

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