

House Judiciary, Rules & Administration Committee

Minutes
2007



MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 11, 2007
- TIME:** 1:40 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representative Bolz
- MINUTES;** Chairman Clark called the meeting to order and introduced the secretary and the new page, Aras Holden. The Chairman then gave the members a brief personal history and asked each member to do the same, including which district each represented and how many terms they have served as Representatives. The five new members were Republicans Bolz, Labrador and Luker and Democrats Bock & Ruchti.
- The Chairman discussed RS's saying they are the personal property of the sponsors. In this Committee, individual folders will be sent down to the floor desks the day of the meeting, so the members will have a change to review the legislation prior to the meeting. These RS's are not to be written on and are not to be shared with anyone until heard by the full Committee and introduced to print. RS's may be returned to the sponsor upon the request of the sponsor, or if the proposed legislation has technical problems. After the presentation of the RS is finished, the members are welcome at that time to ask questions as long as they are recognized by the Chairman.
- SUBCOMMITTE:** The Chairman said there will be a permanent Subcommittee assigned for the Committee for the session. That Subcommittee will be chaired by Representative Leon Smith with the following members: Representatives Wills, Luker, Boe and Ruchti. The Subcommittee will review and make recommendations on the Administrative Rules sent to the Committee. The Subcommittee will also study any complicated legislation that comes before the Committee after it is printed in bill form
- ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 2:05 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 15, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** None
- GUESTS:** Paul Panther, Steve Wolf and George Miller, Idaho Department of Correction; Michael Henderson, Lawyer, Idaho Supreme Court
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes.
- MOTION:** Representative Ring moved to approve the minutes of the meeting held on January 11, 2007, as written. Motion carried.
- RS16486:** The Chairman recognized Paul Panther to explain the proposed legislation. Mr. Panther asked if he could yield to George Miller to present **RS16486**. Mr. Miller said he is a deputy warden in charge of security for the Idaho Maximum Security Institution. This legislation resolves an inconsistency in the application of the administrative exhaustion requirement specified in Idaho Code 19-4206. Idaho Code, Section 19-4206(1) requires prisoners who file a petition for writ of habeas corpus or any other civil action concerning conditions of confinement to establish administrative exhaustion.
- Although the requirement is routinely applied in petitions for writ of habeas corpus, in other types of civil actions such as those involving civil rights claims, the requirement appears to be selectively enforced. Allowing the administrative exhaustion requirement to be circumvented defeats the purpose of the exhaustion requirement, which is to provide the institution housing the prisoner an opportunity to informally resolve the disputed issue prior to proceeding to court. This amendment makes it mandatory for all inmates to demonstrate that they have exhausted all remedies. This procedure allows the inmates and the staff to address and resolve problems before the litigation stage.
- In answer to a question regarding the inmates having their problems resolved in a timely fashion, Mr. Miller said there are established time lines that must be adhered to.
- MOTION:** Representative Smith moved to **return RS16486 to the Sponsor** in order that the language might be redrafted and new legislation brought back before the Committee. **Motion carried by voice vote.**

- RS16488C1:** The Chairman recognized Paul Panther, who asked if Steve Wolf, Chief Investigator with the Idaho Department of Correction might make the presentation. Mr. Wolf said this proposed legislation would make it a felony for a prison or jail employee to have sexual contact with a person on probation or parole. The legislation would also make it clear that it is a felony for a person who is employed in a correctional facility or a probation or parole officer to have sexual contact with a probationer or parolee who is not in prison. Mr. Wolf said it is a security threat to have these kind of relationships in the institutions.
- MOTION:** Representative Nielsen moved **to introduce RS16488C1. Motion carried by voice vote.**
- RS16607:** The Chairman recognized Michael Henderson to explain the proposed legislation. Mr. Henderson said this bill would amend the chapter relating to coordinated family services by providing that family court services coordinators are required to submit to a thorough background check. The legislation would ensure that persons involved in this sensitive task, often involving contact with children, will be carefully screened prior to appointment. There would be no fiscal impact with this legislation. It will protect the security of all those involved.
- MOTION:** Representative Shirley moved **to introduce RS16607. Motion carried by voice vote.**
- RS16611:** The Chairman recognized Michael Henderson to explain. This proposed legislation would enact a new statute requiring background checks, including criminal history checks, for supervised access providers. The bill would ensure that supervised access providers will be carefully screened before being appointed. There is no fiscal impact.
- MOTION:** Representative Smith moved **to introduce RS16611. Motion carried by voice vote.**
- RS16612:** The Chairman recognized Michael Henderson to explain the last piece of proposed legislation on the agenda. Mr. Henderson said this bill would amend the provisions of the Child Protective Act relating to guardian ad litem programs to provide that the Supreme Court will adopt rules, policies and procedures, including fiscal controls and compliance with established standards, for guardian ad litem programs receiving moneys from the grant administrator. It would also require volunteers, coordinators and staff to submit to a thorough criminal history check and sex offender registry check.
- The amendments will ensure fiscal and programmatic oversight of the local guardian ad litem programs, as well as more thorough background checks of program personnel for the protection of children.
- MOTION:** Representative LeFavour moved **to introduce RS16612. Motion carried by voice vote.**
- ADJOURN:** Prior to adjourning, Vice Chairman Smith said his subcommittee consisting of Representatives Wills, Luker, Boe and Ruchti, would review the Administrative Rules submitted to the committee on Tuesday, January

23, 2007, immediately following the full committee meeting. There being no further business, the Chairman adjourned the meeting at 2:20 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 17, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** None
- GUESTS:** Pam Sonnen, Carolee Kelly, Paul Panther and Mary Perrien, Idaho Department of Correction; Kenneth Jorgensen, Attorney General's Office
- MOTION:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Ring moved to accept the minutes of the meeting held on January 15, 2007, as written. Motion carried.
- HCR002:** The Chairman recognized the Chief Clerk to explain the Concurrent Resolution. This resolution provides for the printing of House and Senate bills, resolutions, memorials and amendments for the next two years and fixes the price for printing the same. The Chief Clerk pointed out that the cost of printing each page was \$13 per page in 2005-2006 and has dropped to \$11.50 per page for the 2007-2008 contract.
- MOTION:** Representative Wills moved **to send HCR002 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Wills will carry the bill on the floor.
- HCR003:** The Chief Clerk was recognized to explain. This Concurrent Resolution provides for the printing of the House and Senate legislative daily journals for the next two years and fixes the price for the same. Again, the cost per page dropped from \$13 per page to \$11.50 per page.
- MOTION:** Representative Nielsen moved **to send HCR003 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Nielsen will carry the bill on the floor.
- HCR004:** The Chairman recognized the Chief Clerk to explain. This Concurrent Resolution provides for printing the House and Senate legislative permanent journals for the next two years, and fixes the price for printing the same. The cost per page dropped from \$38 per page to \$32 per page.
- MOTION:** Representative Wills moved **to send HCR004 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Smith will carry the bill on the floor.
- HCR005:** The Chairman again recognized the Chief Clerk to explain. This

Concurrent Resolution provides for printing the Session Laws, fixing the price for printing the same and the price which the public shall be charged for copies of the Session Laws. The cost for printing per page dropped from \$19.10 to \$17.45 per page. The cost to the public for copies increased from \$43 to \$46.50 for single volumes and from \$55.50 to \$59.50 for a set of two volumes.

MOTION: Representative Bolz moved **to send HCR005 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Bolz will carry the bill on the floor.

RS16487: The Chairman recognized Paul Panther who asked to yield to Carolee Kelly to explain the proposed legislation. The purpose of this legislation is to give the board of correction, through the Idaho Department of Correction, the authority to release prisoners from custody on the last weekday preceding a Saturday, Sunday, or legal holiday, when the prisoner's discharge date would otherwise fall on a weekend or legal holiday.

This procedure avoids the potential situation of a prisoner being held in custody beyond his discharge date. It also avoids the potential situation of a prisoner being improperly released prior to his or her actual discharge date.

MOTION: Representative LeFavour moved **to introduce RS16487. Motion carried by voice vote.**

RS16489: The Chairman recognized Paul Panther who asked to yield to Dr. Mary Perrien to explain the proposed legislation. This legislation deals with those persons who are incompetent to stand trial. A court may commit a criminal defendant to the custody of the Idaho Department of Correction if it finds the defendant unfit to proceed and dangerously mentally ill. Under current law, the final decision regarding admission to the Idaho Secure Medical Facility rests with the director of correction, after consultation with the administrator of the state medical facility. The consultation process typically involves acquisition and review of the defendant's mental health and other records by the Department of Correction staff.

Currently, courts commit defendants to the medical facility prior to the authorization for admission by the director. This results in misunderstandings about the defendant's status and the obligations of the parties. The Department of Correction staff does not have the opportunity, prior to entry of the order, to review the defendant's records and make a recommendation to the director regarding admission.

This legislation would resolve the problem by providing that the director must authorize admission of the defendant to the Idaho Secure Medical Facility prior to entry of an order of commitment.

When asked if this proposed legislation had been approved by the Courts, the answer was that it had not been shown to the Courts. Mr. Panther was asked if he would consent to a delay on any action by the Committee until the legislation was seen and approved by the Courts. Mr. Panther agreed to do this.

- MOTION:** Representative Smith moved **to return RS16489 to the Sponsor. Motion carried by voice vote.**
- RS16491:** The Chairman recognized Paul Panther who asked to yield to Pam Sonnen to explain. The purpose of this proposed legislation is to enhance the state of Idaho and Idaho state agencies ability to collect attorney fees and costs awarded against prisoners by a state or federal court order. Currently, the Department of Correction can only collect monies from an inmate account when a judgment is entered. This legislation would summarily permit the Department of Correction to collect an award of attorney fees and costs pursuant to a state or federal court order without a judgment. This legislation would discourage frivolous lawsuits.
- MOTION:** Representative Bock moved **to return RS16491 to the Sponsor.**
- SUBSTITUTE MOTION:** Representative Nielsen moved **to introduce RS16491**, saying the goal of the legislation is to prevent frivolous lawsuits. It would prevent a lot of problems.
- Representative Ruchti spoke in favor of the original motion saying there are current laws in place to prevent frivolous lawsuits. This legislation asks for an award of costs to be done quickly without due process. Representative Wills spoke in favor of the substitute motion. Representative Luker spoke in favor of the intent of the legislation but said that the language needs to be reworked and brought back before the Committee. Representative Smith spoke in favor of the original motion saying the language in the proposed legislation is flawed.
- ROLL CALL VOTE:** Roll Call Vote was requested.
- SUBSTITUTE MOTION:** The Substitute Motion was **to introduce RS16491. Voting AYE: Representatives Nielsen, Shirley and Wills. Voting NAY: Representatives Clark, Smith, Harwood, Ring, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Ruchti, Bock. Motion failed 3-13-0.**
- ORIGINAL MOTION:** The Original Motion was **to return RS16491 to Sponsor. Motion passed unanimously.**
- RS16569:** The Sponsor asked that **RS16589 be returned.**
- ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 2:35 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 23, 2007

TIME: 1:55 p.m.

PLACE: Room 404

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Chairman Clark, Representatives Shirley, McGeachin

GUESTS: See attached sign-in sheets

MOTION: Vice Chairman Smith called the meeting to order and asked the members to review the minutes. Representative Ring moved to accept the minutes of the meeting held on January 17, 2007, as written. Motion carried.

RS16601: Representative Ring was recognized to explain the proposed legislation. This legislation has been brought at the request of law enforcement. Last year the Legislature passed a bill dealing with pseudoephedrine. Shortly after the bill was passed, Congress passed legislation which changed the amount of pseudoephedrine products which can be purchased.

This legislation brings Idaho code into compliance with federal law by changing the amount from 9 grams to 3.5 grams.

MOTION: Representative Wills moved **to introduce RS16601. Motion carried by voice vote.** Representative Hart asked to be recorded as voting "no" on the motion.

RS16678: Michael Henderson was recognized to explain the proposed legislation. This bill would amend certain provisions of the Child Protective Act in keeping with recommendation of the Supreme Court's Child Protection Committee.

The language referring to reasonable efforts to prevent the removal of a child from the home, or to prevent placement of the child in foster care, would be modified to bring it into more exact compliance with federal requirements.

MOTION; Following a lengthy discussion, Representative LeFavour moved **to introduce RS16678.**

SUBSTITUTE MOTION: Representative Luker moved **to return RS16678 to the Sponsor.** In support of the Substitute Motion, Representative Luker questioned if the term "may" in line 38 should be changed to "shall." Also, the language on page 2(l) seems to be a little awkward.

**UNANIMOUS
CONSENT:**

Vice Chairman Smith **asked for and received Unanimous Consent for RS16678 to be returned to the Sponsor for consideration of suggested changes and to be resubmitted at a later date.**

ADJOURN:

Vice Chairman Smith reported on Chairman Clark's condition, saying the Chairman should be able to return on Monday, January 29, 2007. There being no further business to come before the committee, the meeting was adjourned at 2:35 p.m.

Representative Leon Smith
Vice Chairman

Betty Baker
Secretary

MINUTES

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

DATE: January 23, 2007

TIME: 2:40 p.m.

PLACE: Room 404

MEMBERS: Chairman Smith(24), Representatives Wills, Luker, Boe, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: Please see attached sign-in sheets

MINUTES: Chairman Smith called the meeting to order, saying all Administrative Rules received by the committee would be reviewed in the order that they have been listed on the agenda.

DOCKET 05-0102-0601: Nancy Bishop was recognized to explain the **Rules on Secure Juvenile Detention Facilities**. Ms. Bishop said the changes are extensive, but very minor in nature. The proposed changes are needed to clarify certain practices, update definitions and use accordingly throughout the chapter, and remove redundancies. The changes offer uniformity in all areas.

Representative Boe questioned why the language on page 5, section 04 was stricken and new language added which gives the department the authority to enter into contracts with private providers for confinement of juvenile offenders. Ms. Bishop replied that the new language is needed to allow the department to enter into private contracts.

Steve Jett, director of the Southwest Idaho Juvenile Detention Center, said this pending rule deals only with detention centers.

MOTION: Representative Wills moved **to recommend to the full committee that Docket 05-0102-0601 be approved. Motion carried by voice vote.**

DOCKET 11-0501-0601 Lt. Bob Clements was recognized to explain the **Rule Governing Alcohol Beverage Control**. The purpose of the pending rules are to provide rules governing the display of licenses to provide licensees with a specific period of time following loss or a move of a licensed location in which to secure and occupy a new premises and display the alcohol beverage license. Also, definitions are added to clarify vague or conflicting references in Idaho Code, and some sections are updated to reflect changes in licensing practices.

Language is added to clarify what an acceptable partition is. The rules provide that an applicant shall hold only one position at a time on each incorporated city priority list.

Lt. Clements said that venues which sell alcoholic beverages, where minors are in attendance, cause serious problems. Minors and adults will

all meet on the dance floor and often minors in these situations find access to alcohol.

Language has been drafted to resolve situations where licenses are issued which are not being used. There have also been instances of new licenses being used illegally, which is a felony.

Representative Luker questioned the definition of a "Multipurpose Arena" and how the number of 1,000 minimum capacity was reached. The response was that 1,000 seemed to be a reasonable number compared to other facilities. Representative Luker questioned the materials mentioned in the building of a partition, saying there were other materials that could also be used. The response was that the language was only trying to present guidelines. This is simply an attempt to keep alcoholic beverages out of the hands of minors.

The Chairman asked if this rule has already been reviewed by the Senate. Lt. Clements said it has been partially reviewed. The review will continue on Wednesday, January 24.

CON:

Paul Thornton was recognized to give his testimony. Mr. Thornton said he is the owner of Bravo Entertainment. Bravo Entertainment is the largest concert promoter in the northwest, and produces live entertainment events from clubs to amphitheatres in 19 states. Mr. Thornton said he was speaking mainly about the Big Easy Concert House in downtown Boise.

Bravo has always operated the Big Easy Concert House and Restaurant in the same way it runs larger arena events. The security staff is abundant and well trained. All employees are vigorously trained in providing the safest environment possible for the patrons. The Big Easy has never been issued a single citation of noncompliance and has never received a single infraction from the Alcohol Beverage Control.

