

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 probable 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.

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Senator Lodge  
Chairman

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Leigh Hinds  
Secretary