

House Judiciary, Rules & Administration Committee

Minutes
2005



MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 11, 2005

TIME: 11:20 a.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** Representatives Ellsworth, Sali, Nielsen, McGeachin

MINUTES: Chairman Field called the meeting to order and welcomed everyone to the Committee, both the returning members and the new members. The secretary and page were introduced and each member was asked to introduce himself/herself and tell which district each represented. Several members expressed concern regarding the overcrowding of the prisons and the growing drug problems.

Chairman Field said the Committee would be dealing with several important issues. One of the issues is gang related problems in Idaho. Eastern Idaho has significant problems with gangs. A presentation would be made on this subject on January 13. Meetings on the 17th, 19th and 25th would deal with Program and Capacity Assessment for the Department of Correction relating to mandatory minimum sentences and also sentencing in general. On the 27th of January, the problem of Meth production, the clean-up of the locations and the residue would be presented to the members. Then on the 31st of January, guardianships and conservatorships would be discussed.

ADJOURN: In concluding remarks, Chairman Field thanked the members and welcomed the opportunity to work with them on these issues. There being no further business, the meeting was adjourned at 11:40 a.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 13, 2005

TIME: 1:35 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** Representatives Sali and Clark

GUESTS: Brent Reinke, Dept. Juvenile Corrections; Brian Walker, 3-B Juvenile

MINUTES: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Ring moved to accept the minutes of the meeting held on January 11, as written. Motion carried.

The Chair said this meeting will inform the Committee about gang-related problems in the state. Director Reinke was recognized to begin the presentation. The Director said in 2003 there were 170,517 juveniles in the system between the ages of 10 and 17. Also, in 2003, there were 16,785 arrests in Idaho. Idaho has 12 detention centers (397 beds) and there are currently 6,200 juveniles serving probation. The Director introduced Brian Walker to continue with a slide presentation.

Director Walker gave each member a handout (attached.) The Director said that based on the response from police and sheriffs regarding a 2002 National Youth Gang Survey, there were an estimated 21,500 gangs and 731,500 gang members across the nation. Southeast Idaho and Canyon County are home to the majority of the gangs in the state. Gang structure consists of leadership, hardcore, associate, fringe, new member and recruit. Gang members are recruited by seduction, subterfuge, obligation, coercion and self recruitment which is determined by necessity, money, protection and glamour. The types of gangs in this area are Hispanic, Crips and Bloods, Folks and People, motorcycle gangs and Straight Edge.

In conclusion, the Director said the way to combat gang involvement is through family, community involvement and school education which will enable young people to obtain high paying jobs.

The Chair thanked the Director and recognized Judge Gutierrez. The Judge gave each member a handout (attached.) The Judge said that we must implement solutions to the gang problem now. The recent acts of violence in the Caldwell area have had the effect of prompting some to decry the gang activity as a Canyon County or a Latino problem. However, gang activity is an Idaho problem. Gang recruitment is not predicated on racial or cultural distinctions, but rather is a function of opportunity and susceptibility. All Idaho children are at risk. The criminal

acts most frequently committed by gangs involve violence. A method must be developed which allows parents, teachers, and law enforcement officials to accurately identify those youth who are actual gangsters. Idaho's response to gang violence must be one of zero tolerance. Risk factors which predict gang membership include involvement in delinquency, problematic parent-child relations; low school attachment and academic achievement, association with peers who engage in delinquency and disorganized neighborhoods in which a large number of youth are in trouble.

Prevention requires community involvement by involving youth in productive activities such as sports, entry-level jobs, and so forth. Families need access to culturally competent support resources. The entire community needs access to substance abuse resources. Education and communication are vital in the effort to eliminate gangs. Also, the juvenile justice system needs to focus on restorative justice in which juvenile offenders, victims and the community work together to right the wrongs caused by criminal behavior.

RULES REVIEW: Chairman Field thanked the Judge and called on Vice Chairman Smith to explain how the rules would be reviewed. The Vice Chairman said there would be two subcommittees, one chaired by Representative Shirley and the other chaired by Representative Ring. These subcommittees would review the rules and make recommendations to the full Committee.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:15 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 17, 2005
- TIME:** 1:25 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representatives Ring, Hart
- GUESTS:** Pamm Juker, Chief Clerk; Hon. Randy Smith, District Judge; Dir. Thomas Beauclair, Dept. Of Correction
- MINUTES:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on January 13, 2005, as written. Motion carried.
- RS12496:** The Chair recognized Chief Clerk Pamm Juker to explain the proposed legislation. This is a Concurrent Resolution for the printing of the House and Senate bills, resolutions, memorials and amendments. The only bids received were from those currently doing the printing. Prices are reduced from last year.
- MOTION:** Representative Clark moved to **introduce RS12496 and send it directly to second reading**. Motion carried. Representative Clark will carry the resolution on the floor.
- RS12497:** The Chief Clerk was again recognized to explain. This legislation provides for the printing of the House and Senate Daily Journals. The cost has been reduced from last year. Again, the bids were from those currently doing the printing.
- MOTION:** Representative Clark moved to **introduce RS12497 and send it directly to second reading**. Motion carried. Representative Boe will carry the resolution on the floor.
- RS12498:** The Chief Clerk explained that this legislation provides for the printing of House and Senate Permanent Journals. The cost has been reduced from last year and the bids received were from those currently doing the printing.
- MOTION:** Representative Clark moved to **introduce RS12498 and send it directly to second reading**. Motion carried. Representative Bastian will carry the resolution on the floor.
- RS12499:** The Chief Clerk said this legislation provides for the printing of the Session Laws. The price has increased slightly from last year.

MOTION: Representative Clark moved to **introduce RS12499 and send it directly to second reading.** Motion carried. Representative Smith will carry the resolution on the floor.

Chairman Field welcomed District Judge Randy Smith to give a presentation to the members on sentencing by district courts. A handout was given to each member on Idaho Statutes, Section 19-2601, 19-2513 and 19-2521 which explain how sentencing is done (attachment.) Prior to sentencing, the Judge must have a plea of guilty or a conviction. The Judge then has the following options: commute the sentence, suspend the execution of the judgment at the time of judgment, withhold judgment and place the defendant on probation, or suspend the execution of the judgment at any time during the first 180 days. Withholding judgment and placing the defendant on probation might be done for a first time offender in a non-violent crime. In section 19-2513, Idaho Code, a Unified Sentencing Act was passed which allows the defendants to understand the truth of the sentence they are going to receive. Under this Act, the Court shall specify a minimum period of confinement and may specify a subsequent indeterminate period of custody. Section 19-2521, Idaho Code, sets forth the criteria for placing a defendant on probation or imposing imprisonment. Mandatory minimum sentencing is usually done in drug crimes and DUI's. Idaho has the rule of three strikes and you are out.

Judge Smith thanked the Legislature for establishing drug courts. In Bannock County, no one who has gone through the treatment has gone back to using drugs. The Judge said being involved in the drug court has been one of his most rewarding experiences.

Chairman Field thanked the Judge for taking the time to speak to the Committee and introduced Director Beauclair to begin the first of three meetings with a slide presentation on incarcerations by the Department of Corrections as of January 1, 2005. The Director said Dr. Marsh would be at the meeting scheduled for January 19, and Bobbie Huskey would be at the meeting scheduled for January 25. The Director said there were 5,623 male offenders incarcerated as of January 1, 2005. There were 682 female offenders incarcerated as of the same date. Because the women consist of a smaller number, they can usually be gotten into treatment sooner. Some of the major factors affecting incarceration growth are sentencing laws, prison capacity, new crimes/offenders, recidivism rates, probation violations and parole violations.

ADJOURN: Chairman Field thanked the Director for the information and said the slide show would be continued at the next meeting scheduled for January 19. If necessary to complete the information gathering on sentencing, another meeting could be scheduled. The Chairman asked the Director to introduce the other Department of Correction people attending the

meeting. Rod Leonard, Pam Sonnen, Teresa Jones and Don Drum were introduced. Chairman Field pointed out to the members that judges volunteer their time when working with the Drug Courts. There being no further business to come before the Committee, the meeting was adjourned at 3:10 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 19, 2005

TIME: 1:30 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** None

GUESTS: Director Tom Beauclair, Dept. Of Correction

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on January 19, as written. Motion carried.

MINUTES: Chairman Field recognized Director Beauclair to continue his presentation on the prison system. The Director said growth in the correctional populations has been relentless over the past thirty years. This growth is the result of a number of factors. It is influenced by sentencing laws, the capacity of correctional facilities, new crime, the crime rate, probation and parole violators and recidivism. In order to accommodate the growth, the Department is providing a number of temporary solutions for housing these offenders. Tents have been erected. Temporary cots have been added at the women's correctional facility. Because of the overcrowding, offenders were being held in county jails. To prevent this bottleneck, 60 cots were added in the gymnasium at Cottonwood. These temporary solutions cause safety concerns, as well as budget concerns. Also, the Department's capacity for treatment becomes more challenging.

Last year, in a 2-month period of time, there were approximately 250 offenders incarcerated. The Director said currently Idaho is a bed-ridden system. Correctional facilities should operate at no more than 90% of capacity. Idaho is operating at 102%. The Department will be going out of state to house some offenders. There is currently no more money in the budget for treatment programs. It is important for offenders to be able to obtain their GED's or have vocational training in order to successfully reenter society. Fifty-two percent of the male offenders are incarcerated for non-violent crimes. Eighty-five percent of the female offenders are incarcerated for non-violent crimes. More community-based alternatives are needed to work on drug and alcohol offenders.

There are also medical issues. The Department pays all medical costs for those being held in county jails, as well as in prison. In addition, it is currently impossible for the Department to deal with mental health problems. Congress approved \$50,000,000.00 to be used for the treatment of these problems and Idaho is hoping to receive a grant to help treat these offenders. Currently, offenders with mental health problems

spend more time in prison because of behavioral problems.

Five pieces of legislation have been drafted this year which address the cost of supervision fees, medical costs of prisoners, offender mental health records, sexual contact with prisoners and correctional manager. Medical Director for the Department, David Haas, was recognized to answer some questions on the prison medical contract. The contract is expected to go up by 20 to 25 percent this year. The \$12 million health contract expires in September. Eight companies have expressed interest in carrying the new contract.

Greg Sali with the Department was recognized to discuss the Forecast Advisory Committee and its broad range of members. Mr. Sali said the forecast for 2005 is a fairly small increase in numbers. The growth is determined by the increase in the population.

ADJOURN:

Chairman Field thanked all those who spoke to the members. The study of the prison population will be continued at the next meeting to be held on January 25. Bobbie Huskey, who prepared the Huskey report on the Program and Capacity Assessment for the Idaho Department of Correction will discuss the contents of the report at that meeting. There being no further business to come before the Committee, the meeting was adjourned at 2:40 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

**HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE
SHIRLEY SUBCOMMITTEE**

DATE: January 19, 2005

TIME: 2:45 p.m.

PLACE: Room 404

MEMBERS: Subcommittee Chairman Mack Shirley, Representatives Sali, Harwood, LeFavour, Bastian. Representative Leon Smith, ex officio

**ABSENT/
EXCUSED:** Representative Sali

GUESTS: Brent Reinke, Director; Zaine Baird, Department of Juvenile Corrections

MINUTES: Subcommittee Chairman Shirley called the meeting to order and recognized Director Reinke to give an overview of the rules of the Department of Juvenile Corrections.

**DOCKET #05-
0101-0401:** Director Reinke said a new rule has been adopted to replace the existing pending rule, IDAPA 05.01.01, Rules for Private Contract Providers, which is being repealed in its entirety.

MOTION: Representative Smith moved to recommend to the full Committee that the repeal of Docket 05-0101-0401 be approved as adopted . Motion carried.

**DOCKET #05-
0101-0402:** The Director said this is the chapter rewrite on the pending rule dealing with the Department's Rules for Contract Providers. This chapter governs the regulation of those who contract to provide residential or other program services. Updates were needed to comply with the changes in federal law, records confidentiality, and to clarify compliance with some Idaho statutes. The chapter consists of some former rules that were retained resulting in an improvement in format and language, standards criteria for good care and treatment of juveniles placed with contract providers, and standards criteria toward managing risk. This chapter sets higher standards and is pretty much self explanatory.

MOTION: Representative LeFavour moved to recommend to the full Committee that Docket 05-0101-0402 be approved as adopted. Motion carried.

**DOCKET #05-
0103-0401** The Director said this temporary rule amends the rules of the Custody Review Board. This rule amends Sections 101 and 201 to clarify that juveniles must be seen by the Custody Review Board and not just referred, prior to age 19. Also, if the Board sees a juvenile but does not retain him, the juvenile may be kept in custody for no more than 45 days after turning nineteen. However, the Board may in certain circumstances elect to retain the juvenile until the age of 21.

MOTION: Representative Bastian moved to recommend to the full Committee that Docket 05-0103-0401 be approved as adopted. Motion carried.

DOCKET #05-0104-0401: The Director said this temporary rule requires that the Department shall establish uniform standards for county probation services as well as qualifications for and standards for the training of juvenile probation officers. The standards in these rules were developed in collaboration with the Juvenile Justice Training Council, a sub-committee of Idaho Peace Officer Standards and Training Council (POST.)

MOTION: Representative LeFavour moved to recommend to the full Committee that Docket 050-0104-0401 be approved as adopted. Motion carried.

ADJOURN: There being no further business to come before the subcommittee, the meeting was adjourned at 3:35 p.m.

Representative Mack Shirley
Subcommittee Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE
Ring Subcommittee

DATE: January 19, 2005

TIME: 2:50 p.m.

PLACE: Room 406

MEMBERS: Subcommittee Chairman Ring, Representatives Hart, Pence, McGeachin, Representative Smith, ex officio

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: Michael Becar, Idaho State Police; Pat Teague, Veteran's Services; Byrl Cinnamon, Board Certified Shorthand Reporters; Kathy Baird and Thomas Hearn, Sexual Offender Classification Board.

Minutes: Subcommittee Chairman Ring called the meeting to order and recognized Michael Becar to give an overview of the pending rules for the Idaho State Police Dept.

**Docket #
11-1101-0401** Mr. Becar said the rule more adequately addresses military discharges, requiring more timely notices of employment and entrance into academies, so officers will be trained within the allotted twelve months. It adds continuing training requirements, eliminates some course attendance requirements for officers who have not been out of law enforcement over five years, and updates the patrol academy curriculum .

Motion: Representative Smith moved to recommend to the full Committee that Docket 11-1101-0401 be approved as adopted. Motion carried.

**Docket #
21-0102-0401** Chairman Ring recognized Pat Teague to give an overview of the pending rules for the Division of Veterans Services. Mr. Teague said these changes address basic eligibility for Veterans regarding the requirement that applicants for the Emergency Grant list Idaho as their Home of Record during their wartime service. It is proposed that this requirement be waived if the Veteran has resided in Idaho for at least five years.

Motion: Representative McGeachin moved to recommend to the full committee that Docket 21-0102-0401 be approved as adopted. Motion carried.

**Docket #
49-0101-0401** Chairman Ring recognized Byrl Cinnamon to give an overview of the rules of the Board of Certified Shorthand Reporters. Mr. Cinnamon said that the changes were mostly deleted definitions and were reviewed previously by legislative services. They do not impact the public. Rules were also revised to eliminate disciplinary hearing provisions.

- Motion:** Representative Hart moved to recommend to the full committee that docket 49-0101-0401 be approved as adopted. Motion carried.
- Docket #**
57-0101-0401 Chairman Ring recognized Kathy Baird to give an overview of the rules of the Sexual Offender Classification Board. Ms. Baird said that the pending rule is being adopted to implement legislation passed and signed into law during the 2003 Legislative session. An amendment was made to Sec. 004 and 131 to clarify the offender polygraph examination rule and add polygraph examination standards. Subsection 040.06.a provides for on-line continuing education units. Subsection 040.03 and Sec. 051 are being amended to emphasize the statutory requirement for Idaho licensure for certified sexual offender evaluators. A processing fee is required for all providers seeking offender evaluation certification. Chairman Ring recognized Thomas Hearn who summarized additional information on 570-01-01 as summarized in the attached letter.
- Motion:** Representative Pence moved to recommend to the full committee that docket 57-0101-0401 be approved as adopted. Motion carried.
- Adjourn:** There being no further business to come before the subcommittee, the meeting was adjourned at 4:05 p.m.

Representative Robert Ring
Subcommittee Chairman

Tammy Perkins
Subcommittee Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 25, 2005
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representative Nielsen
- GUESTS:** Director Tom Beauclair; Consultant Bobbie Huskey; Olivia Craven, Pardons and Parole; A. J. Burns, Office of Performance Evaluations
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on January 19, as written. Motion carried.
- MINUTES:** Chairman Field said this is the last of a 3-meeting series on the overcrowding of Idaho prisons and sentencing of inmates. Director Beauclair was recognized to introduce the guest speaker, Bobbie Huskey, President of Huskey & Associates, Inc.
- The Director said Bobbie Huskey is president of a national consulting firm located in Chicago. Her team has conducted research, master planning, program development and program evaluation projects for 23 states and in more than 70 jurisdictions throughout the country. Ms. Huskey has been featured on NBC Nightly News, CBS 48 Hours, CBS Morning News and quoted in international, national and local publications. Ms. Huskey is a clinical social worker who has operational experience as an administrator of community corrections.
- Ms. Huskey said her firm was asked to study and give a report on Idaho correctional facilities. The number of inmates confined in the facilities exceeds the Department's safe operating capacity. The current capacity statewide is 5,691 beds and facilities operate at 96% to 113%. As of August 2004, there were a total of 5,798 inmates housed in state correctional facilities and another 482 inmates waiting in local jails. Due to this severe crowding, the correctional system cannot place inmates into facilities according to their risk, needs and classification status. Facilities are not able to operate within their safe operating capacity and there are not a sufficient number of rehabilitative programs to accommodate the demand.
- Under the leadership of Director Beauclair, IDOC has been recognized as a national leader in assessing the risk and needs of offenders and operating Core Programs that will lead to reduced recidivism. However, the ability to continue these practices has been jeopardized by the severe crowding. Effective programs cannot occur if staff to offender ratio is too

high. The overall goal of the study was to assess the current program and facility capacities and to develop recommendations on the type of capacity needed in the future and how to maximize the integration of all system components.

The plan presented in the report maximizes current facility, program and staff capacities. It shows how the Department can meet its need for special need beds with existing bed capacity and it presents a proposal to provide group and individual therapy without adding any additional case managers. It also proposes new structured reentry options to expedite the gradual release of inmates near the end of their sentence. Idaho needs to establish drug treatment centers and a way to treat the mentally ill. There are currently 1.4 million children whose parents are locked up. Those parents still need to have a bond with their children. By establishing community work centers and day care treatment centers, Federal funding will be available to help cover the cost of the programs. With proper programs, inmates will be ready for parole. Also, by creating coalitions of several agencies, a coordinated approach will be established. Community involvement is essential.

