

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 05, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Senators Davis and Mortimer

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.

MOTION: **Senator Lakey** moved to accept the minutes of January 17th. **Senator Bock** seconded the motion. Motion carried by **voice vote**.

MOTION: **Senator Bock** moved to accept the minutes from January 20th. **Senator Werk** seconded the motion. Motion carried by **voice vote**.

RS 22668 **Relating to the Juvenile Correction Act - Senator McKenzie** stated that there was a small change to Section 4 of 20-505 and that he would give a brief background. He stated that he had a case where a juvenile was charged with two different cases; one was possession of paraphernalia for smokeless tobacco and the other was possession of alcohol. **Senator McKenzie** said that the paraphernalia charge began in adult court, but because it was a crime that was not accepted by the Juvenile Correction Act it got bumped to juvenile court and then received a diversion. He stated that the case involving alcohol stayed in adult court, because of the way the section is written. He stated that crimes of possession of alcohol or tobacco that are crimes only because an individual is a minor still stay in adult court. The court has discretion to send those cases to juvenile court; however when the case went to juvenile court the judge stated that they routinely deny them. Subsequently, the case returned to adult court, which raised the issue why children were sent to adult court when they committed an act that was a crime solely because they were a minor. **Senator McKenzie** stated that this change would mean that, if the act was a crime because they were a child, it would go to juvenile court. If it was a crime that would be a crime even if they were an adult – then it would stay in adult court. He stated that this change would give more opportunities to deal with issues in the juvenile court system and will not remain on their adult record and negatively affecting their lives.

MOTION: **Senator Bock** moved to print **RS 22668**. Seconded by **Senator Hagedorn**. Motion carried by **voice vote**. **Senator Lakey** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, he has prosecuted some of these cases and has a conflict but still wishes to vote on **RS 22668**.

Chairman Lodge asked Senator McKenzie if he had discussed this change with the counties where this would have an effect on their Juvenile Court System. **Senator McKenzie** replied that he had circulated the information and that there were some concerns over the smaller fines and court costs.

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

Idaho State Police Pending Rule

Rules of the Idaho Peace Officer Standards and Training Council - William Flink, Division Administrator, explained that the first purpose of the proposed rule amendments was to better define minimum employment standards for law enforcement officers. These proposed amendments will assist POST in complying with rulings of the Idaho Supreme Court by clarifying vague terms that cause individuals of common intelligence to necessarily guess as to their meaning and differ as to their application. The amendments are needed to prevent arbitrary or discriminating enforcement of their rules and a better venue to prescribe standards in determining candidates suitability for law enforcement employment. **Mr. Flink** stated that they were enhancing their definition of "drug abuse", "misdemeanor" and "driving under the influence" as it related to their minimum employment standards.

The second purpose of the rule change was to make available to students attending POST approved training the same due process provisions when applying for such training. He said that the current IDAPA Rule 1111.01-54 states that the POST council may take into consideration the commission of any act or offense that involves moral turpitude to ensure that an applicant is of good moral character and warrants the public trust. The purpose of the requirement is to prohibit persons who engage in dishonest, unprofessional, unethical or immoral conduct from becoming law enforcement officers, as well as protecting against acts of conduct which may endanger the safety and welfare of others. At the present time, the definition of "moral turpitude" has been left to the POST Division Administrator or Council. The term has been used in correlation with disqualification throughout the nation's history. **Mr. Flink** stated that, in Idaho, the courts have defined "moral turpitude" to be an act of baseness, vileness or depravity. In the due process language the POST Council met with the three college law enforcement managers to ensure that candidates going through training did not run into eligibility issue after graduation. **Mr. Flink** explained the Council propose that an applicant can be rejected who has committed any act involving moral turpitude, even if they have never been charged by a law enforcement agency. Under Section 3, an applicant committing any act involving moral turpitude may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the act, recommends the approval. In Section 55 concerning marijuana, an applicant shall be rejected who has used marijuana in the last three years, while employed as a law enforcement officer or in a position of public safety—regardless of that use in the last three years. In the past the policy has been not to admit anyone who has used drugs ever in their life, it has become increasingly difficult to find applicants that have never used drugs.

Senator Bock stated that he noticed that anyone who has used marijuana in the last three years be rejected and inquired into the legal use of marijuana in neighboring states. **Mr. Flink** responded that they have plans to insert the word "unlawful" to be able to omit other language and that Marinol, a prescription cannabis drug is not included in the prohibited substances for this reason. **Senator Hagedorn** said that a few things needed clarification, such as the acts committed by an applicant that did not require any documentation by law enforcement. **Mr. Flink** responded that, in the application process, there are many forms to fill out concerning character, which are taken at the applicant's word. Many of the agencies conduct background checks and polygraph examinations and that is where any untruthfulness in their application is found. **Senator Hagedorn** inquired into the validity of claims made against an applicant. **Mr. Flink** stated that there was a follow up from the hiring agency, which would ensure that due diligence was maintained in any accusation against an applicant. **Senator Werk** asked about "moral turpitude" and if homosexual conduct was included in that definition. **Mr. Flink** answered that it was not an issue they looked at and that police officers were a microcosm of

society which included all types of individuals. If there was a documented crime on record then they would have to look at it, but he has never had a case of that nature in the 30 years he has worked in certification. **Senator Werk** inquired into expunged crimes or pardons and if they could truthfully answer that they had not committed a crime they had been pardoned for. **Mr. Flink** replied that a suspended conviction still counted as a conviction but a pardon was a different matter, as it was the Governor essentially stating that the crime did not occur.

Chairman Lodge stated that no single individual would make a decision but that it would be brought before the Council. **Mr. Flink** responded that he either approves an application or refers it to the POST Council, but does not reject an application himself. **Vice Chairman Vick** inquired if that current practice was going to be included in the rule. **Mr. Flink** responded that it was something that could be added to the rule. **Vice Chairman Vick** stated that it would be a good idea, in his opinion, to add that practice to the rule.

**PASSING OF
GAVEL:**

Vice Chairman Vick passed the gavel back to Chairman Lodge.

MOTION:

Vice Chairman Vick moved to approve **Docket No. 11-1101-1301**. The motion was seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

S 1251

Relating to the Peace Officer Standards and Training Council - Rory Olsen, POST Deputy Administrator, stated that **S1251** was a proposed amendment to Idaho Code §1951-01, which provides definitions to terms referred to throughout Chapter 51. The Council was seeking to add "voluntary reserve officer" to the definition of peace officer in Section 1951-01D. Currently volunteer reserve officers are not included in the definition of peace officers though they have existed since 1989 and serve as a vital asset to law enforcement agencies that have limited resources. The POST Council and their legal advisors thought it would be prudent to include voluntary reserve officer in the definition of peace officer to prevent any possible legal challenges that might arise regarding legal authority. **Senator Bock** inquired into the practical effect of the change. **Mr. Olson** responded that there was concern that an individual could challenge the voluntary reserve officers authority in court. **Senator Hagedorn** stated that there was a county that utilizes a "posse" and inquired if that was recognized in Idaho Code. **Mr. Olson** replied that he was not aware if posses were addressed in statute but that they did not have arrest powers. **Vice Chairman Vick** inquired into the authority of voluntary reserve officers. **Mr. Olson** replied that the two main roles were Reserve Level 1 and Reserve Level 2. For Level 1 an individual must attend much of the same training that a patrol officer does and can function on their own, but they must have a fully certified officer to supervise them while on duty. He stated that Level 2 is more akin to a ride-along and must be in the same vicinity of the certified officer. **Vice Chairman Vick** inquired into what authority a volunteer reserve officer possesses. **Mr. Olson** responded that the current definition states that the level 1 individual only has authority while on duty. **Senator Lakey** said that volunteers provide a valuable service and asked if the authority of a peace officer was defined in the section. **Mr. Olson** answered that most of the statutes that he has read referred back to the definition currently under consideration.

MOTION:

Senator Bock moved to send **S 1251** to the floor with do pass recommendation. Seconded by **Senator Lakey**. Motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 2:36 p.m.

Senator Lodge
Chair

Carol Deis
Secretary

David Ayotte
Majority Staff Assistant