Senate Judiciary & Rules Committee

Minutes
2005

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 14, 2005

TIME: 1:30

PLACE: Room 437

MEMBERS: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

Senator Darrington introduced the new members of our committee, **Senator Mike Jorgenson** and **Senator Kate Kelly** and welcomed them as well as our page, **Brittany Mullen**, from Declo High School.

The following are a series of bills that the Supreme Court has recommended to the Governor concerning defects or omissions in the law, as required under Article V, section 25 of the Idaho Constitution

RS14528 **Mike Henderson**, Legal Counsel for the Supreme court presented this legislation that deals with expungement of juvenile convictions under the Juvenile Corrections Act providing for expungement in certain cases where the juvenile "has not been adjudicated. However, because of an amendment to this statute in 2004, this subsection is not contained in the proper subsection and needs to be changed.

MOTION: **Senator Davis** made a motion to send RS14528 to print. Second was by **Senator Burkett** and the motion carried by a voice vote.

RS14529 This legislation would amend Idaho Code Section 19-851 to make clear that "serious crime" includes any misdemeanor that includes the possibility of confinement.

MOTION: **Senator Lodge** made a motion to send RS14529 to print. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS 14530 This bill relates to the Juvenile Corrections Act to clarify that courts have jurisdiction for offenses that occur in the State of Idaho.

MOTION: **Senator Richardson** made a motion to send RS14530 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS14531 Relating to Courts to provide clarity that the magistrate's division of the district court is a court of record.

MOTION: **Senator Jorgenson** made a motion to send RS14531 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

Olivia Craven, Executive Director of the Commission on Pardons and Parole introduced the members of the Commission to the committee. They are Anna Jane Dressen, Robin Sandy, Mike Mathews, Del Ray Holm, and Bud Brinegar.

Anna Jane Dressen - appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2005 and expiring January 1, 2008.

Ms. Dressen is an Idaho native who lives in Coeur d'Alene and is being re-appointed to the Commission. She told the committee that the work is challenging, unique and sometimes heartbreaking, but can also be rewarding. They have recently been reviewing those for pardons who have gone into the world and made anew life after keeping conditions of parole and she assured the committee that "the system works".

Senator Darrington asked about the rate of parole, which is 63%. Ms. Dressen attributes this to better prepared people who cooperate with the programs. When the Commission reviews the file material, they find they are able to conduct themselves in a better manner. She is in strong support of hearing officers. **Senator Richardson** asked about prison capacity moving faster, and Ms. Dressen responded that if there were more programs, prisoners would move through the system faster.

Senator Bunderson asked about mandatory minimums for the prison population. Ms. Dressen said that mandatory minimums are for very serious crimes and that judges usually add time to them, not cut the time down. She would like to see more halfway houses. **Senator Davis** asked her on average, how many hours she spends with hearings. She said that they serve in panels of 3 and usually spend one to one and a half days reading to prepare for the hearings. They have hearings for 80-100 days, and some of those days are 16 hours long. **Senator Davis** thanked her for her service on behalf of the State of Idaho.

Senator Lodge also thanked her and her family for her service and inquired about the percentage of those parolees with family support. Ms. Dressen replied that there is more support than you would think, as they usually have a packed house for the hearings, and she would guess about 65% have family support.

Ms. Dressen expressed annoyance when the inmates sit on their bunks and don't want parole. When this happens, their rewards are taken away. For them to stay in prison is the salary of a school teacher, but if they are kicked out, they will commit a crime to get back in. **Senator Jorgenson** asked about the rewards and was told that inmates need to work to pay for goods in the commissary. **Senator Burkett** asked about those who don't want parole and was told that there are about a 100 a year who refuse parole and programming.

Other members of the Commission spoke briefly to the committee. Del Ray Holm has been on the Commission for 22 years and feels that if the Department of Correction will prepare the inmates, the Commission will get them out. Mike Matthews has served for 10 months and remarked that it is unbelievable to see that many people with that many problems. There is no one else to take the mental inmates so they stay there to protect society and help families. Robin Sandy told the committee that if we would do away with drugs, there wouldn't be problems, as there are so many that have inhaled chemicals and now have no short or long

term memory and if released, simply cannot remember to not commit a crime. They cannot remember being trained, so the programs don't work for them.

OVERVIEW

Olivia Craven gave the committee an overview of the activities of the commission for the last year.

The Commission is composed of 5 part-time members, who are appointed by the Governor for 3-year terms. They conduct hearings every month. For 8 months of the year, these hearings are in Boise, and for 4 months they are in the Northern and Eastern part of the State. During the holdbacks, hearings in Orofino were done by video conference. This saved about $12,000 but isn't working as well as an actual hearing, so those visits will resume in May.

There are seven crimes where the Commission conducts the hearings and makes a recommendation to the Governor for final approval. They are Murder, Voluntary manslaughter, Rape, Kidnapping, Lewd and Lascivious conduct with a minor child and manufacture or delivery of a controlled substance. In CY 2004, there were 1904 hearings, 122 fewer than in 2003. There were 1018 releases/parole, which is 157 fewer than in 2004. The parole grant rate is 60%, which is the same as 2003, but 4% more than in 2002. All parole decisions of the Commission can be appealed and they grant 33% of the appeals. The return rate for 2004 was 35% and about 33% of those arrested for violations are reinstated. In CY 2004, 52% of the violators had used meth.

She concluded that there are no pat answers to solving the problem of crime. Drug Courts on the front end are a very positive part of our Criminal Justice System to divert offenders into treatment and the process is to balance the safety and good of the general public and rehabilitation of the offender. A previous administrator called the Commission the "conscience" of the Idaho Department of Corrections. She invited the committee members to visit a hearing and see what the Commissioners do.

ADJOURN: Meeting was adjourned at 2:50 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE:	January 19, 2005
TIME:	1:30 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Jorgenson, Burkett, Kelly
ABSENT:	Senator Sweet
COMMITTEE VOTE:	**The committee voted on the Gubernatorial Appointment of Anna Jane Dressen to the Commission of Pardons and Parole. Senator Jorgenson made the motion to send the confirmation to the full Senate. Second was by Senator Bunderson and the motion passed by a unanimous voice vote.**
MINUTES:	**Senator Lodge** made a motion to accept the minutes of January 14. Second was by **Senator Jorgenson**. Motion carried by a voice vote.
RS14489	This legislation was presented by David Haas, from the Dept. of Correction and is adopting a new section to set forth provisions applicable to the medical costs of state prisoners housed in correctional facilities. The State board will pay a provider of a medical service for any and all poisoners confined in a correctional facility, for an amount no greater than the reimbursement rate applicable based on the Idaho Medicaid reimbursement rate.
MOTION:	**Senator Davis** made a motion to send RS14489 to print. Second was by **Senator Richardson** and the motion carried by a voice vote.
RS14410C1	This legislation presented by Mond Warren of Health and Welfare will help the state protect vulnerable Idahoans by providing the Department with statutory authority to require fingerprint-based criminal history background checks on employees, contractors, providers and others who have unsupervised contact or provide direct care services to children and vulnerable adults.
MOTION:	**Senator Richardson** made a motion to send RS14410C1 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.
RS14379	George Gutierrez, Industrial Commission presented this legislation that increases the funeral, burial, and cremation benefits under the Crime Victim's Compensation law for victims of violent crime in Idaho from $2500 to $5000 when they have no other source of funding.
MOTION:	**Senator Jorgenson** made a motion to send RS14379 to print. Second was by **Senator Burkett** and the motion carried by a voice vote.
RS14574	**Senator Davis** presented this legislation that amends the method of

service of process on a corporation formed for condominiums. It also provides that service of process on a corporation shall be on the registered agent of the corporation.

MOTION: **Senator Lodge** made a motion to send RS14574 to print. Second was by **Senator Burkett** and the motion carried by a voice vote.

RS14295 This legislation presented by **Senator Davis** provides to limit the rights of a judgment creditor in its collection efforts. This legislation would provide that the charging order is exclusive remedy for satisfying a judgment against a members LLC interests.

MOTION: **Senator Lodge** made a motion to send RS14489 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RS14535 **Senator Davis** also presented this legislation which proposes to repeal Idaho's current version of the Uniform Limited Partnership Act. In its stead it provides principally for the adoption of the National Conference of Commissioners on Uniform State Law (NCCUSL) promulgation of the Uniform Limited Partnership Act. He said that Dale Higer will present the bill when it comes back to the committee.

MOTION: **Senator Bunderson** made a motion to send RS14535 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RULES REVIEW: **Chairman Darrington** turned this portion of the meeting over to **Senator Richardson,** who is Vice-Chair for the Rules Review.

Kathy Baird, Management Assistant for the Board presented the pending rules which are the result of legislation passed in 2003. This is a new section of rules that went into force in October of 2004, but there are a few amendments that needed to be made prior to submitting the notice of pending rule. The Board conducted public hearings, met with providers, distributed the draft document to the courts and various others and solicited suggestions. They incorporated many suggestions and have received no negative comments from the courts or other criminal justice entities. Only one concern about evaluation costs was expressed. Ms. Baird passed out a copy of the format for psychosexual evaluations (See attached #1) The purpose for setting a required evaluation format is to provide the courts with standardized reports, which is the key to ensure high quality and consistency in the reports statewide.

Last year, when the rules were presented, there were questions about the definitions for predatory and violent sexual predator. Ms. Baird told the committee that this language is consistent with statutory or federal definitions. Also, there was concern about the term "violent" and that definition was eliminated altogether.

In Section 040 components for specialized training are identified. Experience qualifications require evaluators to have 2000 hours of adult sex offender evaluation and treatment experience within the past 10 years for initial certification. These must include at least 250 hours of adult sexual offender evaluation experience and at least 250 hours of adult sexual offender treatment experience. The evaluator also needs 40 hours

of formal conferences, symposia or seminars relevant to treatment and evaluation within the preceding two years. No more than 10 hours of continuing education units may be from online educational sources and verification of program completion must be provided with the renewal application. These qualifications are essentially the same as those set by the board as mandated in 1998 and passed into law in 2003, and following The Association for the Treatment of Sexual Abusers (ATSA) guidelines.

Ms. Baird told the committee that they have been questioned why a sex offender evaluator should be required to have training and experience in sex offender treatment. She explained that psychosexual evaluations completed for the courts prior to sentencing must include a recommendation as to whether an offender is a good candidate for community supervision and for treatment. The board feels strongly that although evaluators are not required to also treat sex offenders, that in order to thoroughly assess offenders amenability to treatment, the evaluator must have an understanding of sex offender treatment and this is consistent with the standards in many other states and also ATSA guidelines.

Under legal advice, the board developed an approved evaluator conditional waiver status. Waivers are only good for 3 years, and after the first and second years, the evaluator will be required to provide a progress report as well as his plan for the coming year to meet the end goal. There will be a central roster of evaluators, and by statute, only providers on the roster are eligible to perform sex offender evaluations for the courts.

She informed the committee about the use of post-conviction sexual history polygraph as a valuable tool for verifying an offender's self-report of sexually offensive behavior. This use is intended to reveal information about the extent of the offenders paraphilias, not for self-incrimination. This is highly recommended and its use does not violate an offender's 5th amendment right and also is supported by the Idaho Attorney Generals criminal law division. The standards is that polygraph examiners are required to be Post Conviction Sex Offender Testing certified by the American Polygraph Association (APA).

The last comment she made was about the lack of required supervision for the potential evaluator's experience with sex offenders. This is a concern of the board, but at this time, they cannot make this a requirement because they cannot specify who is approved to provide the supervision or under what circumstances. They will revisit this issue when the certification system has been in force for a year or two and then they can rule that only current certified evaluators who meet specific standards are qualified to provide supervision for those providers seeking sex offender evaluator certification. They will also work toward creating an affiliate evaluator status and with that, eliminate the conditional waiver. She told the committee that the courts are awaiting their first list of evaluators, and they will have that list ready by the end of January.

Thomas Hearn, Chairman of the Sex Offender Classification Board, read a letter that he had given to the committee members. (See attached #2)

Dr. John Morgan of Aztlan Counseling and Testing Services, located in Caldwell, Idaho told the committee of his concerns about the pending rules of the SOCB. He has been doing psychosexual evaluations for over 10 years, but not treatment. He also regularly attends seminars, symposia and workshops dealing with evaluation and treatment of sex offenders. He said there is no empirical research that shows treatment experience makes for a better evaluation outcome. Also, requiring treatment experience in order to do evaluations is not universally recognized as an acceptable standard of practice within the profession. For example, California uses "and/or" language that is superior to the proposed "and" language proposed by the Board.

He stated the rationale presented that some communities are "too small" to allow for separation of treatment providers and evaluators has not been documented. He does evaluations in Weiser, Cascade, Mountain Home, Caldwell, Boise, Payette, Emmett, Murphy and McCall. He also urged the committee to refer the rules back to SOCB for refinement through collaborative involvement with the professionals practicing in the field, including judges, prosecutors and mental health practitioners. He would also like to see "and./or" language added to section 040.045

ADJOURN: Time for this meeting was gone and as another committee meets in the room, discussion will be continued at the next meeting to be held on Friday, January 21. Meeting was adjourned at 3:00.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 21, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of January 19 as written. Second was by **Senator Sweet** and the motion carried by a voice vote.

RS14656 Robert Aldridge presented this legislation relating to guardianships. The concept of a "de facto custodian" was adopted last year by the Legislature and then it was looked at for expansion. Some issues were found that needed clarification to revise provisions applicable to a court appointment of an attorney or guardian ad litem to represent a minor and this legislation addresses those items. Senator Bunderson commented that he has has positive calls about this as the basic concept is well received and will help grandparents as well as helping to educate people of the intent.

MOTION: **Senator Lodge** made a motion to send RS14656 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RULES REVIEW: (continued)

SEX OFFENDER REGISTRATION BOARD

Chairman Darrington turned the committee chair over to **Senator Richardson**, Vice chair to conduct the rules review.

Dr. John Morgan, who does sex offender evaluations in private practice spoke in opposition to this rule, reiterating his point from the last meeting. He urged the committee to refer the rules back to the Board for refinement through collaborative involvement with the professionals practicing in the field, including judges, prosecutors and mental health practitioners who haven't been heard. He also feels that IATSA is losing members because of these rules.

Senator Jorgenson asked Dr. Morgan if he represented any of the organizations that he mentioned and was told that he did not. **Senator Jorgenson** then asked why those people weren't in attendance at the meeting if they were so concerned with these rules. Mr. Morgan responded that it is due to economics, that they would have to leave their offices. **Senator Bunderson** asked if any of them had send a letter representing their position and was told that they hadn't.

Tom Hearn addressed the statements made at the hearing on January 19 that he felt were simply untrue and inaccurate. The Board did engage in

a collaborative process. Other than Dr. Morgan, there have been no other complaints about the treatment requirement. The board thinks that protection of the citizens from potentially dangerous sex offenders is not something that can be done without some effort and change. Change is not always easy for professionals and others who are comfortable with the way they have been doing things. Mr. Hearn told the committee, that "Nothing could be further from the truth than to say that the sex offender treatment experience requirement for sex offender evaluators is unnecessary and unscientific and was done without logic or reason at the whim of the people on the Board. Idaho needs to take seriously the problem of dangerous sex offenders. The Courts requested and need our help in identifying Violent Sexual Predators which is one of the purposes of these rules". His final comment was "I would hope that you have some confidence in the people on the SOCB, two of whom have had decades of experience evaluating and treating sexual offenders, and adopt these rules as written".

Kathy Baird spoke to the committee and felt that Mr. Hearn had covered the points, but she wanted to provide some additional input. The courts initiated a dialogue with the board about taking over responsibility of determining whether evaluators are qualified. They also had concerns about the lack of consistency and in some instances the poor quality of evaluation reports. The Board conducted two public hearings - both attended by only 5 people. This information was disseminated to IATSA members and other mental health providers, Department of Corrections staff, courts and other criminal justice entities, as well as the Bureau of occupational licenses. This information was presented at the Idaho Prosecuting Attorney's Association and the Idaho Correction Association conferences this summer. She has personally invited people to the board meetings during the rule writing process who had expressed an interest and no one ever came. They solicited language modification suggestions and did incorporate many of the suggestions received. She has correspondence from the Director of SANE thanking them for listening to their concerns and working with them. They did receive some comments that were totally contrary to the legislated mandate and just not workable. They responded to these individuals and explained their positions. She concluded by saying that "Our standards are reasonable and consistent with nationally recognized guidelines and they cannot expect everyone to be pleased, but these rules were not written without consideration for the individuals they impact. A great deal of work and consideration has gone into these rules over the past two years." She asked the committee to approve them so they can continue with the job they have been requested and mandated to do.

Senator Darrington asked Ms. Baird if the minutes of the public hearing are available to the public, and she said they are on the web site.

Senator Davis commented that he had not received any concerns from Eastern Idaho and he knows that the Idaho Department of Correction is favorable.

Senator Burkett asked if there was a roster of the certified evaluators yet

and was told that they are waiting for the rules to be passed to certify the first group of evaluators. At the present time there are two applicants from the Treasure Valley area and 25-25 from the rest of the state. Northern Idaho is served by people from Spokane as is Southeastern Idaho served by Logan, Utah. She expressed that this is a specialized field and the number of people are limited. **Senator Bunderson** asked if those who come from out of State were certified, and was told that they would have to have Idaho certification to practice here.

MOTION: **Senator Bunderson** made a motion to accept the Rules of the Sex Offender Classification Board. Second was by **Senator Jorgenson**.

Discussion: Senator Darrington commented that the rules did not come about rapidly, it has been a slow time consuming process. Last year, we sent them back and told them to work on them and come back. They are a fee rules which means they will continue in resolution if they are approved. Their meeting minutes are open, so anyone can seek answers to their questions. On matters of far smaller concern, as Chairman of this committee, he hears from individuals from Declo to Bonners Ferry and Wyoming and Oregon all the time. He gets numerous messages, but has heard nothing against these rules, and is in support of them.

Committee Vote: The motion carried by a voice vote.

REPORT: The Prosecution of Child Sexual Abuse - July 1, 2003 to June 30, 2004

Bill von Tagen presented each committee member with a report to the Idaho Legislature on the Prosecution of Child Sexual Abuse for the last year. This is a joint submission by the Office of the Governor and the Office of the Attorney General with information being gathered by a reserach team, consisting of Ted Hopfenbeck, Coordinator of Data Collection ; Dr. Steve Patrick Coordinator of Data alalysis and co-principal investogator and Dr. Robert L. Marsh Project Director and co-Principal investigator. Research associates were Nate Hopfenbeck, Baxter Andrews, Michelle Morrison and Terri Shafer. This report is prepared and submitted as required by Idaho Code 67-1405 and is the 16th annual report to the legislature concerning the prosecution of sexual abuse crimes against children in our state.

For the year ending June 30, prosecutions were initiated in 371 cases of child sexual abuse involving 373 victims. This is the lowest since 2000 and represents a decrease of 88 cases and 143 victims. 2003 had 459 cases, which was the highest ever. In Fiscal year, 2004, there were 116 prosecutions of juvenile offenders. After the startling 35% increase reported one year ago, the report marks a return to the number of juvenile prosecutions typically reported over the last several years. With 72% of their victims 11 years old or younger, the report again indicates that teen offenders prey upon very young children.

This report also shows a decline of 37 in the number of adult prosecutions. Adult prosecutions have declined for two consecutive years following the highest number reported in the Fiscal Year 2002 report.

Dr. Steve Patrick continued explaining the report to the committee. It is

disturbing this year that there is an increase in strangers being the offender, att 5.8%. In the majority of cases, it appears that the abuser is not a stranger lurking in the shadows, but a person known and trusted by the victim and the victim's family. In fact, in those cases in which the researchers could determine the relationship of the victim to the adult abuser, less than 6% of those prosecuted were strangers to the victim and the family. This suggests that parents can best protect their children by knowing the people with whom their children spend time and by being vigilant that those who are building relationships of trust. In more than one quarter of the cases studied, the relationship between offender and victim in unknown. Similarly, the prior criminal history was unknown for 80% of the adults convicted of child sex abuse. Additionally, one third of the cases filed during the study period had not reached disposition and thus cannot be included in statistics for conviction and sentencing. In short, this report, like its predecessor reports, tell us what we do not know as much as it tells us what we do know. If this is of concern, policymakers may wish to consider whether to take steps to allow the researchers to compile a more complete report.

Attorney General Lawrence Wasden expressed hope that this report will be a valuable resource to policymakers, prosecutors, law enforcement officers, parents and others interested in reducing this heinous crime.

A copy of this report will be kept in the committee room for future reference.

Adjournment: Meeting was adjourned at 3:00 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 24, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Jorgenson, Kelly

ABSENT: Senator Sweet and Burkett

MINUTES: **Senator Jorgenson** made a motion to accept the minutes of January 21 as written. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS14594 **Senator Darrington** told the committee that this was a compromise with the Governor's office, as he didn't want to raise fines, and the Governor didn't want to take money from the General Fund. Whenever a ticket is written, 10% of that fine goes into the General Fund. Four years ago, the law was changed through joint cooperation of the Senate and House Judiciary and Rules Committee Chairs to divert 10% of that 10% fine to go directly into the POST operational fund. The continual increase will help support the POST academy. This legislation increases the 10% to 14% that will go to POST and increases the fines by $4.00 which will give a total of $10.00 to POST and will support this correctional facility.

MOTION: **Senator Richardson** made a motion to send RS14594 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS14644 This legislation relates to the Idaho Public Safety and Security Information System, (ILETS) to revise terminology. Dawn Peck explained that the act was rewritten to remove archaic language for example, there has not been a teletypewriter system for many years. The system will remain known as ILETS, and the agencies no longer rent equipment, they just pay for when they use it.

MOTION: **Senator Lodge** made a motion to send RS14644 to print. Second was by **Senator Richardson** and the motion carried by a voice vote.

RULES REVIEW:

IDAHO STATE POLICE

Mike Becar, Executive Director of the POST academy presented the rules to the committee and also gave an overview of the POST Council, as comprised of 15 members, 3 Chiefs of Police, 3 Sheriff's, one from each of the 3 areas, North, Central and Southeastern Idaho. There are also representatives from the Idaho State Police, the Prosecuting Attorneys Office, Attorney General's office, Juvenile Correction, Adult Correction, Idaho Cities and the Idaho Counties. There is also an FBI agent and a Fish and Game officer.

These rules more adequately address military discharges, require more timely notices of employment and entrance into academies so officers are trained and certified within the statutorily allowed twelve months. The rules add continuing training requirements, eliminate some course attendance requirements for officers challenging the academy who have not been out of law enforcement over five years, and updates the patrol academy curriculum to accurately reflect what is being taught.

The rules mandate that every peace and detention officer must begin the respective POST Basic Training Academy within six months from the date of their appointment as a full-time officer. They must successfully complete 605.5 hours of instruction with 40 hours received in pre-academy computer based training, 525.5 hours received at the training academy and the 40 hours received in field training in the officer's appointment agency prior to or subsequent to attendance at the Basic Patrol Academy.

Senator Richardson asked about other academies and their requirements. Mr. Becar said that some other academies require 14 to 26 weeks, but Idaho's is 10 weeks and they are trying hard to keep that from lengthening. Applicants are send a CD that they can use to take 100 hours of training at their own agency before coming to POST.

MOTION: **Senator Bunderson** made a motion to accept the Rules of the Idaho State Police. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

Senator Darrington asked **Senator Jorgenson** and **Senator Kelly** to share their thoughts after visiting the POST academy. **Senator Jorgenson** felt that the biggest concern right now is the DNA lab and how we can use DNA technology to facilitate solving of crimes. He felt that the level of compensation isn't competitive for the lab technician, Cindy Hall and Idaho is critically vulnerable in that capacity, if she were unavailable.

Senator Kelly expressed the same feeling that well trained staff has an impact on our state and we need a few more resources or we need to out source some of it. Director Becar responded that there are two more people in the process of certifying and it takes about two years, but he didn't know if Idaho would be able to retain them.

OVERVIEW: **Idaho State Police by Colonel Dan Charboneau**

Colonel Charboneau introduced Lt. Colonel Kevin Johnson and showed with a graph (See attached #1) the duties required in this position of Deputy Director. Some of the changes in the department include a single major over patrol and one over investigations, instead of joint command to better focus at headquarters. Two investigations captains and a sergeant position were used to create 3 investigation lieutenant positions to restructure chain of command in the region and create some salary savings. This resulted in a better and faster communications from field to headquarters and aligned the department more like a police organization. It also created advancement opportunities and created better supervision due to patrol captains being involved with patrol issues.

Efforts have been focused efforts on enforcement and the "Look, Listen and Think" concept while on patrol. They have also focused on investigating, dismantling and prosecuting major drug trafficking organizations. They are educating the public more, through presentations and information sharing opportunities both in state and out of state.

Forensic Services made changes over a year ago to stem their exodus as 20% of the criminalist staff was lost in a very short time. DNA testing and firearms were the hardest hit and are in the process of rebuilding but this takes a couple of years. A second DNA analyst will be on line within 30 days and a third will be ready in 18 months.

There are currently ten trooper openings and four detective openings as twelve troopers have been deployed to Iraq. They are managing the open positions to ensure that these troopers will have jobs once they return.

He updated the committee on the Methamphetamine issue in Idaho. Meth is the most powerful nervous stimulant and creates an addiction requiring more and more of the drug for the same effect. It creates paranoia and unpredictable behavior. Addicts focus on the drug and getting it, and less and less on other aspects of their life, like their children. He is very concerned about the drug endangered children who are exposed to drugs and toxic chemicals at the drug labs. Many suffer physical harm or neglect from direct or indirect exposure to illegal drugs. Out of 37 cases, 56 kids were identified and 18 tested positive for meth. They ingest meth from touching surfaces that have dust on them and then putting their hands in their mouths. Those exposed are medically assessed within 2 to 6 hours by Health and Welfare and then given the appropriate care. There is no long-term medical follow-up and concern is for their development and educational needs. Colonel Charboneau told the committee, "There is a great need to care about these children as they are our future."

As of the end of October, 2004, 33 meth labs were seize by ISP. Since 1999 741 meth labs were seized by all law enforcement combined. It is unknown how many meth labs are in Idaho. Most of the labs that enforcement seizes are "addiction labs" or small ones that make enough to feed an addiction or sell in small amounts. These labs create 5-6 times the amount of waste for the finished product. A lot of this waste is left in the residence or flushed or thrown away.

Colonel Charboneau told the committee of a study done by Dr. John Martyny were houses and motels were cleaned up and controlled "cooks" were performed. He found that phosphine gas and meth in vapor were created immediately. The meth vapors moved throughout the area in varying degrees of concentration into duct work and left on surfaces, and children's toys. Meth residue will build up with repeated cooks and the difference in a positive test for meth can be related to exposure of the "cooks".

This problem is moving from West to East, and started in 1996. Dr.

Martyny's study shows a need for adequate clean up. Several states have or are moving to enact standards to address clean up of residual meth. At the present time there are no health based standards, which will require a long-term study to develop. Idaho has no recording mechanism to notify buyers or renters of potential hazards of the labs that have been seized by law enforcement. This can have an untold effect on families and children exposed unknowingly to a prior meth lab. Other states (recently Oregon) have controlled the sale of pseudoephedrine or ephedrine. Without these chemicals, meth production is more difficult and requires tightly controlled chemicals and more expertise. Lack of this control will bring more buyers into Idaho. A giant step is needed to control the immediate ingredients in the process, which may cause an inconvenience to some of the general public but in the long run will bring dramatic results.

Senator Darrington asked if they are finding less meth labs than in the past and if so, is it due to the criminal penalties involved? Colonel Charboneau responded that penalties help by making the environment hard for these people to peddle their poison. Also, heavy enforcement helps and the State Police are relied heavily upon for meth labs. It takes 4 officers 8 hours to do a small lab, which takes them away from their other responsibilities. Then the evidence goes into the forensic lab, so it is an all-encompassing problem. There is also an increase of meth smuggled into the state of Idaho. Several years ago, 1 oz. of meth would have sold for $1200 to $1500 in Boise, now it is $450 an ounce.

Senator Darrington thanked Colonel Charboneau for the informative presentation.

Adjournment: Meeting was adjourned at 3:00 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE:	January 26, 2005
TIME:	1:30 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Jorgenson, Burkett, Kelly
MEMBERS EXCUSED:	Senator Sweet
MINUTES:	**Senator Jorgenson** made a motion to accept the minutes of January 24 as written. Second was by **Senator Richardson** and the motion carried by a voice vote.
RS14548	Ken Jorgensen, Office of the Attorney General, presented this legislation that requires motorists to signal when merging onto a highway or when leaving a highway. This amendment simply clarifies the statute as the Legislature intended it to be interpreted in the first place.
MOTION:	**Senator Davis** made a motion to send RS14548 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.
RS14549C1	Mr. Jorgensen also presented this legislation to clarify that appointment of counsel in civil post-conviction proceedings is discretionary. The legislation eliminates the appointment of counsel in frivolous and non-meritorious cases. This brings the threshold to a level of the Federal Courts.
MOTION:	**Senator Davis** made a motion to send RS14549C1 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.
RS14550	Mr. Jorgensen presented this legislation that will clarify that the felony domestic battery statute has the same intent requirement as the aggravated battery statute.
MOTION:	**Senator Richardson** made a motion to send RS14550 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.
RS14648	Mr. Jorgensen also presented this legislation to add a new section to Section 18-923 to criminalize attempted strangulation as a felony. This is in relation to domestic violence and is intended to specifically permit the prosecution of attempted strangulation where no visible injury is present.
MOTION:	**Senator Lodge** made a motion to send RS14648 to print. Second was by **Senator Richardson** and the motion carried by a voice vote.
RS14600C1	Mike Kane presented this bill that is to increase penalties for serious case of operating a vehicle without an owner's consent, commonly called "joyriding".

MOTION: **Senator Lodge** made a motion to send RS14600C1 to print. Second was by **Senator Burkett** and the motion carried by a voice vote.

RS14706 Heather Reilly, Idaho Prosecuting Attorney's Association presented this legislation that will amend Idaho's current Malicious Injury to property or "vandalism" Statute to clarify that multiple acts of property damage to multiple victims' property may be combined and charged as one crime, if the acts are committed during a course of conduct that is a common scheme or plan. If the property damage exceeds $1000.00 then the penalty is a felony.

MOTION: **Senator Richardson** made the Motion to send RS14706 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RS14688 Ms. Reilly also presented this legislation that is seeking to amend Idaho's Injury to Children Statute, to clarify that the mental state necessary for a conviction is one of "general intent". The amendment defines willfully in a manner that is consistent with the current language and purpose of the Injury to Children code section.

Senator Davis had some concern that "willfully" means something on this set of crimes but different when it comes to a child. He questioned whether the purpose of this legislation is to define "willfully" as in Title 18. Ms. Reilly responded that "We weren't troubled until the Supreme Court told us that "willfully" didn't mean "willfully" as defined in 18-0101." She quoted from the State v Young decision "It is apparent from the context of section 18-1501 (1) that the generalized definition of willfully should not be used.

MOTION: **Senator Davis** made a motion to send RS14688 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

UPDATE **Office of the State Appellate Public Defender**

Molly Huskey, State Appellate Public Defender gave the committee an overview of the department that was created in 1998 as a mechanism to allow equal application of the death penalty among all counties. All the counties pay into the Capitol Crimes Defense Fund and are benefitted by the service of the appellate office. Jefferson County is the only one that isn't participating.

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. For 2004 they had 595 cases for the 6 attorneys. They currently have 5 cases but anticipate 7 by the end of January to be handled by two attorneys.

Ms. Huskey feels that the SAPD has built a good reputation and is well-thought of in the court system. Morale is good and they have the best and strongest staff they have ever had. They will continue to do as much work as possible without sacrificing quality, but are reaching a point because of caseload where that will become extremely difficult, if not impossible to do. To resolve that dilemma, and to bring the office into

compliance with national standards, they requested 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 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. She will have to refuse appointment to all future cases, capital and non capital until the caseload is reduced. She concluded by saying that they will continue to provide the very best service for the client, while recognizing their obligation to the Governor's office, the Legislature and the taxpayers of Idaho.

Senator Darrington thanked Ms. Huskey for an informative update and turned the gavel over to Senator Richardson, vice-chair for Rules Review.

RULES REVIEW **Idaho Division of Veterans Services - Docket 21.01.02**

Patrick Teague presented the Rules governing emergency relief for veterans. Rather than granting a general bonus to Idaho wartime veterans at the time of discharge from military service, the Idaho Legislature established a program designed to assist veterans discharged under honorable conditions at a time when the veteran or his dependents are actually in need of assistance. Throughout the year, forty $1000 one-time grants are made to eligible veterans. The Division of Veterans Services, through the Office of Veterans Advocacy administers this program. The section dealing with Idaho as Home of Record contains a proposed rule change. This requirement has been in effect for one full year and has done what it was intended to do, andt hat was reduce suspected abuses of Emergency Grant funds. However, the requirement also inadvertently eliminates, from making application, veterans who have resided in the State for many years and consider Idaho to be home. While the home of record requirement is a good one, this proposes that the Division Administrator be given the ability to waive his eligibility requirement as long as the veteran applicant has resided in the State of Idaho for at least five (5) years and is otherwise eligible. This rule change will better meet the intent of the Emergency Grant program.

MOTION: **Senator Burkett** made a motion to approve the rules of the Division of Veterans Affairs. Second was by **Senator Lodge** and the motion carried by a voice vote.

RULES REVIEW: **Board of Certified Shorthand Reporters**
IDAPA 49 Docket 49.0101- Rules of Procedure

Byrl Cinnamon, President of the Certified Shorthand Reporters Board presented the rules to the committee. The majority of the proposed changes are housekeeping or clerical updates due to a relocation and new address of the Board. The Board recognized that individuals have more than one opportunity to take the examination each year, and are open to anyone who files the appropriate application. Therefore, some sections have been deleted and the items moved to other areas where they are better suited. They are adopting what already existed in the Idaho Administration Act.

MOTION: **Senator Bunderson** made a motion to accept the rules of the Certified Shorthand Reporters Board. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

Senator Darrington asked **Senator Bunderson** and **Senator Kelly** to visit with the Idaho State Police to determine if the laws are adequate with regard to methamphetamine and other controlled substances.