Director Beauclair said the Department has reduced the length of stay and enhanced treatment capacity. However, resources are needed. The prison is at 102% of capacity. At this rate, the Department must go out of state at a cost of \$50.00 per day per prisoner. Although the Department has established good partnerships with several other agencies, there are no funds available to accomplish many options.

The Chair thanked Ms. Huskey and the Director. The main goal of these presentations is to help the members understand proposed legislation which will be coming before the Committee this session. Olivia Craven with the Commission of Pardons & Parole was recognized. Ms. Craven said she would be happy to come before the Committee and give a report on what the Commission is doing to help solve the over-crowding problem. A. J. Burns with the Office of Performance Evaluation was recognized. Ms. Burns said Pardons & Parole and the Department of Correction have been very cooperative in helping to assess the quality of data collected and the problem of recidivism.

RULES REVIEW: Chairman Field called on Vice Chairman Smith to address the subcommittees' review of the rules. The Vice Chairman said two subcommittees, one chaired by Representative Ring and the other by Representative Shirley, reviewed all the rules which came to the Committee this session.

RING SUB COMMITTEE Representative Ring said his subcommittee met and reviewed the pending and fee rules of the Idaho State Police, the Division of Veterans Services, the Board of Certified Shorthand Reporters and the Sexual Offender Classification Board. Minutes were taken covering the meeting.

MOTION: Representative Ring moved to approve the minutes of the subcommittee held on January 19, as written. Motion carried.

- MOTION:** Representative Ring moved to accept the recommendations of the subcommittee report to the full Committee that the rules be approved as adopted. Motion carried.
- SHIRLEY SUB COMMITTEE:** Representative Shirley said his subcommittee reviewed the pending rules of the Department of Juvenile Corrections. Director Reinke gave an overview of each of the rules and minutes were taken..
- MOTION:** Representative Shirley moved to approve the minutes of the meeting held on January 19, as written. Motion carried.
- MOTION:** Representative Shirley moved to accept the recommendations of the subcommittee report to the full Committee that the rules be approved as adopted. Motion carried.
- ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 2:50 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 27, 2005

TIME: 1:45 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** Representative Sali

GUESTS: Colonel Charboneau, Director, Idaho State Police; Director Brent Reinke, Department of Juvenile Corrections; David Hawn, Financial Management Analyst

MOTION: Chairman Field asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on January 25, as written. Motion carried.

**REPORT BY
DIR.
CHARBONEAU:** Chairman Field recognized the Director to give the members a report on the production of methamphetamine in Idaho. The Director gave each member handouts (attached) and said methamphetamine is a powerful stimulant which is easily manufactured from household substances. It is highly addictive. It causes increased energy and sexuality, with decreased appetite. The effects from the drug can start within 2-5 minutes and last 6-24 hours.

As the effects of the drug wear off, the user experiences delusions, compulsive behavior, paranoia and a tendency to violence. Heavy and long term use can cause many effects including tooth decay, anxiety, paranoia and insomnia, inability to function socially, heart disease, lung disease and brain damage. Recipes for methamphetamine can even be found on the internet.

Environmental hazards from meth labs include dumping of waste products, contaminated soil and water, and toxic vapors released during processes. These vapors permeate into the walls, carpets and ceilings of the locations used. The Director said a study indicated that only 10% of the labs are being found.

In order to help solve Idaho's problem, public education is necessary, as well as concentrated agency efforts, community partnerships, law enforcement partnerships and partnerships with business, educators and medical professionals.

Children endangered by drugs include those under 18 years of age, those exposed to the drug and to toxic chemicals of drug labs. Children suffer physical harm or neglect from direct or indirect exposure to illegal drugs. The most important of all are those infants and children who suffer

physical abuse and neglect because of their caretaker's substance abuse. The lack of nurturing and emotional stimulation results in developmental delays, depression and attachment disorder. Often they suffer from malnutrition and fail to thrive. They have poor hygiene habits and are not given medical attention when they need it. More resources and more full-time employees are needed by the Department to combat this problem. Idaho is sharing information with other states all along the border as this problem continues to move east.

**REPORT BY
DIR. REINKE:**

The Director said in 1995, Idaho passed the Juvenile Corrections Act. Everything the Department does is under the umbrella of restorative justice. It is about being proactive. The Department has found ways to work with schools and families. It works within 44 counties and with 84 magistrates. There are currently 12 detention centers owned and operated by the counties with 397 beds. A judge helps manage each facility. The youngest sex offender is around 10 years of age. The majority of the sex offenders in the system are 15 to 20 years of age. The Juvenile Justice System has become a repository for juveniles with mental health problems. The Department needs to be able to improve its programs and do a better job locally. Next year the Department will present to the Committee a 10-year overview.

**REPORT BY
DAVID HAHN:**

Chairman Field thanked Director Reinke and congratulated him for all the good work he has done over the years. David Hahn was then introduced to present the Governor's Budget Recommendation for the Department of Correction and for the Department of Juvenile Corrections. Mr. Hahn gave each member a handout (attachment.) The Governor's budget recommendation for the Department of Correction takes into consideration the actual and projected incarcerated offender population and institutional bed capacity. The need for supplementals and enhancements has been driven by significant fluctuation in the retained jurisdiction population (riders) and the offender whom the courts or the Parole Commission has committed to prison (termers.)

The forecast shows that by FY 2006, the termers population will have grown by 716 offenders, while the rider population will have returned to historical patterns of increase. Termers are usually incarcerated for approximately 2 ½ years. Riders are incarcerated for 120 days.

The Governor's recommendation for the Department of Correction includes a 12.1% General Fund increase, adds 90.6 FTPs over the 2005 cap; provides \$250,000 in dedicated funds for intermediate sanction/revocation facilities, provides \$761,600 in dedicated funds for 14 additional FTPs for community supervision and addresses the increase in offender population by adding 600 permanent beds.

Mr. Hahn said tent beds are continuing to be incorporated in the permanent operational plan. The Department has done an excellent job of keeping the inmate population in the state, but in the late fall and winter months, the tents must be pulled. At that time, offenders will have to be sent out of state.

Factors influencing the Governor's budget recommendation for the Department of Juvenile Corrections include current fiscal climate, number

of court commitments, availability of federal funding to the state and counties, control over releases, population management efforts, transition of the juvenile offender back into the community and strong partnerships. One of the Governor's recommendations for the Department was an increase to the General Fund of 4.1%.

ADJOURN:

Chairman Field thanked Mr. Hahn and told the members that the presentations were made to help set the groundwork for the legislation that would be coming before the Committee. There being no further business to come before the Committee, the meeting was adjourned at 3:45 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 31, 2005

TIME: 1:40 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** Representatives Sali and McGeachin

GUESTS: Bob Aldridge; Dede Shelton; Sarah Scott

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Wills moved to approve the minutes of the meeting held on January 27, as written. Motion carried.

MINUTES: The Chairman recognized Bob Aldridge to explain the findings and recommendations of the interim study committee on guardianships and conservatorships. Mr. Aldridge gave each member a handout (attachment). Mr. Aldridge yielded to Dede Shelton, administrator of the Guardian Monitoring Program, to explain guardianships and conservators to the Committee. Ms. Shelton gave each member two handouts (attachments), one explaining the Ada County Guardianship Monitoring Program and the other explaining how a guardianship is imposed. Ms. Shelton said the Guardianship Monitoring Program was created in 1995 out of the requirement that the Court review and monitor all guardianship and conservatorship cases for compliance with governing state statutes. Due to the enormous caseload of Magistrates and the number of legal guardianship cases in Ada County, it became necessary to establish a program which utilizes community volunteers. The program's volunteers improve accountability as they monitor the care received by the most vulnerable populations, which include the elderly, disabled and minor children.

There are currently approximately 1500 cases in Ada County, of which 895 are guardianships and 605 are conservatorships. Ms. Shelton explained to the members the steps involved in imposing a guardianship. She explained that a guardianship is the process by which a court finds a person's ability to make decisions so impaired that the right to make decisions is legally granted to another party. A conservatorship is the process by which a court finds a person's ability to make decisions so impaired because of disabilities that the right to make financial decisions is legally granted to another party. The goal of guardianship through the court's eyes is to protect the individuals and at the same time allow those persons to preserve the greatest amount of independence as their condition will allow.

Sarah Scott, program manager for the Commission on Aging was

recognized. Ms. Scott said the Commission was a part of the study committee. In many situations, the only way disabled adults are found is by their neighbors calling for help for them. If that individual has no assets, there is no way to pay for a guardian or a guardian ad litem. The issue before the Committee today is one where guardians and conservators are taking advantage of vulnerable adults. Law enforcement looks at these issues as civil matters. The goal is to establish Guardianship Monitoring Programs in each Idaho county to ensure these populations are safe and that their court-appointed guardian and/or conservators are reporting to the Court as mandated by Idaho statutes. Ms. Scott said the problem in Idaho is enormous and a solution must be found.

Mr. Aldridge said conceptual approval was given to the following issues and proposals: (1) Clarify that a guardian ad litem is assigned to a case until released by a judge; (2) Require the submission to the courts of the fees to be charged for review and approval prior to payments; (3) Broaden the guardian information requirements and give the court the authority to require more information; (4) Set forth a more thorough listing of what needs to be turned in with annual reports; (5) Clarify the protections accorded to wards; and (6) Require that alternatives to guardianship first be examined.

The interim committee voted to support the establishment of a guardianship pilot project to include up to three counties in Idaho (probably Ada, Payette and Bonner) to include: (1) Adoption of standards of practice for guardians; (2) Requirement that guardians be registered; (3) Consideration of an office of the public guardian; (4) Review of the strengths of Idaho law regarding treatment and care of disabled persons and (5) If federal or grant funding is available, provide funding for adult protection to seek guardians for cases where volunteers cannot be enlisted.

Patti Tobias, administrator with the Courts, was recognized to explain the ISTAR system. Ms. Tobias said the program is used for both criminal and civil cases. It is the hope of the Courts that imaging will be established which would grant immediate access to information and prevent so much paperwork. Mr. Aldridge said currently cases are not being reviewed. The Courts do not have the personnel or the training to monitor these cases. This is the reason it is necessary for the guardian ad litem to stay with the case.

RS14714: Mr. Aldridge said this proposed resolution clarifies how the title to property is held by the conservator and how it may be exercised.

MOTION: Representative Smith suggested that since these issues are very complicated, the members might wish to seek more feedback prior to hearing them when they come back in the form of bills. Representative Smith moved **to introduce RS14714**. Motion carried.

RS14717: Mr. Aldridge said this proposed legislation adds a specific listing of the duties and the powers to the conservatorship portion and the guardianship portion of the Idaho Probate Code.

- MOTION:** Representative Nielsen moved **to introduce RS14717**. Motion carried.
- RS14725C1:** Mr. Aldridge said this proposed legislation gives definition to the required contents of a report by a conservator. It will help standardize how reports are structured, which will simplify monitoring of such reports.
- MOTION:** Representative Clark moved **to introduce RS14725C1**. Motion carried.
- RS14726C1:** Mr. Aldridge said this legislation sets forth the duty of a conservator and of a guardian to submit plans on how the affairs of the protected person or ward are to be handled. It makes review and monitoring much easier and makes the conservator or guardian aware that they should be looking at long term needs of the individual.
- MOTION:** Representative Smith moved **to introduce RS14726C1**. Motion carried.
- RS14767:** Mr. Aldridge said this legislation establishes a Guardianship Pilot Project in at least three counties for the administration and disbursement of fund money. It requires an annual report. The Pilot Project is an extension or continuation of the Fiduciary Review Committee. It would establish a method of reviewing conservatorship reports which would not directly involve the magistrate since most magistrates have neither the training or the staff to conduct such reviews. Funding would need to be provided to cover all the necessary costs and expenses of this system.
- Caralee Lambert was recognized to say that this legislation is part of another bill. This bill is before this Committee. The other bill is before Appropriations.
- MOTION:** Representative Clark moved **to return RS14767 to the Sponsor**. In support of his motion, Representative Clark said the legislation needs more work. Motion carried.
- RS14768:** Mr. Aldridge said this legislation makes two changes in the methods of appointing a temporary guardian or temporary conservator.
- MOTION:** Representative Clark moved **to introduce RS14768**. Motion carried.
- ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 3:20 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 1, 2005
- TIME:** 1:40 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representatives Nielsen and Wills
- GUESTS:** Dave Nelsen, David Haas and Paul Panther, Idaho Department of Correction; Bob Taylor, Manager, Support Services, Idaho State Police; Molly Huskey, State Appellate Public Defender
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Harwood moved to approve the minutes of the meeting held on January 31, as written. Motion carried.
- MINUTES:** The Chairman welcomed Molly Huskey, State Appellate Public Defender, to give the committee an overview of the department. The SAPD office takes non-capital felony, post conviction and habeas cases for direct appeal. They also take capital cases, post-conviction and then direct appeal from denial of post-conviction and direct appeal. In 2004, they had 595 cases for the six attorneys. They currently have 5 capital cases, but anticipate 7 by the end of January which will be handled by two attorneys.
- There are lots of national standards which apply to this field of law. The attorneys have done a fabulous job, but there is simply not enough staff or funding to defend these clients. Ms. Huskey said they will continue to do as much work as possible without sacrificing quality. In order to accomplish this, the office needs 6 full-time employees and money for the capital unit. The consequences of not getting funded are that they would not be compliant with national standards and would run a greater risk of getting reversed in federal courts. In all other states, where a class action lawsuit has been filed as a result of excessive caseloads, every class action has won, resulting in greater national scrutiny of the system and court involvement. The office also tries to do educational outreach. Chairman Field thanked Ms. Huskey for the excellent work she has done while in office.
- RS14396:** David Haas was recognized to explain the proposed legislation. Mr. Haas said the purpose of the legislation is to ensure continuity of treatment for offenders who require mental health treatment and to reduce recidivism among such offenders. Mr. Haas asked to yield to Paul Panther to further explain.

Mr. Panther said the legislation will require governmental entities which

possess mental health records of an offender to provide those records to subsequent entities which will then provide the same type of treatment to the offender. At the end of the offender's sentence, the records would be provided to a subsequent care provider who might treat the offender following discharge.

Also, the proposed legislation provides that an offender need not execute an authorization for the type of transfer of his mental health records contemplated in this legislation. An exception is provided where those records deal with substance abuse treatment and, therefore, cannot be disclosed under state and federal law.

MOTION: Representative Clark moved **to introduce RS14396**. Motion carried.

RS14405: Dave Nelsen was recognized to explain. This legislation adds language that expands the group of persons within the criminal justice system for whom sexual contact with offenders is prohibited. Current law does not specifically list probation and parole officers or officials who work at administrative offices not located at a state correctional facility.

MOTION: Representative Ellsworth moved **to introduce RS14405**. Motion carried.

RS14478C1: Dave Nelsen said the purpose of this proposed legislation is to increase the monthly cost of supervision fee assessed offenders by ten dollars (\$10.00), which would make the fee fifty dollars (\$50.00) per month rather than the current forty dollars (\$40.00). This increase will help cover the cost of needed additional personnel and operating expenses attributed to population growth.

MOTION: Representative Ellsworth moved **to introduce RS14478C1**. Motion carried. Representative Harwood asked to be recorded as voting "No" on the motion.

RS14471: Bob Taylor with the Idaho State Police was recognized to explain. Mr. Taylor said Congress passed the National Crime Prevention and Privacy Compact in 1998. This legislation allows Idaho to join 21 other states that have ratified the compact.

MOTION: Representative Clark moved **to introduce RS14471**. Motion carried.

RS14481C1: Bob Taylor said this legislation makes updates and corrections to portions of the Sexual Offender Registration Notification and Community Right-to-Know Act. The amendment adds consistency in the language regarding conviction dates for both out-of-state offenders who move to Idaho and in-state offenders convicted of eligible crimes.

MOTION: Representative Clark moved **to introduce RS14481C1**. Motion carried.

ADJOURN: There being no further business to come before the committee, the

meeting was adjourned at 2:30 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 3, 2005

TIME: 1:30

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** None

GUESTS: See attached sign-in sheets

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on February 1, as written. Motion carried.

MINUTES: The Chairman welcomed all the people in the audience. Because so many signed up to testify, the Chairman asked that everyone try not to repeat previous testimony.

H 1: **Representative Ring** was recognized to begin the explanation of the bill. There are four co-sponsors of the bill and each will be given the opportunity to testify. Representative Ring said the purpose of this bill is to control the purchase of compounds used in the manufacture of methamphetamine. It amends Idaho Code, Section 37-2713 to prescribe conditions for the sale of any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers. The bill declares an emergency and provides an effective date.

The majority of conditions for sale are already in code. This bill adds pseudoephedrine and defines the conditions for its sale. The drug will be considered a Class V. The bill provides that pseudoephedrine shall be dispensed only by a licensed pharmacist or licensed pharmacy technician. The person purchasing the compound must produce a photo identification and sign a written log. Representative Ring said this will be a nuisance to the pharmacists. It will create a bit of extra paper work. There are probably 30 or 40 products that would be affected by passage of this bill.

Representative Mitchell was recognized to give his testimony as one of the co-sponsors of the bill. Representative Mitchell said this process is no different than is currently being done in 20 states and similar legislation is now before Congress. Each of the co-sponsors of the bill has something different to say. Representative Mitchell said there would be a 30-day period before the products are removed from the shelves. This would allow time for safer drugs to replace the ones being removed.

Representative Rusche was recognized. Representative Rusche said he is a retired pediatrician and a co-sponsor of the bill which would control the pipeline of raw materials used to make meth. He said he had also worked for Blue Shield. Sudafed does nothing to cure colds. It has very little effectiveness. However, when pseudoephedrine is cooked with other products, it produces the highly addictive drug methamphetamine. Currently for every meth lab that is found, nine more are out there. This bill is good policy which promotes the well being of the public.

Representative Wills, the last co-sponsor was recognized to speak to the bill. Representative Wills said the bill needs to be sent to the floor with a Do Pass recommendation. Progress is not defined by attempting to change 100% at one time, but by trying to change 10% one hundred times. The bill specifically takes all of the products that can be made into meth off the shelf and puts them behind the pharmacist. It will prevent people from buying large quantities or stealing it off the shelves. The bill did not come forth without of great deal of forethought. Idaho has a serious problem.

Representative Wills gave each member a chart showing arrest offenses of drug court clients (attachment.) The chart shows that 190 people were arrested for the use of meth. This bill is a stopgap measure. The liquid form of Sudafed or gel caps will still be available on the shelves and new products such as Sudafed PE will be available as well. Meth is not a drug to be taken lightly. If a person takes it once, that person is in trouble.

- PRO:** Director Charboneau with the Idaho State Police was recognized. The Director said pseudoephedrine and Sudafed are basically the same products. The Director presented to the members a sack full of products found on shelves that contained pseudoephedrine. The Director said without pseudoephedrine, meth cannot be manufactured.
- CON:** JoAn Condie, executive director of the Idaho State Pharmacy Association, was recognized. Ms. Condie said the Pharmacy Association does not support the bill, although it does support the intent.
- PRO:** Richard Markinson, executive director of the Idaho State Board of Pharmacy, was recognized. Mr. Markinson said the Board was involved in the drafting of the bill. The bill exempts any product that consists of liquid or liquid gel cap preparations. The Board drafted Rules which will go into effect if the bill is passed listing the exempt pseudoephedrine products (attachment.)
- CON:** Stan Gibson, Idaho State Pharmacy Association, was recognized. Mr. Gibson said as a practicing pharmacist and a member of the Association, there is no objection to the intent of H 1. The reports from the Idaho State Police indicate that the number of meth labs in the state of Idaho have been reduced. Many retailers are currently putting restrictions on the sale of these products. The Pharmacy Association supports limiting the sale to two or three products per sale. On a "simple" extraction sheet (attached) coming from the Oklahoma Board of Narcotics, putting all of these products behind the counter will limit access to the products where there are no pharmacies or where pharmacies are closed. The Association asks that this bill be held until all interested parties can get together to

draft new language to solve potential problems. The pharmacists themselves have never been involved in the drafting of the language of the bill. Mr. Gibson said he has a personal interest in drafting acceptable language since both his son and his daughter have lives that are shattered due to the use of drugs.

- CON:** Vic Allen, Idaho State Pharmacy Association, was recognized. Mr. Allen said he has been a pharmacist for 25 years. He said about the safest thing to be done would be to remove all of the cold medications. The pharmacists currently oversee the purchase of these products. He asked that the pharmacists be allowed to continue to control the sale by watching who is purchasing these drugs and what quantity they are purchasing. The products do not need to be behind the counter at the pharmacy.
- PRO:** Kelly Montoya was recognized. Mr. Montoya said he has been involved in narcotics investigations for several years. Meth would appear to be the most popular drug in Canyon County. The rise in violence in the county is directly or indirectly related to the use of meth. It costs between \$10,000 and \$14,000 to dismantle a meth lab. Families are affected by domestic abuse, child endangerment and the threat of explosions when cooking meth.
- CON:** Charley Jones, part owner in Stinker Stations, was recognized. Mr. Jones said the stations do not sell a lot of this product, but it is available for purchase. This bill gives an advantage to Albertsons and Wal-marts, who don't need any more advantage to compete against the small retailer. This bill will take away a very small part of the station's business one item at a time.
- PRO:** Mike Kane, representing the Idaho Sheriffs, was recognized. Mr. Kane said the sheriffs are in favor of the bill. The bill is not a cop vs. retailer situation. It is very likely that the sheriffs will be the first through the door of these meth labs. This bill is a tool for law enforcement to use. This will help to identify potential meth labs. The use of meth causes horrible consequences and it is not easy to cure. In conclusion, Mr. Kane said if one tiny portion in the making of meth can be eliminated through this bill, it should be passed.
- CON:** Pam Eaton, president of the Idaho Retailers Association, was recognized. Ms. Eaton said the retailers all agree that something needs to be done to control the manufacture of meth. One solution might be to increase the penalties imposed on those who intend to manufacture meth. The single entity drugs used to manufacture meth should be kept behind the counter. However, with this bill more people will be going to emergency rooms to get cold medication. The Association didn't know about the bill until late.
- PRO:** Dr. Richard Roberge, a retired obstetrician and vice-chairman and physician representative for the Southwest District Health Department, was recognized. The doctor said he supports the bill which makes Sudafed a class 5 drug requiring photo ID and a signature. Sudafed is a component of meth also called crystal meth. With the purchase of Sudafed, other chemicals, and 10+ hours, a drug dealer can triple his investment. A syphilis outbreak has occurred in southwest Idaho and

particularly in Canyon County. Meth and syphilis are intimately related. In the last year 46 cases of syphilis were found and in 17 of those cases, the people were current or past users of meth. Meth costs money and sex can be used to obtain money. Also, meth lowers inhibitions making promiscuous and unsafe sex more frequent.

Before the epidemic is brought under control, \$500,000 will have been spent. The long term effects are not included in that figure. Thirty-three percent (33%) of the syphilis cases have been incarcerated or are incarcerated. In conclusion, the doctor asked the members to give the bill a "do pass" vote.

PRO: Heather Reilly, representing the Idaho Prosecuting Attorneys, was recognized. Ms. Reilly said this bill is an effort to make it more difficult for individuals to manufacture meth in Idaho. Under this bill, no person may purchase, receive or otherwise acquire more than nine grams of any product within any thirty day period.

CONCLUSION: The Chair recognized Representative Ring who said the situation speaks for itself. Passage of this bill will cost the small retailers a small amount of money. On the other hand, there is an enormous cost in human misery and dollar expense for those who use meth.

The co-sponsors were asked if they would be willing to wait on this bill and try to iron out the problems as stated by the pharmacists. The co-sponsors replied that there didn't seem to be any way to reach a compromise on the bill.

MOTION: Representative Ring moved **to send H 1 to the floor with a Do Pass recommendation.** In support of the motion, Representative Wills said if something isn't done on this issue, the Legislature will be facing the same problem next year.

SUBSTITUTE MOTION: Representative Clark moved **to hold the bill for a time certain until the meeting of February 15.**

ROLL CALL VOTE: On the Substitute Motion, voting AYE-Representatives Sali, Clark, Ellsworth, Harwood, McGeachin, Bastian and Hart. Voting NAY-Representatives Field, Smith, Nielsen, Ring, Shirley, Wills, Boe, LeFavour and Pence. **MOTION FAILED 7-9.**

On the Original Motion, voting AYE-Representatives Field, Smith, Nielsen, Ring, Shirley, Wills, Bastian, Boe, LeFavour, Pence. Voting NAY-Representatives Clark, Ellsworth, Harwood, Sali, McGeachin and Hart. **MOTION PASSED 10-6.**

ADJOURN: There being no further business to come before the Committee, the

meeting was adjourned at 4:15 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 7, 2005

TIME: 1:35 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: Pamm Juker, Chief Clerk; Mike Kane, Idaho Sheriffs

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Bastian moved to approve the minutes of the meeting held on February 3, as written. Motion carried.

RS14807: Chairman Field recognized the Chief Clerk to explain the legislation. The resolution reflects a reduction in the number of copies of Session Laws printed to 650 copies.

MOTION: Representative Clark moved **to introduce RS14807 and send it directly to second reading. Motion carried.** Representative Clark will carry the bill on the floor.

RS14850: Chairman Field turned the meeting over to Vice Chairman Smith. The Vice Chairman recognized Representative Field to explain the proposed legislation. The legislation will establish a pilot project that will include at least three counties to help design and improve the reporting and monitoring system for guardianships and conservatorships. The fees for filing the cases will be collected by the State Treasurer and administered by the Idaho Supreme Court.

MOTION: Representative Clark moved **to introduce RS14850 with a corrected Statement of Purpose. Motion carried.**

RS14655: Mike Kane was recognized to explain. Idaho Code Section 31-2224 is a nineteenth century statute that requires a sheriff, when leaving office, to provide to his successor a written transfer of the property, process, papers and prisoners delivered, specifying the process by which each prisoner delivered was committed and detained. All of this information is currently tracked by computer. This statute is obsolete and needs to be repealed.

MOTION: Representative Boe moved **to introduce RS14655. Motion carried.**

RS14666: Mike Kane was recognized to stand in for Dan Chadwick who was unable to attend the meeting. This proposed legislation re-writes existing Idaho Code, Section 19-4301, making it more readable and understandable and

adds a provision relating to when a coroner must investigate a suspicious infant or child death. The new provision provides that a coroner will investigate stillbirths and child deaths when it can reasonably be shown that there is no known medical disease causing the stillbirth or death. The intent is to capture those circumstances where illegal drug use by the mother may have caused or contributed to the cause of stillbirth.

MOTION: Representative Ellsworth moved **to introduce RS14666. Motion carried.** Representative LeFavour asked to be recorded as voting "No" on the Motion.

RS14588: Representative Clark was recognized to explain. County Prosecutors lead and advise the state, county and city law enforcement teams in our state jurisdictions, but are not included in the definition of law enforcement in the Public Employee Retirement System of Idaho (PERSI) law. This change will place the prosecutors and their deputies in the same classification for retirement as all other law enforcement officials.

MOTION: Representative Ellsworth moved **to introduce RS14588. Motion carried.**

RS14589: Representative Clark was recognized. This legislation would allow those involved in a motor vehicle accident one copy of the unredacted collision report, alleviating the necessity to access the report with a court order.

MOTION: Representative Hart moved **to introduce RS14589. Motion carried.**

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 2:10 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 9, 2005
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representative McGeachin
- GUESTS:** Margaret Odedo, Certified Shorthand Reporters; Rayola Jacobsen, Roger Hales, Idaho Bureau of Occupational Licenses; Representative Henderson; Sheriff Ben Wolfinger
- MOTION:** Chairman Field called the meeting to order and told the members that the sponsor of **RS14681 asked that it be returned** and the sponsor of **RS14792 asked that the legislation be held for a time certain** until the meeting on Friday, February 11. The Chairman asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on February 7, as written with a corrected Representative's name on the motion to introduce RS14666. Motion carried.
- AMENDMENT
TO H001:** The Chairman explained that H001 was sent to General Orders for a Committee amendment. The Chairman recognized Representative Ring to explain. Representative Ring said the amendment included language which was originally going to be put into a rule by the Board of Pharmacy. It was determined that the language rightfully belonged as part of the bill. The amendment adds the following on page 2 of the printed bill: delete line 9 and insert: "(3) The provisions of this subsection do not apply to any sale, transfer, furnishing or receipt of any drug that contains pseudoephedrine or their salts, isomers or salts of isomers if the compound, mixture or preparation is in liquid, liquid capsule or gel capsule form." The language in the amendment has been approved by the Board of Pharmacy, the Attorney General and Legislative Services.
- MOTION:** Representative Ring moved **to amend H001 which remains on General Orders awaiting this Committee amendment. Motion carried.** Representatives Clark, Ellsworth, Hart, Sali and Harwood asked to be recorded as voting "No" on the motion.
- RS14385:** Margaret Odedo was recognized to explain. The proposed legislation will change a definition of the term "shorthand reporting" to clarify that it must be contemporaneous with the event being reported. It deletes outdated references to grand fathering and clarifies that an examination is required, sets forth acceptable examinations and provides a time frame for acceptance of examination results. It updates a reference to the national court reporters association to reflect the current name. It increases the

fee for license reinstatement from \$40 to \$100 and establishes a fee of \$20 to be charged for examination preparation materials provided to applicants by the board. It requires the board to give the reporter's examination annually.

MOTION: Representative Wills moved to **introduce RS14385. Motion carried.**

RS14488: Rayola Jacobsen was recognized to explain the legislation. Ms. Jacobsen explained a brief history on why the legislation was drafted and asked to yield to Roger Hales, Administrative Attorney for the Bureau, to continue explaining the legislation. Mr. Hales said this legislation adds subpoena power to allow the Bureau of Occupational Licenses access to records necessary to investigate complaints made against licensees and to ensure the attendance of witnesses at a hearing on behalf of both the Board and the licensee.

MOTION: Representative Clark moved to **introduce RS14488. Motion carried.** Representative Hart asked to be recorded as voting "No" on the motion.

RS14770: Representative Henderson was recognized to explain. Representative Henderson said this legislation addresses a problem in all counties in the state of Idaho. Last year, the total cost for medical treatment of inmates in county jails was \$245,000. This legislation provides Idaho county sheriffs the opportunity for reimbursement of medical services incurred while housing non-indigent inmates. It provides county sheriffs specific authority for collection of medical costs from inmates who have financial resources including medical/hospitalization insurance that may be in force.

MOTION: Representative Shirley moved to **introduce RS14770. Motion carried.**

RS14775: Representative Clark was recognized. This bill creates an alcohol beverage control fund to support alcohol beverage control activities and provides for distribution of funds collected from on premise consumption of beer and certificate of approval license fees into the alcohol beverage control fund.

MOTION: Representative Hart moved to **introduce RS14775. Motion carried.** Representative Sali asked to be recorded as voting "No" on the motion.

ADJOURN: There being no further business to come before the Committee, Chairman Field adjourned the meeting at 2:35 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 11, 2005

TIME: 1:00 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** Representative Ellsworth

GUESTS: Representative Smylie; Patrick Sullivan; Patricia Tobias, the Courts; Representative Jaquet

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Shirley moved to approve the minutes of the meeting held on February 9, as written. Motion carried.

RS14792C1: The Chairman turned the gavel over to Vice Chairman Smith in order to explain the proposed legislation which was brought forth by Kelly Buckland. Representative Field said this legislation has been worked on for about one and one-half years. The legislation strengthens the Human Rights Act by adding disability to the current prohibitions of discrimination in connection with public accommodations (private businesses.)

MOTION: Representative Clark moved **to introduce RS14792C1 and refer it to State Affairs. Motion carried.**

RS14686: Chairman Field recognized Representative Smylie to explain the legislation. Representative Smylie said the "disruption of the educational process" law has been used by school officials, school resource officers and other educators as a tool to maintain appropriate discipline and safety in Idaho's schools. A recent court ruling pointed out that Idaho Code did not specifically include students as persons who could disrupt the educational process. This legislation corrects this situation and allows school officials to use this tool.

MOTION: Representative Clark moved **to introduce RS14686. Motion carried.**

RS14744C1: Representative Smylie was recognized. This legislation, based on a Nebraska statute, establishes a policy of earned conduct reduction of sentence. Within 60 days of initial reception, an inmate will receive a personalized program plan for the inmate to follow. The legislation also gives the Board of Correction the authority to modify the plan or revoke it. The exact fiscal impact is difficult to determine, but the legislation will result in savings to the general fund, either directly or as avoided costs.

MOTION: Representative Smith moved **to introduce RS14744C 1.** Representative Boe said an amendment to the legislation has been drafted, the wording

of which should be incorporated in the bill. It provides a safety valve to the legislation.

SUBSTITUTE MOTION:

Representative Clark moved **to return RS14744C1 to sponsor.**

AMENDED SUBSTITUTE MOTION:

Representative Boe moved **to introduce RS14744C 1 with the addition of the suggested changes. Motion carried.**

RS14821C1:

Patrick Sullivan was recognized to explain. This legislation would criminalize the operation of an audiovisual recording device in a movie theater without the written consent of the theater owner. Mr. Sullivan said there are those who bring camcorders to movies and then sell copies of the movie to black market distributors. A misdemeanor penalty is recommended for this action.

MOTION:

Representative Clark moved **to introduce RS14821C1. Motion carried.**

RS14873:

Patricia Tobias, representing the Courts, was recognized. This legislation is intended to resolve the uncertainty that now exists as to when a sentencing court can make a decision as to whether to place a defendant on probation following a period of retained jurisdiction.

MOTION:

Representative Smith moved **to introduce RS14873, RS14874, RS14875 and RS14880.** In support of the motion, Representative Smith said all four pieces of proposed legislation were drafted by the Supreme Court. **Motion carried.**

RS14593C1:

Representative Wills was recognized to explain. This proposed legislation amends Idaho Code to reflect a change which will allow the investigation of a property damage only motor vehicle crash to be reported only if at least \$2,000 in damage occurs. It is estimated this will reduce many police officers' accident investigation time by 40% to 50% on all property damage only accidents. It will allow law enforcement more time to perform other important duties to protect the citizens of this state.

MOTION:

Representative Harwood moved **to introduce RS14593C1. Motion carried.**

RS14942:

Representative Sali was recognized to explain. This legislation grants parole on parole eligible dates for non-violent offenders when specified conditions are met and provides six months of transition time back into the community at the end of an inmate's sentence.

MOTION:

Representative Bastian moved **to introduce RS14942. Motion carried.**

RS14895:

Representative Jaquet was recognized to explain. This proposed legislation provides that a parent of a child may release or waive the child's prospective claim for negligence. Exceptions are outlined.

MOTION:

Representative Smith moved **to introduce RS14895. Motion carried.**

RS14957:

Representative Boe was recognized to explain. This legislation would

make dog fighting a felony. It defines dog fighting and provides a punishment. Representative Boe said this would put more teeth into the state's misdemeanor crimes. It refers to using animals in spectator events.

MOTION: After a discussion on the current crises of prison overcrowding, Representative Smith moved **to return RS14957 to the sponsor.**
Motion carried.

RS14958: Representative Boe asked to withdraw the proposed legislation which would make cock fighting a felony. Representative Boe plans to rewrite both proposals to make them more acceptable to the committee members.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:15 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 15, 2005
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** None
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Harwood moved to accept the minutes of the meeting held on February 11, as written. Motion carried.
- H 78:** The Chairman said the bills before the committee concern guardianships and conservatorships. Bob Aldridge was recognized to explain. Mr. Aldridge said when a conservator is appointed for either a minor or a person with a disability of some nature, some questions have arisen as to the exact nature of the title vested in the conservator on behalf of the protected person. This has led to problems, especially with some financial or title institutions as to whether the appointment of a conservator is a transfer of title and what ability the conservator has to deal with the property. The added language in this bill clarifies how the title to property is held by the conservator and how it may be exercised. The concept was approved by the Guardianship/Conservatorship Interim Committee this summer.
- MOTION:** Representative Smith moved **to send H 78 to the floor with a Do Pass recommendation. Motion carried.** Representative Nielsen will carry the bill on the floor.
- H 79:** Mr. Aldridge said normally when a guardianship or conservatorship proceeding has been commenced, a guardian ad litem is appointed for the person who is alleged to be incapacitated. However, the duties and the powers of the guardian ad litem are not spelled out in any detail. This bill adds a specific listing of such duties and powers to the conservatorship portion of the Idaho Probate Code and to the guardianship portion of the Idaho Probate Code.
- MOTION:** Representative Smith moved **to send H 79 to the floor with a Do Pass recommendation. Motion carried.** Representative Smith will carry the bill on the floor.
- H 80:** Mr. Aldridge said existing law is silent as to the necessary contents of the annual report of a conservator. This bill sets forth in detail what the contents of a conservator report should be and what supporting documentation is required. Since many such reports may cover large or complex conservatorships with voluminous supporting documents, the bill

allows documents supporting the figures in the report to either be submitted with the report or made available only on request. The bill also allows federally and state chartered financial institutions to submit the product of their fiduciary reporting systems so that the contents of that product do not have to be redone into a report form.

PRO: Chris Ode, Regional Trust Manager for the Idaho Bankers Association was recognized. Mr. Ode said the Idaho Bankers Association supports H 80. Good reporting is necessary and the bill brings accountability to conservatorships. The bill is not onerous. It is very instructive.

MOTION: Representative Clark moved **to send H 80 to the floor with a Do Pass recommendation. Motion carried.** Representative Clark will carry the bill on the floor.

H 81: Mr. Aldridge said current law does not require a conservator or guardian to submit a working plan, either in advance of appointment or thereafter. This creates a problem because many non-professional conservators or guardians do not understand the need to organize how their duties will be performed, nor what the scope of those duties are. It is also difficult for the court or an independent monitor to assess whether proper actions are being undertaken by the conservator or guardian.

This bill sets forth the duty of a conservator and guardian to submit plans, initially proposed, and then a final plan of how the affairs of the protected person are to be handled. This makes review and monitoring much easier. It will also make the conservator or guardian aware that they should be looking at long term needs of the protected person.

MOTION: Representative Wills moved **to send H 81 to the floor with a Do Pass recommendation. Motion carried.** Representative Sali will carry the bill on the floor.

H 82: Mr. Aldridge said there are several problems in existing law regarding temporary or emergency appointment of a conservator or guardian. First, the time period for a temporary guardian does not match the time period for which a temporary conservator is appointed. Also, in temporary conservatorships, a requirement was added that a medical report must be submitted before an appointment could be made. However, many times this report cannot be obtained, so no appointment is made even though there is an immediate and emergency need to protect the person from financial ruin.

This bill changes the time period of appointment of a guardian to match the existing conservatorship time period of 90 days with the ability to extend that time for good cause. In the conservatorship appointment, the requirement of a medical report is deleted. However, in order to protect the person, the petitioner still must show by a statement under oath that an emergency exists and the Court must make an actual finding that an emergency exists. The bill allows emergency appointments while still giving protection to the person.

MOTION: Representative Clark moved **to send H 82 to the floor with a Do Pass**

recommendation. Motion carried. Representative McGeachin will carry the bill on the floor.

H 131: The Chairman asked Mr. Aldridge to explain H 131 which addresses the guardianship pilot project fund. Mr. Aldridge said Idaho law requires that conservators and guardians submit annual reports. Additionally, a conservator must submit an inventory within 90 days after appointment. Theoretically, such reports would be monitored by the court. However, no mechanism for that monitoring, nor funds or staff to do the monitoring, is provided. Nor is any enforcement mechanism in place to bring the matter before the court if abuse is found. Therefore, the vast majority of such reports are never examined. Years of discussion among the Department of Finance, the Idaho Supreme Court, practitioners and others have lead to a potential method of monitoring reports. Presentations to the Interim Committee proposed a Pilot Project which would have monitoring performed by the Department of Finance. However, that monitoring will require funds to pay for examination and for methods to furnish copies of the reports to the examining entity.

The method of raising the necessary funds will be to raise all fees for the submission of guardianship and conservatorship reports. These fees will be placed in the "guardianship pilot project fund" and administered by the Idaho Supreme Court. Additional funds may be provided by the legislature, or from grants, donations, or money from other sources. The funds will be used exclusively to develop the pilot project to operate in at least three Idaho counties. The Supreme Court will make annual reports starting in January 2007. The provisions of the bill sunset July 1, 2009, and any remaining monies will go to the state general fund.

PRO: Ken Deibert, Administrator for the Department of Health and Welfare, was recognized. Mr. Deibert said the Department of Health and Welfare supports the bill.

MOTION: Representative Smith moved to **send H 131 to the floor with a Do Pass recommendation. Motion carried.** Representative Field will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 2:45 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 17, 2005

TIME: 1:30 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** None

GUESTS: See attached sign-in sheet

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on February 15, as written. Motion carried.

H 93: The Chairman recognized Paul Panther to explain. Mr. Panther was joined at the podium by David Haas and Jody Carpenter to help present the bill and answer questions. Mr. Panther said the bill provides for the transmission of certain mental health records for offenders and provides that no court order or individual authorization is required except in the case of substance abuse records. The bill will facilitate the flow of information and will only apply to mental health providers. It will make it easier for mentally ill persons to get help. Ms. Carpenter said if an offender seems overly depressed, a mental health provider can be called in to evaluate that person.

Mr. Panther recommended some amendments to the bill to make it a better bill. Representative Sali expressed concern about the potential for abuse. It was explained that the evaluation must be based upon the findings of a professional. The jail has the duty to provide appropriate medical care. The bill doesn't require a person to give anyone treatment. Mr. Haas said this sharing of information happens between 3 and 4 days. If there is a competency issue, there is due process to make that decision. It will ultimately be decided by a court.

CON: Jim Baugh was recognized to testify. Mr. Baugh said if the members choose to send the bill to the floor, the amendments need to be included. He cannot support the original bill without those amendments. The original language is far too broad.

CON: Gregory Dickerson, Administrator, Human Supports of Idaho, Inc. was recognized. Mr. Dickerson said he was here to voice his opposition to H 93, primarily because it is too broad in scope. In line 4, the bill provides for transmission of certain mental health records for offenders under certain conditions. Within the bill, these records include "mental health evaluations, care and treatment." These broad designations include every conceivable mental health record that is available. Further, the bill

does not adequately define the certain conditions and it does not specify what business operations, or the types of care that the information would be released for. Effective mental health treatment relies on the therapeutic relationship between the mental health professional and the client. This relationship must be based on trust. It is not appropriate to interfere with this relationship. The bill lacks clear direction.

- MOTION:** Representative Sali moved **to hold H 93 for a time certain at the discretion of the Chairman.** In support of the Motion, Representative Sali said this would allow time for all the parties involved to finalize the amendments and bring back a clear copy showing what amendments were recommended. **Motion carried.** The Chair asked Representative Sali to work with the parties on the amendments. It might be a good idea to introduce a new piece of legislation which would include the amendments and bring back a new bill for the members to review.
- H 94:** David Nelsen, Operations Administrator for the Department of Correction, was recognized to explain. The purpose of the bill is to add language that expands the group of persons within the criminal justice system for whom sexual contact with offenders is prohibited. The language includes probation and parole officers and others who have contact with offenders. A Committee amendment has been drafted as follows: On page 2, line 23, following "prisoner" insert: ", not their spouse". On page 1, line 6, following "CORRECTION" INSERT "WHEN THEY ARE NOT SPOUSES".
- MOTION:** Representative Smith moved **to send H 94 to General Orders with Committee amendments attached, and a corrected fiscal impact showing that there is no fiscal impact. Motion carried.** Representatives Ellsworth and Ring will carry the bill on the floor.
- H 95:** David Nelsen was recognized to explain. This legislation will increase the monthly cost of supervision fee assessed offenders by ten dollars, from the current forty dollars (\$40.00) to fifty dollars (\$50.00) per month. This change will alleviate workload pressure on current probation and parole employees caused by the increasing levels of offender populations, by funding new positions and generating funds to cover related operating costs.
- MOTION:** Representative Smith moved **to send H 95 to the floor with a Do Pass recommendation. Motion carried.** Representative Pence will carry the bill on the floor.
- H 96:** Robert Taylor, Manager, Support Services Division, Idaho State Police, was recognized to explain. This bill allows Idaho to join 21 other states that have ratified the National Crime Prevention and Privacy Compact. By ratifying the Compact, Idaho will join an interstate arrangement that allows it to share criminal history records directly with other member states. This would make Idaho the sole repository for records of crimes committed within the state. States would no longer have to rely on FBI records, which are often not as current or accurate as the records of the originating state law enforcement agencies. The Compact will essentially eliminate the FBI as the "middleman" for maintaining criminal history records information.

- MOTION:** Representative Clark moved **to send H 96 to the floor with a Do Pass recommendation. Motion carried.** Representative Clark will carry the bill on the floor.
- H 127:** Michael Kane, representing the Idaho Sheriffs Association, was recognized. Mr. Kane said an amendment was drafted to resolve concerns regarding the original language in the legislation. The amendment reads as follows: 31-2224 DELIVERY OF PROPERTY TO SUCCESSOR – WRITTEN TRANSFER AND RECEIPT. He must also, at the same time, deliver to the new sheriff a written transfer of the property; ~~process, papers and prisoners delivered, specifying the process or order by which each prisoner delivered was committed and detained.~~ The new sheriff must thereupon acknowledge, in writing on a duplicate of the transfer, the receipt of the property, ~~process, papers and prisoners therein specified.~~ The object of the bill is to delete obsolete language.
- MOTION:** Representative Sali moved **to send H 127 to General Orders with the above Committee amendments attached so that the language is incorporated into the bill. Motion carried.** Representative Sali will carry the bill on the floor.
- H 97:** Dawn Peck, Manager, Idaho State Police Bureau of Criminal Identification, was recognized to testify. This amendment to the Sexual Offender Registration and Community Right-to-Know Act adds the crime of “Sexual Contact with a Prisoner” to the list of crimes for which a person must register in the Central Sex Offender Registry. Additionally, the amendment addresses an inequity in the current law in regard to those offenders who were convicted in another state and moved to Idaho after July 1, 1993. Currently, they are required to register, even if they were off any sort of supervision on that date. However, Idaho offenders off supervision on that date do not have to register. This has caused significant problems. The amendment endeavors to provide consistency in the language with regard to conviction dates for both out-of-state offenders who move to Idaho and in-state offenders convicted of eligible crimes, and includes any offender required to register in another state.
- It was recommended that the following amendment which is a new section c) be incorporated in the bill on page 1, line 42 and continuing on page 2, line 1: c) Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section and was required to register as a sex offender in any other state or jurisdiction when he established permanent or temporary residency in Idaho.
- MOTION:** Representative Sali moved **to send H 97 to General Orders with Committee amendments attached, inserting a new section c) as outlined above. Motion carried.** Representative Sali will carry the bill on the floor.
- H 129:** Representative Clark was recognized to explain. Representative Clark said this bill came before the Legislature a few years ago. It passed both the Senate and the House, but was vetoed by the Governor. This bill will

include Prosecutors and Deputy Prosecutors in the definition of law enforcement and will place the Prosecutors and their Deputies in the same classification for retirement as other law enforcement officials. If Prosecutors and Deputies are included in the Public Employee Retirement System of Idaho (PERSI) law, Idaho might be able to retain more employees in those positions.

PRO: Grant Loeb, Prosecutor in Twin Falls County, was recognized. Mr. Loeb said he was speaking for the Idaho Prosecuting Attorneys Association. This is an important step toward improving Idaho's Criminal Justice System. The bill gives promising young attorneys the opportunity to make a career out of being a prosecutor. The legislation will help retain attorneys. It will also give prosecuting attorneys a valuable tool. Passage will encourage young attorneys by giving them a viable career choice. Prosecutors make life or death decisions every day.

PRO: Molly Huskey, Idaho Appellate Prosecuting Attorney, was recognized. Ms. Huskey said it is vital that prosecutors be retained, but it is also necessary to include public defenders in the bill. Public defenders do not receive large salaries. The same difficulty in retaining public defenders has been experienced as in the retaining of prosecutors.

Alan Winkle, Director, PERSI, was recognized. PERSI has not taken a position on this bill. The Legislature is the sponsor for PERSI. The vast majority of jobs covered under current law are physically demanding jobs. Magistrates are an exception. Judges come under PERSI later in life and therefore a higher accrual is necessary.

MOTION: Representative Clark moved **to send H 129 to General Orders with Committee amendments attached to include the Office of the Appellate Public Defender and county public defenders.**

SUBSTITUTE MOTION: Representative Smith moved **to send H 129 to the floor with a Do Pass recommendation.** In support of his motion, he said the inclusion of public defenders should be a separate piece of legislation.

AMENDED SUBSTITUTE MOTION: Representative McGeachin moved **to hold H 129 in Committee.**

ROLL CALL VOTE: Voting AYE on the Amended Substitute Motion: Representatives Ellsworth, McGeachin and Bastian. Voting NAY, Representatives Field, Smith, Clark, Harwood, Nielsen, Ring, Shirley, Wills, Hart, Boe, LeFavour, Pence. **3-12-1. Motion failed.**

ROLL CALL VOTE: Voting AYE on the Substitute Motion: Representatives Field, Smith, Clark, Harwood, Nielsen, Ring, Shirley, Wills, Hart, Boe, LeFavour, Pence. Voting NAY, Representatives Ellsworth, McGeachin, Bastian. **12-3-1. Motion carried.** Representative Clark will carry the bill on the floor.

H 130: Representative Clark was recognized to explain. This legislation would allow those involved in a motor vehicle accident one copy of the unredacted collision report, alleviating the necessity to access the report with a court order. An amendment has been recommended which would

be: on line 27 of the bill, between the words “the” and “report”, insert the word “final”, so it would be the final report.

- PRO:** Mr. John Janis, attorney, was recognized. Mr. Janis said his law firm represents people who are involved in accidents. His firm needs a final report in order to obtain necessary information. His firm now receives a blacked-out report and he doesn't understand why.
- CON:** Director Charboneau was recognized The Director expressed concern regarding the investigative nature of some accident reports. However, he said he could accept the legislation with the recommended change.
- PRO:** Paul Jackson, representing Farmers Insurance, was recognized. Mr. Jackson said the insurance companies also need copies of unredacted reports. They support the legislation but would like to see “or insurance company” incorporated in the language at the end of line 26 of the printed bill.
- MOTION:** Representative LeFavour moved **to send H 130 to General Orders with Committee amendments attached, inserting the word “final” before report on line 27.**
- SUBSTITUTE MOTION:** Representative Smith moved **to send H 130 to General Orders with Committee amendments attached, inserting the word “final” before report on line 27 and adding “or insurance company” on line 26 after the word “representative”.** **Motion carried.** Representative Harwood asked to be recorded as voting “No” on the motion. Representative Smith will carry the bill on the floor.
- ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 4:15 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 21, 2005
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representative Clark
- GUESTS:** Erwin Sonnenberg, Ada County Coroner; Candace Childers, Shorthand Reporters; Rayola Jacobsen, Occupational License Bureau; Roger Hales, Attorney; Patricia Tobias, Administrator, The Courts
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Wills moved to approve the minutes of the meeting held on February 17, as written. Motion carried.
- H 128:** Chairman Field recognized Coroner Erwin Sonnenberg to explain the bill. This bill is just a change in one aspect of the coroners' law. Under current law, the coroners are not notified in a timely fashion regarding stillbirths. This bill merely changes the notification time. It doesn't change anything that the coroner does now. The new provision is found at 19-4301(1)c and provides that a coroner will investigate stillbirths and child deaths when it can reasonably be shown that there is no known medical disease causing the stillbirth or death.
- Mr. Sonnenberg said a stillbirth is defined as a spontaneous fetal death of twenty (20) weeks gestation or more, calculated from the last menstrual period to the date of delivery, or a weight of 350 grams and 12.35 ounces or more.
- MOTION:** Representative Wills moved **to send H 128 to the floor with a Do Pass recommendation. Motion carried.** Representative Pence asked to be recorded as voting "No" on the motion. Representatives Sali and Ellsworth will carry the bill on the floor.
- H 155** Candace Childers, a member of the Certified Shorthand Reporters Board, was recognized to explain. Ms. Childers said the bill updates the provisions of the statutes to accurately reflect current board policies and procedures. Additional wording is added to the definition of shorthand reporters to ensure that a live reporter is present for the proceedings. The bill allows reciprocity with certificates issued by the national organization. It deletes a section that is no longer necessary and it correctly reflects the name of the national organization. It addresses experience qualifications and changes a reinstatement fee from \$40 to \$100 in order to bring the fee into parity with the regular renewal fee, which was raised several years ago. It also allows the board to furnish

past test materials, at a charge of \$20, to individuals so applicants can use them as an aid in passing their test.

MOTION: Representative LeFavour moved **to send H 155 to the floor with a Do Pass recommendation. Motion carried.** Representative LeFavour will carry the bill on the floor.

H 156: Rayola Jacobsen, Bureau of Occupational Licenses, was recognized. Ms. Jacobsen gave some background history to explain why this bill was drafted. The Bureau represents 18 different professions and 18 different boards. The Bureau exists to protect the health, safety and welfare of the public. Several years ago, over 100 complaints were filed against a mortuary. The owner of the mortuary denied access to the records. If this bill had been in place, the Bureau could have had subpoena power to allow access to those records necessary to investigate the complaints.

Roger Hales, attorney representing the Bureau, was recognized. The bill allows the Bureau to conduct investigations into violations of any law or rule regulating the respective professions, trades or occupations. On page 2, line 17 of the printed bill, a new subsection c is added which establishes a new investigative tool. It also gives a check and balance to this tool. This is not a new concept. Other boards possess this ability. Any action by the Bureau is always subject to judicial review.

MOTION: Representative Smith moved **to send H 156 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: Representative Sali moved **to hold H 156 in Committee for a time certain until the meeting held on Friday, February 25.** In support of his motion, Representative Sali said it appears that this bill gives a blank check to the Bureau to ask for almost anything in its investigation. It appears that the number of documents the Bureau could request would be too broad. There probably should be sideboards. As it is written, it is problematic. There should be some kind of an interim step. Representative Hart felt the language is too broad. Representatives Harwood and Nielsen spoke in support of the substitute motion. **Motion carried.**

H 204: Patricia Tobias was recognized to explain. This bill is intended to resolve the uncertainty that now exists as to whether to place a defendant on probation following a period of retained jurisdiction. The bill provides that a court may place a defendant on probation after the 180-day period has expired only where extraordinary circumstances exist that prevent the court from obtaining needed information or securing the defendant's presence for a hearing. Even then, the 180-day period could be extended only for 30 days. This would resolve the existing uncertainty and provide some leeway for sentencing courts in the small number of cases where such extraordinary circumstances are present.

MOTION: Representative Smith moved **to send H 204 to the floor with a Do Pass recommendation. Motion carried.** Representative Shirley will carry the bill on the floor.

H 205: Patricia Tobias was recognized. This bill would provide juvenile courts

with greater flexibility in determining how to deal with juveniles who violate alcohol and tobacco laws and certain other offenses. It gives the court discretion on a case by case basis to treat any juvenile under the age of 18 who violates such laws under the provisions of the Juvenile Corrections Act.