Mr. Thornton said the language of the pending rule is too limiting and will cause problems. Also, fixed seating is not the answer. The number 1,000 is an arbitrary number. There are many language problems. The pending rule needs to have more thought put into it. Bravo Entertainment would like to be involved in drafting better language.

Representative Luker asked about the capacity of the Big Easy and how alcoholic beverages were currently kept away from minors. The response was that all minors' hands are marked with large black x's upon admittance which won't easily wash off. Security monitors the minors at all times and the bartenders are very careful not to serve them alcohol. The capacity in the Big Easy is 1200.

CON:

Denise Rogers was recognized. Ms. Rogers said she is the Executive Director for the Idaho Licensed Beverage Association. The Association finds the language in the rules to be ambiguous and confusing. It is very important that the rules be written clearly so that any logical person can understand them.

There are ambiguous terms used which are subject to interpretation, such as "suitable premise", "actual use", and "legitimate sales". There is also

concern regarding the limitations on priority lists. Changing the section to allow an applicant to hold only one position at a time on each city list is discriminatory and unnecessary. The Idaho Licensed Beverage Association is willing to work with the Alcohol Beverage Control to rewrite the rules in a more clear and concise manner.

PRO: Germaine Galloway with the Boise Police Department was recognized. Officer Galloway said places like the Big Easy make it very difficult to combat underage drinking. When you have a place that on certain nights becomes a bar, some minors will find a way to drink alcohol.

PRO: Pam Eaton, Executive Director of Idaho Lodging & Restaurant Association and President/CEO of the Idaho Retailers Association, said both associations support the rules from Alcohol Beverage Control. The rules clarify good operating standards.

Representative Wills spoke in favor of the pending rule, saying it is a start in tightening some of the rules of society and it will help provide a safe environment for our youth.

MOTION: Representative Wills **moved to recommend to the full committee that Docket 11-0501-0601 be approved.**

SUBSTITUTE MOTION: Representative Luker **moved to recommend to the full committee that Docket 11-0501-0601 be approved with the exception of Section 010.03, defining Multipurpose Arena, which the subcommittee recommends be rejected. Voice vote was taken with 4 voting in favor of the Substitute Motion and 1 against. Substitute Motion carried.**

DOCKET 11-1101-0601: Director Jeff Black was recognized to explain this **pending rule of the Idaho Peace Officer Standard Training Council.** This rule adds definitions for “correction officer” and “adult probation and parole officer.” It adds correction and adult probation and parole officers to the definitions of law enforcement profession as it pertains to the 2-year agreement so people working in those capacities get credit for time served.

It adds the Law Enforcement Code of Ethics to the rules and clarifies that peace officer, county detention officer and communications specialist experience must be with a duly authorized law enforcement agency in order to count toward peace officer and detention officer certification. It also gives the POST Executive Director the authority to waive minor hearing deficiencies and the authority to waive “uncharacterized” and “general under honorable conditions” military discharges. Finally, it clarifies the qualifications for the supervisor certificate and establishes the POST Hearing Board.

MOTION: Representative Luker **moved to recommend to the full committee that Docket 11-1101-0601 be approved. Motion carried by voice vote.**

DOCKET 11-1102-0601: Director Black was recognized to explain the **Rules of Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers.** This pending rule reflects the addition of a county clerk to the

Juvenile Training Council.

- MOTION:** Representative Wills moved **to recommend to the full committee that Docket 11-1102-0601 be approved. Motion carried by voice vote.**
- DOCKET 11-1103-0601:** Director Black was recognized to explain the **Rules of Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers.** This pending rule reflects the addition of a county clerk to the Juvenile Training Council.
- MOTION:** Representative Wills moved **to recommend to the full committee that Docket 11-1103-0601 be approved. Motion carried by voice vote.**
- DOCKET 11-1104-0601:** Director Black was recognized to explain the **Rules of the POST Council for Correction Officers and Adult Probation and Parole Officers.** This rule extends the voluntary certification option for correction officers from 2008 to 2010 and for adult probation and parole officers from 2007 to 2009.
- MOTION:** Representative Boe moved **to recommend to the full committee that Docket 11-1104-0601 be approved. Motion carried by voice vote.**
- DOCKET 21-0101-0601:** Oliver Chase with the Idaho Division of Veterans Services was recognized to present the **Rules governing admission, residency and maintenance charges.** This rule implements changes to the Division's rules implementing changes to Idaho Code, section 66-901, which allowed the admission of spouses to Veterans Nursing Homes. The changes included adding and updating definitions to reflect the admission of spouses. This docket provides guidance concerning eligibility requirements for admission to nursing homes. Limits have been set on the number of spouses allowed in order to ensure a veteran is not denied admission to the home.
- MOTION:** Representative Luker moved **to recommend to the full committee that Docket 21-0101-0601 be approved. Motion carried by voice vote.**
- DOCKET 21-0101-0602:** Oliver Chase with the Idaho Division of Veterans Services was recognized to present the **Rules governing admission, residency and maintenance charges.** This rule making takes information previously found in IDAPA 21, Title 1, Chapter 3, "Rules Governing Medicaid Qualified Units in Idaho State Veterans Homes," and places them in Chapter 1 of the Divisions Rules. This places all of the information dealing with the homes under one chapter and eliminates Chapter 3.
- The information provides clearer guidance concerning charges during a resident's leave of absence or hospitalization. It explains how charges are calculated and it explains the requirement to apply for or become eligible for medicaid benefits when admitted to the home.
- MOTION;** Representative Wills moved **to recommend to the full committee that Docket 21-0101-0602 be approved. Motion carried by voice vote.**
- DOCKET 21-0103-0601:** Mr. Chase was recognized to present **Rules governing Medicare and Medicaid qualified units in Idaho Veterans Homes.** This rule repeals

IDAPA 21, Title 1, Chapter 3 “Rules Governing Medicaid Qualified Units in Idaho State Veterans Homes.” As previously mentioned, the information from this chapter is now in Chapter 1. It also helps simplify the Division’s rules.

MOTION: Representative Luker moved **to recommend to the full committee that Docket 21-0103-0601 be approved. Motion carried by voice vote.**

DOCKET 21-0104-0601: Mr. Chase was recognized to present **Rules governing Idaho State Veterans Cemetery.** This rule provides for the possibility of written interpretations of this rule in the future and provides a definition of a “designated interpretive trail.” This defines the trail as a public recreational trail designated by a sign or marker. It allows the administrator to limit access to designated interpretive trails to marked trail head points, versus picking up the trail by crossing across the cemetery.

It also provides the administrator the ability to ensure groups comply with any event restrictions in place and requires animal owners to control their animals while on cemetery property.

MOTION: Representative Boe moved **to recommend to the full committee that Docket 21-0104-0601 be approved. Motion carried by voice vote.**

DOCKET 21-0105-0601: Mr. Chase was recognized to present **Rules governing medical transportation payment for wheelchair confined veterans.** This rule updates the definition of a commercial carrier, removing the requirement of entering a written agreement with the Idaho Division of Veterans Services. This change allows a wheelchair bound veteran to obtain transportation with a commercial carrier and be reimbursed. It makes the program more accessible to the veterans.

MOTION: Representative Luker moved **to recommend to the full committee that Docket 21-0105-0601 be approved. Motion carried by voice vote.**

DOCKET 21-0106-0601: Mr. Chase was recognized to present **Rules for the Enforcement of the Veteran’s Preference in Public Employment.** These rules were drafted in accordance with the 2006 Legislature’s requirement that the Division implement the rules. The language is similar to the Administrative Procedures Act to accommodate the various types of local government management structure. The rules were written to keep the Division out of the enforcement process and allow government agencies to develop their own policies for handling complaints concerning Veteran’s Preference.

The rules contain procedures public employers may implement for an internal process to review complaints regarding veteran’s preference in public employment. It does not require all public employers to use this procedure, allowing them to establish an alternative procedure. Should a public employer choose not to establish procedures, the rules allow a petitioner to file an action directly in a district court of the state of Idaho within 35 days of the alleged denial of a preference.

Representative Ruchti said he had problems with the language of this new chapter. Representative Luker felt the procedure is not clear.

MOTION: Representative Luker moved **to reject Docket 21-0106-0601 unless the full committee desires a review. Motion passed by voice vote.**

DOCKET 11-1010-0601: Dawn Peck, Manager of the Idaho State Police Bureau of Criminal Identification, was recognized to present the **Rules Governing the ILETS System**. Ms. Peck said one of her responsibilities is to provide operational and administrative support to the board for the Public Safety and Security Information System, commonly known as ILETS.

This rule is a pending fee rule. The ILETS system is a computer-based message switch and network. It provides authorized agencies access to state and federal data files and gives them the ability to send administrative messages statewide or nationally, or terminal-to-terminal. The system is governed by a multi-jurisdictional board.

This past year the board did an analysis of the current fee structure and the costs of operating the system. As a result of their study, the board determined an increase is needed in order to maintain the viability and reliability of the system. The board unanimously approved a 25% increase to both the access fee and the usage fees. The fees will increase effective October 1, 2007.

The amount of the change to each individual agency depends upon the fees currently paid. The access fee increase for all county or municipal agencies will increase from \$4,000 to \$5,000 per year, and for all state, federal or tribal agencies, the access fee will increase from \$7,000 to \$8,750 per year. The county and municipal agency fees are less because of the value they add to the system by their input into files such as warrants, stolen vehicles and protection orders.

The usage fee is based on each agency's percentage of the total annual messages sent and received by the user agencies through the ILETS message switcher.

MOTION: Representative Wills moved **to recommend to the full committee that Docket 11-1001-0601 be approved as adopted. Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 5:05 p.m.

Representative Leon Smith
Vice Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 25, 2007

TIME: 1:35 p.m.

PLACE: Room 404

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Chairman Clark

GUESTS: Please see attached sign-in sheet

MOTION: Vice Chairman Smith called the meeting to order and asked the members to review the minutes. Representative Ring move to approve the minutes of the meeting held on January 23, as written. Motion carried.

RS16665: The first item on the agenda was **RS16665** and Bill von Tagen with the Attorney General's office was recognized to explain. This proposed amendment deals with the misuse of public funds by public officials. The Idaho Court of Appeals recently interpreted the current statute to only apply to public officials who are specifically charged by law with the receipt, disbursement and safe keeping of public money. As a result, public officials who misused public monies, but were not charged by law with the safe keeping of those monies could not be punished under Idaho Code, Section 18-5701.

Because public officials have a greater duty to make proper and legal use of public funds as a result of the trust the public places in those officials and because public officials have greater and more frequent access to public funds, the misuse of public monies merits a specific provision prohibiting the conduct and a greater penalty than ordinary theft.

Representative Luker asked why there was no monetary distinction in the proposed legislation. Mr vonTagen said there is a degree of prosecutorial discretion here. However, a public official has a higher duty placed upon him to safe keep public money.

MOTION: Representative Shirley moved to **introduce RS16665. Motion carried by voice vote.** Representatives Hart, Luker, Bock and Nielsen asked to be recorded as voting "No" on the Motion.

RS16666: Bill von Tagen was recognized to present the proposed legislation. The purpose of the amendments to the false personation statutes is to prevent and punish "identity theft". Identity theft is the fastest growing form of criminal activity in the United States. The Federal Trade Commission reports that the occurrence of these particular crimes has grown to epidemic proportions.

According to statistics, in 2004 over 600 Idahoans complained of identity

theft, up from 493 in 2003 and 361 in 2002. This legislation would provide greater protection of personal identifying information that could be misused to acquire property, services, money or other benefits.

In addition, the penalty for false personation is enhanced to a felony to provide for greater punishment, deterrence and protection of society because the victims often incur significant expense and time trying to repair the personal and financial damage that results.

This would expand coverage to social security numbers and insurance cards. There are felony provisions which will cover people who are out of state.

MOTION: Representative Nielsen moved **to introduce RS16666. Motion carried by voice vote.** Representatives Hart and Labrador asked to be recorded as voting "No" on the Motion.

RS16727: Bill von Tagen was recognized. This proposed legislation deals with financial transaction cards. The amendment of Idaho Code, section 18-3122 to include the term "information" recognizes that many types of information are valuable and can be used to access a person's financial resources. Cell phones and cameras can be used to obtain this personal information.

The proposed amendments ensure that the most common form of identity theft, credit card fraud, is a fully prohibited felony. By making these crimes felonies, perpetrators will be further deterred from committing the action and suffer greater punishment and society will receive greater protection.

MOTION: Representative Ring moved **to introduce RS16727. Motion carried by voice vote.**

H 19: Michael Henderson was recognized to explain the bill. This bill adds a new section to the Idaho Code relating to coordinated family services by providing that family court services coordinators are required to submit to a thorough background check. This would include a criminal history check and checks of the sexual abuse registry, adult protection registry and sexual offender registry.

The bill will ensure that the persons involved in this sensitive task, often involving contact with children, will be carefully screened before being appointed.

MOTION: Representative LeFavour moved **to send H 19 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative LeFavour will carry the bill on the floor.

H 20: Michael Henderson was recognized. This bill would enact a new statute requiring background checks, including criminal history checks, for supervised access providers.

Pursuant to rules adopted by the Supreme Court, the courts appoint supervised access providers in cases in which the court has ordered that

a person may have contact with a child only by supervised access, or where the court decides that supervision is appropriate to facilitate the exchange or transfer of a child. The bill will ensure that persons who perform this sensitive task, involving contact with children, will be carefully screened before being appointed.

MOTION: Representative Ring moved **to send H 20 to the floor with a Do Pass recommendation. Motion carried by voice vote.**

H 21: Vice Chairman Smith recognized Patricia Tobias, Administrative Director of the Courts. Ms. Tobias introduced Judge Bryan Murray, Magistrate Judge in Pocatello, to present the bill. Judge Murray has served as Chairman of the Child Protection Committee since 1996. He is an expert in this field.

Judge Murray opened his remarks by saying it is a pleasure to be with the Committee. About 10 or 11 years ago, Idaho adopted the Child Protective Act.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 29, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representatives Wills and Labrador
- GUESTS:** Representative Bilbao; Paul Panther, Steven Wolf and Carolee Kelly, Idaho Department of Correction
- MOTION:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Shirley moved to approve the minutes of the meeting held on January 25, 2007, as written. Motion carried.
- RS16736:** The Chairman recognized Representative Bilbao to explain the proposed legislation. The purpose of this legislation is to prohibit the exploitation of persons fifty years of age or older and to allow for victim restitution for any financial loss and private causes of action by the victim. Idaho seniors are at risk of becoming victims of this crime. This amendment adds seniors to the existing bill. There is currently a problem with Idaho seniors being defrauded of their money.
- MOTION:** Representative Ring moved **to introduce RS16736. Motion carried by voice vote.**
- H 18:** The Chairman recognized Paul Panther to explain the bill. Mr. Panther said he is a Deputy Attorney General with the Department of Correction. The purpose of this legislation is to clarify the law to make it clear that sexual contact between any person in the custody of a correctional facility in Idaho and any employee of a governmental or private agency having such custody is a felony and that sexual contact between any person on parole or probation and any supervising officer is a felony. The only exceptions are if the persons involved are married. It clears up ambiguity in the existing statute. Mr. Panther asked to yield to Steve Wolf.
- Steve Wolf, Chief Investigator with the Department of Correction, said under the current statute, it is unclear whether it is illegal for a person who is employed in a correctional facility or a probation or parole officer to have sexual contact with a probationer or parolee who is not in prison. This legislation only applies to those persons who act as supervising officers. In answer to a question as to why on page 2, line 1, the words "charged with or" have been added, Mr. Wolf said this was added to protect those mentally ill people who are charged with a crime, but not yet convicted.

MOTION: Representative Bock moved **to send H 18 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Bock will carry the bill on the floor.

H 23: The Chairman recognized Carolee Kelly, supervisor of sentencing staff for the Idaho Department of Correction. The purpose of this bill is to allow the board of correction, through the Idaho Department of Correction, the authority to release prisoners from custody on the last weekday preceding a Saturday, Sunday, or legal holiday, when the prisoner's discharge date would otherwise fall on a weekend or legal holiday.

This act avoids the potential situation of a prisoner being held in custody beyond his discharge date when that date falls on a weekend or legal holiday. It also avoids the potential situation of a prisoner being improperly released prior to the actual discharge date.