Adjournment: Meeting was adjourned at 2:38 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 28, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Kelly** made a motion to accept the minutes of January 26 as written. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS14612C1 **Senator Davis** presented this legislation to amend Rule 7 of the Idaho Senate. It deletes the formal requirement of fixing attache' compensation by resolution. It allows Senate Leadership to establish payroll policies and manage them in a more businesslike fashion.

MOTION: **Senator Lodge** made a motion to send RS14612C1 to print. Senator Darrington commented that as this is a resolution, it would automatically be sent to the floor, so that motion would include recommendation for a do pass on the floor. Second was by **Senator Sweet**. The motion carried by a voice vote.

In light of the adopted motion, **Senator Davis** encouraged the inclusion of a committee report, recommending the rule change to the Senate as a whole. As that report was for RS14612C1 to be sent to print, then another motion was needed to to send the resolution to the floor with a do pass recommendation. **Senator Darrington** said it had not been the practice to make a motion to send resolutions to the floor because when they are sent to print they automatically go to the floor. He felt this may be unnecessary but had no objections to this action.

Senator Davis suggested as he looked at Senate Rule 37, referring to amending or repealing of a temporary or permanent rule that it requires a 2/3 vote except by simple majority if the majority is on the report of the Judiciary and Rules committee. After visiting with the Lt. Gov on the matter, and then referring to Rule 21, because these resolutions only deal with rules, in order to act on the committee report for the simple majority the committee would have to formally recommend adoption by the full Senate. A second motion for action would be in agreement with the secretary's knowledge of procedure and **Senator Davis's** suggestion.

MOTION: **Senator Sweet** then made a motion to send RS14612C1 to the floor with a do pass recommendation. Second was by **Senator Lodge**.

MOTION: **Senator Burkett** made a substitute motion to send the bill to the floor

through the normal resolution process, as it is a rule change and should be voted on by a 2/3 majority. Second was by **Senator Kelly.**

Senator Davis spoke in opposition to **Senator Burkett's** motion saying "Senate Rule 37 (3) is contrary to **Senator Burkett's** understanding. When the rules were adopted at the beginning of both the organizational session and at the beginning of this year, the maker of the motion moved that the rules of the second regular session of the 57th legislature be adopted as temporary rules, so all we have as a Senate are temporary rules, and to amend those temporary rules, it will only require a simple majority vote, if the vote is on a report of the Judiciary and Rules committee. I have visited with Madam Secretary (Jeannine Wood) and with the Lt. Governor as it relates to that interpretation and the three of us are on the same page".

Senator Burkett agreed with **Senator Davis's** interruption of the rule, but the question is can it be sent to the floor without the report and require a 2/3 vote but if it were sent with the report of our recommendation it would only require a majority vote, and he feels the rules are important enough to follow the normal procedure.

The motion to be voted on is **Senator Burkett's** substitute motion for RS14612C1 to go to the floor for print without the do pass recommendation. The motion failed to pass by voice vote. Vote on the original motion to go to the floor with a do pass carried by a voice vote and RS14612C1 will be sent to print, and once printed, will go directly to the floor with a do pass recommendation.

RS 14613

Senator Davis also presented this legislation to amend Senate Rule 47 to delete subsection (b), which states that "if any laws or constitutional provisions of the State of Idaho are inconsistent with these rules, the conflicting rule shall defer to the law or constitutional provision." **Senator Davis** told the committee that without a doubt, the Constitution of the State of Idaho is always the overriding instrument as compared with Senate Rules and therefore it is unnecessary to state that a Senate Rule is subordinate to the Constitution.

Senator Davis provided language from Mason's Legislative Manual, 2002, page 15 "Rules of legislative procedure are derived from several sources and take precedence in the order listed below. The principal sources are as follows:

(a) Constitutional provisions and judicial decisions thereon.
(b) Adopted rules.
(c) Custom, usage and precedents.
(d) Statutory provisions.
(e) Adopted parliamentary authority
(f) Parliamentary law. "

Senator Davis continued with " the effect to strike subpart (b) would be to more properly reflect the way to interpret the procedures in the Senate in setting the rules, to first look at the constitution, then at the rules, then

custom, statutory provision, and the like." He asked the committee to send it to the floor to do pass.

Senator Bunderson asked if there would be any situation where the Senate Rules are not consistent with the Constitution. He was told that if there were, the court would still have the right to force the constitution, and this language is superfluous and is not necessary. **Senator Burkett** agreed and asked, "if the constitution can trump Senate rules, is there a problem re-stating that in our rules, to recognize and confirm the fact that when we proceed in the Senate we are doing so under the Constitution. Does it hurt to leave that language in our rule?" **Senator Davis** responded no to those questions.

Allen Derr, representing the Idaho Press Club and Idaho Newspapers testified that this action is unnecessary. The legislation has to pass both houses and this body has historical and noble history and precedent of openness in proceedings and committees. To pass this sends the wrong message. The public will get the message that we are above the constitution and the laws. He concluded by telling the committee that the "public will greatly remember what you do here. Leave it as it is."

MOTION: **Senator Jorgenson** made a motion to send RS14613 to print. Second was by **Senator Richardson**. **Senator Bunderson** made a substitute motion to send RS14613 to print and to the floor with a do pass recommendation. Second was by **Senator Jorgenson**.

DISCUSSION: **Senator Burkett** commented that voting yes on this has two major problems and the language should stay in place. This will set a standard to the public that we don't have to abide by other rules and can discriminate based on gender or race or minimum wage. He feels we should run the Senate according to the laws of the State of Idaho and he objects to removing the language. **Senator Davis** responded that the Constitution is a living document and has been changed several times. Language that doesn't add to the laws brings confusion and this language just restates what we already do. **Senator Sweet** felt the points made by **Senator Davis** are valid and as guided by Mason's Manual are inline with the constitution, and he supports this change.

Committee Vote: The motion carried by a voice vote.

RS14617 **Senator Davis** also presented this legislation to amend Senate Rule 20. It deletes in subsection (e) "after the chairman has identified the authorization under the provisions of Section 67-2345, Idaho Code, for holding the executive session. An executive session may be held as provided in Section 67-2345, Idaho Code." This legislation adds the language, "at which time persons who are not members of the legislature may be excluded, provided however, that during such executive session, no votes or official action may be taken." He asserted that "the effect of the amendment is that the House and Senate Rule on Executive Session are consistent" , and he believed it was a better method of addressing Senate Rules. This rule is intended to be used only in rare and extreme circumstances. **Senator Davis** commented that he has never been on a committee that has gone into executive session nor attended an executive

session, and he is the Majority leader. In the approximately 5400 committee meetings held since he has been here, there have only been six that went into executive session including the House. Of these, no action was taken. All the possibilities could have been enumerated that would allow a committee to go into executive session, but had that been done, after September 11th, some of the executive sessions that occurred involved issues relating to terror. **Senator Davis** asked that this legislation be sent to print and directly to the floor.

Senator Burkett commented that under the existing rule 20 (E) where it refers to Section 67-2345, that would restrict any past executive sessions in committee to the parameters of 67-2345. Is it true that after 911 that any executive committee sessions would be in violation of this rule?

felt that after 911, any executive session was in violation of existing Senate Rule 20 (E) and particularly Section 67-2346**. Senator Davis** responded that one individual attended an executive committee meetings to address litigation and terrorism issues.

Allen Derr also objected to the change in this rule. He commented that it was smart to put in the language, but it is not a good message to have a 2/3 vote to go into executive session without people finding out why. To give that kind of power has a potential to corrupt. The better message would be to leave it like it is.

Senator Sweet commented that where there is no action taken in executive session, there shouldn't be cause for concern.

MOTION: **Senator Sweet** made a motion to send RS14617 to print and to the floor with a do pass recommendation. Second was by **Senator Richardson**.

DISCUSSION: **Senator Kelly** said she was new to the legislature, but not new to public service or the law and she takes this very serious the trust of the public for us as a body to make open deliberations and open decisions.. She felt there should be no secret meetings allowed and no closed meetings without explanation other than the 2/3 vote.

Senator Sweet said that it was abundantly clear that from previous committee meetings, he doesn't believe this is being abused, it is just used for issues requiring sensitivity.

Senator Burkett said that people in his district who want to come to a meeting and are being told they can't. To allow an executive session for any purpose is ludicrous. He felt that if there is a rule that can be abused, it will be abused and there needs to be open government at every level and this is a troubling move.

Senator Davis responded that he also wanted open government in Idaho and he is committed to it. He referred to a letter written by Minority Leader Senator Clint Stennett last session when the Senate Resources and Environment Committee scheduled an executive session for the purpose of considering and advising legal counsel on pending litigation relating to

federal reserved water claims filed in the Snake River Basin Adjudication. Senator Stennett stated "Senator Kennedy and I believe there may be legitimate extraordinary circumstances under which it would be prudent for a committee of either house of the legislature to be able to meet in executive session, closed to the public and the press. The purpose of the meeting you have now scheduled for today may well be one of those legitimate circumstances." Senator Davis concluded, that "If the minority leader recognizes the need for those occasional rare circumstances, then this rule is appropriate as well."

Senator Richardson commented that there is a time for business and a time to get in and dig, and these special meetings give you time to really work the issues out and not have this contention made public to the world.

Senator Burkett responded that all committees need to dig and that is usually a time of contention. But the argument here today are there extraordinary circumstances that justify a closed meeting where you might be talking about litigation which would be the only potentially legitimate that has faced us in the past. In defense of the minority leader, it is a huge departure from a rule that says you can have an executive for any reason you want. It is one thing to say you are going to have executive sessions, but it is another to say you are going to have them without any guidelines or standard under which a committee would decide to go into executive session.

Committee Vote: The motion is to print and do pass. Motion carried by a voice vote. RS14617 will be sent to print and directly to the floor with a do pass recommendation. **Senator Davis** will sponsor the bill on the Senate floor.

RS14730 Heather Reilly, Ada County Deputy Prosecutor presented this legislation to amend the penalty for reckless and inattentive driving. Inattentive driving is specifically designated as a lesser offense than reckless driving. The current maximum jail sentence for reckless driving is 90 days. Therefore when the court applies the general misdemeanor penalty for inattentive driving, the result is a maximum sentence greater than that for a conviction of reckless driving. This prescribes a penalty for inattentive driving of 90 days or a fine of $300.00 or both.

MOTION: **Senator Lodge** made a motion to send RS14730 to print. Second was by **Senator Burkett** and the motion carried by a voice vote.

Due to the time factor, **Senator Darrington** asked Robert Aldridge if he would present his 6 pieces of legislation and then a motion would be made on all of them at the same time, unless anyone was concerned about an individual piece of legislation.

RS14704 Mr. Aldridge told the committee that currently there are two acts in the Idaho Code that deal with medical consents: Chapter 43 and 45 of Title 39. This act creates a single unified act repealing Chapter 43 in its entirely and including appropriate sections in the new combined act. Similarly, the existing terms of the Natural Death Act, chapter 45 are repealed and replaced by the new unified Act. These changes have been

reviewed by hospitals and doctors.

RS14716 This bill clarifies that, while a motion is required fora petitioner or the attorney for petitioner to appear at the hearing telephonically, no motion is needed if the petitioner or the attorney is instead submitting an affidavit that no objection has been received to the granting of the decree.

RS14718C1 Idaho law currently does not appear to allow the creation of what are called "purpose trusts". Nevertheless such trusts have been created in Idaho and are being administered by Idaho banks and other trustees. This bill clarifies that such trusts may be created and sets terms and conditions for their operation.

RS14731 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.

RS14754 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. At the present time, with embryos being frozen for decades, and then used to produce a child, substantial questions have arisen in court about these "afterborn heirs". This bill adds a time limit of 10 months after the death of the decedent for an heir to be born.

RS14755 Idaho law requires that prenuptial and postnuptial agreements must be recorded in their entirely to be effective for real estate settlements. However, details not relating to the real estate are revealed and this bill will not allow that particular information to be made public.

MOTION: **Senator Lodge** made a motion that RS14704, RS14716, RS14718C1, RS14731, RS14754, and RS14755 be sent to print. Second was by **Senator Sweet** and the motion carried by a voice vote.

RULES REVIEW: **Senator Darrington turned the meeting over to Vice-Chair Richardson for the Rules Review for the Department of Juvenile Corrections.**

Docket 05-0101-0401 Repeals Chapter 01 for rewrite.

Docket 05-0101-0402 Nancy Bishop, legal counsel for the Department explained that this chapter governs the regulation of those who contract to provide residential or other program services fo the department. Updates were needed to comply with changes in federal law (such as HIPAA), records confidentiality and to clarify compliance with some Idaho statutes. Other changes were made to improve standards of care and communication with the department.

Other significant changes included improved training requirements; background and criminal checks for volunteers and interns; handling of mental health emergencies; as well as meeting state and federal requirements in the area of special education. The Department of Juvenile Corrections went to a great effort to engage the stakeholders in the revision of these rules. Seven presentations were made around the

state and a number of invitations to comment were sent to both county juvenile departments and contract providers. In addition, both a version of the rules containing the details of any proposed changes (strikeover and underlined) as well as a "clean" copy were placed on the department's public web site for several weeks before the rules were submitted.

Docket 05-0103-0401 This chapter amends only a few parts of the Custody Review Board Rules. The Board began operations January 2003 and these amendments deal with areas of the rules that need clarification. They are that a juvenile must actually appear before the Board prior to his or her 19th birthday; and when the custody review board has determined that a juvenile will no longer be retained in custody, the department still has up to 45 days, prior to physical release, to finalize the juvenile's release plan.

Docket 05-0104-0401 There was some confusion as to the location of information on this docket, so it will be re-scheduled for committee review at a later date.

MOTION: **Senator Darrington** made a motion to accept Docket 05-0101-0401, Docket 05-0101-0402 and Docket 05-0103-0401 of the Department of Juvenile Corrections Rules. Second was by **Senator Sweet** and the motion carried by a voice vote.

Adjournment: Meeting was adjourned at 3:17 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 31, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MEMBERS EXCUSED: Chairman Darrington was excused today and Vice-Chair Richardson conducted the meeting.

MINUTES: There were no minutes to be approved today.

RS14608 Steve Tobiason presented this legislation on behalf of Aladdin Bail Bonds to modify bail statutes by stating the purpose of bail is to ensure the attendance of the defendant in court. This also provides a bail surety or agent 180 days to locate and return a defendant who has failed to appear in court. It identifies certain conditions which justify either the exoneration of bail or an extension of time to return the defendant. This legislation should reduce costs to law enforcement for locating and returning defendants to the state of Idaho by motivating bail sureties and agents to locate and return those who fail to make their court appearances.

MOTION: **Senator Bunderson** made a motion to send RS14608 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

S1013 Michael Henderson, legal counsel for the Idaho Supreme Court presented a series of defects in the law legislation as required by 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. . ." 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: **Senator Lodge** made a motion to send S1013 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Jorgenson** will be the floor sponsor.

S1014 Mr. Henderson told the committee that at the present time, Idaho Code 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 legislation amends Code section 19-851 to make clear that "serious crime" includes any misdemeanor that includes the possibility of confinement. This would bring the statutes on appointment of counsel in criminal cases into conformity with US Supreme Court cases, and would avoid any confusion arising form the current conflict between the statute and case law.

MOTION: **Senator Bunderson** made a motion to send S1014 to the floor with a do pass recommendation. Second was by **Senator Burkett** and the motion carried by a voice vote. **Senator Jorgenson** will be the floor sponsor.

S1015 Mr. Henderson presented this bill which relates to the Juvenile Corrections Act. 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 State of Idaho.

Senator Jorgenson asked why this legislation qualified as a defect in the law and not policy. Mr. Henderson responded that in discussion with the magistrates and those involved with the JCA, they wanted to bring the statute in line with the intent of the Legislature, and that fell into a defect in the law.

Senator Davis asked about the purpose of the JCA and was told that the agreement for jurisdiction provides correction or guidance for the juveniles, but that part is for punishment.

MOTION: **Senator Davis** made a motion to send S1015 to the floor without recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Jorgenson** will be the floor sponsor.

S1016 Mr. Henderson explained to the committee that 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 (3) subdivisions of the preceding section are courts of record." Thus, the magistrate's division was, from its 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 that time. This could lead to the impression that the magistrate's division is not a court of record. This bill would make clear that the magistrate's division of the district court is a

court of record, and that its judgments and orders are entitled to the corresponding respect and effect.

MOTION: **Senator Lodge** made a motion to send S1016 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Jorgenson** will be the floor sponsor.

S1039 **Senator Davis** presented this legislation to provide for service of process on a management body of a condominium development that has been incorporated. He would like the language changed on line 35 to strike the word "law" and to strike all of line 36, adding "Idaho rules of civil procedure". He asked that the bill be sent to the floor in the 14th order for amendment.

MOTION: **Senator Bunderson** made a motion to send S1039 to the floor in the 14th order for amendment. Second was by **Senator Burkett** and the motion carried by a voice vote. **Senator Davis** will be the floor sponsor.

S1040 **Senator Davis** presented this legislation relating to the rights of a judgment creditor against a member of a limited liability company (LLC); to provide that the charging order is the exclusive remedy by which a judgment creditor of the member or transferee may satisfy a judgment He explained that an LLC is more similar to a partnership where shareholders are more like a corporation.

MOTION: **Senator Bunderson** made the motion to send S1040 to the floor with a do pass. Second was by **Senator Burkett** and the motion carried by a voice vote. **Senator Davis** will sponsor the bill on the Senate floor.

Adjournment: Meeting was adjourned at 2:20 p.m.

Senator Richardson Vice-Chairman	Marianne T. Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 2, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of January 31 as written. Second was by **Senator Lodge** and the motion carried by a voice vote.

GUBERNATORIAL APPOINTMENT

Jim Tibbs appointed to the State Board of Correction to serve a term commencing January 10, 2005 and expiring January 1, 2011.

Mr. Tibbs told the committee that he was not a native of Idaho, but moved here when he was 5, then attended schools in Boise, graduating from college in 1970 and receiving a BA in criminology. He served with the Police Department from November 23, 1970 until he retired on December 31, 2004. He served from February 2004 as interim Chief of Police for Boise City.

Senator Darrington asked Mr. Tibbs about his role as a member of the Board. He responded that the board has direct control and management of the penitentiary. With his strong association with law enforcement, he would like to be actively involved, but not micro manage. His primary goal is to leave it better than he found it.

Senator Richardson commented that he was impressed with Mr. Tibbs resume and asked what changes he anticipated. Mr. Tibbs said it was quite premature to tell, but he would like to spend time and make an impact with the department of correction and looked forward to the experience.

Senator Davis asked Mr. Tibbs about his departure from the Boise City Police Department, as he had followed the events of the mayoral shakeup the last few years. Mr. Tibbs responded that he had a 34 year career with the Boise City Police and he looked forward to retirement. He had encouraged the new Chief of Police and wished him well. There was no disciplinary note of any kind in his file when he retired.

Senator Davis asked about the make up of the board and was told that it is a 3 member board appointed for 6-year terms. Senator Darrington commented that Carolyn Meline is a Democrat and Dwight Board is

Republican, so it was find that Mr. Tibbs did not declare a party affiliation.

Senator Lodge commented that she was pleased with his approach to the job and wanting to learn before commenting. She asked about the Substance Abuse programs in the corrections system and the difficulty for inmates to get into the programs.

Mr. Tibbs responded that Substance Abuse isn't just related to the Department of Correction. Law enforcement can't separate it from other crimes, as it is related to everything. It becomes a budgetary issue for the programs and so may be difficult to get into.

Senator Burkett asked Mr. Tibbs what he has learned about extreme force and managing police officers that will relate to managing correctional officers. He responded that every time an officer uses deadly force it is a tragedy, and they are always looking at other options for corrective situations. If there are too many complaints, an officer is red-flagged and investigated. Officers are public servants and know they need respect and trust. All employees need the right training to act accordingly.

Senator Sweet told Mr. Tibbs that he has watched him locally and knows he has the qualifications for this appointment and wishes him well.

Senator Kelly expressed gratitude for his service and that he was willing to continue to serve by being a member of the Department of Corrections Board.

Senator Darrington reminded the committee that a vote will be taken on Mr. Tibbs appointment at our meeting on Friday, February 4.

HCR3

Pam Juker, Chief Clerk of the House presented these bills to the committee and passed out a copy of the contract price and numbers that need to be printed each year. (See attached #1). This one provides for printing the House and Senate Legislative Permanent Journals and fixed the price agreement for them. Ms. Juker said the numbers of printed copies are down from the contract of 2003-2004 which were 320 each at $42 a page, and are now 270 each at $38 a page. She also said they had difficulty finding someone who would bid on this work.

MOTION:

Senator Richardson made a motion to send HCR3 to the floor with a do pass. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Darrington** will carry this bill on the Senate floor.

HCR4

This provides for the printing of the House and Senate Legislative daily journals and fixing the price for them. These have also decreased in numbers from 400 at $18 a page to 260 at $13 a page. **Senator Richardson** asked if the trend was going from printing to using compact discs. Ms. Juker replied that 8 years ago 800 were printed of each and every year the numbers are reduced. Now that the journal is on CD, the daily journal and the bills are on the internet and this has led to a reduction in the numbers needing to be printed.

MOTION: **Senator Lodge** made a motion to send HCR4 to the floor with a do pass. Second was by **Senator Richardson** and the motion carried by a voice vote. **Senator Sweet** will carry this bill on the Senate floor.

HCR5 This provides for printing of House and Senate bills, resolutions, memorials and amendments and fixing the price for printing. This quantity has reduced from 420 each at $18 a page for 2003-2004 to 250 each at $13 a page for 2005-2006.

MOTION: **Senator Lodge** made a motion to send HCR5 to the floor with a do pass. Second was by **Senator Kelly** and the motion carried by a voice vote. **Senator Lodge** will carry this bill on the Senate floor.

S1036 David Haas presented this bill that relates to the State Board of Correction. The Department provides health care to inmates in accordance with Eighth Amendment standards that apply to health care for prisoners. Currently, these 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 with the privatized health care company accounts for approximately eighty percent of the Department's costs for inmate health care.

The annual cost of providing health care to inmates via private contract has increased during the past four years from approximately nine million dollars to thirteen million dollars. 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, to begin October 1, 2005. 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. To provide maximum cost-efficiency, there are four options for prospective vendors to bid:

1. Total risk to the vendor. All costs are paid by the vendor.
2. Total risk to the vendor, with the exception of medications utilized to treat Hepatitis C. These medications cost approximately $15,000 per treatment, and the Department currently houses approximately 570 inmates who have been diagnosed with Hepatitis C. The number of inmates who will eventually qualify for treatment is unknown.
3. Catastrophic Care cap. This option requires the vendor to pay up to $50,000 for hospitalization, specialty care and off-site outpatient care per inmate. All costs above the cap will be paid by the Department of Correction.
4. Aggregated cap. This option creates a pool of funds to be used for hospitalizations, emergency services, and off-site care. Terms of the pool are negotiable, and include contributions by the vendor and the Department. It is anticipated that the final contract will include some form of uncontrollable financial risk to the Department.

The current legislation is intended to limit the Department's exposure to the same level of risk assumed by the State of Idaho for providing health care to indigent citizens via Medicaid. Without this legislation, the Department's risk will be an unpredictable variable determined unilaterally

by the respective health care providers.

Senator Davis told Mr. Haas that he felt comfortable with the language in S1036, but wondered about adding a paragraph to deal with non-applicable medicaid rates. Mr. Haas felt that was a good idea to have the ability that would give flexibility as that hadn't been anticipated. **Senator Burkett** asked if other states had implemented similar legislation. He was told that Mississippi had and Arizona was working on legislation to assume a certain amount of reimbursement above the cap, or up to $50,000 per inmate per occurrence.

Senator Richardson expressed concern that some doctors and dentists won't take care of ceratin cases because of the rate of Medicaid reimbursement. Mr. Haas said that they have the advantage over a local jail as they can move prisoners to where they can get the care they need.

MOTION: **Senator Davis** made a motion to send S1036 to the 14th order for amendment. Second was by **Senator Bunderson** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the Senate floor.

S1037 Mond Warren, Bureau Chief for the Dept. of Health and Welfare's bureau of audits and investigations presented this bill. This legislation will help the state protect vulnerable Idahoans by providing the statutory authority necessary to require criminal history background checks on providers and individuals who have access to vulnerable adults and children. The Criminal History Unit currently processes criminal history background checks for foster car and adoption applicants, medicaid providers, licensed day care providers, emergency medical services applicants and department employees and contractors who have access to or provide services . In the fiscal year 2004,15,500 background check applications were processed.

The department recently applied for and received federal grant funding to participate in a pilot program to process background checks on the above named individuals who work in long term care settings. Idaho is one of seven states selected to participate in this program, and one pre-requisite for participation is legislation which provides statutory authority to conduct the background checks. This legislation must also include immunity provisions for employers when making employment decisions based upon the information obtained through a background check. Further definitions are in the department's rules governing this process.

This proposed legislation will require the department to promulgate rules to identify which specific classes of individuals will be required to have this background check. At the present time there is no fiscal impact due to not adding any additional classes, but there could be expenses incurred through the rules identifying any new classes of individuals who would be required to have a criminal history background check.

Senator Jorgenson questioned how it won't have any fiscal impact with the background checks. Mr. Warren responded that the pilot program pays for the background checks and no additional classes are added.

Senator Jorgenson asked if the background checks were for "new hires" or existing staff and was told that they are not checking into the existing staff at the present time, that this was just for new people hired.

Senator Bunderson asked about nursing homes financed by Health and Welfare and was told that there are no rules for criminal background checks for these providers. People are allowed to go to work as soon as they complete the disclosure application. The FBI houses the information and the department makes the decision based on that information. The background check doesn't guarantee employment, it is just part of the process.

Senator Sweet asked if after the pilot project, applicants would be required to pay the $55 and wondering if creating an unfunded mandate is being created. Mr. Warren said the pilot program was funded through September 30, 2007 and they had discussed how to fund these checks if the pilot doesn't continue.

Senator Lodge also expressed concern about who would be paying for these background checks that after the pilot program, those who apply or the State.

Barbara Jordan, representing the Idaho Trial Lawyers spoke to the committee of their concerns with Sections 6 and 7, which grants immunity from liability to the department or employer. They support the idea and intent, but feel that this could be covered in the Tort Claims Act.

In section 2 they would like to see language removed to be more specific about who decides on the required background checks. They also had concern with the language in Section 5 of "knowingly or willfully" failing to disclose information, which might cause a person to be prosecuted for forgetting a traffic ticket.

Marty Durand, legal counsel for the American Civil Liberties Union said they also support the idea but were concerned because the bill doesn't contain the language that is relevant to the position being applied for. For example, would a cook need a criminal background check? Also, if a youth was arrested for disturbing the peace and forgot about it, they would be "knowingly and willfully" failing to disclose information. She said they would support the changes suggested by the Idaho Trial Lawyers.

Mr. Warren responded that he would feel better if this statue was clear without referring to another statute.

Rob VandeMerwe, Idaho Health Care Assn. told the committee that he is the one that brought the pilot program to Mr. Warren and Health and Welfare department. Seven states are participating in a pilot program for background fees, and it was an opportunity to see how it would work before it would be imposed on them.

MOTION: **Senator Bunderson** made a motion to send S1037 to the floor with a do pass. Second was by **Senator Davis**. **Senator Burkett** made a

substitute motion that S1037 go to the 14th order for amendment. This motion died for lack of a second.

Discussion: **Senator Lodge** was concerned about the Fiscal Impact and that it would be determined later and could slip by, causing headaches later on. She was not in support of this bill. **Senator Davis** commented that there had been good discussion on this and his concerns had been addressed. The requests of the Idaho Trial Lawyers were reasonable. He appreciated the comments of the other members of the committee and felt as Senator Lodge did, that the fiscal note should be more meaningful. Senator Burkett said that he was not in support of this bill, as the bill is inconsistent and reaches beyond criminal checks.

Committee Vote: The committee voted against sending S1037 to the floor with a do pass. This bill will be held in committee.

Adjournment: The meeting was adjourned at 2:55 p.m.

Senator Denton Darrington Chairman	Marianne Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 4, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Lodge, Sweet, Jorgenson, Kelly

MEMBERS ABSENT/ EXCUSED: Senator Davis (excused)
Senator Burkett (absent)

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of January 28 as written. Second was by **Senator Sweet** and the motion carried by a voice vote.
Senator Sweet made a motion to approve the minutes of February 2 as written. Second was by **Senator Richardson** and the motion carried by a voice vote.

Committee Vote: **GUBERNATORIAL APPOINTMENT**

Jim Tibbs appointed to the State Board of Correction to serve a term commencing January 10, 2005 and expiring January 1, 2011.

MOTION: **Senator Lodge** made a motion to recommend to the full Senate the appointment of Jim Tibbs to the State Board of Correction. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RULES REVIEW: **Senator Darrington** turned the meeting over to **Senator Richardson** for the Rules Review of the Department of Juvenile Corrections

Docket No. 05-0104-0401 Brent Reinke, presented this docket which is the uniform standards for Juvenile Probation Services. Idaho Code Section 20-5041 states that "the Department, by rule, in cooperation with the courts and the counties, shall establish uniform standards for county probation services as well as qualifications for an standards for the training of juvenile probation officers."

This is a new chapter and fulfills this requirement. The standards in these rules were developed in collaboration with the Juvenile Justice Training Council, a sub-committee of Idaho's POST Council . The rules address standards of practice for all Idaho juvenile probation departments.

MOTION: **Senator Sweet** made a motion to approve Docket 05-0104-0401 of the Department of Juvenile Corrections Rules. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Richardson** told the committee that this concludes the rules review for our committee for this year.

Senator Darrington told the committee that Brent Reinke was going to present an overview of the department, but he has already done so in JFAC and in Health and Welfare committee where most of the committee heard the presentation. **Senator Jorgenson and Senator Bunderson** do not sit on those committees, but can meet privately with Mr. Reinke if they would like to know more about the Department.

S1038

George Gutierrez, Bureau Chief Industrial Commission presented this bill that 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.

This proposal will add the crimes of kidnapping, domestic violence, and child injury. The definition of family members eligible for this benefit is also expanded to include grandparents and grandchildren of the victim.

The program is federally funded at 60% of state payments on behalf of victims. While the proposal is expected to increase state spending, no General Fund money is used, as state matching money comes from fines and restitution payments from offenders through the criminal courts and then reimbursement to the program. Expenditure of these non-General Fund monies is estimated to increase by approximately $88,000 annually. (Funeral Expenses: $49,738; Family Assistance: $38,262)

Senator Lodge's concern was to make certain that the money not come form the General Fund and asked about the amount of claims a year. She was told that last fiscal year there were 40. Senator Jorgenson asked as the law currently exists how many were eligible for these benefits. Mr. Gutierrez said there were 807 claims for fiscal year 2004 eligible for or had this benefit. With sexual assault and homicide victims, the numbers would rise to 1180. Family members may or may not access this program.

Senator Richardson asked if the victim sued the perpetrator, how would that affect the compensation. Mr. Gutierrez said that if a civil suit were filed, the Crime Victim Compensation Association had first lien on any settlement. This goes into the compensation fund and doesn't come from the general fund. The law limits $25,000 per case.

MOTION:

Senator Jorgenson made a motion to send S1038 to the floor with a do pass. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Jorgenson** will carry this bill on the Senate floor.

S1054

Mike Becar, Director of POST presented this legislation that will generate revenue to train correction officers and probation officers and create standardization in that training. They currently train 260-300 officers a year.

This proposal amends Idaho Code to alter distribution of fines and forfeiture funds currently allocated between the general fund and the Peace Officer Standards and Training (POST) fund. The allocation of funds to the general fund from fines is reduced by 4%, while the allocation to the POST fund is increased by 4%. The fee assessed by the court

from certain offenders to be distributed to the POST account, is increased from six dollars to ten dollars. The fine and fee adjustments will provide adequate funding for the increase in POST's expenses related to providing training for Department of Correction personnel, and maintaining the new training facility that was authorized in Fiscal year 2002.
The amendments to move 4% of funds and forfeitures from the general fund to the POST fund, will represent approximately $280,000. The fee assessed by the court will generate an additional $866,800 into the POST fund . The total fiscal impact into the POST fund is estimated to be $1.1 million.
Senator Richardson asked if POST was receiving requests from out of state to do training for their officers. Mr. Becar responded that officers need to go through basic training in their own state, but they do train officers from the northwest continually. About half the states have had their directors tour the facility in Idaho, and two agencies are looking at building one similar to the new POST facility.

MOTION: **Senator Richardson** made a motion to send S1054 to the floor with a do pass. Second was by **Senator Sweet** and the motion carried by a voice vote. **Senator Darrington** will carry this bill on the Senate floor.

S1055 Dawn Peck, manager of the Idaho State Police Bureau of Criminal Identification presented this bill to clean up archaic language in the current statute of 1971 to more clearly identify the system. The current members of ILETS are Chief Cliff Hayes, Post Falls PD, Chief Dave Moore, Blackfoot PUNITIVE DAMAGES, Sheriff Shawn Gough, Gooding Co, Sheriff Rick Layer, Elmore County, Colonel Dan Charboneau and Robert Taylor, ISP Support Services manager.
This bill removes the language that identifies the system as a teletypewriter system, and it has been many years since that system was used. The name change better describes the system used today, an information system used for the purpose of public safety and security. There are currently 94 agencies with direct access to the system who now pay fees for access, rather than rent hardware.
Senator Darrington commented that when a police officer makes a stop and does a radio check through dispatch ILETS provides this information that is essential to keep track of criminals out there. It is a valuable tool for the public and for officer safety, as their location is know when they make a radio check.
Senator Bunderson asked if Idaho has the right equipment to achieve the vision or are we deficient. Ms. Peck commented that several states have mobile data terminals in their cars and we are a long way from realizing that vision. Each agency has to buy their own equipment.
Senator Lodge asked what information those 94 agencies can access. Ms. Peck told the committee that there are restrictions on who can access information, most can access state information but it requires statutory authority to access federal information.

MOTION: **Senator Lodge** made a motion to send S1055 to the floor with a do pass. Second was by **Senator Kelly** and the motion carried by a voice vote. **Senator Kelly** will carry this bill on the Senate floor.

