

Senate Judiciary & Rules Committee

Minutes
2006



MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 11, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Vice Chairman Richardson was excused.

OTHERS IN ATTENDANCE Rod Leonard, Bob Aldridge, Michael Henderson, Patti Tobias, Megan Rock

CONVENED: **Chairman Darrington** called the meeting to order at 1:31 p.m.

RS 15471 Relating to the Uniform Probate Code; amending Section 15-5-202, Idaho Code.
Michael Henderson explained that this bill would revise provisions applicable to the testamentary appointment of a guardian of a minor.
Senator Davis commented that the wording in this bill was lengthy and difficult to understand as written. He suggested a re-write of this bill to make it more concise.

MOTION: **Senator Davis** made a motion to return RS 15471 to the sponsor. **Senator Burkett** seconded the motion and the motion was carried by a **Voice Vote**.

RS 15472 Relating to the Juvenile Corrections Act; amending Section 20-510, Idaho Code.
Michael Henderson explained that in reviewing this code, the Supreme Court's Juvenile Justice Advisory Team recommended the mandatory "shall" be changed to "may," allowing the courts to make a preliminary inquiry only in those cases where it would be helpful.

MOTION: **Senator Davis** made a motion to send RS 15472 to print. **Senator Jorgenson** seconded the motion and the motion was carried by a **Voice Vote**.

RS 15473 Relating to courts; repealing Section 1-1612, Idaho Code.

Michael Henderson explained that this section needed to be repealed and not require persons to appear at appointed places.

MOTION: **Senator Davis** made a motion to send RS 15473 to print. **Senator Jorgenson** seconded the motion and the motion was carried by a **Voice Vote**.

RS 15475 Relating to the State Board of Correction; amending Section 20-227, Idaho Code.

Michael Henderson explained that this would extend the powers of parole and probation officers to persons under the supervision of mental health courts.

MOTION: **Senator Lodge** made a motion to send RS 15475 to print. **Senator Sweet** seconded the motion and the motion was carried by a **Voice Vote**.

ADJOURNMENT There being no further business, the meeting was adjourned at 2:00 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 13, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Vice Chairman Richardson

CONVENED: The meeting convened at 1:30 p.m.

OTHERS IN ATTENDANCE See attached sign in sheet.

CONVENED: **Chairman Darrington** called the meeting to order at 1:31 p.m.

RS 15325C1 Relating to the Uniform Environmental Covenants Act, amending Title 55, Idaho Code.

Dale Higer, Attorney with Idaho Uniform Law Commission, explained that by adding a new chapter 30, Title 55, Idaho Code, there would be clear rules for a perpetual real estate interest to regulate the use of brownfields when real estate is transferred from one owner to another.

MOTION: **Senator Davis** made a motion to send RS 15325C1 to print. **Senator Kelly** seconded the motion and the motion was carried by a **Voice Vote**.

RS 15326 Relating to the Uniform Limited Partnership Act.

Dale Higer explained that this bill would provide a more flexible and stable basis for organization of limited partnerships and business ventures. He also stated that 94% of the State Bar supports this bill.

MOTION: **Senator Davis** made a motion to send RS 15326 to print. **Senator Lodge** seconded the motion and the motion was carried by a **Voice Vote**.

RS 15575 A Joint Memorial to Congress in support of **Judge N. Randy Smith** to serve on the Ninth Circuit U.S. Court of Appeals.

Senator Bart Davis introduced Judge Randy Smith, and mentioned many

of his attributes, one being a graduate of BYU, and that he was greatly respected by the Bar throughout the state, regardless of political affiliation. He noted particularly that Judge Smith had received from the Courts the George C. Granta, Jr. Award for Professionalism in 2004. Idaho State University also honored him as Statesman of the Year last year. Senator Davis further expressed that Judge Smith was an exceptional judge and a credit to his field. He urged the Committee to ask Congress to support his nomination to the Ninth Circuit.

Senators Lodge and Burkett also commented that Judge Smith was a very positive person and would be a great addition to the Appellate Court.

MOTION:

Senator Davis made a motion to send RS 15575 to print. **Senator Lodge** seconded the motion and the motion was carried by a **unanimous Voice Vote**.

REPORT

Commissions on Pardons and Paroles

Olivia Craven, of the Parole Commission, introduced the members of the Commission, **Bud Brinegar**, **Mike Matthews**, **Janie Dressen**, and **Robin Sandy**.

Commissioner Mike Matthews gave the following report.

- 1. Mental Cases** - There is limited or no treatment for these cases. Medication may be helpful, but sometimes offenders will get out and may stop taking the medications especially if they have no support.
- 2. Harepsycopathy Test** - This test determines if the inmate is a sociopath or psychopath and cannot benefit from treatment. No inmate with a Level of Service Inventory Revised (LSIR) over 38 can be put in a Therapeutic Community (TC) or any other programs. However, no one is trained to give this test.
- 3. Supervision Concerns** - While the Commission sets the conditions of parole, they have no authority over parole. The Commission gives special conditions to each parolee at a hearing, but the system fails by lumping everyone the same. The system as it exists is troublesome and bureaucratic.
- 4. Driving Under the Influence (DUI's)** - It has been suggested that a statute be developed to make any DUI received after adjudication and/or prison term for an AGGRAVATING CIRCUMSTANCES DUI, ACCIDENT DUI, or VEHICULAR MANSLAUGHTER or HOMICIDE be an automatic FELONY with a new prison sentence. This is seen often on revocations and frequently the DUI is a misdemeanor or even dismissed.
- 5. Sex Offenders** - Sex offenders are not released without appropriate programming and current psychological evaluation. The two sex offender programs within the institutions are MEN'S GROUP and SANE SOLUTIONS. Only SANE SOLUTIONS does a polygraph as part of their treatment. Many of the statutory rape offenders may have a drug or alcohol problem and because of the crime get limited or no treatment.

There is only one TC that will take sex offenders and only one Cognitive Self Change Program (CSC) that will allow sex offenders into their program. Yet a Psychological Evaluation may say "any and all cognitive programming available with the institution and prior to release should be completed."

6. Treatment - More treatment programs are needed. Many are unable to program because they can't read at a 6th grade level. There are only four TC's in the state. There was a program called METH MATRIX that seemed to be working; however, we were told recently by counselors that it was being "phased out." Sometimes an offender may be 450th on the list for a TC. Many inmates in county jails are getting very little, if any, treatment and are only being ware-housed. Some possible solutions would be:

- Low custody inmates with long sentences and/or topped inmates could be housed at jails or out of state with no programs.
- Appropriate and timely programming would be more valuable to the state and public than building more prisons.
- Appropriate and timely programming would be more valuable to keeping recidivism lower than longer incarceration because of the inability to get into these programs.
- Appropriate and timely programs would get more inmates out on time with treatment and negate the need to send prisoners out of state at increased costs.

Senator Darrington began the questioning by asking Commissioner Matthews (a) what kind of job the private-operated prison, Idaho Correctional Center (ICC) was doing in their estimation as parole commissioners, and (b) what kind of staff support did they have at their hearings. **Commissioner Matthews** replied that there were always 7 - 10 counselors available in the audience and any question that a commissioner had relative to the programming of an individual was addressed immediately and in a professional manner. **Commissioner Sandy** was recognized by the Chair and reported that she liked the fact that ICC was more people-oriented, not computer-based. They always knew where the inmate was and when he could be scheduled. Other institutions are not as organized and it is difficult to get inmates out in a timely manner.

Senator Darrington asked if there was a difference in management and support in the various institutions?

Commissioner Matthews said they were not the same. Some institutions were very supportive and available and at other institutions, the Commissioners didn't even know the warden. "Often we are caught in the bureaucracy of the institution and our time is not well spent."

Senator Bunderson asked if there was a difference between private and state institutions relative to preparing an inmate for parole.

Commissioner Matthews stated that while all the institutions have programs, there are better results from private institutions because the inmates are able to talk to the counselor.

Senator Bunderson continued by asking why that was; was it funding or

lack of interest? **Commissioner Matthews** said that he was not privy to how the Department of Corrections handled their caseworkers. He only knew how they were received at the institutions.

Senator Bunderson stated that there seemed to be too many misdemeanors regarding DUI's. Perhaps the law should be extended past five years. There is currently a task force of legislators and law enforcement officers that are considering this and other issues.

Commissioner Matthews responded that the biggest problem was relative to revocations. DUI's are especially troubling if the original crime they were in for was a DUI but they are paroled for another crime, i.e., burglary. If they get another DUI, but it's not within the five years, it may be dismissed. "We are not in a position to make the decision."

Senator Bunderson asked that Olivia Craven supply him with some of that information to take to the committee.

Senator Jorgenson asked if the private institution was more efficient than the state institution. **Commissioner Matthews** could only answer from the standpoint of the response they have when they get to that hearing room. **Senator Jorgenson** asked further if, from personal knowledge, private institutions are more efficient, better staffed, more accountable, more accommodating, and more successful in rehabilitation.

Commissioner Matthews replied that they are better staffed because they see them, and more accommodating because they are there. "Regarding rehabilitation, I only know what they tell us. They are helpful, prepared and fully staffed." **Senator Jorgenson** then asked about the costs in private vs. state institutions. The Commissioners could not answer this.

Senator Kelly asked about the proposals being discussed about a new 400-bed facility to transition inmates from prison into the community.

Commissioner Matthews thinks there is a real need for some avenue to divert some inmates as early as possible. It will take a period of time and some will respond better than others.

Senator Davis asked if there is a problem of overcrowding.

Commissioner Matthews said yes. **Senator Davis** continued by citing Idaho's physical facts from a publication put out by Legislative Services, of how Idaho compares in the nation and the Northwest. In a ranking of state prisoner incarceration rate, Idaho ranks 19th in the nation and 2nd in the Northwest. **Commissioner Dressen** spoke up to say that Idaho has a reputation for being tough on crime. **Senator Davis** suggested that we may be asked to build facilities that are unnecessary, but that has yet to be determined. Maybe during tough economic times, money was taken from programs that caused a higher incarceration rate. The incarceration rate may be growing faster than the population rate. He mentioned that this year there will be a vote on the floor of the Idaho State Senate to vote for another prison and he doesn't want to vote for it. He would like his opinion. **Commissioner Matthews** said he tended to agreed with him.

Senator Lodge asked if an expansion of the Board would be helpful and the Commissioner responded that the Director could use help. Senator Lodge said she would like to see any new prison include or be a

Rehabilitation Facility. She asked how many people that have gone through TC have come back? **Commissioner Craven** said she did not have the numbers, but the percentage was smaller if they had gone through TC. **Senator Lodge** thought it was inexcusable that there were inmates not ready to be heard and that issue needs to be addressed. She asked how many were eligible for programs that had not received them. **Senator Darrington** said that Tom Beauclair gave those numbers to the Governor's Criminal Justice Commission and Director Brent Reinke will be here on Wednesday and he can bring those.

Senator Sweet asked Commissioner Matthews to expand on previous comments that mental inmates were leaving in worse condition than when they came in. What would he recommend relative to the mentioned medication and criminal element? **Commissioner Matthews** said that mental inmates that have no family support or supervision may not continue their medication and/or end up in a criminal environment.

Senator Sweet asked what could be done to keep the worst sex offenders from getting out. **Commissioner Matthews** said that was their responsibility to recognize the worst and to keep them there.

Commissioner Craven said she felt strongly that when a sex offender goes to Court, they should have a psycho-sexual evaluation so they know what kind of sex offender they have and whether they are going on probation or into the prison system. They must have polygraphs and all of this costs money.

Senator Burkett asked how they currently, without the analysis that Commissioner Craven just spoke of, classify the sex offender.

Commissioner Matthews said that they look at the crime, look at the background information from the hearing officer, listen to victims, listen to relatives, read the psychological report and then discuss it.

Commissioner Craven said that treatment does work with most sex offenders.

Chairman Darrington asked a question that had been handed him by another member. Shouldn't the LSIR evaluation identify the major problem inmates and does it work? **Commissioner Matthews** replied that it did if it was given appropriately.

Chairman Darrington told Commissioner Craven that it was recognized that the Parole Commission was one of the best tools in the state in dealing with prison population and offenders. He said he was very aware of how much work was being done by her personally and members of her staff. His question was if she has adequate support staff, adequate hearing officers, and was the budget adequate for the Commission to do the work? **Commissioner Craven** responded that she did not have adequate staff and really needed more support. **Senator Darrington** said that since they were granting 60-62% paroles, one of the highest in the United States and had only 36-38% recidivism, which is one of the lowest in the United States, was there any alarm? **Commissioner Craven** replied that she did not believe there was. That recidivism rate remains about the same and is lower than any other state in the country. The more information the Commission has, the more paroles that are granted; but, some services must be cut drastically this next year if we don't get

some help.

Adjournment

There being no further business, the meeting was adjourned at 3:00 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 16, 2006
TIME: 1:30 p.m.
PLACE: Room 437
MEMBERS PRESENT: Chairman Darrington, Senators Bunderson, Davis, Lodge, Jorgenson, Burkett, Kelly
MEMBERS ABSENT/ EXCUSED: Vice Chairman Richardson and Senator Sweet
MINUTES: **Senator Lodge** made a motion to approve the minutes of Wednesday, January 13 as written. **Senator Bunderson** seconded the motion and the motion carried by a **voice vote**.

RULES REVIEW - Sexual Offender Classification Board

**Docket
57-0101-0501**

Rules of the Sexual Offender Classification Board

Kathy Baird, Executive Director, Sexual Offender Classification Board (SOCB) explained that the changes for these rules were mostly housekeeping changes. They have been published and have received no comments. **Ms. Baird** explained the following changes:

Section 004. The Association for the Treatment of Sexual Abusers revised and re-titled their standards and practice guidelines for members.

Section 041 is a new section especially for training requirements for psychosexual evaluator certification. The amount of training hours for initial certification was increased from 40 to 200 hours with 2000 hours of specialized experience, regarding evaluating and treating sex offenders. Originally the initial training requirement was the same as that for annual re-certification and this did not make sense. This change is to rectify that error.

Section 060. Certified Evaluator application is modified to reflect that application fees are non-refundable, which is consistent with statutory language.

Section 150. Evaluation for violent sexual predator designation reflects that if the board requests an offender being reviewed to participate in a polygraph examination, and the offender is not willing to do so, it wouldn't be considered as refusing to cooperate with the evaluation.

Senator Burkett suggested that the committee hold the rule for a day. It will be put at the top of the Agenda for Wednesday.

Ms Baird gave a brief update of the Sexual Offender Classification Board. She shared with the Committee a chart of Violent Sexual Predators (VSP) population which is attached as an Addendum to these minutes. The chart shows that there are 32 sexual predators in Idaho communities, including 12 from other states and 2 unaccounted for. They are all considered to be a Level 3, which is higher risk.

Senator Bunderson asked if we were compensated from state, federal, etc. when an offender relocates here. **Ms. Baird** was not aware of any agreements.

There was more discussion from the Committee members of how to handle sex offenders that come from other states. **Ms. Baird** says that the Federal Congress Proposal calls for more and better communication between states. **Senator Darrington** mentioned that if the Federal statutes become effective, we would probably require some amendments to our Sexual Offenders Classification Act.

Senator Darrington opened the discussion of the referral system—what is the process, does everyone that the Board access have a psychosexual evaluation? **Senator Lodge** raised the question of cost and how long it takes to do the evaluation. **Ms. Baird** explained that the cost is approximately \$1000 and it takes four to six months, or more. Sex offenders are identified by an actuarial risk assessment about six months prior to release. Identified high risk offenders are referred to the board as well as other referrals from clinicians, probation officers, and the courts. Everyone that accesses the Board has a psychosexual evaluation. Assessments can be done by prison clinicians prior to release or a contracted evaluator for those outside the prison system such as probationers or parolees. **Senator Jorgenson** asked if they are required to continue to register? **Ms. Baird** said yes. Sex offenders have to register and are supervised until their sentences are discharged and then they must continue to register. VSP addresses are confirmed every 90 days. A VSP can never be removed from the registry. A non VSP can petition a Judge to be removed after ten years. **Senator Darrington** asked that the Idaho VSP Population Chart be added as an addendum to the minutes.

Senator Darrington asked that Ms. Baird comment on recidivism. **Ms. Baird** responded by saying that the recidivism study was done by the Center for Sex Offender Management, a federal agency. Target recidivism of five, ten, fifteen, and twenty years is long term and about 33% of all sex offenders will re-offend. Recidivism in Idaho for offenders in the system is much lower. **Senator Darrington** mentioned that it was critical to sort out those who are pedophilic. **Senator Burkett** asked if the broad range of statistics for recidivism, 7-35%, indicated that statistics are not good? **Ms. Baird** answered that the variance had a lot to do with the length of time to review – five to twenty years.

Senator Darrington asked for further questions. There being none, the

meeting was adjourned at 2:25 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 18, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None

GUESTS: See attached sign in sheet.

CONVENE: **Chairman Darrington** called the meeting to order at 1:36 p.m.

APPROVAL OF MINUTES: **Senator Jorgenson** made a motion to approve the minutes of Friday, January 13, 2006. **Senator Burkett** seconded the motion. The motion passed by voice vote.

DOCKET APPROVAL: **Senator Kelly** made a motion to adopt Docket 57-0101-0501. **Senator Lodge** seconded the motion. The motion passed by voice vote and was adopted.

RS15351 Relating to the Peace Officers Standards and Training Council.

Chairman Darrington introduced **Brent Reinke** Department of Corrections. Director Reinke stated it pertains to the trade standards and certification of juvenile detention officers. There are twelve detention centers across the state. Thirteen academies have been conducted with approximately 325 graduates. In conjunction with the graduates, there have been 30 state employees. This legislation would assist them with certification. Currently only county detention officers can be certified. There would be no fiscal impact.

Chairman Darrington asked if there were any questions. **Senator Bunderson** stated that in regards to fiscal impact he wasn't sure if we meet the rule if we say there will not be any fiscal impact this year. Some projection is needed for the future. He asked **Director Reinke** if he could provide a dollar amount that the committee could relate to based on today i.e. number of people etc. who would receive that type of training?

Director Reinke stated the department knows exactly what the expenses are for each academy and it would not be that difficult to estimate. Senator Bunderson stated he didn't know if an accurate number would be useful, but the number of people affected and the estimated cost for each program would be in present dollars. Director Reinke responded that it would take several years to cycle staff through, but he would be happy to supply this information to him. **Chairman Darrington** asked if this RS

should go to print, could he supply the correct SOP? **Director Reinke** responded yes.

Senator Bunderson moved to print with a provision that the fiscal note would supply additional information as to what the projected fiscal impact would be when this commences. **Senator Lodge** seconded the motion. The motion was carried by voice vote.

Chairman Darrington turned the meeting over to **Vice Chairman Richardson**.

**PENDING
RULES:**

Vice Chairman Richardson conducted the meeting regarding the rules.

**DOCKET NO.
21-0101-0501**

Vice Chairman Richardson introduced **Joe Bleymaier**, Administrator of Veterans Services for the State of Idaho. Mr. Bleymaier stated this rule implements changes to rules governing admission, residency, and maintenance charges in Idaho State Veteran's Homes. This rule pertains to the possession of certain types of knives. The change will allow and assist the Veteran's Homes to create a safer environment for visitors and residents alike.

Vice Chairman Richardson stated that he always carries a Swiss Army knife and asked if this rule would include a Swiss Army knife?

Mr. Bleymaier responded yes it would. Residents cannot keep knives in the home no matter what size or type.

**DOCKET NO.
21-0102-0501**

Mr. Bleymaier stated this rule implements changes to rules governing emergency relief for veterans. The change updates what "written interpretation" is. The intent of all Idaho Division of Veteran Services (IDVS) rules must be clear and concise and not require any interpretation.

**DOCKET NO.
21-0103-0501**

Mr. Bleymaier stated this rule implements changes to rules governing Medicaid qualified units in Idaho State Veterans Homes. The rule relates to the possible future Medicare certification in addition to the current Medicaid certification of the homes.

Senator Bunderson stated this was an issue when he was on JFAC, and the big debate was saving the state money. If the veterans were eligible for Medicaid, there would be some savings associated with that. The veterans have a choice, but the administration encourages those qualifying for Medicaid to utilize that. He asked do we know how many would qualify? **Mr. Bleymaier** commented that in the three homes in Boise, there was a total of eighteen qualified for Medicaid prior to 2000. Seventeen participate, so we have seen a growing number. Medicaid has been a good thing. The nursing ratio is up per resident which increased the care for residents, and reduced our requirement for general funds by using Federal funds.

Senator Bunderson stated that the benefits are superior under Medicaid and asked if there was only one remaining who is qualified to receive Medicaid but has not elected to do so? **Mr. Bleymaier** responded that out of the veterans who would have been grandfathered in, the total

participation statewide is 63%. Each year since 2001, it has increased.

Senator Bunderson asked for clarification. He asked what if I qualified for Medicaid, would I have to accept Medicaid? **Mr. Bleymaier** said it would be his option to accept or not. It would be, however, to your benefit to accept it; otherwise you would be in a self pay. The majority choose Medicaid over private pay.

**DOCKET NO.
21-0104-0501**

Mr. Bleymaier now discussed the rule governing a pending fee rule for the Idaho State Veterans Cemetery regarding interment, disinterment and reinterment. The rule will reflect an additional charge and was done to recover the cost of placing crypts, which is not a reimbursed fee.

Vice Chairman Richardson asked if there were any questions. There being no questions, he thanked Mr. Bleymaier and advised him the committee would be voting at the next meeting.

REPORT:

Chairman Darrington introduced Brent Reinke, Director of Idaho Department of Juvenile Corrections. **Director Reinke** stated that Senator Darrington had asked an additional question pertaining to the ratio of adult offenders, the numbers of treatment beds available and the recidivism rate of adult sex offenders. Those questions will be answered later in this presentation and when Department of Corrections and Commission on Pardons and Parole address this committee. Director Reinke began his presentation discussing the funding of the agency from the various departments. Membership is comprised of executive, legislative, and judicial association members as well as citizens.

The Governor, in his State of the State said that the Commission had worked tirelessly and he had taken their recommendations to heart.

Director Reinke continued by saying that the areas they had been focusing on, based on direction from the Governor's office, are: sex offenders, methamphetamine, gangs, and prison population growth. He first explained their goals to improve the sex offender situation. They were to:

- Stop returning high-risk offenders to the community without assessment, treatment and supervision
- Maintain an active assessment and treatment program
- Improve public awareness
- Implement cross-state communication and collaboration
- Improve the identification

He said that some of these goals would take 3 to 6 years to carry out. The overall goal regarding methamphetamine is to reduce the use and trafficking in Idaho. The Commission has done a great deal of research in this growing problem. The goal to reduce gang activity in Idaho is by education, awareness, prevention, intervention, suppression and enforcement. The commission's recommendations for the prison population growth is to manage through the "best practices" approach. This is research-based and is similar to what is being done on the juvenile side. The commission plans to demonstrate to the legislators and decision-makers outcomes based on research so they will be more apt to

support the effort. It is important that we provide adequate prison and community corrections capacity for both beds and services. Other goals in this area are to provide research-based treatment, to fund and complete a master facility development/construction plan and to increase integration within the prison correctional system.

Director Reinke stated that the Commission will meet six times in 2006 to continue working on the four core areas discussed today and reviewing other interrelated criminal justice issues. He asked if the Chairman had any comments.

Chairman Darrington said that the Governor had gleaned from the first four meetings of the Criminal Justice Commission legislation that will be introduced in this committee in the next few days. One of the most important things is in Director Reinke's hand-out that relates to Friday's presentation by the Commission of Pardon and Parole. It states the fact that in Corrections there are five people needing treatment for every two beds available. That means we are only treating 40% of those that need it.

Vice Chairman Richardson asked if any decisions were made from the commission about under-the-counter drugs. **Director Reinke** said there was a recommendation to support pseudoephedrine control legislation this coming year. We are not going to figure out what that legislation should be, but we want to say there is a need. I believe the Governor agreed with that in his State of the State address.

Senator Bunderson asked what could be done to correct the 5-2 ratio. **Chairman Darrington** said that one proposal to correct it would be a private treatment prison of around 400 beds. That is one answer. **Director Reinke** said that was one of the recommendations. **Senator Bunderson** asked if this was a strategic plan, with funding requests and attributes of solving the problem. **Director Reinke** said that we do not have a plan. I'm sure the Department of Corrections could answer that quite thoroughly.

Senator Davis asked if there was a shortage of probation and parole officers and were programs discontinued? **Director Reinke** said yes, and that the District Judges were champions for that discussion. Judge Randy Smith was concerned that for the goals identified, they needed an adequate number of probation and parole officers to be added to the recommendations.

Chairman Darrington called on Rod Leonard, Senior Planner of the Department of Corrections to make comments on the issue. **Mr. Leonard** said that our caseload increases by 800 to 1,000 additional probation and parolee offenders per year to our caseload. We are at 11,000 or more now and we continue to try to get additional probation and parole officers. A lot of the specialized caseloads (which have less offenders) have gone away to more generalized caseloads. We ask for additional staff every year. We have offenders who need the program and treatment in Therapeutic Community (TC) for re-entry into the community. In recent cut-backs, we lost 97 staff out of our institution and about half of those

were drug and alcohol counselors and psyche and social counselors. Those have not been replaced.

Senator Bunderson says if you keep a person longer, it will cost more money. If we can provide a program and get them out sooner, it may cost more money to get the program to them, but there is an off-setting cost. What type of analysis do you have to say which is best? **Mr. Leonard** said there had been research. Washington State has done an extensive report on length of sentence, length of stay, treatment, and re-entry. I don't have an answer, but there is research being done. **Senator Bunderson** said we need answers in order to make policy, one way or the other. We need a program that fits the majority and move forward in a more proactive mode. **Mr. Leonard** agreed with him.

Chairman Darrington asked if there were any other questions before Director Reinke had the last word. There were none.

Director Reinke stated that in order to do the right thing in our state for the kids as well as the adults, we must get services out into the community, out where people live.

Adjournment

The meeting was adjourned at 2:25 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 20, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Vice Chairman Richardson

CONVENED: **Chairman Darrington** called the meeting to order at 1:40 p.m.

OTHERS IN ATTENDANCE See attached sign in sheet.

PENDING RULES APPROVAL: **Senator Lodge** made a motion that Docket No. 21-0101-0501 relating to Residency & Maintenance Charges, Docket No. 21-0102-0501 relating to Emergency Relief and Docket No. 21-0103-0501 relating to Medicaid Qualified Units accepted. **Senator Sweet** seconded and the motion was carried by a **Voice Vote**.

FEE RULES APPROVAL: **Senator Davis** made a motion to adopt Docket No. 21-0104-0501 relating to Idaho State Veterans Cemetery. **Senator Jorgenson** seconded and the motion was carried by a **Voice Vote**.

RS 15622 Relating to Scrap Metals Dealers.

Mike Crane, Idaho Sheriff's Association, explained when someone brings scrap metals or pipe to a dealer they are required to leave identification. If law enforcement hears of theft of wire or pipe in the area they can call the scrap dealers and check to see if anyone made a sale with that dealer.

Senator Darrington explained that they would like the sheriff to go to the scrap dealer and go through their pages and see who has been selling what.

MOTION: **Senator Jorgenson** made a motion to send RS 15622 to print. **Senator**

Lodge seconded and the motion was carried by a **Voice Vote**.

RS 15645

Relating to Parole

Olivia Craven, Executive Director, Commission of Pardons and Paroles and her editors have found a misplaced word so at this time the RS will be withdrawn.

RS 15442

Relating to Actions for Forcible Entry and Unlawful Detainer

Senator Davis explained this bill would provide a tenancy at sufferance in Idaho's Unlawful Detainer Act.

MOTION:

Senator Davis made a motion to send RS 15442 to print. **Senator Jorgenson** seconded and the motion was carried by a **Voice Vote**.

RS 15624

Relating to Criminal Judgments

Heather Reilly, Prosecuting Attorney, Ada County Prosecuting Attorneys Office. Ms. Reilly asked that the sentences be deleted, requiring that the prosecuting attorney must provide notice to the accused prior to the preliminary hearing or waive the preliminary hearing. There are two reasons for this, one is that this notice is unique to this extended sentence statutes, and the second is the confusion that can be created.

MOTION:

Senator Davis made a motion to print RS 15624. The motion was seconded by **Senator Kelly** and carried by a **Voice Vote**.

Rules Review - Idaho State Police

DOCKET NO.
11-1003-0501

Rules Governing the Sex Offender Registry

Dawn Peck, Manager, Idaho State Police Bureau of Criminal Identification, explained that these rules delete, update and reflect changes in the registration documents. **Senator Davis** asked Ms. Peck to explain deletions. **Senator Davis** also explained that they will not consider approval until Monday's meeting. **Ms. Peck** explained that the Sex Offender Registry form is a two-page form, including photos and fingerprints. They will have a new data base with mapping capabilities.

Presentation of Judiciary Report on Drug & Mental Health Courts and Other Court Services

Honorable Michael Dennard, Magistrate Judge for the 4th Judicial District Court, Ada County and Statewide Project Director for Court Assistance Office. **Judge Dennard** is very proud of the progress in providing services and information to over 40,000 people last year. He said he is excited with the project of putting all court forms on a central server, which is funded by a grant from Legal Services Corporation. The Court Assistance Program receives a lot of positive feedback from the public.

Honorable Brent Moss, District Judge for the 7th District Court, Madison County and recipient of the Kramer Award for Excellence in Judicial

Administration. **Judge Moss** explained that Mental Health Court began three and a half years ago. They have found that those participating have reduced their jail days by 84% and psychiatric hospital days by 98%. Just last month they have involved National Act of the Mentally Ill (NAMI), they have been a great support from the beginning. Mental illness is a family disease and NAMI teaches families how to cope and deal with the health of their loved ones. However, they still need assistance in sharing information statewide between agencies.

Honorable N. Randy Smith, District Judge for the 6th District Court, Bannock County. **Judge Smith** thanked all the Senators for their very touching remarks and spoke very highly of Judge Dennard and Judge Moss. The drug court program is truly making a difference, and mental health court's capacity has grown considerably. There have been a total of 1,363 offenders that have graduated from drug and mental health courts since 1988.

Senator Darrington said that the greatest accomplishment of the legislature and the judiciary in the last 20 years has been the building of relationships to communicate and work together for the good of the people. **Senator Darrington** has a concern with the amount of extra evening time judges put in mental health and drug courts and the possibility of burn-out. **Judge Dennard** admits they spend a lot of extra time and it is a concern. **Senator Jorgenson** asked if the Judges saw these courts as being a good alternative to traditional corrections, in reducing the number of people who are incarcerated? **Judge Smith** said the numbers speak positively. **Senator Davis** asked if the Judges see the possibility of bringing a mental health board to juvenile justice? **Judge Moss** says it could happen. **Senator Davis** asked, if there is such a successful rate with these courts, why isn't the judiciary interested in giving more District Court Judges? **Judge Smith** said if they had more resources they could do more. **Senator Bunderson** asked if there was a disconnect between the magistrate and legislators? He suggested that he be forthcoming on what the Senate can do to help. **Judge Smith** noted he's appreciative of the Senate's approach. The state needs more treatment because the statistics show those that are given treatment in incarceration are less apt to recidivate. **Senator Bunderson** said it seems to him we need a vision or strategic plan. **Senator Sweet** asked what factors contributed to the success. **Judge Moss** responded that the weekly accountability to the court with the wrap around treatment, support and teaching from mental health professionals are factors contributing to this success. **Senator Lodge** wanted to thank the judges and mental health professionals for their difficulties and sacrifices to be able to serve the citizens of Idaho. She also asked if there was any way to have a cost per person for these treatments? **Patti Tobias**, Administrative Director of the Courts, replied to the question and said that all of those costs were available and she would get them to the board. **Senator Lodge** would like to compare these figures with the \$53/per person in jail. She would also like information on expanding the retirement system to keep it safe. **Ms. Tobias** said she would prepare that information for another meeting. **Senator Burkett** asked if there was any way to get to family members

that might need help. **Judge Dennard** spoke of an alternative to domestic violence court, having a family based court system that collected all the significant players of a person's family. **Judge Smith** said he believes these courts are really the way to go. We need to reward those people that are working so hard. **Senator Darrington** talked about a video he saw today at Juvenile Corrections Board Meeting about a medical doctor whose brother (a meth addict) blew his brains out. This action puts it in terms, which his family needs to see. He can't begin to speak to the effectiveness of this video.

Adjournment There being no further business, the meeting was adjourned at 3:02 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 23, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

MINUTES: **Senator Jorgenson** made a motion to accept the minutes of January 16 and January 18 as written. Second was by **Senator Lodge** and the motion carried by a **voice vote**.

PENDING RULE APPROVAL: **Senator Kelly** made a motion to adopt Docket No. 11-1003-0501 relating to the Sex Offender Registry. Second was by **Senator Lodge** and the motion was carried by a **voice vote**.

RS 15687 Relating to Sex Offenders
Kathy Baird from the Sex Offender Board explained that this bill expands the list of crimes for which an offender may be reviewed for violent sexual predator designation.

MOTION: **Senator Richardson** made a motion to send RS 15687 to print. Second was by **Senator Lodge** and the motion was carried by a **voice vote**.

RS 15528 Relating to mandatory minimum sentencing of recidivist sexual offenders.
William A. von Tagen, Deputy Attorney General, explained that this amendment would provide for mandatory minimum sentences for recidivist sexual offenders. It only applies to sexual offenders who are on the registry because they committed a prior sexual offense.

MOTION: **Senator Sweet** made a motion to send RS 15528 to print. Second was by **Senator Richardson** and the motion was carried by a **voice vote**.

RS 15530 Relating to death sentences - Capital Punishment Judicial Review
Mr. von Tagen explained that this legislation amends the conditions under which a report is to be prepared by a trial judge. Since judges no longer make the determination of whether the death penalty is appropriate, the required report is no longer necessary.

MOTION: **Senator Lodge** made a motion to send RS 15530 to print. Second was by **Senator Jorgenson** and the motion was carried by a **voice vote**.

RS 15613 Relating to misuse of public funds
Mr. von Tagen explained that these amendments are designed to clarify that misuse of public agency financial transaction cards for personal use

falls within the prohibitions of the statute.

- MOTION:** **Senator Lodge** made a motion to send RS 15613 to print. Second was by **Senator Kelly** and the motion carried by a **voice vote**.
- RS 15656** Relating to criminal procedure
Mr. von Tagen explained that the purpose of this amendment is to update the act that presently only prohibits judicial dismissal or reduction of the conviction to a misdemeanor for sexual offenders convicted of sexual abuse, sexual exploitation, and lewd conduct of a child under the age of sixteen years. This amendment would except all offenses requiring sexual offender registration and would assist law enforcement in the protection of children and other potential victims.
- MOTION:** **Senator Davis** made a motion to send RS 15656 to print. Second was by **Senator Richardson** and the motion carried by a **voice vote**.
- S 1250** Juvenile corrections, court inquiry
Michael Henderson, legal counsel for the Idaho Supreme Courts, explained that this bill was to provide that courts may make preliminary inquiries to determine whether the interests of the public or of the juvenile require further action.
- MOTION:** **Senator Sweet** made a motion to send S1250 to the floor with a **do pass** recommendation. Second was made by **Senator Lodge** and the motion carried by a **voice vote**. Senator Lodge will sponsor the bill on the Senate floor.
- S 1251** Court/person appear appointed
Michael Henderson explained that this bill would repeal an obsolete statute.
- MOTION:** **Senator Jorgenson** made a motion to send S1251 to the floor with a **do pass** recommendation. Second was made by **Senator Kelly** and the motion carried by a **voice vote**. Senator Jorgenson will sponsor the bill on the Senate floor.
- S1252** Correction Board, mental health courts
Michael Henderson explained that this bill would extend the arrest powers of parole and probation officers to persons under the supervision of mental health courts.
- MOTION:** **Senator Davis** made a motion to send S 1252 to the floor with a **do pass** recommendation. Second was made by **Senator Lodge** and the motion carried by a **voice vote**. Senator Sweet will sponsor the bill on the Senate floor.
- REPORT:** William von Tagen introduced **Dr. Bob Marsh, Ph.D**, Research Analyst, who presented the committee with a Child Sex Abuse Offender Report. Dr. Marsh and his associate, **Dr. Steven Patrick, Ph.D.**, Coordinator of Data Analysis, have been working on this report for fourteen years. This report "The Prosecution of Child Sexual Abuse" was given to each committee member. **Dr. Marsh** stated that child sex offense is dramatically different than what the sensational cases report in the newspapers. There were 422 cases reported this year and of those, 251

were adult cases, an increase of four. There were 163 juvenile cases reported in 2005 which is an increase of 47. There is no indication why there was an increase. He referred to a chart that shows cases from 1996 to 2005 and noted that the juvenile cases were as low as 76 and as high as 167. Victim gender is predominantly female for both adult and juvenile perpetrators. He gave the following statistics:

- 54% of the victims of adult offenders were between 12 and 15 years old
- 27% of the victims of adult offenders were 11 years old or younger
- 76% of victims of juvenile sex offenders were under 11 years of age
- 52% of the adult abusers were acquaintances of their victims
- Less than 1.23% of the adult abusers were strangers

Senator Burkett asked why there were some unknowns, i.e., 28% of relationship to victims, noted in the report. He wondered why we knew less about the relationship to the victims than some of the other criteria.

Dr. Marsh said that up until 5 years ago, they had access to pre-sentence investigation granted by the Supreme Court. That statute has been re-interpreted to preclude access and the “unknown” is a result of that change. The pre-sentence investigation tends to have the best information in each case file.

Senator Bunderson asked if these were charges, prosecutions or allegations? **Dr. Marsh** said it took about 2 years to go through the courts and most plead guilty.

Dr. Marsh continued by directing the committee members to another chart that he thought was important. This chart gives the total average rate in Idaho: 3.14 cases reported for every 10,000 population. He believes that if they had access to the pre-sentence investigation, they would be able to give more complete information. Also, he is producing a recidivism study along with Dr. Patrick and they are looking at 600 child sex offenses that have been prosecuted in the state since 1991.

Senator Darrington asked if there was a trend toward younger victims.

Dr. Marsh said there was. **Senator Darrington** said the trend would indicate that those caught up in the crime were more pedophilic than those who have older victims. **Dr. Marsh** said that it also indicates people who need treatment intervention.

Senator Davis said that it appeared that the older the offender is, the younger the victim is. **Dr. Marsh** agreed with the observation. **Senator Davis** asked why Dr. Marsh could no longer receive the pre-sentence investigation (PSI). **Dr. Marsh** said it was due to court rule.

Senator Sweet asked if legislators could help them get the information that is needed to improve this report. **Senator Darrington** commented that committee could discuss that with Patti Tobias and Michael Henderson. There has been some discussion in the past that legislators should be careful of getting into separation of power issues between court rules and legislative actions.

Patti Tobias, Administrative Director of Courts, commented that it was not necessarily a separation of power issue. She said they had gone to extraordinary lengths to provide access to all the records that the researchers need. They have offered a number of alternatives and if there is continued frustration, the next step would be to discuss this with them. **Senator Darrington** suggested that he and Patti, along with Bill von Tagen and Bob Marsh, pursue this issue.

The meeting was adjourned at 2:37 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 25, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None

CONVENED: The Judiciary and Rules Committee meeting was called to order at 1:30 p.m., January 25, 2006 by Chairman Darrington.

GUESTS: See attached list.

MINUTES: **Senator Jorgenson** moved that the January 20 and January 23 minutes be approved as written. **Senator Sweet** seconded the motion. The motion was carried by **voice vote**.

RS 15760 Relates to Crimes and Punishments with emphasis on sex offenders. **Megan Ronk**, Policy Advisor on the Governor's Criminal Commission, was introduced to the Committee. The issue of sex offenders is of primary concern to the Criminal Commission. The Commission focused on how the state registers, tracks and monitors sex offenders. They examined current practices and looked at models from other states to develop recommendations for the Governor. The Commission determined that the current system is not broken, but that there are some areas that need to be adjusted so that Idaho communities can be safe.

Legislation was developed using a three-pronged approach to address the sex offender issues:

- 1) Sex Offender Registration: Currently sex offenders have ten days to register once they leave prison, move to a different county or to another state. Proposal is that sex offenders register within two days of a change of address.
- 2) Violent Sexual Predators (VSP): Currently VSP's have to register once a year with a local sheriff within the county in which they live. The proposal is to increase that registration requirement to four times a year.
- 3) Address verification: The Commission thinks it is very important to have good address verification processes in place. For VSP's, residence will be verified on a monthly basis and a local sheriff will make a home visit

every six months. For all other sex offenders on the registry, addresses would be verified by a non-forwardable card three times a year.

These enhancements to the registration and address verifications will provide a better system for tracking sex offenders.

This legislation will increase the penalty for failure to register as a sex offender from a maximum of five years to a maximum of ten years and will increase the maximum penalties for several other crimes that require registration as a sex offender.

RS15760 has been reviewed by the Criminal Justice Commission, the membership of the Associations for the Prosecutors, the Chiefs of Police, the Sheriffs and the District Judges. Comments from these entities have been incorporated into the final draft.

MOTION: **Senator Lodge** made a motion to send RS 15760 be print. Second was by **Senator Jorgenson**. The motion was carried by a **voice vote**.

RS 15764 Relating to the Idaho Criminal Gang Enforcement Act. **Megan Ronk** presented this legislation which will add a new Chapter 85 Title 18 Idaho Code, providing definitions that will be useful to Idaho law enforcement agencies. It extends sentences for gang members who commit certain crimes, criminalizes recruitment of gang members, and makes it a felony for knowingly supplying firearms to a known gang member.

Senator Davis asked to have the structure of the bill explained as it relates to the reference of 18-8502. **David Hensley**, Governor's Criminal Commission, responded to this question by stating that the pattern of criminal gang activity applies to any crime within that section. Judges will now have the ability to extend the sentence based on the conviction of an underlying offense. **Senator Davis** does not question the content, only the wording of the bill. **Mr. Hensley** explained that the object of this reference was that if there was a convicted offense under the gang activity section, the extended sentence would be tied to both sections.

Senator Burkett asked where the "patterns of criminal gangs" appears in the statute. Also, how would one be identified as a gang member, who are the other members? **Mr. Hensley** directed attention to the extended sentences section of the legislation. He said that the makeup of the gang's membership must show that it is an association for criminal purposes.

Senator Richardson asked **Ms. Ronk**, is this the initial legislation we have on gang activity in the state of Idaho? **Ms. Ronk** responded that this is the first legislation addressing gang activity--there is no other way to address this problem.

MOTION: **Senator Richardson** made a motion to send RS 15764 to print. **Senator Lodge** seconded the motion. **Senator Davis** commented that he thought the language should be "cleaned up" but he would not stand in the way of

the motion. The motion was carried by a **voice vote**.

RS 15689

Relating to Written Agreements. **Jane Wittmeyer**, Vice President for Idaho Affairs, Intermountain Forest Association, presented this legislation and explained that RS 15689 deals with boundary by agreement or boundary by acquiescence. This issue deals with forest land sales and will provide rules for the judges in settling boundary disputes. It also adds a rule into Section 9 of Idaho Code which fixes the value between joining parcels of property. This means that there would have to be a written document brought to bear on making the decision of who owns that property.

MOTION:

Senator Jorgenson made a motion to send RS 15689 to print. **Senator Sweet** seconded the motion. **Senator Davis** commented that this is a major shift in the public policy of the state of Idaho. This says that people who reached oral agreements 50 years ago, can no longer have those agreements enforced under this proposal. For instance, if, ten years ago, neighbors agreed where a fence would go and one of them died or moved away, that agreement would no longer be enforceable. However, **Senator Davis** will allow the issue to come forward. The motion was carried by a **voice vote**.

RS 15696

Relating to Limitations of Actions to Recover Real Property. This legislation, presented by **Ms. Wittmeyer**, deals directly with adverse possession of land. The amendment is to extend the time period from five to twenty years to adversely possess land.

MOTION:

Senator Jorgenson made a motion to send RS 15696 to print. **Senator Kelly** seconded the motion. **Senator Davis** stated that he was looking forward to further discussion based on remarks on previous RS. The motion was carried by **voice vote**.

Senator Darrington turned the meeting over to **Senator Richardson** to cover Rules Review.

Senator Richardson introduced **Mike Becar**, Executive Director of Peace Officers Standards and Training.

**Docket No.
11-1101-0501**

Mr. Becar said this rule will take out language that contradicts the 5-year rule. It also changes Level One core curriculum minimum training hours from 160 to 233. There is added language regarding exceptions on advanced certification that are case specific. There will be certification and new canine rules to address training. There are also some administrative rule changes/additions updating the vocational law enforcement program certification which addresses the process.

Senator Davis asked about the fiscal impact. **Mr. Becar** explained that reserve training does not come out of the budget. Reserve officers are volunteers of the agencies and the agencies conduct their own training for

the reserves and they just have to follow this as a minimum.

DOCKET No.
11-1102-0501

Mr. Becar stated that this involves a set of rules specifically for part time juvenile detention officers. Part time detention officers are not addressed under the current rules.

DOCKET No.
11-1104-0501

Mr. Becar said this is a new rule for the certification and training of adult correction officers.

These rules will be taken into consideration and will be voted on Friday, January 27, 2006.

Senator Darrington introduced **Molly Huskey**, Attorney, State Appellate Public Defender's Office (SAPDO). **Ms. Huskey** provided a description and history of the office and explained the use of the Capital Defense Fund emphasizing that this fund relieved some of the cost burden from the counties. All counties are now part of this program. SAPDO handles capital cases throughout the state.

The obligation of SAPDO is to give the best possible representation for the best price and to substantiate the idea that the system is fair.

One of the 2006 goals of SAPDO is to conduct an audit. There will be a team that will make site visits and that team will determine how SAPDO is spending its money, and the practices that it engages in when distributing cases, and, bringing and presenting those cases for argument. The audit is not just about how SAPDO spends money and meets national standards but also about the quality of work being performed and can it be made better.

Senator Richardson raised two questions: 1) If the Federal Government mandates a certain part of the defense, does it pay part of the cost, and 2) What kind of success rate has SAPDO had? **Ms. Huskey** responded that there are no Federal funds for these cases since the mandate is that states cover indigent defenses. The success rate has been 100%.

Senator Sweet asked about the case load. SAPDO handled six capital cases and anticipated getting four more. There also were non-capital direct appeal cases.

Senator Kelly brought up the question of people who went to prison and were later found innocent, **Ms. Huskey** could not really answer that question.

Senator Darrington introduced **Dale Higer**, Chairman of the Idaho uniform Law Commission.

S 1255

Relating to the Uniform Environmental Covenants Act. **Mr. Higer** explained that this bill deals with the cleanup of brownfields in the state

and regulates the use of brownfields when real estate is transferred from one party to the next. The environmental covenant stays with the land.

Senator Richardson asked if land was designated as a brownfield, could it be cleaned up and come back as usable land. **Mr. Higer** responded that some lands restored to a certain point could be used for some uses but not others based on the level of contamination. **Senator Sweet** asked if this would make it more difficult to bring land back to commercial use? Mr. Higer responded that it would be easier because these rules would facilitate the repair of the land. **Senator Bunderson** asked if liquid thrown on the ground from a meth house causing contamination would qualify under these rules. That question could not be answered. **Senator Kelly** stated that there is a meth clean-up rule coming up soon and that the environmental covenant is a separate real estate mechanism not related to the meth lab cleanup.

MOTION:

Senator Davis made a motion to send S 1255 out with a do pass recommendation. The motion was seconded by **Senator Kelly**. The motion was carried by **voice vote**. Senator Davis and Senator Kelly will sponsor the bill on the Senate Floor.

S 1256

Relating to the Uniform Limited Partnership Act. **Mr. Higer** explained that this legislation will provide a flexible basis for limited partnerships and will stimulate new limited partnership business ventures by recognizing modern day uses including the use of limited partnerships for estate planning purposes.

MOTION:

Senator Davis made a motion to send S 1256 out with a do pass recommendation. **Senator Richardson** seconded the motion. The motion was carried by **voice vote**. Senator Davis will sponsor the bill on the Senate Floor.

Chairman Darrington adjourned the meeting at 2:45p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

NOTE: Any sign-in sheets, guest lists, and/or booklets, charts and graphs, will be retained in the Committee's Office until the end of session and then will be on file with the minutes in the Legislative Services Library (Basement E).

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 27, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

OTHERS IN ATTENDANCE: Any sign-in sheets, and/or booklets, charts and graphs, will be retained in the Committee's Office until the end of session and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Darrington** called the meeting to order at 1:34 p.m.

MINUTES: There were no minutes to approve.

MOTION: **Senator Jorgenson** made a motion to adopt Docket Nos. 11-1101-0501, 11-1102-0501, and 11-1104-0501. These POST academy rules were discussed in the meeting held on January 25. **Senator Richardson** seconded the motion and the motion was carried by a **voice vote**.

RS 15741 Medicaid recovery. **Mr. Robert L. Aldridge**, representing Trust & Estate Professionals of Idaho, Inc. (TEPI) will explain. All of these bills have been reviewed by subcommittee and voted on by the committee.

This bill clarifies how the Medicaid Estate Recovery Division of Health & Welfare can recover assets from the estate of a decedent and clears up a number of uncertain areas of law.

Chairman Darrington suggested that, since Bob Aldridge had many RS's, committee members entertain questions as each RS is presented and then at the end of the presentation, we accept one motion for all and take any that have controversy associated individually.

RS 15742 **Mr. Aldridge** explained that this bill raises the limit of personal property from \$75,000 to \$100,000 in the Small Estate Affidavit Act.

RS 15743 **Mr. Aldridge** explained that this bill will extend the same provisions to minor guardianship proceedings that are extended to adoption cases regarding putative fathers.

RS 15744 **Mr. Aldridge** explained that this bill relates to trusts and is an ancient doctrine that can make irrevocable trusts into revocable trusts. This would abolish the application of the Doctrine of Worthier Title.

RS 15745 **Mr. Aldridge** explained that this bill has been expanded to allow an acting

guardian or conservator to make funeral-burial decisions and arrangements upon the death of the decedent.

RS 15746

Mr. Aldridge explained that this bill clearly provides that, under all circumstances, a trust that exists as a “dry trust,” one with no current assets, can receive assets at a later date such as from a Will or an insurance policy.

RS 15747

Mr. Aldridge explained that this bill will increase the level when a trustee may terminate a trust to \$100,000. This will give more flexibility to terminate a trust when the administration costs are becoming too high to justify continuation of the trust.

RS 15748

Mr. Aldridge will withdraw this RS at this time to make a minor change to the language in the legislation.

RS 15776C1

Mr. Aldridge explained that the effect of this bill is to provide a clearly defined method for transferring and receiving guardianships and conservatorships and for recognizing foreign guardianships and conservatorships on a temporary basis.

RS 15820

Mr. Aldridge explained that this amendment would clarify the language of Section 15-5-202, Idaho Code, related to the guardianship of a minor child in case of the death of a parent and/or where parental rights have been terminated and would remove potential ambiguities or conflicts in the language of the section.

MOTION:

Senator Jorgenson made a motion to send RS 15741, RS 15742, RS 15743, RS 15744, RS 15745, RS 15746, RS 15747, RS 15776C1, and RS 15820 to print. **Senator Lodge** seconded the motion. The motion was carried by **voice vote**.

RS 15415C3

Senator Darrington introduced **Mond Warren**, Bureau Chief for the Idaho Department of Health and Welfare (IDHW), Bureau of Audits and Investigations.

Mr. Warren stated that these rules will help protect vulnerable Idahoans by providing statutory authority necessary to require criminal history and background checks on providers and individuals who have access to vulnerable adults and children. **Senator Sweet** asked if there was a list of providers that gave input and were they in agreement? **Mr. Warren** responded that the following associations provided approval and endorsement: Idaho Hospital Association, Idaho Health Care Association, Idaho Assisted Living Association, The Idaho Mental Health Providers Association, The Idaho Service Coordinators Association, Project Patch and others. **Senator Lodge** stated that she had followed this legislation closely to ensure that the State would not be picking up the cost of the criminal background checks and that the legislation would be in compliance with last year's actions.

MOTION:

Senator Lodge moved that RS 15415C3 be sent to print. **Senator Kelly** seconded the motion. The motion was carried by **voice vote**.

Senator Darrington turned the meeting over to **Senator Richardson** for

**DOCKET NO.
16-0224-0501**

rules review.

Clandestine Drug Laboratory Cleanup was explained by **Elke Shaw-Tulloch**, Chief of the Bureau of Community & Environmental Health, Idaho Department of Health & Welfare (IDHW). **Ms. Shaw-Tulloch** requested that 16-0224-0501 be adopted as final. IDHW convened a workgroup of 25 stakeholders to develop, review and agree upon rules that were in alignment with statute. This rule resulted, and it gives IDHW the responsibility to create a cleanup process for hazardous chemicals, to develop a policy standard for this process, and, to design a way to make public a list of properties identified as clandestine drug laboratories. There are three main points of discussion:

- 1) *How property gets on a list*—law enforcement determines whether a property is a clandestine drug laboratory, and the contaminated properties go on IDHW's website;
- 2) *How property is delisted*—the removal of the property is the responsibility of the property owner, and a certificate of delisting will be issued once certain criteria are met; and,
- 3) *Topics of Public Comment*—the qualifications of the person conducting sampling and the independence of that person from the person/company doing the cleanup.

Senator Richardson clarified that the Bureau of Community & Environmental Health would be responsible for enforcing these standards.

Senator Kelly asked for some clarification on disclosure that could be provided by **John Eaton**, Director, Government Affairs, Idaho Association of Realtors, Inc (IARI). **Mr. Eaton** stated that although the property is delisted and is taken off the hazardous website, it still must be reported during a real estate transaction. **Senator Burkett** asked a property can be placed on a list that will last forever without due process. **Ms. Shaw-Tulloch** responded that there is provision for an appeal that occurs when law enforcement declares a property a clandestine drug laboratory. **Senator Burkett** asked why a hearing should not be held prior to the listing since, once the listing occurs, it would remain on the property forever. **Senator Darrington** asked for an explanation from **Richard Schultz**, Administrator of Idaho Health & Welfare. **Mr. Schultz** responded that there are two issues here: 1) These rules follow the statute that Senator Darrington co-sponsored last year and fall into line with it's statutory authority; and, 2) the opportunity to appeal is driven by the section of the code that gives law enforcement the responsibility to identify these locations as clandestine drug labs. IDHW is only listing the property that law enforcement has already identified as a clandestine drug lab. The appeal process would lie within the area of law enforcement.

Senator Bunderson asked for clarification about the meaning of "address." **Ms. Shaw-Tulloch** explained that it was the legal address and the interior of a residence or business. **Mr. Schultz** added that the exterior was under the auspices of the Department of Environmental Quality (DEQ).

Senator Sweet asked how many properties are being dealt with. **Ms. Shaw-Tulloch** responded that there were 42 properties, but she did not have a breakdown by county.

**DOCKET NO.
16-0505-0501**

Criminal History and Background Checks in Long Term Care Settings was explained by **Mond Warren**, Bureau Chief, Bureau of Audits and Investigations, Idaho Department of Health & Welfare (IDHW). This rule will help to protect vulnerable Idahoans in long-term care settings as part of the Federal Pilot Project which was funded by Congress to determine the feasibility of background checks in long-term care settings. Last year, the IDHW was authorized to participate in the Federal Pilot Project to require criminal history and background checks for those who have access to individuals in long-term care settings.

These rules will be taken into consideration and will be voted on Monday, January 30, 2006.

Senator Richardson returned the gavel back to the Chairman of the Committee.

ADJOURNED: **Senator Darrington** adjourned the meeting at 2:25 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: Monday, January 30, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

CONVENED: Chairman Darrington called the meeting to order at 1:34 p.m.

GUESTS: See the attached sign-in sheet.

MINUTES: **Senator Jorgenson** moved that the minutes of January 25 be approved as written. **Senator Richardson** seconded the motion and the motion was carried by a **voice vote**.

PENDING RULE APPROVAL: **Senator Richardson** made a motion to approve Docket No. 16-0224-0501 relating to Clandestine Drug Laboratory Cleanup. Second was by **Senator Jorgenson** and the motion carried by a **voice vote**.

Senator Richardson made a motion to approve Docket No. 16-0505-0501 relating to Criminal History and Background checks in long-term care settings. Second was by **Senator Lodge** and the motion carried by a **voice vote**.

RS 15717 Relating to the Uniform Interstate Family Support Act

Dale Higer, Idaho Uniform Law Commission, explained that this Act limits child and family support orders to a single state, eliminating interstate jurisdictional disputes. This legislation amends and clarifies many of the provisions of the Act, increasing its usefulness.

MOTION: **Senator Jorgenson** made a motion to send RS 15717 to print. Second was by **Senator Kelly** and the motion carried by a **voice vote**.

RS 15645C1 Relating to Parole, provides that no person making an evaluation shall be held financially liable for denial of parole or for future acts of a parolee.

Olivia Craven from the Commission of Pardons and Parole explained that this RS would amend the current statute to follow current practice and to save the state of Idaho money. Current wording says that only a psychologist or psychiatrist can do the reports necessary for the Commission. This law requires that the Commission obtain specific reports on sex offenders and any other inmates where they may deem it appropriate to gather more information. However, clinicians and other

mental health professionals can conduct the tests and provide reports with their recommendations. Therefore, Ms. Craven requests that this statute be amended. Testing by a psychologist or psychiatrist would cost a minimum of \$1,000 to \$1,800 or more. Currently clinicians are conducting these tests and providing reports for them at no additional cost.