When asked about the release date being a Friday before a weekend and not the following Monday if the release date falls on a Saturday or Sunday, the response was the statute is a fixed period of time and current law says the incarcerated person cannot be held beyond the discharge date.

MOTION: Representative Nielsen moved **to send H 23 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Nielsen will carry the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:55 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 31, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representative Nielsen
- GUESTS:** Michael Henderson representing The Courts
- MINUTES;** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on January 29, 2007, as written. Motion carried.
- RS16804:** Chairman Clark said **RS16804 establishing the office of drug control policy has been returned at the request of the Sponsor in order to redraft some of the language. A new RS will come before the committee the first part of next week.**
- S 1006:** The Chairman recognized Michael Henderson to explain the bill. This is one of a series of bills that the Supreme Court has recommended in its annual report to the Governor concerning defects or omissions in the laws, as required by the Idaho Constitution.
- Current law, Idaho Code Section 1-702, states that a district judge who is selected to fill a vacancy "shall be appointed to hold office until the next general election for district judges occurring at least one (1) year following the date of the judge's appointment and until his successor is elected and qualified." This gives the impression that if the appointed district judge does not win the election, the winning candidate immediately takes office and displaces the appointed judge.
- Actually, the appointed judge continues in office until his successor's term begins on the first Monday in January following the election as provided in Idaho Code Section 67-302. This bill would amend Idaho Code Section 1-702 to make it consistent with Idaho Code Section 67-302.
- MOTION:** Representative Wills moved **to send S 1006 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Wills will carry the bill on the floor.
- S 1007:** Michael Henderson was recognized to explain the bill. In 2005, the general fine for misdemeanors was raised from \$300 to \$1,000. In 2006, House Bill 326 increased the fines for 20 misdemeanors not covered by the previous year's bill to \$1,000. Idaho Code 18-3305, pertaining to discharge of a firearm aimed at another, had previously provided that a

person committing the offense was to pay a fine of “not less than \$100.00.” House Bill 326 increased the fine to \$1,000, but did not substitute “more” for “less.” As a result, the statute currently requires a fine of “not less than \$1,000. This bill corrects that error.

MOTION: Representative Hart moved **to send S 1007 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Hart will carry the bill on the floor.

S 1008: The Chairman again recognized Michael Henderson. This bill would clarify and correct the language in statutes concerning income withholding for child support. It would make it clear that a court has the authority to amend not only administrative orders pertaining to delinquencies, but also the authority to amend the court’s own child support orders.

The amendment would also change the wording currently in code referring to delivery of child support payments by the clerk, to delivery of such payments through the Department of Health and Welfare’s Child Support Receiving Services.

MOTION: Representative Smith moved **to send S 1008 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Luker will carry the bill on the floor.

S 1009: The Chairman recognized Michael Henderson to explain. Mr. Henderson said the Certified Shorthand Reporters Board issues two types of certifications for shorthand reports—regular and temporary. It was the intent of the Idaho Code to require a district court reporter to pass an examination and obtain the more demanding regular certification no later than the second examination date following appointment as a district court reporter.

However, the language of the statute can be interpreted to mean that a district court reporter may satisfy the requirement by obtaining merely a temporary certificate. This bill would make it clear that a district court reporter must obtain regular certification.

MOTION: Representative Shirley moved **to send S 1009 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Shirley will carry the bill on the floor.

REPORT ON RULES REVIEW: Chairman Smith thanked the members of the Subcommittee for staying through a long meeting reviewing the administrative rules sent to the Committee. The Smith Subcommittee reviewed all of the pending rules for the Department of Juvenile Corrections, the Idaho State Police and the Division of Veterans Services, and recommends that all of the pending rules be approved **with the exception of the rules governing Alcohol Beverage Control, Docket 11-10001-0601, Subsection 010.03 defining “Multipurpose Arena”, which the Subcommittee recommends be rejected. Also, the Smith Subcommittee recommends rejection of Docket 21-0106-0601, Rules for the Enforcement of the Veteran’s Preference in Public Employment.**

The Smith Subcommittee also reviewed the **pending fee rule of the**

Idaho State Police on Rules Governing the ILETS System, IDAPA 11.10.01, Docket 11-1001-0601, and recommends to the full Committee that the fee rule be approved.

MOTION: Representative Smith **moved that the full Committee accept the recommendations of the Smith Subcommittee. Motion carried by voice vote.**

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 1, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** None
- GUESTS:** Bill von Tagen, Attorney General's Office; Steve Tobiason, Attorney; Julie Taylor, Blue Cross
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on January 31, 2007, as written. Motion carried.
- H 62:** Bill von Tagen was recognized to explain the legislation. This proposed amendment deals with the misuse of public funds by public officials. The legislation was drafted because a Hagerman police officer, who used his p-card for three controlled-hunt applications, could not be found guilty of misuse of state funds because he wasn't charged with the safe keeping of public money as part of his official position.
- The Idaho Court of Appeals recently interpreted the current statute to only apply to public officials who are specifically charged by law with the receipt, disbursement and safe keeping of public money. As a result, public officials who misused public monies, but were not charged by law with the safe keeping of those monies, could not be punished under Idaho law.
- Because public officials have a greater duty to make proper and legal use of public funds as a result of the trust the public places in those officials and because public officials have greater and more frequent access to public funds, the misuse of public monies merits a specific provision prohibiting the conduct and a greater penalty than ordinary theft.
- Representative Luker said this would appear to apply to any employee of the state and asked if there was a definition of public officer. In reply, Mr. Von Tagen said to his knowledge public officer is not defined. What this legislation is asking is that any state employee be governed by the same provisions.
- Representative Luker said he felt there was a problem if a low level employee used a card for a minimum \$2.00 purchase. Perhaps this should be a misdemeanor offense. Mr. Von Tagen said it might be possible to make that provision. However, that is not the issue here. If exceptions are to be made, more problems could be created.

Mr. Von Tagen said this legislation is aimed at persons using a financial transaction card. Currently, if someone abuses a credit card and commits a misdemeanor, there is a 12-month statute of limitations which goes into effect.

- MOTION:** Representative Smith moved **to send H 62 to the floor with a Do Pass recommendation.** In support of his motion, Representative Smith said he agreed that some of this may be construed to be a little bit onerous, but there is prosecutorial discretion provided in another section of the code.
- SUBSTITUTE MOTION:** Representative LeFavour moved **to hold H 62 in Committee.** In support of the Substitute Motion, Representative LeFavour felt the law needed more clarity. Representative Bock spoke in favor of the Substitute Motion.
- ROLL CALL VOTE:** Voting on the **Substitute Motion to hold H 62 in Committee, voting AYE: Representatives Harwood, Hart, Luker, Boe, LeFavour, Ruchti, Bock. Voting NAY: Representatives Clark, Smith, Nielsen, Ring, Shirley, Wills, McGeachin, Bolz and Labrador. Motion failed 7-9-0.**
- DIVISION:** On the **Original Motion to send H 62 to the floor with a Do Pass,** The Chairman called for a Division. **Original Motion to send to the floor with a Do Pass carried.** Representative Smith will carry the bill on the floor.
- H 63:** Mr. Von Tagen was recognized to explain the bill. H 63 deals with false personation. The purpose of the legislation is to prevent and punish "identity theft." This law will provide greater protection of personal identifying information that could be misused to acquire property, medical services, money or other benefits. The penalty for false personation is enhanced to a felony to provide for greater punishment and protection of society. Victims of identity theft often incur significant expense and time trying to repair the personal and financial damage that results.
- This legislation will include falsely obtaining medical services which are not currently covered by law. The nature of identity theft needs to be considered. Often the victims have no idea that they are victims of identity theft. When medical cards are involved, there is theft committed against doctors, hospitals and insurance companies. It is a theft against the state. This legislation deals with tampering with medical information. It is a felony if a specific person is picked out and his or her personal information is used.
- PRO:** Steve Tobiason, representing the Idaho Association of Health Plans, was recognized to give his testimony. Mr. Tobiason spoke in favor of the bill. Mr. Ken Robbins, According to Mr. Tobiason, Deputy Attorney General, said he has a backlog of medical insurance fraud cases in the two years he has been involved with this issue. This law will help give better tools to go after these offenders.
- PRO:** Julie Taylor, representing Blue Cross of Idaho, was recognized. Ms. Taylor said this is an important bill. Blue Cross stands in support of this legislation. Ms. Taylor spoke of a case in which a man used another man's insurance and medical information to have his gallbladder

removed. When those medical bills were sent to Blue Cross, the company recognized that fraud had taken place. However, all of the providers did not get paid. This provides a good tool to go after this type of fraud which is a bigger issue than ever before.

MOTION: Representative Ring moved **to send H 63 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: Representative LeFavour moved **to hold H 63 in Committee.**

AMENDED SUBSTITUTE MOTION: Representative Nielsen moved **to send H 63 to General Orders with the following Committee amendments attached: leave in the stricken language in lines 23 and 24, and strike “as a felony; increase the fine amount to \$15,000 instead of \$5,000; leave in the language in lines 32 and 33, and add after “as a felony” the words “at the discretion of the court”.**

Representative Luker spoke in favor of the Substitute Motion.

ROLL CALL VOTE: On the **Amended Substitute Motion**, only Representative Nielsen voted in favor of the motion to send H 63 to General Orders with Committee amendments attached. **Amended Substitute Motion failed.**

On the **Substitute Motion to hold H 63 in Committee, the vote was: Voting AYE: Representatives Harwood, Nielsen, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Ruchti, Bock. Voting NAY: Representatives Smith, Ring, Shirley, Wills, Clark. Motion passed. H 63 will be held in Committee.**

H 64: Bill von Tagen was recognized to explain the bill. The purpose of the amendments is to prevent and prohibit criminal use of a financial transaction card. By including the term “information”, it is recognized that many types of information are valuable and can be used to access a person’s financial resources.

Sections (1) and (5) of section 18-3124 have been deleted to ensure consistency with the proposed amendments to section 18-3125 and to make acts enumerated in those sections felonies. The proposed amendments of section 18-3125 ensure that the most common form of identity theft, credit card fraud, is a fully prohibited felony. The purpose of amending section 18-3128 is to make a violation of section 18-3126 a felony and enhance the penalty for a violation of that provision. In addition, the purpose of the amendment is to make a violation of section 18-3125 a felony.

By making these crimes felonies, perpetrators will be further deterred from committing the crime and society will receive greater protection. In answer to a question on how to prove intent to defraud, Mr. von Tagen said the prosecutor will have to prove that intent without a reasonable doubt.

MOTION: Representative Smith moved **to send H 64 to the floor with a Do Pass recommendation. Motion carried.** Representatives Harwood and Hart

asked to be recorded as voting "No" on the motion. Representative Luker will carry the bill on the floor.

ADJOURN:

There being no further business to come before the Committee, the Chairman adjourned the meeting at 2:40 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 5, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representative McGeachin
- GUESTS:** Please see attached sign-in sheet
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on February 1, 2007, as written. Motion carried.
- RS16858C1:** Vice Chairman Smith took over the chairman's seat so that Representative Clark could explain the proposed legislation. This legislation adds a new section, Section 67-821, to the Idaho Code which codifies the Office of Drug Policy, formerly known as the Office of the Drug Czar, within the office of the Governor. The bill also modifies the Interagency Substance Abuse Committee membership to include the administrator of the Office of Drug Policy and also names the administrator chairman of the committee. Finally, the legislation creates a single point of budget coordination and program direction for substance abuse programs that utilize state funds.
- The Fiscal Note recognizes that the creation of the Office of Drug Policy will require funding for the administrator position, as well as project manager and administrative support positions.
- MOTION:** Representative Harwood moved **to introduce RS16858C1. Motion carried by voice vote.**
- H 73:** Representative Bilbao was recognized to speak to the bill. The purpose of this legislation is to amend Idaho Code, relating to the financial exploitation of persons age 50 or older. It also orders full restitution be paid to the victim for any loss incurred. Existing fines and penalties will remain in force per this code.
- The incidence of elder abuse, both nationally and locally, is increasing dramatically. In January of 2007, the Idaho Department of Finance estimated that 60% of all complaints they receive are from seniors. This bill will strengthen the law against the financial exploitation of seniors.
- Representative Smith said he had a problem with the age of 50 used in the bill. Representative Luker said the age of 50 seems to be arbitrary. If

a problem exists, it should apply to everyone. Representative Bilbao said this bill is trying to plug a hole in the dam.

MOTION: Representative Wills spoke in favor of the bill and moved **to send H 73 to the floor with a Do Pass recommendation.**

PRO: Joe Gallegos, Associate State Director of AARP Idaho was recognized to speak to the bill. Mr. Gallegos said the bill is not only important, but necessary. The Federal Trade Commission reported that 1,899 fraud complaints had been filed by Idaho residents during calendar year 2005.

The Idaho Attorney General's office reported that 2,051 complaints had been filed with them during 2006. Although not all of these complaints were specific to financial fraud, most had an element that caused the consumer to lose money.

The Idaho Department of Finance reported that investors will be challenged with increasingly complex and confusing investment frauds. Senior fraud was second in the order of prevalence and seriousness. These seniors have money available and are looking for places to invest.

In conclusion, Mr. Gallegos said AARP would not be appearing before the Committee today if there were not deliberate attempts by predators to separate these people from their hard earned and often times limited and fixed financial resources.

Representative Bock questioned why the term "targeted" was not used in the legislation. Mr. Gallegos said the drafters did not feel that it was necessary to use that term. It was felt that "exploitation" covered that.

PRO: Sarah Scott, program administrator for the Idaho Commission on Aging, was recognized. Ms. Scott said the current statute is a companion to the adult vulnerable abuse act. This bill adds individuals 50 years or older. This legislation is important. Seniors are being targeted for exploitation. Often these seniors are on a fixed income. These people don't receive anything for their money in the instances the bill is talking about.

Very few of the cases of exploitation ever get prosecuted. The scams are becoming very sophisticated.

Dr. Russ Newcomb was recognized. Dr. Newcomb cited a case in which his mother was a victim of fraud and a case where his mother-in-law was also a victim of fraud including having her checks forged. When the forgery was discovered, it took four or five months to clear the matter up. Vulnerable adults are targeted and this enhancement to strengthen the law is important.

SUBSTITUTE MOTION: Representative Smith moved **to send H 73 to General Orders with Committee amendments attached as follows: strike the language "of any person 50 years of age or older" in lines 18, 23, 39 and line 14 on page 2.** In support of his Motion, Representative Smith said 50 years of age is not a senior. Senior discounts do not start at age 50. A senior is not defined in this bill.

Representative Wills said most people do not want to be stereotyped or labeled as vulnerable. That term causes them embarrassment. This is a good piece of legislation.

Representatives Ruchti, Bolz and Bock spoke in favor of the Substitute Motion.

Representative Nielsen referred to a letter from Robert Aldridge (attached) in which Mr. Aldridge said numerous national and state studies have shown this alarming rise in elder abuse to be accelerating. One side effect of the financial abuse is that the abused senior may end up on public support programs, including Medicaid.

**ROLL CALL
VOTE:**

On the Substitute Motion to send H 73 to General Orders with Committee Amendments attached, voting AYE: Representatives Clark, Smith, Harwood, Hart, Bolz, Labrador, Luker, Boe, Ruchti, Bock. Voting NAY: Representatives Nielsen, Ring, Shirley, Wills and LeFavour. Motion passed 10-5-1.