S1063 Mike Kane presented this bill that is a joint effort from a lot of people and was suggested by **Senator Lodge** on joyriding. When a vehicle is taken, but the intent isn't to steal it, the penalty is a minor misdemeanor or $300 fine. It can also be charged as grand theft. There is no middle ground and this bill will increase penalties for serious cases of operating a vehicle

MOTION: **Senator Bunderson** made a motion to send S1063 to the 14th order for

Senator Denton Darrington Chairman	Marianne Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 7, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Richardson** made a motion to approve the minutes of February 4 as written. Second was by **Senator Sweet** and the motion carried by a voice vote.

RS14640 Roger Bourne, Ada County Prosecutor's Office, presented this legislation that clarifies an aggravating circumstance in the death penalty statute that was changed two years ago, requiring juries to be involved. He has actually tried two cases under this legislation. He told the committee that in the death of Lyn Heneman, DNA identified her killer, but it wasn't until 2 ½ years later when another woman was killed, that her murder was solved with a positive match of DNA. At this time, Mr. Bourne wanted to let the jury know that Eric Hall had killed two people, but wasn't allowed to inform the jury of the previous death. The prosecutors disagreed and felt that all relevant information about the defendant at the sentencing phase should be considered by the jury where they have to assess the murderers continuing threat to society. Conduct after the murder is especially important in cases involving multiple murders or other acts, good or bad, committed after the murder at hand.

MOTION: **Senator Burkett** made a motion to send RS14640 to print. Second was by **Senator Sweet** and the motion carried by a voice vote.

RS14804 **Senator Burkett** presented this bill relating to controlled substances to monitor the purchase of compounds used in methamphetamine production. The concern for this is to get conformity between the northwestern states regarding sale of meth pre-cursors and retailers are being asked to assist in the enforcement. The bill would require retailers to put "pre-cursor" medication containing pseudoephedrine behind the counter. A customer would have to show a government issued photo identification to obtain these medications and sign a log or receipt showing the date of transaction and amount of compound purchased. The limit for purchase would be 9 grams. These records would be available for inspection by the Board of Pharmacy and maintained for one year. This legislation doesn't affect preparations in liquid or gel form as these cannot be broken down to make meth.

Senator Darrington suggested that the committee not act on this legislation until the House Bill comes to the Senate and can be reviewed.

Senator Lodge asked what size package would constitute 9 grams and was told the limit was 36 pills, however it was packaged. **Senator Lodge** was concerned that a person could use illegal identification to purchase illegal items.

Senator Bunderson also questioned how this system would work, as a person could buy the limited amount possible at one drugstore, go across the street to another and buy the limit, and continue in this manner until they had a sufficient quantity to make meth. He asked how the records would come together to enforce the law. **Senator Burkett** answered that a person going from store to store would be creating a chain of evidence to apprehend them. However, at the present time there is no electronic means to monitor these purchases.

Senator Jorgenson asked if the compounds used for meth production are just months away from gel or mist, which are not included. **Senator Burkett** replied that this will drive the market to supply only this type of medication, to which Senator Jorgenson responded that the problem then seems about to take care of itself anyway. "Actually, without the legislation, it won't happen very soon," **Senator Burkett** told the committee.

MOTION: **Senator Davis** made a motion to send RS14804C1 to print. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS14797 **Senator Burkett** presented this legislation relating to the terrorist control act to further define the term "terrorism". This is a similar proposal as last year, but adds two definitions, that "Terrorism" means activities that:
(a) are a felony violation of Idaho criminal law
(b) Involve acts dangerous to human life, other than to that of the actor,...

Senator Davis commented that this legislation was addressed and discussed at length last year and he felt that "the law should mature before being modified."

MOTION: **Senator Davis** made a motion to return RS14797 to the sponsor. Second was by **Senator Jorgenson**. The motion carried by a voice vote. **RS14797 will be returned to Senator Burkett.**

S1062 Melissa Moody, Criminal Division of the Attorney General's Office told the committee that this bill is to criminalize attempted strangulation of a household member as a felony as it is a serious problem in Idaho. She passed out some information to the committee about the attempted strangulation statute in Idaho. (See attached #1)

She introduced several people who spoke to this legislation. Darren McKenzie, Canyon County Prosecutor; Brenda Cameron, Hope's Door; Dr. Thomas Altquist, St. Lukes's Emergency; Jan Bennetts, Ada County Prosecutors Office.

Mr. McKenzie told the committee that there is a hole in Idaho law that can be fixed. Strangulation is a violent act that a person can inflict on another with their own hands while looking into the victim's eyes. He didn't know

this problem existed until last year while working with domestic violence cases. Many victims described that they actually thought they were going to die. Unfortunately, the only evidence is redness and possible bruising so the only punishment is a misdemeanor and probation. Idaho needs this bill to give prosecutors the tools to prosecute effectively. Penalties need to be severe as it is a serious problem.

Senator Richardson asked how they can prosecute if it is just one person's word against another, and was told that is what makes this so hard. They need to rely on external marks and witnesses to prove guilt the same as other crimes.

Senator Darrington asked about the definition of a "household member" and was told that the relationship is taken from Idaho Code 18-918 to mean "a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom a person is cohabiting, whether or not they have married or have held themselves out to be husband or wife."

Brenda Cameron told the committee of her experiences as a survivor of multiple incidences of strangulation that occurred over a period of 9 years. It started with a push or slap and then turned to strangulation. She knew that he could kill her at any time, and she was terrified of that. She left him many times over a period of 12 years and learned 3 things, first - it was all her fault, second that there was no getting away from him, and third, that she would die. She knew that one of them would die and was grateful that she could get out of that relationship without dying. She is now the Executive Director of Hope's Door, for women fleeing from domestic violence situations. This legislation is so important because of the children who witness this violent abuse.

Senator Darrington asked if substance abuse was an issue in her situation and she told him that her husband had been clean for 2 ½ years before he strangled her.

Dr. Thomas Altquist, St. Lukes Emergency, told the committee that strangulation occurs late in domestic violence relationships, and the intent is death. It doesn't take a lot of pressure as 10 lbs to a carotid artery for 10 seconds can cause a person to lose consciousness and 50-60 seconds can cause death. Usually this is repeated many times, and he realizes that emergency room personnel don't ask enough questions of a person being admitted. He said the problem was if everything is done to document the injury and good workups are done in the emergency room, there is only a misdemeanor charge as a punishment. This abuse is under reported. If a person is not directly asked, they won't tell about the abuse, and most don't come for treatment due to fear of the abuser.

Senator Bunderson asked about persons other than that of the household, such as a significant other or exboyfriend being included and whether an emergency clause had been discussed. Dr. Altquist said that a boyfriend is not included and he didn't know why there wasn't an emergency clause.

Senator Richardson wondered if in a marital disagreement a husband could be framed, or if there was adequate physical evidence. Dr. Altquist replied that pressure can cause small hemorrhages in the eyes, and ears, but a person can kill or nearly kill another without any evidence.

Senator Burkett asked about documentation of abuse. Dr. Altquist said they had tracked several hundred women and what they said when being treated. There was powerful proof of abuse in their feelings of denial, fear, resignation, and finally passing out.

Jan Bennetts, Ada Co. Prosecutor told the committee that she trains law enforcement on corroborating evidence when a victim reports a series of events and the crime scene matches that description. In order to prove "beyond reasonable doubt" they need to fill the hole in the law. Victims are not cooperative with the prosecutors and this language is very valuable as it will help them. Victims feel that since there are no marks, there is no sense in going to a doctor and they don't report the abuse.

Senator Sweet asked Ms. Bennetts if it would create problems for the prosecutors if the term "household member" was struck and broadened to include anyone trying to strangle. Ms. Bennetts responded that this was intended to cover certain types of domestic violence situations and covers the class of people that it should address. **Senator Sweet** expressed concern about leaving out people that should be included. **Senator Lodge** agreed with **Senator Sweet** that possible a boyfriend and girlfriend may not co-habit but could still be abusive. She felt that this language should be cleaned up now rather than come back later, and that it should have an emergency clause.

Senator Bunderson commented that he would like to see it go to the 14th order for amendment, to include those not covered by the term Household member broadened and add an emergency clause.

Senator Burkett asked if corroborating evidence would fit aggravated battery and was told no, that aggravated battery caused permanent disability, disfigurement, or bodily harm and was not defined in case law. The jurors had to make that decision and it was very difficult.

Melissa Moody said they would embrace language to change household member and omit this term's definition as set forth in Idaho Code 18-918. She said the Legislature needs to be strong.

Senator Kelly asked why this was not put in the domestic violence part of the statute, but in a separate section. Ms. Moody replied that they tried to do this without the term household member, but that was the intended catalyst.

MOTION: **Senator Bunderson** made a motion to the 14th order for amendment. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Bunderson** will carry this bill on the floor.

S1064 Heather Reilly presented this bill to amend Idaho's current malicious injury

to property or “vandalism” statute 18-7001 to clarify that multiple acts of property damage to multiple victims' property may be aggregated and charged as one crime, if the acts are committed during a common plan. Under the current malicious injury to property code section, the value of the property damage to one property owner must exceed $1000.00 in order for the violation to be charged as a felony. This amendment will allow consideration of the sum of the value of all of the damages done during this action when determining whether the property damages exceed $1000.00 in value. The fiscal impact will depend upon the increased number of offenders charged with and convicted of felony malicious injury to property.

Senator Lodge commented that this legislation would really help with the gang problems.

MOTION: **Senator Lodge** made a motion to send S1064 to the floor with a do pass. Second was by **Senator Richardson** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the Senate floor.

S1067 Heather Reilly presented this bill that would amend the penalty for reckless and inattentive driving . The maximum penalty for a first offense reckless driving will be increased to 180 days in jail and/or a $500.00 fine. A second offense within 5 years will carry a maximum penalty of 1 year in jail and/or a $1000.00 fine. Not only has the maximum penalty for reckless driving been increased, but also, this legislation strikes the minimum jail requirement to 5 days for a 1st offense of reckless driving and 10 days for a second offense of reckless driving. The minimum jail requirement has been deleted to create consistency in potential penalties for serious driving offenses such as Driving without privileges and driving under the influence.

This legislation also states a penalty for inattentive driving which is a misdemeanor but under current law has no prescribed penalty. In this case, the court normally applies a general misdemeanor penalty of 6 months in jail and/or a $300.00 fine. At the present time, inattentive driving is designated as a lesser offense than reckless driving. The current maximum jail sentence for reckless driving is 90 days for a first offense and for a second offense is not less than 10 days in jail nor more than 6 months. Therefore, when the court applies the general misdemeanor penalty for a conviction of inattentive driving the result is a maximum sentence that is greater than that for a conviction of reckless driving , which is the more serious crime.

MOTION: **Senator Lodge** made a motion to send S1067 to the floor with a do pass. Second was by **Senator Sweet** and the motion carried by a voice vote.

S1060 Ralph Blount, Attorney General’s Office presented this legislation that he referred to as “the second bite of the apple” to clarify the intent of the Legislature to limit the appointment of counsel at public expense in civil collateral attacks on convictions, to those limited cases in which an evidentiary hearing is required. This bill will also provide for reimbursement to the county for the cost of the attorney services. He told the committee that every petitioner gets an attorney upon request and

those who have plead the facts are entitled to counsel, but frivolous accounts are not.

Molly Huskey, State Appellate Public Defender, told the committee that of all legislation, this is the most terrifying. It would deny almost every indigent defendant the right to challenge the effective assistance of counsel. Additionally, it would cost counties a lot more money because of the implications of federal review. Much of the language is not accurate, and this change would prevent a judge form providing relief of conviction. Ms. Huskey asked the committee to not vote on this as they were given inappropriate and inaccurate information.

Senator Darrington told the committee and the audience that this discussion would have to continue at a later date, as the time for this meeting was gone. This bill will be scheduled for Friday, February 11.

Adjournment: Meeting was adjourned at 3:02 p.m.

Senator Denton Darrington Chairman	Marianne Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 9, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Sweet** made a motion to approve the minutes of February 7 as written. Second was by **Senator Richardson** and the motion carried by a voice vote.

S1053 Robert Aldridge presented a series of bills as part of his work with the Trust and Estate Professionals of Idaho, referred to as TEPI. Last year, the concept of a "de facto" custodian was adopted by the Legislature, but limited to the area of minor guardianship. The definition of a de facto custodian is a person who has a relationship with a minor child both custodial and financial, being the primary care giver and primary financial support of the minor for a certain time period. For a child under age 3, that is six months and for those over 3, it is one year. This bill would modify the appointment for an attorney. If the child is sufficiently mature to direct the actions of the attorney, one is to be appointed. If the child isn't mature enough, then a guardian ad litem is appointed, if the court determines that an appointment is not necessary for the best interest of the child or if the child is already in the custody of health and welfare department.

This bill is the result of review of the last year's court proceedings in minor guardianship. The language for the changes has been arrived through a coalition of persons, judges, and committees involved in child protection. It solves some questions that have arisen about how de facto custodianship works.

Senator Davis questioned why there is one set of standards in divorce proceedings when determining the relationships of children. Mr. Aldridge replied that the language was adamantly supported by the Child Protection Agency and should be quite clear.

Pat Collins from the Idaho Bankers Association spoke in support of this legislation, as well as S1069, S1070, S1071 and S1072. Within the past six months, a group was formed called the Trust Estate Professionals of Idaho or TEPI. Their objective was to create a formal group within which all trust legislation could be reviewed in advance of introduction into the legislative process. Membership consists mostly of trust attorneys, CPS's that work in the trust area and other licensed trust professionals, including bankers. Chris Ode with Wells Fargo Bank is the Chairman of the IBA Trust committee, but was out of town and not able to attend this meeting.

MOTION: **Senator Lodge** made a motion to send S1053 to the floor with a do pass recommendation. Second was by **Senator Sweet** and the motion carried by a voice vote. **Senator Lodge** will carry this bill on the Senate floor.

Discussion: **Senator Davis** wanted it reflected in the minutes that he had real concerns about the burden of proof standard on page 2, line 8 where it says "if a court determines by clear and convincing evidence that a person meets the definition of a de facto custodian and that recognition is in the best interest of the child."

S1068 Mr. Aldridge told the committee that last year some changes were made in the medical death act. This is the next step in working through the medical consent. The medical act was created in 1978 and the death act was created in 1980. Now they are being combined for a single set of standards or statute in recognizable choices, what they mean and to be more user friendly.

The methods and purposes of the Medical Consent Act and the Natural Death Act are retained, but are clarified and simplified, with overlapping or conflicting sections brought together and unified. The Living Will and Durable Power of Attorney for health care, formerly spread into two documents, are combined in a single document, although the person executing the form can choose to fill out either or both of such subparts. The existing signature method of the Living Will is used for the combined form.

Steve Millard, Idaho Hospital Association spoke that they were trying to work with Mr. Aldridge and the drafters on some concerns they had and asked the committee to hold the bill until they could get language for an amendment.

Senator Darrington suggested that it could go into the 14th order and if the amendment wasn't ready when the time came, it could be moved to a later date. **Senator Richardson** felt uncomfortable voting on a bill without seeing what the amendments would be. Mr. Aldridge told the committee that the word "adult" would probably be removed. **Senator Bunderson** asked about the time to reach an agreement on language and was told that it would be on a fast track and be ready in possibly a week.

MOTION: **Senator Bunderson** made a motion to send S1068 to the 14th order for amendment and hold for a date certain. **Senator Darrington** suggested that the date certain be at the discretion of the chairman. Second was by **Senator Richardson** and the motion carried by a voice vote. The bill will be held until it can be scheduled for a hearing including the amendments.

S1069 Mr. Aldridge presented this bill clarifying a question that has arisen in regard to summary administration of an estate, a procedure which is not a probate proceeding, but which passes all property to the surviving spouse of the deceased. A hearing is held before the court on the petition for the decree, but neither the petitioner nor the attorney for the petitioner are required to attend. However, the Court normally wishes to have some evidence that, after proper notice, no objection has been received by the petitioner or the petitioner's attorney. This bill clarifies that, while a motion

is required for a petitioner or the attorney for petitioner to appear at the hearing telephonically, no motion is needed if the petitioner or the attorney for the petitioner is instead submitting an affidavit that no objection has been received to the granting of the decree.

MOTION: **Senator Sweet** made a motion to send S1069 to the floor with a do pass recommendation. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Davis** will carry this bill on the Senate floor.

S1070

Mr. Aldridge told the committee that Idaho Law currently does not appear to allow the creation of what are called "purpose trusts". Nevertheless, such trusts have been created in Idaho and are being administered by Idaho banks and other trustees. This bill clarifies that such trusts may be created then 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 the estate planning options for the public at large. The bill also eliminates any question as to whether existing purpose trusts currently being administered by Idaho trustees are valid.

MOTION: **Senator Davis** made a motion to send S1070 to the floor with a do pass recommendation. Second was by **Senator Kelly** and the motion carried by a voice vote. **Senator Sweet** will carry this bill on the Senate floor.

S1071

The purpose of this legislation is to provide a non-judicial method for the resolution of disputes and other matters involving trusts and estates. This legislation also provides for judicial resolution of disputes if a non-judicial resolution is not obtained. This legislation represents a continuation by the legislative committee for the Taxation, Probate & Trust Section of the Idaho State Bar in its ongoing examination of the Uniform Trust Act, Also, it deals with the adoption of specific legislation contained therein, in conjunction with the Idaho Bankers Association and with. TEPI . Much of the language in this bill comes from existing statutes in the State of Washington.

After printing, an amendment was suggested to add a cross-reference in 15-5-208, regarding attorneys fees and costs, to existing Idaho statute 12-117, which covers actions in which the State of Idaho or an agency or subdivision of the State is involved as a party.

Mr. Aldridge always believed that this issue was covered in existing legislation but has no objection to a more clear and concise wording in an amendment. He told the committee that the Uniform Trust Act is not ready to be accepted by Idaho law, and the holes in the law concerning trusts cannot wait for it to be completed.

Sharon Powers, director of TEPI, told the committee that this bill sets forth much needed statutory provisions to allow citizens of Idaho to resolve disputes and other matters involving trusts and estates in a non-judicial manner by binding agreement. The act ensures that interests of all parties, including those who cannot represent themselves, such as minors, unborn heirs and unascertained persons, are represented in any agreement that may be reached.

If a dispute cannot be resolved among the interested parties, the Trust and Estate Dispute Resolution Act also provides for statutory judicial resolution

of such disputes. Currently, petitioners of the court seeking resolution of trust matters must cite common law and treatises as authority for courts to modify trusts. As Idaho law doesn't have much case law in the trust and estate area, the practioners cite cases in other states. This act would make it clear that Idaho courts do have the authority to resolve these matters and has been based on Washington state statutes which have been shown to work effectively and efficiently.

Senator Davis asked why we follow Washington's model over any others. Ms. Powers told him that many offices in Boise have offices in Seattle and are familiar with Washington statutes, so it was decided to use them as a model. **Senator Davis** asked if Idaho adopts this act what the anticipated benefits would be to Idaho consumers. Ms. Powers said that Idaho citizens would benefit from Idaho standard instead of from collective magistrates opinions.

MOTION: **Senator Bunderson** made a motion to send S1071 to the 14th order for amendment. Second was by **Senator Davis** and the motion carried by a voice vote. **Senator Bunderson** will carry this bill on the Senate floor.

S1072

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. A typical example would be a bequest to "my grandchildren". As long as the grandchild in question had been conceived prior to the death of the decedent and was later born, even after the death of the decedent, the grandchild would be an heir. At the time the existing statute was adopted, in 1971, few if any means of conceiving and carrying a child to birth existed, which did not fall within the normal nine to ten months for pregnancy, and therefore there was no time limit in the statute on the period after death in which the birth had to occur. However, now, embryos, etc., can be frozen for decades and then used to produce a child, through various means, including surrogate motherhood.

Substantial questions have arisen in court cases in other states as to whether such "potential" children are "Afterborn heirs" under statutes similar to the existing Idaho statute. Requirements of notice, keeping the estate open until all such potential afterborn heirs are brought to birth, and so forth, constitute major problems for an estate. Therefore, this bill puts a time limit of ten months after the death of the decedent the birth must occur. This will allow estates to have certainty in their administration, including being able to close within a reasonable time.

MOTION: **Senator Richardson** made a motion to send S1072 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the Senate floor.

S1073

Current Idaho law requires that Marriage Settlements (prenuptial and postnuptial agreements or similar documents) must be recorded in their entirety to be effective as to any real estate affected by the Settlement. However, such documents often contain information that the parties do not wish to have made public, including, but certainly not limited to, 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: **Senator Lodge** made a motion to send S1073 to the floor with a do pass recommendation. Second was by **Senator Sweet** and the motion carried by a voice vote. **Senator Jorgenson** will carry this bill on the Senate floor.

Adjournment: Meeting was adjourned at 2:33 p.m.

Senator Denton Darrington	Marianne Hansen
Chairman	Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 11, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES:

RS14844 **Senator Compton** presented this legislation that would make emergency medical service providers eligible for the Idaho Law Enforcement and Firefighting Medal of Honor. This legislation was reviewed by the sheriffs assn. the police, firefighters and has their support.

MOTION: **Senator Lodge** made the motion to send RS14844 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RS14848 **Mike Kane**, representing the Sheriff's Assn. presented this legislation that is designed to set up a mechanism wherein retired peace officers may qualify for a concealed firearms permit. It tracks federal law on concealed weapons permits.

MOTION: **Senator Richardson** made a motion to send RS14848 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS14733 **Senator Davis** presented this legislation at the suggestion of Kent Foster, an attorney in Idaho Falls who works in the adoption field and asked that Idaho's termination of parental rights statue be updated. He asked that it be printed and then Mr. Foster would present the bill in committee.

MOTION: **Senator Bunderson** made a motion to send RS14733 to print. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS14915 John Eaton, Government Affairs Director for the Idaho Association of REALTORS presented this legislation which is a cooperative effort and was drafted by representatives from the Idaho State Police, the Department of Health and Welfare, the governor's office, and the Assn. of Realtors, as well as Senator Darrington, Representative Field and others.

This legislation would give the Department of Health and Welfare the authority to promulgate rules that would create a clean up process and clean up standards for "clandestine drug laboratories." These are primarily methamphetamine labs.

Senator Lodge asked if there was an budgeted position that was vacant at the Department of Health and Welfare, why would $81,333 be needed for salary and benefits, as well as travel and operating expenses. Mr. Eaton replied that there is a vacant position, but there is no funding for it. **Senator Kelly** responded that with the Department of Environmental Quality and the Governor's office, this is a very significant step forward.

To develop the rules is going to be a difficult process.

Senator Jorgenson asked if it is proper to pass a bill without standards in place, and was told that the department would develop a program then they would develop the rules.

MOTION: **Senator Kelly** made a motion to send RS14915 to print. Second was by **Senator Lodge**.

Discussion: **Senator Bunderson** reported the status of the charge that he and **Senator Kelly** were given by the chairman to identify any criminal charges that perhaps should be given to producers of meth, particularly where children may have ingested drug residues on the floor or furniture and discharging drugs into public systems or groundwater. He said that ISP had developed a list of several issues that could be explored. **Senator Bunderson** and **Senator Kelly** will work with ISP and the prosecuting attorneys association this next year to determine what actions, if any, are recommended

Committee Vote: Motion carried by a voice vote.

S 1060 (**Continuation of discussion from February 7)**
Ralph Blount addressed some issues that were not fully completed on Monday and explain what post conviction is in more detail. Post conviction proceedings are a new civil case and the purpose of it is to allow a convicted defendant to raise new claims that his conviction was the result of constitutional error, or something done wrong in the case. It follows a trial where the defendant had the opportunity to challenge the evidence against him, and it follows an appeal where they have had the opportunity to complain about rulings, etc. in the trial. It is the third "bite at the apple" so to speak, as it is not required, by the United States constitution. There is no constitutional right to counsel, it is a separate counsel-it is civil. The only right to counsel that someone has in a post conviction case is a statutory right limited by 1949-04 which "may appoint counsel" so it is a discretionary standard. Until recently when the Idaho Supreme Court interpreted 1949 to require appointment of counsel if there is a possibility of a valid claim or allegation. *Charboneau* is kind of an interesting case. *Charboneau* is the 5th or 6th bite of the apple. He was convicted of murdering his wife in 1985 after a jury trial. He has had 2 appeals to the Idaho Supreme Court. He has filed two previous petitions for post-conviction relief. All members of the Idaho Supreme Court panel recognize that his ineffective assistance of counsel claims could be described as merit less. Also, all members recognize that *Charboneau's* factual allegations did not establish that the sheriff's office withheld any evidence, they said "the possibility of a valid claim". This converts the "may"; or the discretion that the courts have had, into a "shall"; there is always a possibility.

In 1993, this legislature did not intent by changing "shall" to "may" to give every petitioner counsel upon request. There needs to be standards to guide courts in when to appoint counsel and this bill will do that. S1060 restores the discretion that the Legislature intended in 1993 in that it protects so that if there is an evidentiary hearing, counsel will be

appointed. An evidentiary hearing would be one where the court considers facts. There could be an evidentiary hearing based on two things - the petitioners allegations, the facts that they presented. The court looks at it, says it looks like valid claim, and an evidentiary hearing is held. Or, the court could say they are going to have an evidentiary hearing and get an attorney for that.

Those evidentiary hearings, when facts are presented, are under the rules of evidence. An attorney knows the rules of evidence, a pro se person does not. Appointment of counsel will help things run smoothly, consistent with those rules. However, the bill also recognizes that there may be exceptional circumstances necessitating an attorney. The interest of justice that might dictate the appointment of an attorney. An example might be that a petitioner is illiterate or is mentally incompetent and appointment of attorney will insure that those claims are investigated. This bill is fiscally responsible because it ensures that cases that need a lawyer will get a lawyer, cases that are frivolous will not get a lawyer and the county has a right to be reimbursed for those expenses. S1060 adopts the same standards that apply in Federal post conviction cases and in federal habeas cases and in federal civil rights cases. Mr. Lamont Anderson will talk about those standards.

This bill establishes a fair, consistent appointment of counsel in post conviction relief cases, and has been endorsed by the law enforcement legislative committee, the chiefs of police assn. the sheriff's assn. and prosecuting attorneys association and has been endorsed by the Idaho Association of Counties because they know it will save them money. Those who deserve or will benefit from an attorney will get an attorney, those who have frivolous or meritless claims will not be entitled to an attorney at county expense to pursue groundless litigation.

Senator Darrington asked how often does a post conviction relief effort succeed. He was told that "rarely, very very rarely, far less often than we see people prevailing upon appeal." **Senator Darrington** then asked if it should succeed, then could the judge order a new trial, order a re-sentencing or both and was told that was correct. **Senator Darrington** then asked about the length of time from when the post conviction relief petition is filed by the inmate and the time the judge decides whether to order some action could be some length of time. He was told that oftentimes, it may be many months. **Senator Darrington** followed up by asking how that action would work. Mr. Blount responded that it is a civil case so if the person has not alleged a valid claim it would go through summary judgment, the court could rule immediately on it , the case would be dismissed and it would go up on appeal. If the judge determines that there is a valid claim or wants to have a hearing on it, the case will have an evidentiary hearing and, under this bill, then counsel would have to be appointed to make things run smoothly.

Senator Burkett asked if it wouldn't really be determined if the claim was valid after the evidentiary hearing? Mr. Blount responded, "not necessarily as their pleading standards are much more rigorous than in a regular civil case. They have to set out facts, but not any law, that would,

if true, give them a right to relief. That's how the court has to look at it. If they haven't made their prime effacia, then they are subject to summary dismissal."

Senator Davis asked about line 11 on page 2 showing modifications to 1949-04. After a showing of exceptional circumstances, what is the antecedent of extraordinary circumstances. Does it relate to the need or the appointment or is there some merit to the claim. Mr. Blount replied that it is actually a redundancy.-"extraordinary circumstances" and "in the interest of justice" are the same thing under the federal law. The concern was to pull in that body of federal law. "Extraordinary circumstance" comes out of the federal statute that was 28 USC 1915. "In the interest of justice" language comes out of rule 8 for habeas corpus cases, and the Public defender statute that is 18 USC 3006. The standards are actually the same, but we pulled them in to give the courts adequate guidance. as it is pretty well developed.

Senator Davis commented that "It is well developed in your mind. but you want us to set the policy. " Mr. Blount answered that the best way is to read out of one of the cases. The committee members were given a handout . (See attached #1) The cases are almost identical and you look at whether the claim was frivolous or not, the district court should consider the legal complexity, the factual complexity, the petitioners ability to investigate and present his claims and any other relevant factors. It is pretty open.

This legislation will clarify that appointment of counsel in civil post-conviction proceedings is discretionary. The legislation eliminates the appointment of counsel in frivolous and non-meritorious cases. The fiscal impact is positive. County funds, which now must be spent on appointment of counsel in frivolous and non-meritorious civil post-conviction cases, will be preserved for those cases meriting a trial or in exceptional circumstances.

Mr. Blount further explained that inmates are provided the same aids in preparing habeas petitions as they are post-conviction petitions. There are no law clerks to assist inmates to prepare habeas petitions.

Lamont Anderson, Chief of Capitol Litigation, told the committee that the intent of the legislation being proposed is to fix what the Idaho Supreme Court did in "Charboneau" in 1993. The Legislature wanted to provide District Judges more discretion. The statute at that time said "shall" and it was changed to "may". In Charboneau, the Idaho Supreme Court said that any possibility, every petition graces possibility of a valid claim. As a their position that as a result of that, there isn't a district in this state that wouldn't appoint counsel in every post conviction case, which brings us back to "shall". "As Mr. Blount said, the legislation is based on the federal habeas law, and as my area of expertise is in the area of federal habeas, I can tell you that counsel is mandated when there is an evidentiary hearing. That is to allow things to go smoothly so that rules of evidence can be followed. It is discretionary if there is no evidentiary hearing and the discretion is based upon extraordinary circumstances and the court

has generally provided two criteria: 1) the likelihood of the success on the merits: Do the facts in the petition demonstrate the likelihood that there is going to be success. 2) is the ability of the prisoner to articulate their claims based upon the complexity of the legal issues", he said.

Mr. Anderson told **Senator Davis** that in answer to his earlier question, this determines the petitioners ability based upon their ability to articulate claims and the legal merits of the claim, so it addresses both. The cases relied upon, as far as the 9th circuit, is "*Weygandt v Look*., 1983" The only issue in that case is the appointment of counsel in a federal habeas case there were no other issues. In "Terrell v Brewer", admittedly, not a habeas case, but applies exactly the same standard as the 1983/Bivens action that was applied in habeas. He addressed the concerns from the last hearing regarding the difference between federal habeas inmates or inmates that file federal habeas petitions versus post conviction petitions. He said the resources available to those individuals are exactly the same. There are no law clerks that assist federal habeas petitioners, any more than there are that assist pro se post conviction petitioners. There are copies of relevant statutes provided to federal habeas petitioners as well as post conviction petitioners, there are para legals but they are not allowed to provide legal advice either in post conviction or federal habeas, as they are not attorneys. The same aids that are provided to federal habeas petitioners are provided to state post conviction petitioners and additional aids are not provided.

Senator Davis asked if this legislation would be better applied if a section was added in the bill that said that no final or interim disposition of the matter can be dealt with until the court has dealt with the question as to whether exceptional circumstances exist. Mr. Anderson responded that this was the underlying concern that the Supreme Court had in *Charboneau*, and for that matter its predecessor, *Brown v State*, in that the District judges in those particular cases entered motion for summary dismissal before the judges even addressed the issue of appointment of counsel. As he recalled in *Brown*, he didn't believe that the District Judge even ruled on the motion but in *Charboneau* there was no ruling. He knows that there are district judges in this state that do not rule on motions for appointment of counsel prior to entering motions for summary dismissal. As Mr. Anderson didn't want to mislead the committee he told them that "there may not be a hearing as post conviction is an animal that is often done on the pleadings. As Mr. Blount said, there is a trial, there is an appeal and then within a year, a petitioner or prisoner has to file a document entitled a petition for post conviction relief."

The state either files an answer and/or a motion for summary dismissal, those are the defenses that the state would elect. It could be a statute of limitations defense, which has been filed beyond the year of statute of limitations, or it could be a successive petition defense. If that is true, then the district court would take judicial notice of the underlying trial and appellate proceedings and most likely rule on the states motion for summary dismissal without ever having a hearing. It would be unlikely if a petitioner was brought into court for oral argument on a states motion like that, it would be done on the pleadings.

Molly Huskey, State Appellate Public Defender explained what a post conviction petition is. " As characterized, it is not the 'third bite of the apple'. Maybe a defendant has had a trial and pled guilty and maybe he or she has had a direct appeal, but they cannot raise post conviction claims in either of those circumstances. The case law is very clear that is not the form to raise it, so the only time they can challenge the constitutionality of their sentence, for example a claim of ineffective counsel is in the post conviction action. It is extremely difficult to raise it beforehand, so it is not really the circumstance where they have tried it twice before and been able to do it, this is the first and only time they get to raise this claim." She referred to a sheet that had relevant statutes on it, (See attached #2) and told the committee " 4904 does limit the appointment of counsel and is in fact, discretionary so in any current case and at any given time, the district courts are not required to provide counsel in a post conviction case. Following *Charboneau*, that standard did not change. *Charboneau* has two issues in his appeal, 1) that his attorney's were ineffective (and that had been brought up previously). The court in *Charboneau* said, This is a frivolous claim and you do not get counsel. The district judge was absolutely correct when he did not appoint counsel. They said there was a 2nd claim, a potential *Brady* claim that the state had not disclosed evidence and they looked at the *Brown* case, which said: We have pro se guys and they don't know how to file these civil pleadings, they don't know how to access the courts, so we have to be careful when we read their petitions to just dismiss them out of hand as not having any merit. So what the *Charboneau* court said was, if they potentially raise a claim (a merit that has a likelihood of success) then they should be appointed counsel to explore how to properly frame that issue. In the current statute, if the case is frivolous the Public Defender just withdraws from the case There is no mandatory appointment that continues on simply the individual was once appointed counsel.

This bill does not protect defendants the way they allege that it should. The reason is, that this bill does not give district courts the discretion to appoint counsel to help draft the petition. Again, our inmates do not have the skills to draft complex civil pleadings. At the present time, if they fill out the forms and gets them to the judge, they can appoint counsel and counsel can look at the claim for them. Under this statute, the judge wouldn't be able to do that, as it wouldn't be exceptional circumstances under the federal standard.

What the pro se litigants are being asked to do is to rise to the level that even some judges and attorneys don't know how to do, and under this bill if they don't plea it well enough, they don't get an attorney, so it doesn't matter the merit of their claims.

Ms. Huskey said they tracked the number of post convictions that they had in fiscal year 2004 and they were appointed to 70 cases. 20 of those were conflicted out, so hey were left with 50 cases. In 19 of those, they asked the court to withdraw, as they didn't feel the cases had merit. That was permitted and that is how the system works, under the legislation that we currently have. Of the ones remaining, 16 outstanding, 4 were

dismissed by court, 1 was vacated (or won outright and that individual was not given counsel to plea his post conviction petition) 6 were remanded, which means they briefed it, the AG office said that there was an error there and needs to be sent back and in one case they were quashed and 3 were confirmed. Right now, on appeal of those cases, 23% are won. In 23 of the 50 cases, something was wrong with that individuals conviction which wouldn't be known if this statute passes, and that means individuals out there should constitutionally not be there. As it relates to the federal habeas standards, the language in this bill that **Senator Davis** keeps referring to, is not accurate.

The exceptional circumstances language is not used in federal habeas. It is used in 1915 which is the appointment of counsel, when you are trying to get money out of the state, as referenced by Mr. Anderson to the *Terrell* case, cited in this bill. It was a lawsuit to get money, not a federal habeas corpus claim. Sections 2254 and 2255 are governed by the language "interests of justice" and that is the language that Mr. Anderson read - a court has to evaluate the likelihood of succeeding and the ability of the person to plead this case. Those are the standards that we have in 4904 and this legislation doesn't need to be changed to have this standard as was adopted in *Charboneau*. All the Supreme Court said was "an attorney maybe should look at this case, and if there is a likelihood of merit, then we should look at the ability of this individual to plead it." It does not say that in every post conviction case, there has to be an attorney appointed.

The law library at the prison is adequate because there are some functional equivalents. If counsel is taken away to help them do petitions, then there is a huge problem, because the paralegals don't give legal advice, so no one can draft the pleadings for them, and they don't have access to resources. The cost of having an attorney look at these pleadings is very minimal in light of what happens. To change legislation that is currently working, is fixing a problem that doesn't exist at a great potential cost to the taxpayers of the state that we are trying to save.

Senator Kelly asked what was going on in other states on this topic, or is this unique to Idaho? Ms. Huskey said it is hard to compare because each state has different proceedings, and she knows in talking to other states, that ours is unique.

Mr. Blount told the committee in summary, that the Uniform Post Conviction act is not uniform across the entire country. This bill would guarantee an attorney for any kind of hearing where facts are considered, not just on the merits. Post Conviction is a proceeding for raising new facts but the defendant who sat through the trial knows what they want to complain about. All they have to do it write down the facts - they don't have to know the law. There has never been a right to counsel to draft a petition. The old statute said "shall" in 1967, but someone had to file a petition before anything was triggered, then counsel was appointed. Still today, they need to file something that can be construed and our courts liberally construe because substance prevails over form. The SAPD does not prevail on 23% of post conviction claims on the merits, some are

remanded because there is an error. A lot of the remands are there as a result of not giving a petitioner notice of the dismissal. On the merits, reversals are exceptionally rare. Under this bill, incompetence would be an exceptional circumstance. "Exceptional circumstance" and "in the interest of justice" are identical under the federal law.

He concluded with " Pro se law clerks do not work for defendants, they are employees of the court and they are there to help the court look at cases".

Senator Darrington asked if he disagreed with the individual breakdown of the disposition of the cases dealt with in 2004. Mr. Blount said he did not disagree. He realizes that cases are meritless "down below and they are meritless up above".

MOTION: **Senator Bunderson** made a motion to send S1060 to the floor with a do pass. The motion was lost for lack of a second. The bill will be held in the committee.

S1061

Bill von Tagen presented this bill that will amend Section 18-918 to clarify that the felony domestic battery statute has the same intent requirement as the battery statute (I.C. §18-903) and the aggravated battery statute (I.C. §18-907). These amendments are brought in reaction to the Idaho Court of Appeal's decisions in State v. Sohm, 140 Idaho 458, 95 P. 3d 76 (Mar. 4, 2004), and State v Hansell, 2004 WL 2822777 (Dec. 4, 2004), 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, as well as inflicted a traumatic injury. This "double" intent requirement was never intended by the Legislature. The amendment to Section 18-918 is intended to clarify that a battery against a household member does not require an additional intent, above and beyond that required for a battery against a non-household-member. This amendment simply clarifies the statute as the Legislature intended it to be interpreted in the first place.

MOTION: **Senator Bunderson** made a motion to send S1061 to the floor with a do pass. Second was by **Senator Richardson** and after a brief discussion the motion carried by a voice vote.

Adjournment: Meeting was adjourned at 2:58 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 14, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Sweet made** a motion to approve the minutes of February 9 as written. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RS14793 **Senator Goedde** presented this legislation which will create a criminal felony statute to penalize individuals who sexually abuse or exploit vulnerable adults. Idaho Code 18-1505 provides protection for vulnerable adults from physical or mental abuse, exploitation or neglect. The violation of the section is punishable by imprisonment in the state prison for up to 25 years or a fine of $25,000 or both.

Senator Jorgenson asked about the origin of this endeavor and was told that it was the result of a nursing home incident in Coeur d' Alene but the only penalty is a misdemeanor. **Senator Richardson** asked about the domestic abuse issue or is it only sexual abuse and was told that this is targeted toward sexual abuse and exploitation. **Senator Burkett** asked how this would affect legal spouses of vulnerable adults. **Senator Goedde** deferred the answer to Heather Riley of the Ada County Prosecutors Association, who said that if a legal spouse was doing something against the vulnerable adults wishes, then they would be in violation. Currently there are conditions for children, such as lewd and lascivious conduct, and this is the sexual content language for the adults. As for the legal spouse, if the action was proven not to be consensual, it would fall within the prohibition of sex abuse. Otherwise it wouldn't involve consensual and wouldn't be reported to law enforcement. If it is non consensual, then it could involve married or unmarried people.

MOTION: **Senator Jorgenson** made a motion to sent RS14793 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

Discussion: **Senator Davis** joined **Senator Burkett** in being troubled over the broad impact of this legislation as written and the possibility to pick up spouses. He felt that this needed to be thought through or an alternative approach looked at.

Committee vote: Motion carried by a voice vote.

RS 14772 **Senator Goedde** presented this bill that would make it a felony to intentionally abuse a vulnerable adult under circumstances likely to

produce great bodily harm or death. It also would be a felony to neglect a vulnerable adult under circumstances likely to produce great bodily harm or death, or to exploit a vulnerable adult in those cases where the monetary damages exceed $1000. **Senator Goedde** explained that with this language they tried to separate offenses to move egregious behavior to five years. During the discussion, it was noticed that the word "willfully" was not in this language, and it was then realized that the revised legislation was not the one being presented. This will be returned to the sponsor.

RS14813 **Senator Sweet** presented this language that 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. This bill also provides that the Idaho State Police shall keep records of those agreements and make them available to the public.

Senator Lodge questioned that there wouldn't be a fiscal impact as this service surely would generate a cost. **Senator Sweet** assured her that he had visited with Ann Cronin, Idaho State Police and there was no appreciable cost to use the website, which will be the cheapest way to get information out to the public.

Senator Davis asked if as an elected Senator, he would be exempted under this law and was told that he would in Idaho, but not in other states. **Senator Sweet** told the committee that our law, as well as that in Washington has the least requirements, and conditions have to be met on a state by state basis. **Senator Davis** wondered if this was more beneficial to those who come to Idaho than it is for Idahoans who go to other states. **Senator Sweet** responded that the code was amended to accept other states, and they are not trying to get reciprocity from other states.

MOTION: **Senator Bunderson** made a motion to send RS14813 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RS14985 **Senator Sweet** also presented this legislation that would provide a uniform statewide method dealing with abandoned or unclaimed property in the possession of a sheriff or city police department. This bill also provides a uniform statewide method for the acquisition and disposition of firearms that are confiscated by any public agency in Idaho.

Senator Davis asked **Senator Sweet** if he is a licensed firearms dealer, and was told that was correct. **Senator Bunderson** asked if this legislation could add a few dollars to the city coffer but Senator Sweet responded that he didn't think there would be an appreciable amount as firearms have previously been licensed off to dealers and this will not be changed.

MOTION: **Senator Richardson** made a motion to send RS14985 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RS 14950 Mike Becar, executive director of the Post Council presented this legislation to add a new section authorizing the Peace Officer standards

and Training (POST) Council to establish minimum basic training and certification standards for state correction officers and for adult probation and parole officers. There are already standards in place for training for those working with juveniles, but these are for those working with adults. Also, this proposal amends Idaho Code section 202-09(c) to clarify that peace officer status is reserved for those certified as peace officers, not just IDOC employees "who receive certification" from POST.

MOTION: **Senator Bunderson** made a motion to send RS14950 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

There were several groups of High School students in the audience and **Senator Darrington** invited them to ask questions and he instructed them in the procedures of the committee.

Adjournment: Meeting was adjourned at 2:15 p.m.

Senator Denton Darrington Chairman	Marianne Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 16, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Sweet** made a motion to approve the minutes of February 14. Second was by **Senator Richardson**, the motion carried by voice vote.

RS14561C1 Heather Cunningham, representing herself, brought two problems in the law to the attention of the committee. The purpose of this revision to Idaho Code Section 7-721 is to clarify that the "Quick Take" procedure, which allows condemning authorities to take possession of private property prior to trial is available to all condemning authorities. Currently, the statue contains a list of condemners and projects which is not all-inclusive; therefore there are some condemners which cannot take possession of property being condemned by eminent domain until after a Commissioner's Hearing and a trial on the issue of valuation. The result is a delay in public projects and additional costs to private property owners. This revision to the statute will clarify that any entity with the power to take private property via eminent domain may also obtain immediate possession of the property upon deposit with the Court of "just compensation". The property owner and the condemner can then resolve the valuation/just compensation issue without the public project being delayed.

MOTION: **Senator Sweet** made a motion to send RS14561C1 to print. Second was by **Senator Richardson**. Motion carried by a voice vote. This bill will be referred to Local Government and Taxation committee.

RS14818C1 Heather Cunningham also presented this bill which is to revise Idaho Code to move the existing "Highway Relocation Assistance" section of the code, which is applicable to eminent domain, to the "Eminent Domain" section of the code. Currently, when property is acquired through eminent domain for a highway, displaced individuals receive relocation assistance from the condemner. However, when property is condemned for purposes other than highways, relocation assistance is not provided under the current statute. This change will ensure that all Idaho citizens who are displaced this way will receive equal are location assistance, regardless of who is condemning their property or the purpose of the taking.

Senator Burkett asked about the emergency clause which would make this legislation in full force after its passage and approval, and was told it would be as of July 1. **Senator Kelly** asked why the relocation assistance was originally adopted just for the highway act. Ms. Cunningham replied that in the history of condemnation, displacement occurred more due to highways. This is to make sure that all entities cannot use the statute to

deny relocation assistance.

MOTION: **Senator Jorgenson** made a motion to send RS14818C1 to print. Second was by **Senator Lodge**.

Discussion: **Senator Kelly** felt there were some serious legal and public policy issues involved in this, but the germane committee who deals with this can look into those issues.

Committee Vote: Motion carried by a voice vote. This bill will be referred to the Local Government and Taxation committee.

RS14860 **Senator Goedde** brought this legislation due to an incident in a facility in Coeur d'Alene. Currently, under Idaho law it is only a misdemeanor to abuse, exploit or neglect a vulnerable adult, even in those circumstances where great bodily harm or exploitation beyond $1000 exists. This bill would make it a felony to intentionally abuse a vulnerable adult under circumstances likely to produce great bodily harm or death, to neglect under these same circumstances, or to exploit a vulnerable adult where the monetary damages exceed $1000.

Senator Burkett asked how anyone who abuses or neglects a vulnerable adult is guilty of a felony, (line 16) but if it is abuse by negligent infliction (line 30) will only be guilty of a misdemeanor. He asked how that can be reconciled. He was told that the qualifier is "great bodily harm" The current code has definition of abuse.

MOTION: **Senator Jorgenson** made a motion to send RS14860 to print. Second was by **Senator Lodge**. The motion carried by a voice vote.

RS 15009 JoAn Condie, representing the Pharmacy Association presented this bill that would allow a pharmacist who moves to Idaho to be able to go to work faster than they could if they waited for all the paperwork to be done. If they are in good standing in their current state, they would be issued a "temporary license" status until they could receive their permanent pharmacist license. At the current time, with the shortage of pharmacists in Idaho, those transferring into Idaho are forced to wait until all the other states comply with the reciprocity request. The delay has been as long as 14 weeks.

MOTION: **Senator Lodge** made a motion to send RS15009 to print Second was by **Senator Richardson** and the motion carried by a voice vote. This bill will be referred to the Heath and Welfare committee.

RS15015 Steve Tobiason presented this legislation that is another version of the bail bond concerns. This legislation modifies bail statutes by stating a primary purpose of bail is to ensure the attendance of the defendant in court by providing a bail surety or agent 180 days after payment of the bail bonds to the court, to locate and return a defendant who has failed to appear in court. It also clarifies the authority of the bail surety or agent to enforce the remedies of the bail contract if a defendant breaches the contract and to recover expenses caused by the breach.

He explained that this should reduce the costs to law enforcement for

locating and returning defendants to the State of Idaho by motivating bail agents to locate and return defendants who have failed to appear in court.

Senator Lodge asked Mr.Tobiason if he had discussed this with the court administering the fee, paying forfeiture and then refunding could cause the county a problem. Mr. Tobiason said it was intended to do that, the extension is either at the front end or the back end of the time.

MOTION: **Senator Burkett** made a motion to send RS15015 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

S1065 Heather Reilly presented this bill that is an effort by the prosecutors to address the definition of "willfully".

There were several cases in 2003 and prior that pulled the rug out from under the prosecutors as to the definition of willfully. Social workers also had concerns and the attorney general suggested they try to define it more clearly.

In 2002, the Supreme Court decision in State v Young required the state to prove "specific intent", showing that not only a person acted or failed to act, but also that the act or failure to act was done with knowledge that it would cause unnecessary suffering or unjustifiable physical pain. As opposed to a general intent requirement of proof that an act or failure to act was "unjustified", "willful" or purposeful and committed "under circumstances or conditions likely to produce great bodily harm or death" as was intended by the Legislature.

In 2003, the Court of Appeals also applied this ruling to the "endangerment " clause of the code in State v. Halbesleben. This decision requires the state to prove a person willfully or purposefully placed a child in a particular situation and that the defendant knew the situation into which the child was placed would be dangerous to them or their health. This amendment clarifies that the intent requirement for injury to children is general intent consistent with that required for proving battery or other similar offenses. Ms. Reilly said without this definition, it is hard to prove"wilfulness" when the person inflicting the damage maintains that they didn't know that could happen, as with "shaken baby syndrome". This also includes an emergency clause.

MOTION: **Senator Lodge** made a motion to send S1065 to the floor with a do pass. Second was by **Senator Sweet** and the motion carried by a voice vote. **Senator Darrington** will carry this bill on the Senate floor.

Adjournment: Meeting was adjourned at 2:17 p.m.

Senator Denton Darrington Chairman	Marianne Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 18, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson** made a motion to accept the minutes of February 11 as written. Second was by **Senator Sweet** and the motion carried by a voice vote.

HCR7 **Senator Darrington** presented this bill that provides for printing the session laws, fixing the price for that printing and the price that the public is charged for copies of these session laws. The agreement is with Caxton Printers, Ltd. of Caldwell, Idaho and was entered into on February 1, 2005 between the Speaker of the House of Representatives, Bruce Newcomb, President Pro Tem of the Senate, Robert Geddes, the Joint Committee of the House Judiciary Committee and the Senate Judiciary and Rules Committee of the Legislature of the State of Idaho. The contract is for 800 copies at $19.10 a page, with $7.75 for binding, $7/page reduction, $43 volume singles, and $55.50 volume doubles. This is done every two years.

MOTION: **Senator Lodge** made a motion to send HCR7 to the floor with a do pass recommendation. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS15025C1 Bill von Tagen presented this legislation that deals with identity theft. This proposal creates a new code section to create a felony when a private person falsely pretends or assumes the position of a member of the armed forces to attempt to obtain personal identifying information about another person.

MOTION: **Senator Richardson** made a motion to send RS15025C1 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS14943 **Senator Andreason** presented this concurrent resolution that would reject certain standards for commercial driving schools incorporated by reference into the rules governing uniformity of the State Board of Education. The effect of this resolution, if adopted by both houses, would be to prevent the agency rules from going into effect. He asked that this be referred to the Education Committee after printing. (See attached letter)

MOTION: **Senator Lodge** made a motion to send RS14943 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RS14909 **Senator Sweet** presented this bill on behalf of **Senator Keough** and **Representative Eskridge** that would provide the opportunity for all disabled individuals to obtain a combination hunting and/or fishing license at a reduced fee price. This legislation will encourage the increased participation of disabled individuals in hunting and fishing activities by offering them a reduced

price on their licenses. The fiscal impact on the dedicated fund for the Fish and Game Department may be impacted by the movement of currently ineligible disabled people that purchase a full fee license to purchase of a discounted license. This may be offset partially by an increase of purchases overall by disabled people who currently do not purchase licenses but may as a result of this bill.

Senator Davis expressed concern that the definition of a disabled person was stricken from this bill section. **Senator Sweet** said the legislation was focusing on people who are handicapped or those who are financially unable to purchase licenses. He also commented that the definition of a handicapped person is in a completely different code section.

MOTION: **Senator Davis** made a motion to send RS14909 to print. Second was by **Senator Bunderson** and the motion carried by a voice vote.

S1068 Bob Aldridge told the committee that an amendment had been made to this bill and he requested that it go to the 14th or amending order. There have been hours of meetings on this issue and upon suggestions given, the legislation has been re-written many times. At this time, he is unaware of anything that needs to be changed. The Living Will and Durable Power of Attorney for Health Care, formerly spread into two documents, are combined in a single document, although the person executing the form can choose to fill out either or both of such subparts. The existing signature method of the Living Will is used for the combined form, which will make execution of the document much easier, especially in a hospital or other institution.

Senator Davis expressed concern if the intent was to work on it or allow the process to proceed. This is a significant and important area of law and it isn't wise to take the first step without all the groups being included. He suggested that it be held in committee and allow time for those who want to work on it to do so.

Mr. Aldridge was very much opposed to this suggestion and told the committee that he had worked for a long time on this and it was ready to go. He said it was difficult to do everything at once, and there will be continuing changes for a number of years. "This legislation represents important changes that need to be done now," he said, "and I am not aware of any opposition. It is important to get it through this year and then come back again with any changes. The Idaho Medical Association and the Idaho Hospital Association were happy with it and it has been thoroughly reviewed. "

Senator Davis felt that if the IMA doesn't support it, that some form of public setting should be allowed for review. Mr. Aldridge responded that he was baffled that the IMA would have additional questions, as multiple meetings were held with the Idaho Hospital Association and the Idaho Medical Association and a great many of their suggestions are incorporated in this bill, and that is the reason it is in amended form.

Senator Darrington reminded the committee that they have several options; they can send it to the floor with a do pass, send it to the 14th order for an amendment, or send it back to draft a new RS, present it to the committee get a new bill number to get it as the amendment that is here. Then we could take

the same action of printing it and sending it to the floor.

Mr. Aldridge went through the bill line by line telling the committee of the changes, which were very few, as most sections were simply renumbered and carried forth without change to how they were previously worded.

Peter Sisson, an Elder law attorney, and a co-author of the bill spoke to the committee and encouraged them to move forward this year. It is important, even though there is no pending case, there is much confusion in this area. He sees in his practice all the time, that people fill out a form and check boxes that they don't really intend, such as hydration in the end, and this can create heartache for the family members in the long run.

Cheryl Simpson Whitaker, of the Better Way Coalition, said that they have been involved since May of 2004 holding open forums and gathering information electronically on this legislation. People have reviewed it and deliberated on it, but she assured the committee that it has had wide input and availability for comment.

MOTION: **Senator Bunderson** made a motion to hold the bill in committee and ask that another RS come forth. Second was by **Senator Burkett**. **Senator Davis** made a substitute motion to send S1068 to the 14th Order for amendment as the body of the Senate will be in the amending order on Tuesday, February 22. Second was by **Senator Richardson. Senator Bunderson** said he was comfortable if it went to the 14th order with the accompanying amendment. Motion carried by a voice vote.

S1122 **Senator Darrington** told the committee that he and **Senator Lodge** had met with the Chairman of the Finance Committee regarding the fiscal impact statement, requesting one full-time employee and $78,000. **Senator Cameron** said that if the fiscal impact statement is accurate, he will find a way to make it work and had no objections to action on this.

Megan Ronk, the Governor's Criminal Justice Policy Advisor told the committee that the Governor talked about the aggressive approach in battling the manufacturing, trafficking and abuse of methamphetamine in Idaho. Since 1999, 741 clandestine labs around the state have been shut down. They have been going after the manufacturers of meth through targeted law enforcement efforts and enhanced criminal penalties.
Through the Drug Endangered Children's Protocol, an innovative approach has been established to protect children endangered by the toxic filth of meth labs.

In the Governor's speech, he referenced the need to establish a process and standards to clean up residential properties contaminated with hazardous chemical residues that remain after a meth lab is shut down.

Currently, there are no standards in the state of Idaho for cleaning up these meth labs. If a lab is interdicted by law enforcement, hazmat teams come in and clean up the gross contaminants that are evident. But there are other contaminants and residues that are spread throughout the property, on carpet, walls, ceilings, window treatments and in ventilation systems. Unsuspecting residents, including those with children rent or purchase one of these

properties and are unaware of the hazard.

Senate Bill 1122 is the first step in establishing a program and standards for a clandestine drug laboratory cleanup. This legislation, which resulted after nearly four years of discussions and negotiations, is a cooperative effort and was drafted by representatives from the Idaho State Police, the Department of Health and Welfare, the governor's office, and the Idaho Association of Realtors, as well as Senator Darrington, Representative Debbie Field and others. This legislation is also supported by the Idaho Chiefs of Police association and the Idaho Sheriff's association.

Colonel Dan Charboneau told the committee that this was an important piece of legislation and has gone through a long process over a number of years to try to resolve some of these cleanup issues. This is the first on many steps to establish a program for meth lab cleanup issues that face the State of Idaho. **Senator Kelly** in her role at DEQ is well aware of the struggles encountered in this process. When law enforcement enters a clandestine lab, they go in with full protective gear as it is a hazardous environment. When they leave the site, they take the gross contaminants, those things readily apparent as evidence or product as solution. With the recent study done, they realized a lot of contaminants were being left behind that could damage young children in their developing years. This is an effort we need to make to make sure residences are safe, motel rooms are safe for future occupants.

In June of 2003 they began the "drug endangered children protocol" in Region One and of the18 kids identified, 12 tested positive for meth. In June of 2004, the process began in the Twin Falls/Jerome area, and 18 of 46 children involved in meth lab properties tested positive for meth. Even when law enforcement is done, there is still concern about cleanup and that is what this bill addresses.

Dick Shultz, Administrator of Division. of Health and Welfare told the committee that this is taking the right path, is a hard thing to do, but is the right thing to do. This will be a process that will result in negotiated middle ground of what needs to be done. The Health and Welfare department will have the authority to promulgate rules that would create a clean up process. This is a new undertaking for the department to do the interior cleanup, the Department of Environmental Quality (DEQ) does the exterior cleanup now. The result of the rule making needs to have a very broad discussion of input and will be an engaged process.

Senator Darrington asked that the rules be referred back to this committee for review at that time.

John Eaton, Government Affairs Director for the Idaho Association of Realtors spoke in support of this bill. The Realtors have been working with state officials for the past several years to create some kind of cleanup standards for Idaho. The problem has been that little data existed until recently regarding the practical effects of meth labs on residential property. Colonel Charboneau earlier referenced a study by Dr. Marteny entitled "*Chemical Exposures Associated with Clandestine Methamphetamine Laboratories"* that outlines problems with cleaning up meth labs. The Colorado Department of Public

Health and Environment recently published a comprehensive guidance document on cleanup standards. Many states have been adapting their laws to fit this new research, and Idaho is finally in a position where we have some science on the issue, and it makes sense to pursue these standards.

Recently the Dept. of Health and Welfare agreed to take the lead, which further opened up the opportunity for this legislation. Mr. Eaton asked that the bill be sent to the floor with a do pass recommendation.

Senator Richardson asked who would be responsible if the previous owner did not clean up the residence sufficiently and then the current owner might be charged. Mr. Eaton responded that the owner will be required to go through a cleanup and not be allowed to re-occupy that structure until Health and Welfare certifies that it is clean. Mr. Schultz commented that ,at the present time, there is no health based risk based standard. This is going to have to be worked through as to the liability and has to be worked so this standard is not arbitrary.

Senator Bunderson asked why water was excluded and was told that these systems outside the building are covered by DEQ. He also asked if the immunity in Section 626-07 applied to contamination of those items. He referenced the criminality of this as a topic to be looked at this summer by a group including himself, Colonel Charboneau, Senator Kelly, and prosecuting attorneys.

Senator Davis asked, if in return to the grant of immunity, would it be good to have a "branding" of title or ownership of a subsequent ownership so they would be aware of the contamination and the subsequent potential risk that would exist. Ms. Ronk deferred the answer to Mr. Eaton who told **Senator Davis** that at the present time there exists a law that deals with disclosure of property when it is being sold. If there had been a meth lab on the property, it would have to be disclosed. The property disclosure form asks "Has the property been used as an illegal manufacturing site?" This form which they use is more in depth than the form set out in Title 55.

Senator Davis said he would assume that any responsible realtor would follow the rules, but he felt it would be good public policy to say if they want the immunity then all subsequent purchasers should be advised by giving some notice from the recorders office that this was once a contaminated site and when they have met the standard, the department would issue a certificate of compliance that would also be recorded, but this would alleviate the risk.

Mr. Eaton responded that this has been discussed in the past, but the Realtors position is that it is already required by law to be disclosed and it would probably put a cloud on the title at the time of sale, thereby hurting the owner, which was unintended. If a felony committed on the property, that doesn't have to be disclosed as it could adversely impact the value of the property and this should fall under the same type of situation.

Senator Davis felt that the title should be "branded", as the car title is when it has been involved in an automobile accident.

Alex LeBeau, Head of Idaho Realtors told the committee that he and **Senator Kelly** worked on this issue, and if a felony occurred on the property, it is not a disclosable item. The fact that there are potential environmental contamination would in fact be a disclosable item. How it gets cleaned up and that it does get cleaned up is the issue. The fact that a meth lab gets busted doesn't always mean that there is going to be environmental contamination and that is the problem with putting this on the title. It is going to depend on the standards that are determined.

Senator Bunderson commented that if there was a problem, the first property owner that allowed that to happen, should incur the loss, and not the subsequent owner. Then this would be overcome with the passage of time. There are some health based concerns and should be disclosed if someone is harmed and not have it "swept under the rug". Mr. LeBeau referred this answer to their legal counsel, Jeremy Pisca.

Jeremy Pisca, told the committee that the immunity from civil action is with regard to health based claims and that Mr. Eaton adequately identified the property conditions enclosures act, which says that if it is an environmental hazard it needs to be disclosed. There would be some immunity on the health based claim , if the property was cleaned to the new standard. If a property owner failed to disclose that does not make them immune to suit from fraud or misrepresentation. If someone was harmed and it was clearly "swept under the rug", that claim for fraud would still survive.

MOTION: **Senator Davis** made a motion to send S1122 to the floor with a do pass. Second was by **Senator Richardson**. **Senator Burkett** made a subsequent motion to move S1122 to the 14th order for amendment. This substitute motion was lost for lack of a second. Original motion was carried by a voice vote. **S1122** will be sent to the floor with do pass recommendation. Senator Darrington and Senator Kelly will carry this bill on the Senate floor.

ADJOURN: Meeting was adjourned at 3:10 p.m.

Senator Denton Darrington Chairman	Marianne Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 21, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Burkett, Kelly

MEMBERS EXCUSED: Senator Sweet, Senator Jorgenson

MINUTES: **Senator Kelly** made a motion to approve the minutes of February 16 as corrected. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS15000C1 This piece of legislation will be held until Friday, February 25 when the following RS15016C1 returns as a bill and they will be heard together.

RS15016C1 **Senator Burkett** presented this legislation that will provide for a scholarship for dependents of Idaho's members of military service who are killed or missing during the conflict in Iraq. It changes the language from child to dependents to include children and spouses. The scholarship would be $5100 per student per year, totally a cost to the General Fund of $23,000 for each Idaho casualty.

Senator Lodge asked if this was just for Idaho schools, which it is.

MOTION: Motion was made by **Senator Richardson** to send RS15016C1 to print. Second was by **Senator Kelly** and the motion carried by a voice vote.

RS15039 **Senator Langhorst** presented this legislation that would establish a public transportation policy for the state of Idaho and provides for public transportation services by local or regional public and private entities. There is no impact to the general fund as services to be provided are already funded from the gasoline excise tax and federal funds.

MOTION: **Senator Richardson** made a motion to send RS15039 to print. Second was by **Senator Burkett** and the motion carried by a voice vote. This bill will be referred to the Transportation Committee.

S1120 Mike Kane presented this bill that sets up a state process wherein retired peace officers may qualify for a concealed firearms permit. It tracks federal law on concealed weapons permits and will allow them to carry a weapon anywhere in the country in accordance with federal law.

Senator Richardson asked if this would require reciprocation from other states to assure this would happen. Mr. Kane responded that this is for law enforcement and if they comply with federal law, then they can carry a weapon in any state in the country.

Senator Kelly asked about retired police officers and was told that if they retire after 10 years they can get a permit to carry a weapon anywhere in the country, under Section 18-3302. They have to be a retiring officer in good standing. Right now the law says that if you are traveling and enter another state, you have to get a permit from that state to carry a weapon.

Senator Bunderson asked why this legislation was needed and Mr. Kane told them this was part of a presidential crime control and prevention package. The intent is that they will be fully equipped and ready to be used if called upon, thereby making the world a safer place.

Senator Darrington summed up the discussion by saying that retired officers in civilian clothing in the duration of their travels, wherever they might be within the 50 states, will be doing whatever they are doing, recreation, shopping, and they might be there during the commission of a crime, and who would be better able to respond and help on the spot than those who have been trained with regard to firearm use within the law.

Senator Richardson commented that it made sense to give these people this ability. **Senator Kelly** asked about there being no fiscal impact, yet there are fees in the legislation. Mr. Kane responded that the fee goes to the county sheriff who can charge $20 to defray expenses, and there is a renewal fee of $12.00 every year. These costs equate with the expenses, thereby not creating a fiscal impact.

MOTION: **Senator Richardson** made a motion to send S1120 to the floor with a do pass. Second was by **Senator Kelly** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the Senate floor.

S1137 Colonel Dan Charboneau presented this bill that would clear up the language in some of Idaho code sections. Section 202-09 (C) will be amended to clarify the status of certified corrections officers. This makes it clear that peace officer training is reserved for those certified as peace officers. Section 19-5109 gives the POST council the authority to establish minimum basic training and certification standards for state correction officers and for adult probation and parole officers. There is another bill, Senate Bill 1054 which will alter certain funding formulas to direct an additional $1.1 million to the POST dedicated account to support the increased POST operations.

MOTION: **Senator Bunderson** made a motion to send S1137 to the floor with a do pass. Second was by **Senator Kelly** and the motion carried by a voice vote.

Adjournment: Meeting was adjourned at 2:00 p.m.

Senator Denton Darrington
Chairman

Marianne T. Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 23, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of February 18 as written. Second was by **Senator Richardson** and the motion carried by a voice vote. **Senator Kelly** made a motion to approve the minutes of February 21 as written. Second was by **Senator Davis** and the motion carried by a voice vote.

RS14869 Allen Gorin, Director of Idaho United for Israel, presented this legislation that is a joint memorial simply stating that the people of Idaho stand in solidarity with the State of Israel as it takes steps to fight the terrorism that has impacted both Israel and the United States. The safety of Idaho citizens and the economy of Idaho both benefit from this stand of solidarity. The memorial also encourages the promotion of tourism, economic trade, and cultural exchange with the State of Israel. Another benefit of the memorial is the positive message it sends that Idaho is a state that welcomes people of different faiths, beliefs, and ethnic heritage. This memorial could encourage additional export and trade with the State of Israel which would have a positive impact on Idaho's economy.

Mr. Gorin told the committee that Idaho needs to take a proactive position of how we treat Jews and other minorities. It would be Idaho's advantage to befriend Israel as they are experts on water issues.

Senator Jorgenson commented that he was proud to live in Hayden Lake, which is now the antitheses of what Reverend Butler created. He felt that this legislation was putting the entire culture on the defensive as he has met some very decent Palestinians and Arabs who want to work for democratic values, but they put their life on the line if they speak out.

George Moses, representing himself, has lived in Idaho for 8 years, coming from Washington D.C. where he was involved in politics such as this. He compared the resolution with the words of the President's speech yesterday and thinking of it in terms of the changes that have taken place so rapidly since the death of Chairman Arafat. "We are no longer dealing with a static situation in Israel, but are dealing with a dynamic situation that is changing from day to day, " he told the committee. He felt that much of the language in this resolution is based on facts and attitudes in the past. The President and Secretary Rice are trying to pass those into a new future, and he urged the committee to support the President in this effort and to support Secretary Rice in helping us move forward.

He addressed the question that one side or another would consider this one-

sided. As he listened to Mr. Gorin present it as it relates to Israel, and it does that, he feels that in his work with this issue even Palestinians who don't wish Israel ill, will see it the same way. If this is passed, Idaho will be placed on one side of this dispute and it is being done at a time when the President is trying to move us to a center place where we can reach common ground.

He continued with "The fact is that peace and security, which everyone in the region wants, will not come fast. We all witnessed when Israeli's fanned across the world before the millennium to solicit and receive contributions to rehabilitate Bethlehem and then three years later, Israeli tanks were chewing up the city of Bethlehem. That is not how we want to go, we need to get to a place where the common ground is sufficient for both parties to be accommodated, not dictated by one and accepted by the other. He asked the committee to take a closer look at this.

He worked closely in the State Department with those that deal with these issues and he assured the committee that they spend a great deal of time and effort examining all sides, and when they make a policy recommendation to the President, they do so with the best interest of the United States at heart. He urged the committee to put Idaho on record as supporting the President and his people in their work to get us where we need to go. If the concern is that we show the world how we treat Jews in Idaho, he suggested that it be addressed directly and create a memorial how Jews can live and prosper in Idaho and leave foreign policy to the foreign policy experts.

Senator Sweet commented that he understood this resolution in a very similar form has passed in other states and is presently in the works in others and asked Mr. Gorin which states had passed this civil resolution.

Mr. Gorin responded that as of one year ago, it had passed in the Florida-House and Senate; Georgia-Senate; Louisiana-House and Senate; New Mexico - House: Colorado- House and Senate. Legislation has been submitted to Alabama- House, California- Assembly, Texas- House, Missouri-House, Pennsylvania- Senate, Michigan- Senate, and was in progress in Oklahoma, South Carolina, Kansas, Arizona, Kentucky, South Dakota, Idaho and Oregon. When the updated list is done, there will undoubtedly be more states.

Senator Bunderson commented that a year ago, Yasser Arafat was still alive and that current members of the leadership are trying harder to cooperate with the administration's plan of making Palestine a separate state as well as directing that there be a cessation of terrorist activity which has had a calming effect the last few weeks. He asked about language in the bill that said "members of the current Palestinian leadership have failed to abide by their commitments to nonviolence made in the Israel-PLO declaration of Principles (also known as the 'Oslo Accord') of September 1993." The legislation says that they have failed as of today's date or when it passes, and he felt this was problematic. Mr. Gorin replied that "there is a debate whether what is seen going on is genuine or posturing, but we'll find out if a new boss can rein in the terrorist elements and work out something with Hamas and Hezullah. The reason we have gotten to this point, is that the United States has finally spoken with moral clarity, when Pres. Bush refused to deal with

Arafat and when he linked the creation of a Palestinian state with the embracing of Democrat values. When the United States speaks with moral clarity, it facilitates the ability to have peace. And I think this resolution speaks with moral clarity."

Senator Davis commented that he had visited Israel as a member of the Jewish Council and felt the focus then was the right of Israel to defend itself as a state. President Bush and Secretary Rice are saying that they are not worrying about what is happening with the United Nations resolution or worrying about what has been done prior, let us focus today where we ultimately want to be, where there is a Palestinian State and an Israeli State. He felt this was the essence of Pres. Bush's current speech and asked if that was right. He wished that this legislation contained language of the Oslo Accord and its intent for two separate states.

Mr. Moses responded to Senator Davis's concerns by saying that it is important not to lose the past, and he feels the President sees as an opportunity now to reach a settlement based on two viable states living side by side. He read from an editorial in today's Washington Post that said " Three years ago, Mr. Bush cut off contact with Palestinian President Yasser Arafat and demanded the reform of his government. Now, after Mr. Arafat's death, such reform is seemingly underway. A new president, Mohmoud Abbas, was democratically elected, and a new Palestinian cabinet announced yesterday placed reformers in key positions. One Abbas ally has been put in charge of re-organizing security forces, and another was named minister of information." (See entire article - attached)

He assured the committee that there are Palestinians who are waiting to see whether Mr. Arafat's presence and stalling the American peace process was reason or excuse. The Arab-Muslim world is looking to see what comes after this. As long as that sore festers, we will suffer the results. The President knows this and he has made resolution of the Palestinian Israeli dispute at the top of his Middle East agenda.

MOTION: **Senator Sweet** made a motion to send RS14869 to print and to the floor. Second was by **Senator Davis.**

Discussion: **Senator Richardson** feels very strongly about Israel, and is appreciative of what they have done, but he feels that this is bad timing with what is taking place in the world right now. If this was supporting Israel without condemning the Palestinians, he could support it, but he cannot at this time.

Senator Davis believes the primary purpose of the legislation is to recognize that Israel has a right to self-defense, and a right to condemn and protect itself against terrorism, just as we in the US have a right to do.
He found many Palestinians who want to live in a peaceful existence, whether it be in one state or in two states.

Senator Lodge told the committee that she has visited Israel within the last five years and she feels that the committee needs to sit back and see how negotiations are going to proceed. She would like to support the President and Secretary Rice, but she doesn't feel that this is the right time for this memorial as the language is not up to date, and she can't support this

resolution.

Senator Burkett said that he is concerned that it is not the right time to send this to Washington containing some words, such as condemnation . Also interjecting Idaho into the extreme hate based and religious based conflicts around the world doesn't do anything to alleviate or address our need to say we are not a place for hate.

Senator Sweet said he fails to see where this condemns anyone other than those who commit acts of terrorism. He would hope that this body would condemn anyone who commits acts of terrorism. Every time this references anything that relates to condemnation, it refers to acts of terror, which is appropriate. On the second page, line 32, it "urges all parties in the region to pursue vigorously all efforts to establish a just, lasting and comprehensive peace in the Middle East..." This is a positive statement and it is time we send something positive like this to help deal with the public image that Idaho has. There is no way it condemns anyone who works for lasting peace in a place where both the Palestinians and the Jews can have a homeland.

Senator Jorgenson spoke in opposition to the memorial by saying that "we should be opposed to terrorism, but that is all terrorism, whether it is Irish terrorism, Spanish terrorism, or Korean terrorism, it is terrorism and when we start putting just two classifications, it only serves to exacerbate devicivness".

Committee Vote: Motion failed by a voice vote. RS14869 will be returned to the sponsor.

S1100 Roger Bourne presented this legislation to clarify that juries 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. This will help to sentence a serial killer or multiple murderer by hearing all relevant information before sentencing

MOTION: **Senator Burkett** made a motion to send S1100 to the floor with a do pass. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Darrington** will carry this bill on the Senate floor.

S1135 **Senator Sweet** presented this bill that 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. This bill also provides that the Idaho State Police shall keep records of those agreements and make them available to the public.

MOTION: **Senator Lodge** made a motion to send S1135 to the floor with a do pass. Second was by **Senator Sweet** and the motion carried by a voice vote. **Senator Sweet** will carry this bill on the Senate floor.

ADJOURN: Meeting was adjourned at 2:20 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 25, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MEMBERS EXCUSED: Vice-Chairman Senator Richardson

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of February 23 as written. Second was by **Senator Kelly** and the motion carried by a voice vote.

Senator Darrington told the committee that the RS's on our agenda will be voted on as a group as they are being sent to print for other committees.

RS14998C2 This legislation on behalf of the Idaho Supreme Court 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 disturbance and who meet the other criteria for involuntary treatment.

RS15034 This legislation also from the Court would provide that courts hearing Juvenile Corrections Act or Child Protective Act cases could order a mental health assessment and preparation of a plan of treatment for juveniles who appear to be suffering severe emotional disturbance (SED). This bill is intended to provide a procedure for obtaining prompt assessment and treatment of the mental health needs of the juvenile at any stage of these proceedings.

RS15043 This last bill from the Court addresses the liability arising from the actions of "shared" employees. These 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.

RS15041 This is a concurrent resolution to encourage programs which support the educational experience in international study and cultural awareness and is being printed for the Education Committee.

RS15042 This is also a concurrent resolution urging the Secretary of State to convene a summit for civic learning and is being printed for the Education Committee.

MOTION: **Senator Bunderson made a motion to print RS14998C2, RS15043, RS15034, RS15041 and RS15042. Second was Senator Lodge and the motion carried by a voice vote.**

RS15000C1 Steve Edgar, co-sponsor of the bill told the committee he was a retired

United States Air Force pilot and combat veteran, who served for over 21 years on active duty and moved to Idaho shortly after his retirement. He told the committee that he is a concerned citizen with a resolution that he hoped they would support. This resolution will help to provide peace of mind to our Idaho citizens serving in combat zones worldwide. As a veteran, the knowledge that his family would be provided for in the event of his death would be one of the many burdens lifted from his shoulders while serving in a war zone.

He recognized Idaho's support for those fighting the enemy on foreign soil by the many symbols of support, especially in and around the capitol. Presently, the Federal benefits only provide surviving dependents of military members killed in combat, a $12,500 death benefit, a maximum of $250,000 in life insurance and a funeral stipend of up to $4325. At one time, Saddam Hussein was paying surviving family members of suicide bombers a $25,000 payment, more than our own death gratuity.

The National Conference of State Legislatures recently surveyed the 50 states to assess the status of supplemental veterans benefits and found that 40 states, including Oregon, Utah, Washington and Wyoming have supplemented these federal benefits or are in the act of approving state funded GI benefits. As of today, 27 states have or are approving state supplemental death benefits, and 22 states have or are approving family bills regarding assistance to military families.

Two days ago, Governor Kulongoski or Oregon proposed providing to National Guard members and reservists from Oregon who have served on active duty abroad, free tuition and exemption from other state fees. He wants to create a "recognition" package for Oregonians serving abroad. This bill is a vehicle for Idaho to step forward on this issue, just as we are asking the federal government to step forward in our resolution.

Tom Ressler representing the Veterans of Foreign Wars and the Auxiliary and the American Legion spoke in support of this bill. He told the committee that families of deceased military have trouble making ends meet and this is a step in the right direction to take care of their families.

MOTION: **Senator Lodge made a motion to send RS15000C1 to print. Second was by Senator Jorgenson.**

Discussion **Senator Burkett** commented that he had worked closely with Senator Craig's office on this legislation and it would give them a boost to increase the death benefits. **Senator Bunderson** commented that his oldest brother was killed in World War II making it hard for his family to get along financially, and he felt this was a good measure to put in place.

VOTE: The motion carried by a voice vote.

S1119 Molly Steckel presented this bill for the Idaho Medical Association. In 2004 the Legislature created the Idaho Law Enforcement and Firefighting Medal of Honor to recognize extraordinary acts of valor and heroism by police officers and firefighters. Following the passage of that bill, several emergency room physicians decided that they would like to honor their colleagues, the many

emergency medical service providers in Idaho. This bill would change the name of the medal to the Idaho Law Enforcement, Firefighting and EMS Medal of Honor and make emergency medical service providers eligible to receive this recognition. Emergency medical service (EMS) providers make a significant contribution to their communities and take many risks in the line of duty. Adding them to the Idaho Law Enforcement and Firefighting Medal of Honor will acknowledge the contributions of these dedicated individuals. She said their intent was not to dilute the meaning of the Medal of Honor, but to create eligibility for a group of EMS providers who are on the scene of almost every 911 call and devote their lives to helping the citizens of Idaho.

Senator Bunderson asked about the high risk of treating a person who has AIDS or under the influence and the contamination risk. Shawn Rayne, who is interim Depute Director of the Ada County paramedics and commander of tactical medical team responded by saying that they have a larger risk of being contaminated with Hepatitis C, and that does happen. The only protection is workman's compensation as the EMS were left out of the picture in public safety matters, as well as the first bill that was passed.

Senator Burkett asked about an example of the current Medal of Honor requirements. Ms. Steckel replied that there had been no medal of honor recipients yet as the new commission was created in 2004 and nominations are due in May, 2005.

Senator Compton, co sponsor of the bill with Ms. Steckel and **Senator Stennett**, summarized the discussion saying that there was a question that including the EMS personnel would cheapen the honor, but the EMS work side by side with law enforcement and put themselves in harms way as well. During 911, hundreds of policeman fireman and EMS responded, and their lives are as valuable as any others. The goal is to save lives and EMS should be included in this recognition.

MOTION: **Senator Bunderson made a motion to send S1119 to the floor. Second was by Senator Lodge**.

DISCUSSION: **Senator Davis** spoke of the night of March 15, 2003 as his son lay dying from a gunshot wound, and the EMS did their best to save his life. He thanked them for their efforts.

Senator Burkett expressed concern about including others in the Congressional medal of honor and felt that another medal should be named a different name as an honor for heroes in Idaho. **Senator Bunderson** responded that this medal doesn't take anything way from the Congressional Medal of Honor. **Senator Lodge** commented that there are not enough ways to honor heroes, and spoke of a personal experience in her family. "This is a small token to show children that there are real heroes," she said.

VOTE: **Senator Davis** requested a roll call vote. **Senator Burkett** was the only Nay vote. Motion carried and S1119 will be sent to the floor with a do pass. **Senator Compton and Senator Stennett** will co-sponsor the bill.

S1155 Steve Tobiason, presented this legislation on behalf of Aladdin Bail Bonds,

who have approximately 60 employees in 6 offices and 2 satellite offices and pay between $26,000 and $48,000 in salaries. They have their own in-house investigative and recovery agents. The purpose of the bill is to provide additional time to locate clients who have broken trust with the court and failed to appear. The victims rights should be recognized as well as those of the criminal, and the priority is to create incentive to return the defendant. Aladdin had 1000 that didn't appear, and they returned 97%. The next year 2000 were located within 90 days and they 96%. Those who cannot be located don't want to be found.

The 90 day limit works okay, but they would like to return 100% and need more time. The difference is that they must pay the full amount of bail for the first 90 days. At that point, they want an incentive to return the defendant that is hard to find and would like to receive back the bail money.

If someone doesn't appear, when the bond agreement is reached, a relative would sign that they would be held liable if the defendant didn't appear. It makes more sense to get recovery of the individual and this finds another way to keep the incentive as the highest level possible.

Heather Reilly, representing the Idaho Prosecuting Attorney's Association of Idaho who have concerns and are in opposition to the bill. One is that the priority of the bail agent is to insure that the defendant does appear on the front end. She related that an attorney will prepare for a court appearance and then the defendant does not appear and the trial is vacated. This is costly. The IPAA doesn't agree that an additional 6 months is necessary for a bail agent or surety to look for an individual. The first 90 days is an efficient incentive to locate them. She noted the language that "a failure to give accurate and timely notice shall exonerate bail or undertaking". If an individual fails to appear in Ada county but is taken into custody in Kootenai, then that bond agency is exonerated. Also, striking language on lines 37-40 would not allow the parents who put up the money to bring their son back into court to be reimbursed, but would be limited only to the surely or bail agents.

Robert Hayes, owner of Aladdin Bail Bonds in Idaho told the committee that the core of this bill is the ability to put the defendant back into custody. The intent of bail is to give financial incentives to the bail agent to bring that person back into custody. The financial incentive is the same. The bail is paid In 90 days, then they would have another 90 days to go get the person and get reimbursed. He commented that he didn't want to lose anyone in the state.

Mike Henderson, Legal counsel for the Idaho Supreme Court spoke in opposition to the bill saying that it was circulated to the judges and trail court administrators and the comments were uniformly negative at the proposed additional180 day period after remittance for return of defendant to require court to remit the forfeited bail, minus a $100 administrative fee. A large problem would be how to handle the money during the 180 period. The auditor would have to hold the money which would stop the flow to the general fund. They felt the incentives or pressure upon persons supply bail to locate and return the defendant would be less, and more would be

returned by laws enforcement, as 70% are returned by law enforcement now. Also, the delays in the docket will result as cases lay dormant as witnesses may disappear, and memories may fade.

David LeRoy, representing the Idaho Bail Bonds likened the statutes regulating the right of bail as a 7-way intersection. North is the defendant and liberty, South is the Court and the judge who want the guy back, 3rd direction is law enforcement, 4th is friends and family who have pledged credit and their possible loss, 5th is trial court administrator who want timely cases, 6th is local government entities dependence on forfeiture revenues, and 7th is the bail agents who need a regular and predictable area. The big picture is that 7 ways creates a very delicately balancing of interests to work and must be negotiated carefully. He referred to the opposition to this bill by several agencies, who have contacted those members of the committee. (See attached letters)

Allegheny Casualty Company has been a national bail underwriting insurance company for 50 years, and their experience has been that in other states where this approach was tried, turned out to be bad for the future safety of their industry as well as for the state and they urged Idaho to move away from this direction.

International Fidelity Company also wrote that states where the bail writer has longer to pay suffer great losses, as in New Jersey, California and Connecticut. They feel the responsible surety underwriter will and does pay promptly, but the irresponsible ones are the opposite. They urged Idaho not to extend the current 90 day pay term on bail bonds.

John Duvall, President of Bail of Idaho who has 51 members who own their own business spoke against the bill saying that it is self-serving for only two people. Stacey Madron, a bail agent for 15 years in Canyon County and Vice President of Bail Agents of Idaho spoke in opposition. Debra Hicks, in the bail bond business for 17 years in Pocatello spoke in opposition to the bill as did C.J. Neimoth, in business in Mountain Home for 11 years. Ken Owens in business for 25 years in Boise, said the incentives are already built in to the law at the beginning. Jack Green of Wendell, Director of Idaho Bail Association said this is a great gift to the bail agents to make more money, but it is a deterrent to court and to the taxpayers, and he is in opposition.

Gene Newsom, Jackson Mississippi spoke in opposition to this bill as it doesn't serve overall justice and allows too much time . Rulon Evans, of Pocatello said the system works well, that they have a small forfeiture rate if the bonds are prepared properly and they don't need more time.

Senator Burkett asked about the comment of "self-serving to two people" and was told by Ken Owens that it was of interest to only 1 or two companies, but that those who opposed it were members from different parts of Idaho and the current laws work. The time for incentives is before you put the name on the bail bond not at the end.

Senator Sweet asked what the problem was in extending the time to return the prison to justice. He was told that if the agent doesn't pay, the insurance

company pays, if the indemnor signs, they guarantee the court of a no show.

Shad Preece, Department of Insurance was asked about the advantage to them to bring the legislation and responded that they met with the sponsors, but they are not taking a position on the bill . They disagreed with how the law applies and they are seeking a legislative change. He mentioned two letters that referred to a recent situation that the Department of Insurance advised them that Idaho Code Section 41-2041 sets forth the fees that are allowable in a bail bond transaction. There are no provisions for the revocation fee or the bond enforcement fee that they charged their client and therefore it appears that these fees are in violation of Idaho law. (See attached letter)

MOTION: **Senator Davis made a motion to hold S1155. Second was by Senator Lodge.**

DISCUSSION: **Senator Davis** had a long list of points to cover, and found there were more roads into the 7 way intersection. He felt that the committee was being asked to referee an industry fight and suggested they come back with a negotiated resolution.

Senator Bunderson agreed that something is broken but is not sure this is the solution and he was also not willing to referee.

VOTE: **Motion carried by a voice vote. S1155 will be held by committee vote.**

ADJOURN: Meeting was adjourned at 3:12 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 28, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson made a motion to approve the minutes of February 25 as written. Second was by Senator Sweet and the motion carried by a voice vote.**

RS15031C1 This bill is being printed for the Education committee and will allow time for the authorized chartering entities to fully review a petition and to work with petitioners to develop a charter school and explain to the parents and students what can be expected from their attending the school.

MOTION: **Senator Jorgenson** made a motion to send RS15031C1 to print. Second was by **Senator Davis** and the bill will be returned to the Education Committee.

S1156 Brian Kane, Office of the Attorney General, presented this bill that deals with identity theft and introduced Major David Dahle of the JAG office of the Idaho National Guard. This is a new area of identity theft as thieves are calling or soliciting the families of deployed soldiers for personal information. This scam operate by the individual calling a soldier's family and informing them that there has been an accident, bomb, or another incident in Iraq and they are trying to confirm identities. They then ask the family member to provide them with the social security number of the soldier, which they then use to steal the identity of the soldier. The practice is predatory in two ways, first the criminal preys upon the emotions of family members when they are most vulnerable and they are also stealing identities of people who are least able to protect themselves.

A new section of Idaho Code 18-3126A is created making it illegal to acquire personal information by falsely impersonating a member of the Armed Forces. This violation will be a felony. It is recognized that an emergency exists considering the large number of Idaho soldiers currently deployed overseas.

Senator Davis asked how the federal law ties into this legislation and he was told that it applies to regular military, including the Idaho State Police and would capture "all folks". There has been no opposition to this bill.

MOTION: **Senator Davis made a motion to send S1156 to the floor with a do pass recommendation. Second was made by Senator Jorgenson and the motion carried by a voice vote.**

S1086 Larry Tisdale, Health and Welfare presented this bill to close a loophole that

exists in Idaho Code for the recovery of medical assistance (Medicaid) payments made after the recipient reaches age 55, from the probate estate of the Medicaid recipient and the recipient's spouse. This could save the state about $525,000.

Senator Davis asked if this would modify the family's living or homestead allowance, but was told that the only exemption would be to heirs and this filing would be prohibited until both spouses are deceased.

Bob Aldridge addressed this bill telling the committee that the exempt property allowance in the probate code is intended to permit a decedent's spouse, or if none, children, including adult children, to keep a limited amount of family mementos and heirlooms, which was recently raised in Idaho to the sum of $10,000. However, the probate code also permits the exempt property allowance to be paid in cash or from other assets of the estate, such as real property and this can result in not having enough personal property to cover the allowance amount. Under Medicaid law, no recovery is made if property is passing to a surviving spouse, or to children. Therefore, the exempt property allowance only occurs in Medicaid Recovery situations where the claim is made by surviving competent adult children of the decedent.

Neither Oregon nor Washington permit such cash payments to be paid ahead of Medicaid estate recovery. The original language of this bill changed the priority language in §56-218 to continue to allow the adult children of Medicaid recipients to keep items of personal property up to $10,000 in value, but would not allow cash payment made from other assets of the estate until the Medicaid claim had been paid.

However, Mr. Aldridge stated that Trust & Estate Professionals of Idaho, Inc. disagreed with this blanket and sweeping change in the law. Therefore, amended language was crafted that provides that if there was not enough personal property to fulfill the $10,000 exempt property allowance, then the persons claiming the allowance must file a written statement, under oath, that either: (a) there had been no previous transfers, within one year prior to the death of the decedent through the date of the written statement; or, (b) that there had been such transfers, and a reasonable description of the property transferred. In the second case, the value of the property previously transferred would be subtracted from the amount of the unfulfilled claim and only the reduced amount of the remaining claim, if any, could be paid by the estate to the persons making the exempt property allowance claim. This avoided the personal property of the estate being stripped out in advance of the death of the decedent but nevertheless allowing the adult children to get the full allowance. Instead, the transferred property would, in effect, be treated as if it were still in the estate.

Mr. Aldridge and Mr. Tisdale requested that the amended language be adopted and the bill sent to the 14th order.

MOTION: **Senator Richardson** made a motion to send S1086 to the 14th order for amendment. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the floor.

S1121 **Senator Davis** introduced Kent Foster, an attorney in Idaho Falls, who handles many adoptions, to present this bill. Mr. Foster explained that in 2000, Idaho created a new way of looking at the rights of birth fathers. There have been a number of discussions among counsel and magistrates so he was asked to help address some issues. 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.

There are other potential discrepancies that can occur between the notice and consent part of code , concerning notification of a person whose consent is needed before adoption. This is moved to the legislative findings section and the old language eliminated, taking out inconsistencies.

Marty Durand, representing the American Civil Liberties Union, spoke in opposition of this bill as they feel the proposed amendment to the Idaho adoption consent provision is unconstitutional under the *Lehr* decision. In *Lehr*, the Supreme Court specifically addressed the constitutionality of state statutes providing notice to unwed fathers, and that they have a constitutionally protected interest in establishing a relationship with their children. This proposed revision would eliminate the requirement of notice for fathers who have publically made a legally binding admission of paternity prior to the placement of the child for adoption, and are clearly "responsible fathers". If this legislation is adopted, the only way a man who has signed a voluntary acknowledgment of paternity could be entitled to notice if the birth mother objects, is to file a paternity action or register as a putative father.

Senator Davis confirmed with Ms. Durand that the *Lehr* decision was made in1983, and that New York has made adoptions since then and they have been tested by the Supreme Court. Also, the act that Idaho adopted in 2000 was based on the logic behind the New York modified standards of termination of parental rights.

The first principle opposition by the ACLU to S1121,as it is currently written, is already the law in the state of Idaho, but most of the arguments that Ms. Durand referenced, including the *Lehr* decision are based on a statue that New York doesn't even follow anymore, and Idaho statute is more consistent with the current one, which has the strict edition scrutiny. He asked Ms. Durand what their concern was with the bill, not the statute. She replied that the bill would omit the section of code that provides for notice to an unmarried biological father who has filed involuntary acknowledgment. That section on page 3, lines 7-11 is removed. So if a biological father has filed a voluntary acknowledgment, saying that he is the father, but he is not going to file a paternity action to prove it, but he is not going to fight it. This would remove that notice or requirement to be given to biological fathers in those circumstances.

Senator Jorgenson asked Ms. Durand if there was any distinction to a father who acknowledges paternity but hasn't offered or paid financial support to the child? Ms. Durand responded that some fathers take more steps to acknowledge paternity by actually providing for the child, but in some cases where the child hasn't even been born yet, the father files the voluntary

acknowledgment of paternity and then may think he is protecting his rights. In some of these situations, the father has not had the opportunity to bond with the child or provide for it, but he has taken the steps to acknowledge that he is the father.

Senator Jorgenson followed up with a question. He asked about a child that was older, and Ms. Durand told him that the code makes a distinction between children who are younger and older than six months and the obligations of the father.

Susan Dwello, Permanency Program Specialist for the Dept. of Health and Welfare, spoke in opposition to the bill saying "Idaho law provides that an unmarried birth mother is entitled to privacy and has a right to make a timely and appropriate decision for her and her child. The Idaho Legislature has found that the interest of the state, the mother, the child and the adoptive parents outweigh the interests of the unmarried biological father who does not demonstrate a relationship to his child in accordance to the law. In Idaho, a woman making an adoption plan may conceal the pregnancy from the biological father or indicate that the father has no interest in the child, when this may not be the case. Unless the father learns of the pregnancy and the adoption plan, and moves to stop it, the adoption will proceed. While most fathers either agree to an adoption plan or do not contest termination of their parental rights, there are those who want to parent their children."

She spoke that through her work with the Interstate Compact, she was aware of an adoptive placement from Idaho to an adoptive home in North Carolina in February of 2004.

Senator Davis interrupted her testimony to ask her if she was present in this meeting with the authority of the director of the Department, and she said she was and that they had legal counsel from the office of the Attorney General. **Senator Davis** followed up by asking if her concerns were with page 3, lines 7 through 11, or with the statute as it is currently written. Ms. Dwello responded that she was specifically referring to the replacing of section 1505. Senator Davis asked again if she had specific authority from the Director of the Department of Health and Welfare to appear today and speak in opposition to this bill. She responded by saying "Yes, I do". **Senator Davis** asked if she had talked with Karl Kurtz and she responded that she had talked to Ken Diebert.

Ms Dwello continued with her testimony saying that "An Idaho child, referred to as 'Baby Girl Williams' , was born on February 1, 2004. Three months prior to this child's birth, the unmarried biological father had registered a Notice of Commencement of Paternity Proceedings with Vital Statistics. He made attempts to provide financial assistance to the birth mother and pleaded with her to obtain pre-natal care for herself and the child. Three days after the child's birth, the court ordered that the unmarried biological father had no parental rights or a right to hearing as he had "failed to perfect his interest of parental rights as required by Idaho Statute." The next day, this child was place with an adoptive family in North Carolina. On March 2004, the order relating to this father's parental rights was vacated. The Court found that the unmarried birth father was entitled to notice, and because he had not received

notice, his rights to due process were violated.

This unmarried biological father was not the only party to suffer in this case. This child had the right to be assured that all attempts had been made to achieve permanency in her young life. Every child is entitled to assurances that their adoptive home will not be disrupted once legally formed. Cutting corners only increases the risk that the placement will be challenged or overturned.

"If an unmarried biological father has objectively forfeited his rights, then the best interest of the child should prevail as intended by the Legislature. But, if a birth father has been responsible, if he files a notice of his commencement of proceedings to establish his paternity, his rights, all rights that exist should be protected. His consent should be necessary and he should be provided with notice of a hearing to adopt his child.

Senator Davis once again interrupted Ms. Dwello asking if the opinion she was expressing is a legal opinion and she responded no. He then asked if it was her opinion as to what they should be provided. She responded that she was talking policy regarding the unmarried birth father. She also said they had legal representation present to talk about due process. **Senator Davis** asked about the status of "baby girl Williams" and was told that she knew that they only were involved as far as the Interstate Compact on placement of children. **Senator Davis** asked if an appeal had been filed, but Ms. Dwello had not heard of an appeal.

She continued with her testimony saying that " In effect, by repealing Section 16-1505, notice of adoption proceedings will not only exclude the right of notice to unmarried birth fathers who have perfected their interest of parental rights as required, but will also not provide notice to the petitioner's spouse, any person who is listed on a child's birth certificate as the child's father, to any person who is married to the child's birth mother at the time she relinquishes her child for adoption and others as listed." She said that, "as an employee of the Dept. of Health and Welfare, I have just become aware of the proposal to repeal Section 16-15." Although unable to address all the legal implications of the proposal, she asked the committee to seek further evidence before acting on this proposal."

Jerold Lee, Legal counsel for Welfare Child support services of Health and Welfare and said he became aware of this at 11 a.m. this morning and while he isn't sure he is opposed to it, he had several questions that may affect the child support program . The first is dealing with the legal finding of paternity. In this bill a portion is removed that would require that biological father to have to give his consent in order for the adoption to go forward. He didn't know all of the ramifications, but the federal funding for his program is directly tied to this voluntary acknowledgment process, which was given to them through federal regulations. He feels that more time is needed to look into this and see how this will affect their program.

Senator Darrington pointed out that this bill was printed two weeks ago today and has been circulating for about two weeks.

Mr. Lee also noticed that there was a gap in who was required to give consent in the case of the child under 6 months old and hoped Mr. Foster could address that. He was concerned that the biological father would be prevented by the birth mother in pursuing that relationship and he didn't know what the consent or notice process of that time gap was. Another concern that he hadn't had time to look into was since section 1505 was being repealed and that Mr. Foster mentioned all those concerns of due process were being rolled into the termination statutes.

Jody Carpenter, Deputy Attorney General for Health and Welfare said the department has concerns about the policy, and how it may affect the timely adoption of children particularly the repeal of the notice section, and there is difference between consent and notice. The court may not have to have the biological father's consent to put the child up for adoption, but they have had cases in the last few years since the statute has been changed where the father has taken some steps to meet the statutory requirement and through some means, that information has not gone before the court. However, the fact that they did give notice at this time, gave him the opportunity to come in and say that he did meet these requirements. If the notice section is taken out, then he never has that opportunity to say that maybe fraud has taken place. In the case of "baby girl Williams", the father had filed notice of paternity as soon as he found out about it and had evidence that he had made overtures to the girl that he would like participate in taking care of the child. The way it was filed, that information never got before the magistrate and the child was placed with a family in North Carolina and it was a horrible ordeal for everyone when the child had to come back because it was invalidated.

The Department's concern is if this were to go forward and that repeal was found later on to be challenged on a Constitutional basis, it puts the department in a position of possibly having adoptions out there where they are not confident that the child is available for adoption.

Senator Darrington commented that everyone would agree that the North Carolina case was a tragedy for everyone concerned and asked how this proposed bill would have altered the outcome of that case. Ms. Carpenter replied that the fact that he should have gotten notice so that he could have come in and given evidence. If the requirement for notice and consent is removed, they do not have that opportunity.

Senator Davis told Ms. Carpenter that Section 1505 was in the law and they still had a bizarre set of facts, so the repeal of this section doesn't solve the problem. Ms. Carpenter replied that this was true, and there might always be a chance of fraud, however, if it is still there, there is an additional check.

Senator Davis asked at what point in time has the due process been violated. The State of Idaho has a duty to determine where that line is to be drawn and hope that the best judgment is used. It could be said that you could never terminate the parental rights of a non-custodial parent unless they were physically required to appear in the courtroom and knowingly waive in writing and provide him an attorney. If all that were done, the requirements of the 14th amendment would be satisfied.

The question is how far back from that standard is the fairness to the individual involved, satisfaction to the 4th 5th and 14th amendment and still be able to have that adoption stand up. He asked Ms. Carpenter if when she read those decisions of Utah, and New York, and if he backs up as far as he has with what he is proposing here, in her opinion, other than have a concern does it fail to satisfy due process requirements and could she make that representation to the committee?

Ms. Carpenter said she couldn't make that representation, but she could tell him that she would like to look into this further, as they don't know where the court would come down and it puts the department in a position where they want to be able to put a child up for adoption and feel confidence in it.

Senator Bunderson asked how much time the department would need to address their concerns. Ms. Carpenter said she would like to sit down with the author of the bill. **Senator Bunderson** then asked if this bill passes, and the courts rule moving it further to the right on the continuum, what would be the result on those who have been impacted by the law, would the court allow an unraveling of any decisions as made under this law, or would they take into consideration that the child is now in the home and has a certain stability and it is more adverse to disrupt it than allow an unraveling based on a court decision.

Ms. Carpenter said if later the Court found that this provision was unconstitutional and the father's rights have been violated, the court could unravel the adoption, which is the department's concern.

Mr. Foster spoke in summary that all the opposition that he has listened to has been raised with the bill as it was originally written, and people need to understand what that said. That bill followed the law of the United States as established in that Supreme Court case of *Lehr* v Robinson. It said that biological fathers don't automatically have a constitutional right. That bill decided that there was no due process problem and no equal protection problem under the Constitution because the law of the State of New York said he started out having only an "inchoate" interest. That is the language of the court. Inchoate interest is something that isn't right, is unprotected, and hasn't been established until you do the specific things required under the law. He said that the law is clear what has to be done, if a child is under six months of age, and that is the age of most children in adoptions, then they have to file a paternity action, file a notice and participate in the cost of the pregnancy and birth to the extent that they are able. If they don't do that, they don't have any rights to terminate and they are forever barred. They are not entitled to any notice of any further proceedings, and all that is being taken out are the sections that appear to be in conflict with that, because otherwise, there can be a statutory interpretation argument with the court and that is a very difficult argument. This is a clear way for an unmarried biological father to establish his rights, it would make it easier for him as there should only be one way for him to do this and this is consistent with the statute as it is written.

Senator Burkett asked Mr. Foster if he was concerned that this statutory mechanism, once the notice provision is gone, would not protect the fathers and let them develop a relationship with the child before the six months

expired. "As I see it, the relationship has to last for 6 months before there are any sort of rights". Mr. Foster responded that is a very hard question, because what if it is 5 months and 29 days when the father bails out, and that is going to be a hard case for the court to decide whether he has complied with the statute, which he has not, but he has gotten very close, and this decision would have to be left in the hands of the court. **Senator Burkett** asked if there was concern for those who have established a relationship with a child for 4 or 5 months and then it would be unconstitutional and could cause unraveling of several adoptions. Mr. Foster replied that it is a concern and the decision was made by the Legislature in 2000 that the New York law similar to this has been constitutionally upheld by the United States Supreme Court, and Utah law, after which this statute was patterned has been held constitutional by the Utah court.

Senator Burkett felt the notice provision would cure the potential problem where the father can't give consent, he would still get notice. Mr. Foster said he doesn't think that solves any problems, and it sends cold chills up his spine, to think about going to an adoption agency with a couple saying "are we going to get this child or not?" They go there thinking this is the time for a final hearing, or the best interest of the child hearing. . That is what the notice statute says it is for, to provide information for the best interest of the child. The father would say that the best interest of the child is that it remain with the mother and the father have continued access. That is not the best interest of the child, and that decision was made by the Legislature in 2000 when the statute was adopted that provides him an adequate way to establish his rights; it is clean, clear, easy to do, and doesn't cost him much money. He is a father of 6 that he said 3 were adopted and 3 were "do it yourself" projects. He felt a fathers responsibility was to step up to the plate and provide immediately for the needs of the child and the family, not six months later. That was the policy adopted by the Legislature in 2000 to be consistent with the Supreme Court decisions..

MOTION: **Senator Davis made** a motion to move S1121 to the floor with a do pass recommendation. **Second was by Senator Richardson. Senator Davis** will carry this bill on the Senate floor.

Discussion: **Senator Davis** mentioned that he spoke with Director, Karl Kurtz , who had no knowledge of anyone from the Department of Health and Welfare being here in opposition to the bill. **Senator Burkett** thought that this proposal could be held unconstitutional and if it were in the future, adoptions that occur between now and then would all be impacted. He can't see the problem of waiting a week to see if that is the case.

VOTE: Motion carried by a voice vote.

S1134 **Senator Goedde** presented this bill due to an incident in Coeur D'Alene and he turned the time to Mike Kane to talk to the committee. Mr. Kane mentioned that the prosecutors , the sheriffs association and the office of aging also support the bill to make it a felony to sexually abuse a vulnerable adult . At the present time, there is no law whatsoever on this issue and there isn't even a misdemeanor penalty. They have lifted the concept of sexual abuse of a minor and wrapped it onto the vulnerable adult concept. A vulnerable adult is someone who lacks the capacity to make an informed decision about his own

life, and to consent to his own affairs. This could include Alzheimers or mentally disabled. The language came from the lewd and lascivious laws that are already in place that say that there is a life imprisonment, but this is a 25 year felony to do these things to a vulnerable adult. The language has been already looked at by the court and found to be constitutional. When the print hearing was held, Senator Davis asked about consenting adults in the marital setting, and the answer is under that under the Unites States and Idaho constitution this law will not apply to consensual acts in the marital setting.

Senator Davis commented that Mike Kane gave him some information after the argument he made before the Supreme Court. After reading it, his concerns were resolved.

MOTION: **Senator Lodge** made a motion to move S1134 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Goedde** will carry this bill on the floor.

S1136 **Senator Sweet** told the committee that Bob Wells representing the Chiefs of Police, and Mike Kane representing the Sheriff's Association were in agreement with the amendments to this bill that are prepared and asked this to go to the 14th order for amendment. **Senator Sweet** turned the time over to Brian Judy, Idaho State Liaison for the National Rifle Association of America. He spoke on behalf of more than 26,000 Idaho members of the NRA in Idaho. This bill would establish a uniform, statewide policy to deal with firearms that are unclaimed, confiscated, abandoned impounded or taken into custody via the legal process. At the current time there are agencies that are destroying these firearms. This bill will require that these firearms be sold to an officially licensed dealer as a first option, rather than being destroyed. (See attached letter) It is important that the firearms in this bill are only sold to licensed dealers, and when those firearms are sold to the general public, then a background check is done on the prospective purchaser. It is a fiscally responsible bill, and would generate revenue to the department and that is an interest of public safety. Some of the opposition has been taken care of by the amendments that putting firearms back into general circulation will create a risk to law enforcement and the public in general. He told the committee that over 99% of firearms are never used in the commission of crimes and destroying firearms will not deter crime and he urged passage of this bill.

MOTION: **Senator Sweet** made a motion to send S1136 the 14th order for amendment. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 2, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: There are no minutes from the meeting of February 28 as they are being edited to make them more brief.

H78 Robert Aldridge, President of Trust and Estate Professionals of Idaho (TEPI), presented a series of bills. The first one addresses questions that have arisen as to the exact nature of the title when a conservator is appointed for either a minor or a person with a disability of some nature. The existing language of section 15-5-420 has lead to problems, especially with some financial or title institutions, as 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, as a new paragraph (c) to section 15-5-420 clarifies how the title to property is held by the conservator and how it may be exercised. The concept of this bill, but not the actual language was approved by the Guardianship-Conservatorship Interim Committee this summer.

MOTION: **Senator Sweet made a motion to move H78 to the floor with a do pass. Second was by Senator Richardson and the motion carried by a voice vote. Senator Sweet will carry this bill on the Senate floor.**

H79 **Senator Darrington** asked Mr. Aldridge to address the differences between guardianship and conservatorship. He said they are the same, there is just a wording difference. This bill adds a specific listing of such duties and powers to the conservatorship portion and to the guardianship portion of the Idaho Probate Code. The only differences in wording between the conservator and guardianship portions of the bill is that in conservatorship proceedings, the involved person is referred to as a "protected person", while in guardianship proceedings, the term is "ward". This bill was approved for concept, but not language, by the Guardianship/Conservatorship Interim Committee.

MOTION: **Senator Lodge made a motion to send H79 to the floor with a do pass. Second was by Senator Sweet and the motion carried by a voice vote. Senator Lodge will carry this bill on the Senate floor.**

H80 Mr. Aldridge told the committee that existing law is silent as to the necessary contents fo the annual report of a conservator. Although many professional conservators submit detailed reports, a great number of reports lack any detail or supporting information. This makes monitoring of such reports very

difficult and makes fraud or mistakes difficult to catch.

This bill sets forth in detail what the contents of a conservator report should be and what supporting documentation is required. However, 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 their contents do not have to be redone into a report form. The court may request supplementation of the report if needed. In its essence, the list of requirements will also be a guide for non-professional conservators and for courts. It will also help to standardize to the extent possible how reports are structured, which will simply monitoring of such reports.

Chris Ode, Vice-President and Regional Trust Manager for Wells Fargo Bank serving as the Chairman of the Idaho Bankers Association Trust Committee spoke in support of this bill and also shared with the committee, the role that Idaho Bank Trust professionals have played in trust legislation in the past and will in the future. He reviewed the formation of the Trust and Estate Professionals of Idaho (TEPI) that was created last year, (See attached letter) and said that most of the Idaho banks that have trust divisions are members of TEPI.

He told the committee that when the House Guardianship/ Conservatorship Interim Committee met last year its primary focus was curbing abuses by individual conservators. There was no mention whatsoever of any problems with banks serving as conservators. In fact, the banks have long set the standards for handling and filing reports in conservatorship. The goal of this bill is to raise the level of reports by individuals to those already produced by the banks, so that it will be harder for individuals to hide the mishandling of conservatorship funds.

MOTION: **Senator Lodge** made a motion to send **H80** to the floor with a do pass**.** Second was by **Senator Burkett** and the motion carried by a voice vote. **Senator Jorgenson** will carry this bill on the Senate floor.

H81 Current law does not require a conservator or guardian to submit a working plan, either in advance of appointment or thereafter, giving a general outline of how the duties of the conservatorship or guardianship will be performed. This creates two problems, the first that 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; and, second, it is 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 of a guardian to submit plans, initially proposed, and then final, of how the affairs of the protected person (as to conservatorship) or ward (as to guardianship) are to be handled. The plan for conservators, to the extent known at the time, is included the petition. A final plan, to the extent known at that time, is included in the 90 day inventory. If the plan changes between annual reports by the conservator, the change is included with the next annual report. The method with the guardian is the same, except that the final plan is submitted 30 days after appointment, since a guardian does not submit

any equivalent of the 90 day inventory. Again, any changes between annual reports are included in the next annual report. This keeps the court and the guardian ad litem and any monitor of the reports in touch with what is supposed to be the general structure of the affairs of the protected person or ward. 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 or ward. This bill has been endorsed in concept, but not in actual language, by the Guardianship/Conservatorship Interim Committee.

MOTION: **Senator Bunderson** made a motion to send H81 to the floor with a do pass. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Bunderson** will carry this bill on the Senate floor.

H82 Mr. Aldridge explained that there are several problems in the existing law regarding temporary or emergency appointment of a conservator or guardian. The first is that the time period for which a temporary guardian is appointed does not match the time period for which a temporary conservator is appointed. This can lead to unnecessary multiple hearings. The second one is that in temporary conservatorships, a requirement was added several years ago that a medical report must be submitted from either a doctor or a licensed psychologist before an appointment could be made. However, many times, this report cannot be obtained, and no appointment is made, even though there is immediate and emergency need for the appointment to protect the person from financial devastation.

This bill makes two changes in the methods of appointing a temporary guardian or temporary conservator. First, in the guardianship appointment, the time period of appointment is changed to match the existing conservatorship time period of 90 days, with the ability to extend for good cause. Second, in the conservatorship appointment, the requirement of a medical report by a doctor or licensed psychologist is deleted. Health & Welfare Adult Protection, the Commission on Aging, and private practitioners have all found that in a great many cases the person needing protection refuses to leave the home to meet with a doctor or psychologist, and refuses to allow a doctor or psychologist into the home. This creates a roadblock to obtaining protection in emergency situations. However, 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, as defined in the existing statute. Traditionally in these types of situations, Idaho courts will require that some showing be made as to why no medical report can be obtained. This bill will allow emergency appointments when needed while still giving protection to the person. The concept, but not the language, of this bill has been approved by the Conservatorship/Guardianship Interim Committee.

Senator Burkett asked why the 90 days were chosen instead of 60 and was told that there is a big problem getting back into court when they run out of time trying to get everything done.

MOTION: **Senator Richardson** made a motion to send H82 to the floor with a do pass. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the Senate floor.

H131 Mr. Aldridge explained that 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 to bring the matter properly before the court if abuse is found provided in existing law, although some remedies (fines, surcharges, reimbursements etc.) are provided in existing law. The vast majority of such reports therefore are never examined. This has lead to great abuse in many cases, especially in conservatorships. This also may lead to persons ending up on Medicaid, welfare, or other state or federal programs unnecessarily.

Years of discussion among the Department of Finance, the Idaho Supreme Court, practitioners, and others in the field of conservatorship/guardianship have lead to a potential method of monitoring reports. However, that monitoring will require funds to pay for examination and for methods to furnish copies of the reports to the examining entity. Presentations to the Conservatorship/Guardianship Interim Committee proposed a Pilot Project which would have monitoring performed by the Department of Finance. However, before the Department commits personnel and funds of its own to the monitoring, a source of funding is needed.

Senator Darrington asked what the three counties were that would be included in the pilot project. Mr. Aldridge replied that they were Ada, Bonner and Payette, but he felt a fourth should be added from Southeastern Idaho, perhaps Bonneville County.

Idaho fees for filing of petitions for conservatorship and/or guardianship, and for filing reports, are very low compared to other states. For example, there is no fee at all for submission of a guardianship report, and only a $9 fee for submission of a conservatorship report. Therefore, the method of raising the necessary funds will be to raise all fees by the amounts shown in 31-3201G, a through c. The additional fees will 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 pilot project is to be designed to improve reporting and monitoring systems and processes to protect persons and their assets when a conservator and/or guardian has been appointment. The bill sets forth the elements of the pilot project in paragraph 3, a through e. These elements come from the Interim Committee Final Report. The Supreme Court will make annual reports starting in January of 2007, when the pilot project should be in full action and have sufficient history for such a report. In any event, the provisions of the bill sunset July 1, 2009, and any remaining money will go to the State General Fund. It is the expectation of the pilot project that, by that time, a full working state-wide monitoring system will have been developed and appropriate legislation passed, effective not later than July 1, 2009.

Senator Lodge asked about the cost of report and how many reports, requiring fees, would have to be filed in one year. She was told that if there is one guardian for 1 protected person, all 3 documents would have to be filed. If they were filing for the original petition, then they would have to pay

that fee and then a fee when they filed on the annual date.

Senator Burkett asked what a ward of the state could be charged for all reports for the first year. Mr. Aldridge responded that there were various charges for certain reports. The court fee could be $400 to $750, the Guardian ad litem, from $400 into the thousands and the doctor report to be $50 or nothing. Attorney fees could be pro bono, or up to $2000 if not contested. The total could be around $3000 or more.

MOTION: **Senator Davis** made a motion to send H131 to the floor with a do pass recommendation. Second was by **Senator Richardson** and the motion carried by a voice vote. **Senator Davis** will carry this bill on the floor.

ADJOURN: Meeting was adjourned at 2:30 p.m.

Senator Denton Darrington	Marianne T. Hansen
Chairman	Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 7, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of February 28 as written. Second was by **Senator Kelly** and the motion carried by a voice vote. **Senator Sweet** made a motion to approve the minutes of March 2 as written. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS15092 **Senator Langhorst** presented this legislation that will return to the transportation committee, but would like to add language that would give more flexibility to public transportation authorities so it will be returned as RS15092C1.

MOTION: **Senator Lodge** made the motion to send RS15092C1 to print. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS15100 **Senator Little** presented this bill that would establish the fatality review process on domestic violence deaths occurring within Idaho. This has been drafted with the approval of the ACLU, Cornerstone Institute, the Prosecutors and the Council on domestic violence.

A fatality review is an examination of a death caused by domestic violence. The review takes place after the police investigation is closed and criminal prosecution is completed. The fatality review assesses points of intervention and contacts the perpetrators and victims had regarding the domestic violence. Most fatalities are preceded by multiple efforts to help the victim and multiple opportunities for the community to prevent the fatality. Fatality review enhances communication between venues of law enforcement and social service agencies. Twenty-six other states have this language in their statutes. This can happen long after the fatality, and is not a witch-hunt bill; it is just trying to improve the system.

Senator Darrington wanted the record to reflect that by agreement with the Chair and Senator Little, the intention is that the bill not be put on the agenda for a hearing this year, but simply to have a printed bill to circulate to all interested parties throughout the state, so considerable work can be done between now and next year.

MOTION: **Senator Richardson** made a motion to send RS15100 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

DISCUSSION: **Senator Burkett** asked if the Domestic Violence Council would fall within the

purvue of this committee and was told that some goes through this committee and some goes through Health and Welfare depending on what it is. The rules go to the Health and Welfare committee but we have done legislation here and they have done it there many times.

Senator Bunderson asked where there will be no impact to the General Fund does that mean no State employees will be involved in this discussion? **Senator Little** responded that the intent is to live within the means of their budget and that is the issue out there. They would only do the highest priority reviews if they were low on funds. If they made recommendations to the judicial branch, executive branch, health care providers, and others and saved several people's lives, that would be a good investment by the State of Idaho. **Senator Bunderson** then commented that it should clearly be defined what involvement is there, and if it is a diversion of personnel, that is a fiscal impact.

Senator Kelly asked that with the open meeting/open record consideration, she would like to see as much openness as possible. **Senator Little** responded that he wasn't looking for secret meetings and is delighted that it is going out for review and input.

VOTE: The motion carried by a voice vote.

RS15107 **Senator Brandt** presented this joint memorial to Congress to support re-authorization of the "Secure Rural Schools and Community Self-Determination Act" or the Craig-Wyden bill. This will be returned to the Transportation Committee when printed.

MOTION: **Senator Sweet** made a motion to send RS15107 to print. Second was by **Senator Burkett** and the motion carried by a voice vote.

Senator Darrington told the committee that he and **Senator Davis** would be at the water hearings all day on Wednesday, and that **Senator Richardson** would be chairing the meeting.

S1166 Mike Henderson, Legal Counsel for the Idaho Supreme Court, presented this bill addressing the liability arising from the actions of "shared" employees. These are county officials and employees who perform clerical and other duties for the courts and are subject to the control and supervision of the administrative district judge. In *Blankenship v. Kootenai County,* (1994), the Supreme Court held that county employees, while performing judicial clerical functions, were employees of the State of Idaho for the purposes of the Tort Claims Act, and that the State, not the county, would therefore be liable for the wrongful acts of such employees.

This bill grew out of discussions among the members of the Supreme Court's Shared Employees Committee. It was felt that a statute setting forth the standard adopted in Blankenship would help to make clear the status of shared employees, and would facilitate relationships between the State of Idaho and the counties in dealing with issues arising from the actions of

shared employees.

Senator Darrington made the comment that this bill would be important to **Senator Bunderson's** committee.

MOTION: **Senator Bunderson** made a motion to send S1166 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

S1165-S1164 These two bills are being presented together as a request of the Lt. Governor and Senator Darrington after meeting Council for Children's Mental Health (ICCMH)

Mr. Henderson started with S1165 saying the intent of this bill is to provide a means for the court to address in a prompt and effective manner, issues that they confront with regard to mental problems of juveniles that come before them, both in Child Protective Act cases and Juvenile Corrections Act.

Mr. Henderson told the committee that Judges handling Juvenile Corrections Act or Child Protective Act cases sometimes find that the juvenile before them is suffering from severe emotional disturbance that needs to be addressed promptly and appropriately. This bill is intended to provide a procedure for obtaining prompt assessment and treatment of the mental health needs of the juvenile at any stage of these proceedings. This bill would provide that courts hearing JCA or CPA cases could order a mental health assessment and preparation of a plan of treatment for juveniles who appear to be suffering severe emotional disturbance (SED). Such orders could be issued when the court has reason to believe that the juvenile is suffering SED that: (1) impairs his or her ability to comply with the orders of the court, or presents a risk to the juvenile's well-being, or the safety of the juvenile or others; and (2) the juvenile's needs are not being met with the services thus far provided.

The bill would also allow the court to convene a screening team, drawn from a wide range of agencies and including the child's parents or guardians, to provide recommendations for the court. The court could also order an additional evaluation and recommendations for treatment when needed. If the court concluded that the requisite conditions were present, the plan of treatment would become an order of the court, and the Department of Health and Welfare would provide the mental health treatment designated in the plan of treatment. Any residential or in-patient treatment could be ordered only after a hearing or waiver of a hearing by the juvenile and the juvenile's parents or guardians. Financial obligations of the juvenile's parents would be determined in a manner consistent with the corresponding provisions of the Children's Mental Health Services Act. This bill provides a new procedure for the assessment and treatment of juveniles in JCA and CPA cases, and would insure that such services could be ordered at an early stage of the proceedings if the criteria for such an order are met. Such early evaluations will in many cases facilitate the resolution of the cases, and may therefore result in savings that will offset the costs of any additional assessment and treatment.

S1164 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 disturbance and who meet the other criteria for involuntary treatment. The bill would require 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. This would be consistent with Idaho Code for the examination of adults.

The bill would also allow the Dept. Of Health and Welfare up to seven days following the entry of an involuntary treatment order to provide a plan of treatment, rather than requiring such a plan before entry of the involuntary treatment order. The bill also makes several changes to insure that the treatment of the child following the entry of an involuntary treatment plan is consistent with the same plan approved by the court. In section 16-2409, the court would be permitted to conduct a review hearing at any time to monitor compliance and make any significant adjustments in the plan. Conversion of the child's status from involuntary treatment to voluntary would be permitted only if the court finds that the child is not likely to cause harm to himself or others or suffer substantial deterioration. The involuntary treatment procedure is rarely used, but would be available in those cases where the criteria are met and where parents or guardians consent to treatment.

Senator Davis asked about the proposed amendment to16-2409 and asked if the intent of subpart two is to approve the requested consent from the parent or guardian or are the options two different ways to convert from involuntary to voluntary. Mr. Henderson replied that this would be one way to convert, and subsection would now begin with "upon approval by the court" and subsection 2 would provide what the court has to find in order to approve that conversion. There would have to be both the informed consent of parent and approval of the court based on these standards.

Mr. Henderson continued explaining Section 16-2423 deals with informed consent and provides certain standards for treatment. The title of this provision is "Informed Consent to Medication or Other Treatment" and applies to the period of involuntary treatment ordered for 120 days by the court. A new section was added (16-2435) concerning the order for a mental health treatment hearing. The assigned magistrate shall hold a hearing on a petition as soon as reasonably practicable. If at the hearing, the magistrate finds that the child is suffering from a serious emotion disorder, appropriate mental health treatment with the cost to be borne by the parent or guardian. If the person cannot pay, then the costs shall be borne by the entity ordered to pay for such mental health care.

Judge John Varin, is a Magistrate judge hearing juvenile cases in the Fifth Judicial District and is chair of the Juvenile Justice Advisory Team of Magistrate Judges. He told the committee that he was pleased to have the opportunity to speak today about an issue that the advisory

team of judges as well as judges hearing juvenile cases statewide struggle with on a daily basis, the mental health of our juvenile population and the impact on juvenile crime. Juveniles struggling with a mental health condition often commit offenses that bring them into the juvenile court system. An untreated mental health condition is often the underlying factor in juvenile substance abuse, violent criminal behavior and crimes against property.

Many of these cases come to the attention of the juvenile court after an episode of violence in the home and these juveniles end up in detention because the officer rightly is concerned about family and community safety. If the juvenile is not detained, charges are filed and an admit/deny hearing is set before the court. Frequently, at the initial hearing it is disclosed the child has a mental health diagnosis and could be taking serious psycho tropic medications and the family may be utilizing psycho/social/rehab (PSR) services, day treatment and other mental health services.

At the initial hearing, the focus is what can be done to keep the family, community and child safe. What the juvenile judges have found is often that because of the trauma of the violent episode and ongoing difficulties with the child, the family is at a loss as to what to do. They love their child but also are frightened for their safety because of the child's behavior, and don't know what to do. He felt that from his experience and from national studies, detention can be extremely detrimental for these types of children for several reasons.

In addition to the emotional turmoil that exists, when inquiry is made about the child' s treatment, frequently, there is confusion about what is, or should occur. Medical doctors, psychologists, PSR workers, counselors, school officials and others may all be involved. As a result the family simply is overwhelmed.

He finished by telling the committee, "The legislation before you today came about from the difficulty these types of cases raise for the juvenile justice system. 30% of cases in detention and probation are children diagnosed with mental health issues. Since these cases involve community safety issues, the court should have some authority to assure proper actions are being taken to treat the child to minimize the threat to the community. This is especially true if, the family, due to the factors I've noted, aren't able to respond. This legislation creates a statutory link between the Department of Health and Welfare and the juvenile and child protection court, which currently doesn't exist."

Senator Bunderson asked if there is a trend and what the options to treat it. Judge Varin responded that this is a very serious problem, and meth is creating a lot of concern for judges, as kids are medicating themselves and becoming more psychotic as a result of drug use and judges are seeing more emerging mental health issues as a result. There is going to have to be some serious evaluations and some of these kids are going to end up in

the Juvenile Corrections custody because there aren't resources at the local level to deal with the anger and frustration that they exhibit.

Senator Burkett asked if the reference was to "serious emotional disturbance" or "serious emotional disorder" as referenced in the second bill. Judge Varin replied that "Serious emotional disturbance" is defined in statute, and section 16-2435 broadens the ability of the court to be involved, if that is the will of the committee . There is a lot of frustration with the resources and services for these types of kids.

Senator Sweet commented that he was concerned about "serious emotional disturbance" and "serious emotional disorder", and wondered what was the exact definition. He would like to know if they are the same and what the definition is of either or both of them.

Senator Darrington answered that the term was adopted by the ICCMH for SED which is in code. Serious emotional disturbance is in Section16-2403 subsection 13: *"Serious emotional disturbance" means an emotional or behavioral disorder, or a neuropsychiatric condition which results in a serious disability, and which requires sustained treatment interventions, and causes the child's functioning to be impaired in thought, perception, affect or behavior. A disorder shall be considered to "result in a serious disability" if it causes substantial impairment of functioning in family, school or community. A substance abuse disorder does not, by itself, constitute a serious emotional disturbance, although it may coexist with serious emotional disturbance."*

Paul Carrol wanted to go on record as supporting the bill but there is a problem in assessing SED in a timely manner. 44% of juveniles in custody have significant mental health issues and within that group are 32% that are emotionally disturbed. By giving the court an opportunity to get involved, coordination of services would be improved, accountability will be improved and through this coordination, they will become more efficient in using the resources they have. (See attached sheet)

Senator Bunderson asked if there are 44% now, what were there several years ago, and was told that the figure has held fast with all the other states. Also, over the last 3 years, they have worked hard on the definition of SED to make sure it is in alignment with the definition used by Health & Welfare.

Senator Burkett asked about the chart, and the 44% with mental health issues right now, and asked about the plan for them. He was told that they have a trained staff to address the mental health of the juveniles in custody. **Senator Burkett** asked then, if this will would impact kids that will come into the system and was told it would as well as those that show a relapse.

Senator Richardson asked how this type of disorder would be recognized. Mr. Carrol responded that it can be recognized by those youth that demonstrate depression as a prominent sign that can lead to suicide

attempts or thinking. He said that 33% of the kids committed to them are on psycho tropic medications and the majority are on anti-depressants and medications for attention deficit disorder. Depression, post-traumatic stress syndrome as a result of child abuse, and thought disorders are other types. Also aggression can be a way to act out other emotional problems. Often depression, withdrawal and threatening or attempting suicide and those kinds of things are the most common disorders.

Chuck Halligan, program manager with Department of Health and Welfare (DHW) in Children's Mental Health told the committee " We understand and agree with the concept this bill is putting forward, the ability of the court to provide coordinated treatment to some of Idaho's most challenging youth."

He is supportive of this bill and looked at from the perspective of how would the DHW children's mental health program implement the process. They already do many of the activities listed in this legislation, such as provide assessments, and they include the family and others in the development of the plan, and for those youth eligible, also provide treatment.

One of the concerns that would assist them in implementing this legislation is the confidentiality issues they will face when conducting a court ordered assessment. It will be necessary to have either a parent's consent or an order from the court to access certain records such as school records, prior hospitalization information, treatment records and such. Section 20-511A provides the Dept. with an order to conduct an assessment but does not clearly state how we can access other records.

The other concern is the unknown fiscal impact. It depends on the services provided and the number of children served, cost of service and length. Last year the cost for residential care for a child that stays an average 90 days at $150 dollars a day is about $14,000 per child. The children have to have an emotion disorder diagnosed and the behaviors are looked at. There has to be a cluster of behaviors and then the functional impairment is looked at, both in school and at home. If impaired, they become eligible for Health and Welfare services. Subsection 3 allows for the court to order an additional assessment as DHW expense, which currently costs $125 per hour. A thorough assessment may take anywhere from 6-8 hours, costing $750-$1000. The Dept. can access federal funding for out of home care for certain children and will need to work with the court to address the court orders needed for this federal funding.

The Supreme Court has committed to work with them on the implementation and reporting of the fiscal impact at a future date if it is significant, possibly to the 2007 legislature.

Jim Baugh, executive director of Comprehensive Advocacy for Idahoans with Disabilities spoke in opposition to the bill. They were the original sponsors of the Idaho Children's Mental Services Act, ten years ago. At that time the worry was that the state would interfere with the power of parents and the

treatment of their children, so the act was changed several times to insure that parents would have control when they were doing the right thing for their child. Referring to section 2435, he said that this section is in direct conflict with 1624,1617, and 1618. None of these are removed by this bill-2418 is being amended and is being left in with provisions that are in direct conflict with 2453, which says that "any interested person or entity may file a petition seeking voluntary or involuntary treatment of any child alleged to be suffering from a serious emotional disorder." He said he didn't understand how court ordered treatment could be voluntary. If it is voluntary, then no court order is necessary because the person has agreed to it and provided consent. The purpose for a court order is to provide consent where no legal consent can be given, but the state has an interest to provide treatment to protect the child or society in getting the involuntary treatment. He told the committee that "This is taking a child and making a treatment decision that the parents don't agree with. In order to do so, you only have to find that 1) the child is suffering from an emotional disorder. " He stressed that " It is important that this says disorder and not emotional disturbance. Emotional disturbance is defined in the Idaho Code , but emotional disorder is not. Disorder is only one element of a serious emotional disturbance. A disorder is anything contained in the diagnostic manual, which is a thick book of disorders and half are for children. There are a lot of disorders, and this is extremely important.

A second standard is created for a court to take over treatment of a child from their parents based on a disorder, not a disturbance. The only other requirement is that a need exists...it doesn't have to be a serious need, doesn't have to be a danger. Therefore, a statute is created that is in conflict with the current law that says that at least the child is in danger or the parents aren't taking care of him, but *any interested person or entity* can ask the court to take over the care of that child. If those two things are present, the Magistrate SHALL take over the treatment, and are required by the statute to require involuntary treatment for that child and take over from the parents, the supervision of the child's treatment. This is the section that wasn't worked out with all the parties. There are serious problems with the way this is written and what it does. " He urged that 16-2435 be removed from this bill, as it is in direct conflict with those other statutory provisions, starting with "Notwithstanding any other provision of law" and negates the other provisions in 2416, 2417, and 2418. He said, "The right of the parent to control the medical treatment of their child is a fundamental right, and the fact that this allows the state to take that away from the parent without showing any legitimate interest of the state, makes this wide open for a constitutional challenge. This involves the states taking away the right of the parent and restricting the liberty of the child. The current statute actually states what should be done."

It was agreed by Ken Diebert, Chuck Halligan and Jim Baugh that this would be better being amended. Mr. Baugh would agree if this section were removed from the bill making it acceptable, as some sections are needed, but he can't support the bill unless this happens.

Senator Sweet asked if the amendments were made, would that address

the concerns that a judge can order treatment against what a physician can order. Mr. Baugh responded that a physician will not provide treatment that they think is improper, and if the treatment of the court is something that a physician cannot comply with, they will withdraw from the case and another physician will have to be found that will treat in accordance with the order of the court. If there is a disagreement between two physicians, then the parents can decide what treatment they want, but some kids don't have parents who can decide on treatment, and then the court can step in and decide.

MOTION: **Senator Davis** made a motion to send S1165 to the floor with a do pass. Second was by **Senator Richardson** and the motion carried by a voice vote.

Senator Davis made a motion to send S1164 to the 14th order for amendment. Second was by **Senator Burkett**. Senator Darrington asked that Ken Diebert, Mike Henderson, Jim Baugh, and Paul Carrol work out the potential amendments and bring them to the Lt. Governor and himself and then proceed. Motion carried by a voice vote.

Adjournment: Meeting was adjourned at 3:02 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 9, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Vice Chairman Richardson, Senators Lodge, Sweet, Jorgenson, Burkett, Kelly

MEMBERS EXCUSED: Senator Darrington, Bunderson, Davis

MINUTES: Minutes will be approved at the next meeting.

RS15110 Greg Laragan, assistant Chief Engineer for Operations at the Idaho Transportation Department (ITD) presented this legislation. This is intended to help get traffic flowing normally as soon as possible after non-injury accidents to reduce motorist inconvenience and minimize secondary accidents that might occur in the traffic back-up. This bill has been reviewed by the Idaho State Police (ISP) and will be referred to the Transportation Department.

Senator Lodge expressed concern that law enforcement would lose some evidence in investigating the accident if the vehicles were moved.

Colonel Dan Charboneau, ISP responded that it makes it more difficult, but it keeps traffic moving when there is a minor accident. There will still be damage and skidmarks and reports from witnesses, but the goal is to keep heavy congestion moving, especially in rush hour.

Senator Sweet asked if this was similar to a bill that started in the House, and was told that bill was voted out of the House Transportation committee, by a vote of 61 to 8, but a subcommittee wanted to work with the wording and this legislation is a result of working with ISP on wording.

MOTION: **Senator Lodge** made a motion to send RS15110 to print. Second was by **Senator Kelly** and the motion carried by a voice vote.

H95 Dave Nelson, Department of Corrections presented this bill which would increase the supervision fee assessed offenders from $40 to $50 a month to alleviate the workload pressure on current probation and parole employees caused by the increasing levels of offender populations. According to existing Idaho Code, any person under state probation or parole supervision shall be required to pay a set fee amount to help defray the direct and indirect costs incurred by the Department of Correction in the supervision of probationers and parolees. This will generate an additional $822,830 in revenue per year for the Department. As specified in statute, monies generated through collection of this fee are placed in the probation and parole receipts account (dedicated fund in the state treasury). This

request will not impact the General Fund.

MOTION: **Senator Burkett** made a motion to send H95 to the floor with a do pass recommendation. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Burkett** will carry this bill on the Senate floor.

H96 Bob Taylor, manager of ISP support services, presented this bill that will allow Idaho to join 21 other states who have ratified the National Crime Prevention and Privacy Compact passed by Congress in 1998. The intent of the interstate compact is to improve the quality and completeness of criminal history records made available to a state when it conducts national fingerprint-based record checks for applicant or non- criminal justice purposes. Pursuant to the compact, criminal history records automated and held at the state level will be used in lieu of the records held by the FBI, as state held records are more complete and accurate. (There can be time lags in the delivery of criminal history records and disposition information from states to the FBI.)

The goal of the compact is a master "index-pointer" approach that ties the computerized files of the FBI and the state-level centralized criminal history files into a national record system available for applicant purposes. This will help ensure that when authorized agencies or organizations screen persons seeking positions of trust they will receive more complete information on which to base an informed decision. This is currently not possible because of the diverse state laws regulating applicant/civil access to the state centralized criminal history records. The compact provides that the laws of the state receiving criminal history information from the national system will govern release or dissemination. The review team determined that only minimal changes in operations by the Bureau of Criminal Identification are necessary for compliance. Implementing these process changes will incur no cost for the Idaho State Police or other units of state or local government.

Questions by the committee expressed concern over the expense for Idaho to join, cost to do a check and how it affects the ISP. Mr. Taylor told them that there is no cost to join, as they used Federal Grant money to become a member and it doesn't affect the current fees to do a check, which is $34.00, and they will do business as usual. Mr. Taylor said this this will permit another state to have access to our records and the state checks are more open than the federal. At the present time a check for fingerprints or name is $10.00. **Senator Burkett** asked if a request from a non-compact state was treated any differently than a request from a compact state and was told that there is no difference in a state going to the federal data base, but their hope is that every state will join to facilitate access to all state records.

MOTION: **Senator Jorgenson** made a motion to send H96 to the floor with a do pass recommendation. Second was by **Senator Sweet** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the Senate floor.

H128 Erwin Sonnenberg, Ada County Coroner presented this bill that will re-write existing Idaho Code section 19-4301 to make it more readable and understandable as well as adding a provision relating to when a coroner

must investigate a suspicious 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. With regard to stillbirths, the intent is to capture those circumstances where illegal drug use by the mother may have caused or contributed to the cause of the stillbirth. Under existing law, there is no legal authority to investigate under those circumstances. There is no immediate fiscal impact to local government, or impact on the state general fund. Future fiscal impact will depend upon the number of deaths and stillbirths actually investigated by the county coroner and law enforcement.

Senator Richardson asked who notifies the coroner and was told that the person who finds the body, or has custody of the body, which could be a hospital. **Senator Richardson** then asked about SIDS deaths. Mr. Sonnenberg said that there is no known reason for this and the coroner's office is called right away. SIDS starts as a suspicious death and then is identified later.

Senator Kelly asked how they came up with the language, "reasonable articulable suspicion " (to believe that the death occurred without a known medical disease) and was told that lawyers came up with it.

Senator Burkett asked why the notification was different for kids than adults. He was told that adults usually have a medical history, and with children, there is very little. Over the years, they have needed something to address these children, which needs to be more specific than the language for adult notification. This doesn't eliminate the other statutes, but is more strict and takes a better look at it.

Don Schweitzer, a substance abuse counselor, representing himself spoke in opposition to this bill. His concern is that mothers of a stillborn child could be prosecuted because of their substance abuse. He felt it was not fair to look at the use of illegal drugs and not at the fetal alcohol, which is a big problem. He questioned the fiscal impact, saying that the Bonneville County Commission is adding to their jail and have asked for an increase in their budget. He was very concerned that the prosecutors would use the language in this bill to target mothers.

Mr. Sonnenburg addressed the fiscal impact and said that they are just asking for the findings to be brought back to them sooner. They are doing the deaths anyway, but some important information is lost because of the time factor. They investigate every death of a child now, to perhaps find something that the Dr. couldn't, but they are getting the information weeks or months later and that will continue without this bill.

MOTION: **Senator Sweet** made a motion to send the bill to the floor with a do pass recommendation. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Sweet** will carry this bill on the Senate floor.

H155 Byrl Cinnamon, Idaho Certified Shorthand Reporters Board, presented this bill that is necessary to update the provisions of the Certified Shorthand Reporters statutes to accurately reflect current board policies and procedures. The proposed increase in reinstatement fee from $40.00 to

$100.00 will impact approximately five individuals requiring reinstatement per year. The estimated impact of 25 individuals at $20.00 per year wanting material is $500.00. The fee will permit the Board to recoup its expenses in producing and mailing practice examination materials for those individuals who request them.

Senator Sweet asked if there was any opposition to this, and was told that there was no opposition.

MOTION: **Senator Lodge** made the motion to send H155 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by voice vote. **Senator Kelly** will carry this bill on the Senate floor.

S1051 **Senator Schroeder** presented this bill as a result of a very frustrating situation that happened to him several years ago, and his hopes that this bill could prevent it from happening to anyone else. When he returned from serving in the Legislature in 2002, he found that his long distance carrier had been changed without his knowledge. This happened again in 2003 and again in 2004. His local service is provided by Verizon and his long distance by AT&T. This practice is known as "slamming" and the Federal Communication Commission (FCC) has rules regarding the unauthorized change of a customer's telephone company. This also pertains to the billing practices. However, Senator Schroeder told the committee that he would write to Verizon, noting the charges and refusing to pay the exchange carrier adjustment, and the next month, there would be a credit of that amount on his bill, but no end to the slamming. They told him that the compliance agreement was good for only one month.

He needed a solution, as they had also "slammed" his fax line, so in September, 2003, he contacted the Consumer Protection Division of the Attorney General's Office and was told that by agreement, the Idaho Public Utilities Commission was handling "slamming" complaints. The PUC Utilities Compliance Investigator, Nancy Harman, agreed to investigate the matter, advising **Senator Schroeder** to continue to pay the Verizon bill, but deduct the disputed charges from Advantage, who seemed to be his current long distance carrier as a result of the "slamming". The PUC contacted Advantage who filed a timely response as required by the FCC rules and "while not admitting liability for an unauthorized change in the complainants's service, Advantage indicates in its response that is has fully absolved complainant of all charges assessed in connection with the change in a manner consistent with the FCC rules as adopted by the Idaho PUC." Ms. Harman notified Senator Schroeder that the complaint had been resolved.

The slamming continued through May of 2004, and the Senator was billed through Verizon for Advantage's Exchange Carrier adjustment, and then on the next month's bill was credited. He obtained a complaint list of slamming from 2002-2004 from the IPUC (see attached), showing that in 2002 there were 267 complaints, 97 for business and 170 for residential. In 158 of these the company reversed or modified the action, and in 129 cases the company was at fault. In 2003, the complaints were down to 216, with the company at fault 112, and in 2004, 90 complaints with the company at fault in 38.

In March 2005, Senator Schroeder requested information about slamming complaints form the Attorney General's office and received actual instances of slamming of customers. He then drafted this bill to address the problem and provide a penalty for those who commonly practice "slamming".

The bill will provide a telephone customer action and relief for venue, court costs and attorney's fees for this practice, and will provide a class action by consumers regarding actions by a telephone company, carrier or cellular phone company for the practice of "slamming". It also has a higher penalty for those over 65 years of age, or handicapped as he considers them to be a vulnerable person. He concluded by saying that this practice "takes money from people you don't see and gives you something you don't want." He did agree to an amendment excluding cellular phones from this bill.

Senator Jorgenson asked **Senator Schroeder** when this happened, why he didn't enter a block order to prevent more from occurring. The **Senato**r responded that eventually this was done, but at the time, he really didn't know what was happening and just was trying to stop it.

Senator Kelly asked why the Attorney General's office would refer this case to the PUC**. Senator Schroeder** said the law says to go to the Attorney General, but they said to go to the PUC.

Senator Lodge said her son works for a phone company and she has no long distance service right now because she was "slammed". She knows she can get it straightened out by talking to the phone company, and she feels there is no need for this legislation at this time. However, she said she will know more after she gets her long distance service back.

Skip Smyser, representing Cingular Wireless told the committee that there is a difference with wireless customers, as they sign a written agreement, and are rarely slammed as a result. He felt the legislation needed to be amended to reflect this. He felt that this was a legitimate concern for land line customers, but that wireless customers should not be included.

Roy Eiguren, representing Verizon, thanked the sponsor for agreeing to take the wireless companies out of the legislation. He also addressed **Senator Kelly's** question that the Consumer Protection Act has no authority to give away jurisdiction to the PUC to deal with unfair practices. The Public Utilities Commission does not regulate long distance services.

Elizabeth Criner, representing Veritos, and Verizon land line companies, told the committee that Verizon takes this very seriously. A lot of companies do third party billing and they track this information and terminate the contract of anyone who is "slamming". She said she was slammed in 2003, contacted her provider and it was cleared up in 2 ½ weeks. Federal regulations provide the consumer a place on the bill to note complaints. She didn't know of any company that can keep out bad actors.

Senator Jorgenson asked her if she was in opposition to the bill and she responded that Verizon opposed the bill as they don't tolerate these practices. She said half of the complaints they received had merit, but

there are remedies in place already and customers are protected.

Senator Schroeder summarized by saying that if this bill fails to pass, at some point in time there needs to be a penalty or a fine so these companies will think twice before "slamming". This happens to everyone, as pointed out, and it needs to be addressed.

MOTION: **Senator Jorgenson** made a motion to send the bill to the 14th order for amendment. Second was by **Senator Kelly.**

SUBSTITUTE MOTION: **Senator Sweet** made a substitute motion to hold the bill in committee to allow the amendment to be done so it doesn't create problems in the future. **Senator Lodge** seconded the motion saying she would like to see more work done on it. **Senator Burkett** made an amended substitute motion to hold the bill for one week to allow for the amendments to be done and then send it to the amending order. Second was by **Senator Jorgenson.**

AMENDED **Senator Sweet** requested a roll call vote. The amended substitute motion to hold for one week failed by a tie vote, **Senators Richardson, Lodge and Sweet** voting nay, and **Senators Jorgenson, Burkett and Kelly** voting Aye. The substitute motion to hold in committee failed by the same tie vote. The original motion to send the bill to the 14th order for amending also failed by the same tie vote. The bill will be held in committee.

ADJOURN: Committee was adjourned at 3:12 p.m.

Senator Mel Richardson
Vice- Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 11, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Jorgenson, Burkett, Kelly

MEMBERS EXCUSED: Sweet

MINUTES: **Senator Jorgenson** made a motion to accept the minutes of March 7 as written. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS15094 David Butler, Dept. of Health and Welfare, presented this legislation that provides the necessary statutory authority for the department to conduct criminal history and background checks on providers, employees, and contractors, who have access to vulnerable Idahoans in long term care settings. This statute would also provide immunity for employers who rely on the results of the criminal history background checks for employment decisions, and provides for expiration after the federal funded pilot program ends. This legislation has support from the providers associations who are participating with the department in planning for the pilot program. The pilot program will be funded fully by federal funds and the department will evaluate any future potential fees that may be incurred after that and will provide that information to the Legislature for review and approval.

Senator Richardson asked if a person has completed their sentence, would this background check prevent them from employment by the department. Mr. Butler responded that if they were on the registry, it would keep them from being qualified.

Senator Kelly asked if there were funds to pay for this, and was told that Idaho was chosen to participate as one of the seven states and the cost is provided through a grant. **Senator Lodge** commented that she has worked with Bill Walker on this legislation and the sunset clause of September 30, 2007 will allow the department to acquire equipment and hopefully there will be funding when the grant runs out.

MOTION: **Senator Jorgenson** made a motion to send RS15094 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS15099 This legislation is the result of work done by **Senator Jorgenson** and **Senator Kelly** with the Idaho State Police to enlarge the data base by adding fifty felony crimes to the DNA/;CODIS Act, under which offenders are subject to sample collection. The Idaho Department of Correction (IDOC) reports an average of 160 offenders convicted of these additional crimes sentenced into

its custody for each of the past three years. Just under 35% of these offenders receive probation, while slightly more than 65% are incarcerated. **Senator Jorgenson** pointed out how important DNA evidence is as a law enforcement tool, with the recent murder of a judge's husband and mother being solved by the killer discarding a cigarette butt.

MOTION: **Senator Lodge** made a motion to send RS15094 to print. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS15116C1 This legislation is being printed for the Commerce committee and will add a new benefit plan to the four existing plans offered through the Insurance High Risk Pool.

MOTION: **Senator Davis** made a motion to send RS15116C1 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

RS15138 Steve Tobiason presented the third revision of this legislation after removing sections that were objected to by the courts, insurance people and the prosecutors. This legislation clarifies the authority of the bail surely or agent to enforce the contractual right to indemnification if a defendant breaches the contract, specifically the right to recover expenses caused by the defendant's breach of the contract. This legislation should reduce the costs to law enforcement for locating and returning defendants to the state of Idaho by motivating bail sureties and agents to locate and return those who have failed to appear in court.

Senator Darrington told the committee that this will be printed, but will not be scheduled in the committee this legislative year. It can circulate and possibly return next year, but will not be heard again this year.

MOTION: **Senator Richardson** made a motion to send RS15138 to print. Second was by **Senator Burkett** and the motion carried by a voice vote.

H204 Patti Tobias, Administrator of the Idaho Supreme Court presented this bill providing that in extraordinary circumstances, a judge could retain jurisdiction for an additional 30 days to decide whether to place the defendant on probation or not. She told the committee, "As you may recall, the retained jurisdiction program is one of the judges most favored sentencing alternative and it is used often."

The Department of Correction has reduced the sentence to 180 days which used to bump against the maximum time fairly often, but happens infrequently now. The length of stay has been reduced to about 120 days in the last year, however, the judges still felt that this legislation would provide the flexibility needed in the unusual circumstance, if the Judge couldn't get the hearing scheduled, or if the department couldn't transport the defendant back to the county in a timely manner.

MOTION: **Senator Lodge** made a motion to send H204 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

H205 Ms. Tobias also presented this bill that 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. This is an important bill, as today if a juvenile receives an alcohol or tobacco violation, he or she is cited into adult court. This bill gives courts discretion, on a case by case basis, to treat these juveniles under the Juvenile Corrections Act (JCA) rather than in adult court. The amendments in the bill change the age of the violator from 14 to 18, which offers a number of advantages. More sentencing alternatives are geared toward younger offenders and are available in the juvenile court. Juvenile probation officers are skilled in working with youthful offenders and intervention and corrective resources are available. There is greater involvement and accountability of parents in the JCA, and the judges have jurisdiction over the parents. Also, the case can be coordinated with any other cases involving the juvenile. Everyone is appropriately concerned about alcohol and tobacco abuse. This legislation provides some flexibility that is very supported, and there is no opposition.

Senator Burkett asked if this included Driving Under the Influence (DUI) charges, and was told that it didn't as they are in another section of code.

MOTION: **Senator Lodge** made a motion to send H205 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Jorgenson** will carry this bill on the floor.

H206 The last bill that Ms. Tobias presented proposes two changes to what is widely regarded as a model system in state government, that is, using senior retired judges where the workloads are greatest or emergencies exist. The bill first provides greater flexibility in the use of senior judges by lifting the "salary cap" in extraordinary circumstances and secondly, it lets the court trace the number of days that apply toward the "salary cap" calculations on a fiscal year basis rather than the calendar year, more consistent with the state's budget.

A senior judge, either magistrate or district, is paid a daily rate of compensation; and that compensation, plus his retirement pay cannot exceed the current annual salary of a sitting judge, hence the "cap".

That is a fair and appropriate provision, but the court has encountered an unusual circumstance as Judge Gordon Petrie of Emmett is serving in Iraq. While he is serving his country, a senior judge is in his county. The senior judge assigned will start bumping into the salary cap, and the court will have to start shuffling other judges there which would be very disruptive to the community and local officials. This bill will provide that the chief justice can determine that extended service by a judge is necessary because of extraordinary circumstances. The amendment for this bill is in two sections, one for magistrate judges and one for all other judges.

Senator Davis asked how other states handle this problem, and was told that some other states have caps and some don't. **Senator Bunderson** asked about the judges salary while he is in Iraq and Ms. Tobias said he was not receiving pay while he is there, as they are paying the senior judge who is taking his place. **Senator Bunderson** then asked if that is the practice for the other branches of government. Ms. Tobias said she wasn't sure. **Senator Bunderson** felt that Idaho should be taking care of those who are

serving our country in Iraq and should be given a stipend to equalize their pay while there. Ms. Tobias was not aware of any statutory provisions that would allow a stipend.

MOTION: **Senator Burkett** made a motion to send H206 out with a do pass recommendation. Second was by **Senator Lodge**. **Senator Richardson** will carry this bill on the Senate floor.

Discussion: **Senator Burkett** commented that as long as this is restricted to unique circumstances, this is a great idea, and it wouldn't be fair to a judge to come back to a situation of rotating judges.

Vote: Motion carried by a voice vote.

H245 Mike Henderson, Legal Counsel for the Idaho Supreme Court presented this bill that is to update procedures for identifying and summoning prospective jurors. He told the committee that the Chief Justice in his letter to the Legislature pointed out the need for reform of the jury selection process. This bill has been drafted after consultation with county clerks and jury commissioners throughout the state.

Currently, under the Uniform Jury Selection and Service Act, there is a three-step process for compiling names of prospective jurors. First, the county compiles a master list of names from voter registration lists, lists of drivers licenses and vehicle registrations, utility customers and other sources. Next, the names are drawn from the master list for a second list, called the master jury wheel. When jurors are needed for trial, the names of prospective jurors are drawn from the master jury wheel, which must be emptied every two years, in December of each odd-numbered year.

With modern technology, this cumbersome process is not longer necessary. This bill would eliminate the intermediate step of the master jury wheel, and each county would maintain a master jury list. This could then be updated through the electronic transfer of information. When jurors are needed for trial, they would be drawn directly from this list. The master jury list would have to be updated every two years, but could be updated continually. The streamlining of the jury selection process will simplify the work of clerks and jury commissioners throughout the state and may result in savings on the local level.

The bill would also make several other important improvements in the process making it more convenient for jurors. Qualification questionnaires can be filled out and returned by e-mail, fax or other reliable means of communication. Ada County is already allowing prospective jurors to complete and return questionnaires via the internet. Persons who cannot understand English, or are not citizens, or are not 18 years of age or because of a felony or a disability, would be excused from being called for jury service for two years. The court could permit a person suffering from a disability to be excused for more than two years or permanently, depending on the disability. Persons over 70 years of age would be permanently excused from jury service by requesting so on their questionnaires. Contents of these questionnaires would be confidential to the extent provided by Supreme Court rules.

Senator Bunderson has had calls from those who operate small businesses and their livelihood depends on them being there, and he asked if they could be excused. Mr. Henderson responded that it is difficult to excuse them and still keep a balanced cross section from which to draw a prospective jury. **Senator Richardson** asked if anyone pays the $300 fine for failure to appear, as a "buy out", and Mr. Henderson replied that he was not aware of people doing anything like this.

Senator Darrington asked two judges who were visiting to respond to some of the questions of the committee. Judge Randy Smith (Sixth district) responded that with a fine of $100 for missing one day of jury duty and $300 for missing 3 days, very few skip it. Judge Ron Bush (Sixth District) commented that is a significant amount of money and if a judge sensed that a person was trying to "buy out", they would deal with them appropriately.

Senator Darrington commented that it would be almost impossible to make a list of exemptions, and 90% of the people can find a reason to be excused. Mr. Henderson commented that everyone wants a good and smart jury.

Senator Burkett asked about the master list and that in section 2-206 subsection (4) it says "The master jury list shall be open to the public for examination as provided by the supreme court rule." and in section 2-207, (1) it says that "updated information from the lists of voter registration, drivers licenses and state identification cards, including any changes, deletions and additions, shall be made to the master jury list from time to time."

Senator Kelly was also concerned about the confidentiality of the jury lists as it says in 2-206 that they "shall be open to the public" .

Judge Smith said that these records would be confidential according to Idaho Court Administrative Rules, Rule 32. He then quoted from the rule: *"Records of the judicial department, subsection d Records Exempt from Disclosure, number (6) Except as provided by Idaho criminal rules or civil rules, the names of jurors placed in a panel for a trial of an action and the contents of jury qualification forms and jury questionnaires for these jurors, unless order to be released by the presiding judge*;.. " **Senator Kelly** asked if there was a danger that someone could access the master list and use it for a mailing list. Ms. Tobias and Judge Bush pointed out that the Court Rule 32 would keep all records exempt from disclosure.

MOTION: **Senator Bunderson** made a motion to send H245 out with a do pass recommendation. Second was by **Senator Kelly** and the motion carried by a voice vote. **Senator Kelly** will carry this bill on the Senator floor.

Senator Denton Darrington Chairman	Marianne Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 14, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of March 11 as written. Second was by **Senator Richardson** and the motion carried by a voice vote.

H94a Tim McNeese presented this bill that would make it a crime for the employees of the Department of Corrections to have sexual contact with offenders. Current law prohibits sexual conduct between incarcerated persons or parolees and those who are "officers, employees or agents of a state, local or private correctional facility." It doesn't specifically list probation and parole officers who work at office not located at a state correctional facility. This bill would include this group of people.

Senator Darrington commented that the amendment specified "not their spouse", but wondered about a significant other, and was told that there is protection for those legally married to the offender, but no protection if they are not. It has been changed so that consent is not a defense.

MOTION: **Senator Richardson** made a motion to send H94a to the floor with a do pass recommendation. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the Senate floor.

H127a Mike Kane presented this bill, which basically now is the amendment. The bill dates back to the Civil War and requires a sheriff when leaving office to write down a list of all property for his successor. Currently, with prisoners and property tracked by computer, this bill deletes the obsolete requirement of property process and transfer.

Senator Bunderson asked about the public policy of this law and was told that was the thinking at the time, and even now, many didn't know the law existed. **Senator Bunderson** then asked what other County officials do when they leave an office. Mr. Kane commented that was the original intent of the legislation was to repeal this antiquated law, but those in the body across the rotunda didn't prefer to do that, so they settled for the amendment, as "Half a loaf is better than a whole loaf".

MOTION: **Senator Davis** made a motion to send H127a to the 14th order for amendment. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Bunderson** will carry this bill on the Senate floor.

H130a Representative Clark presented this bill that would allow those involved in a motor vehicle accident to have one copy of the unredacted collision report, alleviating the necessity to access the report with a court order. Section 9-335 states exemptions from disclosure and confidentiality and in subsection (f) Endanger the life or physical safety of law enforcement personnel, a new section is added and with amendment: "A motor vehicle collision report is not an investigatory record and any person involved in a motor vehicle collision investigated by a law enforcement agency, that person's authorized legal representative, or insurance agency shall have a right to a complete, unaltered copy of the final report prepared by the agency."

Representative Clark told the committee that this was a minor change to a major problem.

MOTION: **Senator Jorgenson** made a motion to send H130a to the floor with a do pass recommendation. Second was by **Senator Sweet** and the motion carried by a voice vote. **Senator Jorgenson** will carry this bill on the Senate floor.

DISCUSSION: **Senator Kelly** was concerned that the public records of the investigation making motor vehicle records available to the public. Representative Clark responded that only those individuals involved in the accident, their insurance and their attorney will have access as stated in the new section.

Senator Davis questioned whether subsection (f) is where this language belongs, as it doesn't specifically apply to anyone and possibly subsection (g) should be added where it would be located.

Senator Burkett was in support of the language as it is that would make the reports public records.

SUBSTITUTE MOTION: **Senator Davis** made a substitute motion to send H130a to the 14th order for amendment. Second was by **Senator Kelly.** Motion carried by a voice vote. **Senator Jorgenson** will carry this bill on the Senate floor.

H157 Representative Frank Henderson presented this bill that amends existing code to provide county sheriffs, through their jail administration, the opportunity for reimbursement of the costs of all medical care given inmates housed in county jails. The obligation to provide medical care to jail inmates has become a major expense to every Idaho county that operates a county jail. For example, the Twin Falls jail cost of medical care for that county last year was more than $400,000. Major items in that cost were medications for $47,000, hospitalization for $49,000 and dental costs of $63,000, which were all paid by county property taxpayers.

In Kootenai County jail, medical costs exceeded $245,000 with $76,000 paid to dentists, $86,000 for medications and hospital care totaling $64,000, again all paid by taxpayers. The problem exists because present code only identifies an inmate's doctor visit as a reimbursable expense. Attempts to recover other medical costs have been denied in several court decisions which have sustained inmate's claims that lacking

specific identification in the code, “other medical costs” are not reimbursable. This bill will correct that deficiency, but any necessary medical care will not be denied to any inmate. Money for payment of medical care will be taken form the inmate’s commissary account which is established at the time the person is booked into jail. Whatever money the person has in his possession is placed in this account. Other uses of the commissary account are for purchase of candy bars, playing cards and other personal items. If an inmate doesn’t have money in this account, friends and relatives frequently make a deposit in his account.

This bill also requires the inmate to provide health insurance information to enable the county to seek repayment of medical costs from an insurance company in the event a policy happens to be in force. To summarize, Representative Henderson told the committee that this bill provides an opportunity for the potential reimbursement of what has long been an unfunded mandate.

Marty Durand, representing the ACLU spoke in opposition of the bill saying that in 2001 the cost of medical care was increased from $1.00 to $5.00. Now, this legislation proposes to increase the cost from $5.00 to $20.00, which is a significant increase. She questioned whether the cost of providing medical care has quadrupled in the last 4 years. They are concerned that increasing the fee will discourage inmates from seeking medical treatment, thereby increasing the risk to other inmates, staff and the general public. It could ultimately increase the cost of inmate medical care to the counties if inmates delay seeking treatment until a more serious problem occurs. Currently there is an epidemic of “methicillin resistant staphylococcus aureus” (MRSA), a drug resistant staph infection, which is a highly contagious infection that can result in amputation or death, but usually starts out as a minor skin lesion. To control this, it is critical that an infected person get treatment as soon as possible. Discouraging inmates from seeking treatment can affect inmates, staff, their families and the outside community.

Senator Darrington asked why inmates who have the means or medical insurance cannot pay their own expenses. Ms. Durand responded that this doesn’t apply to many inmates.

Senator Davis asked about the charge for a person who has sufficient funds in their commissary account and was told that if they have no money in their account, the county has to provide the medical care at no cost to the inmate. **Senator Davis** asked if she preferred to hold the bill because non-indigent inmates would rather have a stamp than health care. Ms. Durand responded that most of them are there because of poor choices, which they continue to make.

Mike Kane spoke to this bill and some of the questions. The intent of the raise to $5.00 was to deter inmates from taking a “day out to go to the doctor”, and getting a free day. This increased stopped that practice somewhat, but medical costs have increased and a higher amount is needed at this time. He also said that this increase won’t affect Medicaid, and doesn’t apply to HIPA as well. It would be a violation of

constitutional rights fo them to turn over the health records. An inmate who doesn't want to spend the money can contest the cost of the medical care, and the sheriff's are in support of this legislation.

Senator Bunderson asked about the possibility of an inmate spending down their commissary account and the reporting to sick bay and would there be anything that could be done, and Mr. Kane responded that nothing could be done, but provide medical care at county expense.

MOTION: **Senator Davis** made a motion to send H157 to the floor with a do pass recommendation. Second was by **Senator Bunderson** and the motion carried by a voice vote. **Senator Lodge** will carry this on the Senate floor.

ADJOURN: Meeting was adjourned at 2:18 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 16, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Kelly

MEMBERS ABSENT: Burkett

MINUTES: **Senator Sweet** made a motion to accept the minutes of March 9 and March 14 as written. Second was by **Senator Kelly** and the motion carried by a voice vote.

RS15012C1 Heather Reilly presented this legislation that she, **Senator Darrington** and Ken McClure have worked on for several months and is known as the "*Pregnant Meth Mothers Bill*". They also worked with the Idaho Medical Association to protect infants endangered by use of Schedule I and II controlled substances such as meth, cocaine, heroin and other more addicting drugs. There is an increase in the number of babies testing positive for meth at birth and there have been many drafts of this legislation. She asked that it be printed and then the bill would circulate to get input from those who work with these situations. The intent is to get these people into treatment so they will quit using, and babies won't be born addicted.

Senator Darrington noted the need for a bill to be worked on in the interim, as it is such a high profile problem. **Senator Bunderson** asked if this is limited to controlled substances, as babies can be deformed by other substances. Ms. Reilly said they were trying to narrow the scope and focus on that problem, then they would move on to other substances. She said "This is a baby step."

Senator Richardson asked that when the test finds the mother is using and she goes into treatment, what are the indications that the child will have problems. Ms. Reilly responded that they hope if the intervention is early enough, and the mother gets into treatment, that she won't continue to use. There are not studies done yet, or data, to show how use of meth affects a child. **Senator Darrington** commented that the doctors feel the results will be similar to those of crack.

Senator Kelly expressed concern about the implication and lack of drug treatment for these mothers.

MOTION: **Senator Richardson** made a motion to send RS15102C1 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

RS15149 Relating to eliminating the exemption from the requirement for registration of any self-funded health care plan, being printed at the request of the Commerce Committee.

RS15163C3 Relating to DEQ Sewer and Water Plan Review, being printed at the request of the Health and Welfare Committee.

MOTION: **Senator Kelly** made a motion to send RS15149 and RS15163C3 to print. Second was by **Senator Lodge** and the motion carried by a voice vote.

H97a Dawn Peck, manager of the ISP Bureau of Criminal Identification, which contains the Central Sex Offender Registry, presented this bill, which is an amendment to the Sexual Offender Registration and Community Right-to-Know Act and adds the crime of "Sexual Contact with a Prisoner" to the list of crimes for which a person must register. This crime was brought to their attention by the Department of Corrections when they were paroling an inmate. They were ready to register him, but the statute was not included in the registration statute. Therefore, they could not register him as a sexual predator, which would be appropriate. Also, this 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 live in Idaho and were off any sort of supervision on that date. However, Idaho offenders who were off supervision at that time do not have to register. This has caused significant problems regarding some offenders, and there has been one lawsuit proposed because of it.

This amendment will ensure that Idaho does not become the "safe haven" as far as registration is concerned. The department often gets calls from offenders in other states who are "shopping" for a state that will not require them to register. Ms. Peck shared an example with the committee of an offender who "topped out" in the state of Washington in late 1992 and moved to Idaho just before the July 1, 1993 cut off date. He was registered, designated as a violent sex offender and referred for civil commitment in Washington. However, since he lived in Idaho before the cut off date, the department was not able to register him. The individual has a long history as a pedophile of young boys and currently lives close to a community park. This amendment would require him to register.

MOTION: **Senator Sweet** made a motion to send H97a to the floor with a do pass recommendation. Second was by **Senator Kelly** and the motion carried by a voice vote. **Senator Sweet** will carry this bill on the Senate floor.

S1196 David Butler, Deputy Director and Division Administrator of Management Services for the Dept. of Health and Welfare, presented this bill. Also present was Mond Warren, the Bureau Chief of Audits and Investigations who oversees the Criminal History Unit. This bill allows the Idaho Department of Health and Welfare to participate in a federally funded pilot project. He referred to a handout listing the current Idaho requirements for criminal history background checks for individuals who provide direct care and services. They are:

Adoptive parents
Adult Day Care providers

Alcohol and Drug Abuse Prevention & Treatment servicing children
Certified Family Homes
Children's Residential Care Facilities
Children's Therapeutic Outdoor Program staff, volunteers, interns
Day Care Centers
Developmental Disability Agencies
Emergency Medical Services applicants
Foster Parents
Mental Health Clinic staff
Owner/Administrators of Residential Care Facilities
Personal Assistance Agencies
Personal Care Services
Psychosocial Rehabilitation providers
Service Coordinators

Background checks are not conducted in the following settings:
Home Health
Hospice
Institutional Care Facilities for the Mentally Retarded (ICFs/MR)
Long Term Care Hospitals or Hospitals with Swing Beds
Nursing Homes
Residential Care or Assisted Living

Mr. Butler also passed out copies of letters of support from partnering State Agencies and provider associations. (See attached)

The Department feels this legislation makes good social policy, as well as good fiscal policy. The social policy is the conscientious thing to do as it addresses the issues of protecting at risk individuals with mental or physical conditions. By using federal funding for this pilot program, the state and provider community could save millions of dollars. Idaho has already been selected as 1 of 7 pilot states for this project. If given legislative approval, they will proceed. The pilot is 100% federally funded and has a sunset clause of September 30, 2007, to coincide with the completion of the pilot project.

MOTION: **Senator Lodge** made a motion to send S1196 to the floor with a do pass recommendation. Second was by **Senator Kelly** and the motion carried by a voice vote. **Senator Lodge** will carry this bill on the Senate floor.

S1197 **Senator Kelly** and **Senator Jorgenson** have worked on a bill that would add more crimes for offenders who will be required to subject to a DNA sample. **Senator Kelly** was the first presenter and said that they are by no means experts in this area, but they did visit the Department and visited with the DNA expert, Cindy Hall. They found Ms. Hall runs an excellent shop and went into great deal about DNA research. This legislation was put together because of the importance of DNA, and the information goes in a national data base to give access to other states and they can be assured about the accuracy of forensics.

In Idaho, DNA is collected when a person is convicted, not just when they are arrested as in other states. Thirty-two states collect DNA from all

felonies at the present time, but Idaho doesn't have the resources .This legislation adds 50 new sexual and violent crimes that should be included in the DNA collection requirements. **Senator Darrington** commended them for being able to pick 50 out of the 400 violent crimes available.

Senator Jorgenson spoke about the fiscal impact of this legislation. The Idaho Department of Correction reports an average of 160 offenders convicted of these additional crimes sentenced into its custody for each of the past three years. Just under 35% of these offenders receive probation, while slightly more than 65% are incarcerated. The cost to the department to obtain an offender sample is $6.00, but some may be obtained while the offender is in county custody, reducing the cost. The maximum impact to the IDOC is estimated at $960,000. However, this is added to the fiscal impact of the addition of burglary and domestic violence in the 2004 legislative session. Since March 24, 2004, the IDOC received 749 offenders convicted of these crimes, at a total sample cost of $4,494.00. In the past three years, IDOC has taken 1241 DNA samples of incoming offenders at a cost of $7,446. An estimated annual fiscal impact to the IDOC for both those offenders added to the DNA/CODIS (Dioxyribonucelic Acid-Central Offender Data Information System) Act in 2004 and in this proposal is approximately $5,500 a year.

The ISP forensic program is responsible for DNA analysis in Idaho. Typically, CODIS DNA samples are outsourced under a federal grant addressing CODIS DNA backlogs. The ISP initially received approximately 6000 offender samples when the act was implemented. To date, just over 3000 samples have been analyzed. The remaining 3000 are scheduled for analysis when ISP receives federal funding to do so. The samples generated from this proposal would be added to the backlog and processed under the federal grant. CODIS collection kids cost $4.78 each and ISP provided the kits to those entities collecting the samples. The current contract price for DNA amplification kits are $5995 a kit, and approximately 160 CODIS samples can be processed per kit. Associated reagents and consumables used in the analysis process is approximately $3,300 per amplification, and fiscal impact of supplies would be $10,060 a year. As with the IDOC, ISP absorbed the addition of the burglary and domestic violence offenders. The addition of an estimated 160 samples per year will tax the available hours of the DNA analysts. When the federal funds are no longer available to cover CODIS analysis, the ISP will require one additional lab technician to pick up general laboratory work so the analysts can dedicate their time to the DNA workload. The fiscal impact for adding one laboratory technician is $30,000 a year.

Senator Sweet questioned about the classification of "Unlawful possession of a firearm" or "Unlawful discharge of a firearm" being a felony. He was told that if that classification is in there, it is for people who have been convicted. He wondered about the accidental discharge of a firearm in a home and was told by Heather Reilly that according to Code 18-3317, this is accidental and wouldn't be criminal under this statute, as in a drive by shooting.

Mike Kane spoke about the DNA collection as a mouth swab, a non-

invasive procedure and not an unreasonable search.

MOTION: **Senator Bunderson** made a motion to send S1197 to the floor with a do pass recommendation. Second was by **Senator Lodge** and the motion carried by a voice vote. **Senator Lodge** will carry this bill on the Senate floor.

ADJOURN: Meeting was adjourned at 2:30 p.m.

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 18, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson** made a motion to accept the minutes of March 16 as written. Second was by **Senator Kelly** and the motion carried by a voice vote.

RS15166 This legislation will assist Idaho residents in identifying benefits for which they may be eligible through their pharmacy. The bill will be sent to the Health and Welfare committee when printed, as per written request from the Chairman and committee.

MOTION: **Senator Lodge** made a motion to send R15166 to print. Second was by **Senator Jorgenson** and the motion carried by a voice vote.

H203a Representative Henderson presented this legislation that would make the duplicating of movies in a theater a misdemeanor. He told the committee that it is probably incorrect to call this bill an anti-camcorder act, because it doesn't outlaw camcorders, but it does outlaw the use of them for the purpose of recording a motion picture being exhibited. Illicit copies made in this manner are then reproduced into millions of cheap DVDs that reduce patronage in theaters, and that has a direct effect on the Idaho economy.

Rep. Henderson shared letters from theater owners in Idaho urging passage of this bill that will help stop film piracy as this practice hurts their business. (See attached) Current statutes do not provide the specific authority needed by a theater owner or attendant to stop an act of film piracy. This bill will allow the authorization to detain a person suspected to be in violation of the act. Twenty states have already enacted anti-camcorder, anti-film piracy laws in the last year, and another 20 are considering the law this year. This was also amended to make it consistent with the shoplifting statutes.

Also, for many decades thousands of ounces of Idaho silver have been used to produce the photographic film on which motion pictures are printed. This is a huge market for the output of one of Idaho's most important natural resource industries.

Peg Owens, Idaho Commerce and Labor, Idaho Film Bureau told the committee that 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. Film companies own the product they create and license that product for distribution, spending millions during all phases of the process.

Idaho must act to help the creative industries control piracy, by passing this bill to send a clear message to the film industry that Idaho does not condone intellectual property theft.

Senator Jorgenson asked how this could be done "prior to release" of the film. Ms. Owens told the committee that 50 major titles were duplicated in 2003 during screenings and premiers or while a film is in transit to a theater.

Senator Richardson asked about making a copy for a person's own use and not for commercial gain. Ms. Owens told him that this action was not covered in the bill, but could still be detected and then reported to authorities.

Carol Skinner, owner of the Flicks, and also buyer for films shown at the Egyptian, spoke in support of the bill as this is stealing from the creator's livelihood. She was amazed that it wasn't already a law in Idaho, as 32 states have passed legislation which enable theater personnel to hold a person and their equipment until they can call authorities.

MOTION: **Senator Jorgenson** made a motion to send H203a to the floor with a do pass recommendation. Second was by **Senator Richardson** and the motion carried by a voice vote. **Senator Darrington** will carry this bill on the Senate floor.

H207 Patti Tobias presented this bill that will double the Idaho Statewide Trial Court Automated Records System (ISTARS) fee, which has been unchanged since the creation in 1997. At that time, the Legislature created a dedicated fund for the purpose of implementing the ISTARS trial court information system. Court users pay an additional $5.00 on civil filing fees and criminal dispositions, which is deposited into the fund. This bill would increase that amount to $10.00 and this additional revenue would be used to develop and implement technologies such as video teleconferencing, imaging, electronic filing and digital recording systems in trial courts statewide. The use of these technologies would provide greater access to court records, greater efficiencies for the public, reducing time, travel and other costs to the parties, the State of Idaho and the counties. Spending authority for use of this fund is provided annually by the Legislature, even though the bill has no impact on the general fund. The increase in the ISTARS fee would represent an annual increase of approximately $1,500,000.00.

Senator Darrington pointed out that the courts have more need for ISTARS than ever before. Ms. Tobias explained that ISTARS is a very complex system and the only way to meet the needs of law enforcement and the court is through this system and its special software that enables tracking of data.

Senator Darrington explained that 8 years ago, when this system was developed to tie the whole state together, it was projected by the court that the fee would not have to be increased for 4-6 years. The court has gone 3 years past the replacement schedule for their technology. With this system, all jurisdictions in the State can talk to each other, and everyone can have access to data.

Senator Burkett questioned whether this will really need all the amount of money projected to be received. Ms. Tobias responded that technology will

meet the needs they have and should be adequate for the next 5 years.

Senator Bunderson asked about INTERMAC, chaired by Colonel Dan Charboneau, and was told the group is having their first meeting on April 17.

MOTION: **Senator Bunderson** made a motion to send H207 to the floor with a do pass recommendation. Second was by **Senator Sweet** and the motion carried by a voice vote. **Senator Darrington** will carry this bill on the floor.

H208a Representative Wills presented this bill that will reflect a change in Idaho Code to allow the investigation of property damage in a motor vehicle crash to be reported only if at least $1500.00 in damage. It is estimated this will reduce many police officer's accident investigation time by 40% to 50% on all property damage only accidents and allow them more time to perform other more important duties to protect the citizens of this state. The language in the bill was originally $2000.00, but was amended to a lower figure. Representative Wills commented that a few years ago, $750 was major damage, but that only applies to a couple of scratches now.

Senator Darrington asked who makes the judgment call about the estimate of damage and was told that the officer who responds is trained to make that decision. **Senator Jorgenson** was concerned that this amount could vary according to the value upon the make and model of a car, for example, if it were vintage a few scratches could cost $5000 for paint alone, and wondered if all officers are qualified to estimate all damage. Representative Wills responded that most automobiles from 1991 on absorb more crash and sustain more damage and accidents have grown to be more costly than in 1990. An officer will still be called to the scene of an accident, but will not file a report if he estimates the damage to be less than $1500.00.

Senator Lodge asked if this would affect insurance rates if there is no report because it looks like it wasn't that much. Representative Wills assured her that the insurance adjusters didn't feel it was an issue, and there are many variables, but this should be good for a few years. The officers use standard operating procedures for the estimating of vehicle damage.

MOTION: **Senator Richardson** made a motion to send H208a to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Richardson** will carry this bill on the Senate floor.

ADJOURN: Meeting was adjourned at 2:31 p.m.

Senator Denton Darrington Chairman	Marianne Hansen Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 21, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of March 18 as written. Second was by **Senator Richardson** and the motion carried by a voice vote.

RS15168 This legislation adds to the definition of regulated air pollutant the authority for the Department of Environmental Quality (DEQ) to adopt and implement the permit to construct programs required by sections 7412 (g) and (i) of the Clean Air Act for major sources of hazardous air pollutants (HAPS)

Senator Darrington told the committee that the Pro Tem wants this trailer bill as an addendum to H230, a companion bill currently on the Second reading calendar so the two will catch up. The committee secretary has a letter from the Chairman of the Health and Welfare committee requesting this be referred back to them when printed.

MOTION: **Senator Davis** made a motion to send RS15168 to print. Second was by **Senator Jorgenson**.

DISCUSSION: **Senator Kelly** was very upset that this proposed print hearing was not on the agenda for this committee for today. She explained that the Health and Welfare committee discussed this legislation as well as the companion bill and objected to both bills. She strongly objected to this print hearing and will be voting no.

VOTE: The motion carried and the legislation will be sent to print and to the Health and Welfare committee.

H272 - S1101 **Senator Darrington** told the committee and the audience that H272 would be discussed first and if it is recommended for a do pass or to go to the amending order, then there will be no action on S1101 today**. Senator Burkett** clarified that witnesses can testify to S1101 as well as H272 as they speak today.

Representative Rusche a co-sponsor of H272 presented the bill that would limit meth labs by limiting the ingredients used to cook meth., mainly pseudoephedrine. This bill places pseudoephedrine on Schedule V, an existing pharmacy schedule used for paregoric and codeine in cough medicines. It places combination medications, those which have pseudoephedrine and another medication such as Tylenol or an anti-

histimine in an assisted sales category, much like tobacco. For those substances that contain pseudoephedrine less than 30 milligrams, in liquid gel form, or in an otherwise unextractible form will remain on the shelves. It has a 9 gram possession limit that was felt by the Federal Government and many states to indicate intent to produce in a laboratory. The intent language was not included in this bill, just the limitation. It also allows the Board of Pharmacy and Law Enforcement to respond to changes in the drug manufacture culture of these cold medications by "opting in" or "opting out". If Law Enforcement finds that there is a combination that is used to make meth, the Board of Pharmacy can be petitioned to make temporary rules to place that ingredient in Schedule V.

Dr. Rusche presented some of the information that they received when proposing this legislation. Colonel Dan Charboneau, ISP stated that there were 38 meth labs found and broken up in Idaho last year, and that for each lab that is found, 9 more exist.(*FBI-ISP*); The cost for law enforcement to interdict a home lab is $10,000 to $14,000 per location *(Canyon County Sheriff Department*); Oklahoma has found that nearly identical controls on pseudoephedrine reduced the number of laboratory operations 88%, just by making the raw material harder to get. Texas is evaluating similar laws because of the movement of labs out of Oklahoma and into their state. *(New York Times*)

Pseudoephedrine for labs and lab production has increased in Coeur d'Alene and Canyon County as the "cookers" are leaving states with pseudoephedrine restrictions. Washington is looking to strengthen their law because of the movement from the Portland area north to Vancouver, Washington. (Washington Board of Pharmacy)

Idahoans will still be able to treat their cold symptoms effectively. Drugs containing pseudoephedrine are but one kind of treatment available for cold symptoms. Combination drugs having less risk for misuse will continue to be sold off the shelf or with the assistance of a clerk. Only pure pseudoephedrine or combinations identified as being used in meth production are "scheduled" and dispensed by the pharmacy. For each pound of meth, there are 7 lbs of toxic waste coating inside of buildings, clothing, and furniture. This is a safety bill for fireman, policeman and anyone exposed to a meth lab. This is a small simple change in policy, to put pseudoephedrine as a Schedule V drug and will help with the meth labs in Idaho.

Senator Sweet questioned the statistics of Oklahoma as the handout he was provided showed a reduction of 50% not 88%. Rep. Rusche said that information came from the ISP and the Board of Pharmacy.

Senator Davis commented that if Idaho only knows about 10 out of 100, then has Oklahoma seen a reduction in the ones they know about or the ones they don't know about. Rep. Rusche replied that this is only the labs that they interdict, and they are not talking about a manufacturer, but a small lab, being used by "meth heads".

Senator Bunderson asked if this bill focuses on pure pseudoephedrine

won't the cookers use other forms of products to make their meth. Rep. Rusche replied that in Idaho, 80% of the labs have pure pseudoephedrine as their source of ingredients.

Senator Richardson asked if this was to require pure pseudoephedrine to go under the counter, and was told that it would be under the control of a pharmacist, and under the counter. A purchaser would be required to sign a log in order to buy the product. The non-pure product would be put in the area as tobacco is and would be an assisted sale. **Senator Richardson** asked how serious the second group is, and was told that 20% of the labs use combination medications, so it is significant, but these wouldn't be required to be on Schedule V. Rep. Rusche told the committee that he could walk into an Albertson store and there would be 8 feet of shelf containing pseudoephedrine products. Not everyone is voluntarily putting it behind the counter, but to insure compliance, the pure pseudoephedrine has to be on Schedule V where there is a tracking system.

Senator Jorgenson asked Rep. Rusche if he acknowledged that this is an attempt to cure a symptom and not sickness. The Rep. replied that this will lessen labs and it is feasible that those who can't cook will just go buy the finished product, so treatment is the big deal. In order to purchase pure pseudoephedrine a person must sign a log and show photo identification. This is a small inconvenience to the consumer to address a problem and be successful. **Senator Jorgenson** asked about the volume of the product that is stolen from the shelves, and Rep.Rusche had no estimate of figures on that theft.

Pam Eaton, Pres. of the Idaho Retailers, spoke in opposition to the bill, saying that retailers want to be partners in this effort, but weren't involved in the discussion leading up to this bill. She said that lots of chain stores have transaction limits for these products, and if a store has a problem with high theft, the product is already put behind the counter. From 50 responses concerning this theft, from chain stores and individuals, there was a 1% theft rate. One major chain had 10% theft, and put pseudoephedrine products behind the counter to be vendor assisted.

She told the committee that meth cookers can figure out a new way to manufacture within 14 months, and they can still purchase a large quantity of pure pseudoephedrine over the internet.

With regard to H272, she said the retailers were concerned that the log registers were not HIPAA compliant, and who would police the 9 gram limit in a 30 day period.

She said that **Senator Burkett** had talked to retailers before drafting his bill, S1101, which they appreciated, but phenylpropanolamine is not made anymore, so that is a mute point. A log can be kept, but it would be looked at after the fact, and cross-referenced with other stores. Similar legislation has been introduced across the country, but has not proven effective. Idaho has less meth labs than other states, and there are other ways of dealing with them.

Senator Jorgenson asked about the use of the log and the HIPAA requirement. Ms. Eaton said they are trying to figure it out, and could try a separate log for each transaction, but it is a big concern. **Senator Sweet** asked who would have statutory authority to collect and look at the logs, and was told that law enforcement would have to get a warrant.

Senator Sweet commented that Rep. Rusche said this is a small "give up", but in a small community to go to the convenience store at midnight and have to reveal identification could be a real "give up". Ms. Eaton agreed that to wait in line would be a huge give up.

Senator Lodge asked about the calculation of cost to law abiding citizens for the products to be put on Schedule V or behind the counter. Ms. Eaton said they hadn't done a workup, but most of the pharmacies don't want to increase the cost because they care about the consumer. If the drug is scheduled and put behind the counter, and the professional pharmacist has to be the one distributing it, the cost is going to have to be made up. There is already a shortage of pharmacists in Idaho and the same problem exists with vendor assisted sales.

Senator Bunderson commented that her letter (see attached #1) seemed to show conflict with the procedures and the legislation. Ms. Eaton commented that it is unfair to make all retailers take products away. It is a good first step to require a transaction limit. **Senator Bunderson** asked if she would support an amendment for either bill. She responded that a real effective way is for the wholesalers to do the tracking. When this was implemented in Washington, department of Health and Welfare saw that certain retailers were ordering high amounts of these products, and 40 were pulled out. This has worked well in Washington, and they have seen a decrease.

Representative Ring, co-sponsor of H272 addressed some of the concerns of the committee. There is already a reduction of meth labs in Idaho, as the Canyon County Sheriff reported that the "drug mafia" is shutting down small labs as the are competition. As to the keeping of a log, *Pennywise Drug* currently has an electronic log and you only see your signature on it, which would address the HIPAA concern. Also, there is a minor loss of sales by having the drugs behind the counter but it balances with the possibility of children coming into contact with them.

JoAn Condie, director of the Idaho State Pharmacy Association spoke in opposition to H272. The concerns of the Pharmacy are that the current log books required and furnished by the Board of Pharmacy are not HIPAA compliant and are only reviewed once a year at the annual pharmacy inspection. They also resent being made to enforce the limit of pseudoephedrine sold to a patient over a 30 day period, so that person does not purchase over 9 grams of any type product. They know the staff is inadequate at the ISP and the Board of Pharmacy to review these logs and don't feel they are an effective method of control. They suggested making pseudoephedrine products a prescription so they can be tracked through the Board of Pharmacy's electronic tracking system. They also suggested that the legislation be "opt in" not "opt out", so products that are not being used in meth labs not be affected. Pharmacists are fully aware of the meth

problem, as they deal with patients with drug problems daily. Ms. Condie concluded with "They truly care about their patients and want to assist in curtailing the use of meth in their communities. They also want something that provides tools that will truly aid law enforcement in stopping the production of meth, but when they realize this is a "feel good" bill, they will wonder why they are forced to take the burden when there is no benefit to the citizens of Idaho or the State Police." She urged the committee to vote no on H272.

Representative Wills, also a co-sponsor addressed the issues that had been brought up. The sponsors changed the bill because of the wishes of the retailers, took off the sunset clause, and put the "opt in" clause in and made other changes except to "put a single entity in Schedule V". The Idaho Department of Correction and law enforcement report an enormous substance abuse problem and 95% of the parole and probation violators that return come back due to meth use. This is a serious law enforcement issue as the housing is very costly. The meth related dental costs were $87,000 last year in the Department of Corrections, and this didn't count the counties where others are housed. There are a lot of statistics out there, and DEA says only 10% of the meth labs are found in the state, and 37 were found in the last little while, so that means that 370 are still out there. He asked the committee to make a stand today to no longer tolerate meth issues out there and take the responsibility to get these labs cleaned up within the borders of Idaho, to realize this is a good bill and not one that infringes on the rights of others.

Elizabeth Criner, representing Pfizer Pharmaceuticals, told the committee that their company has spent 10 million dollars to put chemical lock products that would limit the ability of meth cookers to convert their products to methamphetamine. Unfortunately, the effort has been frustrated by the ability of most meth chemists to overcome the locks and still utilize the drugs. They have created a new drug called Sudafed PE, and the main ingredient is phenylephrine, which for the moment cannot be converted to meth. The two bills being considered today treat single compound products differently than multiple compound products. Pfizer has a concern about that as their products are singled out, but both products can be used for the production of meth. She presented a letter from the DEA stating that liquid gel caps, gel caps and/or liquid pseudoephedrine products can be used for methamphetamine production. (See attached #2) She felt that to make these ingredients a Schedule V, or to put them behind the counter, will simply cause the criminal element to look to another product to use which will still be readily available to them. The other issue is that in rural areas a pharmacist isn't always available. If a person is pregnant and Sudafed is all they can take, they will have to drive to find the medication in a nearby town. This would make it very difficult for people who rely on this medication. Also, from information provided by law enforcement, compound pseudoephedrine products and single pseudoephedrine products have been found in meth labs in Idaho, so both are used in manufacture of meth.

Colonel Dan Charboneau, ISP, told the committee that H272 is not about the number of meth labs in Idaho, it is a child protection and public safety bill. Any meth lab, small or large creates a toxic environment through the

presence of solvents and acids and the creation of phosphine gas, airborne iodine and hydrochloric acid and meth in vapor. Chemicals are frequently stored in pop bottles and other common containers, placed in refrigerators or on tables or counters. Frequently children are present in these environments, touching surfaces, then putting their hands in their mouth, ingesting meth. Meth affects brain activity and causes permanent brain changes just as it does in adults, but to a more marked degree. These children will be in our schools a day care centers, and some will come into the criminal justice system as well, requiring social services and medical attention at a cost currently incalculable. In Fiscal Year 2005, Idaho's Education, Health & Human services and public safety budgets accounted for a total of nearly 94% of the state's general fund.

These children will impact those very agencies and services as their needs will be long term and enduring. This legislature has started down the road to eradicate meth and its dangers to the innocent. He presented a handout indicating a number of products that will be affected by passage of these bills. (See attached#3) He told the committee that "the bulk of pseudoephedrine containing products will be available by vendor assistance and a number of non-pseudoephedrine products will remain on shelves, as will liquid and powder products. There will always be a store open where some type of cold medicine is available for those who need it."

Stan Gibson, a pharmacist in the Boise/Nampa area and Legislative Chairperson for the Idaho State Board of Pharmacy, spoke in opposition to H272. He was concerned for the reasons already mentioned by Ms. Condie, and felt that the pharmacy log book is a very poor tool for the sales of pseudoephedrine. Requiring pseudoephedrine to be sold in the pharmacy, as a non-scheduled product, by pharmacists or their technicians would accomplish the same goal of limiting access to the product without requiring a log book which is of limited value. In their view, a better solution would be to require the pure, single entity pseudoephedrine products to be sold by prescription only, as a schedule 5 product and give the pharmacists prescriptive authority for these products. The product would be entered into the computer as a scheduled prescription and would be reported monthly to the Idaho State Board of Pharmacy in their scheduled prescription report, which is readily accessible to all concerned health care and law enforcement entities.

Representative Mitchell, also a co-sponsor of the bill told the committee that this started as a domestic violence meth lab with children idea. Then House Bill 1 was written and they asked for help from pharmacists and retailers and rather than adjust and scratch, they started H272.

Senator Darrington noted that the time was gone for testimony and asked each person who had signed in to stand, give their name and their position. Those who spoke were:
Steve Hermansky, Schering Plough Health Care Products, Opposed
Heather Reilly, Prosecuting Attorneys, In Support
Karianne Fallow, Albertson's, Opposed (see written testimony)
Mike Johnson, Chiefs of Police, In Support
Mick Markuson, Board of Pharmacy, questions the logs

Shirley Alexander, Child Protection manager of H&W, in Support
Jeff Buel, Johnson & Johnson, Opposed
Pam Packard, a citizen, favored some legislation to give retailers a rule, but was opposed as this is an advantage to retailers with pharmacies and a disadvantage to small retailers.
Cynthia Laubacher, Director of State Government Affairs, and representing *MEDCO* submitted written testimony as Medco is one of the nations' leading mail order pharmacies, serving over 60 million Americans. There is no way they could comply with the provision for their Idaho members who receive their medications through the mail, as there is no interaction with them at the point of purchase. They asked for an amendment to exempt non-resident pharmacies licensed by the State of Idaho from the provision of this bill.

Senator Bunderson wanted an answer to a question he had asked earlier that wasn't covered in testimony as to how many states list pseudoephedrine as a Schedule V. **Representative Ring** answered that 20 states have rules or legislation in force and 11 have bills going through their legislatures at the present time. **Representative Mitchell** told the committee that the following states have put pseudoephedrine on Schedule 5: Arkansas, Illinois, Iowa, Kansas, Minnesota and Missouri.

Pam Eaton summarized by saying that H272 is better than House Bill 1, as it is a huge compromise and came more to the middle, but the sponsors didn't meet with them and retailers want to be partners in this effort.

Representative Rusche said the safety of firemen, police and the savings offsets the inconvenience to the consumer purchasing cold medication.

MOTION: **Senator Davis** made a motion to hold H272 in committee. Second was by **Senator Jorgenson**.

DISCUSSION: **Senator Davis** was concerned about the strong desire of the industry to be a part of the solution. **Senator Sweet** referred to a letter from the Law Enforcement Alliance of America (LEAA) that was asking Congress to get Tough on Meth, not cold Medicine. The LEAA takes issue with provisions of this bill that would place cold medicines on Schedule V. "Criminalizing the purchase of common over-the-counter medicine is an unnecessary and harmful step that is unlikely to affect the folume of methamphetamine on the street. The amount of pseudoephedrine that can be obtained in cold medicine is tiny compared to the volume of meth and meth chemicals pouring in over the border. The DEA estimates that more than 80% or possibly as much as 95% of meth used in the United States is supplied by large scale operations overseen largely by Mexican drug cartels." (See attached letter)

SUBSTITUTE MOTION: **Senator Richardson** made a substitute motion to send H272 to the 14th order for amendment. Second was by **Senator Bunderson**.

DISCUSSION: **Senator Richardson** felt that this issue needs to be addressed and get moving to get what the retailers can work with. **Senator Jorgenson** was opposed to the possibility of 9 grams of medication being a crime. **Senator Burkett** felt this legislation needs to go forward this year and have pseudoephedrine be put behind the pharmacy counter as cigarettes are

now.

COMMITTEE VOTE: **A roll call vote was held. Voting aye were Senators Darrington, Richardson, Bunderson, Burkett and Kelly. Voting nay were Senators Davis, Lodge, Sweet and Jorgenson. H272 will be sent to the 14th order for amendment. Senator Richardson will carry this bill on the Senate floor.**

Senator Denton Darrington
Chairman

Marianne Hansen
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 23, 2005

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Lodge, Sweet, Jorgenson, Burkett, Kelly

MEMBERS ABSENT: Senator Davis

Senator Darrington told the committee that this would be the last meeting that our page, Crista Cardwell would be here. Secretary Marianne Hansen presented her a watch from the committee and a letter of appreciation from all the committee members.

MINUTES: **Senator Sweet** made a motion to accept the minutes of March 21 as written. Second was by **Senator Lodge** and the motion carried by a voice vote.

GUBERNATORIAL APPOINTMENT: Jay Nielsen of Twin Falls spoke to the committee about himself, as he is being appointed to the State Board of Correction. His term commenced March 16, 2005 and will expire January 1, 2007. He has been in the banking business for over 20 years, as President and CEO. He has been a parole commissioner from 1992 to 1998, serving as chairman for one year. He is presently serving on the Snake River Council Boy Scouts of America. He commented that the six years with Pardons and Parole have him a good idea of what is facing the Department of Correction. He told the committee that we need to figure out how to get those who want to be in prison out and a lot of work needs to be done on the drug problem. If meth and alcohol could be done away with, it would clear out the prisons.

Senator Darrington asked him if the Board of Corrections and the Commission of Pardons and Parole are similar. He replied that the Commission is more intense and the Board of Corrections is more policy and administrative. He commented that he was available anytime to go wherever he was needed.

Senator Richardson asked Mr. Nielsen about his role as part of the Board of Corrections. He responded that the wardens are doing a good job and not overfilling the prisons, but it costs $23,000 a year to keep a prisoner and that money would put them through Yale University. The best way to treat them is to dry them out and then have them go through drug rehabilitation and hope it works for them. **Senator Richardson** commented that it used to be "Do the crime, pay the time" but now there are 1100 more prisoners than last year. Mr. Nielsen responded that it goes in cycles, crime will go up and then it

will level off. The average age of an inmate is 32, and if they can get them to age 40, they won't want to come back to prison, but that is different with younger people.

Senator Jorgenson asked what causes the increase in prison population and was told that it is mostly robberies to obtain money for drugs, which account for 50-70% of the cases.

Senator Darrington asked Mr. Nielsen why the Governor appointed him and was told that it was for his business background and his time on the Pardons and Parole Commission.

MOTION: **Senator Richardson** made a motion to send the nomination of Jay Nielsen to the floor for a confirmation by the full Senate.

H301 Patti Tobias presented this bill that would provide a statutory framework for mental health courts, much in the same way that the Idaho Drug Court Act provided such a framework for drug courts when it was adopted in 2001. Mental health courts provide an innovative alternative to incarceration, while providing community protection, through close supervision and monitoring of mentally ill offenders. If the mental health problems of these offenders can be addressed successfully, recidivism will be reduce and other costs to the public will be avoided.

Mental health courts are currently operating in Idaho in the 1st and 7th Judicial Districts . Earlier this session, Judge Brent Moss from Rexburg spoke with the Joint Finance and Appropriations Committee about his experience with the first mental health court and some of its graduates, who had been diagnosed with schizophrenia or bipolar disorders, with severe symptoms and impairments, and often with a long history of substance abuse. He talked about the lives being changed and the cost savings.

As of January 31, defendants are averaging less than a day a month in jail - a reduction of 85% compared to the period prior to entering the mental health court. Defendants are averaging .03 hospital days per month, a reduction of 97% compared to the period prior to entering the mental health court. Judge Mitchell from Coeur d'Alene has also devoted extraordinary time to get a mental health court started there. The judges are willing to continue and expand these "problem solving" court efforts addressing substance abuse and serious mental health problems, often co-occurring disorders, for both adults and juveniles.

This bill would provide that the Supreme Court's Drug Court Coordinating Committee would become the Drug Court and Mental Health Court Coordinating Committee. It would then have the responsibility of providing an implementation plan for mental health courts, as well as guidelines for eligibility, screening, assessment, treatment, case management, supervision and evaluation. District courts in each county would have authority to establish mental health courts in accordance with the standards set by the Committee. There is no right to be admitted to a mental health court, and that a court can be operated in conjunction with a drug court. Further, each person

admitted to mental health court, like those admitted to drug court, would pay a monthly fee of up to $300, unless exempted from such payment for good cause. These fees would be deposited in the county drug court and mental health court fund and would be used to cover expenses incurred in the operation of drug courts and mental health courts. This bill would have no impact on the general fund.

Senator Jorgenson commented that he was aware of the mental health court in Coeur d'Alene and asked if this is a pattern of what exists there. Ms. Tobias told him that was correct, and this bill puts into code a framework to expand in other jurisdictions.

MOTION: **Senator Jorgenson** made a motion to send H301 to the floor with a do pass recommendation. Second was by **Senator Richardson** and the motion carried by a voice vote. **Senator Lodge** will carry this bill on the Senate floor.

H326 Patti Tobias also presented this bill that increases the maximum fine for misdemeanors, where a maximum fine is not otherwise prescribed by statute, from $300 to $1,000. When the Idaho Territory was formed in 1864, the maximum fine for misdemeanors was set at $500 then lowered to $300 in 1887. This is the first increase in that amount, but since that time, various maximum fines have been prescribed for some specific misdemeanors. In some cases, the maximum fine has been set at $300; in others, at $500; and in others, at $1,000.

This bill will allow a greater measure of deterrence by allowing courts, in their discretion, to impose any fine up to the maximum amount. . Considering the cases in which a fine will be imposed that is greater than the previously existing maximum and will exceed that amount by an average of between $200 and $300, and using reasonable estimates for the other variable factors, it would appear that the funds generated will be between approximately $818,000 and $1,222,000.

MOTION: Motion was made by **Senator Lodge** to send H326 to the floor with a do pass recommendation. Second was by **Senator Richardson** and the motion carried by a voice vote. **Senator Jorgenson** will carry this bill on the Senate floor.

H334 Patti Tobias also presented this bill that would expand funding for drug courts and mental health courts. The Drug Court and Family Court Services Fund would become the Drug Court, Mental Health Court and Family Court Services Fund. Moneys 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. These funds would continue to be subject to appropriation by the Legislature. The bill would also provide additional funding for these court services.

For those misdemeanors for which the maximum fine is increased effective July 1, 2005, any fine or forfeiture remitted over and above the maximum fine that could have been imposed prior to July 1, 2005, would be deposited in the Drug Court, Mental Health Court and Family Court Services Fund. The additional revenue deposited in the fund as a result of these provisions, based upon reasonable estimates, will

allow the Supreme Court to expand drug courts and mental health courts by approximately 300 participants. This assumes that the Department of Health and Welfare, through its substance abuse treatment funds and other programs,and the counties can provide the requisite substance abuse and mental health assessment, treatment and supervision costs. The Fund will provide drug testing, court coordination, evaluation and operating costs. Additional revenue will provide substance abuse assessment and treatment, mental health assessment and treatment, and other court services required by statute.

This bill increasing the maximum fines for several misdemeanors are being proposed in separate legislation. If that legislation is enacted, the additional funds generated will depend on several factors that cannot be precisely determined, including conviction rates, the percentage of cases in which the court would impose a fine higher than the previously existing maximum fine, the amount by which such fines would exceed the previously existing maximum fine, and collection rates. Using reasonable estimates for the variable factors, it would appear that the funds generated will be between approximately $818,000 and $1,222,000. Any variance from the estimates factored into this projection could affect the amount actually generated.

Senator Richardson asked how this would affect the General Fund and was told that this bill wouldn't have any effect on the current funding stream, but is challenging to program computers. **Senator Sweet** asked about capping existing districts and was told that it is for this year only but would allow the desecration of the judges to move to the maximum penalty of $1000

MOTION: **Senator Burkett** made a motion to send H334 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a voice vote. **Senator Darrington** will carry this bill on the Senate floor.

H325 Mike Henderson, Legal Counsel for the Idaho Supreme Court presented this bill that incorporates several changes in the Child Protective Act (CPA), Adoption of Children Act and Termination of Parent and Child Relationship Act that 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 CPA 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.

Only peace officers, and not social workers, could remove a child from the home upon a determination of imminent danger. The attorney general, as well as a prosecuting attorney, could file petitions in CPA cases. 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 a CPA petition. Under present law, reasonable efforts to prevent placing a child in foster care are not required where the parent has subjected the child to "aggravated circumstances"; which definition has been amended to bring the Act into compliance with federal regulations.

A new provision has been added requiring a hearing on a permanency plan following a finding of aggravated circumstances. The Department of Health and Welfare would be required to produce a case plan in every case in which the child is determined to be within the jurisdiction of the court, including those cases in which the parent is incarcerated. A provision has been added providing for procedures, including a hearing, where a child who has been placed under protective supervision is removed from the home. The orders in CPA cases that may be appealed are specified. In addition, definitions contained in the different acts are harmonized, including the definition of "legal custody." The grounds for termination of the parent-child relationship have been revised and clarified. Finally, where an adoption arises from a CPA case, or where the court has jurisdiction under the CPA over a child who is the subject of a termination case, the court in the CPA case would have jurisdiction over the adoption or termination case unless the court relinquishes its jurisdiction.

Senator Kelly asked why only peace officers and not social workers could remove children. Mr. Henderson answered that Health and Welfare are not conducting removal and don't wish to be involved. **Senator Sweet** asked about the best interest of the child in these cases. He was told that this is a flexible concept of the court to look at it, and there is no further definition.

Senator Kelly asked who was on the committee that developed these changes. Mr. Henderson said that he could supply a copy of the committee work and the comments of the statute changes. This committee was chaired by Bryan Murray of Pocatello.

MOTION: **Senator Richardson** made a motion to send H325 to the floor with a do pass recommendation. Second was by **Senator Lodge** and the motion carried by a voice vote.

SUBSTITUTE MOTION: **Senator Burkett** made a substitute motion to send H325 to the 14th order for amendment to section 16-1615. This motion died for lack of a second.

COMMITTEE VOTE: Motion to send H325 to the floor with a do pass was carried by a voice vote. **Senator Darrington** will carry this bill on the Senate floor.

ADJOURNMENT: Meeting was adjourned at 3:10 p.m.

Senator Denton Darrington	Marianne Hansen
Chairman	Secretary