MOTION: Representative Boe moved **to send H 205 to the floor with a Do Pass recommendation with a typographical correction in the Statement of Purpose. Motion carried.** Representative LeFavour will carry the bill on the floor.

H 206: Patricia Tobias was recognized. This bill would allow greater flexibility and efficiency in the assignment of senior judges by allowing an exception to the salary cap for such judges in extraordinary circumstances. Ms. Tobias pointed out a situation where a magistrate judge is serving his country in Iraq. A senior judge is serving in his stead.

MOTION: Representative Harwood moved **to send H 206 to the floor with a Do Pass recommendation. Motion carried.** Representative Harwood will carry the bill on the floor.

H 207: Patricia Tobias was recognized. This bill would broaden the applications of the Idaho Statewide Trial Court Automated Records System (ISTARS) Technology Fund. There are currently almost 1,000 computers using ISTARS. This system is used to process the nearly 500,000 cases filed in the court system annually. The fund provides revenue to support the system and other court technology initiatives. This bill would increase the user fee from \$5.00 to \$10.00, beginning with cases filed after July 1, 2005. This increase would make funds available to implement beneficial new technologies for use by the courts. Some of the technologies that could be implemented are: video teleconferencing, digital recording, on-line payment of fees and fines, imaging, data sharing and electronic filing. This increase would be the first one since the fund was established eight years ago.

MOTION: Representative Boe moved **to send H 207 to the floor with a Do Pass recommendation. Motion carried.** Representative Hart will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:40 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 23, 2005
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representative Clark
- GUESTS:** Representative Smylie; Marty Durand, ACLU; Megan Ronk, Governor's office; Detective Harold Petty
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on February 21, as written. Motion carried.
- H 202:** The Chair recognized Representative Smylie to explain the bill. The change is contained in Section 33-512, Idaho Code, which is a pretty broad section in the code. The change is very simple. On page 2 of the printed bill, lines 43 and 45-46, the language "including students enrolled at the school" has been added. The "disruption of the educational process" law has been used as a tool to maintain appropriate discipline and safety in Idaho's schools. However, a court ruling in May of 2004 pointed out that Idaho Code did not specifically include students as persons who could disrupt the educational process. This bill corrects this situation. This would only be done as a last resort.
- MOTION:** Representative Sali moved **to send H 202 to the floor with a Do Pass recommendation.**
- PRO:** Boise Detective Harold Petty was recognized to speak to the bill. The Detective said he has been a school resource officer for 11 years. This bill makes it a misdemeanor crime for a student to disrupt a class. The bill allows him to take such disruptive children into custody until the parents can come to get them. It gives him an important tool. It will provide instant consequences for improper actions.
- SUBSTITUTE MOTION:** Representative LeFavour moved **to hold H 202 in Committee. Motion failed.**
- ORIGINAL MOTION:** The original motion was **to send H 202 to the floor with a Do Pass recommendation. Motion carried.** Representative Smylie will carry the bill on the floor. Representative LeFavour asked to be recorded as voting "No" on the motion.
- H 211:** Representative Smylie was recognized to explain. This bill is based on a Nebraska statute. It established a policy of earned conduct reduction of

sentence. The bill is not a good time piece of legislation. It is a different concept. The main goal is to try to reduce recidivism. The inmate would receive a personalized program plan to follow. It could include education, substance abuse treatment, mental health treatment, work, or any other program deemed necessary. If the inmate successfully completes the program, the Board of Correction may reduce the inmate's term by four (4) months for each year. It gives the Board the authority to modify or revoke the plan. It also gives the board of pardons and parole the power to not release an inmate. The language in the bill is permissive with the use of the word "may" instead of "shall."

- PRO:** Marty Durand with the ACLU was recognized to testify. Ms. Durand said the American Civil Liberties Union of Idaho supports the bill. It is a step in the right direction. It is an effort to address the problem of overcrowding in our state prisons. Overcrowding is a serious problem, affecting not only inmates but prison staff as well. The bill would give inmates an incentive to modify their behavior.
- CON:** Megan Ronk, criminal justice policy advisor to the Governor, was recognized. Ms. Ronk said passing the bill would not allow the criminal justice commission to come up with broad recommendations to cut the growing prison costs.
- MOTION:** Representative Smith moved **to hold H 211 in Committee**. In support of his motion, Representative Smith said passage of the bill might be premature. **Motion carried.** Representatives Sali, Bastian, Hart, Pence, LeFavour and Boe asked to be recorded as voting "No" on the motion.
- H 210:** Chairman Field said Representative Sali, the sponsor of the bill, asked that **H 210 be held in Committee for a time certain, until the meeting on Tuesday, March 1, 2005. There being no objection, the bill was so held.**
- H 208:** Representative Wills was recognized to explain. This legislation will allow the investigation of a property damage only motor vehicle crash to be reported only if at least \$2,000.00 in damage occurs. This will allow law enforcement officers considerably more time to perform other important duties to protect the citizens of the state.
- MOTION:** Representative Ellsworth moved **to send H 208 to the floor with a Do Pass recommendation. Motion carried.** Representative Wills will carry the bill on the floor.
- ADJOURN:** Prior to adjourning, Chairman Field said **H 1 has been returned to the Committee.** New legislation will be drafted which will include recommended amendments by all interested parties. Protocol was followed with the bill and the Committee amendment. No motion to bring the bill back before the Committee was ever made. This is an incredibly important issue. The Chair asked all interested parties to get together after adjournment to work out wording that would be acceptable on this issue. The new proposed language will be on the agenda for Friday,

February 25, at 1:00 p.m. There being no further business to come before the Committee, the meeting was adjourned at 2:20 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 25, 2005
- TIME:** 1:00 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representatives Smith and Harwood
- GUESTS:** See attached sign-in sheet
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on February 23, as written. Motion carried.
- H 156:** Chairman Field recognized Rayola Jacobsen to testify to the bill. Ms. Jacobsen said a cosmetologist misconstrued the meaning of the bill which caused the wrong information to be sent out. Currently, the Bureau of Occupational Licenses cannot obtain records which would assist in investigations. This bill would resolve that problem. However, because of problems with the language, Ms. Jacobsen asked that **H 156 be held in Committee. Unanimous consent was given to hold H 156.**
- H 157:** Representative Henderson was recognized to speak to the bill. This bill addresses a problem which exists throughout the state of Idaho. It will provide Idaho county sheriffs the opportunity for reimbursement of medical, dental, prescription drug and other costs of medical services incurred while housing non-indigent inmates in county jails. It provides county sheriffs with specific authority for collection of medical costs from current and former inmates who have financial resources including medical insurance that may be in force.
- PRO:** Michael Kane, representing the Sheriffs Association, was recognized. Mr. Kane said the sheriffs support this bill. It sets out a system whereby the county sheriffs have the ability to collect reimbursement from inmates who have financial resources, including medical insurance.
- MOTION:** Representative Clark moved **to send H 157 to the floor with a Do Pass recommendation. Motion carried.** Representative LeFavour asked to be recorded as voting "No" on the motion. Representative Henderson will carry the bill on the floor.
- H 203:** Representative Henderson was recognized. Representative Henderson said he has a daughter who is a senior executive in the motion picture industry. If there is a problem with his testifying to the bill because of that, the Representative said he wants to do what is right. There was no objection, so he said this bill would criminalize the operation of an

audiovisual recording device in a movie theater without the written consent of the theater owner. He quoted from some letters received from the department of commerce and labor, a president of an independent movie theater, owners of movie theaters in Salmon and Kellogg, Idaho, and the Motion Picture Association of America (attachments.) Videotaping of films during theatrical presentations is stealing. Those who engage in the practice are intending to make and sell copies for their own profit.

It is important to outlaw the use of camcorders in Idaho theaters since this type of piracy seriously impacts the motion picture industry. Camcorder piracy is the use of a video camera to illicitly steal a movie, usually very early in its theatrical release. As a result of camcorder piracy, many motion pictures become available over the internet as well as on street corners and flea markets around the world.

Representative Henderson asked to yield to Patrick Sullivan to explain an amendment which was drafted for the bill. Mr. Sullivan said, after the bill was printed, the Idaho Trial Lawyers Association indicated some concerns with the language. The amendment resolves those concerns.

MOTION: Representative Bastian moved **to hold H 203 for a time certain until the meeting on March 1.** In support of his motion, Representative Bastian said on page 1, line 26 of the printed bill, the word "shall" should be changed to "may", leaving the discretion of imprisonment up to the judge. Also, the phrase of "for the purpose of committing piracy" should be inserted after "theater" on page 1, line 24.

SUBSTITUTE MOTION: Representative Clark moved **to hold H 203 in Committee.**

AMENDED SUBSTITUTE MOTION: Representative LeFavour moved **to send H 203 to General Orders with Committee amendments attached. Motion failed.**

SUBSTITUTE MOTION: Substitute Motion was **to hold H 203 in Committee. Motion failed.**

MOTION: Original Motion was **to hold H 203 for a time certain until March 1. Motion carried.**

H 232: Representative Boe was recognized to explain. This bill deals with cockfighting. Both **H 232 and H 233** are quite similar. The Humane Society and the Idaho Sheriffs Association are here to provide testimony on the bills. H 232 focuses entirely on the organized exhibition of cockfighting, while H 233 focuses on dogfighting. Representative Boe asked to yield to Mike Kane.

PRO: Mike Kane, representing the Ada County Sheriffs Association, said cockfighting is a felony in 48 states right now. These exhibitions are extremely cruel. For example, in cockfighting, razor blades are attached to the feet of the birds. People wager bets on which bird will win. The bill makes cockfighting exhibitions the lowest type of felony.

- PRO:** Inga Gibson, Program Coordinator, The Humane Society of the United States, was recognized. Currently, animal fighting in Idaho is a misdemeanor. Because of the low penalty, people who want to organize this type of activity are coming to Idaho. Misdemeanor prohibitions against these activities are porous, penalties are weak and enforcement is lax. A \$50 fine is meaningless to someone who stands to win \$5,000 from a cockfighting exhibition. Razors attached to the legs of the roosters are made of surgical steel. The purpose of a felony penalty is to serve as a strong deterrent against this activity. The Humane Society is asking the legislature to take a proactive approach by raising the penalty to a felony.
- PRO:** Susan Clark, representing the Idaho Humane Society, was recognized. Ms. Clark said the Idaho Humane Society enforces animal related laws, including the existing cockfighting and dogfighting provisions in the Idaho Code. Existing laws are inadequate in that the penalties are so insignificant. Also, the penalties are weakly applied. Animal fighting is a moneymaking industry. In conclusion, Ms. Clark asked to convey to the courts that this is a serious crime by making it a felony.
- CON:** J. C. Williams was recognized. Mr. Williams said he raises game birds and sells them for the purpose of breeding. He supplements his income by selling these birds. The wording in this bill is too broad. Farmers must be able to raise and sell these animals.
- CON:** L. Dean Goodner was recognized. Mr. Goodner said he is a local rancher. He raises game fowl. These animals are not bred for fighting, but they are game fowl. They fight among themselves. Sometimes one of them dies. Mr. Goodner was concerned that if someone buys some of his game fowl, he might be found guilty of a felony under the current language of this bill.
- CON:** David Strahn was recognized. Mr. Strahn said he was perplexed by the bill. Cockfighting is completely legal in Mexico. This bill might be discriminatory against Hispanics.
- CON:** Ross Weeks was recognized. Mr. Weeks said he raises game birds. He teaches his children responsibility with the birds. The language in the bill is too broad.
- CON:** Clint Davison was recognized. Mr. Davison said he organizes cockfighting activities. Cockfighting is very prominent in southern states. This is a legal activity in many countries. If this is made a felony, it will put an added financial burden on taxpayers of Idaho. Dogfighting should be made a felony. Cockfighting should not. These birds naturally fight.
- H232 MOTION:** Representative Wills moved **to hold H 232 in Committee**. After a lengthy discussion on the motion, Representative Shirley **called for the question. A 2/3 majority supported the question which is a motion to close the debate. The Motion to hold H 232 in Committee carried.**
- H 233 MOTION:** Representative Hart moved **to hold H 233 in Committee**.
- SUBSTITUTE MOTION:** Representative LeFavour moved **to send H 233 to the floor with a Do Pass recommendation. Motion failed.**

ORIGINAL MOTION: The original motion was **to hold H 233 in Committee. Motion carried.** Representatives Bastian, Ring, Boe, LeFavour and Pence asked to be recorded as voting "No" on the motion.

RS 15074: Chairman Field asked for latitude on this piece of legislation which replaces HB1. The sponsors have met with those opposed to the legislation and have made some major concessions. The goal today is for the committee to ask questions of the sponsors and those in the audience to yield to concerns of RS15074. The goal is to see if we can get RS15074 introduced and sent to the 2nd reading calendar. However, after concern from Representative Clark, Chairman Field reiterated the decision would remain in the hands of the committee. Chairman Field also reported there was a three-hour meeting among interested parties after the last committee meeting to discuss compromise language.

Representative Ring was recognized. This proposed legislation is a rewrite of House Bill 1. The sponsors have tried to make the bill more palatable to all interested parties. This legislation only requires single entity pseudoephedrine drugs be sold by a pharmacist or licensed technician. This legislation allows a person to purchase up to 12 standard boxes of sudafed. It gives an important tool to law enforcement. The emergency clause has been omitted. Liquid forms will still be available at convenience stores.

There was a three hour meeting among interested parties to come up with this compromise language.

MOTION: Representative Wills moved **to introduce RS15074 and send it directly to second reading calendar.**

SUBSTITUTE MOTION: Representative Ellsworth moved **to introduce RS15074.**

Pam Eaton, representing the Idaho Retailers Association, was recognized. Ms. Eaton said the Idaho Retailers Association believes that a single entity should come off the shelves and be vendor assisted. The Association does not see why it should be sold only through a pharmacy. This language is not something the Association agreed to.

Representative McGeachin asked to have an E-mail included in the minutes.

ROLL CALL VOTE: Voting AYE on the Substitute Motion: Representatives Sali, Clark, Ellsworth, McGeachin, Bastian, Hart. Voting NAY: Representatives Nielsen, Ring, Shirley, Wills, Boe, LeFavour, Pence, Field. **Motion failed.**

ORIGINAL MOTION: The original motion was **to introduce RS15074 and send it directly to second reading. Motion carried.** Representatives Sali, Clark, Ellsworth, McGeachin, Bastian and Hart voted "No" on the motion. Representatives Ring, Wills, Rusche and Mitchell will carry the bill on the floor.

ADJOURN:

There being no further business to come before the Committee, the meeting was adjourned at 3:45 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 1, 2005

TIME: 2:15 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** None

GUESTS: **See attached sign in sheet and presenters highlighted below.**

Chairman Field called the meeting to order at 2:15 p.m.

MOTION: **Representative Wills** made a motion to accept the minutes of February 25, 2005, with one correction. **Motion approved by voice vote.**

H203 **Representative Henderson** presented H203. This is an Anti-Camcorder Piracy Act. This legislation would criminalize the operation of an audiovisual recording device in a movie theater without the written consent of the theater owner. The bill defines the terms "audiovisual recording function" and "motion picture theater." It also states that theater owners are not liable in any civil action arising out of measures taken by a theater owner to stop an individual unlawfully recording a movie unless the measures were unreasonable or the period of detention unreasonably long. Law enforcement officers using a recording device in a theater in the course of an investigation are exempt from the legislation. A misdemeanor penalty is recommended for this action.

Representative Henderson stated that 20 states now have these laws and another 20 are considering them this year.

There was concern from the committee that something as innocent as taking a camera into a theater to take pictures of the decor would put these people in violation. **Mr. Patrick Sullivan**, Attorney, said that is correct they would be in violation.

An amendment to the bill was distributed to the committee.

Representative Sali stated that he has an amendment to add to the proposed amendment. This would add on page 1, line 25, after the word "exhibited"; "for the purpose of recording the motion picture being exhibited."

MOTION: **Representative Ellsworth** made a motion to send H203 to General Orders with committee amendments attached.

SUBSTITUTE **Representative Smith** made a substitute motion to hold H203 in

- MOTION:** committee. He said that he felt the bill went too far. That if you are caught watching a movie with your camera that you could be in violation of this bill when the actual crime is copying and reproducing the picture.
- A vote was taken on the substitute motion to hold H203 in committee.
Motion failed.
- ORIGINAL MOTION:** A vote was taken on the original motion to send H203 to General Orders with committee amendments attached. **Motion approved by voice vote.** Representatives Smith and Clark wished to be recorded as voting Nay. Representative Henderson will carry the bill on the floor.
- H210** **Representative Sali** asked unanimous consent to hold H210 in Time Certain until Thursday, March 3, 2005. Approved.
- H245** **Mr. Michael Henderson**, Legal Council Idaho Supreme Court, presented H245. This legislation amends the Uniform Jury Selection and Service Act to simplify and update the procedure for identifying and summoning prospective jurors, and to make serving as a juror or prospective juror more convenient. The objectives of the bill are to update jury selection procedures, take advantage of modern technology, simplify the process for clerks and jury commissioners, which may result in savings, and make jury service more convenient for prospective jurors.
- This new process would allow juror questionnaires to be returned by e-mail, fax, or other reliable means of communication. Ada County is already using the internet.
- Persons who are disqualified would be disqualified from jury service for two years. They can be excused for a longer period or permanently if warranted by a person's disability. A person older than 70 can be permanently excused simply by requesting that on their questionnaires, and they can be reinstated on request.
- There was a question why the fine was raised from \$100 to \$300. Mr. Henderson stated that the current fine is less than a misdemeanor and raising it doesn't bring it up to what it could be.
- MOTION:** **Representative LeFavour** made a motion to send H245 to the floor with a do pass recommendation.
- A discussion on the motion followed and a question was asked why 70 year olds can choose not to serve. Mr. Henderson said that simply, in the law, it shows deference to make it easier for them to be excused. There were other concerns about 70 year olds being excused from jury duty.
- SUBSTITUTE MOTION:** **Representative Nielsen** made a substitute motion to send H245 to General Orders and on the amendment change, on Page 7, Line 19, "shall" back to "may." A vote on the substitute motion was taken. **Motion failed.**
- ORIGINAL MOTION:** A vote was taken on the original motion to send H245 to the floor with a do pass recommendation. **Motion approved by voice vote.** Representative Shirley will carry the bill on the floor.

S1013 **Mr. Michael Henderson** presented S1013. This bill is one of a series of bills that the Supreme Court has recommended in its annual report to the Governor concerning defects or omissions in the laws, as required under Article V, Section 25 of the Idaho Constitution. Subsection (5) of Idaho Code, Section 20-525A deals with expungement of juvenile convictions under the Juvenile Corrections Act. It provides that expungement may be ordered by the court in certain cases where the juvenile “has not been adjudicated. . . for any of the crimes identified in subsection (2) of this section. . . “ However, because of an amendment to this statute in 2004, the subsection that lists the offenses for which expungement is not permitted is actually contained in Subsection (4), not Subsection (2). This bill would make the technical correction of changing the reference in Subsection (5) from “(2)” to “(4).”

MOTION: **Representative Ellsworth** made a motion to send S1013 to the floor with a do pass recommendation. **Motion approved by voice vote.** Representative Pence will carry the bill on the floor.

S1014 **Mr. Michael Henderson** presented S1014. This legislation continues the series of bills that the Supreme Court has recommended in its annual report to the Governor concerning defects or omissions in the laws, as required under Article V, Section 25 of the Idaho Constitution. Idaho Code, Section 19-852 provides that counsel must be appointed for a needy person who is under formal charge of having committed a “serious crime.” Idaho Code, Section 19-851 states that “serious crime” includes “(1) a felony, (2) any misdemeanor or offense the penalty for which, excluding imprisonment for non-payment of a fine, includes the possibility of confinement for more than six months.” This is in conflict with the United States Supreme Court decisions holding that an indigent defendant cannot be sentenced to any term of confinement unless counsel was appointed to represent the defendant. This would bring the statutes on appointment of counsel in criminal cases into conformity with United States Supreme Court cases, would avoid any confusion arising from the current conflict between the statute and case law.

MOTION: **Representative Ellsworth** made a motion to send S1014 to the floor with a do pass recommendation. **Motion approved by voice vote.** Representative Ellsworth will carry the bill on the floor.

S1015 **Mr. Michael Henderson** presented S1015. This bill is the third in the series of bills that the Supreme Court has recommended in its annual report to the Governor concerning defects or omissions in the laws. The current wording of Idaho Code Section 20-505 has led some to believe that the courts can assume jurisdiction over a juvenile under the Juvenile Corrections Act where the underlying offense occurred outside of the State of Idaho. It appears, however, that it was not the intent of the legislature to give the juvenile courts jurisdiction over acts committed in other states. To have courts assume such jurisdiction might also raise perplexing constitutional issues, which would result in extended litigation. This bill would clarify the Statute by providing that courts can assume jurisdiction over a juvenile under the Juvenile Corrections Act only where the underlying offense occurred in the Sate of Idaho.

MOTION: **Representative Bastian** made a motion to send S1015 to the floor with a

do pass recommendation. **Motion approved by voice vote.**
Representative Bastian will carry the bill on the floor.

S1016

Mr. Michael Henderson presented S1016. This legislation is the fourth in the series of bills that the Supreme Court has recommended in its annual report to the Governor concerning defects or omissions in the law. In 1969, when the magistrate's division of the district courts was created, Idaho Code, Section 1-101 was amended to list the courts of justice as follows: (1) The Supreme Court, (2) the district courts, (3) the magistrate's division of the district courts. Idaho Code, Section 1-102, then as now, said, "The courts enumerated in the first three subdivisions of the preceding section are courts of record." Thus, the magistrate's division was, from the beginning, a court of record. But in 1983, the list of courts in Idaho Code, Section 1-101 was changed to read: "(1) The supreme Court; (2) The Court of Appeals, (3) The district courts, (4) The magistrate's division of the district courts." The insertion of the reference to the Court of Appeals pushed the magistrate's division down to the fourth spot. Unfortunately, Idaho Code, Section 1-102 was not amended at the time. This could lead to the impression that the magistrate's division is not a court of record. This will make it clear that the magistrate's division of the district court is a court of record.

MOTION:

Representative Boe made a motion to send S1016 to the floor with a do pass recommendation. **Motion approved by voice vote.**
Representative Boe will carry the bill on the floor.

ADJOURN:

There being no further business to come before the committee the meeting was adjourned at 3:06 p.m.

Representative Debbie Field
Chairman

Shani Murray
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 3, 2005
- TIME:** 3:10 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representative Clark
- GUESTS:** See attached sign-in sheet.
- MOTION:** Chairman Field called the meeting to order, apologized to the people waiting to testify for the lateness of the meeting and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on March 1, as written. Motion carried.
- H 210:** Chairman Field said **H 210 would be held for a time certain at the discretion of the Chairman.** There being no objection, the bill was so held.
- H 208:** Representative Wills was recognized. Representative Wills said the bill was returned to the Committee in order that two amendments could be included. The first change is one the insurance companies requested which reduces the amount of damages occurred in a property damage only motor vehicle crash from \$2,000 to \$1,500. The second change makes the effective date January 1, 2006.
- MOTION:** Representative Harwood moved **to send H 208 to General Orders with the aforementioned Committee amendments attached. Motion Carried.** Representative Wills will carry the bill on the floor.
- S 1054:** Mike Becar, Executive Director of the POST Council, was recognized. Mr. Becar briefly explained the duties of the Peace Officer Standards and Training (POST) Academy to the new members. In order to accommodate all of the training programs, the Academy had to build a new building which they just took possession of last month. The Legislature gave the Academy a 1-time funding to start the training and operate the building. The Legislature asked the Academy to find a dedicated source of funding. This bill provides for the funding. It raises the existing fee assessed by the court from certain offenders from \$6.00 to \$10.00.
- MOTION:** Representative Smith moved **to send S 1054 to the floor with a Do Pass recommendation. Motion carried.** Representative Field will carry the bill on the floor.
- S 1137:** Mike Becar was recognized to testify to the bill. Mr. Becar said this is a

trailer bill to S 1054. It adds a new section authorizing POST to establish minimum basic training and certification standards for state correction officers and for adult probation and parole officers. Additionally, the proposal makes it clear that peace officer status is reserved for those certified as peace officers.

MOTION: Representative Smith **moved to send S 1137 to the floor with a Do Pass recommendation. Motion carried.** Representative Field will carry the bill on the floor.

S 1069: Robert Aldridge, Chairman of Trust & Estate Professionals of Idaho, Inc., was recognized to explain. A question has arisen in regard to summary administration of an estate which passes all property to the surviving spouse of the deceased. A hearing is held before the court on the petition for the decree. This bill clarifies that, while a motion is required for a petitioner or the attorney for the petitioner to appear at a hearing telephonically, no motion is needed if the petitioner or the attorney for the petitioner instead submits an affidavit that no objection has been received to the granting of the decree.

MOTION: Representative Nielsen moved **to send S 1069 to the floor with a Do Pass recommendation. Motion carried.** Representative Nielsen will carry the bill on the floor.

S 1070: Robert Aldridge was recognized. This bill clarifies that "purpose trusts" may be created and sets terms and conditions for their operation. Specifically, purpose trusts have no beneficiary, but are created to carry out a specific purpose, such as preservation of a building. These trusts expand estate planning options for the public at large.

MOTION: Representative Hart moved **to send S 1070 to the floor with a Do Pass recommendation. Motion carried.** Representative Hart will carry the bill on the floor.

S 1071a: Robert Aldridge was recognized. This legislation provides a non-judicial method for the resolution of disputes and other matters involving trusts and estates. It also provides for judicial resolution of disputes if a non-judicial resolution is not obtained. The non-judicial resolution portion of the bill allows the interested parties to a trust to attempt to come to a binding agreement on settlement of the dispute. This will allow the relevant parties to a dispute to come to an agreement settling the dispute at a much lower cost than through court action, but with the certainty that the agreement is as binding as a court action. The amendment deletes on page 6, line 12, "This section shall not be" and inserts "Except as provided in section 12-117, Idaho Code, this section shall not be".

PRO: Chris Ode, Vice-President of Wells Fargo Banks, was recognized. Mr. Ode said this bill will benefit the people of Idaho. This allows the spouse, children and trustee to meet and work out what they think is a good resolution without having to go to court. Trustees are bound by the terms of the trust document.

MOTION: Representative Ellsworth moved **to send S 1071a to the floor with a Do Pass recommendation. Motion carried.** Representative Nielsen will

carry the bill on the floor.

S 1072: Robert Aldridge was recognized. Idaho law currently provides that heirs who are conceived before the death of the decedent, but born thereafter, inherit as if born during the lifetime of the decedent. The problem that now exists is that embryos, etc., can be frozen for decades and then used to produce a child. Substantial questions have arisen as to whether such “potential” children are “after-born heirs” under statutes similar to the existing Idaho statute. This bill puts a time limit of ten months after the death of the decedent that the birth must occur.

MOTION: Representative Nielsen moved **to send S 1072 to the floor with a Do Pass recommendation. Motion carried.** Representatives Harwood and Ellsworth asked to be recorded as voting “No” on the motion. Representative McGeachin will carry the bill on the floor.

S 1073: Robert Aldridge was recognized. Current Idaho law requires that marriage settlements must be recorded in their entirety to be effective as to any real estate affected by the settlement. However, such settlement often contains information that the parties do not wish to have public, including details of ownership of entities and private agreements between the parties not related to the real estate involved. This bill allows the recording of a summary of the marriage settlement, so long as the requirements of the new bill are met.

MOTION: Representative Smith moved **to send S 1073 to the floor with a Do Pass recommendation. Motion carried.** Representative Smith will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 4:20 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 7, 2005

TIME: 2:35 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** Representatives Ellsworth, Harwood

GUESTS: See attached sign-in sheet

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on March 3, as written. Motion carried.

S 1038: George Gutierrez, Industrial Commission, was recognized to explain the legislation. Mr. Gutierrez said this bill amends the Crime Victim Act in two places. It increases the funeral, burial and cremation benefits under the Crime Victim's Compensation law for victims of violent crime in Idaho from \$2,500 to \$5,000 when they have no other source of funding. The bill also expands eligibility for mental health treatment for family members of victims of violent crime in Idaho. Currently only family members of sexual assault victims or homicide victims are eligible for this benefit. This proposal will add the crimes of kidnaping, domestic violence and child injury. Also, the definition of family members is expanded to include grandparents and grandchildren of the victim.

The program is federally funded at 60% of state payments on behalf of victims. No General Fund money is used, as state matching money comes from fines and restitution payments from offenders through the criminal courts and reimbursement to the program through subrogation.

MOTION: Representative LeFavour moved **to send S 1038 to the floor with a Do Pass recommendation**

SUBSTITUTE MOTION: Representative Nielsen moved **to send S 1038 to General Orders with Committee amendments attached expanding the definition of family. Substitute Motion failed.**

ORIGINAL MOTION: The Original Motion was to send the bill to the floor with a Do Pass recommendation. **Motion carried.** Representative LeFavour will carry the bill on the floor.

S 1055: Dawn Peck, manager of the Idaho State Police Bureau of Criminal Identification, was recognized. This bill cleans up archaic language in the current statute and more clearly defines the system used by the criminal justice community to exchange information. The bill removes the

language that identifies the system as a teletypewriter system. It also cleans up the relationship of the users to the system. There are currently 94 agencies with direct access to the system.

MOTION: Representative Clark moved **to send S 1055 to the floor with a Do Pass recommendation. Motion carried.** Representative Clark will carry the bill on the floor.

S 1100: Heather Reilly, representing the Prosecuting Attorneys Association, was recognized. Ms. Reilly asked to yield to Roger Bourne with the Ada County Prosecuting Attorney's Office in order for Mr. Bourne to explain the legislation. This legislation clarifies an aggravating circumstance in the death penalty statute. The amendment ensures that the jury will be allowed to consider all relevant information about the defendant at the sentencing phase where the jury has to assess the murderer's continuing threat to society.

Under current language, a defendant could argue that the statute only allows the jury to hear about the defendant's conduct "prior" to, or during the murder, but not about his conduct after the murder. This issue comes up in cases of multiple murders or serial murderers. Currently, in a case in which a defendant who has killed more than one person is convicted by a jury of the first murder, the jury may be precluded from hearing evidence about the second murder because it was not conduct of the defendant that occurred prior to the murder at hand.

In the view of the prosecutors, the legislative intent was to make available to the jury all information about the defendant's conduct relevant to his "propensity to commit murder" which would probably constitute a continuing threat to society. This bill makes that legislative intent clear.

MOTION: Representative Bastian moved **to send S 1100 to the floor with a Do Pass recommendation. Motion carried.** Representative Wills will carry the bill on the floor.

S 1122: Megan Ronk, policy advisor to the Governor, was recognized. The purpose of the legislation is to establish a program providing for a clandestine drug laboratory cleanup process and standard. The legislation directs the Department of Health and Welfare to create standards and a process for cleaning up these laboratories, and to create a tracking system whereby an affected residential property can be added to and removed from the system. Once the residential property has met the cleanup standards, no health-based claim may be filed against the owner of the property for impacts resulting from the clandestine laboratory.

PRO: John Eaton, Idaho Association of Realtors, was recognized. Mr. Eaton said there are currently no standards for cleaning these labs up. This legislation will provide a tool to be able to go forward with standards to accomplish this cleanup. A question was asked concerning what in this bill protects the property owner. The answer was that there is nothing currently in statute to protect the owners. In reply to a question regarding how long the cleanup of a typical lab takes, the reply was usually anywhere from several hours to a few days. However, every case would

be different.

- PRO:** Director Charboneau was recognized. The Director said this is an exciting day when law enforcement can talk about cleanup of the laboratories in this state. This legislation is the result of a four-year process. The Director called attention to the effect the drug labs have on children. Currently there is no voluntary compliance for property owners. This gives a mechanism to protect those who voluntarily choose to accomplish the cleanup standards established by the department.
- PRO:** Dick Schultz with the Department of Health and Welfare was recognized. Mr. Schultz said the time has come to help those who want to clean up a property by setting standards. The difficult thing will be to come up with rules to accomplish this. The standards should not be arbitrarily set. This is legislation that is groundbreaking. The Department wants to do the best it can to help develop standards. It would like to come back next year during the session with proposed rules. This legislating gives the Department the authority to promulgate rules and set standards for cleanup.
- MOTION:** Representative Nielsen moved **to send S 1122 to the floor with a Do Pass recommendation.**
- SUBSTITUTE MOTION:** Representative Sali moved **to hold S 1122 in Committee for a time certain at the discretion of the Chairman.** In support of the motion, Representative Sali said there are issues that need to be addressed and Representative Smith said guidelines should be included in the legislation. **Substitute Motion carried.** Representatives Ring, Shirley and Wills asked to be recorded as voting "No" on the motion.
- HCR 18:** Representative Boe was recognized to explain. This resolution would direct the Legislative Council to appoint an interim committee to study human trafficking in Idaho and to make recommendations to the legislature in 2006. Human trafficking can be compared to modern day slavery. Last year, Representative Boe worked with Representative Pasley-Stuart to learn about trafficking in Idaho. Last fall the Department of Justice called on states to pass legislation or appoint a task force to study the issue.
- PRO:** Merikay Jost was recognized. Ms. Jost said after attending a three-day seminar on the Trafficking of Human Beings in Baltimore, MD, last July, she learned this problem does not just occur overseas, but has a foothold in the United States as well. Victims of trafficking do not seek help from law enforcement. They turn to churches and shelters for help when they can escape their captors. Victims are trafficked into the United States from Asia, Central and South America, Eastern Europe and Africa. They are found in sweatshops, or as field laborers, and they are found in homes working as domestics or nannies.

Incidences of victimization in the sex industry are most heinous. Women and children, boys and girls, are usable, disposable commodities in the sex industry. Victims can be found in massage parlors, salons used as fronts for prostitution, sex entertainment, dance clubs, strip clubs and underground pornography film industry. Others arrive in the United States

as “baby” brides or mail order brides. Imported victims are not the only ones used in this industry. Currently American women and children are also targeted. This resolution is the first step in closing the door to those who see victimizing through human trafficking as a lucrative business opportunity.

PRO: Yolanda Matos was recognized. Ms. Matos is the Assistant Director of the Valley Crisis Center. Ms. Matos works with victims of domestic violence. Men purchase baby brides, ages 12 to 16, and bring them to the United States and make them slaves. Ultimately, these girls see that this is not the way of life in America. However, since they are often not American citizens, they are afraid to come forward. Ms. Matos asked that these women be given a voice. Let Idaho assist these victims.

PRO: Lee Flinn was recognized. Ms. Flinn is program director of the Idaho Women’s Network. The Network fully supports HCR 18. Accounts of human trafficking are shocking and almost unbelievable. Women, men and children are trafficked for purposes of sexual and labor exploitation. At least 700,000 persons annually are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.

Many of these persons are trafficked into the international sex trade, often by force, fraud or coercion. Trafficking also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide. This resolution would empower the legislature to authorize an interim committee to study this problem in Idaho.

PRO: Antonio Sotelo was recognized. Mr. Sotelo spoke in support of HCR 18. Human trafficking is a serious problem. This resolution will aid in understanding how to approach this problem.

PRO: Marty Durand with the American Civil Liberties Union, was recognized. Ms. Durand said the ACLU supports this legislation. These victims become trapped into lives of servitude and misery through varied avenues and methods. Some of the victims arrive believing they’ll have a legitimate job as a housekeeper or nanny and end up as domestic slaves unable to leave their traffickers’ homes. Others end up in forced, commercial, sexual exploitation. This legislation provides a tool to allow Idaho to champion the dignity of all people.

MOTION: Representative Wills moved **to send HCR 18 to the floor with a Do Pass recommendation. Motion carried.** Representatives Boe, Pasley-Stuart, Miller and Wills will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 4:35 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 9, 2005

TIME: 2:30 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** None

GUESTS: See attached sign-in sheet

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on March 7, as written. Motion carried.

S 1039a: Senator Bart Davis was recognized to explain the legislation. Senator Davis said this legislation amends the method of service of process on a corporation formed for condominiums. It provides that service of process on a corporation shall be on the registered agent of the corporation.

MOTION: Representative Wills moved **to send S 1039a to the floor with a Do Pass recommendation. Motion carried.** Representative Wills will carry the bill on the floor.

S 1040: Senator Davis was recognized to explain the bill. This legislation provides a limitation on the rights of a judgment creditor in its collection efforts. It provides that the charging order is the exclusive remedy for satisfying a judgment against a member's limited liability company interest.

MOTION: Representative Smith moved **to send S 1040 to the floor with a Do Pass recommendation. Motion carried.** Representative Smith will carry the bill on the floor.

S 1122: Megan Ronk was recognized to explain the amendment to the bill. Ms. Ronk said all interested parties met to draft the amendment which is before the Committee today. The purpose of S 1122 is to establish a program providing for a clandestine drug laboratory cleanup process and standard. The amendment clarifies that sections 6-2606, 6-2607 and 6-2608 do not go into effect until rules are adopted. These rules will be brought back before the Committee during the next legislative session.