ADJOURN:

Chairman Clark said meetings will be held on Wednesday and Friday to hear all of the RS's in Committee. There being no further business, the meeting was adjourned at 2:45 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 7, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representatives Nielsen and Bolz
- GUESTS:** Michael Kane, Idaho Sheriffs Association
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on February 5, 2007, as written. Motion carried.
- Chairman Clark** reminded the members that if they support a bill in Committee, they must also support the bill on the floor. Or, if they have a problem with the bill after it reaches the floor, they need to call the Chairman and the sponsor and let them know about the concern. Chairman Clark told the members that a bill can always be brought back to Committee.
- RS16863:** Representative Shirley was recognized to explain. Last year H 534 was drafted which amended Section 19-401, Idaho Code, to remove the statute of limitations for felony prosecutions of child sexual abuse. The effort to remove the time constraint was led by Mr. Paul Steed, whose two sons had been sexually abused. This legislation will take the next step by making stricter limitations on the sexual abuse law. This legislation will bring Idaho up to the stricter laws of other surrounding states.
- Representative Ruchti was recognized. Sexual molestation plagues the state. H 534 was Idaho's first step to adopt a strong law against sexual abusers. Many victims of sexual abuse have difficulty fitting into society once the abuse has occurred. This legislation modifies the criminal statute of limitations for cases involving failure to report abuse, abandonment or neglect under Idaho Code Section 16-1605. The statute of limitations would be extended from one year to four years.
- MOTION:** Representative LeFavour moved **to introduce RS16863. Motion carried by voice vote.**
- RS16864:** Representative Ruchti was recognized to explain the proposed legislation. This bill adds a new element of discovery to the child abuse statute. It would amend the current statute to allow a cause of action to be filed after the child reaches the age of 18 years, within 5 years of the time the child "discovers or reasonably should have discovered" the abuse. The legislation also allows, subject to the evidentiary restrictions of Idaho

Code Section 6-1607, a cause of action against the employer of the individual who committed the abuse.

MOTION: Representative Smith moved **to introduce RS16864. Motion carried by voice vote.**

RS16806: The Chairman recognized Michael Kane to explain. The purpose of this bill is to delete an obsolete statute pertaining to service by sheriffs of subpoenas. Current code mandates sheriffs to break into homes and other buildings and boats to serve subpoenas when ordered by the person issuing the subpoena. This 1881 law contravenes current state and federal law pertaining to civil rights and privacy and subjects a sheriff to significant liability.

MOTION: Representative Bock moved **to introduce RS16806. Motion carried by voice vote.**

RS16909: The Chief Clerk was recognized to explain the legislation. Ms. Juker said this RS is a replacement for HCR 5. It was discovered that on the second page, the bid was not correct, so this is simply a replacement reflecting that correction.

MOTION: Representative Smith moved **to introduce RS16909. Motion carried by voice vote.**

RS16807: Michael Kane was recognized to explain. The purpose of this bill is to clarify that courts have the authority in setting bail to set conditions of the bail, including home detention, electronic monitoring, and global positioning system tracking.

MOTION: Representative Boe moved **to introduce RS16807. Motion carried by voice vote.**

RS16808: Michael Kane was recognized to explain the proposed legislation. The purpose of this bill is to delete reference in current law pertaining to mandatory filing of an action seeking prisoner reimbursement in small claims court. Small claims court will still be available to the county, but the county will also have the option to seek defaults, judgments or stipulated settlements in the magistrate's division of the district court.

MOTION: Representative Ring moved **to introduce RS16808. Motion carried by voice vote.**

RS16809C1: Michael Kane was recognized to explain. The purpose of this bill is to clarify that persons on bail or sentencing orders who intentionally leave the area of restriction as set forth by a court as part of a home detention, electronic monitoring, or global positioning system, can be charged with the criminal offense of escape. The correction to the legislation says a person cannot be charged with escape if there is a medical emergency. Also, the person cannot be charged unless he or she is made aware of the penalty.

MOTION: Representative Bock moved **to introduce RS16809C1. Motion carried by voice vote.**

ADJOURN:

Prior to adjourning the meeting, Chairman Clark said the meeting on Friday would begin immediately following the adjournment of the House. There being no further business to come before the Committee, the meeting was adjourned at 2:10 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 9, 2007

TIME: 12:00 p.m.

PLACE: Room 404

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representatives Smith, Boe

GUESTS: Please see attached sign-in sheet

MINUTES: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Shirley moved to accept the minutes of the meeting held on February 7, 2007, as written. Motion carried.

RS16678C1: Michael Henderson, legal counsel for The Courts, was recognized. This proposed legislation was brought before the Committee previously and there were some questions concerning the language. This is a corrected version.

The legislation amends certain provisions of the Child Protective Act in keeping with recommendations of the Supreme Court's Child Protection Committee. It brings the law into more exact compliance with federal requirements and will ensure a continuance of federal funding.

A question was posed regarding the use of the term "may" on line 39. That term has been changed to "shall." New language was added on page 2, lines 39 through 43, dealing with reasonable efforts made to prevent removal of the child. Other amendments would remove inconsistencies between provisions of the Act. Unnecessary language is removed.

MOTION: Representative Wills moved **to introduce RS16678C1. Motion carried by voice vote.**

RS16768: Heather Reilly, representing the Idaho Prosecuting Attorneys Association, was recognized to explain the proposed legislation. The purpose of this legislation is to create a statute that appropriately addresses individuals who cause serious injury to others by driving recklessly. The legislation creates a felony penalty for reckless driving which causes great bodily harm, permanent disability or permanent disfigurement to another.

The legislation creates a discretionary five year sentence and/or a \$5,000 fine. With the enhanced penalty, the courts may order longer supervised probation including extended time for restitution payments to be made to victims.

MOTION: Representative Ring moved **to introduce RS16768. Motion carried by voice vote.**

RS16783C1 Representative Ringo was recognized to explain. This legislation deals with providing protection to victims of domestic violence. This would protect the relocation address. Representative Trail was recognized to further explain. The citizens of Moscow, Idaho, met with Representative Trail and this legislation is the result of those meetings. The legislation is modeled after legislation in Washington state. The office of the Secretary of State expressed no opposition to the legislation. Representative Trail walked the members through the language contained in the new chapter.

The amount of \$50,000 in the fiscal note was questioned. Representative Trail said the amount was arrived at after looking at the fiscal impacts of other states. The sponsors really have no idea how many individuals would be requesting this type of protection.

MOTION: Representative LeFavour moved **to introduce RS16783C1. Motion carried by voice vote.**

RS16845: Bill Roden, representing the Idaho Business Review, was recognized to explain. This issue is a work in progress. In 1994, the law relating to the publication of legal notices was amended to provide, with reference to publications by governmental entities, that the newspaper must not only be a legal newspaper, but must also have the largest circulation in the governmental entity causing the publication to be made.

The purpose of this legislation is to provide that notices shall be published in a newspaper, as defined by current law, that is published within the governmental entity required to publish the notice or in another legal newspaper within the county if no newspaper is published within such local entity. The amendment removes the general requirement that the newspaper must have the largest circulation within the local government area. This takes the law back to where it was prior to 1994.

MOTION: Representative Bock moved **to introduce RS16845. Motion carried by voice vote.** Representative Luker opposed the motion.

RS16860C1: Representative Marriott was recognized to explain. This legislation amends section 1-2005, Idaho Code, to revise eligibility requirements for senior judges. It also amends the law to revise descriptive language, to revise qualification for appointment as a magistrate judge and to remove obsolete language. The legislation also contains an emergency clause.

MOTION: Representative Bock moved **to return RS16860C1 to Sponsor.** Representative Shirley said he was bothered by the finality of the legislation. Representative Luker said the second section of this proposed bill doesn't really have anything to do with senior judges.

SUBSTITUTE MOTION: Representative Nielsen moved **to introduce RS16860C1.** Representatives LeFavour and Bock spoke in favor of the **original motion. Substitute Motion to introduce failed by voice vote.** Representative McGeachin spoke in favor of the substitute motion.

ORIGINAL MOTION: The **Original Motion was to return RS16860C1 to the Sponsor. Motion carried.** Representatives McGeachin, Nielsen and Harwood asked to be recorded as voting “No” on the motion.

RS16904: Representative Nielsen was recognized to explain. This legislation includes in the definition of “libel” the new electronic means of communication.

MOTION: Representative Ruchti moved **to introduce RS16904. Motion carried by voice vote.**

RS16903: Representative Nielsen was recognized to explain. This legislation increases the amount of statutory damages that may be assessed against a person who makes a report or allegation of child abuse, abandonment or neglect knowing the same to be false, or who reports the same in bad faith or with malice.

MOTION: Representative Labrador moved **to introduce RS16903. Motion carried by voice vote.**

RS16837C2: Representative Jaquet was recognized to explain. This legislation will amend Rule 53 of the Rules of the Idaho House of Representatives to define the method for apportioning seats on the House Appropriations Committee. Committee assignments to the House Appropriations Committee will be allocated by this legislation to reflect the representation of the majority and minority parties in the House as a whole. This rule takes this out of politics and represents fairness.

MOTION: Representative Ruchti **moved to introduce RS16837C2.** Representative Bock spoke in favor of the motion.

SUBSTITUTE MOTION: Representative Nielsen **moved to return RS16837C2 to the Sponsor.** Representative LeFavour spoke in opposition to the substitute motion saying this legislation clarifies the law. Representative McGeachin spoke in favor of the substitute motion.

CALL FOR THE QUESTION: The Chairman said a **call for the question was made.** This would shut down further debate on the legislation.

ROLL CALL VOTE: **Voting AYE: Representatives Clark, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker and Ruchti. Voting NAY: Representatives LeFavour and Bock. 12-2-2. Motion passed.**

ROLL CALL VOTE: Roll call vote was requested for the **Substitute Motion to return RS16837C2 to the Sponsor. Voting AYE: Representatives Clark, Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador and Luker. Voting NAY: Representatives LeFavour, Ruchti and Bock. Motion passed 11-3-2.**

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

meeting was adjourned at 1:30 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 13, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** None
- GUESTS:** See attached sign-in sheet
- MOTION:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Ring moved to approve the minutes of the meeting held on February 9, 2007, as written. Motion carried.
- H 106:** Chairman Clark turned his chair over to Vice Chairman Smith in order to present the bill to the committee. Representative Clark said this bill codifies the Office of Drug Policy. This will be within the office of the gentleman on the second floor. The legislation describes what the Office of Drug Policy will do. It also sets forth the duties of the Administrator of the Office of Drug Policy. On page 3 of the bill, estimated appropriation needs for the Office of Drug Policy are addressed. The bill also contains an emergency clause.
- MOTION:** Representative Wills moved **to send H 106 to the floor with a Do Pass recommendation.**
- CON:** Chairman Smith recognized Richard Armstrong, Director of the Department of Health and Welfare, to speak to the bill. Director Armstrong said he found no fault with the bill. The Director gave each member an handout (attached). However, he worked with a study group collaboratively and rapidly through the summer to publish an inventory of services delivered by agencies and an inventory of money spent by agencies.
- Data was gathered on capacity and results, a substance abuse strategic plan was designed, and a continuum of care was planned which couples agency responsibilities for specific services of the individual being treated. Concern was expressed that the bill causes confusion regarding the funding.
- Director Armstrong suggested that an amendment to the bill be drafted on page 4, line 26 to read as follows: strike the language "interagency committee shall advise the department" and insert "administrator and the director shall concur". If the administrator and the director could not agree, the issue could be brought before the Governor for resolution.

PRO: Debbie Field, Administrator of the Office of Drug Policy was recognized. Administrator Field said an interagency committee was developed last year. The responsibility of the interagency committee is to advise the Department of Health and Welfare on the program for the treatment of alcoholics, intoxicated persons and drug addicts. The bill sets out the responsibilities of the program. The last weeks have been spent looking at assessment tools. The amendment was discussed, but the Legislature had problems with the language. The Administrator expressed excitement regarding what the Office of Drug Policy will be able to accomplish. The bill does not need the proposed amendment.

Representatives Ruchti, Boe and Bock spoke in support of the motion.
Motion to send H 106 to the floor with a Do Pass carried by voice vote. Representative Clark will carry the bill on the floor.

H 126: Mike Kane, representing the Idaho Sheriffs Association, was recognized. Mr. Kane said the purpose of the bill is to delete an obsolete statute pertaining to service by sheriffs of subpoenas. The old law mandates sheriffs to break into homes and other buildings and boats to serve subpoenas when ordered by the person issuing the subpoena.

This 1881 law contravenes current state and federal law pertaining to civil rights and privacy. It also subjects a sheriff to significant liability should he or she engage in the conduct contemplated in the statute.

MOTION: Representative Boe moved **to send H 126 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative McGeachin will carry the bill on the floor.

H 127: The Chairman recognized Mike Kane to explain the bill. Mr. Kane said for about 20 years the Courts have been setting conditions on bail. The Courts have been placing people into various home detention methods. This bill simply puts this practice into law.

MOTION: Representative Ring moved **to send H 127 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Luker will carry the bill on the floor.

H 128: Mike Kane was again recognized. The purpose of this bill is to delete reference in current law pertaining to the mandatory filing of an action seeking prisoner reimbursement in small claims court. By deleting the language, small claims court will still be available to the county, but the county will also have the option to seek defaults, judgments or stipulated settlements in the magistrate's division of the district court.

MOTION: Representative Nielsen moved **to send H 128 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Ring will carry the bill on the floor.

H 129: Mike Kane was recognized. The purpose of this final bill before the Committee today is to clarify that persons on bail or sentencing orders who intentionally leave the area of restriction as set forth by a court as part of home detention, electronic monitoring or global positioning system tracking order, can be charged with the criminal offense of escape.

The bill was amended to say that the person could not be charged unless notified by the court at the time of sentencing of the penalty. Also, a section was added saying that if a person needs emergency health care, he or she cannot be charged with the offense of escape.

MOTION: Representative LeFavour moved **to send H 129 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Harwood will carry the bill on the floor.

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 15, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** None
- GUESTS:** Please see sign-in sheet
- MOTION:** Chairman Clark asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on February 13, as written. Motion carried.
- H 124:** The Chairman recognized Representative Ruchti to explain the bill. Representative Ruchti pointed out that Senator Hill, a co-sponsor of the bill was in the audience as was Paul Steed of Pocatello, whose two sons were sexually assaulted. Mr. Steed was a driving force in crafting this bill and the one following this one.
- The bill is a criminal statute. It extends the statute of limitations from one year to four years for cases involving failure to report abuse, abandonment or neglect.
- PRO:** Paul Steed was recognized. Mr. Steed said there are a number of victims who are unable to obtain help under the current statute. There are abusers who have violated children and were unable to be prosecuted because of the current statute of limitations. This law goes after those people who deliberately fail to report abuse.
- MOTION:** Representative LeFavour moved **to send H 124 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Ruchti will carry the bill on the floor.
- H 125:** Representative Ruchti was recognized to explain. This bill extends the statute of limitations on the civil side. The current statute of limitations found in Idaho Code, section 6-1704, would be amended to allow a cause of action to be filed after a child reaches the age of 18 years, or within 5 years of the time the child "discovers or reasonably should have discovered" the abuse and its relationship to an injury suffered by the child.
- The consequences of molestation on children are devastating. They deal with it for the rest of their lives. Under current law, charges must be filed by the victim's 23rd birthday. This bill will allow victims of abuse to bring a cause of action up to five years after realizing that the abuse has

occurred.

Amendments have been drafted because the Attorney General's office believed the language was a little vague.

PRO: Paul Steed was recognized. Mr. Steed said research and testimony have made it very clear that victims of abuse come forward when they are ready to. Idaho is now one of the progressive states in prosecuting offenders. Under current law, the victims have no options. Sometime before 1997, every state bordering Idaho adopted legislation to allow victims equal access to both criminal and civil law regarding sexual abuse of children.

A discovery clause will facilitate accountability within youth-oriented organizations. Discovery provides several resources to victims who come forward. Civil law is a fundamental right. Mr. Steed said his sons were abused at Boy Scout camp. There are organizations in Idaho which have protected abusers. We need this law.

PRO: Mark Baker, an oral surgeon from Pocatello, was recognized. Dr. Baker said he is the father of ten children. It is his desire to make sure Idaho becomes a safer place to raise children and grandchildren. This law will help finish the laws that were started last year. Dr. Baker said he has two sons who are Eagle scouts.

Dr. Baker said he has a problem with professional scouting and the apparent double standards. Twenty-four boys were molested at boy scout camp and not one of those came forward. Victims of sexual abuse come forward when they recognize and come to terms with the abuse. Dr. Baker said the law should be discovery plus 11 years. Idaho needs strong civil laws to discourage pedophiles in the state.

MOTION: Representative Luker moved to send H 125 to General Orders with the following Committee amendments attached: On page 1 of the bill, delete lines 25 through 27, and insert: **“(2) If an act prohibited under subsection (1) of this section involves employment-related circumstances as provided under section 6-1607(2), Idaho Code, then an action may be brought under the common law by, or on behalf of, any child against the employer of the person who committed the act, subject to the requirements of section 6-1607, Idaho Code.”. Motion carried by voice vote.** Representative Ruchti will carry the bill on the floor.

H 171: Michael Henderson with The Courts was recognized to explain. This bill amends certain provisions of the Child Protective Act in keeping with recommendations of the Supreme Court's Child Protection Committee. The language referring to reasonable efforts to prevent the removal of a child from the home, or to prevent placement of the child in shelter care, would be modified to bring it into more exact compliance with federal requirements. Other amendments remove inconsistencies between provisions of the Act, remove unnecessary language, simplify other provisions and specify that the court shall make written findings as to whether the Department of Health and Welfare has made reasonable

efforts to finalize a permanent plan for a child found to be within the jurisdiction of the court under the provisions of the act.

- MOTION:** Representative Bock moved **to send H 171 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Bolz will carry the bill on the floor.
- H 174:** Representative Nielsen was recognized to explain. This amendment increases the amount of statutory damages that may be assessed against a person who makes a report or allegation of child abuse knowing the same to be false from \$500.00 to \$5,000.00. The legislation creates a stronger deterrent against a person who makes a false report or alleges the same in bad faith or with malice.
- MOTION:** Representative Harwood moved **to send H 174 to the floor with a Do Pass recommendation.**
- Representative Ruchti spoke against the motion saying the amount of \$5,000 seems too heavy-handed. Representative Ruchti asked Representative Nielsen if he would consider making the fine up to \$5,000.
- SUBSTITUTE MOTION:** Representative Bock moved **to hold H 174 in Committee.**
- AMENDED SUBSTITUTE MOTION:** Representative Labrador moved **to send H 174 to General Orders with Committee amendments attached as follows: changing the amount of \$5,000 to \$2,500. Motion carried by voice vote.** Representative Nielsen will carry the bill on the floor.
- H 175:** Representative Nielsen was recognized. This bill just adds language to the definition of libel. This is already in case law. The amendment includes the new electronic means of communication.
- CON:** Fairy Hitchcock was recognized to give her testimony. Ms. Hitchcock spoke against the bill citing her own personal experience
- MOTION:** Representative Boe moved **to send H 175 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Nielsen will carry the bill on the floor.
- ADJOURN:** There being no further business to come before the Committee, Chairman Clark adjourned the meeting at 3:10 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 19, 2007

TIME: 1:30 p.m.

PLACE: Room 404

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: Please see attached sign-in sheet

MOTION: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Shirley moved to approve the minutes of the meeting held on February 15, 2007, as written. Motion carried.

**UNANIMOUS
CONSENT:** Chairman Clark asked for **Unanimous Consent to put S 1057, S 1058, S 1060 and S 1061 sponsored by Robert Aldridge, into the Smith Subcommittee for review.** There being no objection, the bills were put into the Smith Subcommittee for review and recommendation to the full Committee.

**DEPT. OF
CORRECTION
UPDATE:** Director Brent Reinke was recognized to give a presentation on the Department of Correction. The Director passed three documents to each of the members (attachments). There are three areas by which the Idaho Criminal Justice Commission would like to be measured in six months. Those are the development of alternatives to incarceration, implementation of the Adam Walsh Act and full review of Idaho's sex offender registry and development of evidence-based programs in the management of incarcerated offenders.

Currently in Idaho one out of every 36 adult males is either incarcerated or supervised by the Department. The Department manages 7,124 inmates and 12,366 probationers and parolees. This is nearly twice the offender population managed in 1997. Eighty-five percent of Idaho offenders have a self-admitted substance abuse issue. Of those, 75% say methamphetamine is their drug of choice.

The Department of Correction currently has 468 inmates housed in the state of Texas. The growth rate in offenders has been 6.5% annually. Idaho is number 3 in the nation in anticipated prison growth.

Kevin Kempf was recognized to continue briefing the Committee. Mr. Kempf spoke of a critical incident which took place in which two police officers, Wally Peterson and Jed Dayley, were recognized for heroism during a joint finance appropriation committee hearing. Mr. Kempf said Probation and parole has three goals: safety, partnerships and

accountability. Mr. Kempf discussed supervised offenders by crime group. Case loads average about 74 cases per officer. The Department, through the Division of Education and Treatment, is trying to ensure that offenders receive the education, treatment and tools needed to re-enter society without offending again.

Mental health issues continue to climb. There are currently 12 cells available in a secure mental health facility. There are 240 inmates with severe and persistent mental illness.

In conclusion, Director Reinke said the Department will focus on becoming one agency with one mission and one message which is serving the citizens of Idaho by providing the essential service of ensuring public safety.

H 173:

Bill Roden, representing the Idaho Business Review, was recognized to explain the bill. Mr. Roden gave each member a summary of his comments and an example of a Statement of Ownership, Management, and Circulation filed with U.S. Postal Service (attachments).

This bill relates to the publication of legal notices in newspapers. Under existing law, a legal definition of "newspaper" is provided. In 1994, at the request of some newspapers, section 60-106 Idaho Code, was amended to provide, with reference to publications by governmental entities, that the newspaper must not only be a legal newspaper, but must also have the largest circulation in the governmental entity causing the publication to be made. If no newspaper is published in that entity, then in the newspaper with the largest circulation within the county

This legislation provides that notices shall be published in a newspaper, as defined by current law, that is published within the governmental entity required to publish the notice, or in another legal newspaper within the county if no newspaper is published within such entity. The amendment removes the general requirement that the newspaper must have the largest circulation within the local area.

It does not remove the requirement of other statutes requiring the publication of acts and proceedings of County Commissioners in the newspaper with the largest circulation in the county. Also, the amendment continues to require governmental legal notices to be published in a newspaper having the largest circulation if the specific statute or court order contains such a requirement.

The bill does not restrict cities and counties and other taxing districts in their choice of official publications. The bill will permit legitimate newspapers to compete for the legal notice business without unfair advantage to any group of newspapers, or individuals.

The Chairman asked why this issue has been sent to State Affairs in the past. Mr. Roden said that was true when a rate increase was involved. The Chairman also asked if there was a law suit pending. That law suit would be The Idaho Statesman v. Idaho Business Review. Mr. Roden asked that two letters in support of the legislation be submitted with the minutes (attachments).

Representative Bock said this is a very large issue. He asked if this might be put into an interim study committee to craft new language to be brought back before the Committee. Mr. Roden said that was a possibility as long as the guidance of that committee would not be by the largest newspaper publications. Representative Ruchti said this legislation doesn't really resolve the problem.

CON: Margaret Wimborne was recognized. Ms. Wimborne said she is the publisher of several small newspapers including the Challis Messenger and the Jefferson Star. Ms. Wimborne asked the members to vote no on the bill. She expressed worry that this bill reverses public policy. If notices are published only in the largest newspaper, the readers most interested will not see them. The small local newspapers are the ones people look to in their community. The issue is quite confusing.

PRO: Bob Aldridge representing the Trust and Estate Professionals of Idaho, Inc., was recognized. Mr. Aldridge said the issue has been discussed at some length. Since the inception of the Probate Court, the publication has always been in the newspaper of general circulation. The issue of the newspaper with the largest circulation can be very confusing.

CON: Jeremy Pisca, attorney representing The Idaho Dailies, was recognized. Mr. Pisca said he was not familiar with the information Mr. Roden gave to the members. He did agree that this bill will create mass confusion in publishing legal notices. These notices are of legal rights, public auctions, and foreclosures for deeds of trust. Mr. Pisca said he failed to understand what the issue is.

One of the requirements in the bill is that the publication have at least four pages with five columns on a page and at least 200 subscribers. It must be a newspaper of general interest. In that case, the Boise Weekly, Idaho Wildlife News and the Idaho Senior publication all have the minimum requirements for publishing legal notices.

Mr. Pisca pointed out that the emergency clause contained in the legislation would essentially settle a pending law suit of the Idaho Statesman v. Idaho Business Review, which would cause further problems.

PRO: Rick Carpenter, publisher of the Idaho Business Review, was recognized. Mr. Carpenter said H 173 was printed to clarify language. In 1994, the legislation included a provision that notices should be published within the local jurisdiction. The Idaho Business Review has an opinion which is published on its website saying that it has the right to publish notices.

CON: Bob Hall, executive director, Idaho Newspaper Assn., was recognized. Mr. Hall said public notice laws are the most ubiquitous laws in the Idaho Codes book. They require that an informed citizenry be kept on notice of any government power or action that affects their lives and their property.

Idaho Code Section 60-106 was put into law in 1919. Since then, it has been amended only five times. Each time, it was amended only to improve the way it met the standards of legibility, convenience and economy. The current law should not be amended to improve only the

private business needs of individual newspapers.

CON: Tom Grote, publisher of The Star-News in McCall, was recognized. Mr. Grote asked the members to remember that this very issue is now in adjudication in the law case of the Idaho Statesman v. Idaho Business Review, with oral arguments scheduled for April. The Committee might want to defer action on this matter until the outcome of the case, as the courts may make the issue moot.

The issue in considering H 173 is the legislative intent of public notice requirements in statute. That intent is to provide the broadest possible exposure to notices required by statute so they are most likely to give actual notice to the intended party. The passing of the bill will have the net effect of reducing effective public notice, as it will allow newspapers that do not have the largest paid circulation in a city or county to publish notices.

CON: Allen Derr, Idaho Newspaper Association, was recognized. Mr. Derr said this proposal does not solve anything. Instead, it creates problems.

PRO: In conclusion, Mr. Roden said something needs to be done about this issue during this session of the Legislature.

MOTION: Representative Luker moved **to hold H 173 in Committee**. In support of his motion, Representative Luker said this does not seem to be an urgent issue. A judge should be allowed to look at this because it involves legal notices. Then a committee needs to be appointed to further study the issue. Representatives Bock and Nielsen spoke in support of the motion. **Motion carried by voice vote. H 173 will be held in Committee.** Representative Labrador asked to be recorded as voting "No" on the motion.

H 176: Heather Reilly, representing the Idaho Prosecuting Attorneys Association, was recognized to explain. This legislation creates a statute which appropriately addresses individuals who cause serious injury to others by driving recklessly. The legislation is aimed at "road rage" and other reckless driving situations. It creates a felony penalty for reckless driving which causes great bodily harm, permanent disability or permanent disfigurement to another.

The legislation creates a discretionary five year sentence and/or a \$5,000 fine. The felony penalty provisions allow for better accountability for offenders and increased protection for citizens. With the enhanced penalty, the courts may order longer supervised probation including extended time for restitution payments to be made to victims.

Representative McGeachin questioned the use of the term "shall" on page 2, line 5 of the printed bill. Ms. Reilly said that term is used in the current statute. The judge has the discretion to set the penalty.

MOTION: Representative LeFavour moved **to send H 176 to the floor with a Do Pass recommendation**. In support of her motion, Representative LeFavour said the legislation is crafted in such a way as to leave the penalty to the discretion of the judge. Representative Bock spoke in favor

of the motion. **Motion carried.** Representative Luker will carry the bill on the floor.

H 172: Representative Ringo was recognized to explain the legislation. This bill is concerned with address confidentiality for victims of violence. It adds a new Chapter 57, Title 19, Idaho Code. Definitions establish who would qualify to be a participant in the program. It provides a procedure for the address confidentiality program.

It also provides penalty provisions relating to falsely attested applications and it provides for the use of designated addresses. It prohibits the disclosure of records and it authorizes the Secretary of State to promulgate certain rules. Representative Ringo asked to yield to Professor Elizabeth Grant who actually crafted the legislation.

Professor Grant said the legislation was written pursuant to an interim study group. All it talks about is that the victim's address not be published through state records. If the alleged victim participates in the program, there is a guarantee of service of process. Nothing about this program would relieve the victim's responsibility to comply with existing court orders.

PRO: Fran Halstead was recognized to give her testimony. Ms. Halstead said she was a victim of abuse. She cited her personal experiences in which she suffered severe physical abuse, stalking, and threats on her life. In conclusion, Ms. Halstead said this bill is a good start in resolving the problems of victims.

PRO: Carl Holquest was recognized. Mr. Holquest said under current law it takes only about 15 minutes for predators to locate their victims. Everyone should try to help these victims. This bill will solve some of the problems these victims experience.

MOTION: Representative Wills moved **to send H 172 to the floor with a Do Pass recommendation.** Representative Luker spoke against the motion saying this is a very difficult issue. He expressed concern that the legislation is putting a little finger in a big dike. This bill could expose the state to potential liability. Representative LeFavour spoke in favor of the motion.

In support of the motion, Representative Wills said this legislation is something that is needed. The Legislature would really be missing the boat if the bill isn't passed. It gives victims a little hope that they can have some type of normal life.

Representative Smith questioned the amount of \$50,000 in the fiscal note and was informed that the amount of \$50,000 is a ball park figure. It is about 20% of the budget set in Washington state.

Tim Hurst with the office of the Secretary of State was recognized to speak to the fiscal impact. Mr. Hurst said his office checked with a number of states who have this law in effect. It was the conclusion that \$50,000 is reasonably high. The Secretary of State has no problem with the fiscal note.

**ORIGINAL
MOTION:**

The original motion was **to send H 172 to the floor with a Do Pass recommendation. Motion carried.** Representatives Ringo and Trail will carry the bill on the floor. Representatives Harwood, Luker and Hart asked to be recorded as voting “No” on the motion.

ADJOURN:

Prior to adjourning, Vice Chairman Smith said the Smith Subcommittee would meet on Wednesday, February 21, following the full Committee meeting. There being no further business to come before the Committee, Chairman Clark adjourned the meeting at 4:40 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 21, 2007
- TIME:** 1:35 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representative Nielsen
- GUESTS:** Patricia Tobias, The Courts; Representative Eric Anderson; William von Tagen, Attorney General's Office; Heather Reilly, Idaho Prosecuting Attorneys Assn.
- MOTION:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Smith moved to accept the minutes of the meeting held on February 19, as written. Motion carried.
- H 193:** Representative Smith took the Chairman's seat in order that Representative Clark could explain the bill. H 193 is a 5% raise in the annual salary of justices of the Supreme Court and the annual salary of district judges. This is the same 5% raise that all other state workers will get. It is currently included in the budget of the gentleman on the second floor.
- Representative Boe asked why this is done every year. Representative Clark yielded to Patricia Tobias to answer. Ms. Tobias said this has been done for many years. It has been the preference of both the House and the Senate to do this each year. Representative Clark said the bill would have been brought forth earlier, but due to unforeseen circumstances, that was not possible this session.
- MOTION:** Representative LeFavour moved **to send H 193 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Clark will carry the bill on the floor.
- H 194:** Representative Anderson was recognized to explain the bill. This is the type of legislation you wish didn't need to be drafted, but society has changed and there is now a need for the legislation. The bill says that every person who maliciously and willfully disturbs the dignity or reverential nature of any funeral, memorial service, funeral procession, burial ceremony or viewing of a deceased person, is guilty of a misdemeanor.
- It clarifies the right to privacy during times of great loss. The Attorney General has approved the language of the bill.

MOTION: Representative Ring moved **to send H 194 to the floor with a Do Pass recommendation.**

Representative Harwood questioned the constitutionality of the bill. Representative Anderson said funerals were never meant to be public affairs. Representative Bock also questioned the constitutionality. William von Tagen with the Attorney General's office was recognized to address the question of constitutionality. Mr. von Tagen said the Attorney General's office looked at the language and recommended a few changes which have been incorporated in the bill. The bill deals with a funeral and the privacy and dignity of that. The bill is defensible.

Representative Labrador spoke in support of the motion pointing out that it deals with malicious and willful conduct. **Motion passed by voice vote.** Representative Anderson will carry the bill on the floor.

HCR 17: Representative Smith was recognized to explain. This Concurrent Resolution was drafted because the Smith Subcommittee recommended that a Rule of the Division of Veterans Services be rejected. Representative Smith asked to yield to Representative Ruchti and Representative Luker to explain why the Rule was rejected.

The Rule which was rejected was Docket #21-0106-0601, Rules for the Enforcement of the Veteran's Preference in Public Employment. The Rule contains procedures public employers may implement for an internal process to review complaints regarding veteran's preference in public employment. Should a public employer choose not to establish procedures, the Rule allows a petitioner to file an action directly in a district court within 35 days of the alleged denial of a preference.

Representative Luker pointed out that if there is a preference violation, allowing the governmental agency to set up the procedure is sort of like the fox taking care of the hen. The Rule also directs the Division of Veterans Affairs to set up another grievance process. The language says if there is no procedure in the governmental agency, it goes to the Division of Veterans Affairs, which would bypass the district court. This would draw out the process too long. Court access would be the quickest way to resolve the issue.

Representative Ruchti said this Rule does not inspire a lot of confidence with regard to a military member.

MOTION: Representative Smith moved **to send HCR 17 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Smith will carry the resolution on the floor.

S 1032: Heather Reilly was recognized to explain the bill. This bill increases the maximum discretionary sentence for unlawful discharge of a firearm at an inhabited dwelling house, occupied building or mobile home from five years to fifteen years.

The legislation is necessary to assist law enforcement and the Courts in protecting the community from drive-by shootings. Drive-by shooting is an extremely dangerous conduct. The legislation increases the

discretionary penalty, but the court will still have at its disposal all of the current sentencing options such as withheld judgment, local probation and county jail time. The court may still impose a five year sentence.

This increased penalty only applies to those who are convicted after a trial and a jury finds them guilty, or those who enter a guilty plea in adult court. It creates a general and specific deterrent for those who are willing to risk others lives by shooting a firearm at another person's home. Further, the bill allows for a longer period of supervision on probation and parole once the offender is released from jail or prison.

MOTION: Representative Shirley moved to **send S 1032 to the floor with a Do Pass recommendation.** Representatives Ring, Bock and Luker spoke in favor of the motion. **Motion carried by voice vote.** Representative Shirley will carry the bill on the floor.

S 1066: Heather Reilly was recognized to explain. This is a housekeeping bill. It creates consistency between the involuntary manslaughter code and the felony murder rule. The statute being amended is Idaho's manslaughter code, specifically section 2 which defines the crime of involuntary manslaughter.

Although the felony murder rule has been amended several times in the past years to include additional crimes for which the rule applies, the code covering involuntary manslaughter was not amended to reflect those same changes. The exceptions to the involuntary manslaughter statute must mirror the felony murder rule.

MOTION: Representative Smith moved to **send S 1066 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative LeFavour will carry the bill on the floor.

ADJOURN: Prior to adjourning, Chairman Clark said the Committee has heard all of the House bills. There are currently about 14 Senate bills which need to be heard. The Committee will start hearing those on Tuesday, February 27. There being no further business, the meeting was adjourned at 2:35 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

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

DATE: February 21, 2007

TIME: 2:45 PM

PLACE: Room 404

MEMBERS: Chairman Smith(24), Representatives, Wills, Luker, Bock, Ruchti

**ABSENT/
EXCUSED:** None

GUESTS: Sharon Powers, from Ahrens & DeAngeli

S 1057 **Chairman Smith** recognized Robert Aldridge, from Trust & Estate Professionals of Idaho. Inc. to explain S 1057 Trust, protector/spendthrift. The term "settlor" is not defined in probate code. This bill gives a definition to "settlor" and alphabetizes all the definitions. Idaho's current law does not address the authority of a trust advisor so this bill specifically allows and sets forth the authority for a trust advisor and explains the possible, but not mandatory, powers that a Trust Protector can hold, and allows a draftsman to incorporate the possible powers of a Trust Protector into a trust instrument by reference without having to specifically note each power in the trust instrument. Idaho law is unclear, with regard to spendthrift trusts, as to a creditor's right to invade the trust corpus, so this bill specifically provides what a spendthrift trust does under certain scenarios. The proposed changes to Idaho Code in this bill to section 4, addresses payment of income taxes and in section 5, dealing with fraudulent transfer of property, both need clarification so they are consistent.

MOTION: **Rep. Wills** moved to recommend to the full committee that **S 1057** be sent to the floor with a Do Pass recommendation. **Motion passed with a voice vote.**

S 1058 **Robert Aldridge** presented S1058. Guardianship proceedings, notices. Notices in guardianship proceedings have always been sent out by mail rather than serviced by a process server. However the Probate Code contains language which may be read contrary to this long standing method. This bill removes that contrary language and conforms the statutes to the actual practice in Idaho.

MOTION: **Rep. Bock** moved to recommend to the full committee that **S 1058** be sent to the floor with a Do Pass recommendation. **Motion passed with a voice vote.**

S 1060 **Robert Aldridge** Guardianship proceedings, notices S 1060. Relating to the Idaho Probate Code revising definition provisions relating to notice in guardianship proceedings where language in certain governmental, public and guardianship proceedings was integrated into the general definitions

portion of the Probate Code in a prior session. However that language was not deleted from other code sections, but now can be safely deleted. Additionally, when the language was consolidated into the general definitions section, the word "monetary" was inserted. This bill strikes that word since use of that incorrectly limits the type of benefits that entitle a governmental agency to notice.

MOTION: **Rep. Luker** moved to recommend to the full committee that **S 1060** be sent to the floor with a Do Pass recommendation. **Motion passed with a voice vote.**

S 1061 **Robert Aldridge** presented S 1061, Guardianship Child Protective Act, which will make guardianship available as a permanent placement for children who are within the jurisdiction of the Child Protection Act. With guardianships more permanent, they can be ordered as the final placement in a CPA proceeding more often and children will be more likely to qualify for federal funding. The section also eliminates the possibility that a guardianship might be used as an "end run" around the court's jurisdiction in a child protective act case, thereby giving better protection from the CPA for the child's health and safety.

MOTION: **Rep. Bock** moved to recommend to the full committee that **S 1061** be sent to the floor with a Do Pass recommendation. **Motion passed with a voice vote.**

ADJOURN: There was no further business. Chairman Smith adjourned the meeting at 3:45 p.m.

Representative Leon Smith
Chairman

Mary Lou Moon
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 27, 2007

TIME: 2:40 p.m.

PLACE: Room 404

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: Rex Blackburn, Dale Higer, Mike Brassey

MINUTES: Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the Smith Subcommittee minutes for the meeting held on February 21, 2007, and the minutes of the full committee meeting held on February 21, 2007, as written. Motion carried.

**REPORT OF
SMITH SUB-
COMMITTEE:** Representative Smith said the Smith Subcommittee has reviewed the following bills presented by Robert Aldridge, Trust & Estate Professionals of Idaho, Inc: **S 1057 relating to spendthrift trust, S 1058 relating to guardianship proceedings, S 1060 which amends existing law relating to Idaho Probate Code and S 1061 relating to guardianships under the Child Protection Act**, and recommends approval of all the bills. They deal with legal nuances of guardianship.

MOTION: Representative Smith moved to **send S 1057 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Wills will carry the bill on the floor.

MOTION: Representative Smith moved to **send S 1058 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Bock will carry the bill on the floor.

MOTION: Representative Smith moved to **send S 1060 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Luker will carry the bill on the floor.

MOTION: Representative Smith moved to **send S 1061 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Bock will carry the bill on the floor.

S 1012: The Chairman recognized Rex Blackburn, Blackburn & Jones LLP, to explain the bill. This legislation enacts the Uniform Foreign-Country Money Judgments Recognition Act. It was drafted and approved by the National Conference of Commissioners on Uniform State Laws and is recommended by the Idaho Uniform Law Commission for adoption in

Idaho. The legislation has been approved by the American Bar Association.

The legislation updates the 1962 Act, clarifying its provisions and correcting problems created by the interpretation of provisions of that Act by the courts over the years since its promulgation. It sets forth standards for recognition of foreign country judgments. It sets forth a procedure for recognition of foreign country judgments. It provides for a stay of proceedings pending appeal of a foreign country judgment.

The legislation provides a statute of limitations of 15 years within which an action to recognize a foreign country judgment must be commenced from the date that the foreign country judgment became effective in the foreign country.

The Act is intended to facilitate international commercial transactions by permitting judgments in foreign courts that have similar due process requirements to our courts to come into the United States when necessary to enforce those judgments.

The Chairman asked what the term "principles of comity" meant. Mr. Blackburn said this is a constitutional provision. Representative LeFavour asked about the use of the word "repugnant" in the legislation. Mr. Blackburn replied that word has been used since the enactment of the Act.

MOTION: Representative Smith moved **to send S 1012 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Harwood asked to be recorded as voting "No" on the Motion. Representative Nielsen will carry the bill on the floor.

S 1013: The Chairman recognized Dale Higer to explain the legislation. Mr. Higer said the Uniform Assignment of Rents Act seeks to bring consistency to commercial real property transactions by establishing a comprehensive model for the creation, perfection and enforcement of security interests in rents derived from real estate.

The legislation provides for enforcement of notification to a tenant, sets forth satisfactory form of notification and provides for the application of proceeds to payment of expenses of protecting real property.

MOTION: Representative Bock moved **to send S 1013 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: Representative Luker moved **to hold S 1013 for a time certain until Thursday, March 1, 2007, in order to give the members more time to study the legislation. Motion carried by voice vote.**

S 1016: Mike Brassey, Uniform Law Commissioner, was recognized to explain. This legislation adopts the new Uniform Prudent Management of Institutional Funds Act to replace the existing Uniform Management of Institutional Funds Act that was adopted in Idaho in 1996 and covers the same subjects. The new law will update existing law and conform to the Uniform Prudent Investor Act which governs charitable organizations.

The new uniform law was approved by the National Conference of Commissioners on Uniform Laws in 2006 and provides guidance to charitable organizations concerning the management and investment of funds held by those organizations. The new uniform law does not apply to corporate and other fiduciaries that are not charities and does not apply to the investment of endowment funds managed by the Endowment Fund Investment Board.

Mr. Brassey said there is a proposed amendment to the bill on page 1, line 34, deleting the word "permanent" in regard to a reference to the endowment funds and makes the exemption more accurate.

MOTION: Representative Smith moved to **send S 1016 to General Orders with the following Committee amendments attached: delete the word "permanent" on page 1, line 34, and change the time of 20 years on page 5, line 7, to 10 years.**

SUBSTITUTE MOTION: Representative Luker moved to **delete the word "permanent", change the time of 20 years to 15 years and to add the following language beginning on line 53, page 4: (4) "When a donor is unavailable or is incompetent, and if"**

AMENDED SUBSTITUTE MOTION: Representative Bock moved to **hold S 1016 for a time certain until Thursday, March 1, 2007, in order to give the members more time to study the legislation and decide on Committee amendments. Motion carried by voice vote.**

S 1018: Dale Higer was recognized to explain. The Uniform Real Property Electronic Recording Act provides county clerks and recorders the legal authority to prepare for recording of real property instruments. This act creates legislation authorizing recorders to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and retrieving these records.

The legislation is not mandatory. It provides for an electronic recording commission consisting of seven members appointed by the governor to adopt standards to implement the legislation.

MOTION; Representative Bock spoke in favor of the bill and moved to **send S 1018 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Harwood asked to be recorded as voting "No" on the motion. Representative Clark will carry the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:50 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 1, 2007
- TIME:** 2:50 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representatives Shirley, Bolz, Boe
- GUESTS:** Please see attached sign-in sheet
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on February 27, 2007, as written. Motion carried.
- HCR 105:** Chairman Clark said this resolution rejects the definition of multipurpose arena of the Idaho State Police, IDAPA 11.05.01, Rules Governing Alcohol Beverage Control, Section 010, Subsection 03. This rule was reviewed by the Smith Subcommittee. The Subcommittee recommended the rejection to the full Committee and that rejection was approved.
- UNANIMOUS
CONSENT:** The Chairman asked for Unanimous Consent to **send HCR 105 to the floor with a Do Pass recommendation. There being no objection, HCR 105 will be sent to the floor with a Do Pass recommendation.** Representative Luker will carry the bill on the floor.
- S 1013:** Dale Higer was recognized. Mr. Higer said this bill came before the Committee on Tuesday and was held over until today's meeting so that the language could be studied by some of the members. The legislation adds a new chapter known as the Uniform Assignment of Rents Act. The Act seeks to bring consistency to commercial real property transactions by establishing a comprehensive model for the creation, perfection and enforcement of security interests in rents derived from real estate.
- MOTION:** Representative Luker moved to **hold S 1013 in Committee.** In support of his motion, Representative Luker said this bill puts a tenant in the middle of a shooting match. There are different methods for trying to enforce security interest in rents. One is the enforcement by appointment of a receiver. Another is enforcement by notification to assignor. Another is enforcement by simple notification to a tenant.
- This legislation is supposed to protect the tenant. However, in reality, it does not afford protection. It causes confusion and stress on the tenant. When one enters into a security agreement, it would be hoped that the agreement is contained within four corners of a document. However, here you don't know what you are getting into.

SUBSTITUTE MOTION: Representative Bock moved **to send S 1013 to the floor with a Do Pass recommendation.** In support of his motion, Representative Bock said this is a sophisticated tool. It is a commercial tool that bankers and lenders use to secure property. This is an important tool in the commercial industry.

Uniformity is important and this proposal makes transactions more viable. The legislation is not intended to deal with Mom and Pop operations. It provides a uniform system where parties can work together.

Representative Luker said there is nothing in the bill that says this is strictly for commercial use. It is too easy to send a notice to the tenant. Representatives Nielsen and Harwood spoke in favor of holding the bill in Committee.

ROLL CALL VOTE ON SUBSTITUTE MOTION: The **Substitute Motion to send S 1013 to the floor with a Do Pass recommendation. Voting AYE: Representatives Smith, Ring, Wills, Ruchti, Bock and Clark. Voting NAY: Representatives Harwood, Nielsen, McGeachin, Hart, Labrador, Luker, LeFavour. Motion failed 6-7-3.**

ROLL CALL VOTE ON ORIGINAL MOTION: The **Original Motion to hold S 1013 in Committee. Voting AYE: Representatives Nielsen, McGeachin, Hart, Labrador, Luker and Clark. Voting NAY: Representatives Smith, Harwood, Ring, Wills, LeFavour, Ruchti, Bock. Motion failed 6-7-3.**

S 1013: Chairman Clark said S 1013 was still on the table and recommended that new motions and a roll call vote be entertained.

MOTION: Representative Smith moved **to send S 1013 to the floor with a Do Pass Recommendation.**

SUBSTITUTE MOTION: Representative Hart moved **to hold S 1013 in Committee.**

ROLL CALL VOTE ON SUBSTITUTE MOTION: The **Substitute Motion to hold S 1013 in Committee. Voting AYE: Representatives Harwood, Nielsen, Hart, Labrador, LeFavour. Voting NAY: Representatives Smith, Ring, Wills, Ruchti, Bock, Clark. Motion failed 5-6-5.**

ROLL CALL VOTE ON ORIGINAL MOTION: The **Original Motion was to send S 1013 to the floor with a Do Pass recommendation. Voting AYE: Representatives Smith, Ring, Wills, Ruchti, Bock, Clark. Voting NAY: Representatives Harwood, Nielsen, Hart, Labrador, LeFavour. Motion passed 6-5-5. Representative Bock will carry the bill on the floor.**

S 1016: Mike Brassey was recognized to explain the legislation. Mr. Brassey said this bill was presented to the Committee on Tuesday, February 27, and held over until today's meeting to allow some amendments to be drafted.

The legislation adopts the new Uniform Prudent Management of Institutional Funds Act to replace the existing Act which was adopted in Idaho in 1996. The new uniform law provides guidance to charitable

organizations concerning the management and investment of funds held by those organizations.

Mr. Brassey said the amendments delete the word "permanent" in regard to a reference to endowment funds, change a certain time period from 20 years to 10 years and add a notice requirement to release restrictions on the use of funds.

MOTION: Representative Smith moved **to send S 1016 to General Orders with the following Committee amendments: On page 1 of the bill, in line 34, delete "permanent"; on page 5, line 3, following "general" insert: "and the donor if available"; and in line 7, delete "twenty (20)" and insert: "ten (10)". Motion carried by voice vote.** Representative Labrador will carry the bill on the floor.