MOTION: **Senator Lodge** made a motion to send RS 15645C1 to print. Second was made by **Senator Kelly** and the motion carried by a **voice vote**.

S 1275 **Brent Reinke**, Director of the Department of Juvenile Corrections presented S 1275 to the Committee.

Mr. Reinke stated that this legislation amends Section 19-5109 (f) Idaho Code to clarify that the Peace Officers Standards Training (POST) council can certify Idaho Department of Juvenile Corrections' direct care staff who attends and completes the Juvenile Detention Academy. Senator Bunderson had some concerns about the fiscal note on this previously and we have made the modifications, discussed the modifications with Senator Bunderson and he agreed with the proposed amendment.

MOTION: **Senator Davis** made a motion to send S 1275 to the floor with a do pass recommendation. Second was by **Senator Lodge** and the motion was carried by a **voice vote**.

S 1296 **Senator Davis** explained that this bill provides that in an unlawful detainer or eviction proceeding, a tenant in sufferance can also be a defendant in that cause or action.

MOTION: **Senator Davis** made a motion to send S 1296 to the floor with a do pass recommendation. Second was by **Senator Sweet** and the motion was carried by **voice vote**.

S 1297 **Heather Reilly**, Deputy Prosecuting Attorney, presented S 1297 to the committee. She explained that this is a clarification of the current firearm enhancement statute. This legislation would remove an inconsistent requirement that a notice of the state's intent to seek this firearm-enhanced penalty must be provided prior to the preliminary hearing or waiver of the hearing. No other enhanced penalty statute requires this notice. She further stated that to remove this specific notice would make this enhanced penalty statute consistent with the other statutes. The current language causes some confusion because it does not address cases that are brought by indictment. Therefore, in some criminal cases where the state proceeds by grand jury indictment, there is no way that a notice can be provided prior to the preliminary hearing because there is no preliminary hearing.

Senator Burkett asked about the number of enhanced penalties. **Ms. Reilly** replied that she listed four in her Statement of Purpose. This legislation corrects the problem by making all statutes consistent.

MOTION: **Senator Kelly** moved to send S 1297 to the floor with a do pass recommendation. Second was by **Senator Davis**. The motion carried by **voice vote**.

S 1300 **Kathy Baird** from the Sex Offender Classification Board (Board) presented

this bill to the Committee. She explained that this proposal expands the list of crimes for which an offender may be reviewed for Violent Sexual Predator (VSP) designation. It would add criminal offenses, such as sexual exploitation of a child and failure to register as a sex offender, to the list of crimes that are eligible for review by the Board. The failure to comply with the sexual offender registration requirements included in this bill will enable the Board to review dangerous offenders who have been convicted of sexual offenses in jurisdictions other than Idaho.

Senator Burkett asked if the Board determined the type of offender, i.e. high risk, repeat offender, exploited materials, or as the same offense. **Ms. Baird** responded that it could be identified as potentially another offense. **Senator Davis** asked if a producer of child pornographic materials is likely to have the propensity to be an offender—**Ms. Baird** stated that they may—she followed up with the definition of predator to clarify the question. **Senator Richardson** asked for clarification on the reason the Board is reviewing these sex offenders. **Ms. Baird** said that the Board tries to identify those sex offenders who are at higher risk to reoffend than the general offenders.

MOTION:

Senator Sweet made a motion to send S 1300 to the floor with a do pass recommendation. Second was by **Senator Lodge** and the motion carried by a **voice vote**.

PRESENTATION

Idaho Department of Corrections (IDOC) presentation by **Thomas J. Beauclair**, Director. Mr. Beauclair introduced the Board.

Mr. Beauclair focused his presentation on issues related to sex offenders. To put it all into perspective, there are 7,000 sex offenders in Idaho; thirty three of those are listed as Violent Sexual Predator (VSPs) and two are supervised by the IDOC. Mr. Beauclair gave an overview of the growth, cost, and composition of all offenders who are incarcerated and on probation that are managed by IDOC. He also spoke to the type of crimes that are committed, the percentages of male/female for those types of crimes, how much the facilities are overpopulated, how many people have been sent out of state to other facilities, types of services available and many other issues and what the positive or negative ramifications are as a result of these issues.

Mr. Beauclair elaborated on the Correctional Alternative Placement Program which Mr. Beauclair will be presenting to JFAC on January 31. He requested this Committee's support for the IDOC program.

Senator Bunderson asked how many offenders have a substance abuse addiction. **Mr. Beauclair** said it ranges between 85-95 percent for those that are documented. **Senator Bunderson** added that there could be more since some offenders committed other crimes but also had a substance abuse addiction. **Senator Davis** asked if there could be regional treatment centers versus one single facility. **Mr. Beauclair** answered that this is the intent, however, this center would be a pilot project and then they would expand. **Senator Burkett** asked about the growth analysis. **Mr. Beauclair** responded that the general Idaho population grew about 3% and the prison

population grew at 7% for the same period of time. Drug crime, particular methamphetamine, is what is really driving growth. Exit surveys identified drug crime as the major cause for incarceration.

Senator Kelly posed a two-part question; 1) How is parole and probation handled as far as treatment, and 2) does budget include additional staff.

Mr. Beauclair answered that the budget does not include additional staff.

Senator Sweet asked what would be the most effective action that would solve the problem. **Mr. Beauclair** answered that there were too many

issues and he couldn't bring it down to one. However, employee compensation is a big issue—he lost 257 officers last year. **Senator Lodge**

asked if there were county treatment facilities and would that alleviate some of the prison growth. **Mr. Beauclair** said county level treatment would

definitely help. **Senator Richardson** asked how successful was the

privatized prison and would it be feasible to invest in that again. **Mr.**

Beauclair responded that private systems are good and can probably build the facility cheaper but the public system can operate just as cheap or

cheaper than the private system. The state is still responsible, it can still be sued, it still must transport, it still must keep the severe cases and the

medical cases. Also, contracts have an inflation rate built in and each year the cost increases. It must be offset somewhere and generally occurs by

reducing staff.

Given time constraints, **Senator Darrington** directed further questions to Mr. Beauclair after the meeting is adjourned.

Senator Darrington adjourned the meeting at 2:52 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 1, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senators Sweet and Burkett

CONVENED: Chairman Darrington called the meeting to order at 1:32 p.m.

GUESTS: See attached sign-in sheet.

MINUTES:

RS 15748C1 Relating to the Uniform Probate Code; to revise the definition for "interested person."

Robert L. Aldridge, Attorney, representing Trust and Estate Professionals of Idaho, Inc., explained that this legislation applies to the definition section of the Idaho Code and changes the definition of "interested person" to include guardianship and conservatorship by adding the two definitions word-for-word from other areas of Idaho Code.

MOTION: **Senator Richardson** made a motion to send RS 15748C1 to print. **Senator Jorgenson** seconded the motion. The motion was carried by **voice vote**.

RS 15854 Relating to the Idaho Criminal Gang Enforcement Act.

Megan Ronk, Policy Advisor on the Governor's Criminal Commission, presented RS 15854 to the Committee. This legislation will make a change relating to the Criminal Gang Enforcement Act by adding words to clarify how extended sentencing applies to the list of crimes outlined in Section 18-8502.

MOTION: **Senator Lodge** moved that RS 15854 be sent to print. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

RS 15815C1 Relating to Controlled Substances.

Heather Reilly, Ada County Deputy Prosecuting Attorney, explained that this legislation is an addendum to RS 15815C1 which creates a new statute to provide law enforcement agencies with a tool to address problems related to methamphetamine including instances where children are exposed and endangered by extremely high-risk drugs.

MOTION: **Senator Richardson** moved to send RS 15815C1 to print. **Senator Davis** seconded the motion. **Senator Kelly** will vote to have this RS printed but is on record that she has reservations about this legislation.

Motion carried by **voice vote**.

S 1302

Relating to Death Sentence, Judicial Review.

Bill von Tagen, Deputy Attorney General representing the Office of the Attorney General, presented this bill. This bill amends Idaho Code Section 19-2827 which deals with the Judicial review of death sentences in the instance where there was not a jury. **Senator Richardson** asked for clarification about whether or not a judge could impose the death sentence. **Mr. von Tagen** responded that a judge could not impose the death sentence based on excessiveness if there was not a jury involved in the findings of fact.

MOTION:

Senator Kelly moved to send S 1302 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. Motion carried with a **voice vote**.

S 1303

Relating to Public Financial Card Misuse.

Bill von Tagen, Deputy Attorney General, explained that this bill deals with the misuse of public funds and amends two sections of the Idaho Code, 18-5701 and 18-5703. The first issue is to define who a public servant, public officer or public employee is. The second is to define public monies and expand that definition to include the use of the financial transaction card.

MOTION:

Senator Bunderson moved to send S 1303 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried with a **voice vote**.

S 1311

Relating to Real Property, Recovery, Actions

Senator Bunderson and **Senator Keough** introduced this bill and turned the discussion over to Jane Wittmeyer, Vice President for Idaho Affairs Intermountain Forest Association. **Ms. Wittmeyer** introduced the team of speakers: William F. Boyd, Attorney and Forester from Couer d'Alene, Kennon D. McClintock representing Idaho Forest Owners, Association, Kevin Boling, Forest Capital Partners, Inc. (FCP), and Mark Benson, Director of Public Affairs, Potlatch Corporation.

William F. Boyd was attending the meeting to support the adverse possession legislation. **Mr. Boyd** talked about the history and current requirements for adverse possession and emphasized that in actuality, adverse possession means stealing your neighbor's property. This bill will change one of the criteria that must be met for adverse possession—the time period would be changed from five years to twenty years. There is no suggestion that any other changes are being made to the existing law.

Kennon McClintock, a forester, was representing an association of small, private forest landowners in Idaho. **Mr. McClintock** read a position paper supporting this legislation. The Idaho Forest Owners Association will support any legislation that reduces the threat to our privately owned Idaho forest lands by virtue of adverse possession.

Kevin Boling, represented an independent investment firm that acquires

and manages large-scale, investment grade forests across North America and has lands in Idaho. **Mr. Boling** gave an example of his experience with adverse possession. FCP purchased some land based on a written description. When they conducted a survey, they found three instances of adverse possession. In one case they had to deal with a father and daughter situation involving two pieces of property. FCP settled with both. They changed the boundaries, filed new deeds so they would no longer pay taxes on this property, spent eight months to work out agreements, paid attorney fees and lost \$39,000.00 in land value because of adverse possession. **Mr. Boling** gave other examples as well.

Mark Benson, Director of Public Affairs, Potlatch Corporation (PC) testified in support of the changes in this legislation. **Mr. Benson** focused on **Senator Kelly's** question of "why twenty years?" PC has thousands of miles of property lines and forests that take 50-80 years to mature. They do not visit those fence lines every five years and sometimes may not visit in twenty years. However, twenty years would give them a better chance to discover if there was an instance of adverse possession. In addition, they visit for inventory purposes and it may not be apparent that a fence line is not in the proper place unless there is a survey completed. **Mr. Benson** further stated that in this century it is necessary for landowners to know where their property lines lie. Increasing the time period from five to twenty years would give neighbors on both sides of the fence more time to perfect their property lines.

MOTION:

Senator Jorgenson moved that S 1311 go to the floor with a do pass recommendation. The motion was seconded by **Senator Richardson**. **Senator Kelly** stated that there was some very good reasons behind the adverse possession law but that it seemed twenty years might be a better time limit than five years. **Senator Davis** agreed with Senator Kelly and added further that his concern was with the boundary by acquiescence and that this is not being pursued at this time although there is no agreement that it will not be pursued in the future. **Senator Davis** further stated that it is his understanding from the advocates of this legislation that this bill is not intended to have any application as it relates to boundary by acquiescence or agreement and because of that representation, Senator Davis will be supporting this motion. If Senator Davis misunderstands and the bill does have application, he said he would appreciate that clarification before he votes. The motion carried by **voice vote**.

ADJOURNMENT:

Chairman Darrington adjourned the meeting at 2:52 p. m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 3, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

CONVENED: Chairman Darrington called the meeting to order at 1:38 p.m.

MINUTES: **Senator Jorgenson** moved that the minutes of January 27, January 30, and February 1 be approved as written. **Senator Lodge** seconded the motion and the motion was carried by **voice vote**.

RS 15904 Relating to warrants; to remove language requiring search warrants to be served with the officer present and to allow service of warrants by specified means.

Mike Kane, representing the Sheriff's Association, explained that this legislation simply allows search warrants to be brought into the 21st century. This amends a law that was passed in 1864 demanding that an officer be present at the time of service. With current electronic media, a search warrant could be faxed or emailed rather than have an officer appear on the scene.

MOTION: **Senator Lodge** made a motion to send RS 15904 to print. Second was by **Senator Jorgenson** and the motion was carried by **voice vote**.

RS 15734C1 A Concurrent Resolution to amend Joint Rule 18, to clarify statements of purpose and fiscal notes.

Senator Davis explained that this Concurrent Resolution was suggested by the majority and minority leaders in both bodies. Some court decisions suggest that a Statement of Purpose (SOP) may reflect legislative intent. He and Senator Kelly have researched material from the Librarian in Legislative Services and found this to be more of a problem than they thought when crafting the rule. The intent for amending this rule and adding language is to indicate that: 1) this was how the bill was originally written and amendments are not necessarily reflected in the SOP, and 2) it is not intended that the SOP represent legislative intent.

Senator Kelly asked if the SOP could be amended while it was still on the Senate floor and Senator Davis replied that it could. **Senator Burkett** asked the sponsor if this was not going to be used as a statement of legislative intent, what would be the need or purpose to modify or amend it. **Senator Davis** answered that the effect of this amendment would be to say it does not necessarily represent legislative intent. He stated that historically, the standard

for legislative intent had been the plain language in the bill. However, even though the language is clear, other methods can be used to define what that intent was.

MOTION: **Senator Jorgenson** made a motion to send RS 15734C1 to print. **Senator Richardson** seconded the motion. **Senator Burkett** voted against this bill because he believes that there is not enough expression of legislative intent. He would prefer to have Statements of Purpose that are more direct. **Senator Davis** said that frequently legislation is passed that goes through the Amending Order and what comes out is substantially different even from a very well-written SOP. The motion was carried by **voice vote**.

RS 15381C2 Relating to fireworks; to revise definitions, require licenses.

Mark Larson, State Fire Marshall and **Gary Smith**, Director of the Department of Insurance were introduced. **Mr. Smith** explained that this legislation requires exporters of fireworks to obtain a license through the Idaho Department of Insurance or the State Fire Marshall's office in order to export fireworks outside of this state. It also requires firework wholesalers, importers and exporters to maintain records of their sales transactions. The specific intent of this legislation is to prevent the illegal sale of fireworks in Idaho. Under current law, there exists a loophole that allows the sale, retail or wholesale, of fireworks that are not legal to be used in Idaho. The purchaser can sign a waiver form stating that the illegal fireworks are for export only and will not be used in this state. This waiver has been misused and abused regularly. The required information on the form is not always being collected from the purchaser. **Mr. Smith** further stated that this legislation would support legitimate exporters.

MOTION: **Senator Kelly** made a motion to send RS 15381C2 to print. Second was by **Senator Bunderson**.

SUBSTITUTE MOTION: **Senator Sweet** made a substitute motion that RS 15381C2 be returned to Sponsor. Second was by **Senator Jorgenson**. By a **voice vote** the motion passed. Chairman Darrington is recorded as voting no.

S1304 Relating to Criminal Procedure; to set forth provisions applicable to judgments for offenses requiring sex offender registration.

Bill von Tagen, Deputy Attorney General, spoke to the committee in favor of S 1304. **Mr. von Tagen** explained that this bill will amend Section 19-2604, Idaho Code, dealing with the discharge of the defendant and the courts' criminal judgment. This amendment addresses one of the legislative remedies. More importantly, this remedy deals with sex offenders where registration is required and they are not subject to dismissal or reduction pursuant to Subsection 3, Section 19-2604, Idaho Code. The current process is not correct as it relates to removing sex offenders from the registry and this amendment will correct this issue. This bill will strengthen the community's right-to-know if there is a sex offender living in their neighborhood.

MOTION: **Senator Richardson** made a motion to send S 1304 to the floor with a do pass recommendation. Second was by **Senator Jorgenson** and the motion carried by a **voice vote**.

S 1301

Relating to Mandatory Minimum Sentencing: to increase confinement for certain sex offenders to fifteen years and to provide a mandatory minimum term of life imprisonment for certain repeat offenders designated as violent sexual predators.

Bill von Tagen, Deputy Attorney General presented this bill. **Mr. von Tagen**, explained that S 1301 amends Section 19-2520G, Idaho Code, dealing with mandatory minimum sentences for recidivist sex offenders. This bill increases the minimum time that a violent sexual predator (VSP) will be imprisoned to fifteen years and adds a new subsection with new language requiring a mandatory minimum of life for some VSP's with repeated offenses. **Senator Burkett** asked if there were crimes added to the current list in Section 18-8304, Idaho Code, and would those new crimes also apply to this list. **Mr. von Tagen** responded that they would but that they would have to be offenses subsequent to the time the new crimes were added. **Chairman Darrington** pointed out that, by the same token, if crimes were taken off the Section 18-8304 list, those crimes would not apply to this amendment. **Mr. von Tagen** concurred. **Senator Kelly** asked what prompted the changes that would legislate sentencing instead of relying on the judges discretion. **Mr. von Tagen** answered that this would provide the judges with a tool to extend sentencing consistently.

Senator Sweet spoke to the fact that this legislation focuses on the worst of the worst crimes and that these grievous crimes are often repeated.

MOTION:

Senator Jorgenson made a motion to send S 1301 to the floor with a do pass recommendation. Second was by **Senator Sweet** and the motion carried by a **voice vote**.

Chairman Darrington said he would probably not be at the meeting scheduled for Monday, February 6, due to a funeral he would be attending in Salt Lake City. Vice Chairman Richardson will chair Monday's meeting in his absence.

ADJOURNMENT:

There being no further business, **Chairman Darrington** adjourned the meeting at 2:43 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 6, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

CONVENED: The Judiciary and Rules Committee was called to order at 1:30 p.m., February 6, 2006 by Chairman Darrington.

GUESTS: See attached list.

RS 15887 Relating to Domestic Violence Crime Prevention; to increase the maximum effective period for protection orders in certain cases, to revise limitations in a protection order.

Senator Jorgenson explained that RS 15887 is an attempt to improve the current protective orders. It would increase distance restraints from 300 to 1500 feet and it would allow a judge to be more flexible in setting time periods for the restraining orders.

Senator Kelly asked if the changes would make our rules consistent with other states. **Senator Jorgenson** said that Idaho's current laws are weaker than those of other states surrounding Idaho and that this bill will make Idaho comparable to other states.

MOTION: **Senator Richardson** moved that RS 15887 be sent to print. **Senator Sweet** seconded the motion. The motion was carried by **voice vote**.

RS 15892C1 Relating to Attorney's Fees in Civil Actions; to increase the maximum dollar amount pleaded or claimed for purposes of allowed costs.

Senator Corder introduced the bill. This bill attempts to define a frivolous lawsuit. It also attempts to address the issue of "loser-pay-all attorney fees." Research identified three areas of concern: 1) the small loss of resolution, 2) small claims, and 3) Idaho Code Section 12-120 which addresses attorney's fees. This bill will not address 1) or 2) noted above. In regard to Section 12-120, attorney fees will be allowed for cases up to \$50,000.

MOTION: **Senator Bunderson** moved that RS 15892C1 be sent to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 15903 Held in committee.

S 1331 Relating to Parole; to reference mental health professionals designated by the Department of Corrections for purposes of examination and evaluation and shall not be held liable.

Olivia Craven, Department of Corrections, explained that the purpose of this bill is to provide information to the Parole Commission as required by statute at the most efficient costs possible. There is only one psychologist in the Department and to contract out would cost \$1,000 to \$1,800 for each evaluation. The Department of Correction clinicians are trained to conduct these evaluations and write the reports at no additional cost. **Senator Richardson** asked if they have staff that could handle the case load. **Ms. Craven** replied that they do. In fact, the main job of the clinicians is to do the testing and write the reports.

MOTION: **Senator Bunderson** made a motion to send S 1331 to the floor with a do pass recommendation. The motion seconded by **Senator Sweet**. The motion carried with a **voice vote**.

S 1332 Held until February 13.

S 1327 Relating to Criminal Background Checks; for individuals who provide care or services to vulnerable adults and children.

Mond Warren, Bureau Chief for the Bureau of Audits and Investigations, Department of Health and Welfare (H&W) explained that this bill gives statutory authority to the rules that are already in place where background checks are required on providers and individuals who have access to children and vulnerable adults. This type of legislation was presented last year but was not accepted because of concerns with the fiscal impact on the state. S 1327 puts the financial responsibility for the background check on the applicant. Currently, background checks are being funded by a federal grant program that sunsets September 30, 2007. **Chairman Darrington** asked if foster parent applicants required background checks. **Mr. Warren** responded that there is statutory authority for foster parents but not for adoptive parents.

Barbara Jordan from the Trial Lawyers Association was introduced. **Ms. Jordan** supports the bill except for a section that addresses immunity. She does not think granting immunity to a department is ever a good practice. **Ms. Jordan** is also concerned about allowing employees to work prior to receiving the results of the background check. **Senator Davis** clarified the immunity question stating that the immunity didn't apply to the action of the provider or employee, but only applies to the exclusion or inclusion of a class of individuals requiring background checks. **Senator Davis** also asked if this was the language H&W agreed to remove last year. **Ms. Jordan** replied that it was.

Michelle Glasgow, representing the Idaho Assisted Living Association (IALA), an organization that represents 75% of the assisted living communities in Idaho, spoke about this bill. **Ms. Glasgow** stated that Mond Warren had made every effort to communicate and cooperate with

the stakeholders using the pilot program now in place, and had been able to automate and improve the efficiencies of the background check system. However, data shows that the average employee in the assisted living industry is a 31 year old woman with children, and she cannot afford the fee. Because of the increased cost of the background check under the H&W system versus the Idaho State Police (ISP) criminal background check system, and other costs related to rules recently passed, assisted living providers cost of hiring will increase from \$265 per person to \$430 per person. Other stakeholders have funding mechanisms built into their systems, assisted living does not because they are providing services predominately to Medicaid residents. **Chairman Darrington** clarified that Ms. Glasgow supports the legislation except for the funding. **Ms. Glasgow** concurred.

Senator Sweet asked what made up the difference between the H&W cost of \$55 and the ISP cost of \$10 for a background check. **Dawn Peck**, Bureau Manager of the ISP Bureau of Criminal Identification, spoke to this question. **Ms. Peck** explained that the ISP criminal background check is for Idaho only, the H&W system checks Idaho history as well as history kept by the FBI. **Senator Kelly** asked if discretionary determination could be made by the employer, based on disclosures on the application, and can an applicant go to work before the employer receives the results of the background check. **Mr. Warren** confirmed that this was true.

Senator Davis raised the question that H&W had agreed to remove the immunity section from this legislation, but that it was still in there. Does this damage the legislation? **Mr. Warren** asserted that he didn't think it damaged the legislation. He does believe it puts the Department at risk when the public perceives that certain classes of individuals should be checked by the Department, and they are not included on the list. However, it is the legislature's decision to add or remove classes of individuals from the list. Those classes are identified by rule and are presented to the legislature for approval. **Senator Richardson** asked that if this section was removed, would it make the Legislature, Department and others liable. **Mr. Warren** said that was the reason the Attorney General's office advised adding the provision.

MOTION:

Senator Bunderson made a motion to send S 1327 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. **Senator Sweet** stated that he wanted to support this bill, but was still concerned about fees and other issues in this legislation. He felt, however, that it was important to protect vulnerable individuals.

Senator Sweet made a substitute motion that S 1327 go to the Fourteenth Order for amendment. The motion was seconded by **Senator Jorgenson** and the motion failed by **voice vote**. The committee went to the main motion that S 1327 go to the floor with a do pass recommendation. **Senator Kelly** noted her issue with an employee working without a final background check, but said she would support this legislation. The motion carried by **voice vote**. **Senators Davis and Jorgenson** requested they be recorded as voting no.

ADJOURNED: **Chairman Darrington** adjourned the meeting at 2:37 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 8, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senator Bunderson

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

GUESTS: See attached sign-in sheet.

MINUTES: **Senator Jorgenson** moved that the minutes of February 3rd be approved as written. **Senator Sweet** seconded the motion. Motion carried by **voice vote**.

APPOINTMENTS: By Gubernatorial Appointment, **Sherry Krulitz** of Pinehurst, ID was reappointed to the Judicial Council to serve a term commencing July 1, 2005 to July 1, 2011.

Chairman Darrington welcomed **Sherry Krulitz** and asked her to tell about her work on the council, about ethical considerations and anything that would be important to her appointment. **Ms. Krulitz** reported that over the five years since her first appointment, there had been one Supreme Court vacancy that was filled, one Court of Appeals appointment and fourteen vacancies filled for District Judges throughout Idaho. Retirement procedures changed because of the senior status option, resulting in six vacancies the first year and five the second year. During her first year on the council, **Ms. Krulitz** said they received over 200 complaints and more than 120 each year since then. **Chairman Darrington** wanted to assure everyone that the Council and this Committee takes all of these complaints very seriously. **Ms. Krulitz** agreed that they do take every complaint very seriously. **Chairman Darrington** said that it is an accurate record and assumption that there have been judges that have left office because of what has come before the Judicial Council. Judges have, on occasion, been reprimanded with letters in their permanent file. Judges have been talked to when complaints have occurred. Great integrity is exhibited in the Council. **Ms. Krulitz** stated that they have done all of these things. **Chairman Darrington** noted that there is a report to the Senate each year showing the number of cases and the dispensation of those cases. **Bob Hamlin** confirmed that there was such a report.

The Board of Commissioners of the Idaho State Bar voted to appoint

Kenneth B. Howard of Coeur d'Alene, Idaho to a term on the Idaho Judicial Council (Council) for a period of July 1, 2005 to June 30, 2011.

Chairman Darrington welcomed **Ken Howard** and asked him to explain what he wanted the Committee to know about his reason for serving on the Council.

Mr. Howard explained that he had applied for this position without fully understanding the extent of the job. However, he has been learning what the job entails and enjoying it very much. **Mr. Howard** felt drawn to this position and was qualified because he had served on the Idaho State Bar and had a love for the law. He felt that lawyers needed to serve in other capacities.

Senator Broadword spoke in support of **Sherry Krulitz** and respects her high ethics.

Senator Darrington stated that the Committee would act on these nominations on Friday, February 10, 2006.

Senator Darrington welcomed **Robert Aldridge** to the Committee. **Mr. Aldridge** represents the Trust & Estate Professionals of Idaho, Inc. (TEPI) and will explain all of the bills being presented at this meeting.

Mr. Aldridge explained that all of the bills being presented today have gone through the committee procedure at TEPI. **Mr. Aldridge** also noted that he had some members of his family in the audience today.

S 1318

Relating to estate property; provisions for recovery of medical assistance costs by Health & Welfare.

This bill illustrates the cooperation TEPI has had with the Medicaid Department. The purpose of the first part of this bill is to clarify and streamline procedures especially for estate recovery. Federal law mandates that Medicaid has an estate recovery program. Large estates are handled smoothly but small estates, under \$75,000, are more complicated. This will clarify that Medicaid can become a successor in these estates.

The second part of this bill relates to when there is a surviving spouse. The statutory process sets forth the exact procedure when there is the death of a spouse. It also clarifies the situation when there is no probate. A claim is not filed by Medicaid at the time of death of the first spouse but does appear at the death of the remaining spouse.

The third part of the bill says that if the asset is a primary income generating asset and the heirs would be eligible to public assistance if that income was taken away, the state could waive the claim.

MOTION:

Senator Richardson moved to send S 1318 to the Senate floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S 1319 Relating to the Uniform Probate Code; to increase the cap for estate values.

Mr. Aldridge explained that this bill also deals with the small estate affidavit and increases the limit from \$75,000 to \$100,000 before an estate must go to probate. This relates to personal property and not to real estate. **Senator Burkett** asked how this relates to multiple claimants. **Mr. Aldridge** responded that the recipients are usually listed out in the affidavit.

MOTION: **Senator Sweet** moved to send S 1319 to the Senate floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S 1320 Relating to the Uniform Probate Code; to revise notice provisions for appointment of guardians.

Current legislation says that if a father is not on the paternity registry with the state, then he is not notified of adoption proceedings. There is currently about 17,000 households where children are living in the homes of the grandparents. In cases where the father cannot be found, this bill will allow the temporary guardianship process to move forward. **Senator Kelly** asked what would happen if the punitive father surfaces. **Mr. Aldridge** answered that if that father wanted to be guardian of the child, he could ask that the guardianship be modified and he be given guardianship of the child(ren). In most cases, the guardian is temporary and if either parent returns and indicates a desire and capability to assume responsibility for the child, the family can be reinstated. **Senator Burkett** had several questions related to judges options, costs of guardianship, and when the father is known. **Mr. Aldridge** responded that judges do not have a lot of options and the court has to determine if the father can be identified. The cost of a guardianship proceeding is about \$600, Mr. Aldridge does a lot of pro bono work because many grandparents are on social security and cannot afford the legal fees. If the location of the father is known that information must be revealed.