MOTION: Representative LeFavour moved **to send S 1122 to General Orders with the aforementioned Committee amendments attached.** Dick Schultz with the Department of Health and Welfare was recognized to clarify the rules that would be promulgated. Mr. Schultz said it would be the Department's intention to bring forth proposed rules instead of temporary rules. This means those rules will have to be approved by the

Legislature before they go into effect. **Motion carried.** Representative Field will carry the bill on the floor.

S 1064: Heather Reilly, Idaho Prosecuting Attorney's Association, was recognized to explain. This bill simply allows for the aggregation, or the adding together, of multiple acts of malicious injury to property or vandalism into one charge, if the acts are part of a common scheme or plan. Under current malicious injury to property code section, the value of the property damage to one property owner must exceed \$1,000.00 in order for the violation to be charged as a felony. This legislation will allow consideration of the sum of the value of all of the damage done during a course of conduct that is a common scheme or plan when determining whether the property damages exceed \$1,000.00.

MOTION: Representative Clark moved **to send S 1064 to the floor with a Do Pass recommendation. Motion carried.** Representative Nielsen will carry the bill on the floor.

S 1065: Heather Reilly was recognized. Ms. Reilly said Jean Fisher and Shelly Armstrong, Deputy Prosecuting Attorneys, were in the audience and would be happy to answer any questions the members might have. This legislation defines "willfully" or the intent element for purposes of the Injury to Children code section. It clarifies that the mental state necessary for a conviction is one of "general intent". This bill clarifies that a conviction for injury to children does not require a higher level of proof than that which is required for injuring any other person by virtue of a battery or aggravated battery.

The legislation defines "willfully" to require proof of knowledge of the potential resulting injury as a result of an act or failure to act. It requires proof of a reasonably foreseeable result of an act or omission. The community through the jury will determine if the defendant would have known, as a reasonable person, that the action or the failure to act was likely to result in injury or harm.

MOTION: Representative Clark moved **to send S 1065 to the floor with a Do Pass recommendation. Motion carried.** Representatives Sali and Harwood asked to be recorded as voting "No" on the motion. Representative Smith will carry the bill on the floor.

S 1067: Heather Reilly was recognized. Senate Bill 1067 amends Idaho's reckless/inattentive driving statute to clarify and respond to recent court rulings. Further, this amendment will provide prosecutors with a meaningful tool to combat the increasing problems of road rage and traffic accidents caused by inattentive drivers. The amendment increases the penalty for a first offense of reckless driving to a maximum of six months in jail or a fine of \$500.00, or both. The amendment also removes the mandatory jail requirement in the current law. The penalty for a second offense has been increased to a maximum of one year in jail or a fine of \$1,000.00, or both. Again, the mandatory jail language has been removed.

MOTION: Representative Smith moved **to send S 1067 to the floor with a Do**

Pass recommendation. Motion carried. Representative Harwood will carry the bill on the floor.

S 1053: Robert Aldridge, Chairman of Trust & Estate Professionals of Idaho, Inc., was recognized. This amendment modifies the appointment procedures for an attorney for a minor child. If the child is of sufficient maturity to direct the actions of an attorney, one is to be appointed. If the child is not sufficiently mature, then a guardian ad litem is appointed. No attorney or guardian ad litem will be appointed if the court determines that an appointment is not necessary for the best interests of the child, or if the child is already in the custody of the Department of Health & Welfare. The bill is the result of a review of last year's court proceedings in minor guardianship. The language was drafted through a coalition of persons, judges, and committees involved in child protection. It answers some questions that have arisen about how de facto custodianship works.

MOTION: Representative Clark moved **to send S 1053 to the floor with a Do Pass recommendation. Motion carried.** Representative McGeachin will carry the bill on the floor.

S 1068a: Robert Aldridge was recognized. Under current law, there are two acts in the Idaho Code that deal with medical consents. This Act creates a single unified act. Therefore, the existing Medical Consent Act is repealed in its entirety and appropriate sections of that Act are included in the new combined act.

Similarly, the existing terms of the Natural Death Act are repealed and replaced by the new unified act. The methods and purposes of the Medical Consent Act and the Natural Death Act are retained, but are clarified and simplified. The Living Will and Durable Power of Attorney for Health Care are combined in a single document, although the person executing the form can choose to fill out either or both of such subparts.

MOTION: Representative Smith moved **to send S 1068a to the floor with a Do Pass recommendation. Motion carried.** Representatives Smith and LeFavour will carry the bill on the floor.

ADJOURN: Chairman Field said there are still many bills to be heard, so meetings will be scheduled on Friday and through the following week on Tuesday and Thursday. There being no further business, the meeting was adjourned at 4:15 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 11, 2005
- TIME:** 1:10 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** None
- GUESTS:** See attached sign-in sheet
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on March 9, as written. Motion carried.
- S 1062a:** Melissa Moody, representing the Attorney General's office, was recognized to explain. This legislation criminalizes attempted strangulation as a felony. This type of violence in a relationship acts as a red flag to the criminal justice system. We need this legislation to hold people accountable for their actions.
- PRO:** Brenda Cameron was recognized. Ms. Cameron said she was a victim and survivor of domestic violence. She was in an abusive relationship, which included attempted strangulation, for 13 years. Nine years ago, she was able to get out of that relationship. She has since become an advocate and has worked as an advocate for several years. Children are also affected by this type of behavior. This bill is necessary to hold these offenders accountable.
- PRO:** Dr. Waj Nasser was recognized. Dr. Nasser said the lack of physical evidence in attempted strangulation cases causes the criminal justice system to treat these as minor incidents which are handled as misdemeanors. These cases are extremely serious. Strangulation can cause unconsciousness within seconds and death within minutes. Victims may have no visible injuries whatsoever. However, because of underlying brain damage by lack of oxygen, victims may have serious internal injuries or die days or several weeks later.
- PRO:** Jan Bennetts, Deputy Prosecutor, was recognized. Ms. Bennetts said this is such a serious crime that it needs a felony conviction. Ms. Bennetts said she is before the Committee to ask for this tool to hold these offenders accountable. These cases are prosecuted through the evidence that is gathered.
- Marty Durand was recognized to speak on behalf of the ACLU. Ms. Durance said the ACLU recognizes strangulation is a serious problem and should have a larger penalty. However, she asked the members to

consider other violent crimes such as aggravated battery, battery with the intent to commit a serious felony. Voluntary manslaughter and involuntary manslaughter. None of these crimes carry a large enough penalty for the seriousness of the crime.

PRO: Heather Reilly, Prosecuting Attorney's Association, spoke in favor of the bill.

MOTION: Representative Nielsen moved **to send S 1062a to the floor with a Do Pass recommendation.** Representative Hart voted against the motion as he didn't feel the bar was high enough. Representatives LeFavour, Wills and Ring spoke in favor of the motion. Representative Sali spoke against the motion saying he was concerned that some people could be charged with attempted strangulation when that wasn't really what was happening. **Motion carried.** Representatives Sali, Ellsworth, Harwood, Hart and Bastian asked to be recorded as voting "No" on the motion. Representative Ring will carry the bill on the floor.

S 1061: Ralph Blount, representing the Attorney General's office, was recognized. This proposed legislation clarifies that the felony domestic battery statute has the same intent requirement as the battery statute and the aggravated battery statute. These amendments are brought in reaction to the Idaho Court of Appeal's decisions which require the state to prove two different levels of intent for felony domestic battery. The case law requires the state to prove not only that the defendant willfully and unlawfully battered a household member, but also that the defendant willfully and unlawfully inflicted a traumatic injury. This "double" intent requirement was never intended by the Legislature.

PRO: Jan Bennetts was recognized. The intent is already a difficult issue to prove. Two separate intents would be very confusing to the jury. Battery is a general intent crime. Aggravated battery is also a general intent crime.

Representative Bastian inquired about striking the following language in line 14 "whether of a minor or serious nature,". Representative Sali recommended adding back in the language of "and willfully and unlawfully".

Chairman Field asked for unanimous consent **to hold S 1061 for a time certain until Tuesday, March 15, in order for all interested parties to resolve their concerns with the bill. There being no objection, the bill was so held.**

S 1153: Senator Goedde was recognized to explain the legislation. This bill would make it a felony to intentionally abuse a vulnerable adult. The Senator yielded to Mike Kane, Idaho Sheriff's Association, to more fully explain the bill. Mr. Kane said vulnerable adults are those persons who lack the capacity to make informed judgments and informed consent. Currently, the abuse of a vulnerable adult is a misdemeanor, no matter how grave the injury is. This bill makes it a felony to exploit a vulnerable adult in those cases where the monetary damages exceed \$1,000.00.

It makes it a felony to intentionally abuse a vulnerable adult where great

bodily harm is likely to result. Great bodily harm is dangerous injuries such as broken bones, injured internal organs, etc. Negligent injury remains a misdemeanor.

MOTION: Representative Wills moved **to send S 1153 to the floor with a Do Pass recommendation. Motion carried.** Representative Wills will carry the bill on the floor.

S 1063a: Michael Kane was recognized. Idaho Code currently makes it a minor misdemeanor to take someone else's vehicle and use it without the intent to permanently deprive the owner of the vehicle. On the other end of the spectrum, when someone steals the vehicle with the intent to permanently deprive the victim of that vehicle, it is considered to be grand theft which carries a 14 year penalty. This bill is designed to deal with joy riding cases (cases where there is no intent to permanently deprive) where significant damage is done to the vehicle or significant amount of property is taken.

In cases where more than \$1,000 damage is done to the vehicle, or more than \$1,000 value of property is taken, this bill would create a 5 year felony. Similarly, where the combination of loss and damage exceeds \$1,000, the 5 year penalty would apply. The bill also makes it clear that if the vehicle is damaged accidentally during the joy riding incident, or if the vehicle is abandoned and is damaged by another or property is stolen by another, the original joy rider will be held responsible.

MOTION: Representative Bastian moved **to send S 1063a to the floor with a Do Pass recommendation. Motion carried.** Representative Bastian will carry the bill on the floor.

S 1120: Michael Kane was recognized. This bill is designed to set up a mechanism wherein retired peace officers may qualify for a concealed firearms permit.

MOTION: Representative Ellsworth moved **to send S 1120 to the floor with a Do Pass recommendation. Motion carried.** Representative Ellsworth will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 2:45 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 15, 2005
- TIME:** 2:45 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** Representative Wills
- GUESTS:** See attached sign-in sheet
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Clark moved to approve the minutes of the meeting held on March 11, as written. Motion carried.
- S 1061:** Ralph Blount, Attorney General's Office, was recognized to explain S 1061 which was held over so that all interested parties could discuss the language and resolve concerns. Mr. Blount said the drafters of the legislation met with Representative Sali to discuss the legislation in more detail. The purpose of the bill is to amend section 18-918(2) of the Idaho Code to restore the intent of the legislature by eliminating the "double intent requirement."
- The problem with the "double intent requirement" is that it is confusing to judges, juries, prosecutors and citizens. Judges do not know how to instruct a jury on "double intent." Under current law the courts are being asked to instruct the jury on the intent of willfully twice; one time "willfully" requires no intent to injure and another time "willfully" requires intent to traumatically injure, which is in conflict with the Idaho Code, section 18-101(1) definition. This bill simply clarifies the language of the felony domestic violence to avoid the now present confusion.
- PRO:** Ken Jorgensen, Deputy Attorney General, was recognized. Mr. Jorgensen told the members that Jan Bennetts with the Domestic Violence Unit had written a letter in support of the bill (attachment). She was unable to attend the meeting.
- Representative Sali expressed concern over the language of "traumatic injury which might include injuries such as scratches. Mr. Jorgensen said sometimes small scratches may indicate other acts of violence. Although this statute is broad, it is broad for a specific reason. If better language can be drafted in the future, the parties would be glad to do so.
- MOTION:** Representative Bastian moved **to send S 1061 to the floor with a Do Pass recommendation.** Representative Nielsen spoke against the motion.

- SUBSTITUTE MOTION:** Representative Harwood moved **to hold S 1061 in Committee**. In support of his motion, Representative Harwood said all germane parties could work on the language during the summer and bring a different piece of legislation back next session. **Motion failed.**
- ORIGINAL MOTION:** The original motion was **to send S 1061 to the floor with a Do Pass recommendation. Motion carried.** Representatives Ellsworth, Harwood and Nielsen asked to be recorded as voting "No" on the motion. Representative Bastian will carry the bill on the floor.
- S 1036a:** Colin Connor from the Department of Correction was recognized. Mr. Connor said the sponsor of the bill is out of town. Chairman Field then asked for unanimous consent **to hold S 1036a for time certain, until the Thursday, March 17, meeting.** There being no objection, the bill was so held.
- S 1119:** Molly Steckel was recognized to explain. This bill makes emergency medical service providers eligible for the Idaho Law Enforcement and Firefighting Medal of Honor. Emergency medical service providers make a significant contribution to their communities and take many risks in the line of duty. Often, these are the first people to arrive at the scene. Adding them to the Medal of Honor will acknowledge the contributions of these dedicated individuals.
- MOTION:** Representative Clark moved **to send S 1119 to the floor with a Do Pass recommendation. Motion carried.** Representative Shirley will carry the bill on the floor.
- H 295:** The Honorable Timothy Hansen, Magistrate Judge of Ada County, was recognized. H 295 amends a section of the Idaho Safe Haven Act. Currently, the statute states that a safe haven shall not inquire as to the identity of the custodial parent and, if the identity of a parent is known to the safe haven, that information shall be kept confidential. This bill provides that the safe haven shall inquire as to the identity and residence of the child's parents, information relevant to the child's status as an Indian child under federal law, and any relevant medical history of the child. Such information would be subject to the provisions regarding confidentiality contained in statutes and in the Idaho Administrative Code.
- This revision is intended to protect the privacy of birth mothers using safe havens, while providing for the gathering of information necessary for the court to insure that it is acting in the best interests of the child and in compliance with federal law. A judge will ultimately decide whether information should be given out or not.
- MOTION:** Representative Clark moved **to send H 295 to the floor with a Do Pass recommendation. Motion passed.** Representatives Harwood and Nielsen asked to be recorded as voting "No" on the motion. Representative Clark will carry the bill on the floor.
- H 325:** Judge Hansen was recognized to explain. This bill incorporates several changes in the Child Protective Act, Adoption of Children Act and Termination of Parent and Child relationship Act. These changes have been recommended by the Statute and Rules Subcommittee of the

Supreme Court's Child Protection Committee. The changes are intended to harmonize provisions of these acts, insure compliance with federal requirements and provide added safeguards for the rights of parents and children.

The provisions of the Child Protective Act have been reordered and renumbered to more closely reflect the sequence of procedures in actual cases and to make the provisions of the Act more accessible and understandable.

A provision has been added making clear that a shelter care hearing is required when a child is removed from a home based on a court's order at the time of issuance of the summons. A report by the Department of Health and Welfare is made mandatory following the filing of the Child Protective Act petition.

A provision has also been added providing for procedures, including a hearing, where a child who has been placed under protective supervision is removed from the home.

In addition, definitions contained in the different acts are harmonized. Grounds for termination of the parent-child relationship have been revised and clarified. Finally, where an adoption arises from a Child Protective Act case, or where the court has jurisdiction under the Act over a child who is the subject of a termination case, the court would have jurisdiction over the adoption or termination case unless the court relinquishes its jurisdiction.

MOTION: Representative Clark moved **to send H 325 to the floor with a Do Pass recommendation.** After lengthy debate by the members, Representative Smith **called for the question.** Unanimous consent was given by a show of hands to close the debate. **Motion carried.** Representative Nielsen asked to be recorded as voting "No" on the motion. Representative Clark will carry the bill on the floor.

H 301: Patricia Tobias, Administrative Director of the Courts, was recognized. This bill provides a statutory framework for mental health courts much the same way as the Drug Court Act provided when it was adopted in 2001. The bill would expand the Idaho Drug Court Act to provide for mental health courts. The Supreme Court would have responsibility for administering any appropriations from the Legislature for mental health courts. District courts in each county would have authority to establish mental health courts in accordance with the standards set by the Supreme Court's Drug Court Coordinating Committee.

This bill does not address any appropriations. Coeur d'Alene and Idaho Falls both have mental health courts. Each person admitted to mental health court, like those admitted to drug court, would pay a monthly fee of up to \$300, unless exempted for good cause. These fees would be deposited in the county drug court and mental health court fund to be used to cover expenses incurred in the operation of these courts.

- MOTION:** Representative Clark moved **to send H 301 to the floor with a Do Pass recommendation. Motion carried.** Representatives Boe and Shirley will carry the bill on the floor.
- H 326:** Patricia Tobias was recognized. This bill increases the maximum fine for misdemeanors, where a maximum fine is not otherwise prescribed by statute, from \$300.00 to \$1,000.00.
- MOTION:** Representative Nielsen moved **to send H 326 to the floor with a Do Pass recommendation. Motion carried.** Representative Field will carry the bill on the floor.
- ADJOURN:** Prior to adjourning, Chairman Field reminded the members that these bills had already been explained and it is important to support them on the floor. There being no further business to come before the Committee, the meeting was adjourned at 4:45 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 17, 2005
- TIME:** 3:00 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** None
- GUESTS:** See attached sign-in sheet
- MOTION:** Chairman Field called the meeting to order. The first item of business was **S 1121**. Because the bill would require a rather long time to hear, the Chairman said if there were no objection, **the bill would be put at the top of Monday's agenda. There being no objection, the bill will be held until Monday's meeting.** The Chair asked the members to review the minutes. Representative Wills moved to approve the minutes of the meeting held on March 15. Motion carried.
- H 334:** Chairman Field turned the gavel over to the Vice Chairman in order to present the bill. This bill addresses the money which will be allotted for mental and drug courts. It was introduced in Ways & Means so that it could be heard as soon as possible. There is a trailer bill which is in the Revenue & Taxation Committee which will increase the surcharge from 2% to 3% from the Liquor Dispensary Fund. In the printed bill, the Drug Court and Family Court Services Fund becomes the Drug Court, Mental Health Court and Family Court Services Fund. Money deposited into the fund could be used for the present specified purposes, and also for the operation of mental health courts, mental health assessment, treatment and supervision, and other court services as provided by statute.
- MOTION:** Representative Clark moved **to send H 334 to the floor with a Do Pass recommendation. Motion carried.** Representative Field will carry the bill on the floor.
- S 1166:** Michael Henderson, representing the Courts, was recognized by the Chairman to testify. This bill addresses the liability arising from the actions of "shared" employees. There are county officials and employees who perform clerical and other duties for the courts. While so acting, the county officials and employees are subject to the control and supervision of the administrative district judge. By stating that shared employees, while performing functions and duties of the courts, are employees for purposes of the Tort Claims Act, the bill would make it clear that the State of Idaho has the responsibility of indemnifying and defending shared employees for claims of wrongful acts in the course of performing such duties. In conclusion, Mr. Henderson said the Courts believe this bill concisely states the law.

MOTION: Representative Clark moved **to send S 1166 to the floor with a Do Pass recommendation. Motion carried.** Representative Pence will carry the bill on the floor.

S 1036a: Richard Haas, Department of Correction, was recognized to explain the bill. The Department provides health care to inmates in accordance with the standards that apply to health care for prisoners. The bill defines the amount of payment to be paid to a provider of a medical service.

Currently, health care services are provided via contractual agreements with privatized correctional health care companies, private prison companies, county jails and entities who have agreements to provide health care services to county jails. The contract accounts for approximately 80% of the Department's costs for inmate health care.

The annual cost of providing health care to inmates has increased during the past four years from approximately \$9,000,000.00 to \$13,000,000.00. The contract requires the company to assume all financial risk for providing the required health care. The current contract expires September 30, 2005 and the Department will issue a new contract. Due to the rapid increase in the cost of health care, it is anticipated that to obtain a similar total risk contract, the Department's costs will be much greater than the current costs.

The Department is expecting the providers to now want to share the risk. The Department expects some degree of risk sharing will be the best value for the state.

MOTION: Representative LeFavour moved **to send S 1036a to the floor with a Do Pass recommendation. Motion carried.** Representative LeFavour will carry the bill on the floor.

S 1062a: Chairman Field said Representative Ring carried this bill on the floor. The Chairman unaware of the floor movement to defeat the Bill. She stated the bills heard in committee are sometimes controversial and difficult. She reiterated she didn't want anyone in the committee, who carries a bill, to face their own committee members in a floor attack. It is better to work out a better solution in committee. Therefore, she requested that the bill be returned to the Committee. The Chair recognized William von Tagen from the Attorney General's office.

Mr. von Tagen handed the members a proposed amendment which resolves concerns in the language of the bill. This new language is acceptable to the Attorney General. The amendment language was drafted after working with members of the Committee. The first change in section (1) reduces the incarceration time from 20 years to 15 years. In section (2), the words "choking or" have been added. In section (3), the first sentence has been stricken. In the next sentence, after the word "kill", it was recommended to add the words "or injure". In section (4) "household member" has gone back to the original definition. In section (5), a "dating relationship" has been defined.

MOTION: Representative Smith moved **to send S 1062a to General Orders with**

Committee amendments attached. In answer to a question concerning the emergency clause on the bill, the Senate requested the clause.

Motion carried. Representative Ring will carry the bill and Representative Sali will carry the amendments on the floor.

S 1134: Heather Reilly, Idaho Prosecuting Attorney's Association, was recognized. Under current law, a vulnerable adult is defined as a person 18 years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment. While drafting changes to the current Abuse of Vulnerable Adult law, it came to the attention of law enforcement, prosecutors and the Commission on Aging that Idaho does not have in current code any statutes to protect vulnerable adults from sexual abuse and commercial exploitation.

This legislation creates a new section, 18-1505A Sexual Abuse and Exploitation of a Vulnerable Adult. This legislation creates a maximum 25-year prison sentence and/or a \$25,000 fine for sexual abuse of a vulnerable adult. Sexual exploitation for commercial purposes may be punished by a maximum of 15 years in prison and/or a \$25,000 fine.

PRO: Michael Kane, Idaho Sheriff's Association, was recognized. Mr. Kane spoke in support of the bill. This legislation relates to an area of the criminal law that prosecutors have to deal with. Currently, sex outside the marriage is a misdemeanor. This bill talks about the people who don't have the ability to make decisions.

PRO: Sarah Scott, Program Manager for the Commission on Aging, was recognized to answer a question regarding unintended consequences to the facilities where vulnerable adults are staying. Ms. Scott said these facilities are already being written up for various violations. This law would not have an impact on these facilities.

MOTION: Representative Smith moved **to send S 1134 to the floor with a Do Pass recommendation. The Chair called for a show of hands on the motion. Motion failed.**

MOTION TO RECONSIDER: Representative Sali moved **to reconsider the action on S 1134.** Chairman Field called for a vote on the Motion to Reconsider. **Motion carried.** Representative Hart asked to be recorded as voting "No."

ORIGINAL MOTION: The original motion was **to send S 1134 to the floor with a Do Pass recommendation. Roll call vote was requested.**

ROLL CALL VOTE: Voting AYE: Representatives Smith, Sali, Clark, Harwood, Nielsen, Ring, Shirley, Wills, Boe, LeFavour, Pense and Field. Voting NAY: Representatives McGeachin, Hart. Motion passed **12-2-2.** Representative Smith will carry the bill on the floor.

MOTION TO CHANGE VOTE: Representative Harwood moved to change his vote from AYE to NAY. There being no objection, motion carried. New vote was **11-3-2.**

S 1135: Representative Sali was recognized to explain the bill. This legislation will authorize the Attorney General to negotiate reciprocal agreements with other states related to the recognition of Idaho licenses to carry concealed

weapons in those other states. The bill also provides that the Idaho State Police shall keep records of those agreements and make them available to the public.

MOTION: Representative Smith moved **to send S 1135 to the floor with a Do Pass recommendation. Motion carried.** Representative Sali will carry the bill on the floor.

S 1136a: Representative Sali was recognized to explain. This proposed legislation will provide a uniform statewide method of dealing with abandoned or unclaimed property in the possession of a sheriff or city police department. It also provides a uniform statewide method for the acquisition and disposition of firearms that are confiscated by any public agency in Idaho.

PRO: Michael Kane, representing the Idaho Sheriff's Association, spoke in favor of the bill.

MOTION: Representative Wills moved **to send S 1136a to the floor with a Do Pass recommendation. Motion carried.** Representative Sali will carry the bill on the floor. Representatives Sali and LeFavour asked to be recorded as voting "No" on the motion.

S 1156: William von Tagen, office of the Attorney General, was recognized. This proposed legislation deals with identity theft. Specifically, it creates a new code section and amends current code to create a felony when a private person falsely pretends or assumes the position of a member of the armed forces of the United States or an officer or employee of either the federal or state government and the person demands, obtains or attempts to obtain personal identifying information about another person. The bill makes this a felony. It has an emergency clause.

PRO: David M. Dahle, Major, Idaho National Guard, was recognized. Major Dahle said the Idaho Military Division recently has received disturbing reports from families of deployed Idaho Army National Guard members. These reports describe telephonic attempts by individuals falsely representing themselves to be representatives of the US Army, in an apparent attempt to obtain social security numbers and other information about the deployed soldiers. The Military Division is deeply concerned that these efforts represent scams to gain access to privileged information for the purposes of defrauding the deployed soldier and his family.

MOTION: Representative Boe moved **to send S 1156 to the floor with a Do Pass recommendation. Motion carried.** Representatives Wills and Nielsen will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the

meeting was adjourned at 4:40 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 21, 2005

TIME: 2:45 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** Representatives Harwood, Wills

GUESTS: See attached sign-in sheets

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on March 17, as written. Motion carried.

S1164a: Michael Henderson was recognized. Mr. Henderson said this bill would make several changes in the provisions of the Children's Mental Health Services Act pertaining to involuntary treatment of children who are suffering from severe emotional disturbances and who meet the other criteria for involuntary treatment.

Mr. Henderson said we need to get help for children with mental health problems and this legislation addresses that issue. The bill requires that one of the designated examiners who treat a child following the filing of a petition for involuntary treatment be a psychiatrist, licensed physician or a licensed psychologist.

The bill would allow the Department of Health and Welfare up to seven days following the entry of an involuntary treatment order to provide a plan of treatment. Upon approval by the court, a child who is subject to involuntary treatment may at any time convert to a voluntary status if informed consent to treatment can be obtained from his/her parent or guardian. This conversion would be permitted only if the court finds that the child is not likely to cause harm to himself/herself or others, or suffer substantial deterioration.

The bill makes several changes to insure that the treatment of the child following the entry of an involuntary treatment order is consistent with the treatment plan approved by the court. The court would be permitted to conduct a review hearing at any time to monitor compliance and make any significant adjustment from the treatment plan.

Mr. Henderson explained that Section 16-2423 deals with informed consent and provides certain standards for treatment. Section 16-2435 was added which concerns the order for a mental health treatment hearing. The magistrate shall hold a hearing on a petition as soon as reasonably practicable. If the magistrate finds that the child is suffering

from a serious emotional disorder, appropriate mental health treatment shall be given with the cost born by the parent, guardian or other liable person. If no one has the ability to pay, the costs shall be born by any governmental entity ordered to pay for such care by the magistrate.

CON: Jim Baugh, Executive Director of Comprehensive Advocacy for Idahoans with Disabilities was recognized. Mr. Baugh's agency provides advice to Idahoans with disabilities. The agency wrote the Children's Protection Act ten years ago. That act was amended four times when it was drafted to insure that parents would have control when they were doing the right thing for their child. This bill corrects 90% of the language in the current statute. However, there was concern with removing the language on page 3, line 33, of the bill. Mr. Baugh recommended an amendment which would read as follows: (3) A child's parent or guardian refuses or is unable to adequately provide for the treatment of the child consistent with the requirements of public safety; and

Mr. Baugh said his agency supports the intent of the bill and it supports the efforts put into changing the language. The sponsors of the legislation have agreed to work on other language to present next year.

PRO: Paul Carroll, Administrator, Department of Juvenile Corrections, was recognized. Mr. Carroll said the Department supports the bill. The Department believes improved coordination will result and it gives the magistrates additional authority.

MOTION: Representative LeFavour moved **to send S 1164a to General Orders with Committee amendments which were recommended by Mr. Baugh stated previously. Also the Statement of Purpose will be corrected to refer to the "plan of treatment" instead of "individualized plan of treatment."** This correction will make the language in the Statement of Purpose consistent with the language of the bill. Representative LeFavour will carry the bill on the floor.

S 1165: Mr. Henderson was recognized to explain. The intent of this bill is to provide a means for the court to address in a prompt and effective manner issues that are confronted with regard to mental problems of juveniles that come before the court, both in Child Protective Act cases and Juvenile Corrections Act. The bill provides that courts could order a mental health assessment and preparation of a plan of treatment for juveniles who appear to be suffering severe emotional disturbances.

MOTION: Representative Smith moved **to send S 1165 to the floor with a Do Pass recommendation. Motion carried.** Representative Nielsen asked to be recorded as voting "No" on the motion. Representative Smith will carry the bill on the floor.

S 1121: Senator Bart Davis was recognized to explain. The Senator said this bill is as difficult of a technical correction bill that can be brought before the Committee. This bill deals with adoptions. The purpose of the bill is to provide updates to Idaho's termination of parental rights and adoption statutes. It provides that a sexual relationship constitutes notice of the potential pregnancy and adoption proceeding. As a result, the primary responsibility for protecting and establishing parental rights is upon the

unmarried biological father. Further, it modifies the consent to adoption provisions of the code by striking a consent requirement by the unmarried biological father. It repeals Idaho Code Section 16-1505 in entirety together with certain other sections throughout Title 16, Chapter 15.

In 2000, Idaho created a new way of looking at the rights of birth fathers. Since then, there have been a number of discussions among counsel and magistrates on some issues which came up. The 2000 change was put in the criminal code section and is now being put into the adoption code section where it is more easily found by attorneys and judges and will clear up some discrepancies.

Starting on page 7 of the printed bill, the language makes modifications addressing the selling of babies. No concern has been voiced about the language of the bill from page 7 through page 10. The language contained in Section 16-1505, has been moved. On page 3, lines 7 through 11 have been deleted because the language is in conflict with Section 16-1504(b). Several changes are technical corrections.

Senator Davis said it was the desire of the sponsors to send the bill to the amending order to resolve a couple of problems with the language.

**UNANIMOUS
CONSENT:**

Chairman Field asked for unanimous consent **to move S 1121 to Wednesday's calendar.** This would give time for the members to review the proposed amendments on this important issue. There being no objection, **S 1121 will be put on Wednesday's calendar.**

CON:

Chad Lough was recognized to speak in opposition to the bill. Mr. Lough is a birth father. At first he was opposed to placing his baby up for adoption. When the agency gave him the opportunity to learn more about adoption, he realized what a good decision it would be for the baby. He was grateful to be involved in the process which will give the baby the ability to know about his medical history. In conclusion, Mr. Lough said birth fathers are not out to make problems in the adoption process. But they should have the opportunity to be informed and to be heard if they want to be involved.

ADJOURN:

There being no further business to come before the Committee, the meeting was adjourned at 5:00 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 23, 2005
- TIME:** 1:15 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence
- ABSENT/
EXCUSED:** None
- GUESTS:** Lyman Belnap, Attorney; Marty Durand, ACLU
- MOTION:** Chairman Field called the meeting to order and asked the members to review the minutes. Representative Bastian moved to approve the minutes of the meeting held on March 21, as written. Motion carried.
- S 1121:** Chairman Field said, although this bill was heard on Monday, March 21, at the end of the presentation amendments were brought forth that had not been reviewed by the members. Therefore, the hearing on these amendments was postponed until this meeting to give the members time to become familiar with the proposed amendments.
- Lyman Belnap was recognized. Mr. Belnap said there are conflicting provisions in the existing code concerning parties who need to give consent to an adoption. Currently it is necessary to get the father's consent in order to go forward with the adoption.
- Since the members raised concern over the deletion of 16-1504(I) on page 3 of the printed bill, the sponsors feel it would be alright to reinsert that language with the addition that the mother must sign the voluntary acknowledgment of paternity as well.
- MOTION:** Representative LeFavour expressed discomfort with the bill and moved **to hold S 1121 in Committee.**
- Mr. Belnap said in order for an inchoate father to become a father who has established parental rights, three steps need to be taken. Those are:
- (I) Commence proceedings to establish paternity under section 7-1111, I.C. and file with the court a sworn affidavit stating that he is fully able and willing to have full custody of the child, and
- (ii) File a notice of his commencement of proceedings to establish his paternity of the child with the vital statistics unit, and
- (iii) If he had actual knowledge of the pregnancy, pay a fair and

reasonable amount of the expenses incurred in connection with the pregnancy and the child's birth.

In support of the motion, Representative Bastian said this is too complicated of an issue for the Committee to be able to take action on it at this time.

CON: Marty Durand, ACLU, was recognized. Ms. Durand said the United States Supreme Court has recognized that all fathers have a constitutionally protected interest in parenting their children. While fathers who have established relationships with their children are entitled to more constitutional protection than fathers who have not yet established their relationships with their children, even unwed fathers who have no established relationship cannot be completely foreclosed from decision-making regarding their child under all circumstances.

The ACLU believes the bill is constitutionally flawed. The proposed revision would eliminate the requirement of notice for fathers who have executed voluntary acknowledgment of paternity. These birth fathers have stepped up to the plate and admitted paternity.

In conclusion, Ms. Durand said it is a serious mistake to engraft another confusing and potentially unconstitutional provision on a statute that is already infused with confusion and constitutional uncertainty.

SUBSTITUTE MOTION: Representative Nielsen moved **to send S 1121 to General Orders with Committee amendments attached. Those amendments would be leaving in the language in Section 16-1504(i), with the addition of the three requirements to establish paternity previously outlined.** Representatives Sali and Hart spoke against the substitute motion.

CALL FOR THE QUESTION: Representative Smith called for the question which requires a 2/3 vote by the members. Motion carried. **The question is should S 1121 be sent to General Orders with Committee Amendments attached.**

ROLL CALL VOTE: Voting AYE: Representative Nielsen. Voting NAY: Representatives Smith, Sali, Clark, Ellsworth, Harwood, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence, Field. **1-15-0. Motion failed.**

ORIGINAL MOTION: The original motion was **to hold S 1121 in Committee. Motion carried.**

ADJOURN: Prior to adjourning, Chairman Field said S 1121 deals with a very important issue which needs action as soon as is possible. Also, there might still be a couple of bills coming over from the Senate which will need to be heard. There being no further business to come before the Committee, the meeting was adjourned at 2:30 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 29, 2005

TIME: 3:10 p.m.

PLACE: Room 404

MEMBERS: Chairman Field(18), Vice Chairman Smith(24), Representatives Sali, Clark, Ellsworth, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Bastian, Hart, Boe, LeFavour, Pence

**ABSENT/
EXCUSED:** None

GUESTS: Senators Kelly and Jorgenson

MOTION: Chairman Field called the meeting to order and asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on March 23, as written. Motion carried.

**UNANIMOUS
CONSENT:** Chairman Field said there were some matters to attend to prior to addressing the bill on the agenda. Regarding **RS14412, RS 14466 and RS14467, which pertained to the Lottery Commission, these were returned at the request of the sponsor.** The Chairman then asked for **unanimous consent to hold H 93, offenders, mental health records; H 158, alcohol beverage control fund; H 209, parental waiver, activities of children; and H 210, regarding when prisoners may be released on parole, in Committee. There being no objection, the bills were so held.**

S 1197a: The Chair recognized Senator Kelly to explain the bill. This proposal adds fifty felony crimes to the DNA/CODIS Act under which offenders are subject to sample collection. When the Act was written in 1996, it included legislative intent language stating that DNA is a useful law enforcement tool for identifying and prosecuting sexual and violent offenders. Legislative intent also cited the value of DNA data in the elimination of particular suspects for such crimes. Crimes identified in 1996 included those violent and sexual crimes most often committed and convicted. Burglary and domestic violence were later added. This amendment captures the remaining felonies falling into the categories of violent or sexual, in accordance with the original legislative intent.

Thirty-two of the states require any felony to go into a DNA data base. All this bill is doing is adding a number of crimes consistent with the original intent. In terms of fiscal impact, this will cause an added cost of a little less than \$1,000.00, which can be absorbed into the Idaho State Police and the Idaho Department of Correction budget as long as federal funding continues to be available.

This bill was drafted at the request of persons in the criminal justice system. The Attorney General's office helped define all of the felonies. The drafters then worked with the Idaho State Police to identify violent

crime categories. Nationally, there is a move to be more inclusive. This provides a forensic tool. It builds the data base up both locally and nationally.

MOTION: Representative Clark moved **to send S 1197a, with a spelling correction on the Statement of Purpose, to the floor with a Do Pass recommendation. Motion carried.** Representative Wills will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:45 p.m.

Representative Debbie Field
Chairman

Betty Baker
Secretary