S 1015: George Gutierrez, Industrial Commission, was recognized to explain. This amendment will clarify that the Crime Victims' Compensation account is entitled to restitution for payments made for medical and forensic sexual assault exams, as well as all other payments made to or on behalf of victims of crimes.

MOTION: Representative LeFavour moved **to send S 1015 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative LeFavour will carry the bill on the floor.

S 1084: Larry Callicutt, Director of the Department of Juvenile Corrections, was recognized. This amendment changes the name of the state "block grant funds", which are distributed to counties, to "Juvenile Corrections Act Funds". These funds will still be passed through to the counties. Only the name needs to be changed in the statute for clarification.

MOTION: Representative Nielsen moved **to send S 1084 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Harwood will carry the bill on the floor.

ADJOURN: Prior to adjournment, Chairman Clark said the Committee would meet on Monday, March 5, 2007, to hear one House bill and one Senate bill. There being no further business to come before the Committee, the meeting was adjourned at 4:05 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 5, 2007
- TIME:** 2:20 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** None
- GUESTS:** Please see attached sign-in sheet
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Wills moved to approve the minutes of the meeting held on March 1, 2007, as written. Motion carried.
- Prior to addressing the items on the agenda, Chairman Clark said **S 1013 was returned to the Committee so that a final vote could be taken.** The bill will be placed on the Wednesday, March 7, 2007, agenda.
- H 172:** The Chairman asked Representatives Ringo and Trail to recap the bill as quickly as possible and then direct their comments to the amendments to the legislation since the bill had already been heard by the members at a previous meeting.
- Representative Trail said this bill provides protection for victims of domestic violence. It provides for the use of designated addresses and prohibits the disclosure of records. Representative Luker questioned immunity from liability. Representative Trail said the amendments would resolve the concern expressed regarding immunity. Representative Trail gave each member an opinion (attached) from the Attorney General's office regarding the question of liability.
- Representative Ringo pointed out that the amendments provided immunity from liability, which was the biggest issue raised by the Committee. There were other deletions in the bill which would clarify the language. These changes did not seem to be a huge change in the direction the bill takes.
- Representative Labrador asked if the Prosecuting Attorneys Association had been informed concerning the bill and the answer was that they had not.
- MOTION:** Representative LeFavour moved **to send H 172 to General Orders with Committee amendments attached.** Representative Labrador spoke against the motion saying some prosecutors do not like this legislation. In favor of the motion, Representative LeFavour said there are many women in our state who are forced to protect themselves and their lives. This will

allow those people to get on with their lives in society. Representative Harwood spoke against the motion saying if this bill doesn't solve the problem, it should not be sent to the floor.

DIVISION: Division was called. A show of hands indicated 7 in favor of the motion and 9 against. **Motion failed. H 172 will be held in Committee.** Representatives LeFavour, Boe and Bock asked to be recorded as voting in favor of the motion.

H 254: Representative Bock asked for **Unanimous Consent to hold H 254 in Committee.** There being no objection, the bill was so held.

S 1150: Olivia Craven, director of the Pardons and Parole Commission, was recognized to explain the bill. This bill asks for an increase to the compensation for members of the Commission of Pardons and Parole. The members have not received an increase in their compensation for approximately 15 years.

The Commissioners spend many days preparing for each session and they are not compensated for this time. They spend days reading reports for each inmate they will be hearing in order to make the best decision possible. They are not paid for the preparation time. The Commissioners are a working board making parole and clemency decisions.

Many states have a full time parole board. Idaho processes many more cases than most full time parole boards do. This annual increase amounts to less than \$20,000 for the Commissioners.

MOTION: Representative Smith moved to **send S 1150 to the floor with a Do Pass recommendation. Motion passed by voice vote.** Representative Smith will carry the bill on the floor.

S 1151: Mike Kane was recognized to explain. Mr. Kane asked the Committee to **hold S 1151 for a time certain until the meeting on Wednesday, March 7, 2007, in order that some language concerns could be worked out.** There being no objection the bill was so held.

S 1160: Patricia Tobias, Administrative Director of the Courts, was recognized to explain. This bill would add a new district judge position in the Fourth Judicial District with resident chambers in Ada County.

No new district judge positions have been added in the Fourth Judicial District since 1998. These district judges have volunteered many hours on drug addiction crimes. The Ada County Drug Court and Mental Health Court have provided a cost-effective means of furthering rehabilitation, avoiding expensive incarceration and protecting the community. They have been able to operate only because judges have been willing to devote time beyond normal working hours to preside over these courts.

Dealing with the demands of Ada County's burgeoning population and further expanding the capacity of the Drug and Mental Health Courts requires additional judicial resources.

MOTION: Representative Nielsen moved to **send S 1160 to the floor with a Do**

Pass recommendation. Motion carried by voice vote. Representative Nielsen will carry the bill on the floor.

S 1164: Mike Kane, representing the Idaho Sheriffs Association, was recognized to explain. The purpose of this bill is to bring the search warrant statute into compliance with modern practice.

Most corporations, including banks, telephone companies, internet companies and similar businesses that have records law enforcement may seek in a criminal investigation, prefer that search warrants be served electronically. Current law requires such service to be in person by a police officer.

The bill has to do with obtaining electronic records. Many records are held out of state. This would allow the security officer to request that the information be returned by electronic mail. This is a very important bill. It gives a less aggressive way of serving warrants.

MOTION: Representative Wills moved **to send S 1164 to the floor with a Do Pass recommendation.** In support of his motion, the Representative said this makes it easier for law enforcement to deal with white collar crimes. This law needs to be on the books. Representatives Bock, LeFavour and Labrador spoke in favor of the motion. **Motion passed by voice vote.** Representative Hart asked to be recorded as voting "No" on the motion. Representative Wills will carry the bill on the floor.

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 7, 2007
- TIME:** 2:10 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** None
- GUESTS:** Please see sign-in sheet
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on March 5, 2007, as written. Motion carried.
- S 1013:** Chairman Clark said this bill relates to the Uniform Assignment of Rents Act which was presented to the Committee previously. There has been some confusion with regard to votes taken on the bill and the fact that some members were not at the meeting, so the legislation is before the Committee for a final vote on the disposition of the bill.
- MOTION:** Representative Luker moved **to hold S 1013 in Committee**. In support of his motion, Representative Luker said the bill was previously discussed at length. There are problems with the language that need to be addressed. There doesn't seem to be any rush to pass the legislation. The bill as it is written causes confusion to a tenant. More time is needed to study the issue.
- SUBSTITUTE MOTION:** Representative Bock moved **to send S 1013 to the floor with a Do Pass recommendation**. In support of his motion, Representative Bock said all of the transactions that are described in this bill are going on right now. This actually makes things better than the law currently in place. This does not appear to affect smaller transactions. It is a good bill.
- DIVISION:** Chairman Clark called for a show of hands on the **Substitute Motion to send S 1013 to the floor with a Do Pass recommendation**. There were five AYE votes and seven NAY votes. Substitute motion failed.
- ROLL CALL VOTE:** Roll Call Vote was requested on the original Motion **to hold S 1013 in Committee**. **Voting AYE: Representatives Smith, Harwood, Shirley, McGeachin, Hart, Bolz, Labrador, Luker, LeFavour, Clark**. **Voting NAY: Representatives Ring, Wills, Boe, Ruchti, Bock**. Motion passed 10-5-1.
- S 1151:** Michael Kane was recognized to explain the bill. The language in this bill has been worked on for about a year. It is a little complicated. Idaho requires that every county must provide medical services to its residents.

The law also requires that every single EMS in the state must have a medical director who must be a licensed physician. These physicians must set protocols for the paramedics and technicians.

These supervising physicians are currently not able to obtain insurance coverage from their private insurance carriers for their work for the governmental entity. In order to rectify this problem, this bill proposes to treat supervising physicians as employees of the governmental entity under the tort claims act. In this way, the governmental entity will be able to provide insurance coverage to the physicians.

PRO: Ken McClure, attorney representing the Idaho Medical Association, was recognized to give his testimony. Mr. McClure said the Association fully supports the bill.

MOTION: Representative Ring moved **to send S 1151 to the floor with a Do Pass recommendation. Motion carried.** Representative Luker will carry the bill on the floor.

S 1171: Senator Kate Kelly was recognized to explain the bill. The Senator said this bill is just a minor change to the statute for civil action. This is a tort law. The bill provides for an action for damages for the loss of companionship, comfort, love and society suffered by parents of an injured minor child.

Currently, Idaho law has been unclear in cases of wrongful injury. In the case of claims for damages, this will clarify the law. The legislation also recognizes that the minor child of a negligently injured parent or guardian can maintain a cause of action for damages.

Representative Smith asked if any thought was given to a statute of limitations when this language was drafted. The Senator said no thought was given to putting limitations on the statute of limitations. In a wrongful injury action, it has been unclear as to what the courts should do.

Representative Harwood asked about the meaning on line 31 of the bill where the language states by a wrongful act or "neglect of another". Senator Kelly said neglect of another would occur when another person is negligent in allowing an injury to occur.

CON: Allyn Dingel, attorney representing State Farm Insurance Companies, was recognized. Mr. Dingel said insurance people are totally opposed to the bill. This is major legislation. The main concern is over Section 2 of the bill. In essence, when a parent receives an injury, a minor child may maintain an action for the injury of that parent or guardian for damages which are, in essence, loss of consortium.

Insurers don't know how to settle a case when actions can be brought by minor children who have their own independent cause of action for loss of consortium. Over 90% of the usual bodily injury cases get settled. Insurance carriers are not going to run the risk that when they settle with the injured parent, the insured can be sued later on by the child.

This bill causes a problem that both the defense bar and the plaintiff's bar

should not have to contend with. Insurance companies will certainly not settle any claims until they have total protection to the insured.

PRO: Barbara Jorden, representing the Idaho Trial Lawyers Association, was recognized. Ms. Jorden said this bill is an interesting one. The members of the association were asked what they thought about the bill. The association decided to support the legislation. This is a clarification for the judges in the state. It is not a guarantee of payment. The bill just allows these cases to go forward in court. The wrongful injury cases would not be any different than cases for wrongful death.

CON: Phil Barber, attorney representing the American Insurance Association, was recognized. Mr. Barber said he was also speaking on behalf of Woody Richards who represents the American Family Insurance Company. This is a significant piece of legislation. It creates a new element to damages and there is a proof of injury problem. This law would add an additional party claim.

MOTION: Representative Luker said the subject matter here is serious and worth consideration. However, more time is needed to study the language. Representative Luker moved **to hold S 1171 for a time certain until the meeting to be held on next Tuesday, March 13, 2007. Motion carried.** Representatives Harwood and Nielsen spoke in favor of the motion. Representative Bock asked to be recorded as voting "No" on the motion.

ADJOURN: Chairman Clark said there would not be a meeting on Friday, March 9, 2007. There being no further business to come before the Committee, the meeting was adjourned at 3:05 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 13, 2007
- TIME:** 2:15 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** None
- GUESTS:** Please see attached sign-in sheets
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Smith moved to approve the minutes of the meeting held on March 7, 2007, as written. Motion carried.
- UNANIMOUS
CONSENT:** The Chairman asked for Unanimous Consent **to move S 1161 to the bottom of the Agenda. There being no objection, the bill was so moved.**
- S 1171:** Senator Kelly was recognized to present the bill. The Senator said this is a bill to clarify that minor children and their parents are able to file a wrongful injury action. The Chairman reminded the Committee that we heard the bill at the last meeting and it was held for a time certain until this meeting in order for the members to study it in more detail.
- CON:** Rod Saetrum, attorney representing himself and the Idaho Farm Bureau, was recognized. Mr. Saetrum said this legislation indicates that there is no fiscal impact and that does not appear to be the case.
- In cases where there is injury to a minor child, only the courts can approve the settlement. Presently in Idaho there are a couple hundred minor claims per year. If this passes, this 200 will grow into the thousands.
- Mr. Saetrum asked how annual accounting in these cases would be handled. There must be a fiscal impact on the bill. A concern arises where a parent has an accident which incurs \$50,000 in medical bills. This claim might be made against a person who has \$100,000 in insurance. Then there are four minor children. The children would be allowed to make claims under this law and those claims might go over the \$100,000 in insurance coverage.
- There would be accounting problems regarding a conflict of interest between parent and child and a conflict of interest for the attorney representing the injured parent. The children cannot waive a conflict of interest. Therefore, there is another level of litigation involved.

- PRO:** John Bush, attorney representing the Idaho Trial Lawyers Association, was recognized. Mr. Bush said this is a good bill. It has always seemed curious to Mr. Bush where in the wrongful death cases the child can bring a claim, but if the parent is seriously injured, no claim can be filed. The bill is all about fairness. The family has always been important in this state. When an injured parent is unable to be a mentor to his or her children, the children are truly impacted significantly.
- Representative Smith asked if a cause of action could also be filed against a non custodial parent or a step parent. The answer was a cause of action could most likely be brought in the case of non custodial parents as well as step parents as long as there were close family ties.
- CON:** Allyn Dingel was recognized. Mr. Dingel discussed the statute of limitations. The statute of limitations runs when a person is 18 plus 2 years. The Legislature must decide what it wants to do on this issue.
- PRO:** Senator Kelly was recognized to wrap up the testimony. The Senator said Idaho recognizes the wrongful death issue. Please extend the policy to wrongful injury cases. The courts have requested a decision on this issue.
- MOTION:** Representative Wills moved **to send S 1171 to the floor with a Do Pass recommendation.** Representatives Ring, LeFavour and Nielsen spoke against the motion.
- SUBSTITUTE MOTION:** Representative Harwood moved **to hold S 1171 in Committee.** In support of his motion, Representative Harwood said there seems to be too many problems in the bill the way it is currently written.
- ROLL CALL VOTE:** Roll Call Vote was requested on the Substitute Motion. Voting AYE: Representatives Smith, Harwood, Nielsen, Ring, McGeachin, Hart, Bolz, Labrador. Voting NAY: Representatives Shirley, Wills, Luker, Boe, LeFavour, Ruchti, Bock and Chairman Clark. **Substitute Motion failed: 8-8-0.**
- ROLL CALL VOTE:** Roll Call Vlore was requested on the Original Motion. Voting AYE: Representatives Shirley, Wills, Luker, Boe, LeFavour, Ruchti, Bock and Chairman Clark. Voting NAY: Representatives Smith, Harwood, Nielsen, Ring, McGeachin, Hart, Bolz and Labrador. **Motion failed: 8-8-0.**
- MOTION:** Representative LeFavour moved **to send S 1171 to the floor without recommendation.**
- ROLL CALL VOTE:** Voting AYE: Representatives Shirley, Wills, Luker, Boe, LeFavour, Ruchti, Bock. Voting NAY: Representatives Smith, Harwood, Nielsen, Ring, McGeachin, Hart, Bolz, Labrador and Chairman Clark. **Motion failed: 7-9-0. S 1171 will remain in Committee.**
- S 1142:** Representative Block was recognized to explain the bill. This legislation is a recommendation of the Interim Committee on Mental Health and Substance Abuse that met during the past summer and fall. The bill adds a new paragraph to the Sentencing Chapter of the Juvenile Correction Act of the Idaho Code that deals with substance abuse. The changes allow

judges some broadened sentencing and treatment options.

This bill is necessary because 80% to 90% of the juveniles in the system have substance abuse issues.

- PRO:** Patricia Tobias, Administrative Director of the Courts, was recognized. Ms. Tobias said if treatment were available, costs would be significantly less to the community than if these juveniles were placed into custody.
- MOTION:** Representative LeFavour moved **to send S 1142 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Block will carry the bill on the floor.
- S 1185:** Kandace Yearsley, Child Support Director with the Department of Health & Welfare, was recognized to explain the legislation. This legislation will add language to Section 7-1026 and 7-1044, Idaho Code, requiring social security numbers be identified on the initiating documents used to establish or register court orders for a child and/or medical support.
- By adding this language, Idaho will continue to comply with the federal requirement and can be granted a federal waiver from the Federal Office of Child Support Enforcement, which will put the Department in compliance with the Social Security Act and the Idaho State Child Support Plan.
- These social security numbers are provided to the court for registration purposes only. This is something that is already being done.
- MOTION:** Representative Wills moved **to send S 1185 to the floor with a Do Pass recommendation.**
- SUBSTITUTE MOTION:** Representative Hart moved **to hold S 1185 in Committee.** Representative Boe spoke against the substitute motion. Representative Harwood spoke in favor of the substitute motion.
- AMENDED SUBSTITUTE MOTION:** Representative LeFavour moved **to send S 1185 to General Orders with Committee amendments addressing the release of social security number information. Motion failed.**
- SUBSTITUTE MOTION:** The substitute motion was **to hold S 1185 in Committee. Motion failed.**
- ROLL CALL VOTE:** The original motion was **to send S 1185 to the floor with a Do Pass recommendation.** Voting AYE: Representatives Smith, Ring, Shirley, Wills, McGeachin, Labrador, Luker, Boe, LeFavour, Ruchti, Clark. Voting NAY: Representatives Harwood, Nielsen, Hart, Bolz, Bock. **Motion passed: 11-5-0.** Representative Wills will carry the bill on the floor.
- S 1161:** Steve Tobiason, attorney representing Aladdin Bail Bonds, was recognized. This bill is a compromise bill from a bill that was presented to the Committee last year. Senator Jorgenson and Representative Clark worked together to draft the language in this bill. The bill revises descriptive language and sets forth the purpose of bail and revises provisions applicable to the forfeiture of bail.

In line 11 of the printed bill, it says that the court “shall immediately” order the issuance of a bench warrant. In line 15, new language has been added saying the clerk shall mail written notice within 5 days of the forfeiture for failure to appear to the last known address, “or, if the bail consists of a surety bond, to the surety or its designated agent”.

The time line in the bill is changed from 90 days to 180 days, which allows more time to locate defendants. The language directs that the defendant must be surrendered to the jail facility of the county which issued the warrant.

This is a simple bill. Forty-five states have commercial surety. Out of those 45 states, 42 allow more than 90 days in which to locate a defendant. The bill will provide an immediate and direct benefit to the sheriffs of the state. It will also provide further protection to third party family members who co-sign on these bonds.

**NEUTRAL
POSITION:**

Michael Henderson, attorney with the Courts, was recognized to give his comments. Mr. Henderson said the Court does not take any position on this bill. Legislation regarding bail has been proposed in each of the last two years. Those proposals would have amended this same statute and would have extended the time between the order of forfeiture and remittance, when the forfeited bail is paid over and distributed as provided in Idaho Code.

In 2006, the Supreme Court appointed the Bail Bonds Guidelines Committee. The membership of this committee includes district judges, magistrate judges, trial court administrators, an elected clerk, a sheriff, a deputy prosecuting attorney, a lawyer, and a representative from the Department of Insurance.

The committee examines the bail guidelines in various judicial districts in order to recommend uniform statewide bail guidelines for adoption by the Court. The committee is also charged with reviewing statutes and Supreme Court rules pertaining to bail and recommending any amendments that appeared advisable.

The committee members have questioned the advisability of proceeding with this type of legislation at this time.

The Chairman asked if this committee was appointed because of two years of controversy on this bill. Mr. Henderson said a subcommittee was formed to study the issues. Representative Labrador asked about the use of “must immediately” in the language. The answer was that language is currently in statute. The use of “shall immediately” doesn’t really change that language.

CON:

Skip Smyser was recognized to testify. Mr. Smyser said he represents the Professional Bail Agents of Idaho. Mr. Smyser cites opposition to the bill because it has a false fiscal note. It confuses and conflicts the purpose of bail in Idaho.

There has been an on-going battle and there has been litigation filed. This legislation does not need to be passed at this time. The Supreme Court intends to do a thorough review of the law in the state of Idaho.

This would put the law in conflict with the court's rule.

- CON:** Michael Whitlock was recognized to give his comments. Mr. Whitlock spoke against the bill saying it seems to be premature.
- CON:** Ken Owens was recognized. Mr. Owens said he has been a bail agent in the state of Idaho for 24 years. He has served on the Supreme Court Committee. He questioned the need to pass the bill at this time. The Supreme Court Committee should have more time to study the issue and bring forth recommendations.
- CON:** John Duvall, bail agent, was recognized. Mr. Duvall said this bill was brought forward without any consultation with the bail bond association. The problem with the bill is the association is already doing everything it can. Two bail agents have attended every meeting on this issue. The Supreme Court Committee should be allowed to do its job.
- PRO:** Michael Kane, representing the Idaho Sheriffs Association, was recognized. Mr. Kane said he was a prosecutor for 15 years. He has been representing the Sheriffs for 7 years. The Sheriffs support this legislation. If there is no bench warrant issued, a defendant walks. Changing the 90 days to 180 days gives more time to locate the defendants.
- There are currently thousands upon thousands of bench warrants issued. Under current law, after 90 days, the bail is forfeited. Because of this there are approximately 10,000 warrants in Ada County where no one is looking for the defendants because the 90-day time is passed. Also, current law says that if a defendant is found in Malad County, he or she may be turned into Malad authorities, even though that person might be wanted in Coeur d'Alene.
- The issue is whether to wait or not wait. The Supreme Court Committee works slowly. The Committee will eventually make recommendations to pass statutes. Mr. Kane asked the members to pass the bill, which will allow more time to locate and return defendants. Fewer people will jump bail because of this bill.
- PRO:** Steve Tobiason was recognized to wrap-up his testimony. Mr. Tobiason said he serves on the Supreme Court Committee. The Court was informed that this bill would be before the Judiciary and Rules Committee this session. The Supreme Court Committee wants to rewrite all 37 sections of the statute. The statute does not address bail bonds. The Court says that issue is the province of the legislature.
- MOTION:** Representative Hart moved **to send S 1161 to the floor with a Do Pass recommendation.**
- SUBSTITUTE MOTION:** Representative Luker moved **to send S 1161 to General Orders with the following Committee amendments: in line 11 of the printed bill, remove the words "shall immediately". Also, in the two following sections of the Code, sections 19-2928 and 19-2929, change the time line of 90 days to 180 days.**

**AMENDED
SUBSTITUTE
MOTION:**

Representative Bock moved **to hold S 1161 in Committee**. In support of his motion, the Representative said this bill is trying to do something for which there is already a committee set up to deal with.

**ROLL CALL
VOTE:**

On the Amended Substitute Motion to hold in Committee, voting AYE: Representatives McGeachin, Bolz, Boe, LeFavour, Bock. Voting NAY: Representatives Smith, Harwood, Nielsen, Ring, Shirley, Wills, Hart, Labrador, Luker, Ruchti, Clark. **Motion failed: 5-11-0.**

**SUBSTITUTE
MOTION:**

The Substitute Motion was **to send S 1161 to General Orders with Committee amendments attached. Motion carried by voice vote.** Representatives Clark and Luker will carry the bill and the amendments on the floor. Representatives McGeachin, Bock and LeFavour asked to be recorded as voting "No" on the motion.

ADJOURN:

There being no further business to come before the Committee, the meeting was adjourned at 5:35 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 15, 2007
- TIME:** 2:20 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representatives Wills, McGeachin
- GUESTS:** Please see sign-in sheet
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bock moved to approve the minutes of the meeting held on March 13, 2007, as written. Motion carried.
- S 1179:** Senator McGee was recognized to explain the legislation. This bill clarifies the Idaho Criminal Gang Enforcement Act. It revises descriptive language and clarifies punishments for adults and juveniles.
- This legislation makes it clear that the gang act applies to juveniles. It has been drafted because judges and prosecutors have had trouble with regard to juvenile punishment for gang related crimes.
- MOTION:** Representative Smith moved **to send S 1179 to the floor with a Do Pass recommendation.**
- David Hensley, office of the Governor, was recognized to further explain the bill. Mr. Hensley said judges in these gang related cases have the discretion on how to charge these juveniles.
- Representative LeFavour spoke against the motion. Representative Bolz and Representative Luker spoke in favor of the motion. **Motion carried by voice vote.** Representatives LeFavour and Boe asked to be recorded as voting "No" on the motion. Representative Bolz will carry the bill on the floor.
- S 1184:** Elizabeth Criner, representing Pfizer, Inc., was recognized to explain the legislation. Ms. Criner said over the past six years there have been an increasing number of counterfeit drugs that have made their way into the wholesale distribution chain and ended up in the hands of American consumers.
- This legislation is proposed to limit the opportunity to introduce counterfeit drugs into the U.S. market via the wholesale transfer process. The legislation accomplishes this by tightening the rules around the licensing of prescription drug wholesalers. It establishes pedigree requirements to ensure the authenticity of prescription drugs within the distribution system.

The bill also establishes penalties for violators. It allows the state to use an accreditation service.

Ms. Criner said this is a very important issue. Counterfeit drugs can affect thousands of lives.

MOTION: Representative Ring moved **to send S 1184 to the floor with a Do Pass recommendation.**

PRO: Bill Roden, attorney representing the Pharmaceutical Research & Manufacturers Association of America, was recognized. The Association endorses the concept of this legislation. All of the various participants involved in drafting the bill have worked hard to create a good piece of legislation.

PRO: Mick Markuson, Idaho Board of Pharmacy, was recognized. Mr. Markuson said the Board licenses approximately 600 wholesalers and distributors. This bill will take effect on July 1, 2007. It is very extensive legislation. New licenses issued after July 1 will come under this law.

ORIGINAL MOTION: **Motion passed by voice vote.** Representative Ring will carry the bill on the floor.

S 1153: Senator Corder was recognized to explain the legislation. Senator Corder asked for permission to read Title 7, Chapter 15, relating to the Small Lawsuit Resolution Act (attachment). In order to reduce the cost and expense of litigation and encourage the swift, fair and cost-effective resolution of disputes, the legislature establishes a system to encourage civil litigants to resolve their disputes through alternative dispute resolution..

The procedures to be utilized under this chapter, while based on the alternative dispute resolution processes of arbitration, mediation and early neutral evaluation, are intended to be as informal as practicable to accomplish these objectives.

The Act began as an experiment with a sunset provision. Last year the legislature acted to remove the sunset provision. There is currently much speculation regarding the success of the experiment. The Act has not produced the volume of data, positive or negative, that the legislature may have expected. It is also true the parameters of any experiment dictate the result, data and eventual success or failure.

Legal practitioners have indicated their inability to use the statute because the claimed amount is too small. Therefore, this bill increases the amount to \$50,000 from \$25,000. It is believed that this should increase the usage of the Act. By increasing usage, court time will be saved and solutions will be expedited.

It is important to note on the handout (attached), there were 75 Small Resolution Act cases in Ada County in 2006. Twenty-five of these were resolved. A judge from the 4th District has said that the Act provides a great tool for fast resolution of small claims.

The Chairman asked why the amount of \$50,000 was used instead of \$100,000. The Senator replied that he had originally wanted to increase the amount to \$75,000, but there was a lot of objection to that because of the lack of data. It was decided to go with the \$50,000 in the hope of gathering more data.

PRO: Russ Johnson, attorney, was recognized. Mr. Johnson said he uses the Small Resolution Act often in his practice. He has settled many cases because of the Act. The Act doesn't work in all cases, but it works in many cases.

CON: Phil Barber, attorney representing the American Insurance Association, and also testifying on behalf of others representing the insurance industry, spoke against the increase from \$25,000 to \$50,000. The reason is friction costs in the system. The Small Resolution Act was crafted to settle small lawsuit amounts. Mr. Barber said he knows of no state with an amount as high as \$50,000. This adds another step in the litigation process. It adds a very imperfect dispute resolution argument.

In the last decade, mediation has become a very well used tool. Mediation is a structured negotiation process. It is the addition of a third party to help reach a settlement agreement between the other parties. A \$50,000 lawsuit is not a small lawsuit.

The Act provides a very limited process. The bigger the case, the more it is worth. This distracts from dispute resolution. The courts can always order mediation.

CON: Ken McClure, attorney representing the Idaho Liability Reform Coalition, was recognized. Mr. McClure asked the members to use caution on this bill. If there were certainty that the Act is working, then the Coalition would suggest going forward with this bill. Small lawsuits can be treated differently from large lawsuits. Ninety to ninety-two percent of civil suits settle before trial.

The Act does not seem to be achieving its goal. It seems to add a layer of time and a layer of cost. The Act was originally enacted as an experiment. So far, it has not been a success. Lawsuits using this Act do not appear to have benefitted from it. Small lawsuits will settle with or without this legislation.

CONCLUDING REMARKS: Senator Corder said he has heard all of this testimony before. There is not enough data to conclude whether this Act is working or not. If the Act works for only five people, then it is working. There are people in Idaho who are not aware of this process.

Representative Smith said the germane parties worked with trial lawyers to put this law together. In one of the first drafts, the dollar amount was \$50,000. Because of some objections, a compromise was reached to set the amount at \$25,000. The problems are the attorney on either side have to recognize using this Act right off.

Representative Smith said going to \$50,000 from \$25,000 is not a big deal. This is an ongoing procedure.

- MOTION:** Representative Smith moved **to send S 1153 to the floor with a Do Pass recommendation.** In support of his motion, the Representative said this act encourages parties to settle a lawsuit quickly. There are only a certain number of days in which to invoke the Small Resolutions Act.
- Representative Luker and Representative LeFavour spoke in favor of the motion. Representative Ring spoke against the motion saying a small amount must be in the eye of the beholder. The amount of \$50,000 is not a small amount in his opinion.
- SUBSTITUTE MOTION:** Representative Labrador moved **to hold S 1153 in Committee.** Once the lawsuit gets past \$25,000, it is no longer a small amount of money. Representative Ruchti spoke in favor of the substitute motion.
- ROLL CALL VOTE:** Roll Call Vote was requested on the Substitute Motion to hold S 1153. **Voting AYE: Representatives Harwood, Ring, Hart, Bolz, Labrador, Ruchti. Voting NAY: Representatives Smith, Nielsen, Shirley, Luker, Boe, LeFavour and Clark. Motion failed: 6-7-3.**
- ROLL CALL VOTE:** Roll Call Vote was requested on the Original Motion to send to the floor with a Do Pass recommendation. **Voting AYE: Representatives Smith, Harwood, Nielsen, Shirley, Luker, Boe, LeFavour and Clark. Voting NAY: Representatives Ring, Hart, Bolz, Labrador, Ruchti. Motion passed 8-5-3.**
- ADJOURN:** Prior to adjourning, the Chairman said any future meetings would be subject to the call of the Chair. There being no further business to come before the Committee, the meeting was adjourned at 4:05 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 21, 2007
- TIME:** 4:00 p.m.
- PLACE:** Room 404
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Harwood, Nielsen, Ring, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Boe, LeFavour, Bock, Ruchti
- ABSENT/
EXCUSED:** Representatives McGeachin and Ruchti
- GUESTS:** David Hensley, Office of the Governor
- MINUTES:** Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on March 15, 2007, as written. Motion carried.
- S 1213:** Chairman Clark recognized David Hensley, Office of the Governor, to explain the bill. The purpose of the bill is to provide for an Idaho Security Medical Program, which the Department of Corrections would maintain. S 1213 replaces the word "facility" with "program" throughout chapter 13, title 66, Idaho Code. Additionally, the legislation makes minor technical changes in the same chapter.
- The legislation is important for three reasons. First, it would modernize a section of code to reflect the Department of Correction's current approach for providing care for this segment of individuals.
- Second, the legislation would reduce potential liability to the state. The Governor's Office and the Department of Correction believe they are meeting the spirit of the current law by providing care and treatment in a secure setting.
- Third, the legislation will give the Governor and the legislature time and flexibility to craft a long-term solution, while still providing care and treatment for these individuals in a secure setting.
- MOTION:** Representative Boe moved **to send S 1213 to the floor with a Do Pass recommendation.** Representative Boe expressed pleasure that a program will be in place to separate these violent mentally ill individuals from being incarcerated within the general prison population.
- Representative Wills said everyone familiar with the problem of incarcerating mentally ill individuals knows the necessity of this legislation. Representative LeFavour spoke in favor of the motion. **Motion carried by voice vote.** Representative LeFavour will carry the bill on the floor.
- ADJOURN:** The Chairman thanked the secretary, the page, and the members of the

Committee, especially the Vice-Chairman, for their hard work. Any possible future meetings will be at the call of the Chair.

There being no further business to come before the Committee, the meeting was adjourned at 4:40 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary