury Selection and Service**; relating to mileage and per diem of jurors - **Representative John Gannon** explained that jury pay had been ten dollars a day and five dollars for a half-day since 1968. This legislation permits counties to pay fifty dollars for a full day and twenty five dollars for a half-day. Mileage reimbursement remains the same. |
| | **Vice Chairman Vick** asked why it wasn't discretionary for the counties rather than having a cap. **Representative Gannon** stated fifty dollars seemed to be the common ground. **Vice Chairman Vick** commented that an increase in juror pay was long overdue and thanked the representative for his work on this issue. |
| **MOTION:** | **Senator Lakey** moved to send **H 153** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. **Senator Bock** commented that this would be an incentive for jurors to attend and even though it was their civic duty, this would encourage jurors to appear. The motion carried by **voice vote**. |
| **ADJOURNED:** | There being no further business, **Chairman Lodge** adjourned the meeting at 1:50 p.m. |

Senator Lodge
Chairman

Leigh Hinds
Secretary

**AMENDED** AGENDA #1

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Friday, March 01, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| Minutes | Approval of minutes of February 15, 2013 | Senators Hagedorn and Werk |
| | Approval of minutes of February 20, 2013 | Senators Mortimer and Lakey |
| RS22072 | Acknowledging an Award of Excellence received by the Boise School District | Unanimous consent request from the Education Committee |
| RS22033 | Relating to Grounds for Medical Discipline by the State Board of Medicine | Unanimous consent request from the Health and Welfare Committee |
| RS22163 | Relating to Uniform Controlled Substances; to revise a listing of synthetic drugs | Elisha Figueroa, Administrator, Idaho Office of Drug Polidy |
| RS21967C3 | Relating to Garnishments | John Watts, Idaho Collectors Association |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

| | |
|---|---|
| **DATE:** | Friday, March 01, 2013 |
| **TIME:** | 1:30 P.M. |
| **PLACE:** | Room WW54 |
| **MEMBERS PRESENT:** | Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Hagedorn, Lakey, Bock and Werk |
| **ABSENT/ EXCUSED:** | Senator Nuxoll |
| **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 to order at 1:30 p.m. and asked the secretary to call the roll. |
| **MINUTES:** | **Senator Hagedorn** moved that the minutes of February 15, 2013 be approved as written. **Senator Werk** seconded the motion. The motion carried by **voice vote**. |
| | **Senator Lakey** moved that the minutes of February 20, 2013 be approved as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**. |
| **RS 22072** | A unanimous consent request from the Education Committee to print RS 22072 the concurrent resolution acknowledging an Award of Excellence received by the Boise School District. |
| **RS 22033** | A unanimous consent request from the Health and Welfare Committee to print RS 22033 relating to Grounds for Medical Discipline by the State Board of Medicine. |
| **MOTION:** | **Senator Davis** moved to print **RS 22072** and **RS 22033**. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. |
| **RS 22163** | **Relating to Uniform Controlled Substances - Elisha Figueroa**, Administrator, Idaho Office of Drug Policy, explained this bill is to update Idaho schedule 1 regulations regarding synthetic cannabinoids known as Spice that mimic the effects of Cannabis. |
| **MOTION:** | **Senator Davis** moved to print **RS 22163**. **Senator Werk** seconded the motion. The motion carried by **voice vote**. |
| **RS 21967C3** | **Relating to Garnishments - John Watts**, Idaho Collectors Association, explained this proposal amends and adds to existing law relating to service process for wage garnishments. He said this will set out provisions that would allow for an option to garnishment service process. Currently, Idaho code allows the sheriff shall be the only entity to provide garnishment service process in the case of a wage garnishment. This proposal speaks only to wage garnishments and would provide for a serving attorney, as defined on page 15 of the RS, and/or an employee or agent of the attorney, also defined under "Definitions." This proposal also changes "plaintiff" to "judgment creditor" throughout Idaho Code § 8-507. The proposal requires a judgment debtor to mail to the court a copy of a claim of exemption as a check and balance that the judgment debtor files with the sheriff or serving attorney. Fees for serving attorney service are established parallel to statutes governing sheriff service fees. |

**MOTION:** **Senator Mortimer** moved to print **RS 21967C3**. **Senator Davis** seconded the motion. **Senator Bock** asked for information regarding safeguards against fraudulent garnishment when this is returned as a bill. **Senator Davis** made a suggestion to embody some case law so debtor and creditor are not responsible if the serving attorney fails to turn the money over. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 1:50 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, March 04, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| Minutes | Approval of minutes of February 27, 2013 | Senators Vick and Bock |
| | Approval of minutes of February 22, 2013 | Senators Nuxoll and Hagedorn |
| S 1122 | Relating to Child Custody; during a period of deployment | Robert L. Aldridge, Trust Estate Professionals of Idaho, Inc. |
| S 1119 | Relating to Mandatory Income Withholding for Child Support | Kandace Yearsley, Department of Health and Welfare Department |
| H 103 | Relating to Fees; removing a certain date | Patricia Tobias, Administrative Director of the Courts |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, March 04, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:37 p.m. and asked the secretary to call the roll.

**MINUTES:** **Senator Bock** moved to approve the minutes of February 27, 2013 as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**Senator Nuxoll** moved to approve the minutes of February 22, 2013 as written. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**S 1122** **Relating to Child Custody - Robert L. Aldridge**, Trust Estate Professionals of Idaho, Inc. (TEPI), explained that certain protections were already in law under the Servicemembers Civil Relief Act, and this bill first requires that the court determine if the Act applies and then act accordingly. The Department of Defense put together a list of Best Practices they would like to see adopted in regards to child custody. **Mr. Aldridge** said the precedent for this new section covers petitions for modification to a child custody order during the time of a servicemember's deployment, expiring 60 days after the completion of deployment with notification to the court and all interested persons that the deployment has ended. The bill also allows an expedited or emergency hearing if an interested person files a motion alleging that expiration of the order would not be in the best interest of the child, and the order will remain in effect until that hearing is held and the court issues its ruling, but the court will enter a temporary order granting reasonable contact to the deploying parent with the child, unless that is not in the best interest of the child.

**Senator Davis** asked if this bill did not pass, what would happen if a servicemember was the custodial parent and was deployed. **Mr. Aldridge** said: (1) it allows a delegation of custody the ability to delegate to someone else, most commonly to grandparents; (2) in the case of a divorce action and a custody battle, and the servicemember is deployed, that person could ask for a delay and it would go on hold until that person's return. **Senator Davis** referred to the second point and asked if there was a deployment, would a pending custody fight be stayed until completion of the deployment. **Mr. Aldridge** said that was his understanding. **Senator Davis** asked if the consent of the other parent was required in the case of a grandparent taking over as primary custody of the child. **Mr. Aldridge** said the way the statute is written the custodial parent can do that delegation, but it is subject to challenge by the non-custodial parent.

**Senator Lakey** questioned whether in a child custody case where the best interest of the child is the issue, that a stay for a period of time based on a servicemember's return is an automatic. **Mr. Aldridge** said he relied on the Department of Defense which said that the option was to have a delay in custody and visitation cases. **Senator Lakey** said it may be discretionary with the court whereas others are not. **Mr. Aldridge** did not know. **Chairman Lodge** asked Senior Judge Barry Wood, who was in the audience if he would like to respond. **Judge Wood** came to the podium. He said he was reluctant to express an opinion although in the interest of the child, it is difficult to understand how someone overseas could prevent that from happening.

**Senator Hagedorn** asked if this language was similar to or used in any other states. **Mr. Aldridge** said it was proposed and adopted according to his understanding from Mr. Mark San Souci, the Regional Liaison for Military Families, in several of the surrounding states. Some states have adopted a more extensive version. **Senator Hagedorn** asked if he was aware of any issues or negative outcomes that were caused by the interpretation of this language in other states. **Mr. Aldridge** replied no. The Defense Department said it had worked well in all the states where it has been adopted.

**MOTION:** **Senator Hagedorn** moved to send **S 1122** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**S 1119** **Relating to Mandatory Income Withholding for Child Support - Kandace Yearsley**, Child Support Bureau Chief, explained that effective May 2012, the Social Security Act requires states to utilize a standardized income withholding form in all cases in which child support is withheld and paid through employer income withholding. This requirement was developed in partnership with a committee of private employers to standardize the form and simplify the income withholding process. This eliminates employer confusion resulting from inconsistent income withholding orders. The requirement also specifies that all payments made by employers are to be processed through the state's disbursement unit to avoid risk of missed payments and to simplify the process for employer payroll departments.

**MOTION:** **Senator Davis** moved to send **S 1119** to the floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**H 103** **Relating to Fees - Patricia Tobias**, Administrative Director of the Courts, explained this bill proposes to repeal the June 2013 sunset provision from the emergency surcharge enacted in 2010. The surcharge was intended to enable the third branch of Government during the financial crisis to continue to fulfill its constitutional responsibilities, to provide services that benefit the people of Idaho, and to help reduce the burden on the state budget. Idaho Code § 31-320H was enacted to provide that these new court costs would be dedicated to the needs of the courts, paid by users of the courts who have committed offenses. The estimated emergency surcharge would generate $4.3 million dollars annually. She referred to the handout (Attachment 1) to show that it has never reached that level, but the surcharge revenue has kept the courthouse doors open, sustaining such beneficial programs as drug courts, mental health courts, and family court services. **Ms. Tobias** said the sunset provision in the bill was intended to permit further review over three years of the financial outlook and the needs of the courts. At present, the general fund has not fully recovered, the needs remain, and the projected revenues are about five percent below the original projection of $4.3 million.

In closing, **Ms. Tobias** said she was not aware of a compelling public policy reason to extend the sunset for the surcharge at this time. Three years ago Idaho was experiencing an unprecedented financial crisis.

**Senator Mortimer** suggested that they add a sunset of five years just to remind the committee to look at it specifically. **Vice Chairman Vick** said he would like some additional assurance that there is no incentive for anyone in the system to make decisions based on these fees. **Ms. Tobias** said there were a number of ways in which adequate safeguards are provided. These funds are collected and sent to the state of Idaho and disbursed from the Treasurer's office for specific purposes in other funds. There are at least four degrees of separation. No individual, judge or county would obtain any direct benefit from a decision that was made in that case.

**Senator Hagedorn** said it was commendable that four years ago they came within six percent of a projection of what these fees would raise. He also said he appreciated the fact that the users are now paying for the system. He then asked why the term emergency was still on the bill. **Ms. Tobias** said others have asked why they didn't strike the term 'emergency' and just leave a surcharge that would be assessed. She felt that since it would require the computer people to search out and change that term everywhere it was mentioned, it didn't seem feasible or prudent.

**Senator Werk** asked where the lion's share of the money was coming from. **Ms. Tobias** said it was not from felony cases, but from infractions and misdemeanor cases. **Senator Werk** asked why are felonies negligible. **Ms. Tobias** said the volume of felony cases is lower and also the felon is incarcerated and has no income. **Senator Werk** said the legislation eliminates the sunset provision which means this doesn't come before the legislature again and he asked if that was the intent why not just extend the sunset. **Ms. Tobias** said she could ensure that the courts are very concerned about the overall fees, fines, and forfeitures and obligations that are placed on criminal defendants. They are taking a look at all of the court fees and fines that the legislature provides to be paid by all defendants and to whom they are paid or collected. She would submit that the bigger system does need review and they will be checking the efficiency through technology systems and policies on fees and fines. A comprehensive package will be brought before the legislature. **Senator Werk** asked if there was some constitutional provision or statutory provision that requires the legislature to provide funding for the judiciary. **Ms. Tobias** said yes, the legislature is responsible to provide funding for the Idaho courts so they can achieve their constitutional mission. She was not aware of anything in the constitution that says that funding has to be provided from the general fund or from other dedicated funds.

**MOTION:** **Senator Bock** moved to send **H 103** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Mortimer** moved to send **H 103** to the 14th Order for an amendment to add a five year sunset clause. **Senator Nuxoll** seconded the motion. A roll call vote failed with Vice Chairman Vick and Senators Mortimer, Nuxoll and Werk voting aye; Chairman Lodge, Senators Davis, Hagedorn, Lakey, and Bock voting nay.

**ORIGINAL MOTION:** The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:37 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

# **AMENDED** AGENDA #1
# SENATE JUDICIARY & RULES COMMITTEE
## 2:00 p.m.
## Room WW54
## Wednesday, March 06, 2013

**PLEASE NOTE NEW MEETING TIME**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| RS22199 | Relating to Criminal Procedure | Senator Bart Davis |
| S 1109 | Relating to Annuity Contracts | Senator Bart Davis |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Wednesday, March 06, 2013

**TIME:** 2:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 2:03 p.m. and asked the secretary to call the roll.

**RS 22199** **Relating to Criminal Procedure - Intern Nate Cucou** said he was a third year student at the University of Idaho College of Law. As an intern of Senator Bart Davis, he will be presenting this legislation. He has been working with the prosecutors association, judiciary and others to put together a method to provide additional relief to individuals who cleaned up their life and were striving to be a productive member of society. The legislation allows an individual to apply for relief from a district court after being discharged from probation, but there are limited instances in which this can occur. If less than five years have passed since the discharge from probation, and he or she is petitioning the district court from relief of a felony conviction, the application may be granted only if the court finds the relief is appropriate and the required elements are met under 19-2604 (3) (d) including a prosecuting attorney's stipulation to reduction. If five years or more have elapsed since the discharge from probation and the individual is petitioning the district court for relief, with the exception of the crimes listed under (3) (c) (i), the decision as to whether to grant the application will be in the discretion of the court only, not requiring the prosecuting attorney stipulation. In essence, this bill helps individuals that have tripped up along the way, cleaned up their lives, and are now trying to be productive members of society, but having difficulty because of the felony conviction.

**Senator Nuxoll** asked for an explanation of relief. **Mr. Cucou** answered it is providing that an individual may petition the court for a reduction from a felony to a misdemeanor. The exception are those crimes listed at the end of the bill. **Chairman Lodge** asked if this had been done in other states. **Mr. Cucou** did not know, but deferred to Senator Davis for the answer. **Senator Davis** answered yes, and additionally some district judges in Idaho believe that within their powers they have the authority to do this today. Other judges say there is no statute that says they have that authority. **Senator Bock** questioned how the variables work and also the general grant of authority to reduce the felony to a misdemeanor, but with exceptions. **Mr. Cucou** said that (3) (a) was not a general grant, but provides the opportunity to petition the court. The actual power or ability to grant comes later in (3) (b) if less than five years have elapsed, and in (3) (c) if at least five years have elapsed. The prosecutor stipulation, in addition to the requirements under (d) all have to be met. He stated if more than five years have passed, no prosecutor stipulation is required; it's in the courts discretion with the exception of the listed offenses which are considered more egregious offenses and would require a prosecutor's stipulation. **Senator Werk** noted that rape was not in the list of crimes and he wondered why. **Mr. Cucou** deferred to Senator Davis. **Senator Davis** directed Senator Werk to page 3, Subpart (4) the sex crimes including rape

are mentioned. The prosecuting attorneys association raised similar questions and they looked at subpart (4) and were confident that sex crimes were included in that section.

**Senator Davis** gave some examples to further clarify the workings of the bill. **Senator Bock** suggested some changes to the draft by moving (d) to be included in (a) and then have the exceptions be (b) and (c). He thought perhaps that would be easier to follow. **Senator Davis** said the stakeholders, including the judiciary, and the prosecuting attorneys association, were involved and had confidence in the structure of the bill. **Senator Werk** asked about the thought process in putting the intermediate step between the judge making the decision of going to the prosecuting attorney since that may be a different attorney than had prosecuted in the first place. **Mr. Cucou** said it may be a competing interest in who makes that ultimate decision. **Senator Davis** commented that the judiciary and prosecutors were all in modest discomfort, but this is a beginning. **Senator Lakey** commented that initially three parties were involved; the individual who is represented by counsel, the judge who is the arbiter, and the people in the state of Idaho who are represented by the prosecutor. He asked if there was a notice process in the bill where the prosecutor gets notified and has the opportunity to participate. **Mr. Cucou** said there was not.

**MOTION:** **Senator Hagedorn** moved to print **RS 22199**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**S 1109** **Relating to Annuity Contracts - Senator Bart Davis** explained this bill deals with the exemption statutes as they apply to judgment collections and when a debtor is allowed to retain the asset. This exemption deals with annuities and there are two components. One may put assets into an annuity and then doesn't pay their obligations. The burden of proof is quite high. An easier burden is to ask if they want to provide an exemption of everything in the annuity. There are extenuating circumstances where an annuity provides a stream of revenue that is needed for an individual. In between the good example and the bad example is the problem faced now. Bankruptcy trustees or creditors have a high burden if their only remedy is the fraudulent conveyance statutes. **Senator Davis** then said they grabbed this language from the state of Tennessee, but it is an inadequate remedy. After this was printed, the industry contacted him and the result of that communication is that this bill is not right as it is. He asked the committee if the bill should be sent to the 14th Order in hopes that the industry will come forth. The downside would be that the committee would not have the opportunity to hear the corrected bill.

**Chairman Lodge** asked the senator if holding the bill in committee would be a solution. **Senator Davis** responded that he would prefer that.

**MOTION:** **Senator Hagedorn** moved to hold **S 1109** in committee to the call of the Chair. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:50 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

# **AMENDED** AGENDA #1
# SENATE JUDICIARY & RULES COMMITTEE
## 1:30 P.M.
## Room WW54
## Monday, March 11, 2013

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| Minutes | Approve minutes of February 18, 2013 | Senators Lakey and Werk |
| | Approve minutes of March 1, 2013 | Senators Mortimer and Bock |
| | Approve minutes of March 4, 2013 | Senators Hagedorn and Nuxoll |
| RS22168C2 | Relating to Attorney's Fees | Lyn Darrington |
| H 105 | Relating to the Sexual Offender Registration Act | Michael J. Kane, Idaho Sheriffs Association |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, March 11, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:37 p.m. and asked the secretary to call the roll.

**MINUTES:** **Senator Lakey** moved to approve the minutes of February 28, 2013 as written. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**Senator Mortimer** moved to approve the minutes of March 1, 2013 as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**Senator Nuxoll** moved to approve the minutes of March 4, 2013 as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**RS 22168C2** **Relating to Attorney's Fees - Lyn Darrington**, representing State Farm Insurance, explained that she was here three weeks ago with another RS, but since that time her client and other industry insurers have been working with Barbara Jordan and the Idaho Trial Lawyers Association to reach some middle ground on the language. She was now presenting that middle ground. This legislation makes one important change as it only affects claims dealing with uninsured and underinsured motorists and an insurance response to proof of loss. This proposal will allow for 60 days to gather facts of the case and to collect information, and pertains to uninsured or underinsured motorists only. The vested parties are in agreement of the language in this legislation.

**MOTION:** **Senator Bock** moved to print **RS 22168C2**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**H 105** **Relating to the Sexual Offender Registration Act - Michael J. Kane**, Idaho Sheriffs Association, explained the purpose of this bill is to increase the $40 registration charge for sex offenders to $80, and requires the additional $40 per year to be used for the electronic tracking of sex offenders throughout the state and for electronic information shared among law enforcement. It also provides notification to law enforcement and sex offenders of the mandatory registration requirements provided in Idaho Law. This information will allow immediate information to be electronically sent throughout the state and city police departments. The sex offender will be notified electronically when it is time to re-register and also if they have moved, they must notify the sheriff their new location within seven days. This enables the ability to track the offender from place to place throughout the state. **Mr. Kane** said if an offender can't pay the money, it will be waived, but they will register.

**Senator Davis** asked if a victim or family member of a victim be notified of the offender's whereabouts or is this mainly a tool for law enforcement. **Mr. Kane** said it was principally a tool for law enforcement, but there is also a piece by Offender Watch that provides the public some limited information about the location of sex offenders. **Senator Davis** asked what the process was for verifying that the person is a victim. **Mr. Kane** said that under the Victim Information and Notification Everyday (VINE) system, there was no process. Anyone with any interest can access the information. **Chairman Lodge** asked how much money would be collected from these fees each year. **Mr. Kane** said approximately $150 thousand.

**MOTION:** **Senator Hagedorn** moved to send **H 105** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 1:50 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

# **AMENDED** AGENDA #2
# SENATE JUDICIARY & RULES COMMITTEE
## 1:30 P.M.
## Room WW54
## Wednesday, March 13, 2013

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| S 1136 | Relating to Uniform Controlled Substance | Elisha Figueroa, Idaho Office of Drug Policy |
| H 102 | Relating to the Idaho State Police | Matthew Gamette, Idaho State Police, Lab Manager |
| H 125 | Relating to Guardianship and Conservatorship | Representative Grant Burgoyne |
| S 1060 | Relating to Prostitution | Sara Thomas, State Appellate Public Defender |
| S 1123 | Relating to Prostitution; to provide for property for forfeiture | Sara Thomas |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Wednesday, March 13, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** Senators Nuxoll and 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 to order at 1:35 p.m. and asked the secretary to call the roll.

**S 1136** **Relating to Uniform Controlled Substance - Elisha Figueroa**, Idaho Office of Drug Policy, explained this legislation would update Idaho Schedule 1 regulations regarding synthetic cannabinoids, commonly referred to as Spice. These synthetics are reported to be powerful psychedelic drugs which can cause one to experience an intense high with symptoms of nausea, agitation, hallucinations, elevated blood pressure and heart rate, seizures, and loss of consciousness. In 2010, Idaho witnessed an explosion of this synthetic drug and in 2011, the legislation passed which allowed law enforcement to control the proliferation of these drugs in Idaho. However, these drugs take on varied chemical structures, which the manufacturers exploit by altering the chemical structure to skirt the current law. The Idaho State Police Forensic Lab tracks submissions of synthetic drugs to the laboratory and continually review emerging drugs and recommend explicit statute wording. Therefore, it is necessary to update Idaho's control substance statute to address these new structures. This proposed legislation would make permanent the changes recommended by the Idaho Board of Pharmacy and signed by Governor Otter on September 4, 2012 which include a newly identified cannabinoid. This proposed legislation also adds explicit wording for an additional synthetic cannabinoid drug which the laboratory has been tracking since the September update. The Board of Pharmacy and the Idaho Sheriffs Association support this legislation. Due to the dangerous nature of these substances an emergency threat to the public exists, they are asking this act be in full effect upon passage and approval.

**Senator Werk** asked if any of these synthetic drugs have a medical usage. **Ms. Figueroa** said there was no medical usage. She introduced the chemist from the Idaho State Police (ISP) Forensic Services, **Corinna Owsley**. **Ms. Owsley** said she worked in the drug chemistry section and had been analyzing these synthetic drugs for approximately three years. In answer to Senator Werk's question, she said these drugs do not have any medical use, but there are provisions in the law if a substance becomes approved for medical use, it would not be banned.

**MOTION:** **Senator Lakey** moved to send **S 1136** to the floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**H 102** **Relating to the Idaho State Police (ISP) - Matthew Gamette**, Quality Assurance Manager, explained that ISP Forensic Service exists to provide forensic science casework support to all local, state, and other law enforcement in Idaho. This legislation is to prevent a private defense attorney from hiring a private forensic expert and then requesting the use of equipment, supplies, or resources of the state lab, all of which are funded by taxpayer funds, to perform their examination of the evidence. He said this scenario is problematic for the state lab for three reasons:

1. The use of state funded equipment for a private business is a misuse of state resources. ISP does not have a mechanism to charge for the use of equipment, nor is it in the scope of their existence as a state agency.
2. The laboratory accreditation process requires the lab to train and certify any individual using laboratory equipment and instrumentation.
3. There are security and productivity concerns when private experts are in the laboratory. All activity must cease due to security and contamination concerns. State employees must be assigned to accompany these private examiners at all times which wastes state resources and builds backlogs.

**Mr. Gamette** stated that ISP does not have the statutory obligation or the resources to provide a private expert testing facility and denial of these requests should be explicit in the statute.

**MOTION:** **Senator Mortimer** moved to send **H 102** to the floor with a **do pass** recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**S 1060** **Relating to Prostitution - Sara Thomas**, State Appellate Public Defender, representing Idaho Criminal Justice Commission (ICJC), explained that a subcommittee of ICJC learned more on the human trafficking problem in Idaho which this legislation addresses. **Ms. Thomas** cited some instances where young girls were recruited to Los Angeles by a gentleman that intended to sell them. She said there were recruitment efforts going on at the Boise Town Square Mall where adult men were trying to recruit teenage girls into prostitution and stripping. She said the subcommittee learned that gangs were running girls from California through Oregon and Washington into Idaho and then into Nevada. This committee looked at the options for protection of Idahoans, and they found a gap in Idaho law. She explained if the girl is 16 or 17 years old and the man involved is less than three or five years older than her, it may not be a crime for him to purchase her for sexual purposes, that is as long as he doesn't pay in cash. Instead, he may buy her food, water or provide her with a place to stay. In other words, if anything is exchanged of value, that includes both tangible and intangible items, for sexual contact or sexual conduct, that is a felony. It is also a registrable offense. Finally, they have asked for criminal forfeiture in these circumstances. Any proceeds, profits, or anything that facilitates the crime must be forfeited to the state.

There was a brief discussion about the age differential and also the exchange of value. **Ms. Thomas** said there were decisions that would be made from the jury, prosecution, and judge. **Senator Werk** said he thought they may be wandering into uncharted territory since there had not been an exchange of anything of value associated with criminal activity in the past. He assumed this would be the case for the legislature as well as prosecutors and judges. **Ms. Thomas** said that was true for Idaho. She said this language had been used in the federal courts.

**TESTIMONY:** **Christine Tibbens**, public policy coordinator for Catholic Charities of Idaho, stood in support of the bill. She said human trafficking violates the inherent dignity of the human person so consequently they support global, federal, and state policies that seek to address these injustices and punish those who benefit economically from them.

**MOTION:** **Senator Bock** moved to send **S 1060** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**S 1123** **Relating to Prostitution; to provide for property for forfeiture - Sara Thomas** explained this was a follow-up bill to S 1060, which lays out the policies and procedures as well as third party protection during the forfeiture proceeding that would be applied to those who were recruiting girls or minors into prostitution. She said these statutes lay out a process to ensure that the property is inventoried and notice is given to any third party so they can prevent forfeiture of their own portion of that property. It also defines what happens to the money that comes from the sell of that property. It would first go to pay for forfeiture proceedings including the investigation that led to the property; the remainder of the money would go to the Victims Compensation Fund. It also allows the prosecutors and the attorney general to negotiate these forfeiture cases, both with the defendant as well as any third party owners. **Ms. Thomas** stated that before any order can be issued during this forfeiture proceeding, the judge has to make a finding that the property or a portion of it was used for the illegal purpose.

**Vice Chairman Vick** asked if another model was being followed since this language was new. **Ms. Thomas** said this language was identical to the drug forfeiture with the exception of internal references to the statutes and where the money goes in the end.

**Senator Lakey** noted the portionality issue again for the record. It may not be possible to divide a piece of real property. **Ms. Thomas** said she had researched the issue of whether real property was commingled. It is not considered commingled so they would be forfeiting the entire piece of property. She added that didn't mean the entire value would go to the state; maybe a portion would go to the state and a portion would go back to the defendant.

**MOTION:** **Senator Werk** moved to send **S 1123** to the floor with a **do pass** recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:10 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Friday, March 15, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| Minutes | Approval of minutes of February 25, 2013 | Senators Davis and Lakey |
| RS22282 | SNAP Benefits | Senator Lodge |
| RS22276 | Interim Committee on Criminal Justice | Senator Lodge |
| S 1109 | Relating to Annuity Contracts | Senator Davis |
| H 147 | Relating to Examination of Case and Discharge or Commitment of Accused | Dan Chadwick, Chair of sub-committee of Public Defense, Idaho Criminal Justice Commission |
| H 148 | Relating to the Child Protective Act | Dan Chadwick |
| H 149 | Relating to the Juvenile Correction Act | Dan Chadwick |
| S 1137 | Relating to Garnishments | John Watts, Idaho Collectors Association |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Friday, March 15, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:33 p.m. and asked the secretary to call the roll.

**S 1109** **Relating to Annuity Contracts - Senator Davis** explained that this legislation modifies a person's annuity contract exemption. He said an attorney here in Boise reported this was a lot of work for bankruptcy trustees and gave some specific examples of the problem. On the other side, the annuity provider is concerned about two components of the bill.

1. In the event that a portion of the annuity becomes non-exempt, they may have already paid out some professional fees to those who held the security, and
2. They were also concerned about the time period.

**Senator Davis** spent time negotiating with both parties and the language presented here is the result of those conversations. (Attachment 1.) **Senator Davis** requested that the committee send S 1109 to the amending order and substitute this sub-part (d) instead of the language that is currently printed in the bill.

**Senator Mortimer** asked if this annuity was a monthly payout or a lump sum. **Senator Davis** said it was his understanding that the annuity that is currently exempt or being modified is an annuity in which no distributions are being made. The statute currently provides that if the annuitant is receiving a periodic payment of $1200 per month, that amount is exempt and an amount greater than that is not subject to the current statutory exemption. This is intended to focus on those situations where funds are placed in the annuity, but the anticipated distribution does not begin until later. It appears that it has been done to isolate and protect or block creditor access to the funds. This bill is a hybrid between bankruptcy standards with an insider and a non-insider. Any contribution made within six months prior to the filing of a bankruptcy petition or alternatively if there is a levy of execution, a creditor or bankruptcy trustee or a party of interest could reach back six months and pull out the all of the contributions made to the annuity in that time period.

**Senator Bock** said suppose there was a structured settlement and there was no immediate plans to pay out of the annuity right away, but that was put into the annuity less than six months. He asked if this would take the annuity out of the exemption. **Senator Davis** responded there may not be enough protection for a debtor in title 11, chapter 6. Counsel of the annuity providers was shown language that would provide some additional protection to annuitants. He stated that most of the structured settlements are not ones that the funds are put in with the contemplation that there is a substantial down stream period of time for distribution. Rather, there is a distribution that begins almost immediately. He said this many be an area to be looked at as time goes by.

**MOTION:** **Senator Mortimer** moved to send **S 1109** to the 14th Order for amendment. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**Chairman Lodge** asked if there were minutes to be approved.

**MINUTES:** **Senator Lakey** moved to approve the minutes of February 25, 2013 as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**H 147** **Relating to Examination of Case and Discharge or Commitment of Accused - Dan Chadwick**, Executive Director of the Idaho Association of Counties. Mr. Chadwick said he was here in dual capacity as he was also a member of the Idaho Criminal Justice Commission (ICJC). He mentioned that earlier this session, there was a presentation by the ICJC about the work of the commission and the Public Defense Subcommittee. This is the first of the three bills that are the work of that subcommittee. This bill relates to general changes to the rules regarding the appointment of public defenders to adult defendants. The defense subcommittee, after working on these issues for three years, discovered problems with the appointment process and the standards and qualities of the public defender. There is significant variation from county to county in terms of what offenses and/or financial circumstances establish eligibility for an appointment of a public defender. The legislation creates clear and consistent terminology, using "defending attorney" and "indigent" in the place of "needy" and cleans up code references throughout. The amendments clarify that any offender has the right to counsel. Section 4 establishes presumptive financial eligibility for appointment of a public defender, but courts still have discretion to deny appointment of counsel. The court would be allowed to order reimbursement of public defender costs associated with a conviction, but only upon disposition of the case.

**Senator Bock** said the fiscal note says no impact and yet discussions relating to this on the commission there was a possibility that this could cost the state $20 million. **Mr. Chadwick** said he thought in terms of this legislation it may be a 'wash'. The discussion of additional costs to the state was in reference to the potential of creating a statewide system.

**Senator Nuxoll** asked if there were no guidelines before. **Mr. Chadwick** said that was correct. **Senator Bock** asked what the consequences would be if we fail to act in anticipation of a lawsuit. **Mr. Chadwick** stated there has been a nationwide review of what states provide in terms of public defenders. He said they did need to deal with these issues in a timely fashion.

**MOTION:** **Senator Bock** moved to send **H 147** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**H 148** **Relating to the Child Protective Act - Mr. Chadwick** said that currently in child protective actions, an attorney may be required to serve a dual role as both guardian ad litem (GAL) and counsel for the child. When acting as a GAL the person must advocate for the child's best interests whereas acting as an attorney requires the person to pursue the child's own wishes. This creates ethical conflicts of interest and a potential violation of the Idaho State Bar's Rules of Professional Responsibility. The amendments would prevent these conflicts from arising. For children under 12, a GAL would be appointed along with counsel for the GAL. An additional attorney can be appointed for the child if the court thought that was in the best interest of the child.

**MOTION:** **Senator Hagedorn** moved to send **H 148** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**H 149** **Relating to the Juvenile Correction Act - Mr. Chadwick** explained this would clarify the circumstances in which juveniles are appointed counsel and seek to conform their rights to counsel to the same as that of adults. However, a child's choice to represent him or herself may be restricted. The amendments would prohibit juveniles from waiving their right to the assistance of counsel in the proceedings in certain cases, e.g., felonies, sex crimes, etc. The amendments clarify procedures for a juvenile to waive the right to counsel and for establishing financial eligibility for appointment of counsel as well as repayment of the associated costs.

**Senator Bock** wanted to discuss his belief that the minor never has the capacity to waive counsel. He wanted an explanation why this was not such a serious concern in this context and also mentioned that sometimes the parents put pressure on the children to waive counsel. **Mr. Chadwick** said the right to counsel belongs to the child, not the parents. The child may have the ability, the mental capacity and the knowledge to make an intelligent waiver. One must look at the best interest of the child.

**Senator Werk** needed further explanation of this issue as he thought of a fifteen year old having the right to waive counsel. **Mr. Chadwick** responded that the key is the court's ability to look at the intelligence of the juvenile. The purpose of the court is to take the pressure off the juvenile. This would be a case by case determination. **Senator Werk** asked if there is ever a financial interest that enters into that kind of decision. **Mr. Chadwick** said the financial aspect will come into the determination. The child may have an estate to pay for counsel or the parents may have sufficient resources and therefore the state is not obligated to provide a public defender. Any other financial consideration doesn't fit within the context of the court's decision.

**MOTION:** **Senator Bock** moved to send **H 149** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. **Senator Bock** commented that there were three or four judges on the committee and the general conclusion was that the circumstance of a waiver of any serious consequences to the juvenile would be nonexistent. The motion carried by **voice vote**.

**Chairman Lodge** said she had two RS's to present; a memorial and a resolution.

**RS 22282** **Memorial to Congress relating to SNAP Benefits - Chairman Lodge** explained that many states including Idaho were overwhelmed by rising Medicaid costs and the increases in Social Services being sought by folks. The Department of Agriculture oversees the SNAP benefits and in this memorial the states administer this food stamp program by rules that are promulgated by the United States Department of Agriculture and Congress. The health of the citizens of Idaho is affected by the consumption of food items that have been purchased with the SNAP benefits. This is to encourage the buying of Idaho grown and produced products where possible. Healthy eating choices mean less chance of developing chronic diseases that are raising health care costs. Idaho is requesting flexibility to determine the best methods of helping their citizens create a comprehensive state-based approach to promote physical activity, nutritional food selections and healthy lifestyle choices.

**MOTION:** **Senator Mortimer** moved to print **RS 22282** and send it to the 10th Order of business on the floor. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**RS 22276** **Concurrent Resolution authorizing an Interim Committee on Criminal Justice - Chairman Lodge** explained the purpose of this legislation is to authorize the Legislative Council to appoint an interim committee to undertake and complete a study of the criminal justice system in Idaho. Idaho has been selected by the Justice Reinvestment Technical Assistance to complete a study of our criminal justice system. They have done this in several states throughout the United States and have come up with ways to save money at the beginning. This summer there will be a study with five members from the House and Senate with assistance from various agencies. They will be meeting with Representative Wills, myself and the three branches of government. They will also meet with Director Reinke and his staff, Director Harrigfeld, the courts, and the counties.

**MOTION:** **Senator Werk** moved to print **RS 22276** and send it to the 10th Order of business on the floor. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**S 1137** **Relating to Garnishments - John Watts**, representing the Idaho Collectors Association, explained the purpose of this bill was to provide a new service process for wage garnishment. He described the two key terms; (1) a serving attorney and (2) employee and agent. These terms are included throughout titles 8 and 11. This will create a new process and policy for businesses to track garnishments in place against any employee. The new policy will limit a serving attorney to wage garnishments only, excluding bank garnishments or attachments. It creates new requirements for the judgment creditor to provide two addressed envelopes (one envelope to whoever serves and one envelope to the court) for the defendant's claim of exception. **Mr. Watts** said it also sets out fees for serving, receiving and distributing garnished funds.

**Senator Werk** was confused about the fees for services not to exceed the fees charged by the sheriff of the county and later it says, "...in addition to such fees..." and then mentions the percentages of 1.5 percent and 0.5 percent for a commission and the sum not to exceed $75. He was concerned that the verbiage suggested there would be additional fees. **Senator Werk** made reference to page 3 of Mr. Watt's handout which was a copy of title 31, Counties and County Law and chapter 32 on Fees. **Mr. Watts** responded they were allowed to have a service fee of an average $45 in addition to the percentages on the recovery. **Senator Werk** asked if these fees were identical to what a sheriff could charge for the exact same service. **Mr. Watts** replied that the formula was the same, but he would defer to Bryan Zollinger to discuss this later.

**Senator Hagedorn** asked how many of the groups listed that received drafts for comment provided feedback and what was the percentage of the feedback that was incorporated into the bill. **Mr. Watts** mentioned that some associations responded and most were neutral. He said he had spoken with the Sheriff's Association several times and their concerns have been the order of garnishments and if they know there's one in place. That provision is built in. The flow of the money will still be the same. Serving attorneys are involved with the money in both processes. **Mr. Watts** mentioned that the sheriffs and the courts both mentioned that it was tradition that the sheriffs do this. He is just asking for consideration for an alternative form of service so business can recover their money more quickly. There was more discussion from the senators with concerns of the fees collected.

**TESTIMONY:** **Rich Fairbanks**, Bonneville Collection Agency, stated that his agency operates in several different states and this is the only state that uses a sheriff for this service. Their concern has always been the amount of time it takes to get the funds back to their creditor clients. **Chairman Lodge** asked how long it took for a sheriff to get this filled and how long would it take the attorney. **Mr. Fairbanks** said there were particular counties that would hold the money for at least ninety days.

**TESTIMONY:** **Bryan Zollinger**, Attorney from Bonneville County, Idaho Falls, explained that his company deals with creditor/debtor collections, representing both. He chose to focus on the fees because of the expressed concerns. **Mr. Zollinger** said there were four basic fees that are allowed under Idaho Code § 31-3203 for the sheriff and these are set by the county commissioners. They are as follows:

1. Service fee - a one time fee for serving the documents (they range from $40 to $70)
2. Interim return fee - every check received from the employer if they are sending a monthly check ($10 to $25)
3. Commission - 1.5 percent on the first $1,000 and 0.5 percent of anything over that amount, not to exceed $75
4. Return fee - the final fee when the garnishment is sent back ($10 to $15)

In a high county on an average $2,000 garnishment, the sheriff is charging about $310 to process. The sheriff takes his fees off the top and the small businesses that he represents may not receive the garnishment even after they have paid the sheriff.

**Senator Hagedorn** mentioned again the concern that additional monies could be charged. **Mr. Zollinger** said the commission was on top of the service fees which were set by the commissioners. They have mirrored the language of the sheriff's fees. **Senator Hagedorn** was not clear on whether the commission was considered part of the fees. **Mr. Zollinger** said they are different; there is a fee plus the commission. **Senator Werk** mentioned that the sheriff's fees are specified in an amount reasonably related to, but not to exceed, the actual cost. **Mr. Zollinger** said it was his belief that charges should not be pushed to the limit. **Senator Werk** asked if the incentive was for the private sector to minimize the fees charged to the collection agency. If the fees are collected from the judgement debtor as an additional amount added to the writ of execution, those fees become a pass-through if charged to the collector. Why would the collector care what fees were charged? **Mr. Zollinger** said no business wants to send their bills over to a collection agency because they are losing money, but collections recover 25 to 30 percent of the accounts that are turned over. The bulk of the garnishments are not recovered, but they still have to pay the $70 or whatever the sheriff charges.

**Michael Kane**, representing the Sheriff's Association, said the sheriffs were in opposition of this bill. He would like to give time to the attorney for the sheriffs, Joe Mallet.

**TESTIMONY:** **Joe Mallet**, said he was speaking on behalf of Sheriff Raney, the Ada County Sheriff's Office and the Sheriff's Association. He gave their perspective on this bill and said they served approximately 16,000 garnishments yearly, which is over 1,300 garnishments a month. He also said they are served within one day and when the money is received it is turned around within one day. The benefit for the sheriff's service is that they are a neutral and detached party. They apply these rules equally and fairly to both the creditor and the debtor. As a litigant, it would be an adversarial position. He said they had referred five cases to the Attorney General's office. When cases come across the desk with fraudulent abusive practices; they open an investigation.

**Senator Bock** asked for Mr. Mallett's insights on the fee concerns. **Mr. Mallet** agreed that the language should be cleaned up because it does imply that you can charge what the sheriff charges and in addition to that you could have this extra commission. **Senator Hagedorn** noted that the language in the many letters that were passed around by Mr. Kane were the same and he would doubt if that was coincidence. **Mr. Kane** said he did know that there was a coalition formed that included the sheriffs, some of the cities, hospitals, and other entities. **Senator Hagedorn** asked if it was his perception or the sheriff's that the private sector cannot do this; that it can only be done by the sheriff. **Mr. Kane** said there was no question that it could be done, but certain things go away such as the queue system. The typical employer of a large number of people will write one check to the sheriff and if part of that should have gone to a different attorney, it would have to be returned and rewritten. The neutral arbiter would also go away if not done by the sheriffs.

**TESTIMONY:** **Brian Smith**, attorney with Smith & Zollinger, testified also in favor of this bill, but refocused on the fees. **Senator Bock** pointed out that chapter 32, entitled Fees, and yet the commissions are located at the end of the section. There was still concern.

**MOTION:** Due to time constraints, **Senator Hagedorn** moved to hold **S 1137** in Committee until Wednesday's meeting. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 4:08 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**1:30 P.M.**
**Room WW54**
**Monday, March 18, 2013**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| MINUTES | Approve Minutes of March 6, 2013 | Senators Vick and Werk |
| | Approve Minutes of March 11, 2013 | Senators Mortimer and Bock |
| S 1151 | Relating to Criminal Procedure | Senator Bart Davis |
| S 1165 | Relating to Attorney's Fees | Lyn Darrington |
| H 30aa | Relating to the Administration of Oaths and Affirmations | Patricia Tobias. Administrative Director of the Courts |
| H 125 | Relating to Guardianship and Conservatorship | Rep Grant Burgoyne |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Monday, March 18, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:30 p.m. and asked the secretary to call the roll.

**H 125** **Relating to Guardianship and Conservatorship - Representative Burgoyne** stated this bill will require guardians, conservators and vulnerable adults to disclose their civil judgments and bankruptcies, and to undergo FBI criminal history and background checks. Other provisions of the bill allow, but do not require, courts to require those who will be living with the ward to undergo a criminal history and background check if determined by the court.

Institutions and legal and commercial entities are exempt from the criminal history and background check requirements, as well as the requirement to disclose civil judgments and bankruptcies.

The purpose of this bill is to provide information to the court, but it is not to tell the court what it has to do with that information. The information may not be disqualifying; it is up to the court. Section 1, 2 and 3 of the bill pertain to incapacitated adults, i.e. an elderly person unable to manage his/her affairs. Section 4 of the bill authorizes the Department of Health and Welfare to perform a criminal history and background checks. Section 5 and 6 of the bill pertain to adults with developmental disabilities. Title 15 pertains to visitors and the reference to the evaluation committee carries out the roll of visitor for the developmentally disabled. The coalition behind this bill was the Idaho Council of Developmental Disabilities, the Department of Health and Welfare, the Idaho State Police, various disability advocates and the Trust Estate Professionals of Idaho, Inc. (TEPI).

**MOTION:** **Senator Hagedorn** moved to send **H 125** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**S 1151** **Relating to Criminal Procedure - Senator Davis** explained the purpose of this bill is to allow courts to reduce felony convictions to misdemeanors and amend judgments of conviction in certain circumstances. A defendant that has straightened up his life can petition the court for modification of the order of conviction. If it has been less than five years, the application can be granted only if the prosecuting attorney stipulates to the reduction. If it has been more than five years, the defendant has to prove his case to the court and the discretion is with the court whether or not to grant it. There are some exceptions. If a defendant is beyond the five year time period and the convicted offense is one of the fifteen listed in the bill, the court can grant the requested relief, but only if the prosecuting attorney stipulates to the reduction. Without the attorney stipulation and with a

conviction of one those fifteen offenses, the defendant would not be eligible for the relief that is provided.

**Senator Hagedorn** asked why these fifteen offenses and not others. **Senator Davis** said the fifteen does not include sex offender registry or those type of sex crimes, but they are delineated in sub-part (4) of the bill. **Senator Davis** then responded that the list that was part of a compromise with judicial and prosecuting attorneys, plus the language of when prosecutorial consent was needed.

**MOTION:** **Senator Bock** moved to send **S 1151** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**S 1165** **Relating to Attorney's Fees - Lyn Darrington**, representing State Farm Insurance Company, explained this bill has been a work in progress for many months. She said her client, and other interested insurers had worked with Barbara Jorden of the Idaho Trial Lawyers to reach a middle ground and this is the result. This bill makes a change to Idaho Code § 41-1839 and it only affects one type of insurance claim; uninsured motorists (UM) and underinsured motorists (UIM) claims. These are personal injury claims and are unique in that benefits are only recovered when the insured is legally entitled to collect damages from the at fault UM or UIM driver. This means the insured must be less at fault than the UM or UIM driver. **Ms. Darrington** said this would also give insurers up to 60 days instead of 30 to complete the necessary investigation and make an offer before becoming liable for attorney fees for UM or UIM claims.

**Senator Davis** asked why there were two different time periods. He wanted to know why 60 days was needed for the UM or UIM claim and only 30 days for the insured. **Ms. Darrington** said it often takes more time to get the medical data and determine exactly what happened.

**MOTION:** **Senator Hagedorn** moved to send **S 1165** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**H 30AA** **Relating to the Administration of Oaths and Affirmations - Michael Henderson**, Counsel to the Courts, explained this bill enacts a new statute that provides for a matter to be supported by an unsworn written statement which is signed and is declared to be made under penalty of perjury pursuant to Idaho Law. It would also provide that a person who willfully makes a false statement on a material matter in a document including such a declaration commits perjury. These provisions, similar to those in several other states, will facilitate the preparation and filing of many types of legal documents, and will also be helpful in permitting the eventual electronic filing of documents. In addition, the Idaho Code already contains many references to written statements that must be made "under penalty of perjury," but there is nothing in the code that clearly provides that making false statements in such statements constitutes perjury. This bill will repair this omission.

**MOTION:** **Senator Mortimer** moved to send **H 30aa** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**MINUTES:** **Senator Bock** moved to approve the minutes of March 11, 2013 as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:12 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

# **AMENDED** AGENDA #1
# SENATE JUDICIARY & RULES COMMITTEE
## 1:30 P.M.
## Room WW54
## Wednesday, March 20, 2013

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| MINUTES | Approve minutes of March 6, 2013 | Senators Vick and Werk |
| RS22309 | Amending Senate Rule 8: Public Records Requests | Senator Davis |
| RS22310 | Amending 73-113 Construction of Statutory Language | Senator Davis |
| RS22311 | Amending Joint Rule 18: Statements of Purpose and Fiscal Notes | Senator Davis |
| RS22312 | Creating a new Joint Rule 21: Recording of Legislative Proceedings | Senator Davis |
| H 124 | Relating to the State Board of Corrections | Olivia Craven, Director Pardons and Parole |
| H 256 | Relating to the Child Protective Act | Patricia Tobias, Administrative Director of the Courts |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

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Room: WW48
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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Wednesday, March 20, 2013

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:**

**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 to order at 1:33 p.m. and asked the secretary to call the roll. The Chairman called on Senator Davis to present his four RSs.

**RS 22309** **A Senate Resolution Amending Senate Rule 8: Public Records Requests - Senator Davis** explained this resolution would amend Senate Rule 8 to provide a centralized and consistent process in responding to public records requests on behalf of the Senate. Because of the strict timetables and process requirements involved in the public records act, it is important to have a standardized approach to ensure that all such requests are handled properly and consistently. This amendment to Joint Rule 8 would simply allow the President Pro Tempore of the Senate to designate a custodian of public records who would coordinate and prepare all responses to requests for public records on behalf of the Senate, its committees and its individual members.

**Senator Bock** had a concern that notice should be given to the member involved in the record request. He would like to see that added if possible. **Senator Davis** said he didn't believe that was necessary because he could say in a rule that the Pro Tempore would designate a limited custodian, but the Public Records Law controls all of us. If someone were to make a public records request, they would comply with the statute, not the rule. This Senate Rule is only binding on us.

**Senator Werk** brought up the neutral gender issue. **Senator Davis** agreed that the rules were not written as such. **Senator Werk** asked how a member could respond within the custodian's limited designated custody and control. How would this work when an individual and the custodian don't communicate - there could be two different responses that were not being consistent. **Senator Davis** said the word "limited" was not in the first draft. In his opinion, the Secretary of the Senate is the custodian of the Senate's records, not the Legislative Services Office (LSO). The word limited is in there to say "for the limited purpose of complying with the public records request." He did not want to create the impression by rule that LSO became the custodian of our Senate. LSO works with the requestor.

**MOTION:** **Senator Werk** moved to print **RS 22309** and send it to the 10th Order on the floor. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**RS 22310** **Amending Section 73-113 Construction of Statutory Language - Senator Davis** explained this legislation would strengthen the current statutory language regarding interpretation of legislative intent. As the legislature moves toward live recording of legislative proceedings on the floor and in committees, it is important to underscore the importance of the literal words in a statute as being the best guide in determining legislative intent. It is simply codification of standards by interpreting the statutes as written.

**MOTION:** **Senator Hagedorn** moved to print **RS 22310**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**RS 22311** **A Senate Concurrent Resolution Amending Joint Rule 18: Statements of Purpose and Fiscal Notes - Senator Davis** explained this concurrent resolution would amend Joint Rule 18 to add language clarifying that a statement of purpose (SOP) or fiscal note is not a statement of legislative intent. The SOP and fiscal note are helpful only as an internal document in the legislative process, but since the sponsor of the legislation writes the SOP and fiscal note there can be an inherent bias in that process which can undermine the accuracy of those statements of purpose. The only true expression of legislative intent is in the literal language of the bill itself.

**Vice Chairman Vick** asked if there had been a problem in this area that is being addressed or are we trying to avert the problem. **Senator Davis** said the courts have even looked at SOPs for legislative intent when making appellate court decision.

**MOTION:** **Senator Nuxoll** moved to print **RS 22311** and send it to the 10th Order on the floor. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

**RS 22312** **A Senate Concurrent Resolution Creating a new Joint Rule 21: Recording of Legislative Proceedings - Senator Davis** explained this concurrent resolution would create a new Joint Rule 21 addressing the issues of live streaming, recording and archiving of the floor proceedings of each house and their committees. The rule states that each floor session of the House and Senate shall be streamed live and recorded unless an affirmative vote is taken by the individual body to suspend such streaming and/or recording. Likewise, the committees of the House and Senate shall also be streamed live and recorded, except that such streaming and/or recording may be suspended at the discretion of the committee chair, or by an affirmative vote of the committee. This new joint rule also states that these recordings cannot be used for commercial or political purposes without permission. Statements made by individual speakers in the recordings do not reflect legislative intent, and the recordings do not substitute for the official record of the House and Senate Journals. The new rule also stipulates how archiving of these recordings is to be handled.

**Senator Hagedorn** remarked that the foundational portion of this is protecting the journal, which is the intent, but he did have some issues. He asked if someone in the majority leadership could release a video of someone in the minority body that had a particular testimony that they did not appreciate or vice-a-versa without that member's authorization. **Senator Davis** said this was the current practice, but it could not be for commercial or political purpose. He gave a hypothetical example which would raise an ethics complaint and would be against the Senate rules. **Senator Hagedorn** said his point would be if someone in leadership wanted to help the efforts of one of their party that was running against someone, could they request a video of a member on a particular issue or debate to be used without the member's authorization? **Senator Davis** answered yes, just as one can do right now. **Senator Hagedorn** said his last point is nothing is mentioned about archiving or streaming to be copyrighted. **Senator Davis** said he had that conversation with the Attorney General and what he heard back was similar to what he tells clients; a non-compete-agreement is as enforceable as the integrity of the person that signs it.

**Senator Lakey** asked who would be the authorized designee. **Senator Davis** said that in the past, Legislative Council has done a separate contract with Idaho Public Television. **Senator Bock** had some of the same concerns as were mentioned by Senator Hagedorn.

**Senator Werk** said he was trying to get comfortable with the political piece, but would like to use a hypothetical example to ask his question. If during an election, the opposition to Senator X runs a television commercial with recordings that have been absconded with and they show Senator X making comments, placing them completely out of context, pretending the speech is about one thing when it is about another. Then Senator X decides he or she wishes to respond in kind by showing the actual context. In other words, Senator X would be making the request of their leadership to be provided with a copy to be used in a political ad to refute the ad that had aired. If this rule did not include "for political purpose" and if we allowed leadership to only provide "for commercial purpose" would Senator X be able to access the official archived version of the proceedings under that scenario with nothing mentioned about political purpose. **Senator Davis** responded that these are the rules of the Senate and the Joint Rules of the House and the Senate. They do not have a definition section, but as they wrestled with what words to include, they wanted the phrase "political purpose" for the very hypothetical suggested. The fear was that "commercial purpose" was inadequate to provide protection to the member. This does not give protection or apply to third parties, but is only binding on the body. **Senator Werk** said his discomfort was the offensive use of the recording versus defensive use of the quotes. In one instance, legislative leadership has the ability to decide to release a clip for political attack and on the other side, legislative leadership decides to release a clip for political defense - to defend oneself. That's where the concern is and even though there were probably many discussions with this kind of flip flop in terms of language. He wonders if that language can be altered in such a way that makes it clear that the political purpose for which this is going to be released is defensive in nature. It would provide a response to an attack that is inaccurate. As a member of the minority, and having great respect for the members of the majority, he knows how nasty campaigns can get and he has a distinct concern about these issues. He would like help in understanding whether or not there can be some language that will specify the kind of political purpose allowed for leadership to sign off on. **Senator Davis** said he knew that sometimes there were ghosts in bills, and ghosts were not there, but he could see how Senator Werk could see what he could see. They wrote it with the feeling to entrust that decision to the member of leadership in that process. He was not sure how to write the difference between a sword and a shield into the rule. He didn't know how to take what was, in some ways, clearly forseeable and write it; so the intent was to say they have good people on both sides and to entrust them with this decision and see how they do. If it is not done well, they will look to wordsmith this in a better way. That's how they came to the determination to rely on the member of leadership to sort through those moments. **Senator Werk** commented that he would have more comfort if there had been an "and" instead of an "or" in the legislation so that a member of minority and majority were involved in the process. Then there would be a check and a balance because neither party would be inclined towards using it in a manner that might be untoward.

**MOTION:** **Senator Hagedorn** moved to print **RS 22312** and send it to the 10th Order on the floor. **Senator Bock** seconded the motion. The motion carried by **voice vote**. **Senator Werk** said he had some real issues again about the single member of leadership being able to make the decision so he will oppose the motion and see what happens looking forward. **Senator Davis** said he would like to rethink through some of this, but would still like to print the RS and visit with other sponsors and leadership and see if there is need to revisit it or if they are still comfortable. He said this was good conversation and he appreciates the input. **Senator Werk** voted no.

**H 124** **Relating to the State Board of Corrections - Olivia Craven**, Director of Pardons and Parole, advised the committee that the purpose of this proposal is to clarify the timeframe in which requests can be made for the remission of bond monies; within one year from the date of discharge of the offense for which the offender was serving parole. Additionally, monies may be used for extradition of parole violators.

**MOTION:** **Senator Hagedorn** moved to send **H 124** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**H 256** **Relating to the Child Protective Act** - **Chairman Lodge** asked Judge Varin if he could return on Monday to present this bill due to time constraints of today's meeting.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:05 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

**AMENDED** AGENDA #1

# SENATE JUDICIARY & RULES COMMITTEE

**1:00 P.M.**
**Room WW54**
**Monday, March 25, 2013**

**PLEASE NOTE NEW TIME - 1:00 PM**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| MINUTES | Approve minutes of March 6, 2013 | Senators Vick and Werk |
| RS22316 | Relating to the Idaho Uniform Business Organization Code | Senator Davis |
| H 150 | Relating to County Finances and Claims Against County | Michael J. Kane, Idaho Association of Counties |
| HCR 26 | A Concurrent Resolution authorizing the Legislative Council to Appoint a Committee to complete a study of Potential Approaches to Public Defense Reform | Representative Darrell Bolz |
| H 241 | Relating to Scrap Dealers | Rep Luke Malek |
| H 292 | Relating to Assault and Battery | Rep Luke Malek |
| H 274 | Relating to Traffic Safety Education Programs | Rep Lyn Luker |
| H 256 | Relating to the Child Protective Act; continuation of presentation from Wednesday, March 20th | Sr. Judge John Varin |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

| | |
|---|---|
| **DATE:** | Monday, March 25, 2013 |
| **TIME:** | 1:00 P.M. |
| **PLACE:** | Room WW54 |
| **MEMBERS PRESENT:** | Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk |
| **ABSENT/ EXCUSED:** | Senator Davis |
| **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 to order at 1:03 p.m. and asked the secretary to call the roll. |
| **MINUTES:** | **Vice Chairman Vick** moved to approve the minutes of March 6, 2013 as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**. |
| **RS 22316** | **Relating to the Idaho Uniform Business Organization Code - Michael Brassey**, Uniform Law Commissioner, said this was a product of a number of years of work by the Uniform Law Commission. The concept is to take Idaho's unincorporated business organization statutes and harmonize them into one business code with common definitions in a single section. It creates a common way of filing with the Secretary of State so there are not different forms for every entity, thus making it easier to use the statutes relating to these entities. There are few substantive changes in the law; there are just changes to the form. Because this RS deals with so many laws and is very large and cumbersome, copies were not made for each committee member.<br><br>**Chairman Lodge** asked for the one copy to be circulated among the members. She said she understood that this is for printing only. **Mr. Brassey** said they did not intend to advance the legislation, but want it available to the Bar so they can review the legislation to be considered next year. |
| **MOTION:** | **Senator Hagedorn** moved to print **RS 22316**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**. |
| **H 150** | **Relating to County Finances and Claims Against County - Michael J. Kane**, Idaho Association of Counties, explained the purpose of this bill is to clarify that a person must comply with the Idaho Administrative Procedure Act prior to bringing an appeal regarding the decisions of county commissioners. They are simply adding the word "final" in a couple of places in the statute.<br><br>**Senator Hagedorn** asked if there were any interim orders that are acted upon and never become final. **Mr. Kane** said under the administrative procedures, all preliminary orders have to become final in the end and that is the point for an appeal.<br><br>**Vice Chairman Vick** noticed that there were a lot of 'no' votes in the House and asked what those concerns were. **Mr. Kane** said he watched the debate and was puzzled by some of the questions being raised. One question was about appealing a budget, but you don't appeal budgets. Budgets are set and go forward year to year; there seemed to be confusion on that issue. **Mr. Kane** said they were trying to control the appellate process so that you only appeal final orders. |

**MOTION:** **Senator Hagedorn** moved to send **H 150** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**HCR 26** **A Concurrent Resolution authorizing the Legislative Council to Appoint a Committee to complete a study of Potential Approaches to Public Defense Reform - Representative Bolz** explained this concurrent resolution is for the purpose of authorizing legislative council to appoint an interim committee to undertake and complete a study of the public defender system in the state of Idaho. Currently, a few counties have public defender officers; all the remaining counties contract for services of public defenders. This led the Criminal Justice Committee to appoint a subcommittee to identify those deficiencies within the public defender system in Idaho. A number of deficiencies were identified and they are listed in the concurrent resolution. They include indigency determination, public defense contracting practices, excessive caseloads and workloads, lack of training and resources for attorneys performing public defender services, existence of flat fee contracts, etc. The most significant trend among nationwide approaches was toward the statewide oversight that would include statewide standards and in some instances even some city funding. The interim committee will study the potential approaches of public defense reform in Idaho. Currently, only those counties that have public defender systems are required to submit data to the state. A unanimous decision of the US Supreme Court upheld the 6th amendment of the US constitution, but yet the 14th amendment applies to state courts, and basically in that decision, the court announced that lawyers in criminal courts were a necessity and not a luxury. Those accused of a crime are entitled to an attorney although they may not be able to afford one. The Idaho constitution article 1, section 13 as well as Idaho Code title 19, chapter 8 also provides the right of counsel.

**TESTIMONY** **Monica Hopkins**, Executive Director of American Civil Liberties Union (ACLU) of Idaho, and representing those members, urged the support of this bill. **Ms. Hopkins** stated that in the 2010 National Legal Aids Association (NLAA) report commissioned by the Idaho Criminal Commission, it was found by delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight, Idaho was lax in the competency of services rendered. She also pointed out that the ACLU joined by the national office has commenced an independent study which has taken a special interest in bringing Idaho's system up to constitutional minimums. There seems to be a fundamental misunderstanding in counties of the roll of a public defender and the importance of the 6th amendment. She urges the support of HCR 26.

**MOTION:** **Senator Bock** moved to send **HCR 26** to the 10th Order of business on the floor. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**H 241** **Relating to Scrap Dealers - Representative Luke Malek** deferred to **Neil Colwell** to present the bill. **Mr. Colwell** is a lobbyist for Avista Corporation which is a gas and electric utility headquartered in Spokane, but with customers in Idaho. He said they were bringing this bill because of a situation in their service territory. In spite of changes made to metal theft laws adopted in 2009, metal theft is still increasing. On their system in 2011, in spite of the bill, they had 21 incidents and in the past year they saw a tripling of statistics. Over the last three years, they have had 92 metal thefts on their system that have resulted in approximately $400,000. It is not just an issue in their service territory, but is statewide as others will testify. Grounding wires can be sold for about $200, but replacement costs are about $10,000 to be paid by customers. This bill has three elements to it: (1) it deals mostly with scrap dealers who must collect information of sales, (2) requires photographs to be taken of individuals and the load they are selling, and (3) makes it a felony to enter a substation with the intention of stealing metals or stealing from an electric or communications utility which could interrupt service. There is a danger in

handling these utility wires and grounding wires. In addition, this bill provides some protection from liability if an individual gets injured while in the process of stealing metals. This would prohibit them from suing the owner. The food producers, scrap metal dealers, and utilities would like more done so it has been agreed to have a group of the stakeholders work on additional legislation for next year.

**Senator Hagedorn** asked if there was a process of how the scrap holders would keep these digital photos or if they would be printed out with the documentation one has to fill out. **Mr. Colwell** said that was not defined in this bill. The law right now simply requires that they hold the digital image until law enforcement requests the information. **Senator Hagedorn** said his concern was how a digital photograph and documentation would be connected. **Mr. Colwell** deferred to **Representative Malek** who replied that the connection would have to be a material witness, someone present for photo and documentation on that date. He said this was a drastic issue and they needed to move quickly.

**Senator Werk** commented that with another felony, the fiscal note was probably incorrect. This would increase the cost to the state. He also asked if the crime is committed when a person enters a substation and is apprehended without having stolen anything, but with intent and asked if that was still a felony? **Mr. Colwell** said that if someone is caught inside a substation and has not yet stolen anything, they would at least be charged with trespassing. This proposed statute says that if you went inside with the intent to steal, it is a felony. The interim group may come up with something different. **Senator Werk** asked if grand theft is stealing $1,000 of stuff, how much stuff would be you need to get from a substation? **Mr. Colwell** deferred to **Holly Koole**, prosecuting attorney and she said they would be prosecuted for the replacement value. **Mr. Colwell** said some of these thefts can interrupt phone wires. He also commented that the scrap dealers were not real organized.

**TESTIMONY:** **Roy Eiguren**, lawyer and lobbyist, introduced **Michael Cataldo** of Pacific Steel & Recycling. **Mr. Cataldo** agrees with the bill in principle, but there are some areas of concern. They only learned about this bill last week and are disappointed that they weren't part of the process. He said when anyone comes into any facility in the state and makes a purchase of $20 or more, they see the drivers license, get a description of the vehicle and license plate number and they are doing that now. They are also a member of the Institute of Scrap Recycling Industries (ISRI) scrap metal alert which is nationwide and free and it's not being utilized by anyone in Idaho.

**Vice Chairman Vick** asked if the records he keeps now are sufficient and are the photo records of the stolen items necessary. **Mr. Cataldo** said he didn't have pictures of the stolen items. He reiterated that he was not fighting this issue, but wanted to be involved in the process. They are the ones doing the work and helping to apprehend some of the people who are stealing.

**TESTIMONY:** **Brent Ekart** with United Metals Recycling, a family owned business in Canyon County, said he had issues with the comment that scrap metal recyclers were not organized. He is connected with a national organization, ISRI. He also has a major problem with not being consulted or taken into consideration before the bill got this far. As Mike explained, they are already getting documentation today from customers in all five of the facilities in the state of Idaho.

**TESTIMONY:** **Rich Hahn**, representing Idaho Power, said he had pictures to show the committee (Attachment 1.) that might answer some of their questions. They were identified as follows:

1. copper wire (this would not come in from the general public)
2. transformer showing copper wire missing going to the insulators (energized at 12,000 volts)
3. another apparatus missing copper wire (also energized at 12,000 volts)
4. a ground rod with ground wire detached - cut off wood transmission pole
5. fencing cut for access to training facility for linemen
6. another hole in the fence in secluded area of substation
7. representation of substation in remote area
8. ground wire taken off fence
9. apparatus with missing ground wire, insulator carries high voltage to substation and is dangerous and not protected
10. same apparatus as No. 9
11. cement holding tank for control wires, with copper wire cut and missing

**Senator Werk** asked if he believed adding a felony for committing this crime would be a deterrent. **Mr. Hahn** said he believed so.

Will Hart of Idaho Consumer Utilities Association and Dennis Tanikuni of the Idaho Farm Bureau also support the bill.

**MOTION:** **Vice Chairman Vick** moved to send **H 241** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

**H 292** **Relating to Assault and Battery - Representative Malek** explained this is a bill relating to assault and battery on health care providers. He said Idaho's health care providers are required to treat patients who come to them in need, even when patients are unruly or violent. Often, patients, under the influence of drugs or with stress-induced anger, assault the very professionals who are tasked with helping them. **Representative Malek** referred to Idaho Code § 18-915, that protects social workers, EMS personnel, police officers and certain others who are regularly in harm's way. This bill extends a similar protection to health care professionals who are assaulted because of their profession. It does not apply to assault by a person who lacks the ability to form intent due to mental illness or defect.

**Senator Werk** asked about a definition of mental illness since there was none in this code. **Representative Malek** said there is a definition in title 66-317, subpart 12. **Vice Chairman Vick** asked how they arrived at the fiscal note with no impact. **Representative Malek** said there was no impact to the general fund, but it might impact the counties. He admitted that it may have been neglected. **Senator Bock** wanted to know exactly what the procedure was to correct the fiscal note, in committee or on the floor. He wanted to be clear of the consequences of not accepting the fiscal note. **Chairman Lodge** said she thought it could be done on the floor. **Senator Werk** thought it would be a revised SOP and given to everyone on the floor. It would be attached to the bill and doesn't change the legislation.

**TESTIMONY:** **Dr. Mark Urban**, Pediatric Emergency Room (ER) doctor for St. Luke's, said he had trained in a facility in Arizona where it was a felony to assault a health care worker. In Boise he has been assaulted once verbally and once physically while on duty. He said with the increased prescription drug abuse problem that is seen across the country, more and more assaults are committed on health care workers as they confront patients and refuse to provide those medications in certain instances. He cited an incident that was caused by an intoxicated man. The only deterrent they have is to call a security person.

**TESTIMONY:** **David Lehman**, representing Kootenai Medical Center, said there were a number of individuals who frequent ER seeking narcotics and prescription drugs. One of the reasons for this legislation is because of the significant number of assaults that occur, with 75 percent to non-licensed personnel. **Mr. Lehman** shared some statistics from the Emergency Nurses Association National Survey, which is done every two years. Because of the significant increase in violence, there has been an increase in days taken off work, so there have been cost implications. He mentioned the state of Arizona, where felony charges act as a leverage to get these people into treatment programs.

**Senator Hagedorn** questioned the statistics that show making this a felony would reduce the attacks. **Mr. Lehman** cited the Arizona legislation and said there was knowledge that the threat of a felony was a deterrent and it was also a positive tool to use to push people into treatment. **Senator Hagedorn** was still concerned and questioned what the hospitals were doing to keep this from happening. **Mr. Lehman** said there were a number of activities including increasing security, flagging frequent visitors and better training so employees can identify potential attacks.

**TESTIMONY:** **Karen Gussie** from St. Luke's testified that she had been assaulted and the cost to her was a change in career. She had started her career in mental health, but in that case there were processes in place to deal with the issues. She was assaulted in ER and in the Critical Care Unit, and she was deterred from filing a complaint with various responses, i.e., that it would look bad, it wouldn't be worth her time, etc. The assaults had cost her time off work. She was not sure if a felony would stop this from happening, but there should be some recourse.

**TESTIMONY:** **Representative Margaret Henbest**, executive director of Nursing of Idaho, said her research of this happening in Idaho showed nothing. However, her email response was different with stories of severe injuries including a broken neck, torn rotator cup, choking, black eyes, teeth knocked out, concussions, lacerations requiring stitches, broken noses, attempted rape, etc. The concern was there was a cultural tolerance that health care workers had to accept this because it was part of their job. Some that had filed police reports said nothing happened; there was no action against the perpetrator. Hospitals have the responsibility for creating an environment that is safe, providing security, training for staff, appropriate management and staffing level, robust reporting practices, and zero tolerance. She said that at small critical care centers, there was no security or resources available.

**MOTION:** **Senator Lakey** moved to send **H 292** to the floor with a **do pass** recommendation. **Senator Bock** seconded the motion. **Senator Hagedorn** didn't want to send a false sense of security around the state. He said it was important that the hospitals and management take action. **Senator Werk** said although he would support the motion, he was hesitant because it could be drafted better by including a reference to the definition of mental illness. He added that he had sent the committee members a 50 state survey of criminal laws protecting health professionals that is online. He is also hesitant to add felonies, especially in the broad sense of this statute. He also noted that the fiscal note needed to be changed. **Vice Chairman Vick** echoed Senator Werk's sentiments. The motion carried by **voice vote**.

**H 274** **Relating to Traffic Safety Education Programs - Representative Lynn Luker** explained this bill has been worked on for a couple of years and has the consensus of the courts and the cities. Some years ago some cities began to offer safety driving schools as a method to avoid issuing a citation and the cities would also collect a fee. The problem is it is outside the uniform citation process so there is no tracking of would-be citations, and it diverts funds away from the normal structure. This bill recognizes the benefit of some of these driving schools as there is some evidence that it refreshes people's memory of safe driving. A city can pass an ordinance to adopt this process, a citation will be issued, it will stay on ISTARS, and an option can be given to the driver to attend the driving school for not more than $25. There are a couple of restrictions; (1) excludes commercial drivers, and (2) anyone who has received a point reduction in the past three years. The benefit is they get the education and they don't get points on their record.

**MOTION:** **Senator Hagedorn** moved to send **H 274** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:08 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary

AGENDA

# SENATE JUDICIARY & RULES COMMITTEE

**8:30 A.M.**
**Room WW54**
**Tuesday, March 26, 2013**

**PLEASE NOTE DATE AND TIME**

| SUBJECT | DESCRIPTION | PRESENTER |
|---|---|---|
| | **GUBERNATORIAL APPOINTMENT**<br>**Lt. Colonel Ralph M. Powell** of Meridian, Idaho was appointed Director of the Idaho State Police to serve a term commencing March 21, 2013 and serving at the pleasure of the Governor | |
| H 256 | Relating to the Child Protective Act; continuation of presentation from Wednesday, March 20th | Sr. Judge John Varin |

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Vick
Sen Davis
Sen Mortimer
Sen Nuxoll
Sen Hagedorn
Sen Lakey
Sen Bock
Sen Werk

COMMITTEE SECRETARY

Leigh Hinds
Room: WW48
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MINUTES

# SENATE JUDICIARY & RULES COMMITTEE

**DATE:** Tuesday, March 26, 2013

**TIME:** 8:30 A.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Lakey, Bock and Werk

**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 to order at 8:35 a.m. and asked the secretary to call the roll.

**GUB APPT:** **Lieutenant Colonel Ralph W. Powell** of Meridian, Idaho was appointed Director of the Idaho State Police Department (Department) to serve a term commencing March 21, 2013 and serving at the pleasure of the Governor. **Chairman Lodge** welcomed Lt. Col. Powell and asked him to present a brief history of his background. **Lt. Col. Powell** said he started his career with the Idaho State Police as a Trooper 30 years ago in District 5. He transferred to District 3, where he served in Executive Protection and on the Idaho State Police (ISP) SWAT Team. He was a District 3 Sergeant from 1987 to 1993, then was transferred to Coeur d'Alene as the District Commander. In 1996, as a Captain, he transferred to Boise and took over the District 3 Command position. In 1999, he was promoted to Major over the Forensic Services Division and approximately nine years later he became the Major over Police Services when Forensics was moved to Police Services. In January 2010, he transferred to Operations Major over Districts 3, 5 and 6, Commercial Vehicle Safety, Training and the Regional Communications Centers. He was promoted to Lieutenant Colonel January 2012.

**Lt. Col. Powell** said he holds a Master's degree in Public Administration and a Bachelor's degree in Pre-Law. He is a graduate from the FBI National Academy, and enjoys spending time with his family which consists of wife Julie, five daughters, three sons-in-law and eight grandchildren.

**Senator Werk** posed questions on (1) laboratory-related problems at trials, (2) DNA testing backlog and (3) criminal case turnaround. **Lt. Col. Powell** responded that (1) annual and five-year audits generally keep the Department out of trouble, (2) most labs have backlogs and the Department works hard to keep it to a minimum with the goal to have the backlog down to zero by July 2013, and (3) criminal case turnaround is 45 days and, while not always met, it is greatly improved from the previous 60 days.

**Senator Nuxoll** asked which aspect of his work he likes best. He replied it's the people. He said he has a great support staff, top of the line people, who he feels are the Department's greatest asset.

**Senator Lakey** addressed a recent publication on road rage and asked him about the best way to handle this problem. **Lt. Col. Powell** said research was done to identify causes and solutions. He said at the end of the day it's important to avoid eye contact when faced with this type of threat.

**Senator Davis** asked which question posed by Governor Otter during his interview was most difficult to answer. **Lt. Col. Powell** said he was asked to relate his vision for the Department. He said his answer was to continue to expand and enhance the Department and to make it stronger by sharing strategic plans and resources with the Transportation Department. **Senator Davis** commented on potential technical advances available to ISP and Lt. Col. Powell's thoughts on his length of service as Director.

**Chairman Lodge** thanked Lt. Col. Powell for attending the meeting. She informed the Committee that a vote on Lt. Col. Powell's appointment would be held later in the meeting.

**H 256** **Relating to the Child Protective Act - Senior Judge John Varin** explained that the amendments to this legislation are the result of almost two years of work by the Supreme Court's Child Protection Committee. He said the amendments would improve implementation of the Child Protective Act (CPA) and the Termination of Parent and Child Relationship Act by clarifying time-lines and definitions, adding consistency and providing a clear description of findings made at various hearings.

**Judge Varin** reviewed the amendments by Section:
Section 1: Amends the definition section of the CPA (I.C. § 16-1602) including moving the term "aggravated circumstances" from the adjudicatory statute and providing definitions and cross-reference to criminal statutes to more clearly define what constitutes aggravated circumstances.
Section 2: Amends I.C. § 16-1610 (Petition) to simply clean up the language and make it consistent with other changes.
Section 3: Amends the adjudicatory statute (I.C. § 16-1619) to clean up the language to be consistent with the definitional changes in section 1 and confirms, if aggravated circumstances are present, the permanency hearing is held within 30 days of that determination.
Section 4: Amends I.C. § 16-1620 (Permanency Hearing when there is a finding of Aggravated Circumstances.)
Section 5: Amends I.C. § 16-1621 (Case Plan hearing-No Aggravated Circumstances) by again merging the juvenile rule (IJR 44) with the statute so details of the case plan hearing are in one location.
Section 6: Amends I.C. § 16-1622 (Review and Annual Permanency Hearing) and affirms a review hearing must be held no later than six months from court order and every six months thereafter.
Section 7: Amends I.C. § 16-1623 to clarify that the hearing is to be held in 48 hours excluding weekends and holidays.
Section 8: Amends I.C. § 16-1624 to provide a timeframe for filing the petition.
Section 9: Amends I.C. § 16-1625 to clean up the language.
Section 10: Amends I.C. § 16-1629 (Duties of Department) to clean up the language and remove rebuttable presumption for filing terminations.
Section 11: Amends I.C. § 16-2002 (Definitions-Termination chapter) to clarify "neglect."
Section 12: Amends I.C. § 16-2005 (Termination-Grounds) and replaces the old aggravated circumstances language consistent with changes to section 1.

**Senator Werk** asked about the six-month hearing notification in section 6. **Judge Varin** referenced the rules and time-standards for processing. **Senator Mortimer** questioned the 30-day time frame in section 3, what it takes to get a child out of the home with proper notification, if sufficient care is given to get the child back home as soon as possible, and also, why the rebuttal presumption terminology was removed from section 10. **Judge Varin** said filing a petition within 30 days does not affect the process but it gets the issue before the court more quickly. He said relative to removal of the rebuttal presumption terminology, the wording was simply moved to page 19 for added clarity.

**MOTION:** **Senator Davis** moved to send **H 256** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**Chairman Lodge** said committee members could meet with Judge Varin directly after this meeting to get more information about the amendments to H 256 if needed.

**CONFIRMATION VOTE:** **Senator Mortimer** moved to send the gubernatorial appointment of **Lt. Col. Ralph W. Powell** to the floor with the recommendation that he be confirmed. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**GRADUATION:** **Chairman Lodge** recognized **Madeline Breen**, Page, and **Elizabeth Manor**, Intern, complimented them for their good work and presented them with a gift from the committee.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 9:25 a.m.

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Senator Lodge
Chairman

_____
Leigh Hinds
Secretary