MOTION: **Senator Jorgenson** moved to send S 1320 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. **Senator Burkett** has a problem with the legislation. It doesn't hold the parent responsible. **Senator Davis** stated that a United States Supreme Court case covered this issue. Individual states, including Idaho, have processes in place to address this very complicated issue. The chair is not in doubt, motion carried by **voice vote**.

S 1321 Relating to Trusts; to revise applicability, doctrine of worthier title shall not be applied.

The doctrine of worthier title is an ancient common law doctrine which causes a trust whose grantor intended it to be irrevocable becomes revocable. Idaho law and case law is silent on the applicability of this law. The addition of Section 68-120 Idaho Code will abolish this law.

MOTION: **Senator Davis** moved to send S 1321 to the Senate floor with a do pass

recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1322 Relating to guardians and conservators; to authorize disposing of deceased person's remains.

This bill amends current statutes to allow guardians or conservators to dispose of a deceased person in certain circumstances. It also allows them to continue guardianship or conservatorship powers after death in certain circumstances.

MOTION: **Senator Burkett** moved to send S 1322 to the Senate floor with a do pass recommendation. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

S 1323 Relating to Trusts; executed concurrently with a will.

This legislation adds "concurrently with" to Section 15-2-511, Idaho Code in reference to trusts. It also adds a section that validates the existence of a trust known as a "dry trust" under all circumstances whether or not it contains any assets.

Daniel Prohaska, a banker representing the Idaho Bankers Association, spoke in support of S 1323. This bill will aid the trustees and the banks that administer trusts.

MOTION: **Senator Richardson** moved to send S 1323 to the Senate floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1324 Relating to Trustee Powers; to increase the collective value of trust assets allowable.

The current economics indicate that the collective value of trust assets allowable for the purposes of termination should be increased from \$25,000 to \$100,000. Medicaid was contacted and this change would not adversely affect them. If a trust specifically identifies limits for termination, the trust instructions would prevail.

Mr. Prohaska stated that raising the value of the trusts for purposes of termination to \$100,000 is supported by bank trust departments.

MOTION: **Senator Jorgenson** moved to send S 1324 to the Senate floor with a do pass recommendation. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

S 1326 Relating to Guardianships and Conservatorships; foreign.

The net effect of this bill is to provide a detailed and precise method for transferring and receiving guardianships and conservatorships and for recognizing foreign guardianships and conservatorships on a temporary basis. **Mr. Aldridge** explained that there are parallel provisions repeated throughout different areas of Idaho Code. This legislation is written as a uniform act and could be used throughout the United States.

MOTION: **Senator Lodge** moved to send S 1326 to the Senate floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1328 Relating to Guardianships; testamentary appointment of a guardian for a minor.

The effect of this amendment is to make Section 15-5-202 of Idaho Code clear and to remove any ambiguities or conflicts in the language of this section. The testamentary appointment of a guardian for a minor is usually clear. **Mr. Aldridge** explained that one problem arises when the parent who has custody of a minor dies and the other parent has had parental rights terminated. Then, second, when both parents die a question arises as to, what the phrase "effective appointment by the parent who died later has priority" mean? The third question is what happens when the parent who made the appointment dies first, then the second parent dies without making an appointment? The new language clarifies all of these situations.

MOTION: **Senator Lodge** moved to send S 1328 to the Senate floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1335 Relating to Probate code; interested person.

Mr. Aldridge explained that the Uniform Probate Code has a very long list of definitions one of which is "interested person." There are two amplifications of the definition of "interested person" in other parts of the Probate Code. Many times an attorney reads the primary definition but does not know about the extended definitions of this term. This legislation includes those definition expansions in the primary list of definitions in the Probate Code.

MOTION: **Senator Jorgenson** moved to send S 1335 to the Senate floor with a do pass recommendation. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington asked for sponsors for these bills. Sponsorships were assigned.

ADJOURNMENT: The meeting was adjourned by **Chairman Darrington** at 2:29 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 10, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Burkett, Kelly
- MEMBERS ABSENT/ EXCUSED:** Senator Jorgenson
- GUESTS:** See attached sign-in sheet.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:35 p.m.
- MINUTES:**
- MOTION:** **Senator Kelly** made a motion to send the appointment of Sherry Krulitz to the Senate floor with a do confirm recommendation. **Senator Lodge** seconded the motion. The motion carried with a **voice vote**.
- MOTION:** **Senator Burkett** made a motion to send the appointment of Kenneth B. Howard to the Senate floor with a do confirm recommendation. **Senator Richardson** seconded the motion. The motion carried with a **voice vote**.
- S 1312** Relating to Crimes & Punishments presented by **Megan Ronk**, Policy Advisor on the Governor's Criminal Justice Commission.
- Ms. Ronk** stated that this bill was a result of recommendations by the Criminal Justice Commission presented to the Governor regarding sex offenders. She said that this bill would close loop holes in several areas which would help keep communities safe. Three key areas were addressed.
1. Sex Offender Registration
 2. Verification of sex offenders' addresses
 3. Maximum sentences for several crimes that require registration
- She then explained the areas in this bill that would increase the maximum sentence and/or fines. They are: assault and battery with intent to commit a serious felony, sexual abuse of a child, sexual exploitation of a child, possession of sexually exploitative material for other than commercial purposes, sexual battery of a minor child 16 or 17 years of age, second offense of indecent exposure within five years, and incest. Ms. Ronk pointed out that these were enhanced maximum sentences, not mandatory minimums. The purpose of raising these maximum sentences was to give judges additional flexibility in sentencing especially in the most heinous crimes. She said that the intent was not to keep people behind bars for a longer time, but rather the judge could use these

enhanced maximums to lengthen the indeterminate portion of an offender's sentence. She said the result would be that these offenders would have parole supervision for a longer period of time. This work is supported by the prosecuting attorneys.

Ms. Ronk continued with other sections of the bill which addressed violent sexual predators (VSPs). It requires VSPs to register with their local sheriff four times per year, rather than once a year. It also would require all sexual offenders, including VSPs, to register with the sheriff within two days of a change of address. Address verification for VSPs would be done monthly through a non-forwardable card from the Idaho State Police, and the local sheriff would also make a home visit for each VSP's registered place of address every six months. All other sex offenders would be required to verify their address three times a year. These new provisions would help keep better track of those sex offenders who are not currently supervised under probation or parole and would increase the contact of VSPs with the authorities. Lastly, Ms. Ronk said that all of the entities have supported this proactive legislation and it should be noted that it contains an emergency clause that would enable these changes to become effective immediately upon the signature of the Governor.

The committee asked some questions of Ms Ronk for clarification.

MOTION: **Senator Lodge** made a motion to send S 1312 to the floor with a do pass recommendation. **Senator Sweet** seconded the motion and the motion carried with a **voice vote**.

S 1336 Relating to Criminal Gang Enforcement Act - presented by **Megan Ronk**.

Ms. Ronk explained that this legislation gives law enforcement tools to control the growing gang activity. The bill addresses gang members that range in age from ten years of age into their sixties. In some cases, gang membership is a family tradition with some third generation gang members. In the summer and fall, the Governor met with a group of officials from Ada and Canyon County, Mayors, Chiefs, Sheriffs, and federal representatives of Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Alcohol, Tobacco and Firearms (ATF), and the United States Attorney's office to address the gang activity in the Treasure Valley.

Ms. Ronk stated that this legislation first defines "criminal gang," "criminal gang member," and "pattern of criminal gang activity." There are extended sentences for certain criminal gang activities. This bill also creates a new felony for a criminal gang member who recruits a person to participate in a criminal gang and for supplying firearms to a criminal gang. This bill also contains an emergency clause and will become effective upon the Governor's signature.

Chairman Darrington introduced **Senator McGee** to take the podium. **Senator McGee** thanked the Chairman and members of the Governor's Criminal Justice Commission in giving tools to take care of the gang

problems in Caldwell. He recognized some of his constituents that were present to support the bill; Mayor Garrett Nancolas, Sheriff Chris Smith and members of the Caldwell Police Department. Senator McGee said he believed there was a need for a reactionary tool to deal with gangs in Caldwell and Nampa. They are doing proactive things like Gaining Responsibility After School (GRAS) where they bring potential gang members into a group to teach them some skills and 12 of those have gone on to graduate from college. He said they had recently built a YMCA in Caldwell to keep potential gang members off the streets and involved in productive projects. There is still a problem and this law deals with it.

Senator Lodge reiterated what Senator McGee said and noted that this would send the message that gang members were not needed in Idaho. She thanked Mayor Tom Dale for attending the meeting, also Chief Curtis Homer, Sheriff Chris Smith and Tony Thompson who was the Drug Abuse Resistance Education (D.A.R.E.) officer at the Senator's school when she was teaching in the Caldwell District.

Marty Durand, Legislative counsel for the American Civil Liberties Union (ACLU) of Idaho explained the ACLU's position on the bill. She said they were not opposed to this bill, but did have some concerns. She explained the concern of who was identifying a gang member. She said that sometimes kids may wear attire that is gang-related when they are only trying to look "cool." She asked that definitions should be clarified where only gang members would be targeted and based on reliable evidence.

Mayor Tom Dale, City of Nampa, stated that this gang problem was certainly not confined to Canyon County. It was a widespread issue. He said that gang activity was a form of urban terrorism. They intimidate people by their drive-by shootings, beatings, and create a negative image in the community. Gang crimes endanger police officers. Mayor Dale said that an effective action required a 3-prong attack to decrease these crimes in our community; 1) strong law enforcement, 2) rapid prosecution with consequences, and 3) strong unified community action. Proper tools are needed to combat this issue.

Mayor Garrett Nancolas, City of Caldwell, said that the costs associated with criminal activity lands in the City Halls, with County Commissions and with the State Government. He stated that these crimes must be stopped or there wouldn't be enough money in the coffer. Even though Caldwell is trying to involve the youth in wholesome activities, it doesn't always work. Because some will make bad choices, there needs to be some consequences and that is what this bill allows. After research of the most violent crimes in Caldwell, every one of them began with what are called gateway crimes, such as graffiti, truancy, and curfew violations. These are minor and don't seem to have an impact, but 20 crimes later these are the same kids who are driving the cars in the drive-by shootings or actually pulling the trigger and committing murders and other violent crimes. The hope is that this bill will give law enforcement agencies the tools that they need to put those associated with gang activity behind bars for a longer period of time.

Chief Curtis Homer, Nampa Police Department (NPD) and **Chief Dave Moore**, City of Blackfoot took their turn together at the podium. **Chief Homer** stated that this was an important issue, especially with the growth in Idaho. Many of these gang members are third generation and they are proud of it. We met with other agencies in Portland, Sacramento, Orange County, and Salt Lake City this fall. This legislation is patterned after the results of those meetings. Out of about 18,000 children in the Nampa School District, there are less than 100 under the age of 18 that are documented as gang members. The other gang members range in age from 18 to 55. Chief Homer passed out some photos of gang members which included families and children flashing the signs of the gang. He stressed that they need new tactics to combat this growing problem. They recently arrested twelve gang members and confiscated three guns.

Chief Moore said that the gang problem was also prevalent in Southeast Idaho. They sent their troops down to Las Vegas Metro for training and brought those programs back to Idaho. It just becomes displacement. When we get tough on them, they move elsewhere. He said they get a lot of recruitment of high-powered gangs from Northern Utah. The Indian Reservation is also a big problem. He supports this bill.

Sheriff Gary Raney, Ada County, and **Sheriff Chris Smith**, Canyon County came to the Podium to make a statement. **Sheriff Raney** expressed his concern in dealing with the gang issue in Idaho. The gang problem has grown to become organized crime which comes with murder, robbery, sophistication and the importation of drugs and people into Idaho. This legislation would give us the tools to effectively address these problems. The bill has been carefully thought out and he commended the Governor's office. **Sheriff Smith** mentioned that one of the elements of this new code would be the ability to identify gang members. The sheriffs of the state must do a classification process when there are arrests, and they take that very seriously. It is incumbent among them to keep gang members separated from enemy gang members and through that process they are able to identify them as gang members.

Leroy Graham and **Nick Duggan** of the Boise Police Department (BPD) approached the podium to give their statements. **Sgt. Graham** said he had been with BPD for 25 years and was the first gang intelligence officer for Boise city. He stated that the world's largest motorcycle club, called the Banditos, was located in Declo, Idaho. The definitions that are followed are the requirements for the National Criminal Information Center (NCIC) and follows federal regulations for the Violent Gang Terrorist Organization File (VGTOF). That allows them to enter gang membership on that file which is a nationwide sharing program. It also allows them to enter the information on the Rocky Mountain Information Network (RMIN), an intelligence sharing system used throughout the Northwest. It gives investigative detectives and officers the ability to share information on a gang or gang members and what they are doing. **Detective Duggan** said that he worked the streets every night in an unmarked patrol car. The most important thing with the guys that he works with is the sharing of information. With standardized definitions everyone in the state of Idaho can share this information and they are not put at risk when they

approach these individuals. If they have stopped individuals on the street and the information they get back from dispatchers identify them as violent gang members, they can call for additional resources to help handle the situation.

Colonel Dan Charboneau, Director of Idaho State Police, explained the components of this statute; 1) establish a gang, 2) person is an established gang member in that gang, 3) they must commit a crime that is enumerated in that statute. This is a powerful tool that law enforcement needs.

Tony Thompson, Sergeant, Caldwell City Police, passed out some photos of gang members, showing children as young as three years as well as adults. This bill will put all law enforcement on the same page as to what a gang member is. In Caldwell, there is a gang problem, but it is not as structured as in Los Angeles. He said it was not territorial and if there is a shooting in Caldwell, they don't know where to go to look for retaliation. Hopefully, this bill will discourage these kids by giving them a harsher penalty.

Heather Reilly, Ada County Deputy Prosecuting Attorney stated that the Ada County Prosecuting Attorneys Association does support this legislation. She addressed Ms. Durand's concerns regarding definitions of gang members. Ms Reilly said not only must we prove that a person is a criminal gang member, but also must prove that they are a gang member engaged in a pattern of criminal gang activity AND meets two or more of the other definitions in this bill. Those factors brought up by Ms. Durand must be proven in combination with the other definitions. The burden of proof will be extremely significant.

Senator Bunderson said he had heard that the process was slow between arrest and before a sentence is rendered and if a penalty could be assessed more quickly people might be turned around. He asked how long it took and if that was a weakness in the system. **Ms. Reilly** said they were required to bring the defendant to trial within six months. However, there are many factors that may lengthen this process.

Senator Bunderson asked if they were incarcerated or out on bail at that time. **Ms. Reilly** replied that it would depend on the case. The in-custody cases are given an expedited trial setting.

Senator Sweet asked how much of the gang activity could be attributed to illegal aliens. **Chief Homer** said that he sees a mixture, no pattern.

Senator Burkett asked if that list on VGTOF wasn't already available with gang member identification if there was a conviction. He asked how this bill would help to extend that list or use it in a different way. **Sergeant Graham**, BPD, said that currently in the state, there was no standard to aid law enforcement and this bill would provide that. **Senator Burkett** clarified that they could create local lists, but this would facilitate the integration of those lists into the nation lists. He asked if they would be able to put individuals on the list that have not been convicted. The answer was yes. **Senator Burkett** asked that at this time, may you put individuals on the VGTOF list without conviction. **Sgt. Graham** said yes,

and this would establish a state definition of what a gang member and a gang is which would eliminate a statewide variance in what the definition of a gang member is.

Senator Kelly asked how this applied to juveniles. **David Hensley** replied that there were no age distinctions. **Heather Reilly** further commented that juvenile court's maximum penalty for a felony is 180 days of detention and the maximum penalty for misdemeanor is 90 days of detention. This code section is specific in that it increases the penalty up to one year in jail or up to five years in prison. In Ms. Reilly's view, she didn't believe the increase in penalties would be applicable to juveniles in juvenile court, but she would need to research further. She said the other sections would apply. **Senator Kelly** said that there was a mandatory of no less than one year and no more than four years if something is done on the school grounds during school hours. **David Hensley** answered that the provision did establish a mandatory minimum of one year if you commit one of the enumerated crimes within 1,000 ft. of the school. **Ms. Reilly** said she did not believe those specific numbers would apply because of the sentencing criteria in juvenile court. This legislation may not apply to a juvenile unless they were waived to adult court.

MOTION: **Senator Lodge** moved that S 1336 to the floor with a do pass recommendation. **Senator Sweet** seconded the motion and the motion carried with a voice vote.

ADJOURNED: **Chairman Darrington** adjourned the meeting at 3:10 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 13, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached list.

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

MINUTES: **Senator Sweet** moved to accept the February 6th minutes as written. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

Senator Lodge moved to accept the February 8th minutes as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

APPOINTMENTS: **Gubernatorial Appointment**
By Gubernatorial Appointment, **Robin Sandy** was reappointed to the Commission of Pardons and Parole Board to serve a term commencing January 1, 2006 and expiring January 1, 2009. **Ms. Sandy** stated that it is a privilege to serve on the Parole Board. She provided a description of the responsibilities of a Parole Board member. **Chairman Darrington** asked about staffing. **Ms. Sandy** confirmed that five commissioners were adequate, but they needed more support staff. **Senator Richardson** talked about the letters he had received from inmates and/or their families concerning the length of time it takes to get a hearing for parole. **Ms. Sandy** explained that the Parole Board does not schedule those hearings; those are scheduled at Administrative Services. There is a legal time line in which those hearings must be held and they always meet that time line. **Senator Lodge** commended **Ms. Sandy** for the time she has spent on the Parole Board and thanked the other Parole Board members for the work they do. **Senator Bunderson** concurred with Senator Lodge's comments. **Senator Sweet** stated that he attended a hearing and was impressed with the work the Parole Board does and also thanked them.

Chairman Darrington stated that the Committee will act on the confirmation at the Wednesday meeting.

RS 16071 **A Joint Resolution, proposing an amendment to Article VII of the Constitution of the State of Idaho**
Senator Lodge presented a constitutional amendment to create the

Idaho Millennium Permanent Endowment Fund (Fund). The Fund will receive 80% of the tobacco settlement payments, and it will create an endowed fund that will not be subject to appropriations. **Cathy Holland-Smith**, Analyst for the Idaho Millennium Fund Committee, continued to explain this legislation. The benefits of establishing this fund are that longer-term investments which will have a higher rate of return and a portion of these settlement funds can be identified for long-term and future projects. **Senator Bunderson** stated that the principal could not be invaded, the language indicates that the income is always available for appropriations. **Ms. Holland-Smith** responded that was correct, the principal cannot be invaded but it would provide for distribution of the increase in the fund to the Idaho Millennium Fund and would be available for appropriation. **Senator Richardson** commented that at some future time the payments would stop coming into the fund. At that point, will the Fund just be working with the interest. **Ms. Holland-Smith** confirmed that was true.

MOTION: **Senator Lodge** moved to send RS 16071 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS 15835 **Relating to animal cruelty; costs**
Senator Kelly explained that this legislation was the culmination of meetings held over the past year. It was hard to determine if it should go to the Agriculture or Judiciary and Rules Committee. It came to the Judiciary and Rules Committee because it contained a strong judicial element. **Dr. Jeff Rosenthal**, Executive Director of the Humane Society, proceeded to explain the details of the bill. Currently livestock and culture producers are subject to animal cruelty and neglect charges by law enforcement personnel who are not trained to evaluate the accepted animal husbandry standards. Seizure of animals subject to cruelty creates logistic and financial burdens for local animal shelters. These issues are addressed in the bill by creating a clear definition of the kinds of animals that have been mistreated and adds a new section providing protection of law enforcement and municipal animal shelters from the exorbitant costs associated with impounding animals.

MOTION: **Senator Kelly** moved to send RS 15835 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 15920 **Relating to driving under the influence (DUI) of intoxicating substances**
Senator Bunderson introduced this RS. The intent of this legislation is to enhance penalties for DUI offenders. First, there will be an increase in sentence for both first time offenders and repeat offenders. Second, the bill will increase the maximum sentence a judge can impose.

MOTION: **Senator Lodge** moved to send RS 15920 to print. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

RS 15441C1 **Relating to the Authority to Establish Roadblocks**
Senator Bunderson brought this legislation before the Committee. This bill relates to roadblocks as they pertain to substance abuse. This bill authorizes sobriety checkpoints in a controlled environment. It will require

rules and ordinances which will be reviewed by the Attorney General's Office.

MOTION: **Senator Richardson** moved to send RS 15441C1 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 15890C1 **Relating to Homesteads; to increase exemption**
Senator Keough opened her explanation of the legislation by saying "this is not a tax bill." The purpose of this legislation is to adjust the homestead exemption from \$50,000 to \$100,000 in bankruptcy proceedings.
Senator Jorgenson asked how the amount of \$100,000 was determined. He was also concerned that the \$100,000 would not be enough.
Senator Keough said the change was based on a recommendation by a constituent whose area of expertise is related to this subject. Also, the increasing property market values were considered. The \$100,000 might not be enough, but it was a good place to start.

MOTION: **Senator Jorgenson** moved to send RS 15890C1 to print. **Senator Burkett** seconded the motion. The motion carried by **voice vote**.

RS 15903C1 **Relating to the Magistrate Division of the District Court and to the Small Claims Department of the Magistrate Division**
Senator Corder presented this RS. The intent of the bill is to increase the allowable claim amount for cases where the amounts sought are small and to provide for collection of fees by the prevailing party. **Chairman Darrington** asked if a person could be put in jail for non-payment of a judgement. **Senator Davis** answered No.

MOTION: **Senator Bunderson** moved to send RS 05903C1 to print. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

RS 15712C1 **Relation to Emergency Powers**
Senator Sweet explained that this bill provides that no restrictions shall be imposed on lawful uses of firearms or ammunition during a disaster emergency. **Senator Davis** and **Senator Kelly** were concerned with how "any state of disaster emergency" would apply. For example, would it apply in case of a drought? Could disaster and emergency be two different things? It is just a question of what "state of disaster emergency" means. **Senator Sweet** volunteered to research this phrase. **Senator Bunderson** suggested that there should be a correlation between this legislation and the official report that came out on the New Orleans episode where guns were confiscated by force.

MOTION: **Senator Richardson** moved to send RS 15712C1 to print. **Senator Jorgenson** seconded the motion. **Senator Burkett** pointed out that there should be a differentiation between homeowners who have guns and are trying to defend themselves and gangs who have guns and roam the streets. The motion carried by **voice vote**.

RS 15636C4 **Relating to Concealed Weapons**
Senator Sweet stated that this bill will amend Chapter 33, Title 18, *Idaho Code*, and has two parts. One that covers technical changes and the other is more substantive by nature. On the technical side, there will be amendments that will change the requirements for carrying a concealed

weapon, extend the time limit of a license from five to six years, increase the cost of renewal from \$12 to \$15, add a provision for notification of renewal to the licensee, and extend the time for renewal without a penalty.

A new section will be added that provides for a penalty when carrying a concealed weapon without a permit and a peace officer is not notified of that weapon or fails to secure that weapon. There will be a change that says a person will not be required to have a license to carry a concealed weapon when on/in real or personal property in which he has an interest.

MOTION: **Senator Jorgenson** moved to send RS 15636C4 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 15912 **Relating to anatomical gift and minors**
Senator Davis introduced this RS. It amends the Idaho Anatomical Gift Act to allow minors sixteen years of age and older to make anatomical organ donations with parental or adult guardian consent.

MOTION: **Senator Jorgenson** moved to send RS 15912 to print. The motion was seconded by **Senator Richardson**. The motion carried by **voice vote**.

S 1354 **Relating to search warrants**
Mike Kane from the Idaho Sheriff's Association proposed this bill amending obsolete language in Section 19-4408, *Idaho Code*. The bill states that search warrants may be served by mail, facsimile or electronically in addition to personal service. This legislation will assist law enforcement in obtaining information such as telephone records, bank records, and computer child pornography documents. **Garth Jacobson**, Attorney for CT Corporation, offered testimony in support of this bill. **Senator Burkett** asked how would electronic notification work. How much time will be allowed before law enforcement comes through the door. **Mr. Kane** responded that they would never notify someone that they were coming to search their house. Current procedures will not change much, a bank or office may be called and told there was a search warrant and should it be serviced on the premises or can it be served by fax or email.

MOTION: **Senator Bunderson** moved to send S 1354 to the 14th order for amendment. **Senator Lodge** seconded the motion. Motion carried by **voice vote**.

S 1332 **Relating to the Uniform Interstate Family Support Act**
Senator Davis made a request to hold this bill.

ADJOURNED: **Senator Darrington** adjourned the meeting at 2:45 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 15, 2006

TIME: 1:35 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senator Davis

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: The meeting was called to order by **Chairman Darrington** at 1:35 p.m.

RS 16046 **Relating to Motor Vehicle Accident Reports**

Senator Brandt was sponsor of this bill and there was no discussion.

MOTION: **Senator Richardson** moved to send RS 16046 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1337 **Relating to Controlled Substances**

This act is intended to prohibit specified acts, to permit an inference of consumption of controlled substances, to provide for the consideration of drug treatment or drug court options, to limit application, to define terms, to provide punishment and to limit the duty to report in certain cases.

Chairman Darrington, explained that, because there were several speakers, a time limit would be set for each speaker so that everyone would have a chance to speak.

TESTIMONY: **Heather Reilly**, Deputy Idaho Prosecuting Attorney representing the Idaho Prosecuting Attorney's Association, explained that this bill creates a new criminal statute for the use of a controlled substance endangering children. In actuality, this bill does not create new laws regarding controlled substances or their possession and use. The bill provides law enforcement with a tool to address the use of dangerous controlled substances in a manner directly affecting and endangering infants and children. It creates a general felony crime. In the case of a pregnant female, the court is directed to consider treatment or drug court where appropriate. Further, the intent of the bill is to address users of illegal drugs who, by their conduct, knowingly permit or intentionally cause a child to ingest an illegal controlled substance.

Al Barrus, County Attorney, from the Cassia County Prosecuting Attorney's office spoke in favor of this legislation. **Mr. Barrus** is part of a task force that is made up of educators, Health & Welfare personnel, police, and other interested parties. Their focus is to get treatment for these pregnant mothers and children and prevent them from using methamphetamine. The idea is not to send people to jail because the jails are full and they want healthy babies.

Perry Brown is a Pediatrician, a member of American Academy of Pediatrics, and faculty member at University of Washington. **Dr. Brown** testified that it is not the appropriate time to increase criminality to address the problem of drug addiction. **Dr. Brown** recognized Senator Darrington's hard work and commitment to drafting a fair bill. However, he feels that other avenues should be fully explored. He stated that Idaho had not dealt with the supply issues or prevention/treatment issues. The Ada County Drug Court has a good record of accomplishment and success but that does not extend out to other counties. The cost of this program would be enormous. **Dr. Brown** firmly believes that everyone thinks the motivation and goals are good, but the method to accomplish those goals are in disagreement. **Dr. Brown** asked to temporarily table this bill.

Randy Kidd is a detective from the Cassia County Sheriff's office. **Mr. Kidd** stated that his goal is to help babies not to put people in jail. He wants to see healthy babies and healthy moms. Methamphetamine is the major problem that is being addressed. He believes that production of methamphetamine will not stop and in order to control this substance, it will take treatment and prevention. That is absolutely necessary. Drug court is successful because there are consequences—if drug court participants don't succeed, they are incarcerated. This bill provides consequences and he supports S 1337.

Carolyn Hurst is a foster parent to a baby and an adoptive parent of a five year old whose birth mothers were drug addicts. **Ms. Hurst** feels that there are not enough treatment programs for those who would voluntarily go for treatment and the treatment plans are not long enough. She asked that those working on legislation use their knowledge and skills to take care of the kids—that is what is important. **Ms. Hurst** does not support this bill.

Ken Deibert is the Director of Family and Community Services, Department of Health and Welfare, and is a supporter of the bill. **Mr. Deibert** attended the meeting to clarify one particular section of the proposed bill. There is confusion where physicians, under law, are exempt from reporting and shielded against legal ramifications if they do report. According to the drafters of this legislation, it is not the intent to eliminate or create a situation where medical professionals are exempted from child abuse protection laws of the state of Idaho. Physicians still must report instances when a child, including a newborn, has substances in its system in accordance with state and federal law.

Stacy Seyb, M.D., who specializes in high risk obstetrics and represents

the March of Dimes, testified against S 1337. **Dr. Seyb** commended Senator Darrington for addressing an issue that is reaching epidemic proportions. Unfortunately, it will place more pregnancies at risk for poor outcome. Substance abuse is a medical program and like many other medical problems, can adversely affect women who are pregnant. He said if the goal was to improve the health of newborns in Idaho, then treatment, not incarceration, was the answer.

Colonel Dan Charboneau, Director, Idaho State Police, spoke in support of this bill. One of **Col. Charboneau's** guiding principles has always been that you can pick your friends, but you can't pick your family. In this instance the youngest victims of methamphetamine have no choice in life; they have been cast into the web that is methamphetamine. There are no studies to show what happens to these children, whether they are exposed before birth or after birth. There are no developmental guidelines for how these children are going to turn out, or what services they are going to need in the future. Educational needs are unknown for these children. What we do know is, if we look at the results of the continued use of methamphetamine by an adult and the scourge that it ravishes on the body, we can apply that information to these youngest children who are more susceptible to the effects of methamphetamine. **Col. Charboneau** stated that the bill would be a good tool for law enforcement.

David Christianson, M.D., represents the Idaho Chapter of the American Academy of Pediatrics. He stated that the Chapter appreciated Senator Darrington's efforts to deal with this problem and they are supportive of anything aiding children. However, there are several areas in the bill that have some problems. There are two main areas of concern: 1) The ethics and criminality of this bill. Will the consequences of the bill actually occur? He does not think so. 2) Potential unwanted effects. Pregnant women will not seek prenatal care, will be discouraged from seeking hospital birth, and will not seek followup care. Physicians and others will be discouraged from performing appropriate services, and there are not enough treatment facilities throughout the state. Costs will increase for incarcerated people and their medical needs. Effort and resources will be used for incarceration and not for treatment. **Dr. Christianson** speaks against the bill, but not the concept. He recommended it be reworked.

Jim Higgins, Sheriff of Cassia County, spoke in favor of this bill. This bill is a good tool, but it is only a tool. No sheriff would really want a pregnant, meth woman, in jail. But, something has to be done to protect these children. This bill may not be perfect, but it is a step forward and he is asking for support of this bill.

Kathy Haley represented the Idaho Women's Network and opposes this bill. The bill allows for drug treatment or drug court but those options are based on availability. Idaho lacks enough treatment facilities, especially for pregnant women. In order to protect children, we must protect mothers and families. **Ms. Haley** stated that the goal is to see babies born free of all chemicals so we must not lose sight of the hope that treatment provides for pregnant women. This legislation will impact an

already overburdened criminal justice system, foster care, and Child Protective Services system. She requested a no vote on S1337.

Shelley Mitchell, Mother and former meth addict. **Mrs. Mitchell** added a personal perspective regarding this bill. She is a survivor of a lab explosion where burns covered 56% of her body. She has been drug free for 2½ years. **Ms. Mitchell** explained how she would have felt if this bill had been in force when she was pregnant. She would never have come to get help, she would never have sought prenatal care, she would never have had pediatric care for her child, and she would have considered having a birth at home as a result of her own meth use. **Ms. Mitchell** emphasized that they need treatment, they need help. She opposes this bill.

Fawn Pettet, Lobbyist for the Catholic Diocese of Idaho, and representing Bishop Michael Driscoll, opposes this bill. Drug addiction, especially during pregnancy, is a challenge for any pregnant woman. This population, which cannot speak on its own behalf, does indeed need protection. Imprisonment of mothers during pregnancy will provide insufficient prenatal healthcare. Placement of newborn infants into foster care is not a satisfactory solution. This promotes the breakdown of the family unit while creating a greater burden for already strained state institutions. **Ms. Pettet** challenges the Committee, and all of those attending the meeting, to choose options that will strengthen the value of the family unit.

Charlotte Lanier spoke as a citizen of Idaho and as a recovering alcoholic/addict with 23 years of sobriety. She speaks against S 1337. **Ms. Lanier** is also a social worker with a background in the treatment of addictive behaviors. She believes that the strongest motivator for a woman to conquer a drug abuse problem is her children. Through her experience, **Ms. Lanier** said that treatment works. State resources need to be turned from punitive measures to compassionate ones. Children need their mothers, not foster parents. Cost/benefit analysis of treatment versus incarceration is overwhelming and funding treatment is far more beneficial than imprisonment. We all must work diligently to create recovery where there is destruction of lives.

Corey Surber, Government Relations, St. Alphonsus Medical Center, spoke at the request of St. Al's Board and physicians who treat babies in the neonatal intensive care unit. She spoke in opposition to this bill. **Ms. Surber** stated that they greatly appreciate the dialogue that has been started by Senator Darrington on this critical issue. Unfortunately, they disagree with the approach outlined in this bill. Drug addiction is an illness that requires treatment. **Ms. Surber** expressed her concern with using prosecution as a deterrent. This will drive addicted pregnant women away from prenatal care. There is an extreme shortage of treatment resources in the state. Idaho could make a better investment in community based, affordable substance abuse treatment. Pregnancy provides a "window of opportunity" for women to get clean and programs need to be available at that time—women do not want to hurt their babies.

Delmar Stone who is a resident of Nampa, licensed master social worker and Lobbyist for the Idaho Chapter of the National Association of Social Workers spoke for the almost 4,000 social workers in the State. **Mr. Stone** stated that at first glance, they supported this bill but after closer reading and consideration of the long-term impact, they oppose the bill. Some of the concerns were:

- women will be put into an environment already overburdened.
- free drug treatment for women should be available before these types of consequences are even considered.
- there are already waiting lists for drug treatment centers
- there would be additional burdens on the system.

There are also some concerns with other issues within the bill. Social workers support the goal of having babies born drug free and look forward to being part of the solution with this Committee.

SUMMARY:

Mike Kane, Attorney for the Sheriff's Association will summarize. He talked about practicalities. The newest method of drug delivery to the user is to injection, and this is happening. There is no law currently in place in Idaho that addresses this specific problem where someone deliberately injects a controlled substance into the system of a child. It is not a crime to be an addict. However, what can be done is to criminalize the delivery of the controlled substance into a fetus. This bill is not about criminalizing addictions, it is about criminalizing the introduction of a controlled substance into an unborn child. There are very few instances where law enforcement will identify a pregnant woman who uses meth. If a meth baby is delivered in a hospital, there is no crime at all for the mother. The only thing that can be done is to turn the child over to Health & Welfare.

There has been a lot of discussion about incarceration—throwing people in jail. When a complaint is filed and the person appears before a judge, the judge may release the person on their own recognizance and the person will not go to jail. They can also get a bond. In addition, the judge can make abstinence and treatment a condition of release. There are pregnant women in jail for all kinds of reasons. Law requires that medical care is available for these women. That is already in place.

QUESTIONS:

Chairman Darrington asked Shelley Mitchell if she was a product of drug court. She responded that she was not. **Chairman Darrington** asked a rhetorical question: would you rather deliver a clean baby in jail or a meth baby absent jail? **Senator Burkett** asked Dr. Christianson: are there studies that indicate taking meth is damaging to a child and does alcohol and smoking damage a fetus? **Dr. Christianson** said they do see the effects but he is not aware of any long-term studies that show the effects. **Dr. Brown** responded to the question. Meth has been recognized for about 5-7 years and so there are no long-term studies but short-term studies on meth and other drugs such as alcohol and cigarettes, are available. The irony is that the only one that has proven side effects is alcohol which is legal. **Senator Richardson** asked Mike Kane: speakers today indicated treatment was the best course of action, but does this bill provide another way until we get there or is this the best answer? **Mr. Kane** answered that this bill is not the "be all, end all." It is an interim thing that can be done while working on treatment plans within the state.

Under this bill, judges will be able to order treatment and other options within the jail will be available. **Senator Sweet** asked Ms. Pettet: do you have a treatment facility, and if not, why not? **Ms. Pettet** said that they only do counseling. They have been operational for only five years. They would be open to partnering with other organizations for a center.

MOTION:

Senator Bunderson moved to send S 1337 to the Senate floor with a do pass recommendation. **Senator Sweet** seconded the motion. **Senator Bunderson** stated that this is a modest step forward that we can take without going to JFAC for appropriations for a broad based treatment program. **Senator Richardson** commented that obviously there needs to be a treatment program but we need something now and this seems to be the answer. We should also move toward treatment as soon as possible. **Senator Lodge** explained that they were working on a treatment program but at this time the need was to protect children. This is not the answer, but is something that will give judges a tool at this time. She supports the bill. **Senator Sweet** has reservations but he thinks that by forcing some individuals into this system it will protect unborn babies and he will be supporting this bill. **Senator Burkett** said that there is a need to protect unborn children from the conduct of the mother during pregnancy. We should start with alcohol since we are dealing with these children in schools. Alcohol syndrome babies are in the system and that must be addressed. If pregnant women are going to be incarcerated for what they are doing to the fetus, that would be the place to start. He does not think the jail cell is the answer and the legislature needs to address more of these significant problems. Motion carried by **voice vote**.

RS 16090

Senate Concurrent Resolution that recognizes and honors Idaho athletes participating in the Winter Olympic Games in Turin, Italy.

MOTION:

Senator Sweet moved to send RS 16090 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT:

There being no further business, **Chairman Darrington** adjourned the meeting at 3:08 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 17, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senator Jorgenson

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:34 p.m.

GUBERNATORIAL REAPPOINTMENT The committee voted on the gubernatorial reappointment of **Robin Sandy** to the **Commission of Pardons and Parole** for a term commencing January 1, 2006 and expiring January 1, 2009.

MOTION: **Senator Lodge** made a motion to send the reappointment of Robin Sandy to the floor with a do confirm recommendation. **Senator Burkett** seconded the motion and the motion carried by **voice vote**.

RS 15843 **Relating to Judicial Districts;** to increase the number of district judges and resident chambers in the First and Third Districts.

RS 15894 **Relating to Judges' retirement and compensation.**

RS 15901 **Relating to Courts;** to establish a fund and enable the Idaho Supreme Court to purchase additional years of service for certain retiring magistrate judges.

MOTION: **Senator Richardson** moved that RS 15843, RS 15894, and RS 15901 be sent to print. **Senator Sweet** seconded the motion and the motion was carried by **voice vote**.

RS 15969C1 **Relating to Pharmacists;** to provide procedures for long-term care and assisted living facilities to fax and verbally send prescription drug orders to a pharmacy when it has been so ordered by a doctor.

MOTION: **Senator Davis** moved to send RS 15969C1 to print and refer it to the Health and Welfare Committee. **Senator Burkett** seconded the motion and the motion was carried by **voice vote**.

RS 15968 **A Concurrent Resolution** stating findings of the Legislature and requesting the Department of Health & Welfare to develop an informal

dispute resolution process for intermediate care facilities which is partially independent from the Department.

MOTION: **Senator Davis** moved to send RS 15968 to print and then refer it to the Health and Welfare Committee. **Senator Burkett** seconded the motion and the motion was carried by voice vote.

RS 16052 **Relating to exemption from Worker's Compensation Coverage.**

RS 16072C1 **Relating to the public employee retirement system.**

MOTION: **Senator Burkett** moved to send RS 16052 and RS 16072C1 to print and refer them to the Commerce and Human Resources Committee. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 16041 **Relating to Honorariums and expenses.**

Senator Darrington explained that this legislation was on behalf of the Idaho Council for Children's Mental Health (ICCMH). This legislation increases payment to \$100 per day for those who serve on local mental health councils in hopes of keeping people on those councils. When this is introduced it will go to the Health and Welfare Committee.

MOTION: **Senator Davis** moved to send RS 16041 to print. **Senator Bunderson** seconded the motion. The motion carried by **voice vote**.

S 1400 **Relating to the Magistrate Division of the District Court and to the Small Claims Department of the Magistrate Division.**

Senator Corder explained that this legislation increases the maximum amount for small claims from \$4,000 to \$5,000 to allow for inflationary adjustment. It provides that the prevailing party in a small claim has the avenue to collect attorney fees and/or collection fees incurred when collecting a judgement. Senator Corder said there was no process to allow courts to set fees and for that reason he would consider a vote to the 14th Order for an amendment.

Senator Davis said that sometimes the questions that the magistrate judges are compelled to look at are far beyond their skill level. When they are trying a DUI one day and a small claims case the next, they are not in a position to become an expert on anti-trust law. They are doing the best they can, but sometimes they have 20 to 30 minutes to hear both sides, look at the documents provided and somehow become an expert on the issue. They make mistakes. In Senator Davis' view, the only problem with the bill is Section 5. He thinks it would do the opposite of what is intended. This part of the legislation would invite injustice. Small claims is for the unskilled and a judge must make a factual and legal basis to sort out and solve the problem. The client that can hire a lawyer and out-lawyer the non-lawyer player may be able to thump the proper claimant with attorney fees.

Senator Corder answered that the opposite could occur. That could happen and the guy who couldn't afford it would win on the appeal and

still could not get his attorney's fees. He further said that he appreciated that perspective.

Senator Kelly asked if the changes that he had suggested be made in the 14th Order included the potential inequities that Senator Davis raised.

Senator Corder replied that it did not, but he would certainly be willing to engage in more conversation.

MOTION: **Senator Davis** made a motion to send S 1400 to the 14th Order for amendment. **Senator Richardson** seconded the motion.

DISCUSSION: **Senator Davis** said he hoped the sponsor would consider including an amendment that would strike Section 5 and renumber the remaining various sections.

The motion carried by **voice vote**.

ADJOURNED: There being no further business, Chairman Darrington adjourned the meeting at 2:08 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 20, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:40 p.m.
- MINUTES:** **Senator Jorgenson** moved that the minutes of February 13, 2006 be accepted as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- Senator Kelly** moved that the minutes of February 10, 2006 be accepted as written. **Senator Davis** seconded the motion. The motion carried by **voice vote**.
- RS 15970C1** **Relating to Crime Victims compensation**
- Senator Jorgenson** explained that this legislation would provide additional mental treatment for victims of trauma arising out of covered criminal conduct.
- There are two parts of this bill:
- 1) This bill amends the definition of "extenuating circumstances".
 - 2) If the Industrial Commission finds that the victim met the definition of extenuating circumstances, the victim would be eligible for benefits up to the maximum amount allowed.
- This legislation could have a potential fiscal impact of \$80,600 to the Crime Victims Compensation Fund.
- MOTION:** **Senator Davis** moved to send RS 15970C1 to print. **Senator Bunderson** seconded the motion. The motion carried by **voice vote**.
- RS 16093** **Relating to Statewide Communications Interoperability**
- Colonel Dan Charboneau**, Director of Idaho State Police, acting member of the Statewide Interoperability Executive Council (SIEC) explained that

the SIEC was organized three years ago and this statute would be a new chapter that would transfer the SIEC to Homeland Security. The essence of the bill is to allow public safety communities to exchange voice, video, or data communications, on demand, in real time, when authorized. The Council will deal with local and private entities as they develop a statewide interoperability communications system. State agencies will be moving toward that goal as well. The SIEC will work closely with the Idaho State Department of Administration. The Council has a sunset clause of December 31, 2012 when a new communications platform under the Federal Communications Commission (FCC) will be initiated.

Fiscal Note: Homeland Security extended a grant of \$261,000 until the end of 2007 which will allow the Council time to put a plan together for a different source of funding.

Senator Burkett asked how this plan compared to other states. Do they have similar statutes? **Col. Charboneau** responded that many states have put plans in place but each one is a little different.

MOTION: **Senator Davis** moved to send RS 16093 to print. **Senator Burkett** seconded the motion. The motion carried by **voice vote**.

S 1356 Held

S 1399 **Relating to Homesteads**

Senator Keough presented this amendment which will increase the maximum permitted homestead exemption in cases of collections and bankruptcy proceedings from \$50,000 to \$100,000. The increase is in response to the changing market values.

Senator Jorgenson questioned whether the amount of \$100,000 really addresses the problem. **Senator Davis** explained that this amount protects the equity in the home that is above consensual loans against non-consensual claims against the property, except for IRS liens. Equity in homes are larger today principally because of inflation; this bill protects some of that equity growth. As a comparison, growth in qualified investment plans has no limits on the amounts that are exempt from creditors or bankruptcy trustees. Unlimited exemptions are allowed for more liquid assets. **Senator Davis** stated that the \$100,000 was recommended by a qualified trustee, it is a defensible number, and it is a conservative number in relation to other state and federal governments, and it still protects people who have increased equity in their home. **Senator Keough** reiterated that this bill was to protect the homeowner in view of increasing market values and that this amount was a recommendation from a constituent who has experience with this issue.

MOTION: **Senator Burkett** moved to send S 1399 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

H 533 **Relating to the Death Penalty.**

Representative Jim Clark explained that the purpose of this bill was to add an additional aggravating circumstance to current law that links sexual abuse against a child and murder.

Senator Davis asked how the judges felt about this change. **Rep. Clark** responded that the judges he had spoken to liked the change, but felt that it would be challenged. **Senator Davis** asked if this was new ground or have other states adopted such legislation. **Rep. Clark** answered that this was not new ground. **Mike Kane**, attorney, responded on the basis of his past experience as a prosecutor. The exact language in this bill is not in any Idaho statute. There is some precedent that has gone to the Supreme Court and there are similar laws around the country dealing with this issue. **Senator Kelly** asked Mr. Kane to explain when this would be challenged. **Mr. Kane** explained that the challenge would be at the time that the perpetrator faced the death penalty and this legislation was used in prosecuting the case. **Senator Jorgenson** asked if Rep. Clark had any objection to this bill going to the 14th order for the purpose of an emergency clause. **Rep. Clark** said that he had no objection.

MOTION: **Senator Jorgenson** made a motion to send H 533 to the 14th Order for amendment. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, Chairman Darrington adjourned the meeting at 2:40 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 22, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:34 p.m.

MINUTES: **Senator Jorgenson** moved that the minutes of February 15, 2006 be accepted as written. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

Senator Kelly moved that the minutes of February 17, 2006 be accepted as written. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1403 **Relating to Anatomical Gifts and Minors**

Senator Davis stated that this bill amends the Idaho Anatomical Gift Act. The bill allows minors who are between 16 and 18 years of age (with parental consent) to make anatomical organ donations. He introduced a family friend, **Hilary Walker, Miss Idaho Falls**, to discuss the issue further.

Miss Walker said she had given many presentations in high school health classes and drivers education classes during her reign as Miss Idaho Falls. She tells students between the ages of 15 and 18 why it is important to make up their minds now whether or not it is right for them to choose to be a donor. This bill allows young adults to face the decision of organ and tissue donation before a death occurs. To make the decision to donate a loved one's organs can seem almost unbearable unless the decision has been made beforehand. Miss Walker said she had experienced the gift of life in her own family when her grandfather had received a new heart. She felt that a 16 year old was mature enough to make this decision or at least discuss it with their parents.

Senator Darrington asked if a minor died between the age of 16 and 18

years of age could the parents legally revoke their decision. Ms. Walker answered that it was not law-binding, but it would give the parents an idea of their child's wishes.

MOTION: **Senator Bunderson** moved that S 1403 be sent to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried with **voice vote**.

S 1332 **Relating to the Uniform Interstate Family Support Act**

Dale Higer, Idaho Uniform Law Commission, explained that the Uniform Interstate Family Support Act limits child and family support orders to a single state, eliminating interstate jurisdictional disputes. Amendments were added in 2001 by the National Conference of Commissioners on Uniform State Laws to clarify many of the provisions of the Act, increasing its usefulness.

After this bill was printed, Mr. Higer and Senator Davis met with a staff member of the Health & Welfare Department to listen to some concerns about the legislation. As a result of this meeting, it was agreed to have the bill amended in three respects.

- to change the effective date to July 1, 2007
- to delete the need for disclosure of social security number
- to correct a reference of Chapter 12, Title 7 to Chapter 12, Title 32

Mr. Higer recommended that the legislation be sent to the floor to be amended.

Senator Davis added that a letter from the Health & Welfare Department projected a fiscal impact of \$250,000 for software changes to make interest calculations. He said he discussed this with the Chair and the Vice Chair of the Joint Committee and reviewed the legislation with them as well as the fiscal impact projection. Senator Davis said the reason the fiscal impact says none on the Statement of Purpose is because under current law, Health & Welfare has the duty to make interest calculation; they just haven't done it. When a child support order or other family allowance order from the courts is enforced, Health & Welfare doesn't collect interest on that judgement unless they receive a certification from a Certified Public Accountant (CPA). Another bill is RS'd that will change the current judgement interest rate (a floating rate) to a flat rate which will help the Department of Health and Welfare make those calculations.

MOTION: **Senator Davis** moved that S 1332 be referred to the 14th Order for amendment. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1397 **Relating to Driving under the Influence of Intoxicating Substances**

Senator Bunderson explained that the background of this legislation started last year when there was a discussion with law enforcement representatives about deficiencies in our law that could be corrected allowing them to handle their responsibilities more effectively. Representatives of Mothers Against Drunk Driving (MADD), the Idaho

Prosecuting Attorneys Association, Sheriffs, and Chiefs of Police were contacted to provide input to craft this legislation. The bill specifically addresses drivers that are pulled over by law enforcement officials for suspected DUI and who refuse to provide specimens for evidentiary testing. Currently, one-third or more drivers who are pulled over refuse to give a specimen and, through the judicial process, some are successful in having their refusal sustained. This legislation increases the potential administrative license suspension time from 180 days to one year for the first refusal and from one year to two years for second or more refusals.

Another element in this bill applies to multiple DUI offenders. The legislation increases the maximum sentence that a judge may impose on conviction of a felony DUI from five years to ten years and for aggravated DUI from ten years to fifteen years.

TESTIMONY:

Heather Reilly, Deputy Prosecuting Attorney, explained that Section 1, 18-8002, *Idaho Code*, states that “any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol...” and drugs as well. The goal of this legislation is to further persuade drivers to provide the necessary evidentiary testing when there is reasonable cause to believe that they are driving under the influence. She further stated that this legislation would also allow the judge to impose probation or parole if additional sentencing time is needed for supervision.

Senator Davis asked if judges have asked for more sentencing time. **Ms. Reilly** said she had not had that conversation with any judge. There are many times when the state recommends a five-year fixed sentence and the judge will impose it.

Senator Davis said that the area he was still struggling with was the minimum for refusal to provide a specimen, which would now be up to one year. He wondered if that would turn individuals into unemployed people who become wards of the state. **Ms. Reilly** responded, under this section, if they provided the sample as asked to do, they would not lose their drivers license. She also stated; a) don't drink and drive, and b) if you are drinking and driving and are asked to provide a sample - provide it. This bill may provide an incentive to comply with the law. **Senator Davis** said he was concerned about the consequences that would apply not just to the defendant, but to his/her family. **Ms. Reilly** said there was an avenue to avoid the administrative license suspension. She said the judges have a certain amount of discretion after the 30-day mandatory restriction. Judges can allow for a release of the suspension (after the 30-day mandatory restriction) for the benefit of counseling or treatment if the defendant shows some willingness to get this help.

Senator Burkett asked if technical procedures were available primarily to persons wealthy enough to afford an attorney and perhaps not available to those who didn't have the financial means. **Ms. Reilly** disagreed that the law was inequitable. She stated that a Public Defender or a Defense Attorney all work under the same law. Ms. Reilly said that when she is prosecuting a case and trying to decide what a fair resolution is, she does

not consider if the person has an attorney or who the attorney is. It's based on the facts and the person's prior record.

Senator Bunderson asked for clarification that methamphetamine and other substances, not just alcohol, were deterrents to driving skill. He also asked Ms. Reilly what is meant by "implied consent" when accepting a drivers license. **Ms. Reilly** replied that a Drug Recognition Examiner (DRE) would be more of an authority, but certainly a person who is driving and under the influence of methamphetamine which is a central nervous system stimulant is a risk to other drivers on the road. She further stated that some prescribed controlled substances are a danger when driving and especially when mixing with alcohol. The DREs give a longer field sobriety test that is administered in those cases. In terms of the "implied consent," that comes with the privilege of driving.

TESTIMONY:

Major Steve Jones, Idaho State Police (ISP), stated that nationally approximately 40% of fatality crashes were alcohol related and in Idaho, the statistics are 39.7%. Every fatal crash costs the state of Idaho about 3.2 million dollars; every serious injury costs the state and taxpayers about \$220,000 for each person injured. He said that ISP officers dedicate their lives to improve traffic safety and they think that this legislation will provide a deterrent to drinking and driving. It will also help provide the evidence that is needed for successful prosecution.

Rondee Blessing, Prosecutor, Canyon County Prosecutors Office, reported that profiles of car crashes caused by DUI offenders show that they are often repeat offenders. She stated that MADD was currently tracking 200 open cases of drunk driving statewide. She told of one example of a repeat offender who was given an aggravated DUI in 2005 and, in that particular case, the offender registered a .26 while driving from Boise to Nampa (although he didn't realize he was in Boise). He then went through a Burger King parking lot going approximately 35 mph and hit a sixteen year old on a bike. The sixteen year old now has permanent scarring to his face. **Ms. Blessing** believes that this law, with additional penalties imposed upon a defendant, will help prosecutors curb the DUIs that are occurring in Ada and Canyon counties.

Senator Davis stated his concern over increasing the sentence from 180 days to one year. **Ms. Blessing** responded that deterrence is an important aspect of this bill. She believes that a one year suspension would be more impressive than six months to be without a motor vehicle. **Senator Davis** said he couldn't see how somebody under the influence would have the rational thought to stay away from a car because of the one year suspension. **Ms. Blessing** responded that she thought the impression was directed to the sober mind and would make an impact on individuals who are not drinking.

Liz Davis, President of MADD, Idaho State. She stated that her expertise was in the victim services arena, but she hopes this legislation will close gaps that many repeat offenders are able to fall through.

David Cavanaugh, Officer of Boise Police Department (BPD), is part of the Selective Traffic Enforcement Patrol specializing in DUI enforcement and also a DRE. He explained that if a person agrees to take an evidentiary test, the license is suspended for 90 days, the first 30 days is absolute. If that person is arrested two years later and they agree to take another evidentiary test, under the present law their license is suspended for one year. There are drunk drivers out there who are familiar enough with the statute to refuse, knowing that their penalties will be less. So rather than cooperate with the investigation, they refuse and the sanctions against them for the license suspension are substantially less; six months rather than one year if they cooperate. This would be a good reason to pass this legislation.

MOTION: **Senator Bunderson** moved that S 1397 be sent to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

S 1398 **Relating to the Authority to Establish Roadblocks**

Senator Bunderson explained that this legislation is designed to reduce the number of motor vehicle drivers choosing to drive while under the influence of drugs and/or alcohol, thereby, making our roads safer for law-abiding citizens.

Specifically, this legislation allows law enforcement officers to set up temporary sobriety checkpoints. Senator Bunderson referenced handouts to the committee; two letters from the Attorney General's office, Mr. Bywater and Mr. Jorgenson. Mr. Jorgenson's letter concurs that this legislation meets constitutional provisions. There has been a question about why this legislation didn't state that the local agencies would have to write rules. It has been confirmed with Mr. Jorgenson and it is implied in the letter from Mr. Moffat that the Supreme Court ruling (*Michigan v. Sitz*) specifies that local agencies would have to establish rules and ordinances that comply with the rulings of the Supreme Court in order to effect the sobriety checkpoint. This bill, if passed, would establish something in Idaho that exists in forty other states. He further stated that the risk of sobriety checkpoints will influence behavior and make our streets safer.

TESTIMONY: **Kevin Settles**, owner of Bardenay, stated that he did not believe that roadblocks were effective and that they gave a negative image of our city. He actively works on liquor abuse issues and serving alcohol to minors in the state of Idaho. He is opposed to this bill and thinks it makes people uncomfortable who come into downtown Boise to patronize businesses such as his. He referenced a 1988 Supreme Court case (*State of Idaho v. David L. Henderson*) in which they threw out citations that were issued by the Boise Police Department during a roadblock. In that case, the roadblock was up under the same conditions that this law would allow. He said his argument was not about the legalities of this issue, but the effectiveness of it. He stated some quotes from that case: "perhaps the most important attribute of our way of life in Idaho is that an individual is free to stroll the streets, hike the mountains, and float the rivers of this state without interference from the government." Mr. Settles opposes this

bill. In answer to a question from Senator Davis, Mr. Settles said the above referenced Supreme Court case was a state issue and at that time it was illegal to conduct a roadblock in this state under the state constitution.

Major Steve Jones, ISP, said they would not be setting up roadblocks on state or federal highways where there were high speed limits because it was not practical. He said ISP would probably be assisting the local agencies on their projects. Statistics offered at a conference sponsored by MADD and the National Highway Traffic Safety Administration claimed that, of the forty states that permit roadblocks, there was a 20% reduction in fatality crashes involving alcohol in the first year roadblocks were allowed.

Senator Lodge was concerned about the collisions occurring on state and federal highways if the ISP was not going to be putting roadblocks on those highways. **Major Jones** said these collisions were on every road in the state. He said that ISP might be involved in roadblocks, but it was not practical to bring traffic to a standstill where speed limits were 65 mph. **Senator Lodge** suggested the possibility of directing traffic off the freeway ramp to check people. **Major Jones** thought that might work. It would reduce congestion and allow ISP to conduct some drug/alcohol screening of the drivers. **Senator Lodge** agreed that where there were high speeds, the danger increases. **Major Jones** said they would have to weigh the safety of conducting the roadblock with other factors. Typically, roadblocks have not been a good way of detecting drunk drivers, but they have been extremely successful as a deterrent to drunk driving.

Senator Davis said he would like to have the bill held over at the discretion of the Chairman. He also said that there was a 2004 decision from the Idaho State Supreme Court which concluded that in *State v. Henderson*, roadblocks established to apprehend drunk drivers violated Article 1, Section 17 of the Idaho Constitution.

Without objection, the Chair will hold the bill at the discretion of the Chair with a pledge to the committee to bring back the bill at the first opportunity and it would be advertised one day before the meeting. The Chairman said they would not be able to allocate an hour and a half, but will try to allocate enough time to proceed with further discussion and Senator Davis' challenge.

ADJOURNMENT: The meeting was adjourned at 3:00 p.m. by **Chairman Darrington**.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 24, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session, and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:30 p.m.

RS 15865C2 **Relating to Fish and Game**

MOTION: **Senator Richardson** moved to send RS 15865C2 to print. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

H 535 **Relating to Sexual Offenders**

Representative Mike Mitchell introduced this bill to the Committee. **Rep. Mitchell** explained that this bill is dealing with Violent Sexual Predators (VSP). The amendment changes existing law relating to VSPs to expand public awareness by disseminating name, address, and photo to all major local radio and television media. Newspapers already receive this information. In addition, the bill will allow the registration fees to be deposited into a special account instead of a county account. The sheriff could then use these funds to further send out information on the VSPs to schools or community centers. **Senator Darrington** reminded Rep. Mitchell and the Committee that there is legislation in process that will raise the registration fee to \$40. He also asked if Rep. Mitchell had the full support of the county sheriffs. **Rep. Mitchell** responded that he was aware of the legislation increasing fees and that yes, he did have the support of the sheriffs.

MOTION: **Senator Richardson** moved to send H 535 to the Senate floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS 16083 **Relating to the Legal Rate of Interest**

Senator Davis explained that this bill changes the interest rate on judgements from a variable rate to a flat rate of 12%. At this time, the

Department of Health and Welfare (H&W) has not made an effort to collect interest on past due child support payments because calculations are more difficult than they are capable of making. They will collect interest if they get a certification from a Certified Public Accountant (CPA). This bill will make collections easier by changing the rate of interest from a variable to a flat rate. All judgements will be affected.

MOTION: **Senator Jorgenson** moved to send RS 16083 to print. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

MINUTES: **Senator Lodge** moved to accept the February 20, 2006 minutes as written. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

H 536 **Relating to Human Trafficking**

This bill amends current law by adding a new Chapter 85, Title 18, *Idaho Code* entitled "Human Trafficking." The intent of this legislation is to address the problem of human trafficking and to provide criminal sanctions for persons engaging in this activity within the state of Idaho. **Representative Donna Boe** introduced H536 stating that the bill provides for legislative intent, defines human trafficking, provides for enhanced penalties, allows for restitution and rehabilitation for the victims, and asks for the evaluation of the services and laws in the state of Idaho.

Chairman Darrington asked how the definition of human trafficking was determined. **Rep. Boe** stated that it was a combination of the definition in the Federal model legislation as well as suggestions from other sources. **Chairman Darrington** asked for a description of the testimony that supported the existence of human trafficking in Idaho. **Rep. Boe** explained that there is trafficking in Idaho.

Most of the testimony heard supported activities in recruitment, harboring, transportation, provision, or obtaining a person for labor or services by using force, fraud, bondage, or slavery. One example was of sheep herders hired to care for sheep out in the desert and almost abandoned without food or water, nor were they paid for their services. Another example was given by a counselor from Nampa regarding "baby brides." **Senator Richardson** asked for an overview of the victim protection portion of the bill. **Rep. Boe** responded that it was hard for a victim to report this sort of criminal action. They are often isolated, can't speak the language, and from a completely different culture so it takes tremendous courage to come forward and get away from the situation. They are often afraid of law enforcement and, in many cases, have been brought into the country illegally so they are without any protection or services. People they might trust would be a counselor, or a nun or priest from a church.

This bill provides that the trafficker must pay restitution and rehabilitation. Traffickers make a lot of money because they pay no labor cost. Nationally, the income from trafficking nearly equals the drug trade and the gun trade. **Senator Kelly** asked how can the zero fiscal impact reconcile when reports are requested. **Rep. Boe** answered that there were already personnel available within the agencies to do these reports.

Senator Bunderson asked how this bill correlates with the kidnaping laws. **Rep. Boe** stated if, for example, the victim was kidnaped and used in servitude, those actions would fall under both provisions, this bill would enhance the kidnaping laws.

Marikay Jost, Idaho Council of Catholic Women, testified in support of this bill. She said having this law would help everyone involved: law enforcement, the judicial system, and the community at large.

Senator Burkett asked for some clarification regarding the human sex trafficking part of the bill. **Rep. Boe** said that the bill refers to any commercial sex activities.

MOTION:

Senator Lodge moved to send H 536 to the Senate floor with a do pass recommendation. **Senator Richardson** seconded the motion.

Senator Davis was concerned about the operative language in the bill. Would it solidly make trafficking a crime? There was not a prosecutor in the room to answer this question, but **Chairman Darrington** will address the issue on the Senate floor. **Senator Bunderson** wants to make sure this is a strong bill and to make sure that the issue of pimp transferring to pimp, or one business of this nature selling to another, is clearly defined as trafficking. The motion carried by **voice vote**.

H 534a

Relating to Statute of Limitations

Chairman Darrington welcomed **Representative Debbie Field** to introduce H 534, as amended. This bill amends current law to eliminate the statute of limitations for prosecution of child sexual assault and an act of terrorism. **Rep. Field** focused on child sexual abuse and talked about the incredible stories that came forward during testimony before the House committee when this bill was presented to that committee. Those testifying were asked to focus on the issue of statute of limitations in their testimony and respected that request. **Rep. Field** emphasized that this was an insidious crime and that the perpetrators should be held responsible for their actions. The changes set forth in this bill sends a clear message that this crime is serious and is put in the same category as murder, manslaughter and rape.

Senator Jorgenson asked if this bill would be retroactive. **Rep. Field** said that the Attorney General said they could not go back to those instances where the statute of limitations had run out. The House did add an emergency clause to this bill.

Senator Kelly asked about the terrorism part of this bill because terrorism is covered in other parts of the code. **Rep. Field** said that the purpose of this bill is to bring all related actions that would not have a statute of limitations into one place. In this case, the provision also remains in the terrorism section of the code.

Senator Jorgenson stated that he had worked on several pieces of

legislation involving sexual abuse, not only in this legislature, but in other states and with other organizations. He further stated that this bill is essential to give people authority to go back, like in the case of flashbacks, to prosecute an abuser. He strongly advocates this bill.

Paul Steed, a teacher, spoke in support of this bill. Nationwide, especially since the Catholic priests drew attention to this issue, legislation has been focused on two areas: 1) Make the reporting law as strong as possible, and 2) Remove the statute of limitations on child sexual abuse. **Mr. Steed** gave examples of Idaho cases where both of these issues would apply.

Senator Sweet stated that he appreciated Mr. Steed's efforts and time on this issue. He then asked for an explanation about how an abuser could only be sentenced for 150 days after admittedly molesting 24 young scouts. (This related to one of the examples Mr. Steed used.) **Mr. Steed** answered that the judge said that prisons were not set up to handle this case and he also made the naive assumption that this offender was a first time offender. People who understand pedophiles say, if a pedophile is caught, it means they are not a first time offender.

Senator Kelly asked about the reporting requirement. **Mr. Steed** responded that in Idaho, an instance of abuse must be reported within 24 hours. Usually, by the time the case gets through the courts, the one-year statute of limitations for reporting has run out and people take the chance of that occurring rather than reporting when they discover an incident.

MOTION:

Senator Davis moved to send H 534a to the Senate floor with a do pass recommendation. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT:

Chairman Darrington adjourned the meeting at 2:20 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 27, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:34 p.m.
- S 1407** **Relating to Judicial Districts**
- Patti Tobias**, Administrative Director of the Courts, explained that this bill amends existing law to increase the number of district judges and resident chambers in the First and Third Judicial Districts. The First Judicial District has not added a district judge position since 1997 and the Third Judicial District has not added one since 1996. There has been a significant increase in cases filed in the district courts in the last ten years, especially in drug and meth related crimes. These districts have the heaviest caseloads in the state.
- MOTION:** **Senator Jorgenson** made a motion to send S 1407 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- S 1408** **Relating to Judges' Retirement and Compensation**
- Patti Tobias** explained that this bill amends existing law relating to judges' retirement and compensation. The amendment increases fees in civil actions and appeals; and increases the percentage of salary deductions and fund contributions. Since 1947, the retirement system for appellate and district judges has been funded by civil filing fees, employer contributions, and employee contributions. The present level of contributions to the judges retirement fund is inefficient and the fund has a negative cash flow balance. The bill proposes that certain civil filing fees be increased by \$14; an amount which remains within acceptable limits when compared to other western states and federal court filing requirements. In addition, judges and the employer (the State) would increase their percent of contribution to this fund. She further stated that there was no change to retirement benefits.

MOTION: **Senator Bunderson** made a motion to send S 1408 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. **Senator Lodge** abstained from voting due to a conflict of interest. The motion carried by **voice vote**.

S 1409

Relating to Courts

Patti Tobias explained that this bill would create a funding mechanism to permit the Supreme Court to purchase additional years of service for certain retiring magistrate judges. Under *Idaho Code 59-1363*, an employer may purchase up to 48 months of additional membership service in the Public Employment Retirement System of Idaho (PERSI), at full actuarial cost, for an employee. She further said that this bill would create a Senior Magistrate Judges Fund which would be used to purchase additional years of service for retiring magistrate judges pursuant to a schedule to be established. The funds would be generated by a \$6.00 increase in civil filing fees. The purchase of additional service would provide an incentive for magistrate judges to continue working part-time as senior judges following retirement, thus providing a pool of senior judges that will be needed to handle the increasing caseload in the years ahead. There is a technical amendment to restrict the limits in accordance with PERSI and the United States Internal Revenue Service and **Ms. Tobias** asked that the bill be sent to the 14th Order.

MOTION: **Senator Kelly** moved to send S 1409 to the 14th Order for amendment. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1398

Relating to the Authority to Establish Roadblocks

Senator Bunderson stated that last week there was a potential conflict in an Idaho Supreme Court ruling that indicated that an action taken by a law enforcement officer where there was not expressed legislative authority was in opposition to Idaho's Constitution. There was also a Supreme Court case for a U.S. Supreme Court ruling between *Michigan Department of State Police v. Sitz*. In that ruling, former U. S. Supreme Court Rehnquist wrote the majority opinion outlining guidelines that, if complied with, would meet constitutional muster.

Senator Bunderson pointed out some statistics of alcohol-related crashes from a letter from John Moffatt, Regional Administrator for the National Highway Safety Administration. Mr. Moffatt's letter also referenced the benefits from other states indicating that a range of 16% to 37% reduction of fatalities when sobriety checkpoints were imposed in those states. He said there were 40 jurisdictions and states that currently have sobriety checkpoints. Mr. Moffatt also said that the perception of risk of being stopped was important because it persuades motorists who might otherwise opt to drive while impaired, to modify their consumption of substances.

TESTIMONY: **Rebekah Cudé**, Deputy Attorney General, was invited to speak to Senator Davis' previous question about the potential conflict between the Idaho Supreme Court ruling and the U.S. Supreme Court ruling. She explained that in the context of the Idaho Supreme Court in *State v. Henderson*, they were specifically discussing the Idaho Constitution.

Using the framework of an earlier case of *Brown v. Texas*, they came to the conclusion that, under Idaho's constitution, sobriety checkpoints were unconstitutional without legislative approval. This case listed three requirements: without probable cause, without prior judicial approval, and without legislative authorization. In the Henderson case, it was decided that there needed to be one of those three requirements. Up to that point, the legislature had looked at Section 19-621 *Idaho Code*, that said, the only justification to establish roadblocks was with reasonable suspicion or probable cause. Later in *Michigan v. Sitz*, the opinion said that sobriety checkpoints could be constitutional requirements of the U.S. Constitution. Ms. Cudé suggested that this case could be referenced when decisions are made in Idaho regarding sobriety roadblocks.

Senator Davis said that, in his reading of the Idaho Supreme Court Fees' decision, the wording of the two constitutional provisions is similar, referring to the fourth amendment and section 17 of the Idaho Constitution. This court has, at times, construed the provisions of Idaho's constitution to grant greater protection than that afforded under the U.S. Supreme Court's interpretation of the federal constitution. Senator Davis asked what he would do with the Supreme Court's words "to grant greater protection than..." talking about Idaho's constitution over the fourth and fourteenth amendment.

Ms. Cudé said in the context of that opinion, the discussion was whether or not to afford greater protection. Currently, states are free to interpret their constitution to provide greater protection to citizens than the U.S. Constitution provides. They are not bound by the U.S. Supreme's Court interpretation of the U.S. Constitution. A state cannot provide less protection but they can provide more.

Tom Ryder, President of Downtown Boise Association, **Mike Fitzgerald**, Vice President of Idaho Lodging and Restaurant Association (ILRA), **Curt Knipe**, Owner of Angel's Bar & Grill, and **John May**, Owner of Owyhee Plaza Hotel all spoke in opposition to this bill. The consensus from their testimony was, it would project a negative image to the downtown area. They further maintained that the merchants are currently vigilant in creating a safe atmosphere. They all believe the current system is effective. Currently, with probable cause, police may pull over any suspicious drivers.

Marty Durand, representing the American Civil Liberties Union (ACLU), spoke in opposition of the bill stating that it violated states' rights and infringed on citizen's rights. She also stated that Driving under the Influence (DUI) roadblocks were inefficient.

Sheriff Chris Smith, Canyon County, and **David Cavanaugh**, Boise Police Department, both spoke in favor of this bill because many accidents caused by drunk drivers involve innocent victims. Sheriff Smith pointed out that the checkpoints would be limited by policy which is generally adopted from model policies drafted by the International Chiefs of Police or the National Sheriffs Association. This policy limits those stops to no more than three vehicles at a time. **Officer Cavanaugh**

pointed out that the high visibility of roadblocks were beneficial because they would serve as a deterrent. There would not necessarily be an arrest.

Liz Davis representing Mothers Against Drunk Drivers (MADD) testified in favor of the bill.

Senator Bunderson said that in 2000, the Mesa Arizona Police Department conducted two sobriety checkpoints during a holiday weekend and of the 1500 vehicles passing through the checkpoints, 96.8% of the drivers supported the checkpoints. He also reminded the committee that 80% of the states have these checkpoints in place. He further encouraged support of the bill to give law enforcement another tool to encourage better driving habits. He stated that no checkpoint could be set up and be constitutional without compliance to the ruling of the U.S. Supreme Court. As Ms. Cudé indicated, if she were called on to defend this statute, she would be totally comfortable that it would withstand Idaho Supreme Court scrutiny.

MOTION: **Senator Richardson** moved to send S 1398 to the floor with a do pass recommendation. **Senator Bunderson** seconded the motion.

DISCUSSION: **Senator Davis** said he agreed with most of Senator Bunderson's position. He also agreed with the observations made by business and industry that they currently have an excellent working relationship with the City of Boise and the Police Department. He will support the motion, but by supporting it, he is hoping that the "and" will be read as an "or." He said he was going to let the Supreme Court make the decision.

Senator Richardson commented that he thought our law enforcement was smart enough not to put roadblocks in areas that would cause traffic congestion. He said he thought the most effective part of this was that there was a possibility of a roadblock. **Senator Burkett** said, to him, it gets down to how the Supreme Court ended their decision, "perhaps the best attribute of the way of life in Idaho is that individual citizens are free to stroll the streets, hike the mountains and float the rivers of the state without interference from the government." He said he didn't think this state needed roadblocks and he would vote no on this bill.

Chairman Darrington was not in doubt, the motion **did not** carry and was held in committee.

ADJOURNMENT: **Chairman Darrington** adjourned the meeting at 2:58 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 1, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session, and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

RS 16148 **Senate Concurrent Resolution;** Rejecting Pending Rules of the Idaho State Board of Dentistry.

RS 16149 **Senate Concurrent Resolution;** Rejecting rules of the Department of Health & Welfare governing the medical assistance program.

RS 16150 **Senate Concurrent Resolution;** Rejecting Pending Rules of the Idaho State Board of Dentistry.

MOTION: **Senator Kelly** moved to send RS 16148, RS 16149, and RS 16150 to print. **Senator Bunderson** seconded the motion. The motion carried by **voice vote**.

RS 16129 **Relating to the Sexual Offender Registration Notification**

Senator Darrington explained that this legislation allows an exemption for certain people accused of statutory rape to avoid the sex offender registry. The exemption would only apply to defendants nineteen or twenty years of age who are not more than three years older than the victim.

MOTION: **Senator Richardson** moved to send RS 16129 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 16141 **Senate Joint Memorial;** to the Senate and House of Representatives of the United States Congress.

Senator Sweet introduced Bryan Fischer representing Idaho Values Alliance. **Mr. Fischer** explained that this Joint Memorial would send a message to the congressional delegation urging them to support the Constitution Restoration Act (Act) of 2005. The Act is designed to protect

a religious liberty in the United States by limiting the jurisdiction of the U.S. Supreme Court over certain matters of religious expression. It was crafted as a result of the increasing tendency of the U.S. Supreme Court to encroach on religious liberty at the state and local level. This is grounded on a provision that is found in the federal constitution in Article 3, Section 2 which gives constitutional authority to Congress to limit the jurisdiction of the Supreme Court.

This memorial would protect such things as “under God” in the Pledge of Allegiance, our national motto of “In God We Trust,” and the public display of the Ten Commandments from legal challenge. It would return to the state of Idaho the authority and liberty in jurisdiction to decide matters of religious liberty and the expression of public religious sentiments by public officials. Senator Larry Craig and Representative Butch Otter are among the co-sponsors of this legislation. This memorial would assist them in shepherding this bill through Congress by showing the support of the Idaho Legislature and the citizens of Idaho.

Senator Davis asked how these sections in the constitution work themselves around *Marbury v. Madison*. **Mr. Fischer** replied that Article 3, Section 2 of the federal constitution gives to Congress the right to limit the jurisdiction of the Supreme Court in matters that it decides should be exempt from appellate review. The bill would retroactively free the states from any prior decisions made at the federal court level on these matters.

MOTION: **Senator Sweet** moved to send RS 16141 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

RS 16064 **Relating to the Idaho School for the Deaf and the Blind**

RS 16097 **Relating to the Public Schools**

MOTION: **Senator Bunderson** moved to send RS 16064 and RS 16097 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS 16180 **Relating to Concealed Weapons**

Senator Sweet explained that this legislation would deal with some technical aspects of our concealed carry law. It extends the period of a concealed carry license from 4 years to 5 years and raises the renewal fee from \$12 to \$15. In this modification, it is also required that renewal notices be mailed out ninety days prior to expiration. In addition, the old language referencing “mining, lumbering, logging, and railroad camp” has been eliminated. A clarification is made that licenses are issued on behalf of the state of Idaho.

Senator Darrington asked if the law enforcement agencies and the prosecutors were in agreement with this legislation. **Senator Sweet** replied that it was his understanding that these items were agreed upon. **Senator Burkett** asked about the type of guns this law covered. **Senator Sweet** said that this law was never meant to apply to rifles or long guns, it only applies to pistols and revolvers. **Senator Kelly** asked why a definition of property was included within the body of the bill and did not

include vehicles. **Senator Sweet** said the definition was put into the bill because of a recommendation to better define the type of property rather than “fixed place of abode” or “fixed place of business.” Motor vehicles are covered specifically in another part of the bill.

MOTION: **Senator Jorgenson** moved to send RS 16180 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1414 **Relating to Crime Victims Compensation**

Senator Jorgenson explained that this bill addresses the need for mental health treatment for victims of trauma arising out of covered criminal cases. It states the definition of “extenuating circumstances” under which the industrial commission may waive the current \$2,500 cap on mental health benefit to allow mental health treatment to continue for as long as needed subject to an annual review and a cap of \$25,000.

Dr. Timlin, a criminal psychologist from Couer d’Alene, spoke in favor of this legislation. **Senator Richardson** asked if the benefit could be for a witness to a crime, for example, a child witnessing the abuse of its mother. **Dr. Timlin** responded that the benefit was for the victim only. She said there was a \$500 benefit for a witness to a crime.

MOTION: **Senator Burkett** moved to send S 1414 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. **Senator Davis** was concerned with the cap and thought the definition of “extenuating circumstances” could be stronger. The motion carried by **voice vote**.

S 1356 **Relating to Domestic Violence Crime Prevention**

Senator Jorgenson explained that this bill is related to domestic violence and amends current law to increase the maximum effective period for protection orders in certain cases, to revise the limitations a court may impose in a protection order, and to make technical corrections.

Senator Burkett questioned the word “annoying” in the list of actions that are being restrained. Another area of concern is the inclusion of indirect communications. **Heather Reilly**, Deputy Prosecuting Attorney, responded to these questions. The term “annoying” comes from other code sections such as the stalking code as well as the state’s witness code. This language is not new, it is something that is currently being used in those types of crimes where protection orders cannot be utilized. The language in this bill is designed to describe for citizens and the court, all the types of conduct that can be addressed in civil protection orders. **Senator Burkett** said he was concerned with the number of protection orders issued and all the people affected by the definition of “annoying”. **Ms. Riley** responded that the judge would review the petition and determine if it was appropriate to issue a protection order. She said that “annoying” was important to be in this bill because it tracks with other codes that relate to this area of law. The prosecutor would not be involved until after the protective order is violated.

Senator Sweet wanted confirmation that this bill would go to the

amending order. **Senator Jorgenson** confirmed and said he had copies of the language that would be in the amendment. The bill does not mandate expansion of time or distance; it merely gives the court the authority to institute the criteria if the court deems it necessary.

MOTION: **Senator Davis** moved to send S 1356 to the 14th Order for amendment. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1415 **Relating to Statewide Communications Interoperability**

Colonel Dan Charboneau, Director of the Idaho State Police explained that this bill creates and defines the governing structure of the Idaho Statewide Interoperability Executive Council (SIEC). He stated that the bill was not just for law enforcement, but for the safety of both public and private safety responders. The purpose of the SIEC is to work with the Idaho Bureau of Homeland Security and the Idaho Department of Administration to move state agencies forward in radio interoperability. This will be a partnership between local, state, and private entities that will make plans and adopt standards to improve state public safety communications. There is a sunset clause of December 31, 2012, set by the Federal Securities Commission, at which time the council must conclude all business.

Bill Bishop, Director, Board of Homeland Security, gave further support to this bill. He provided some history about how the Idaho safety communications system developed. He said this legislation will ensure that Idaho has a system that operates daily in the normal course of public safety operations and that the same system can be used in case of a catastrophic event.

Pam Ahrens, Director of the Department of Administration, and Chairman of the Information Technology Resource Management Council, spoke in support of this bill. She is a member of a committee made up of state agencies that have been working together for ten years to create a shared infrastructure for a microwave system that has been upgraded to digital resulting in a statewide state of the art shared system.

Senator Sweet asked about funding when the grant runs out in 2007. **Colonel Charboneau** said one of the first tasks of the council would be how to fund itself. **Senator Sweet** asked about the reference in the statement of purpose to private sector entities/agencies and what those would be? **Colonel Charboneau** said that an example could be a hospital. It is possible that the first responder could arrive at the scene and turn on a camera that would transmit images to other responders including hospitals. There could be cases where doctors could watch the scene and guide responders on actions needed to help victims. All the entities have not been identified yet, but there will be many opportunities to expand the participation in the network.

Senator Richardson stated that he attended another committee meeting where there was a discussion of an Idaho network that could be used for all communications in Idaho. **Ms. Ahrens** answered that the first effort

and main focus was on radio interoperability and a microwave system. The state agencies are already working together and the next step is to incorporate the private sector.

MOTION: **Senator Bunderson** moved to send S 1415 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 579 **Relating to the Peace Officer Standards and Training**

Mike Kane presented this bill as a housekeeping bill prepared jointly by the sheriffs, attorney general, and post council. **Mr. Kane** gave a brief description of each change.

MOTION: **Senator Lodge** moved to send H 579 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 580 **Relating to False Reports of Explosives**

Mike Kane explained that this bill added dispatcher to the list of persons or institutions where making a bomb threat would be a felony offense. Civilian employees of police departments or sheriff's offices and 911 centers are added to the list. This closes a loophole in current law.

MOTION: **Senator Lodge** moved to send H 580 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

H 581 **Relating to Adoption**

Senator Lodge acknowledged Representative Kathie Garrett and Mandalyn Hulsizer, CASI Foundation. **Senator Lodge** brought H 581 to the Committee. She explained that in Idaho, the United States (US) Citizenship and Immigration Service adjudicates approximately 300 applications per year for families who adopt children from foreign countries. This bill is intended to simplify the adoption process in Idaho. Under Idaho law, a family who adopts a child in a foreign country must re-adopt that child in Idaho to get an Idaho birth certificate. The family must file an adoption petition before a judge and go through the full court hearing process.

Under the provisions of H 581, foreign adopted children who enter the US by IR-3, which means the US recognizes the adopted child as a US citizen, and has issued a passport, would be allowed to undergo an administrative process to obtain an Idaho birth certificate and bypass the court hearing. Foreign birth certificates cannot be replaced for a variety of reasons and they have to be translated each time they are used. Families have already filled out sixty or more forms in completing the adoption process. Idaho already recognizes the foreign adoption as legal but will not issue an Idaho birth certificate that is in English, that acknowledges the child's birth and parentage, and is easily replaceable if it is ever lost. If a family did not finalize adoption in a foreign country, they could still do so under current law.

Mandalyn Hulsizer, International Adoption Coordinator with the CASI Foundation, spoke in favor of this bill. **Ms. Hulsizer** reiterated the points that had been made by Senator Lodge. She explained that this bill will differentiate between an IR-3 Visa, where the adoption is finalized and recognized by US, and an IR-4 Visa, where the adoption is not finalized and the child is not a US citizen. In current law, that distinction is not made. **Ms. Hulsizer** urged the Committee to vote in favor of this bill.

Chairman Darrington asked if this was a national effort. **Ms. Hulsizer** replied that it was not a national effort, but many states have already enacted or are in the process of enacting similar legislation.

Craig Mauck was at the meeting in support of this bill. He said the intent of this bill was to simplify the process of adoption of foreign-born children and have the State of Idaho recognize the adoption and grant a birth certificate. The United States (US) recognized his daughter as a citizen of the US when they stepped off the plane, but they still had paperwork and appearances to make in Idaho for their own state to recognize the adoption. He would like to help alleviate these requirements for future adoptions.

Michael Backe spoke in favor of H 581. **Mr. Backe** and his wife adopted a child from China. They have completed the process except for the Idaho passport. They inquired at the Boise County Court Clerk's office and were advised to get a private attorney. To get an Idaho Birth Certificate, they must hire an attorney and petition the county court. They believe this process is unnecessary and wastes both personal and public resources. The current law needs to be amended.

MOTION: **Senator Richardson** moved to send H 581 to the floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT: **Chairman Darrington** adjourned the meeting at 2:52 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 3, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senator Sweet

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

MINUTES: **Senator Jorgenson** moved that the minutes of February 22, 2006 and February 24, 2006 be accepted as written. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Senator Bunderson moved that the minutes of February 27, 2006 be accepted as written. **Senator Jorgenson** seconded the motion. the motion carried by **voice vote**.

S 1357 **Relating to Attorney's Fees in Civil Actions**

Senator Corder explained that Section 12-120, *Idaho Code* is a section that defends the average person. The intent was to make a part of the judicial system work faster. The section has within it both vindication and justice by way of settlement. The people affected are those who cannot afford the high cost of an attorney. The bill would raise the amount from \$25,000 to \$50,000. The \$25,000 amount was set in 1988. **Senator Corder** stated that with inflation as it is, that is sufficient grounds to raise the limit. He further stated that insurance companies may make a lower offer than the adjuster has suggested, hoping the individual will accept it. If that person goes to an attorney to get what he is actually due, then he must pay high attorney fees that he cannot afford or most often he will settle for the lesser amount. This is about justification for the "little guy."

Senator Corder stated that in a court case, *Gillihan v. Gump*, Section 12-120, *Idaho Code* appeared to the courts to be an ambiguous statute and the justice's said it was unclear who could make the claim to recover attorney fees. He believes an amendment to the bill will make that clear. However, there are others who believe it should be another way and he would be willing for the Committee to send this bill to the 14th Order. He

would then work with both groups of individuals and attempt to come up with language that satisfies both of their concerns.

Darrel W. Aherin, an attorney practicing in Lewiston and representing the Idaho Trial Lawyers Association (ITLA), explained that Section 12-120, *Idaho Code* does not only involve insurance. Subsection (4) was created for small claims with the hope that the parties would resolve the dispute before it went into litigation. He said most of the cases, big or small, take the same amount of time. The first burden of subsection (4) is for the claimant to voluntarily present all medical records, police reports, and statement of damages. The insurance companies would not have to spend attorney fees gathering this information through depositions, thereby creating a cost savings. The insurance company would then make their evaluation and offer, and the case would settle (or not). If the Plaintiff went to trial and brought a new claim with medical issues not previously disclosed, then they would not be able to recover attorney fees. The second burden is on the defendant. If the claim didn't settle, the insurance company is at risk if it did not offer within 90%, or made a low-ball offer; it would have to pay the other party's attorney fees. The Supreme Court in *Gillihan v. Gump* did not interpret the implementation of Section 12-120, *Idaho Code* as it was intended.

The other issue before the committee is changing the amount from \$25,000 to \$50,000. While the medical and economic losses have gone up over time because of inflation, the insurance companies may have a fair argument that if you get too high, depositions may be required. He suggested that the first issue which would shift the attorney fees should be addressed.

Woody Richards, an attorney, representing Property Casualty Insurers Association (PCI) explained that there are at least two other amendments people would like this committee to consider and since they have not been made public, he wondered if this particular legislation was premature. He asked PCI to make a study and State Farm confirmed the results of that study. The results of the study showed attorney fees in other states with similar laws were as low as \$1,000 and as high as \$10,000; our neighboring state of Oregon was at \$5,500. Idaho's limit of \$25,000 is already high, how would raising this amount affect Idaho's economy. Lawsuits add more cost to the price of insurance products and services. **Mr. Richards** believes this bill may encourage more lawsuits.

James Arnold, an attorney from a small firm in Idaho Falls, explained that his firm discussed the *Gump* case and decided that it would be difficult for them to continue to take these kinds of cases. He stated that if the defense had the opportunity to be paid fees, they would hold out longer and there would not be a reduction in lawsuits.

Senator Jorgenson asked if Mr. Arnold's firm took personal injury cases and did they also attempt to resolve property claims? **Mr. Arnold** replied that they did, but said it was increasingly more difficult to deal with property issues.

Phil Barber, an attorney representing the American Insurance

Association (AIA), stated that he believed an adjustment for inflation was done back in the 1980s resulting in a jump to \$25,000. He further stated that subsection (1) was added to level the playing field. The original intent was that it would be mutual and he contends that the proposed amendment to the bill would no longer be mutual. The public policy has been to avoid unnecessary litigation and to encourage people to settle. Each party would bear the a fraction of the cost of the dispute, which could include the cost of a lawyer. He urged the committee to oppose this bill.

Senator Jorgenson commented that Mr. Barber had indicated that this law would affect everyone involved in a lawsuit, not just insurance companies. **Mr. Barber** said that the statute applied to everyone. **Senator Jorgenson** asked how many insurance claims were made per day in Idaho or in the United States. **Mr. Barber** said that there were many, but very few of those went to litigation. In addition, regarding the discussion of property damage, usually both parties in an automobile accident are insured and the companies negotiate those property damages. **Senator Jorgenson** asked if Mr. Barber could bring in documents that would verify this statement. **Mr. Barber** replied that he would try to do that.

Leander James, attorney, member of ITLA, explained that he was testifying for the middle class. He explained that the purpose of Section 12-120, *Idaho Code* is to provide an opportunity to the middle class and those of lesser means to get justice and possibly get these cases resolved before going through the process. He then addressed the amount of \$50,000, which is not that much when property damages and/or medical costs start racking up. He thinks \$50,000 is a fair amount and that subsection (4) will allow the plaintiffs to get their money back and the attorney fees paid. He supports this bill.

Senator Kelly asked Senator Corder what the amendments were that had been mentioned. **Senator Corder** responded that he knew of one amendment that was represented to be a clarification of *Gillihan v. Gump* and it was a suggestion that he would consider.

Allyn Dingel, an attorney representing State Farm Insurance Companies, spoke in opposition of the bill. He stated that in the bulk of motor vehicle wreck cases in Idaho, property damage claims were not part of the litigation under Section 12-120, *Idaho Code*. Those are taken care of by inter-party voluntary arbitration. He said that \$25,000 was the same as the mandatory liability insurance. The consumer would be at risk if the claim exceeded this amount.

Walter Bittzell, an attorney representing ITLA, spoke in favor of the bill. He stated that this bill helps get cases settled outside the court system.

Rod Saetrum, an attorney representing Farm Bureau Insurance Company, spoke in opposition of the bill. He has been a claim adjuster and a litigator. He believes that citizens should have the same rights as others and thinks the claimant should get fees back. He also thinks litigation will be increased in order to recoup fees.

Robert Beck an attorney from Idaho Falls, works on smaller cases. He thinks this bill is good and the higher amount wouldn't be a detriment.

Ken McClure an attorney representing the Idaho Liability Reform Coalition (ILRC), opposes this bill and urges the committee not to adopt it.

MOTION:

Senator Davis moved to send S 1357 to the 14th Order for amendment. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT:

Chairman Darrington adjourned the meeting at 3:01 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** March 6, 2006
- TIME:** 1:30 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Sweet, Jorgenson, Burkett, Kelly
- MEMBERS ABSENT/ EXCUSED:** Senator Bunderson
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:33 p.m.
- H 627** **Relating to the Idaho Statewide Trial court Automated Records System (ISTARS) Technology Fund**
- Patti Tobias** explained that this bill proposes that the electronic payment convenience fee be deposited in the statewide ISTARS Fund, rather than the district court fund. This bill would be more efficient and facilitate a more economical approach.
- MOTION:** **Senator Davis** moved that H 627 be sent to the floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- H 628** **Relating to Judges' Retirement and Compensation**
- Patti Tobias** explained that this bill addresses the authority of the Supreme Court to adopt, amend or rescind rules for the administration of the Idaho Judges' Retirement Fund.
- MOTION:** **Senator Burkett** moved that H 628 be sent to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.
- H 629** **Relating to Criminal Penalties**
- Patti Tobias** explained that this bill would increase the maximum fines for several misdemeanor offenses. Specifically, this bill would increase the maximum fine for reckless driving from \$500 to \$1,000 and for repeat offenders of reckless driving from \$1,000 to \$2,000. The amount collected over \$300 would be apportioned out to a dedicated fund. The dedicated fund is an expansion of the drug court, mental health court and

family court services fund.

MOTION: **Senator Richardson** moved that H 629 be sent to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S 1428 **Relating to Concealed Weapons**

Senator Sweet explained that this is a technical clean-up bill. He said the following technical changes were made:

- provides a notice of renewal,
- increased the renewal fee from \$12 to \$15,
- increased permit time from four years to five years,
- and finally, the license is issued on behalf of the state of Idaho; there wouldn't be differences from county to county.

MOTION: **Senator Richardson** moved that S 1428 be sent to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 430 **Relating to Mental Health Records of Offenders**

David Hass, Medical Services Manager of Idaho Department of Corrections (IDOC), explained that this bill will allow for certain mental health records to be passed back and forth between the Department of Corrections, law enforcement, and the community retaining some continuity of care for mental health patients.

MOTION: **Senator Lodge** moved to send H 430 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 431 **Relating to Detention without Hearing for Certain Mentally Ill Persons**

Dave Nelson, IDOC, explained that this bill grants authority to parole or probation officers to place probationers or parolees in a mental health facility for treatment when that offender presents harm to himself or others.

MOTION: **Senator Jorgenson** moved that H 431 be sent to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 582 **Relating to Driving Under the Influence of Intoxicating Substances**

Representative Ring explained that this bill would provide a civil penalty of \$250 for refusing to submit to evidentiary testing for alcohol or drugs and would provide for the collection and distribution of penalty monies.

Senator Davis questioned Representative Ring about whether the monies would go to the county justice fund or the county current expense fund. Representative Ring said he would find out and report back to Senator Darrington.

Jim Trent of Mothers Against Drunk Drivers (MADD), also spoke in favor of this bill. Mr. Trent said that an Idaho study taken a few years ago showed that of drivers pulled over, 31% refused to take the breathalyser test.

Senator Davis said he wanted to vote for the bill, but he wanted to know the answer to his question.

MOTION:

Senator Davis moved to send H 582 to the 14th Order for amendment. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

H 530

Relating to Retail Sales of Pseudoephedrine Products

Representative Ring explained that pseudoephedrine is one of the ingredients used to cook and make methamphetamine (meth). In addition to the danger of an explosion and a fire hazard, there is a danger of toxic waste and by-products. During the cooking process, meth permeates the structure where it is being cooked and when a meth lab is busted, it takes between \$5,000 and \$15,000 in hazard material clean-up costs. For every pound of meth cooked, there are seven pounds of highly toxic by-products which are dumped into sewers, septic tanks, or poured out on the ground. Different recipes are used in these meth labs, but the one critical ingredient is pseudoephedrine. Without it, a cooker is out of business.

The purpose of this bill is to make pseudoephedrine difficult to buy or steal in large quantities and cause minimal inconvenience to retailers and customers who have a cold or allergies. This bill would place certain controls on the retail sales of products containing pseudoephedrine and to provide penalties for violation. These products containing pseudoephedrine would be held behind the counter or in a locked display case in retail establishments. It would also be unlawful for a retailer to sell any product containing more than 9 grams of pseudoephedrine. Violation of this law would be a misdemeanor.

JoAnne Condie, Executive Director of the Idaho State Pharmacy Association, stated that they had all come to the table this year and that the main difference from last year's bill was that it didn't require that the pharmacists keep a log on sales.

Nancy Merrill, Mayor of Eagle, spoke to the committee in support of this bill. She said she supported this bill and felt that our cities must do something to ward off this meth epidemic. She cited incidents in their city where people were stealing these products in backpacks or baby carriers and even though they are caught on camera, they get away before anyone can stop them. Last year, cities in the Treasure Valley met with the Pharmaceutical Board, Representative Ring, Colonel Charboneau and pharmacies carrying these products to let the State know that they were in support of something like this.

MOTION:

Senator Lodge moved to send H 530 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion

carried by **voice vote**.

H 589a

Relating to Uniform Controlled Substances

Representative Ring explained that this bill is to provide a prison sentence or fine, or both, for conviction of the manufacture or sale of methamphetamine or amphetamine in the presence of a child. He said that it is known that methamphetamine slowly destroys the middle of the brain in adults. The effects on children who are in the development stage could be even more severe.

There was some discussion regarding 37-2732B (a)(5) concerning quantities of methamphetamine and imprisonment of up to ten years. The amendment changes 37-2732B (a)(5) to (a)(4) from 500 grams to 28 grams. There was some confusion about the amendment.

MOTION:

Senator Burkett moved that H 589a be held in Committee at the discretion of the Chair. **Senator Richardson** seconded the motion.

Senator Davis felt that the language of 37-2732 (a)(4) was more consistent with the language of the bill and he felt no need to hold the bill in committee.

**SUBSTITUTE
MOTION:**

Senator Davis made a substitute motion to send H 589A to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

Chairman Darrington adjourned the meeting at 2:50 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 8, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:34 p.m.

RS 16211 **A Concurrent Resolution Stating Legislative Findings and Requesting a Report from DEQ regarding Mercury**

RS 16161 **Relating to Noncertificated Personnel; Evaluation**

RS 16162 **Relating to Noncertificated Personnel; Probationary Period**

RS 16163 **Relating to Noncertificated Personnel; Written Notice**

MOTION: **Senator Jorgenson** moved to send RS 16211, RS 16161, RS 16162, and RS 16163 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 16170 **Relating to Civil Actions**

Senator Richardson explained what he referred to as the "Castle bill." He said the purpose of this legislation is to give a person immunity from civil action for using force to defend his life, family, or property from those who would seek to harm them.

MOTION: **Senator Jorgenson** moved to send RS 16170 to print. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Mark Funaiole** was appointed to the Commission on Pardons and Parole to serve a term commencing February 22, 2006 and expiring January 1, 2009. Mr. Funaiole gave the committee a brief biography of his career with the Air Force. He said it would be an honor to work with the Parole Board and he looked forward to the challenge.

Chairman Darrington suggested that the committee move on this

appointment rather than holding it until the next meeting.

MOTION: **Senator Davis** moved to send the appointment of Mark Funaiolo to the floor with a do confirm recommendation. **Senator Sweet** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington turned the meeting over to **Vice Chairman Richardson** so that he might present his bill to the committee.

S 1425 **Relating to Sex Offender Registration; Statutory Rape**

Senator Darrington explained that this legislation allows an exemption for certain people accused of statutory rape to avoid the sex offender registry. The exemption would only apply to defendants nineteen or twenty years of age who are not more than three years older than the victim. This bill was crafted with the help of the Attorney General's office. The prosecutors are taking a neutral position.

Marty Durand, representing the American Civil Liberty Union (ACLU), is in support of this bill as they have always seen a problem with treating consensual sex between young people as a criminal offense. It is especially unfair that one of those parties has to bear the burden of registering as a sex offender. She would encourage further legislation.

Senator Burkett asked what the status was in other states regarding the three years. **Ms. Durand** said she looked into this a few years ago, mostly in surrounding states and in Utah the age difference for statutory rape is ten years, other states is five years, which is pretty standard.

Fairy Hitchcock, citizen of Boise, said she was in favor of this bill even though it is opposed in some ways to things that have happened in her family. She believes that prosecutors and law enforcement should take another look at what is happening with underage sex.

Senator Bunderson asked why eighteen year olds were not included. **Senator Darrington** responded that he went as far as he could without opposition from the prosecutors and law enforcement.

MOTION: **Senator Jorgenson** moved that S 1425 be sent to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington returned to chair the remainder of the meeting.

H 631 **Relating to Prosecuting Attorneys**

Representative Pence explained that this bill addressed a unique situation, it confronts our sparsely populated counties. She said that this bill provides the process for a county having less than three resident attorneys to contract for prosecutorial services and to allow a prosecuting attorney to hold another county office.

MOTION: **Senator Kelly** moved to send H 631 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion

carried by **voice vote**.

H 432 **Relating to the Small Lawsuit Resolution Act**

Representative Leon Smith explained that this legislation removes the sunset clause which would have made the Small Lawsuit Resolution Act null and void after June 30, 2006.

Allyn Dingel, attorney, representing State Farm Insurance Companies, opposes this bill and suggests a sunset clause for another three years.

Kurt Holzer, attorney, representing Idaho Trial Lawyers Association, spoke in favor of this bill.

MOTION: **Senator Lodge** moved to send H 432 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

H 633 **Relating to a Drug Hotline Fee**

Representative Rusche explained that this bill supports a 24 hour hotline for reporting tips on methamphetamine laboratories and drug dealing. He said it also authorizes promotion and rewards for reporting and establishes a Drug Enforcement Donation Fund to support these activities. The hotline was modeled after "Citizens Against Poaching" and is endorsed by law enforcement.

MOTION: **Senator Jorgenson** moved to send H 633 to the floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

H 632 **Relating to Concealed Weapons**

Senator Sweet explained that this bill exempts certain detention deputies who have been certified by the Peace Officer Standards and Training Academy from a license requirement to carry a concealed weapon.

MOTION: **Senator Jorgenson** moved to send H 632 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Chairman Darrington** adjourned the meeting at 2:43 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 13, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senator Davis

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

MINUTES: **Senator Jorgenson** moved that the minutes of March 1 and March 8, 2006 be accepted as written. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

Senator Lodge moved that the minutes of March 3 and March 6, 2006 be accepted as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

H 716 **Relating to Criminal Procedure**

Michael Henderson, Legal Counsel for the Courts, explained that this bill would allow a defendant to be discharged, or a judgment amended, upon the defendant's graduation from a drug court program or mental health court program and compliance with any applicable probation terms and conditions. He said that several judges had suggested this procedure to give certain defendants a second chance with the added incentive to complete the mental health or drug court.

MOTION: **Senator Jorgenson** moved to send H 716 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 472a **Relating to the Cigarette Tax**

Dan John of the State Tax Commission explained that this bill changes the penalty for possessing more than ten (10) packages of cigarettes without an Idaho cigarette stamp from a criminal misdemeanor to a civil penalty. The penalty would apply to persons who purchase unstamped cigarettes from internet, catalog, telephone and facsimile retailers. The

penalty does not apply to persons who purchase cigarettes from tribal retailers selling cigarettes within the exterior boundaries of an Idaho tribal reservation.

MOTION: **Senator Lodge** moved to send H 472a to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

H 634a **Relating to Expressions of Apology, Condolence, and Sympathy**

Ken McClure explained that this bill permits health care providers to make statements of apology to a patient following an unintended outcome of medical care and those statements not be used against them at a later time. Because those statements currently are admissible in malpractice actions, health care professionals are cautioned not to make them. He stated that this legislation would encourage open communication between patients and health care professionals yet will not inhibit the ability of a patient to file a malpractice action concerning the quality of care provided.

MOTION: **Senator Sweet** moved to send H 634a to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Chairman Darrington** adjourned the meeting at 2:15 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 15, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senator Davis

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

MINUTES: **Senator Burkett** moved that the minutes of March 13, 2006 be accepted as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S 1441 **Relating to Civil Actions**

Senator Richardson explained that this bill was referred to as the "Castle Doctrine," based on the principle that a man's home is his castle. Its purpose is to protect the homeowner from being sued by an intruder that comes into the home. The state of Florida developed a similar bill after a couple of cases in that state. One case was of a 77 year old man and his wife living in an emergency trailer home after Hurricane Ivan had damaged their house. The man shot an intruder that came into the trailer and prosecutors took three months before announcing that no charges would be filed. In another case, a homeowner was beaten and threatened with death, then charged with manslaughter when he shot his attacker. In that case, the grand jury finally refused to indict the homeowner.

The law in England says that a person who is trying to defend his home may use proportional or reasonable force. In one case, two men came into the home of a man who lived in the country and he shot and killed one of the intruders. He was arrested, put in jail, and sentenced to life in prison. After spending 3 years in jail and after much fury from the public, the charge was changed to manslaughter.

Senator Richardson stated that this bill would give protection for one defending home, family, self, and possessions. There are some current Idaho laws and Senator Broadsword would point those out to the

committee. **Senator Broadsword** said that under current statute, Idahoans have the right to resist and protect what is theirs, even with deadly force. She stated that Idaho Statutes 18-4009, 19-201, 19-202, 19-202a, 19-203 and 19-204 assure those rights. Idaho citizens are not, however, protected against a civil action for defending themselves from a criminal which is what this legislation does.

Lynn Luker from the Idaho Trial Lawyers Association (ITLA) said they were not in opposition of the bill, but discussed some technical changes. This bill allows defenses that are in the criminal code to be applied to the civil side. He said the word “action” in the first subsection (paragraph 1, line 13) needs to be changed to “liability.” This would mean you would not have to pay, but a lawsuit could be filed. The second area of concern is the immunity provision. The ITLA believes it should go both ways because there may be instances where this defense could be raised inappropriately. He also mentioned that the customary terms used when addressing attorney fees are “attorney fees and costs.”

Senator Broadsword explained that the ITLA had also suggested moving the amendment from Chapter 2, Title 5 to Chapter 8, Title 6. She said they did have the amendments drafted as ITLA requested and there was still one minor detail that must be worked out before they would be approved.

Senator Richardson summarized the bill by its three components:

- 1) If someone forcibly intrudes into a home or occupied vehicle and the law abiding occupant has the reasonable fear of imminent death or bodily harm, he may use force against the intruder without fear of prosecution or civil lawsuit.
- 2) Removal of the duty to retreat from attack.
- 3) Immunity from prosecution and civil liability for harming an attacker.

MOTION: **Senator Sweet** moved to send S 1441 to the floor with a do pass recommendation. There was no second. **The motion failed.**

Senator Jorgenson moved to send S 1441 to the 14th Order for amendment. **Senator Richardson** seconded the motion. The motion was carried by **voice vote**.

H 713a **Relating to Adult Criminal Sex Offenders**

Senator Goedde presented maps to the committee showing sex offenders in the area of each committee member’s home address. He pointed out that this was a statewide issue and this bill prohibits adult criminal sex offenders from being on the premises of a school. They may not remain on a public place within 500 feet of a school, be on a school conveyance with children under the age of 18, or reside within 500 feet of a school. The exceptions are: parents picking up or dropping off their children attending the school, students meeting the definition of sex offender enrolled in school, and parents attending parent/teacher conferences with prior notice. Violation is deemed a misdemeanor.

Dr. Cliff Green, Executive Director of the Idaho School Boards Association (ISBA), explained further that there were sex offenders living all around Idaho's schools. What happened in Northern Idaho has had quite an impact in that area and during the annual ISBA business meeting, the Coeur 'd Alene School Board brought a resolution to the business process, which has become this bill.

Senator Darrington stated that, as a member of the Governor's Criminal Justice Commission, as were two other members in the room, he recalled testimony in that Commission regarding research showing that sex offenders living in the vicinity of a school were no more apt to re-offend than those that live some distance away. There is a lot of paranoia with regard to community which isn't research-based, but is the way people feel. **Senator Darrington** asked if this was based on a different research. **Dr. Green** said he did not know of any research that would contradict Senator Darrington's statement.

Senator Jorgenson asked if the schools had a policy that a teacher, custodian, bus driver, groundskeeper or anyone employed by schools cannot be sex offenders. **Dr. Green** said they must all go through background checks. **Senator Lodge** mentioned a case where the sex offender was convicted at 14, now 36 and has done nothing wrong, but as a delivery person was told that he could not drive by schools and was also told that he could not attend his 15 year old son's sport events at school. **Dr. Green** answered that after 10 years, one could approach a judge and have his name removed from the sex offender registry if there had been no offenses in that 10 year period.

Senator Kelly asked how a registered sex offender would know if there was a child under the age of 18 on the school grounds. There is an implication that they can be on the school grounds when there are no children under 18 there. **Dr. Green** said they could call the school district. **Senator Kelly** clarified that it would be up to that person to discern whether or not there was anyone under the age of 18 on those school grounds. **Dr. Green** confirmed that they would have to make that effort.

Senator Burkett asked what the administrators were doing if the child was in school and the parent was a sex offender. **Dr. Green** said it would depend on school district and the local policy. **Senator Darrington** asked if the parent could go to sporting events of their child. **Dr. Green** replied that the district policy would dictate and it might be that they would need to be escorted or supervised. They would not make it easy for the sex offender to be on school property; the intent is to protect the children. **Senator Darrington** said that this committee shares that interest, but this committee also knows the great range of sex offences which qualify for the registry.

MOTION:

Senator Richardson moved to send H 713a to the 14th Order for amendment. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

H 602a

Relating to Motor Vehicle Registration

Representative Wills explained that this legislation will establish Project CHOICE, a career ladder for the Idaho State Police (ISP). Project CHOICE, an acronym for Creating Hope, Opportunities and Incentives for Career Employment is a career ladder program that uses a point system. This would give ISP staff an opportunity to move up a career ladder, but also stay where they are and still improve their working relationship and their performance in the line of duty. By using this point system, they could earn a salary increase by their training and experience. Currently, the Idaho State Police is rapidly losing trained and qualified personnel to cities, counties, and private business for better pay and benefits.

Representative Wills further stated that a fund would be established by assessing an additional \$3 annual fee from each vehicle registration including trucks, cars, and motorcycles. The fund will address the critical need of recruiting, training and retaining qualified Idaho State Troopers for the public safety of Idaho citizens. In 1972 with approximately 500,000 motor vehicles in the state, there were 168 officers; in 2006 there were 1.5 million motor vehicles registered in the state and only 128 officers. The population has increased, but the number of state troopers on the highways has decreased because they have been funneled off to other divisions to work serious crimes.

Colonel Charboneau, Director of Idaho State Police (ISP), explained the importance of recruiting and retaining the ISP's quality employees. He reiterated Representative Wills' comments that this plan was based on good performance first, but in addition takes in categories of experience, education, certification, and training. It stays within the Hay Plan, which was created to make state salaries equitable. They looked at other possible funding situations, but support the \$3 increase for vehicle registration to deal with this career plan. As the account builds, additional personnel could be hired for the critical needs of the ISP.

Senator Darrington asked if this put money into the Hay Plan for career ladders and also how much money would this raise? **Colonel Charboneau** said it would go into the Hay Plan, and the money raised would be about \$3.9 million a year after one full year of implementation.

Senator Jorgenson said that it states in the Idaho Constitution that the revenue from motor vehicle fees must go to the rebuilding of highways. **Representative Wills** responded that the question had been asked in the House and the Attorney General's opinion was that Project CHOICE is within the legal requirements of the Constitution. **Senator Jorgenson** asked for a letter to that affect so he could support this bill. **Senator Bunderson** commented that today money is received from the highway distribution fund to pay for Parks & Recreation, Idaho Department of Transportation, and local highway jurisdictions in Idaho. That has long been interpreted as relevant to roads. **Senator Richardson** asked if this funding was controlled through JFAC. **Senator Darrington** said that the bill says "subject to appropriations." **Colonel Charboneau** said that funding would go through standard appropriations process.

MOTION:

Sen Lodge moved to send H 602a to the floor with a do pass

recommendation. **Senator Bunderson** seconded the motion. The motion carried by **voice vote**.

H 762

Relating to Uniform Controlled Substances

Representative Ring explained that this legislation is to reduce the allowable possession limits of pseudoephedrine from 500 grams to 25 grams. He stated that persons convicted of possessing a quantity of more than 25 grams and less than 500 grams could be sentenced to imprisonment of up to 10 years and a fine up to \$25,000.

MOTION:

Senator Bunderson moved to send H 762 to the floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Darrington** adjourned the meeting at 2:48 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 20, 2006

TIME: 1:35 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senator Sweet

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session, and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

RS 16266 **Relating to Capitol Building Projects**

Chairman Darrington announced that Tim Mason, Administrator of Public Works, would present RS 16266. He went on to explain that this bill comes about because of the resolution that passed both bodies of the Legislature with regard to remodeling of the Capital Building.

Tim Mason explained that this RS would provide for another project delivery method. The approval of the Capitol expansion would allow the Department of Administration to enter into a contract for construction management at risk services. Such a contract must follow all rules and regulations as other contracts and would allow the construction managers to be involved with such things as design, pre-qualifications, scheduling, cost control, material packages, and construction administration. This service would act as the general contractor and would guarantee the cost of the project. The Department has set an emergency date of July 1, 2006 so that the contractor at-risk will be involved in the early stages of the development of the project. There is a sunset date of June, 2010 which would be the end of the Capitol expansion project.

Senator Bunderson wanted some understanding of this concept. He could be a general contractor or he could not, how does that work?
Mr. Mason said that the construction manager may not self-perform any of the work, he simply administers the contract. A construction manager at-risk may self-perform some portion depending on what the work is and what his capabilities are. He is responsible for the full project, even his own workers.

Senator Kelly asked why is statutory approval needed for this service and

does it apply just to this project. **Mr. Mason** answered that it does apply to just this project and approval is needed because it is unique in that this is such an important building project.

Senator Burkett asked if other states like Utah were using this type of service. **Jan Frew**, Deputy Administrator of the Division of Public Works, answered that the state of Utah is using the construction manager at-risk concept. In fact, several other states use this type of construction management. **Senator Burkett** asked how this type of concept would affect the bidding process. **Ms. Frew** responded that since this project is going to be so large and so long, there may be several general contractors under the construction manager at-risk. They want the "at-risk" part so it limits the State's contractor list. The State has to list every state and private contractor whenever they do a project and the State has the risk of all of those contractors. In a construction manager at-risk situation, that manager assumes the risk.

MOTION:

Senator Richardson moved to send RS 16266 to print. **Senator Bunderson** seconded the motion. The motion carried by **voice vote**.

H 630a

Relating to Threats of Violence

Representative Wendy Jaquet presented this bill to the Committee. This bill adds to existing law to provide that a person who willfully threatens to commit a violent act on school grounds by use of a firearm or other deadly or dangerous weapon is guilty of a misdemeanor; and to define the terms. This legislation protects children and adults from acts of violence while on school grounds.

Chairman Darrington commented on the absence of members from the School Boards Association or the Superintendents Association. He read a note from the Executive Director of the School Boards Association (SBA) that stated the Association attorney had reviewed the bill and, according to the attorney, remedies already existed for assault and referred to those. Having said that, SBA has no desire to oppose this legislation and will stay neutral.

Sgt. Steve England from the Hailey Police Department, testified in support of H 630. He was a school resource officer at Wood River High School when two fifteen year old students threatened a "Columbine" action during graduation services. He said they could not legally detain these students under current laws. They were ultimately detained by parents signing an "out of control" document.

Senator Burkett asked what items were found during the search. **Sgt. England** responded that they found some air pistols, air soft guns, bullets but no actual high powered rifles or pistols.

Harold Petty, a detective at Boise Police Department, has been a school resource officer for the last 12 years. He believes that current laws are sufficient to handle any scenario of this type that arises in the schools. He believes this bill will allow schools to hand over the responsibility to control

students to law enforcement. The schools have the ability to handle students that make these threats and to lock them out of school if necessary. He is concerned that it will create a tremendous case load for small jurisdictions that do not have the resources to handle additional cases. He is concerned that this will create a nightmare for law enforcement. He opposes this bill.

Senator Bunderson wanted to know how to address the severity of the concerns expressed by the sponsor of this bill. **Detective Petty** answered that he believes that existing code allows him to write those reports under aggravated assault or aggravated battery.

Senator Jorgenson asked what would be the elements of proof if there was a threat. **Detective Petty** said that it would be any conversations overheard by witnesses, written documentation, phone calls, text messaging, or computer generated messages; all of those could be used as evidence. **Senator Jorgenson** asked that if some students thought they were abused or maybe they were abusive themselves, went to a resource officer and indicated that someone had made a threat, would that constitute an enforceable threat? If there was sufficient information from a witness, it would constitute a threat.

Senator Bunderson asked if existing law covered this issue, why would passage of this law inundate law enforcement with additional paperwork. **Detective Petty** responded that this would be a "hand off" situation where the school will pass the problem onto law enforcement. In speaking for his particular agency, they have a good "handle" on their schools with the contact they have with teachers, administrative staff, and the freedom of information they get from the kids. If they follow through with the information they get they can curb a lot of those activities that would fall under the actions this law covers.

Senator Richardson wanted to know how you differentiate between passive conversation threatening statements and actual threats. **Detective Petty** said that when you work with kids enough, you understand that in the heat of passion, there is anger. The follow up with that child is important. Does he have a reputation and a history of being an intimidator or is he the victim who has taken all that he can take. A determination of the seriousness must be made. **Detective Petty** also said that he doesn't know whether or not it is serving a purpose by writing another law. The juvenile detention centers and the prosecutors always have the final say as to who is booked into the facility, so just because the reports for a misdemeanor is written doesn't mean that defendant can be taken to a detention center. The law enforcement officer could still release him to his parents.

Senator Jorgenson said that he had no doubt School Resource Officers (SRO) are important to a school but in the case of small schools where there are no SROs, wouldn't it be better for the police to handle the situation rather than an educator. **Detective Petty** answered that he thought they should be able to do that now under current law.

Mike Kane from the Sheriff's Association supports this bill. He referred to the situation at Wood River High School where two students had a whole student body terrorized. They were under pressure to determine how to deal with this scenario. Why wouldn't current laws work for this case? The laws of assault requires an action of assault and imminent danger to be brought into force. This law is for very special cases which: a) threaten, b) threaten to use a firearm, c) uses a firearm on a school ground, and d) intends to be a threat. Under those conditions it is a misdemeanor. It is not an assault, this is a new crime.

Senator Burkett asked if there was a current law in the state of Idaho that covers telephone threats. **Mr. Kane** answered that there is a law in the state of Idaho called "Telephone Threats" where the telephone is used to call and a threat is made.

Senator Bunderson stated that Detective Petty was concerned with the smaller schools, and asked if the Sheriff's department handle small school districts. **Mr. Kane** answered that they did. **Senator Bunderson** asked if Mr. Kane had the same concerns with the amount of requests from schools. **Mr. Kane** responded that he did not have those concerns. Detective Petty thought that making a threat serves as an assault, but it does not.

Representative Jaquet gave a closing summary.

Senator Burkett wanted to applaud Detective Petty as someone working in law enforcement. However, he believes the drafters of this bill, with the amendments, have placed "sideboards" to the law. This bill deals with intent, threats involving a dangerous weapon, and violence being accomplished on the school ground. That is an appropriately defined crime that meets a fairly narrow set of bounds. He thinks the bill deserves the Committee's support.

MOTION:

Senator Burkett moved to send H 630a to the floor with a do pass recommendation. **Senator Bunderson** seconded the motion. The motion carried by **voice vote**. The **Chair voted no**.

H 583

Relating to Criminal Procedure

Chairman Darrington announced that Representative Janice McGeachin would be presenting H 583. He also announced that, if necessary, this bill may be continued at the next meeting since the room must be vacated prior to 3:00 p.m. He also outlined the framework for the manner in which the speakers would present and respond. Other than David Leroy and Heather Reilly, testimony will be limited to three minutes.

Representative McGeachin explained that H 583 establishes a due process for the wrongfully accused. It provides for the expungement of criminal records of innocent persons which means those records may be destroyed or sealed if certain conditions are met. This bill would apply to any person who has not been found guilty or pleads guilty to any related plea bargains or lesser offenses.

Representative McGeachin further explained the process for this provision. It is the intent of the legislation to seal the records and have all reference to those records removed from any indices that are available to the public. The case shall be deemed never to have occurred and the petitioner may lawfully reply accordingly upon any inquiry into the matter. Current law in Idaho provides for the expungement of records for juveniles, but there is no such provision for innocent adults. In Idaho, case law is inconsistent on this issue. Representative McGeachin said she had researched language for this issue in other states; there are 32 states that have this type of provision. H 583 language is similar to five states and to the language in Idaho's juvenile provisions. Due to the ramifications of advanced information technology and the Patriot Act, it is critical that injured people receive due process.

Representative McGeachin has high regard for law enforcement, but sometimes mistakes are made. H 583 is not a bad cop bill; it is a good citizens bill. The bill provides for due process as set forth in the Constitution of the State of Idaho, Article I, Section 18.

David Leroy, Attorney, spoke in favor of H 583. He described two examples of what could happen on any given day depending on the judge and the circumstances that day. There is nothing that is consistent in the court system today in regard to expungement. An Order for Expungement directs and orders those to whom it is sent to remove the information from their files. This could go to entities such as the FBI, the Transportation Department, the county Sheriff's Department, Police Departments or whoever is listed in the order. It is important to have all these departments and all their locations notified, especially in this information age. Unless all those records are addressed, there has not been an effective remedy at all. There is no statute in the state of Idaho that gives legal authority to expunge records.

This law only applies to those who were never found guilty of a felony nor have they been involved in a plea bargain to a lesser crime. There is one minor adult expungement statute on the books. If someone is arrested and summoned, but not charged and/or is acquitted at some period of time before or after that arrest, they can send a request to the Department of Law Enforcement to have the entry removed from the law enforcement books. If that request is approved, those records are destroyed. However, the only records that are expunged are those at the law enforcement agency or whoever they do business with. All other court and public records remain intact. It is not a remedy in today's world.

Mr. Leroy restated the process given by Representative McGeachin. He said that currently expungement is strictly at the judges discretion. This law will provide a standard of proof and will not compromise public safety. Mr. Leroy proceeded to cover all eleven of the concerns put forth by law enforcement. See Attachment A. He continued by saying that this bill would allow people who are innocent law abiding citizens to clean up inappropriate criminal justice records. He urges support of this bill.

Senator Davis asked if time were not a problem would he agree to some

of the compromise language? **Mr. Leroy** stated that this should be revisited continually until there is a statute that is right. This is a matter that should be examined more broadly, but this bill is a start. There is nothing wrong with an amendment and tinkering with the standards or adding additional information. He also emphasized that he knew of no amendment that was rejected solely because of the lateness of the hour.

Senator Jorgenson asked if the issue was “charged” versus “convicted.” **Mr. Leroy** said that was absolutely correct. This particular statute strictly deals with someone charged, but not convicted of what they were charged with or any related offense. **Senator Jorgenson** said that it is his experience that conviction is what affects employment and triggers questions. **Mr. Leroy** said he wished that were true, but because employers are so sophisticated now, and because there are procedures such as withheld judgements, they don’t just ask if there is a conviction anymore. Most applications ask if the applicant has been arrested, charged with, or convicted of a crime. **Senator Jorgenson** asked if this would give rise to a civil remedy. **Mr. Leroy** answered that he didn’t believe so because it couldn’t be proven.

Discussion of H 583 will be continued at the next meeting.

ADJOURNMENT: **Chairman Darrington** announced that the testimony will come to a conclusion at the meeting on Wednesday, and the meeting was adjourned at 2:50 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 22, 2006

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Kelly, Clark (filling in for Senator Burkett)

MEMBERS ABSENT/ EXCUSED: Senator Burkett

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session, and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:38 p.m.

H 583 **Relating to Criminal Procedure; Expungement**
Testimony continues from Monday's meeting.

Senator Darrington explained the format of today's meeting. He would allow the time needed for the lead opposition, Heather Reilly from the Prosecutor's Association, to begin her testimony. He would then go to the names on the sign-in sheet from Monday and today alternating pro and con, and asked everyone to limit their testimony to three minutes. At the end of the hearing he would allow Mike Kane to give a summary not to exceed five minutes for the opposition to H 583 and he would allow Rep McGeachin or David Leroy three to five minutes for the last word.

Heather Reilly, representing the Idaho Prosecuting Attorneys Association, explained that this bill is a worthy concept, expungement for innocent people. However, the Prosecuting Attorneys Association thinks the bill is written too broadly and that unintended and dangerous consequences could occur because of the drafting of this legislation. Idaho Code currently does not have law that allows for adults to receive expungement of criminal reports or records. Of the Western states, none have a law that relates to the expungement for the innocent.

Ms. Reilly continued by saying that contrary to what you were told on Monday, it is the prosecuting attorneys view that there is no uncertainty among the Courts regarding a person seeking expungement. She said the Court of Appeals settled that question with the 2004 case *State v. Dorn*. That case involved a person convicted of a sexual crime and *Idaho Code 19-2604*, which has to do with the dismissal or discharge of certain offences. The Court of Appeals stated that Idaho law authorizes no type

of expungement of criminal records for adult offenders other than that authorized in *Idaho Code* 19-2604. The Court went on to define expungement in that context. It refers merely to the dismissal or discharge of an offence as opposed to the sealing or destruction of the records.

Ms. Reilly continued with the argument that this bill had been drafted by copying some text from the Juvenile Expunge Code. Using the Juvenile Code and expecting it to work in a completely different context is a problem. It does not apply in the context of those who are found not guilty. She said that language must be crafted that fits in this context but still gives Judges the tools needed to make the correct decision and grant expunge only in cases in which it is deserving... those factually innocent. She also pointed out the importance of these records to law enforcement for investigation, to prosecutors for case evaluation, to courts for sentencing. This is not adequately allowed in HB 583. Federal courts do have "inherent authority" in the context of expungement. But, the courts use a balancing of equities analysis in order to make the decision. This balancing of equities test is needed and is absent from HB 583. Lastly, she suggested that there be amendments to this bill, or to hold the bill in committee. The proposed amendments are attached.

Senator Bunderson asked if amendments were added to this bill, would Mr. Koebbe be expunged? **Ms. Reilly** said it would be the judge's decision. **Senator Bunderson** asked if this would give the judge legal authority? **Ms. Reilly** said yes.

Senator Clark asked if someone was arrested based on probable cause, goes to court and is found not guilty - what happens to "probable cause?" **Ms. Reilly** said she believed the probable cause standard would remain. There is a difference between probable cause and being able to prove a case beyond a reasonable doubt. **Senator Clark** asked if an attorney took his client to a judge that gave him a nay answer regarding expungement, what are the chances of that attorney going back to that judge. **Ms. Reilly** said they could appeal.

Rick Koebbe, citizen of Garden City, stated that he was stopped for an improper left turn and when he departed from the scene, the officer said he ran over his right toe. Mr. Koebbe said that four days later he was arrested at his house and was told that he intentionally ran over the officer's toe. He said the officer's audio proved that was not true. After seven months, the charges were dismissed. He added that now he has a felony criminal record. His FBI report says that "Garden City Police Department charged one of assault and battery in front of a law officer." Mr. Koebbe said it was wrong that innocent people have criminal records. He asked the committee for the support of this bill.

Marty Durand, representing American Civil Liberties Union, who supports HB 583. She stated that as a former prosecutor, she knew that mistakes, while rare, were made. She explained that this bill provides a procedure for clearing an innocent person of a criminal record.

Charles Wadams, Garden City Prosecutor, representing Garden City and

the Garden City Police Department, stated that he agreed with Heather Reilly and the Idaho Prosecuting Attorneys Association that this bill is too broad. He explained that he had some issue with the factual representations that were made before this committee. He said there were two sides to the story that was reported by Mr. Koebbe and Mr. Leroy. According to the Garden City Officer, when Mr. Koebbe drove off after receiving the traffic citation, he ran over the officer's foot. When the officer was preparing his report and listening to his audio, Mr. Koebbe said something and the officer thought it showed intent to run over his foot. He took his report to the Ada County Prosecutors Office, who reviewed it. They took it to a Judge, who signed off on an arrest warrant. Mr. Wadams said he accommodated Mr. Koebbe at the request of his attorney to give him a plea agreement. He looked at his prior record and asked Mr. Koebbe to plea to the infraction, and he would dismiss the misdemeanor and now he is trying to expunge the misdemeanor. Mr. Wadams just wanted to give some balance to the committee.

Teresa Hampton, representing the Idaho Association of Criminal Defense Lawyers, explained that Mr. Leroy has outlined the eligibility and technical application of this bill. She stated that the reason to vote for this bill is because mistakes can be made. If you have been arrested by law enforcement and had your case evaluated by capable attorneys and go to trial and twelve Idaho citizens find you not guilty, you ought to be able to get a clean slate.

Dan Charboneau, Director of Idaho State Police, referred to *Idaho Code* 67-3004, which deals with Criminal History Records and Crime Information. He said that Section 10 of that bill has two provisions where records can be removed from the state and federal database by written request directed to the department:

1. Any person who was arrested or served a criminal summons and who subsequently was not charged by indictment or information within one year of the arrest or summons, and
2. Any person who was acquitted of all offenses arising from an arrest or criminal summons may have the fingerprint and criminal history record taken in connection with the incident expunged.

Director Charboneau said he was also concerned about the unintended consequences this bill might present.

Chief Dave Moore, City of Blackfoot, representing the Idaho Chiefs of Police Association, cited the O J Simpson trial who was found not guilty after a lengthy trial. If this case had been handled in any of the cities in Idaho would we really want to remove all of the information regarding the case including police reports. The burden of proof is always upon law enforcement in any case. Police officers make mistakes and sometimes those mistakes can lead to dismissal of a case. Dismissal of a case for lack of evidence is one thing; but destroying the history of that case is something that should not happen. H 583 states that a judge can expunge a case and expungement will not compromise public safety. There will be a lack of definition of "public safety." Chief Moore stated that these records are needed for historical purposes. My recommendation on behalf of the many law enforcement agencies

represented is that the committee send this bill back to the sponsor.

Jeremy Pisca, attorney with Evans Keane law firm and representing the Idaho Allied Dailies Association, stated that they oppose this bill and believe there could be a more precise and better bill to protect innocent people who have been falsely charged. One of the chief concerns would be in the realm of child sexual abuse. He said that in many of these criminal cases involving children, a decision needs to be made whether or not to put that child on the stand and have them face direct and cross examination. If they choose not to put the child on the stand, the evidence goes away, and the criminal doesn't get caught. The charge should be left on the record, identifiable to prosecuting attorneys, so that the record may be checked in later cases. He recommended that the committee hold the bill or send it to the amending order.

Kevin Richard, representing the Idaho Press Club, stated their concerns and opposition of H 583. He said that while one can physically expunge the record, it's impossible to retract the media coverage of the courts. Those records can be googled easily. They are also concerned about the potential liability that this creates. Newspaper or TV stations would have to defend a story without the court record as the foundation of the story.

Mike Kane, attorney representing the Idaho Sheriffs Association, stated that the law enforcement legislative committee, the Attorney General's office, and the Association of Counties are also in opposition of this bill. He stated that he had been a prosecutor and a defense lawyer and that innocent people do get charged. The title of this bill says "Innocent Persons" however, there is no mention of "innocence" within the bill. The definition of "public safety" is vague and the judge will have to decide that. This bill can be fixed simply by a demonstration to the court that you are innocent. With expungement of the records, it allows people to go to a potential employer and lie about previous charges. This bill could be sent to the amending order and make the standard absolute innocence.

Dave Leroy summarized his opinion by referring to Mr. Koebbe's case and that the Garden City Prosecuting Office did not remember a key element to the case. He had said the officer's report stated "I hope you get your foot run over in the street." as the statement attributed to Mr. Koebbe. Based upon that quote, the Ada County Prosecutors Office represented to a judge, under oath and for probable cause purposes, this quote. The judge was incensed by it and issued a warrant for the arrest of the defendant. In fact when the audio tape was enhanced, the quote was "hope you get your quota here on this street." Mr. Leroy went on to say that this bill is about public policy matters and he has presented a balanced process with this bill. He also said that there was no reason for law enforcement to destroy their records; they would only be sealed away from public access. This bill just says to a law abiding citizen that if you are wrongly charged, the unfair allegations will be removed from the public indices.

Senator Jorgenson asked if Mr. Leroy would be willing to accept the language in Oregon's statute as an amendment to your proposal. **Mr. Leroy** said it would probably be fine. His view is to get this bill passed

this year and it can continue to evolve. **Senator Jorgenson** asked Mr. Wadams if he had known this case would be moved to expungement, would he have offered a plea in the Koebbe case. **Mr. Wadams** said he didn't know, but thought it was disconcerting that something that was dismissed pursuant to a plea agreement, would now be expunged. The dismissal is not a comment on guilt or innocence.

Senator Clark directed his comments to Marty Durand. He said that ISP can do expungement on particular cases. There may be criminal cases that should not be expunged. **Marty Durand** said that she thought that under this bill the court had the discretion.

Senator Kelly asked Mr. Leroy why the judges were not given more discretion? **Mr. Leroy** said that the discretion herein is found in the judge making a finding in regard to public safety. The public safety language comes from the juvenile code of the State of Idaho.

Senator Davis asked if the federal standard of harassment, probable cause, group arrest, was by common law or by federal statutory standards. **Mike Kane** said there was not a federal expungement statute.

MOTION:

Senator Richardson moved to send H 583 to the 14th Order for amendments. The **motion died** for lack of a second.

There was no other motion so the Chair will hold the bill.

ADJOURNED:

There being no other business, **Chairman Darrington** adjourned the meeting at 2:53 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 27, 2006

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Bunderson, Davis, Lodge, Sweet, Jorgenson, Kelly, Clark (filling in for Senator Burkett)

MEMBERS ABSENT/ EXCUSED: Senator Burkett, Sweet

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session, and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:34 p.m.

MINUTES: **Senator Kelly** moved that the minutes of March 15, 2006 be accepted as corrected. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

Senator Richardson moved that the minutes of March 20, 2006 be accepted as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS 15768 **A Concurrent Resolution; Rejecting Pending Rules of the State Board of Education Governing Thoroughness**

RS 16247C1 **Relating to the Office of the State Board of Education; Scholarship Program for Math and Science Teachers**

MOTION: **Senator Bunderson** moved to send RS 15768 and RS 16247C1 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS 16289 **Relating to the Idaho Hospital Contribution Act; to establish a hospital fund**

MOTION: **Senator Richardson** moved to send RS 16289 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

HCR 45 **A Concurrent Resolution Stating Findings and Proclaiming September 14 as Missing Persons Day**

Representative McGeachin introduced Audra Burgener, who was before the committee to request that September 14 be set aside as

Missing Persons Day in Idaho. Ms. Burgener is the aunt of Amber Hoopes, who was abducted from her home on September 14, 2001 in Idaho Falls and has not been seen since. The resolution also designates a song, "The Room We Never Go In" written by a local Idaho Falls man in memory of Amber Hoopes. Ms. Burgener spoke to the committee about the loss of her 20 year old niece. On the evening of September 14, 2001, Amber disappeared from the office of her grandparent's business, approximately 20 feet from the back door of the house and has not been seen or heard from since. Ms. Burgener hopes for this day to unite communities with education on prevention and for remembrance of loved ones that are lost, but not forgotten.

Senator Darrington asked if Amber was abducted or was she a missing person. **Ms. Burgener** said it was believed that she was abducted. **Senator Richardson** commented that the family had been dedicated to finding Amber, continuing efforts among the community every year.

MOTION:

Senator Richardson moved to send HCR 45 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

H 814a

Relating to Judges: To Revise Provisions Applicable to Salaries of Judges

Senator Darrington explained that he, Senator Cameron, Patti Tobias, several of her judges including members of the Supreme Court, and Judge Smith met with Senate leadership to make recommendations to get these judges up to a pay level with other counterparts in state government. The bill was started in the House and amended in the House. **Patti Tobias** explained that there had been a four year plan to move salaries to a more competitive, market-based system. However, there was strong sentiment in the House for an annual review of judicial salaries, hence the 2nd, 3rd, and 4th year of the original proposal was dropped.

Ms. Tobias referred to a handout, which outlined comparisons of salaries with Ada County attorneys, Law School faculty/deans, Federal Judicial positions, and with the Western States as well as the United States. She noted that the justices were paid lower salaries and yet, they make the most important legal decisions in the state. Idaho judicial salaries have dropped to some of the lowest in the nation. These salaries need to be raised in order to attract and retain the best and the brightest on the bench. Ms. Tobias reminded the committee that this bill provides the three percent increase granted to all other state employees and provides an appropriate adjustment for the third branch of government. They have no other compensation tools available to them. The pay adjustment requested for judges is approximately three percent which would make a total of six percent.

Senator Kelly asked when the judges had prior increases. **Ms. Tobias** said that last year state employees and the judges received a one-time one percent increase. The year before that the judges had a two percent

salary increase and the years before that nothing. **Senator Kelly** asked for comments on recruiting and retention for the judges position. **Ms. Tobias** said they monitored recruitment by the number of applicants for positions plus the quality of the applicants. The applicants for the magistrate judges has been sufficient in numbers and quality. But the district judges in areas outside of Ada County have lacked in numbers and in depth of quality.

MOTION: **Senator Jorgenson** moved to send H 814a to the floor with a do pass recommendation. **Senator Bunderson** seconded the motion. The motion carried by a **voice vote**.

SPECIAL: **Katie Twiggs**, the Page for the Judiciary & Rules Committee was honored for her work during the second half of this legislative session. She was presented with a gift from the committee with a letter of thanks and letters of recommendation.

ADJOURNMENT: **Chairman Darrington** said that any future committee meetings would be called at the discretion of the Chair. There being no further business, **Chairman Darrington** adjourned the meeting at 2:05 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 31, 2006

TIME: 1:30 p.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Vice Chairman Richardson, Senator Sweet

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2006 Legislative Session, and then will be on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Darrington** called the meeting to order at 1:35 p.m.

MINUTES: **Senator Lodge** moved that the minutes of March 22, 2006 be accepted as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Kelly moved that the minutes of March 27, 2006 be accepted as written. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 16312 **A Senate Resolution providing for the amendment of Rule 20 of the Rules of the Senate.**

Senator Davis summarized the history of this amendment and its beginning several years ago. He explained that Article III, Section 9 of Idaho's constitution gives both houses of the Legislature the power to determine their own rules of procedure. This Senate resolution would amend Senate Rule 20 regarding meetings of standing, special or select committees. The resolution deletes an earlier section of the rule, and is intended to supersede any other rules or statutes in conflict concerning those committees.

Senator Davis further stated that the resolution would require all meetings of any standing, special or select committee of the Senate to be open to the public at all times, and describes the conditions under which public testimony would be allowed. The resolution provides that committees could meet in executive session only when necessitated by extraordinary circumstances, and only after the chair has identified the reason for doing so and after the committee has approved such action by a two-thirds vote on the record. The resolution also requires that a committee must give at least 24 hours advance notice that it will consider going into executive

session, and list the person(s) or agency requesting the executive session and the reason(s) why an executive session is being requested - exempt records, pending litigation, employee personnel, discipline matters that could harm an innocent third party, security issues, or acquiring real property – but the resolution prohibits voting or taking any official action while in executive session.

Senator Kelly asked about the rule change that was made last year which said that a committee meeting could be closed at any time by a two-thirds vote and now is being proposed for change. **Senator Davis** replied that last year the matter was on appeal and he did not want any language in the rule that might create an artificial misunderstanding of the constitutional issue by the court. He wanted the court to look at the constitutional right of this legislature to set its own policy and rule.

Keith Allred, representing “The Common Interest,” a citizens group, explained that this form of rule is endorsed by them because of the narrow and extraordinary circumstances as reasons to hold closed sessions. He said that ten western states have rules, five of which have a similar narrowly drafted rule, but he would consider this to be a model rule.

Senator Kelly asked if the other states had constitutional provisions addressing secrecy? **Mr. Allred** said yes, that most of them have some statement in their constitution about openness. He said the exact specificity with respect to committee meetings varies quite a bit.

Senator Kelly had questions for Senator Davis. She asked about meetings where pending litigation would be involved. The language in this exemption doesn't mention having lawyers present. Senator Davis said it was his understanding that meetings in the last ten years that involved pending litigation did have attorneys present. He assumes that would happen in the future.

Senator Kelly suggested that when a committee was considering discipline or dismissal of a member of the Senate, it would seem that the situation would have the potential to harm an innocent third party in regards to the member's family or friends. **Senator Davis** responded that he thought the intent was clear and the defenders of the limitation in this language were present. **Senator Kelly** said she was thinking of a recent ethics committee that was convened and this provision could be argued to have applied to that. That particular meeting was conducted in the open and she was concerned that adding this language would have forced closure of that meeting. **Senator Davis** said that one of the good things about not having gone forward two years ago was that we would probably have a rule that didn't contain that limiting exception. He said that he learned last year that it was healthy for the process and the public to do exactly what was done in that situation.

Senator Burkett said that he was trying to contemplate when the legislature would make personnel decisions since it was his understanding that personnel decisions of the Senate were made by the

President Pro Tem in his executive capacity and that he made the hiring and firing decisions. Senator Burkett said that he was trying to figure out the personnel exceptions and when they would apply. **Senator Davis** said that he struggled with that situation. He said that the Pro Tem hires and fires the two-staff persons that support him. All of the attaches are determined by an attache committee, which consists of the majority leader (Chairman), the assistant majority leader, the caucus chairman, and the Senate Secretary, an ad hoc member. He supposes that the minority party has a similar approach. They almost pulled this section from the rule, but they want to be able to allow the germane committees to have some participation and involvement in personnel decisions regarding their current or future staff.

MOTION: **Senator Davis** made a motion that RS 16312 be printed and sent to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion.

DISCUSSION: **Senator Kelly** commented that she had another RS that would change the same section of the Senate Rules to provide for open committee meetings at all times under any circumstances. She attempted to submit this to this committee as well as to the State Affairs Committee and she would like it on record that there is a proposal and it is unfortunate that there couldn't be a discussion on that as well.

Senator Burkett voiced his opinion to vote no on this bill because he believed all meetings could be held in open session. The two areas of concern to him were litigation and threats of state.

Senator Davis responded that this rule does not say that when you have those matters you shall go into executive session. It is discretionary with the committee and requires a two-thirds vote to determine whether that matter and circumstance justifies further executive consideration.

The motion carried by **voice vote**.

RS 16313 **A Senate Resolution providing for the amendment of Rule 53 of the Rules of the Senate.**

Senator Davis explained that this resolution amends Senate Rule 53 to delete a superseded reference to a code section that has been replaced by other provisions of the Senate rules.

MOTION: **Senator Davis** made a motion that RS 16313 be printed and sent to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS 16314 **Relating to Meetings; providing Legislative intent; and Repealing Section 67-2346 Idaho Code, Relating to Open Legislative Meetings.**

Senator Davis explained that this legislation would delete a code section that has been superseded by other provisions of the Senate Rules that have been found to be constitutional by the Idaho Supreme Court. He stated that this would not modify an Idaho Senate Rule, but would strike a

reference in Idaho Code that is inconsistent with Mason's Manual for procedure. The same language would be established in Rule.

MOTION: **Senator Jorgenson** made a motion that RS 16314 be introduced to print and sent to the floor with a do pass recommendation. **Senator Davis** seconded the motion.

DISCUSSION: **Senator Kelly** noted that earlier in the meeting she had referenced a proposed rule change that she had hoped to have a hearing on. She noted that the language of the proposed rule change was identical to that of 67-2346, *Idaho Code*, providing that committee meetings shall be open at all times. While the proposed rule change will put that language into rule, the proposal also puts in a lot of other qualifiers which will allow closed meetings under certain circumstances. She continued that it was important that there be consistency in what the law prescribes for open and closed meetings. In concept, the clarification of the rule and statutory language as proposed in these series of changes should make future interpretations easier for the courts. However, while the clean-up is good, she disagrees with the changes themselves because of concerns about their effect on open government.

Senator Burkett commented in opposition that he did not have a problem with the statute as that is what we live by as lawmakers.

Senator Davis stated that Mason's indicates as a manual, that the Senate Rules control over statute and the constitution indicates that the Senate is to make the rules governing the body.

The motion carried by **voice vote**.

ADJOURNED: Any future meetings will be at the discretion of the Chairman. There being no further business, **Chairman Darrington** adjourned the meeting at 2:50 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary