

Senate Judiciary & Rules Committee

Minutes
2007



MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 12, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Lodge, Jorgenson, Hill, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: Senators Davis, and McKague

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

Chairman Darrington explained that Leigh Hinds, Secretary for the Committee, was out ill. He introduced Barbara Davidson, Pool Secretary and Committee Page, Ben Larson.

RS16582 **Relating to District Judges**

Michael Henderson, Legal Counsel for Supreme Court, explained the recommendations for RS16582 from the Supreme Court for defects or omissions in the laws for the terms of district judges.

MOTION: **Vice Chairman Richardson** made a motion to send RS16582 to print. **Senator Jorgenson** seconded the motion. The motion carried with a **voice vote**.

RS16583 **Relating to firearms**

Michael Henderson explained that RS16583 provided the correct wording for misdemeanors as a fine not to exceed more than \$1,000.

MOTION: A motion was made by **Senator Burkett** to send RS16583 to print. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

RS16584 **Relating to mandatory income withholding for child support**

Michael Henderson explained that RS16584 would make clear that the court has the authority to amend not only administrative orders pertaining to child support, but also the authority to amend the court's own child support.

MOTION: **Senator Hill** made a motion to send RS16584 to print. The motion was seconded by **Senator Kelly**. The motion carried by a **voice vote**.

RS16585 **Relating to certified shorthand reporters**

Michael Henderson explained that RS16585 pertained to the regular and temporary certification of district court reporters.

MOTION: A motion was made by **Vice Chairman Richardson** to send RS16585 to print. **Senator Lodge** seconded the motion. The motion carried by a **voice vote**.

Chairman Darrington mentioned a suggestion from **Senator Burkett** that on slow Fridays the Judiciary and Rules meeting be moved from 1:30 p.m. to 1:00 p.m. This suggestion will be taken under advisement.

ADJOURNMENT: **Chairman Darrington** adjourned the meeting at 1:47 p.m.

Senator Denton Darrington
Chairman

Barbara Davidson
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 15, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, Burkett, McKague and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 429, until the end of the 2007 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

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

RS16475 **Relating to Crime Victim Compensation**

George Gutierrez, with the Crime Victim Compensation Program presented RS16475. Mr. Gutierrez explained the amendments would clarify the law relating to restitution for payments made for sexual assault examinations that the Victim Compensation Program has been responsible for managing since 2001.

MOTION: **Senator Lodge** made a motion to send RS16475 to print. **Senator Hill** seconded the motion. The motion was carried by **voice vote**.

RS16476 **Relating to Crime Victim Compensation**

George Gutierrez explained RS16476 will amend the Idaho Code section to make subrogation recoveries more equitable and reduce the loss of account funds in subrogation and restitution cases.

MOTION: **Vice Chairman Richardson** made a motion to send RS16476 to print. The motion was seconded by **Senator Jorgenson** and carried by **voice vote**.

Chairman Darrington noted that all of the members of the Uniform Law Commission of the State of Idaho, **Dale Higer, Mike Brassey, Rex Blackburn**, and **Senator Davis** were present.

RS16453 **Relating to the Uniform Foreign Country Money Judgements Recognition Act.**

Rex Blackburn, Uniform Law Commissioner, explained RS16453 is merely a revision to an earlier Uniform Act that was adopted by this state in 1990. This act and its predecessors are 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.

MOTION: **Senator Davis** made a motion to send RS16453 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS16549C1 **Relating to Uniform Prudent Management of Institutional Funds Act**

Mike Brassey, Uniform Law Commissioner, explained RS16549C1 adopts the new Uniform Prudent Management of Institutional Funds Act, which replaces the old Management of Institutional Funds Act adopted in Idaho in 1996, but drafted by the Commission more than 35 years ago. The purpose of the new uniform law is to update the existing law and to conform to the Uniform Prudent Investor Act that governs charitable organizations.

MOTION: A motion was made to send RS16549C1 to print by **Senator Davis**. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

RS16577 **Relating to Real Property Recording**

Dale Higer, Uniform Law Commissioner, explained RS16577 will create legislation authorizing recorders to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and retrieving these records. This legislation is sponsored by the Idaho's Association of Clerks and Recorders.

MOTION: **Senator Davis** made a motion to send RS16577 to print. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.

RS16587 **Relates to Business Entities**

Dale Higer explained RS16594 will allow conversion of one kind of business organization to another, or the merger of two or more business organizations into one organization.

MOTION: **Senator Davis** made a motion to send RS16587 to print. The motion was seconded by **Senator Hill** and carried by **voice vote**.

RS16594 **Relating to Anatomical Gifts Acts**

Mr. Higer explained RS16594 revises the Uniform Anatomical Gifts Acts of 1968 and 1987 in light of changes in federal law and regulation and related developments in the field of organ donation.

MOTION: A motion was made by **Senator Davis** to send RS16594 to print. The motion was seconded by **Senator Burkett**. The motion carried by **voice vote**.

RS16452 **Relating to the Uniform Assignments of Rents**

Mr. Higer explained RS16452 seeks to bring consistency to commercial real property transactions.

MOTION: A motion was made by **Senator Hill** to print RS16452, seconded by **Senator Lodge**. The motion carried by **voice vote**.

ADJOURNMENT: **Chairman Darrington** adjourned the meeting at 2:00 p.m.

Senator Denton Darrington
Chairman

Barbara Davidson
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 17, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, Burkett, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: See attached sign-in sheet

MINUTES: **Senator Kelly** made a motion for the Committee to accept the minutes for January 12 and January 15 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS16662 **Relating to Unlawful Discharge of a Firearm**

Heather Reilly, Deputy Ada County Prosecuting Attorney, representing the Idaho Prosecuting Attorneys Association presented this RS to the committee. RS16662 increases the maximum allowable penalty from five (5) years to fifteen (15) years imprisonment for the felony crime of unlawful discharge of a firearm at a building, dwelling or motor vehicle. **Ms. Reilly** noted the increased number of drive-by- shootings in Idaho.

Senator Lodge asked if this RS would possibly help with the problems in Canyon County. **Ms. Reilly** responded that she certainly hoped so. **Senator Lodge** also wanted to know if this RS would affect juveniles. **Ms. Reilly** said only if the juvenile was waived to adult court.

Senator Davis questioned what if the person discharging the firearm honestly believes the dwelling, house, building, motor vehicle, etc., is not occupied at the time. **Ms. Reilly** explained the State has to prove beyond a reasonable doubt that the building was occupied. A short discussion ensued as to the meaning of lawful and unlawful discharge.

MOTION: **Senator Hill** made a motion to send RS 16662 to print. The motion was seconded by **Vice Chairman Richardson**. The motion carried with a **voice vote**.

RS16667 **Relating to Murder**

Ms. Reilly explained this RS will add to Idaho's "felony murder rule" the crime of unlawful discharge of a firearm. This legislation would close the loophole that any person who kills someone during a drive-by-shooting can argue that he or she should not be convicted of murder because he

did not have the specific intent to kill.

MOTION: **Senator Davis** made a motion to send RS16667 to print. The motion was seconded by **Senator Lodge** and carried by **voice vote**.

Chairman Darrington introduced the new director of the Department of Juvenile Corrections, **Larry Callicut**, and turned the meeting over to **Vice Chair Richardson**.

RULES REVIEW **Department of Juvenile Corrections**

05-0102-0601 **Secure Juvenile Detention Facilities**

Mr. Callicut and **Steven Jett**, Director of the Southwest Idaho Juvenile Detention Center, explained these rules are mainly about clarification and uniformity.

Senator Darrington asked if these rules apply more to those who work within the system, and not to the relationship with public and clients within the system. **Mr. Callicut** noted that as correct.

Mr. Callicut said both he and **Mr. Jett** have been involved in compliance monitoring of all twelve (12) detention centers over the years. They have had opportunity to observe and learn what the Office of Juvenile Justice and Delinquency provisions, recommendations and standards are, and they walk in with their eyes wide open.

Senator Davis directed a question to **Senator Darrington** regarding Section 220.01 about the process required in reporting any instance of solicitation of staff by juvenile offenders. **Senator Darrington** said this section refers to the federal Prison Rape Elimination Act (PREA) and this is just the tip of the iceberg of what will be coming down from PREA that will govern Juvenile and Adult Corrections and a large portion of our Criminal Justice System. **Mr. Callicut** agreed with **Senator Darrington** and said that the Department of Juvenile Corrections is waiting for direction and clarity from the federal government about PREA. **Mr. Jett** mentioned that new policies and procedures will have to be put into place and standards adopted throughout Juvenile Corrections, Probation and Parole agencies and institutions. **Senator Darrington** assured **Senator Davis** that the state is just getting its arms around this issue and will be constantly rewriting these rules in the future.

Senator Kelly asked about the fiscal implication regarding these rules and regulations. **Senator Darrington** said the implementation of PREA will be primarily without federal funding unless Congress writes it in at a later time.

MOTION: A motion was made by **Senator Burkett** to approve Docket No. 05-0102-0601. The motion was seconded by **Senator Lodge**. The motion carried by **voice vote**.

ADJOURNMENT: **Chairman Darrington** mentioned that the meeting on Friday will start at

1:00 p.m. He then adjourned the meeting at 2:50 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Secretary

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

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 19, 2007
TIME: 1:00 p.m.
PLACE: Room 437
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Lodge, Jorgenson, McKague, Burkett, and Kelly
MEMBERS ABSENT/ EXCUSED: Senators Davis and Hill
GUESTS:0 See attached sign-in sheet
MINUTES: No minutes to approve

Committee Vote on the confirmation of the Gubernatorial Appointment of Larry Callicutt as Director of the Idaho Department of Juvenile Corrections to serve a term commencing January 2, 2007.

MOTION: **Senator Lodge** made a motion to send the appointment to the full Senate with a **do confirm** recommendation. **Senator Jorgenson** seconded the motion. **Senator Lodge** commented for the record that Larry Callicutt is very well qualified for this position and he has been well-schooled by the former director who was excellent. The motion carried by a **voice vote**.

S 1006 **Relating to District Judges.** **Michael Henderson**, Legal Counsel, explained that this bill would amend Idaho Code § 1-702 to make it consistent with Idaho Code § 67-302. By adoption of this bill, there would be consistency in the term of appointment of district judges so that the current appointed judge continues in office until his successor's term begins on the first Monday in January.

MOTION: **Senator Jorgenson** made a motion to send S 1006 to the Senate floor with a **do pass** recommendation. **Senator Richardson** seconded the motion. The motion carried with a **voice vote**.

S 1007 **Relating to Firearms.** Michael Henderson explained that this bill was correcting a mistake in a bill two years ago. The fine for a misdemeanor was increased from three hundred dollars (\$300) to not more than one thousand dollars (\$1,000). This bill simply corrects Idaho Code § 18-3305 making the fine for the discharge of arms aimed at another from "not less than one thousand dollars" to "not more than one thousand dollars."

MOTION: **Senator Burkett** made a motion to send S 1007 to the Senate floor with a

do pass recommendation. **Senator Kelly** seconded the motion. The motion carried with a **voice vote**.

S 1008

Relating to Mandatory Income Withholding for Child Support.

Michael Henderson explained that this bill simply removes and corrects language to clarify the power of the courts.

MOTION:

Senator Lodge made a motion to send S 1008 to the Senate floor with a **do pass** recommendation. **Senator Jorgenson** seconded the motion. The motion carried with a **voice vote**.

S 1009

Relating to Certified Shorthand Reporters. Michael Henderson explained that this bill is intended to clarify the language of Idaho Code § 54-3104 to require reporters to obtain regular certification within the required time line, thereby achieving the highest level of certification from the Idaho Certified Shorthand Reporters Board.

MOTION:

Senator Richardson made a motion to send S 1009 to the Senate floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried with a **voice vote**.

Chairman Darrington turned the meeting over to **Vice Chairman Richardson** for the Rules Review.

Vice Chairman Richardson introduced **Oliver Chase**, Management Assistant for Idaho Division of Veterans Services, who was here to explain the rule changes for the Veterans Division.

RULES:

Rules Review - Division of Veterans Services

Docket No.
21-0101-0601

This docket implements changes concerning the eligibility and admission of spouses to the Veterans Nursing Homes. Limits are set on the number of spouses allowed to be admitted to the homes in order to ensure a veteran is not denied admission.

21-0101-0602

Mr. Chase explained that this rule making takes information previously found in Chapter 3 and places it in Chapter 1 of the Division Rules. The information provides clearer guidance concerning charges and explains the requirement to apply for or become eligible for Medicaid benefits when admitted to the Home.

21-0103-0601

The information in this rule regarding the governing of Medicaid Qualified Units in Idaho State Veterans Homes was moved to Chapter 1 of the Division's Rules.

21-0104-0601

This rule clarifies guidance for public behavior in the Veterans Cemetery. It allows the administrator to limit access to Designated Interpretive Trails to marked trailhead points, versus picking up the trail by crossing the cemetery. The administrator can also require animal owners to control their animals while on cemetery property.

21-0105-0601

This change allows a wheelchair bound veteran to obtain transportation with a commercial carrier and be reimbursed. It makes the program more accessible to these veterans.

21-0106-0601

These rules were drafted using language similar to the Administrative Procedures Act (APA) to accommodate the various types of local government management structure. The rules contain procedures public employers may implement for an internal process to review complaints regarding veteran's preference in public employment.

MOTION:

A motion was made by **Senator Jorgenson** to adopt Docket Nos. 21-0101-0601, 21-0101-0602, 21-0103-0601, 21-0104-0601, 21-0105-0601, and 21-0106-0601 relating to the **Division of Veterans Services**. **Senator Lodge** seconded the motion. The motion carried with a **voice vote**.

Chairman Darrington adjourned the meeting at 1:30 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

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MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** January 22, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** None
- MINUTES:** **Senator Kelly** made a motion for the Committee to approve the minutes for January 17th and January 19th as corrected. **Senator Richardson** seconded the motion. The motion carried by **voice vote**.
- RS 16634** **Relating to Attorney's Fees in Civil Actions.** **Senator Corder** presented RS 16634 and explained that this legislation is to clarify who is entitled to attorney's fees in civil action suits. This legislation would clarify the policy that the Supreme Court has made unclear and make it a more equitable process. This sets in motion what the legislature will debate and the issue is whether recovery of attorney fees by the prevailing party applies in civil action as well as personal injury action.
- MOTION:** **Senator Jorgenson** made a motion to print RS 16634. The motion was seconded by **Senator Hill**. The motion passed by **voice vote**.
- S 1014** **Relating to Crime Victim Compensation.** **George Gutierrez**, Bureau Chief of the Crime Victim Compensation Program (administered by the Industrial Commission) explained that this bill relates to the program's subrogation interest in civil suits filed against defenders on behalf of victims to whom they have made payments. This bill amends Idaho Code §73-1023 deleting section 2, which required the Bureau to pay a proportionate amount of the fees and costs. Mr. Gutierrez said they had difficulty recouping their economic loss and preserving the victim's compensation fund. This bill is an administrative change to the law that will help them run a more efficient and cost effective program.
- Senator Jorgenson** asked for the primary source of the victim's compensation fund. **Mr. Gutierrez** explained the victim's compensation fund receives money primarily from fines and penalties assessed on criminal convictions within the state of Idaho, restitution and subrogation ordered by the Judge, and a federal grant. A short discussion followed regarding recouping of monies and recovery efforts. **Senator Jorgenson** expressed his concerns that the victims were being adequately represented. **Senator Burkett** questioned if the victims were counseled or advised by the Bureau. **Mr. Gutierrez** explained that the Bureau has case managers who are assigned to every case and are to make options

known to them.

Clinton Miner, attorney, was here to speak on his own behalf and against this bill. **Mr. Miner** said that as the law currently reads, if a claimant hires their own attorney and the attorney recovers the funds for the claimant and the crime victim's fund, then the crime victim's fund has the obligation to compensate the attorney for a proportionate share of the recovery to the crime victim's fund. The Industrial Commission is asking you to change the law so that those fees are assessed or taxed against the victim. A discussion ensued with apparent controversies over this bill.

- MOTION:** **Senator Davis** made a motion that S 1014 be held in committee. **Senator Hill** seconded the motion. The motion passed by **voice vote**.
- S 1015** **Relating to Crime Victim Compensation.** **Mr. Gutierrez** explained that this bill would amend the restitution law of Idaho Code §19-5304 regarding restitution for sexual assault forensic exams. This restitution issue relates primarily to children victims receiving forensic interview. Some judges are allowing restitution for the cost of the full exam and some judges are not willing to provide restitution for the forensic interviews since it is not a medical procedure.
- MOTION:** **Senator Hill** made a motion to send S 1015 to the Senate Floor with a do pass recommendation. The motion was seconded by **Senator Davis**. The motion passed by **voice vote**.

Senator Darrington turned the meeting over to **Vice Chairman Richardson** for the Rules Review. **Vice Chairman Richardson** directed the Committee to the Idaho State Police rules governing the ILETS.

- Docket No.**
11-1001-0601 **RULES - Idaho State Police**
Rules Governing the ILETS. This rule was presented by **Dawn Peck**, manager of the Idaho State Police Bureau of Criminal Identification. **Ms. Peck** explained that after an analysis of the current fee structure and costs of operating the system it was determined an increase was needed to maintain the viability and reliability of the system.

Senator Davis was concerned if all cities and counties were aware of this increase. **Ms. Peck** said all agencies had been informed of this increase and she received no negative feedback.

Senator Davis made a motion to not vote on this rule today. **Senator Jorgenson** seconded the motion. **Vice Chairman Richardson** said the Committee would vote on this rule at Wednesday's meeting.

- Docket No.**
11-1101-0601 **RULES - Idaho State Police**
Jeffry Black, Executive Director of Peace Officers Standards and Training Counsel of Meridian, Idaho explained that this rule defined Correctional Officers and Adult Probation Officers, added to the definition of Law Enforcement Professional, established POST Hearing Board, gave the Executive Director authority to waive minor hearing discrepancies among applicants, added a section on Law Enforcement Code of Ethics, and specified the time of service within organizations for certification. The

POST Executive Director also now has the authority to waive POST candidates and Votech students for “uncharacterized” or “general under honorable conditions” discharges from military service.

- 11-1102-0601** **Mr. Black** explained that this amends the rule to reflect the addition of a county clerk to the Juvenile Training Council.
- 11-1103-0601** This docket also amends rule to reflect the addition of a county clerk to the Juvenile Training Council.
- 11-1104-0601** **Mr. Black** explained that 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: A motion was made by **Chairman Darrington** to adopt Docket No. 11-1101-0601, 11-1102-0601, 11-1103-0601, and 11-1104-0601 relating to **Rules of the Idaho Peace Officer Standards. Senator Lodge** seconded the motion. The motion carried by **voice vote**.

- 11-0501-0601** **Rules Governing Alcohol Beverage Control. Lt. Bob Clements**, State Police Alcohol Beverage Control Bureau, explained the proposed adoptions to this pending rule.

Chairman Darrington mentioned a letter received from the Idaho Lodging & Restaurant Association and the Idaho Retailers Association in support of this rule.

Paul Thorton, President of Bravo Entertainment, which owns Big Easy Concert House, spoke in opposition to this rule, particularly the definition of a multipurpose arena.

ADJOURNMENT Because of time restraints, Docket No. 11-0501-0601 will be continued on Wednesday, January 24th. The meeting was adjourned by **Chairman Darrington** at 2:58 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Secretary

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

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: January 24, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Burkett

GUESTS: See the attached sign-in sheet

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

DOCKET NO. 11-1001-0601 **Rules Governing the ILETS.**

MOTION: **Senator Davis** spoke with representatives from his district and they are not opposed to the fee increases by ILETS; therefore, he made a motion to accept Docket No. 11-1001-0601. The motion was seconded by **Senator Lodge**. The motion carried by **voice vote**.

DOCKET NO. 11-0501-0601 **Rules Governing Alcohol Beverage Control. Lt. Bob Clements**, State Police Alcohol Beverage Control Bureau mentioned that the committee had heard the rules on Monday and asked for any specific questions.

Senator Richardson asked what was relevant about the figure of 1,000 fixed seats for the proposed definition of multi-purpose arenas. **Mr. Clements** said the Bureau looked at the language and the intent when the legislation was passed with the term "multi-purpose arena" and that it was to have an exception for minors. Since the legislative history refers specifically to the Bank of America Center, Idaho Center and Nampa Civic Center, they reduced the figure to 1,000 to be reasonable for smaller facilities. **Mr. Clements** explained that parents were concerned about their children being in an over/under establishment. Over/under clubs is a name for clubs that combine over 21 year olds, who are allowed to be in bars, with under age individuals. He also mentioned it was a drain for law enforcement wherever these facilities are, statewide and nationwide. **Senator Kelly** asked how these facilities can operate with all ages in attendance. **Mr. Clements** said some facilities claim to be a restaurant, but advertise more as a nightclub. These facilities sometimes have different entrances for adults and minors, wristbands, or different cups for adults than minors.

Paul Thorton, owner of Bravo Entertainment which owns the Big Easy

Concert House reiterated that his facility entertains more people than the population of Boise, the Taco Bell Arena and the Idaho Center. He said they were not a bar, never considered themselves a bar, and run security as if it's an arena or amphitheater show. **Mr. Thornton** said the Big Easy had never had an infraction or been cited for a minor drinking. **Mr. Thornton** feels the rule pertaining to the multi-purpose arena would affect only a facility which doesn't have 1,000 fixed seats such as the Idaho Botanical Gardens, the Basque Center, and the Power House Events Center. He doesn't have a problem with the intentions of this rule, just the language. He claims there are better ways to handle this, but the response from Lt. Clements has been that he doesn't have enough law enforcement officers.

Mr. Thornton stressed that the Big Easy is an entertainment facility and more people attend their facility than anywhere in the state. He said they are also a full restaurant with regular service hours 5 to 7 days a week and at least 5 hours a day. They have also done private parties for major corporations in the area. He also thinks the partition language is a problem in this rule because it says floor to ceiling, which would be impossible for a showroom. He has suggested to Lt. Clements that the Spokane facility with its barriers has never been a problem. He believes this is a hastily written rule that can only hurt the industry and wipe out the entertainment coming through this valley. He questioned the "1000 fixed seats" theory because there were no studies or case cites that show how fixed seating prevents minors from drinking versus an open atmosphere. His recommendation was that the multi-purpose and partition issues were really a statute issue and should not be in the rules. He emphasized that The Big Easy had done many fund raisers for various charitable organizations.

Senator Kelly asked if his mention of no citations or infractions referred to his business, employees, inside, or outside. **Mr. Thornton** replied that they had never been cited for having a minor drinking. **Senator Lodge** asked if any activity on the outside of his facility might blemish his record. **Mr. Thornton** replied that the outside of any facility was a tough environment because they don't lease that space. Their insurance would not cover the outside; however, they did ask for the right to patrol that property with security. **Senator Lodge** asked if she would be able to drop in his facility to eat or was it only open for specific activities. **Mr. Thornton** replied that she could. **Senator Kelly** asked if there was a music event at the facility, was it open for any age person to go in the same room where adults were buying and drinking alcohol. **Mr. Thornton** said that some record labels that are paying for the bands and comedians to appear won't play any room that doesn't have an all-age format. **Senator Lodge** asked how many musical events they would have for 18 or 21 and under. **Mr. Thornton** replied probably 80 percent (80%).

Vice Chairman Richardson said that we would not take a vote until Friday and asked if there was anyone that would like to speak in favor of the rule change.

Mike Fitzgerald is the owner of Table Rock Brew Pub and Grill which is

about two blocks from The Big Easy. He is also Vice Chairman for the Idaho Lodge & Restaurant Association which sent a letter in support of this rule which has been distributed to the Committee members. Mr. Thornton has spoken of the many fund-raisers they have done. Mr. Fitzgerald said he only has a problem with the underage events and that they are a nightmare and have been since they opened. His parking lot is inundated with ticket stubs from the Big Easy and other trash that must be cleaned up by his employees. While he thinks The Big Easy is a great thing, it's the over/under that is detrimental for the near-by area and downtown. Another area of concern is in recruiting conventions to come to this town to spend money. One of the top three questions is about safety. He has received feedback from groups who have been here about the very young, Goth-looking kids that were going to a concert at The Big Easy. This will affect the income that we are trying to attract to our city.

Vice Chairman Richardson then called on **Brian Donesley** to testify. **Senator Darrington** suggested that if we could get this issue resolved, we might on Friday approve the rules except for 010.03 on Multipurpose Arena and that we not act on that. If the House has disallowed that particular paragraph, they will send us a Resolution. When we receive that Resolution, we must cast a vote in favor of the Resolution or defeat the Resolution. Lt. Clements confirmed that the House approved the rule except for the multi-purpose definition.

Senator Kelly asked if that was the full committee of the House Judiciary & Rules. Lt. Clements said it was the sub-committee. **Senator Darrington** said that it must go to the full committee. The meeting continued with the testimony of Brian Donesley.

Brian Donesley, an attorney, has issue with 013.01 on page 50 and 013.04 on page 51 of the ISP Rules Governing Alcohol Beverage Control. He explained that the issue was the waiting list and he offered to pass around to members the priority list for liquor licenses to peruse. The priority list is first in time, first in line and ISP's complaint is that persons have more than one place on a waiting list within a city. This rule change addresses that. These lists only pertain to cities where licenses are available. The concept of a quota system involves the decision as to the method of distribution of these licenses. The rule in 013.01 is being changed from "shall be maintained" to "is maintained." That means the mandate to maintain a license goes away.

Mr. Donesley then referred the committee to 013.04 which he stated now provides limitations on the list. He would ask that we keep the mandatory nature of the list for now and eliminate the phrase "applicant shall hold only" unless "applicant" is defined more clearly. An applicant can be an individual or someone with a defined interest in some other legal entity. This must be applied fairly or there could be some kind of equal protection problem under the law. He believes this could be fixed by being re-written.

Vice Chairman Richardson suggested that with the time constraints and the many people signed up to testify, we must postpone continued testimony on the ABC Rules until Friday's meeting.

S 1012

Relating to the Uniform Foreign Country Money Judgments Recognition Act.

Rex Blackburn, Uniform Tax Commissioner, explained that this was a revision to existing law in Idaho and deals with the recognition of foreign jurisdictions. This act would make uniform from state to state within the United States the rules under which those states would recognize a foreign country money judgment.

Senator Davis asked if we had uniform commissions in our partnering countries, Canada and Mexico, and are they adopting a similar type of legislation that would allow us to enforce our judgments. **Mr. Blackburn** said both Mexico and Canada had uniform law commissions. He said there are reciprocal enforcement provisions between Mexico and the United States and the United States and Canada as a matter of treaty.

Senator McKague wondered why there was a need for this and asked if there were judgments currently. **Mr. Blackburn** replied that in order to enforce a judgment from a country other than that country, they require that the country from which the judgment was issued also recognize their judgment. It facilitates the process to have this recognition. He further stated that these judgments are not a common occurrence, but they do occur and it has been recognized that uniform laws have been needed since the 1960s.

Senator Davis said that one of the purposes of the Uniform Law Commission is to try and minimize federal encroachment and allow state participation.

MOTION:

A motion was made by **Senator Kelly** to send S 1012 to the Senate Floor with a do pass recommendation. The motion was seconded by **Senator Jorgenson** and passed by **voice vote**. **Senator McKague** voted no.

S 1016

Relating to Management of Institutional Funds.

Mike Brassey, Uniform Law Commissioner, explained that this statute replaces the existing Idaho law and the old uniform law that relates to the same subject and covers the same people. This statute addresses how charitable corporations and governments that hold charitable funds invest in spending those funds.

MOTION:

Senator Jorgenson made a motion to send S 1016 to the Senate Floor with a do pass recommendation. **Senator Richardson** seconded the motion. The motion passed by **voice vote**.

S 1013

Relating to the Uniform Assignment of Rents Act.

Dale Higer, Uniform Law Commissioner, explained that this 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.

Senator Davis commented that this legislation provides the protection

and insurance for the lessee or the tenant to know that if they make the payments consistent with what is provided in the statute and in this Act, they will not find themselves having to double-pay on their rent.

MOTION: **Senator Richardson** made a motion to send S 1013 to the Senate Floor with a do pass recommendation. The motion was seconded by **Senator Kelly** and passed by **voice vote**.

S 1017 **Relating to Anatomical Gifts.**

Dale Higer explained that the list for organ transplants is long and continues to grow. He said that there is a lack of organ donors. Because of the shortage, this revision expands the list by changing the federal law that relates to the allocation of what organs organizations can recover and facilitates the giving of organs by individuals.

After this legislation was printed by the committee, **Mr. Higer** said the Commissioners learned of concerns from the Association of Idaho Coroners and also the Idaho Prosecuting Attorney's Association. Their concern was with sections 39-3423 and 39-3424 because those sections might interfere with criminal investigations. He recommends that the Committee send this bill to the 14th Order for Amendment in order to make the necessary changes.

MOTION: A motion was made by **Senator Davis** to send S 1017 to the 14th Order for Amendment. The motion was seconded by **Senator Jorgenson**. The motion passed by **voice vote**.

S 1018 **Relating to Real Property Recording.**

Dale Higer explained that this Act provides the county clerks and recorders the legal authority to prepare for electronic recording of real property instruments. This act authorizes recorders to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and retrieving these records.

MOTION: **Senator Lodge** made a motion to send S 1018 to the Senate Floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion passed by **voice vote**.

S 1019 **Relating to Business Entities.** The Idaho Entity Transaction Act will allow conversion of one kind of business organization to another, or the merger of two or more business organizations into one organization.

Charles Goodenough, Attorney, representing the Secretary of the State, turned his time over to **Winston Beard**, Attorney, Chairman of the Legislative Sub-committee of the Business and Corporate Law Section of the Idaho State Bar. He said they had been working on the review of Multi-Entity Transaction Act (META) since the fall of 2005. This law is intended to be more flexible and simple and is designed to reduce attorneys fees and overall costs of transactions. It covers mergers, interest exchanges, conversions and domestications. There are a variety

of entities in Idaho. Almost all recognize mergers with like-kind entities, almost none recognize mergers with unlike-kind entities. The Corporate code recognizes share exchanges and none of the other entities do. Many of the provisions that are not recognized in the law are commonly done by attorneys. It takes multiple steps and transactions to get the job done. He supports this bill.

Mr. Goodenough explained that he was in favor of this bill, but not at this time. He stated that this was complex legislation and needed further study which is why he is suggesting stalling on this bill.

MOTION: **Senator Richardson** made a motion to send S 1019 to the Senate floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion was carried by **voice vote**.

ADJOURNMENT **Chairman Darrington** adjourned the meeting at 2:58 p.m. and reminded the Committee that the meeting on Friday would meet at 1:00 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Secretary

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

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** January 26, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** None
- GUESTS:** Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:30 p.m.
- MINUTES:** **Senator Hill** made a motion to approve the minutes of the January 22nd meeting as written. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- APPOINTMENTS** **State Board of Corrections** reappointed **Jay Nielsen** and appointed **Robin Sandy** to their board.
- Jay Nielsen** said that it's been a very trying time the last 6 months because the agency has been in a great state of flux, with 3 different directors in a short time. Mr. Nielsen explained the real problem is the employees not knowing where they are going to be. Things are really smoothing out. They take on 30 to 40 prisoners a month and need to scramble to find other places for prisoners.
- Chairman Darrington's** observation from the past is that not enough information has been shared with the board as appropriate. **Mr. Nielsen** feels that's a fact. **Mr. Nielsen** gets a letter or e-mail at least twice a week, keeping him informed.
- Robin Sandy**, State Board of Corrections, thanked the committee for her appointments. **Ms. Sandy** explained that things are moving in the right direction and employees are feeling very good. They are seeing cooperation with the Judges and Crime and Parole Board.
- Chairman Darrington** asked if **Ms. Sandy** was alarmed by a 62% parole rate. **Ms. Sandy** assured the committee she was not concerned about that rate because Idaho has one of the lowest revocation rates in the Nation.
- Senator Hill** asked for any goals or improvements **Ms. Sandy** might

have. **Ms. Sandy** said they changed from a bed-driven to a program-driven program. They are working on allocating dollars for treatment.

Senator Kelly thanked both **Mr. Nielsen** and **Ms. Sandy** for all their public service. She also asked if there was anything the legislature could do to help. **Ms. Sandy** asked that they not change the sentencing rules, and feels they are working well the way they are.

Senator Lodge mentioned she was happy with the program-driven option rather than the bed-driven. She also asked if **Ms. Sandy** had any ideas on keeping Correctional Officers. **Ms. Sandy** responded that working conditions were improving.

Senator Davis made a comment that **Ms. Sandy** was in the position to enhance the Parole Commission in having more meaningful parole hearings. **Ms. Sandy** said she was on the Parole Board several years before she even knew any of the Wardens at any of the prisons. **Ms. Sandy** explained it's much better now. During the last 6 months some of the Wardens have come in and introduced themselves. She reiterated, things have changed dramatically.

Chairman Darrington noted that in the past, there was a problem with members of the Board of Corrections telling the Parole Commission how many or which inmates to let out. **Ms. Sandy** and **Mr. Nielsen** assured the committee that was not going to happen.

RS 16738

Relating to Acknowledgments of Written Instruments. Robert L. Aldridge, Attorney, Trust & Estate Professionals of Idaho, Inc. explained this RS is to correct a problem that has existed in Idaho Law pertaining to people who are required to execute a document to be notarized, and are either unable to physically sign at all or can only affix a mark. This bill sets forth the correct method of the execution of the document.

MOTION:

Senator Davis made a motion to send RS 16738 to print. The motion was seconded by **Senator Jorgenson**. The motion passed by **voice vote**.

RS 16721

Relating to Uniform Probate Code. Mr. Aldridge presented this RS to make guardianship available as a permanent placement for children who are within the jurisdiction of the Child Protective Act. If guardianships are more permanent, they can be ordered as the final placement in a Child Protective Act and children will be more likely to qualify for federal funding.

MOTION:

A motion was made by **Senator Jorgenson** to send RS 16721 to print. The motion was seconded by **Vice Chairman Richardson**. The motion passed by **voice vote**.

RS 16718

Relating to Idaho Probate Code. Mr. Aldridge explained this RS deals with removing language about certain governmental, public or charitable agencies who are entitled to notice in conservatorship and guardianship proceedings. Certain language can now be safely deleted.

MOTION: **Senator Lodge** made a motion to send RS 16718 to print. The motion was seconded by **Senator Jorgenson**. The motion passed by **voice vote**.

RS 16720 **Relating to Uniform Probate Code.** **Mr. Aldridge** explained this RS removes contrary language and conforms the statutes to the practice of serving notices , pleadings, motions, and so forth, under the Idaho Probate Code for conservatorship and guardianships.

MOTION: **Vice Chairman Richardson** made a motion to send RS 16720 to print. **Senator Lodge** seconded the motion.

Senator Davis felt when this RS surfaces again it needs a little bit more explaining, since it deals with some pretty significant rights, and questions whether service by mail is the right method. The motion passed by **voice vote**.

RS 16715 **Relating to Trusts.** **Mr. Aldridge** said that Section One of this bill sets forth the authority of the Trust Advisor and expands the possible powers that a Trust Protector can hold. Section Two deals with spendthrifts trusts. Section Three provides clarification for consistency within Section Two and Three. Section Four defines the term “settlor” which is often used in the probate code.

MOTION: A motion was made by **Senator Davis** to move RS 16715 to print. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

Docket No.
11-0501-0601

PENDING RULE - Idaho State Police

Chairman Darrington pointed out two areas of concern, one being on page 45, 010.03 regarding the definition of multipurpose arena, and the second on page 50, 013, regarding priority lists.

Continuation of Committee hearing and voting on Rules Governing Alcohol Beverage Control.

Susan Hazelton, Executive Director of Family Advocate Program spoke in opposition of this rule. **Ms. Hazelton** explained she has had several successful fund raising events at the Big Easy Concert House.

Jermaine Galloway, Boise Police Department supports this rule. He explained the issues with clubs which allow all ages. He pointed out there are more problems with violence and alcohol related issues at certain events. **Senator Jorgenson** asked if **Mr. Galloway** was here with the authority of the Boise Police Department. **Mr. Galloway** explained, he was asked by the Chief because he organizes many of the alcohol compliance checks and alcohol related enforcement in Boise. **Senator Kelly** asked why more problems appear in clubs with mixed ages. **Mr. Galloway** responded he wasn't exactly sure why.

Denise Rogers, Executive Director of Idaho License Beverage Association (ILBA), spoke in connection to the quota system/priority list

referred to by Brian Donesley at Wednesday's meeting. 25 years ago Alcohol Beverage Control (ABC) tried to do away with the waiting list, refunds were processed to everyone on the list, attorneys got involved and it was required for Alcohol Beverage Control (ABC) to reestablish that list. This last year an ad hoc committee of industry interests met at ABC facilities. **Ms. Rogers** said it became clear in these meetings by discussions of Lt. Clements and Officers of the Idaho Lodging and Restaurant Association (ILRA) that they wanted to do away with quota system and priority list in order to make those licenses available to their constituents, however, no other alternative system was proposed. At the last meeting held January 8, 2007 it was concluded there should be no changes to the quota system. **Ms. Rogers** believes this rule does not make sense. In conclusion, ILBA agrees with Mr. Donesley's comments presented to the committee on Wednesday.

Tom Dater, a local businessman representing himself, spoke in opposition to this rule. **Mr. Dater** is concerned with the multipurpose arena issue and the implications this rule would have statewide. Don't penalize existing venues, give them grandfather clauses.

Julie Kilgrow, Executive and Artistic Director for Opera Idaho, spoke against this rule. **Ms. Kilgrow** said this rule would hurt non-profit organizations out there trying to find different venues for holding fund raisers.

Viki Dater, representing the Shakespeare Festival, and non-profit organizations, spoke in opposition to 11-0501-0601. **Ms. Dater** would like a definition of fixed seat. She stated the Big Easy is the first venue any non-profit agency thinks about using, because they consider it a theater.

Senator Davis wanted it clear that the legislature doesn't write these rules. These are rules, from the executive branch that are brought to us, we have two choices, we can accept them as written or reject them.

Sandi McFadden, Associate Pastor of Cathedral of the Rockies, First United Methodist Church spoke in opposition of this rule. They have a worship service at the Big Easy.

Jay Gustavsen, Partner in the Law Firm of Davison and Copple, which represents Bravo Entertainment and Big Easy believes this rule targets one entity, the Big Easy. For three years Lt. Clements has targeted the Big Easy. Agents have been in the bar trying to catch underage drinking. Apparently a meeting was set up with an Agent from ABC and Managers of the Big Easy, the Agent let himself in the back door and was taking pictures. **Mr. Gustavsen** says this is harassment and discrimination. He believes open discussion between Police, Legislature, and ABC needs to take place. If these regulations go forward as proposed, the Big Easy will be shut down.

Terra Bourguiguen, Chairman of Highland Elementary School Art Auction spoke in support of the Big Easy. She explained how the Big Easy donated their facility for the school's art auction last year. They

generated \$10,000 more than previous years.

Dean Hansen, General Manager of Big Easy Concerts, stated he's proud of what he does at the Big Easy in regard to fund raising. He has heard several members of the Boise Police Force, including Officer Galloway, talk to the Big Easy security director, and comment that they are a model for alcohol control in Boise, Idaho. **Mr. Hansen** feels this rule needs public conversation.

Bob Rosenthal, General Manager of Journal Broadcast Group, said they have six radio stations in the Treasure Valley and do a lot of work with the Big Easy. He spoke in opposition to the language of this rule. He would like to speak on behalf of the charitable organizations and the good work being done at the Big Easy. His company had a staff party at the Big Easy, and they refused to serve alcohol to people who did not have a valid identification.

Jodi Peterson, Director of Advertising for Boise Coop said her job is to help raise monies for non-profits in our community. She stated she couldn't do it without the Big Easy. She believes this rule is poorly written and the Boise Coop stands firmly behind The Big Easy.

Ryan Rodriguez, representing himself and a grass-roots group of people said without the help of the Big Easy, awareness would not have arose for Childhood Leukemia, and he could not have raised funds for medical treatment incurred by his son. He also felt the security at the Big Easy was sufficient.

Matt Roos, Accountant and Director of Contemporary Music Ministry at First United Methodist, Cathedral of the Rockies, spoke about the generosity of the Big Easy for providing worship space, and on-line access for ticket sales. On a personal level he has attended concerts there with his children and felt completely safe.

Brian Donesley, Attorney, spoke regarding regulations defining the term "place," which is a bar room. The Big Easy had eroded from down the alley with no glass you can see through, no exterior advertising, speak easy kind of thing, unseen, unheard. In 1947, when alcohol was first licensed by the drink, those were statutory requirements. Now, that it has evolved into where we don't have to have walls, what is a place? A premise is a building that the place is in. Kids are never allowed in the place, but they can be in the building which is the premise with a restaurant certificate. The bottom line is to keep kids out of bars.

Lt. Robert Clements felt compelled to clarify some misguided issues. Mr. Thorton is not a bad person. All he has done for the community is appreciated. The ABC is not picking on the Big Easy. Business has changed and industry has grown. The exception that was put into the restrictions of minors in 2000, listed multipurpose arenas and that referred to the Bank of America Center, the Idaho Center and places similar to that. However, there is no definition so how do they regulate that? **Mr. Clements** explained the intent is to find a place that is a true multipurpose

arena, such as the Bank of America Center and the Idaho Center. He believes the Big Easy is not holding themselves out as a family restaurant. He said as far as the Shakespeare Festival goes, there is an exception for minors to be present in theaters. **Mr. Clements** said in the last six months they have had undercover folks from the Boise Police Department in the Big Easy, and on two occasions minors have had adults buy alcohol for them. Two weeks ago, when the Men of Las Vegas were at the Big Easy, undercover Boise Police Officers, staff from ABC and minors witnessed more prohibited simulated sexual acts than could be counted. A minor with the X on her hand was served an alcoholic drink by a server of the Big Easy. **Mr. Clements** noted that five years ago ABC received a complaint from a mother who worked in the Governor's office. She said her fifteen-year-old was a victim of a lewd and lascivious case where she met up with a 25-26 year-old that was drinking. The ABC is trying to alleviate public safety problems with minors being in the same atmosphere of a bar.

Mr. Clements noted the age for gang members is 14 to 23 years, and the over-under clubs nationwide do attract that age bracket. The Big Easy is a bar atmosphere and an option would be to post no one under 21 permitted. Have a nice bar and all the concerts you want for adults, or take the option of not serving alcohol and have all-age concerts. ABC is not against non-profits. There are places such as the Rose Room which is non-licensed where you can get a catering permit for special functions. Minors are allowed under a catering permit. You could go to the Grove or places that specialize in hosting different types of events. **Mr. Clements** said somebody needs to decide what they want to be. He is concerned about public safety. It's not just about the Big Easy, but also the Grail up north, the Edge of Beach in Moscow, JD and Friends, and Boogies.

Senator Hill asked if there have been violations at the Big Easy. **Mr. Clements** explained that ABC has been evaluating their restaurant endorsement and gathering up information. During the last six to eight months, on two occasions underage people received alcohol from adults in the facility. Two weeks ago there was multiple violations of simulated sexual acts, when the Men of Las Vegas were there and minors were served alcoholic beverages from a waiter of the Big Easy.

Senator Jorgenson finds it hard to compare the Grail with Big Easy. As Vice President of the North Idaho Opera, he would have never held any fund raisers at the Grail. He can't help wondering if dealing with the Grail has had unintended consequences. **Mr. Clements** assured the committee that is not the case. He explained he was aware of the Big Easy and the problems with minors before he ever encountered the problems with the Grail. The Grail rose to a higher level of priority and they had to be dealt with in that order.

Chairman Darrington asked for a comment on the quota system. **Mr. Clements** explained the quota was creating quite a dilemma. There are problems with economic development where businesses want to come in and get liquor licenses. They cannot do that unless they buy the privilege from someone. Over the years, as more and more people get on the

waiting list, they've found people who pay \$800.00 a year for the state's privilege, and there is a requirement they cannot transfer for two years. They've also found people getting licenses who are not actually in the business as certified on their applications and therefore committing a felony.

Paul Thorton, owner of Bravo Entertainment/Big Easy finds it interesting that this rule has been referred to as the Big Easy rule. **Mr. Thorton** feels they have been targeted even though some of the biggest venues will also be affected. **Mr. Thorton** also wanted to make it clear that the Big Easy has never been cited. He said his accounting manager wanted to quit because of the harassment they have taken to meet the restaurant rule. **Mr. Thorton** expressed how cautious they are when there is an over/under night.

MOTION: **Senator Darrington** made a motion to approve rules of ABC, Docket No. 11-0501-0601 in total with the exception of 010.03 (multi-purpose arena). The motion was seconded by **Senator Lodge**.

Senator Darrington explained his motion is not to disapprove 010.03, but to approve all the rest and not speak to 010.03. If the House sends a resolution to disapprove then the committee will act on that resolution. There was a short discussion on this procedure.

Senator Davis noted he was still struggling with 013.04, the limitations on priority lists. He is hesitant to accept this section.

SUBSTITUTE MOTION: **Senator Davis** made a substitute motion to accept the ABC rules, Docket No. 11-0501-0601 in total except that we formally reject 010.03. The motion was seconded by **Senator Burkett**.

The results for the Substitute Motion are as follows: Senators voting Aye were Darrington, Richardson, Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly. Substitute motion passes.

ADJOURNMENT There being no further business **Chairman Darrington** adjourned the meeting at 3:05 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** January 29, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:30 p.m.
- Committee Vote on the confirmation of the Gubernatorial Appointment of **Jay Nielsen** to the State Board of Correction to serve a term commencing January 17, 2007 and expiring January 1, 2013
- MOTION:** **Senator Jorgenson** made a motion to send the appointment of **Jay Nielsen** to the full Senate with a **do confirm** recommendation. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.
- Committee Vote on the confirmation of the Gubernatorial Appointment of **Robin Sandy** to the State Board of Correction to serve a term commencing July 31, 2006 and expiring January 1, 2011.
- MOTION:** **Senator Richardson** made a motion to send the appointment of **Robin Sandy** to the full Senate with a **do confirm** recommendation. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.
- RS 16753** **Relating to bail.**
- Senator Jorgenson** explained that this legislation was to revise descriptive language and to set forth the purpose of bail. He said that the Supreme Court had realized that there was a need for some agreement on bail in the state of Idaho. While attending these committee meetings on this issue, **Senator Jorgenson** realized that the judges were in agreement that Idaho needs bail because it represents private business working with the state partnership. He also mentioned that bail was a state and federal constitutional right. He further stated that another interesting factor was that out of seven judicial districts in the state of Idaho, only five have rules governing bail and no two are the same. That would bring inconsistency with regard to administration and enforcement. Bail is an appearance bond, not a performance bond. Sometimes judges want to impose conditions of bail even though that is not part of the code.

He said that a group of judges, industry people and court administrators managed to work through these issues.

Senator Hill asked why performance bond was not considered. **Senator Jorgenson** replied that a performance bond was not defined in code.

Senator Burkett referred to paragraph 2 and asked about a bond posted by the individual rather than a surety. **Senator Jorgenson** responded that a bond by definition is one of three things; property, cash or surety. An individual could post their own bond. **Senator Burkett** said that since this specifies the bail bond posted by a surety is an appearance bond, would that lend questions that the same procedures were applied to an individual that posted bond. **Senator Jorgenson** said he did not believe it did, but he would check on it.

MOTION: **Senator Richardson** made a motion to send RS 16753 to print. The motion was seconded by **Senator Hill**. The motion carried with a **voice vote**.

RS 16760 **Relating to manslaughter.**

Heather Reilly, Deputy Prosecuting Attorney, representing the Idaho Prosecuting Attorneys Association explained that the purpose of this legislation is to amend Idaho's Involuntary Manslaughter statute under Idaho Code § 18-4006 (subsection 2) to create consistency between the Involuntary Manslaughter statute and the "Felony Murder Rule" reflected in Idaho Code § 18-4003(d). She said this was really just a housekeeping measure to keep consistency between the two statutes.

MOTION: **Senator Hill** made a motion to send RS 16760 to print. The motion was seconded by **Senator Lodge**. The motion carried by **voice vote**.

APPOINTMENT: By Gubernatorial Appointment, **Molly J. Huskey** is reappointed as the State Appellate Public Defender (SAPD) to serve a term commencing August 1, 2006 and expiring August 1, 2010.

Chairman Darrington introduced **Molly Huskey** and asked her to give the committee a report on the offices of SAPD. **Ms. Huskey** explained that the office was created in 1998 in large part due to the Chairman who felt that it would be more efficient and effective to have a stand-alone office that only handled felony appeals from capital and non-capital cases. The office has two divisions. The non-capital felonies include post-convictions and state habeas claims. The capital side handles the state post-conviction which is if they have been convicted of the death penalty and go back into the district court to challenge the sentence. Currently, there are five (5) capital clients, three of which will be re-sentenced and in FY2006 they opened 640 non-capital felony appeals. They were granted additional staffing by the legislature in FY2006 so there are now 21 full time positions in the office. Each appellate attorney handles approximately 30 cases per year.

Chairman Darrington commented that when they created the office of SAPD, it was a huge savings to the counties. **Ms. Huskey** said in

addition to creating their office, there was also created a capital crimes defense fund which acts as an insurance policy. A county pays a specific amount each year and in exchange for that should there be a capital murder in that county they can petition into that fund to get money for the defense as well as services of the office.

Chairman Darrington told the committee that they would be voting on Ms. Huskey's confirmation at the Wednesday meeting.

Chairman Darrington said that statute requires that each year the office of the Attorney General do a report on sex abuse of children. Dr. Bob Marsh and Bill von Tagen are here to give that report.

REPORT:

Sex Offender Report

Bill von Tagen, Deputy Attorney General, representing Attorney General Wasden, noted that everyone should have a copy of the report in their folder. He also said it would soon be on the Attorney General's web site.

Mr. von Tagen mentioned that this was the worst year ever in terms of the numbers of child sex abuse prosecutions. However, there are more registration offenses. The prosecutors are being vigilant with respect to sex offenders and those that are not registering are being charged and prosecuted. Without those cases, the numbers are more the norm of what has been seen in past years. These reports show that the abuser is almost always known to the victim. The victim has a reason to trust and to be with the abuser and that position of trust has been exploited. Only six (6%) of the cases involve stranger abuse.

Mr. von Tagen then turned the presentation over to **Dr. Bob Marsh** and **Dr. Steven Patrick**. **Dr. Marsh** said this was the 16th year that they had done this report. He continued with a summary of the research.

- There were 324 adult cases and 145 juvenile cases filed in district and juvenile courts in FY06. That is an increase of 47 cases from FY05.
- The victim gender was predominantly female for both adult and juvenile perpetrators.
- 54% of the victims of adult defendants were between 12 and 15 years of age and 22% were 11 or under.
- 61% of victims of juvenile sex offenders were under 11 years of age. 62% of the adult abusers were acquaintances of their victims either natural parents, other relatives or step-parents, and less than 6% were strangers.
- 54% of the juvenile abusers were acquaintances of their victims; 21% their parents or other relatives.
- Where adult disposition was known, the immediate sentence for those convicted was 38% probation, 26% prison, 20% retained jurisdiction. This represents an increase in prison sentences.

Dr. Patrick reiterated that the law enforcement and the prosecutor's offices have done a good job in monitoring the ever growing number of

sex offenders on the registration list and catching those that are not living up to their obligations.

Chairman Darrington asked if there was any data on those 86 who failed to register and who committed additional sex offenses. **Dr. Patrick** said that none of those had offended again, but were charged with failure to register.

Chairman Darrington asked what the overall trend was from year to year. **Dr. Patrick** said that with our population growth, the numbers were growing, but no specific area.

Chairman Darrington asked if they had any indication that the younger perpetrators were getting their ideas from the internet sex. **Dr. Marsh** said that they had no information on that, and that it was mere supposition.

Vice Chairman Richardson asked if when child sex abusers are mentioned, is that a combination of different types of offenses. He asked if there was one offense in particular that was growing trend-wise. **Dr. Marsh** said the most frequently used charge is lewd and lascivious conduct. It seems to be the choice for prosecuting attorneys because it is a serious felony and includes everything from mere fondling to actual intercourse. There is a wide range of activities that come under this charge. **Vice Chairman Richardson** asked if he thought there should be a classification of child sex abusers to be more specific. **Chairman Darrington** said that next year that would take place because they would have to comply with the Adam Walsh Act. He said we would have to wait a year because we won't have guidelines from the Department of Justice until sometime this spring. There will be three categories of sex abusers to comply with the Adam Walsh Act. **Dr. Marsh** said he had been suggesting that they have more accuracy for the past 16 years.

Senator Kelly mentioned a bill brought by the school administrators last year about registered sex offenders living near a school and during that process the people that researched that data said they could not separate registered sex offenders who had crimes with children and those that didn't. She asked what Dr. Marsh had encountered regarding accessibility of the data collection. **Dr. Marsh** said that they send out a facsimile to all counties where crimes have occurred and charges have been filed in July and again in October to see if any pending cases have been resolved. **Senator Kelly** confirmed that the information remains confidential as part of your files and comes out in your report.

Senator Burkett asked if the "other filed charges" of 11% noted in the report on page 20 included statutory rape charges or what other category is in that 11%. **Dr. Patrick** said that includes a list of charges that they are required to collect information on and that reflects a variety of charges that is not in a specific category. **Dr. Marsh** interjected that the statutory rape charges would be included under rape.

Chairman Darrington thanked Dr. Marsh and Dr. Patrick for their annual

report to the Committee and adjourned the meeting at 2:20 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** January 31, 2007
- TIME:** 1:30 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Richardson, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senator Davis
- GUESTS:** Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:30 p.m.
- MINUTES:** **Senator Lodge** made a motion for the Committee to approve the minutes of January 24th as corrected. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- CONFIRMATION** **Senator Lodge** made a motion to confirm **Molly J. Huskey's** reappointment as State Appellate Public Defender. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- S 1022** **Relating to Hunting Licenses.** **Senator Jorgenson** explained that this bill would revoke a person's hunting license for life if said person, while in the act of hunting, shoots and kills another person and is convicted or pleads guilty to a felony.
- A short discussion followed regarding the language of this bill.
- Jon Heggen**, Chief, Bureau of Enforcement, Idaho Department of Fish and Game spoke in support of S 1022. **Mr. Heggen** mentioned that this morning the Idaho Fish and Game Department met via telephone conference to support and adopt a motion in support of this legislation. The Fish and Game Department appreciates Senator Jorgenson bringing this legislation to the forefront.
- MOTION:** **Senator Hill** made a motion, seconded by **Vice Chairman Richardson** to send S 1022 to print. The motion carried by **voice vote**.
- HCR 2** **Providing for Printing of House and Senate Bills, Resolution, Memorials and Amendments.** **Pamm Juker**, Chief Clerk for the House of Representatives, provided the Senators with a chart explaining the costs of bill printing for 2007-2008, which has been reduced. These bills are printed by our own Bureau of Copy and Records Services. She explained that other printers are not set up to print the Legislature's volume.
- MOTION:** A motion was made by **Senator Hill**, seconded by **Senator Kelly**, to send HCR 2 to the Senate Floor with a do pass recommendation. The motion

passed by **voice vote**.

HCR 3 **Providing for Printing of House and Senate Legislative Daily Journals.** **Ms. Juker** explained the daily journals are also printed by our Bureau. The chart showed the costs of this printing has also gone down because of internet access.

Senator Hill suggested it might be helpful to have an estimate of total dollars. **Ms. Juker** made a guess of approximately \$15,000 to \$20,000 each per House and Senate. **Ms. Juker** said she would get the actual cost totals for **Senator Hill**.

MOTION: A motion was made by **Senator Lodge**, seconded by **Senator Kelly**, to send HCR 3 to the Senate Floor with a do pass recommendation. The motion passed by **voice vote**.

HCR 4 **Providing for Printing of House and Senate Legislative Permanent Journals.** **Ms. Juker** explained that the Permanent Journals will be printed by the same business previously printing them. They have been able to reduce the number of copies from 270 to 101. In the House and Senate these Journals generally run between 450 to 500 pages. The total price for the House is approximately \$40,000. **Ms. Juker** said the Journal, Bills, Session Laws, and other miscellaneous documents are put on a CD that each member of the legislature receives. Some of the House members do not wish to receive a hard copy of the Journal.

MOTION: A motion was made by **Vice Chairman Richardson**, seconded by **Senator Kelly**, to send HCR 4 to the Senate Floor with a do pass recommendation. The motion passed by **voice vote**.

HCR 5 **Providing for Printing the Session Laws.** **Ms. Juker** pointed out that the Session Laws have also been reduced from 800 copies to 604 each. The price per page also went down. The cost of the full volume to the public had increased.

MOTION: A motion was made by **Senator Hill**, seconded by **Senator Lodge**, to send HCR 5 to the Senate Floor with a do pass recommendation. The motion passed by **voice vote**.

Chairman Darrington noted that on February 2, the committee will meet at 1:00 p.m. and that there are two resolutions before the committee.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 1:56 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 2, 2007
- TIME:** 1:00 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Darrington, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Richardson was previously excused.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:00 p.m.
- GUESTS:** Anne Solomon, Judicial Council, Bill Lasley, District Liaison Supervisor for Department of Juvenile Corrections and Larry Callicutt, Director of Department of Juvenile Corrections
- MINUTES:** **Senator McKague** made a motion that the Committee approve the minutes of January 26th, 29th and 31st. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- RS 16642** **Relating to Duties of the Department of Juvenile Corrections. Bill Lasley**, District Liaison Supervisor, Department of Juvenile Corrections, explained this RS is merely a name change. Amending this section changes the name of the state "block grant funds" which are distributed to counties to "Juvenile Correctional Act Fund."
- MOTION:** **Senator Davis** made a motion to send RS 16642 to print. The motion was seconded by **Senator Burkett**. The motion passed by **voice vote**.
- APPOINTMENT** **Anne Solomon** has been appointed to the Judicial Council to replace Ken Howard. **Ms. Solomon** explained she has been practicing law for 29 years. Her practice is in Coeur d'Alene. Her observation of the Council is that it is extremely well run. **Ms. Solomon** assured the Committee there is not a dollar spent that isn't well spent. The Council has only convened twice, and that was to interview judicial candidates. She feels it is an honor to be on the Judicial Council.
- Chairman Darrington** asked **Ms. Solomon** if she could assure the Committee that the Judicial Council takes their disciplinary role seriously on those who violate a code of ethics. **Ms. Solomon** assured the Committee they are very sensitive and complete in the discussions that come from the judicial point of view, the lawyer's point of view, and from the lay person's point of view.
- Senator Davis** asked **Ms. Solomon** to explain a lawsuit filed against her some time ago. **Ms. Solomon** briefly explained the lawsuit and noted it

was dismissed with a summary judgement.

Senator Davis also asked about the area of confidentiality and openness of the Judicial Council's process. **Ms. Solomon** noted her observation is that the Council does not want all of these complaints publicized because the majority of the complaints are unfounded.

Chairman Darrington thanked **Ms. Solomon** for meeting before this Committee and noted that the Committee will act on the confirmation on Monday, February 5th.

RS 16833 **A Concurrent Resolution rejecting a certain rule of the Idaho State Police Rules governing Alcohol Beverage Control.** This rule is in regard to Docket No. 11-0501-0601, 013.04, regarding the priority lists for liquor license.

MOTION: **Senator Davis** made a motion to send RS,16833 to print. The motion was seconded by **Senator Lodge**. The motion passed by **voice vote**.

RS 16834 **A Concurrent Resolution rejecting a certain rule of the Idaho State Police Rules governing Alcohol Beverage Control.** This resolution is in Docket No. 11-0501-0601, 010.03 dealing with the definition of multi-purpose arena.

MOTION: **Senator Jorgenson** moved that RS 16834 be sent to print. The motion was seconded by **Senator Burkett**. The motion carried by **voice vote**.

Senator Hill said he intends to support this motion. He is concerned the Committee is putting Alcohol Beverage Control in a very precarious situation.

Chairman Darrington suggested to Committee Members, if they plan to vote differently on the floor to please pay the courtesy of notifying the Sponsor.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 1:25 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 5, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Jorgenson

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

MINUTES: **Senator Kelly** made a motion that the minutes of February 2nd be approved as written. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

Committee Vote on the confirmation of the Idaho State Bar appointment of **Anne Solomon** to the Judicial Council to complete the term expiring June 30, 2011.

MOTION: **Senator Burkett** made a motion to send the appointment of **Anne Solomon** to the full Senate with a **do confirm** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S 1061 **Relating to the Uniform Probate Code. Robert Aldridge**, Trust & Estate Professionals of Idaho, Inc. explained this statute provides permanent placement for a minor within the jurisdiction of the Child Protective Act (CPA), which helps qualify them for federal funding. Also, guardianship available as a permanency option, eliminates the possibility that a guardianship might be used as an “end run” around the court’s jurisdiction in a child protective act case, and better positions the CPA court to protect the child’s health and safety.

A discussion followed regarding guardianship vs. foster parenting, the number of grandparents raising their grandchildren these days, and grandparents’ rights.

Senator Davis asked for the difference between Section 5 and Section 6. **Mr. Aldridge** explained that Section 5 applies only to termination of guardianship, and Section 6 applies to either a removal or modification of guardianship. **Senator Davis** asked for the impact of sub part 1 to courts who believe that they likewise have jurisdiction of the

proceedings. **Mr. Aldridge** said the CPA states whenever a child comes under the purview of that act, the child is solely within that court's jurisdiction even if there may be other courts that potentially have jurisdiction.

Senator Burkett asked if, with regard to Section 5 - termination of guardianship, and Section 6 - modification or the removal of guardian, the standards for clear and convincing evidence are different from regular guardianship. **Mr. Aldridge** said yes, in standard minor guardianship the court only has to find by preponderance of the evidence and the test being the best interest of the child. If there is no permanency under the federal statute, the child cannot receive funding available through federal grants.

Senator Davis said it seemed to him this bill takes other state and federal standards and puts them on one page so that those who occasionally wander their way into this area, have more of a statutory standard in one place they can work from. **Mr. Aldridge** said that was true, and he wanted to add that it also satisfies the feds.

MOTION: **Senator Davis** made a motion to send S 1061 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion passed by **voice vote**.

S 1060 **Relating to the Idaho Probate Code.** **Mr. Aldridge** explained this bill is a follow-up to a statute done in prior years. Also on this bill the word monetary was stricken, since the use of that word incorrectly limits the type of benefits.

Senator Davis asked for an example of a non-monetary benefit. **Mr. Aldridge** said there are some programs that provide certain types of medical devices.

MOTION: **Senator Davis** made a motion to send S 1060 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion passed by **voice vote**.

S 1058 **Relating to the Uniform Probate Code.** **Mr. Aldridge** explained that this bill, with regards to notices of conservatorship and guardianship proceedings, removes language to conform the statute to the actual practice in Idaho for service to the incapacitated person.

Senator Davis said if he filed a petition of appointment of a conservatorship or other protective order, it may involve one or more of either sub parts 1, 2 or 3. **Mr. Aldridge** said that was correct.

MOTION: **Vice Chairman Richardson** made a motion to send S 1058 to the floor with a do pass recommendation. **Senator Burkett** seconded the motion. The motion passed by **voice vote**.

S 1057

Relating to Trusts. **Mr. Aldridge** explained this bill goes through a series of questions relating to trusts. Section 1 defines the term “settlor” which is often used in probate code as well as other definitions. Under Section 2 there are situations where trusts have bifurcated the fiduciary role among different trustees. **Chairman Darrington** said that when push comes to shove, who has the last word? **Mr. Aldridge** explained that the Trust Protector has a very limited role. In Section 4, the Idaho law is unclear, with regard to spendthrift trusts, as to creditor’s rights to invade the trust corpus in certain situations. Section 5 deals with proposed changes to make certain sections consistent and not contrary to one another.

MOTION:

Senator Hill made a motion to send S 1057 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion passed by **voice vote**.

Chairman Darrington noted at Wednesday’s meeting there are three criminal bills to deal with and three bills from Patty Tobias.

ADJOURNMENT:

There being no further business, **Chairman Darrington** adjourned the meeting at 2:20 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 7, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

MINUTES: **Senator Hill** made a motion to accept the minutes of February 5th as written. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

S 1032 **Relating to Unlawful Discharge of a Firearm.** **Heather Reilly**, Idaho Prosecuting Attorney's Association explained this bill will increase the maximum possible penalty to fifteen years imprisonment for unlawful discharge of a firearm.

Vice Chairman Richardson asked if there was any differentiation of a person shooting through a window, shooting at the roof, or shooting at the foundation. **Ms. Reilly** explained the actual language of the statute is that the State prove beyond a reasonable doubt that a person unlawfully and intentionally discharged a firearm at an inhabited dwelling house, an occupied building, etc. Whether the shots go through the window or through the foundation isn't necessarily an element they have to prove.

Senator Jorgenson asked how you go about proving that. **Ms. Reilly** responded that as with any crime it has to be the totality of the circumstances. Law enforcement gathers evidence, and the State must be able to present it as an unlawful and intentional firing. **Senator Jorgenson** asked if there was a difference between preponderance of the evidence and beyond a reasonable doubt. **Ms. Reilly** said yes beyond a reasonable doubt is the highest level of proof, preponderance is a burden used for civil or other types of proceeding not in a criminal context.

Senator McKague asked if this was a mandatory sentence. **Ms. Reilly** explained the Judge has absolute discretion.

Senator Burkett asked for numbers of charges statewide since the law was passed in 1993. **Ms. Reilly** apologized for not having specific data, but said there has been an increase in investigations and filings in Ada and Canyon County Prosecutor's Office.

A discussion followed regarding misdemeanor charges for accidental type shootings. **Senator Jorgenson** asked where we draw the line between careless or reckless discharge. **Ms. Reilly** said that was the issue, each fact and each circumstance has to be examined.

MOTION:

Senator Lodge made a motion to send S 1032 to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Richardson**. **Senator McKague** voiced she would be voting no because of the prisons being full and she feels it is not necessary. **Senator Davis** noted there is a time and circumstance in which a Judge needs to have a tool beyond the current time frame, including up to 15 years; therefore, he will vote yes. The motion carried by **voice vote**.

S 1033

Relating to Murder. **Ms. Reilly** explained this bill involved the same criminal statute as the previous bill but would amend the offenses listed in Idaho's current "felony murder rule" to add the crime of unlawful discharge of a firearm or as it's commonly called; "a drive-by-shooting."

Ron Winegar, a Police Officer for 13 years spoke in support of S 1033. **Mr. Winegar** said he couldn't think of a single reason why one would shoot into an unoccupied dwelling or vehicle if you didn't have the intent to hurt somebody. **Senator Kelly** asked if the possibility of being charged with 1st degree murder would discourage people from committing drive-by-shootings. **Mr. Winegar** felt one might think twice.

A discussion followed regarding a person always using the defense of, "I didn't think there was anyone in the building/dwelling". **Ms. Reilly** said even though the Prosecuting Attorney's Association would like this added to the felony murder rule, it does not mean they will be pursuing 1st degree murder in every instance. Even if an inhabited dwelling looks empty; there is no guarantee it is. No one should intentionally and unlawfully fire into a residence or building. An inhabited dwelling has been defined further to mean any dwelling currently being used for dwelling purposes whether it is occupied or not.

Ms. Reilly stated the Idaho Prosecuting Attorney's Association is asking the Committee to raise the unlawful discharge of a firearm into or at an inhabited dwelling to the same level as an attempt to commit a rape or robbery because it is such a dangerous act.

MOTION:

A motion was made by **Senator Hill** to hold S 1033 in Committee. The motion was seconded by **Senator Kelly**.

Senator Hill said to fire a gun into a building or home is a stupid thing to do whether you think someone is in there or not. He said he just can't put it in the same categories under this part of the law.

Senator Davis said he has struggled with this because the statute doesn't say you have to fire into the house, you only have to fire at the house. When he balances it out in his mind he says he thinks a jury is capable of sorting it out.

**SUBSTITUTE
MOTION:**

Senator Davis made a Substitute Motion to send S 1033 to the floor without recommendation. **Vice Chairman Richardson** seconded the motion.

Senator Hill said this is a complex issue, and he wouldn't want to send the vote to the floor without a recommendation from this committee.

Senator Burkett agrees with **Senator Davis** that to transfer an act against a building/property is very different than transferring an act against another person.

Senator Kelly thinks there is a problem with drive-by-shootings that needs to be dealt with. However, she feels taking the existing statute and trying to fix the problem isn't working.

Senator Lodge said these drive-by-shootings happen all the time in her County and she is very concerned. She would vote for the original motion so more work can be done on this bill.

VOTE:

Vote on Substitute Motion - Ayes: Chairman Darrington, Vice Chairman Richardson and Senator Davis. **Nos:** Senators Lodge, Jorgenson, Hill, McKague, Burkett and Kelly. The motion fails.

VOTE:

Vote on Original Motion to hold in Committee. Ayes: Senators Lodge, Jorgenson, Hill, McKague, Burkett and Kelly. **Nos:** Chairman Darrington, Vice Chairman Richardson and Senator Davis. The motion carried. S 1033 will be held in Committee.

S 1066

Relating to Manslaughter. Ms. Reilly explained this bill is a clean-up to the involuntary manslaughter sub section. The sections needed to be amended to mirror one another.

MOTION:

Senator Davis made a motion to send S 1066 to the floor with a do pass recommendation. The motion was seconded by **Senator Hill**. The motion carried by **voice vote**.

H 19

Relating to Coordinated Family Services. Patricia Tobias, Administrative Director of the Court explained this bill authorizes background checks including criminal history checks as well as checks of the sexual abuse registry, adult protection registry and sexual offender registry for family court services coordinators.

MOTION:

Senator Lodge made a motion to send H 19 to the floor with a do pass recommendation. The motion was seconded by **Senator Jorgenson**. The motion carried by **voice vote**.

H 20

Relating to Domestic Relations. Ms. Tobias said this bill is similar to the previous bill, and ensures that supervised access providers will be

carefully screened before being appointed.

MOTION: **Senator Jorgenson** made a motion to send H 20 to the floor with a do pass recommendation. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

H 21 **Relating to the Child Protective Act.** **Ms. Tobias** explained this bill also proposes background checks for guardian ad litem, volunteers, staff and coordinators. The bill also provides for the adoption of uniform rules, policies, and procedures for the statewide guardian ad litem program. **Ms. Tobias** gave a short background of the guardian ad litem program.

Senator Burkett had a question concerning a possible guardian ad litem who might have had a drug charge in their youth. **Ms. Tobias** said she was not sure if the Court had established those guidelines yet.

MOTION: **Senator Jorgenson** made a motion to send H 21 to the floor with a do pass recommendation. The motion was seconded by **Senator Burkett**. The motion carried by **voice vote**.

Chairman Darrington reminded the Committee that Friday's meeting will be held at 1:00 p.m., and noted there will not be a meeting next Friday, February 16th, because several of the Committee Members have another meeting to attend.

ADJOURNMENT: There being no further business, **Chairman Darrington** adjourned the meeting at 2:45 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 9, 2007

TIME: 1:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Davis

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENED: **Chairman Darrington** called the meeting to order at 1:00 p.m.

MINUTES: **Senator Jorgenson** made a motion to approve the minutes of February 7th as written. The motion was seconded by **Senator Hill**. The motion carried by **voice vote**.

RS 16842 **Relating to Automobile Insurance.** **Senator Hill** explained this bill is proposed to modernize and streamline judicial and legal proceedings in automobile insurance litigation. Idaho is one of the few states that does not require insurance companies to offer under-insured motorist coverage.

MOTION: **Senator Jorgenson** made a motion to send RS 16842 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 16843 **Relating to Motor Vehicle Liability.** **Senator Hill** said this bill is similar to the last bill. The revision allow insureds to make claims against insurance policy amounts for which premiums have been collected. This protects family members, passengers and authorized users of the insured person's vehicle.

Senator Kelly asked if you can negotiate different amounts for different drivers and/or vehicles. **Barbara Jorden** explained you buy insurance for your car and the driver. So if someone gets in an accident in your car, the driver's insurance would be the primary, and then the owners would be secondary.

MOTION: A motion was made by **Vice Chairman Richardson** to send RS 16843 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS 16912 **Relating to Service of Process on Resident or Nonresident Motor Vehicle Operators.** **Barbara Jorden**, Idaho Trials Association

explained this bill would streamline judicial and legal proceedings in automobile insurance litigation. The statute is designed to eliminate unnecessary court hearings and defaults by individuals.

Senator Lodge asked if this bill would eliminate the need to publish in the papers. **Ms. Jorden** explained this might be a possibility, if the insurance company could accept service.

MOTION: **Senator Jorgenson** made a motion to send RS 16912 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1084 **Relating to Duties of the Department of Juvenile Corrections.** **Larry Calicutt**, Department of Juvenile Corrections explained this bill is for a name change. It changes the “block grant funds,” which are distributed to counties, to “Juvenile Corrections Act Funds.”

MOTION: A motion was made by **Senator Lodge** to send S 1084 to the floor with a do pass recommendation. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

HB 23 **Relating to Discharge Upon Service of Maximum Term.** **Carolee Kelly**, Director of Sentencing for Idaho Department of Corrections (IDOC) explained this bill would give 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 would eliminate administrative problems caused to the IDOC when a prisoner’s discharge date falls on a weekend or legal holiday.

MOTION: **Senator Jorgenson** made a motion to send HB 23 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

HB 64 **Relating to Crimes.** **Bill von Tagen**, Deputy Attorney General said this amends certain sections to prevent and prohibit criminal use of a financial transaction card and issues of identity theft. Also some sections are changed to ensure consistency with the proposed amendments. Hopefully, this will make certain sections felony convictions and will deter perpetrators from committing the action because of the greater punishment.

Senator Jorgenson asked if making these issues felonies will be a tool to extradite and prosecute? **Mr. von Tagen** stated that was correct.

Senator Burkett asked if there was a distinction between this being done by an unknown individual vs. a family member. **Mr. von Tagen** said there was no distinction. **Ken Robbins**, Deputy Attorney General responded their office has to prove beyond a reasonable doubt that there was actually intent to defraud another person.

Senator Kelly asked if there was a companion bill with this. **Mr. von Tagen** said there was a bill that dealt with false impersonation, not dealing with a financial card, but using another type of card to

impersonate another person. **Chairman Darrington** asked if that bill died in the house. **Mr. von Tagen** said that was correct.

MOTION:

A motion was made by **Vice Chairman Richardson** to send HB 64 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington noted that both Monday and Wednesday meetings next week will be full. Also there will be no meeting next Friday.

ADJOURNMENT:

There being no further business, **Chairman Darrington** adjourned the meeting at 1:42 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 12, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

MINUTES: **Senator McKague** made a motion to accept the committee minutes from Friday, February 9, 2007 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS 16921 **Relating to the Commission of Pardons and Parole.** **Olivia Craven**, Department of Corrections, said this bill is simply to increase the compensation for Commission of Pardons and Parole members from \$150 a day to \$200 for conducting parole hearings. The annual increase will be approximately \$20,000. The commissioners last year conducted almost 2,400 parole hearings. They spend many days in preparation for a hearing and are not compensated for these days.

MOTION: **Senator Hill** made a motion to send RS 16921 to print. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

RS 16957 **Relating to Tort Claims Against Governmental Entities.** **Michael J. Kane** representing Idaho Counties Risk Management Program (ICRMP) gave some background information on this bill. He explained emergency medical service (EMS) agencies cannot afford to hire doctors full-time, so they contract with the individual doctor. These physicians who act as supervising physicians for governmental ambulance services are not insured because their insurance doesn't cover them when they work for a governmental entity. This bill would rectify this problem by expanding the definition of employees, under the tort claims act, to include these medical doctors for the limited purpose of their supervisory duties to EMS agencies.

MOTION: A motion was made by **Vice Chairman Richardson** to send RS 16957 to print. The motion was seconded by **Senator Jorgenson**. The motion carried by **voice vote**.

- RS 16930** **Relating to Motor Vehicle Dealers and Salesmen Licensing.** **Trent Wright**, Idaho Auto Dealers Association, presented this bill. They represent 106 of Idaho's 109 new car and pickup franchise dealers. He explained this bill would provide reimbursement of claims to motor vehicle dealers under a manufacturer incentive program and also provides a time frame for submission of such claims.
- Senator Davis** asked why the State of Idaho should define these contract terms. **Mr. Wright** said they are asking the State to provide a layer of protection against out of state corporations that are seeming to use this process to provide an extra funding stream from our dealers; and to provide a level of parody within the Northwest. All of the surrounding Northwest States have a code similar to this in their books.
- MOTION:** **Senator Jorgenson** made a motion to send RS 16930 to print. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.
- RS 16631** **Relating to the Small Lawsuit Resolution Act.** **Senator Corder** explained the Small Lawsuit Resolution Act (SLRA) is an act that has not been in existence long. Legal practioners have indicated their inability to use this statute because the claim amount is too small. This bill would increase the amount from \$25,000 to \$50,000. This increase will save court time and expedite solutions.
- Senator Jorgenson** asked if this increase would mean an increase in insurance minimums. **Senator Corder** answered, in his opinion, it would not.
- MOTION:** A motion was made by **Senator Davis** to send RS 16631 to print. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.
- RS 16633** **Relating to Attorney's fees in Civil Actions,** **Senator Corder** said he makes the same arguments, only stronger, as RS 16631. The amendments in this bill are supported by Consumer Price Index adjustments. **Senator Corder** referred to a letter from his attorney in support of this bill.
- MOTION:** **Senator Davis** made a motion to send RS 16633 to print. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**. **Senator Jorgenson** voted no.
- RS16880C1** **Relating to Modular Buildings.** **Senator Kelly** explained this bill relates to Modular Building and is designed to correct certain deficiencies related to law applicable to this growing industry in Idaho. This bill will level the playing field. When companies construct buildings outside of Idaho and bring them into Idaho to be installed, those facilities will be held to the same standards that Idaho facilities are.
- MOTION:** **Senator Davis** made a motion to send RS 16880C1 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.
- HB 54** **Relating to Licenses Issued by the Idaho Transportation**

Department. Hal Putnam, Supervisor at Idaho Transportation Department, explained this legislation is proposed to strike wording from Idaho Code that is vague and ambiguous. This bill proposes to delete from a list of persons that shall not be licensed, a person who is a “habitual drunkard” or “addicted to the use of narcotic drugs” because these terms are undefined in statute. **Mr. Putnam** gave a little background on the bill.

Senator Hill asked why not define “habitual drunkard” or “addicted to the use of narcotic drugs.” **Mr. Putnam** said he believes the decision was made that it was easier to strike it than try to bring forth legislation to define it.

Senator Davis said he was struggling with the same thing and asked if Mr. Putnam was aware of any other statutory provisions where terms similar to “habitual drunkard” are defined. **Mr. Putnam** said the term is also used with regards to those who are dispensing alcohol, not to dispense to somebody who is a “habitual offender.” There is another term that refers to this type of situation as a “common drunkard,” again undefined. **Senator Davis** feels he is being asked to vote to say it’s alright to issue a licence to a habitual drunkard or somebody who is using narcotic drugs. He can’t vote for that; however, he can vote to define those terms.

Senator Hill asked if the Idaho Transportation Department or another agency has the authority to write some rules on the statutes? **Mr. Putnam** referred to **Alan Frew**, Motor Vehicle Administrator for Idaho Transportation Department (ITD). **Mr. Frew** said the ITD feels it was basing this on advice from legal counsel. There is a legal issue regarding the definition of habitual drunkard or those persons addicted to narcotic drugs that is not defined in Idaho Code. That does not in any way take away ITD’s ability to take those kind of drivers off our highways. ITD has lots of other tools for this. This bill does not diminish the capability of law enforcement to remove people who are inebriated or impaired from Idaho’s highways; it wasn’t designed to do this. **Mr. Frew** explained this bill was not designed to clarify these two terms. By the removal of those two terms the ITD will remove a conflict with certain court orders.

Senator Burkett asked if ITD would consider taking this bill back and re-vamping this section. **Mr. Frew** said ITD would consider doing that.

Ed Pemble, Driver Services Manager of the Idaho Transportation Department wanted to make the point that no one has stepped forward saying “I am habitual drunkard” or “I am addicted to narcotic drugs” in order for the department to cancel their license. There is no other way to identify these people. The surrounding states do not have this vague language. The DUI laws and the administrative license suspension process are taking people off the roads for these offenses.

MOTION:

A motion was made by **Senator Jorgenson** to hold HB 54 in committee. The motion was seconded by **Senator Lodge**.

Senator Burkett said his initial response is to hold this bill. He is concerned this statute exists, but there is no effort to enforce it.

Senator Hill said that maybe ITD needs to change what they are doing to make sure the law is enforced. He is not convinced their legal counsel isn't trying to take the easy way out.

Senator Davis said he supports the motion, but is wondering if we might want to give ITD the opportunity to see if they can find some alternative solutions to this bill. Maybe send it to the 14th order for possible amendment.

**SUBSTITUTION
MOTION:**

Senator Davis made a substitution motion to send HB 54 to the 14th Order for amendment. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

HB 66

Relating to Driving without Privileges. Mr. Putnam explained this bill prohibits the issuance of a restricted driving permit during a period of suspension as a result of driving without privileges that would allow for the operation of a commercial motor vehicle.

MOTION:

Senator Burkett made a motion to send HB 66 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington reminded the committee that on Wednesday the Commission of Pardon and Paroles will be at our meeting.

ADJOURNMENT:

There being no further business, **Chairman Darrington** adjourned the meeting at 2:25 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 14, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Burkett

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

MINUTES: **Senator Hill** made a motion to accept the committee minutes from Monday, February 12, 2007 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS 17014 **Relating to Acknowledgments of Written Instruments. Bob Aldridge**, Trust & Estate Professionals of Idaho, explained this bill sets forth the correct method of the execution of a document, by mark or by direction, and of notarization of the executed document, when a person is unable to physically sign because of physical infirmity, paralysis, or disease. This bill also covers a person who has sufficient mental capacity to execute the document, but does not have the physical ability to do so.

MOTION: **Senator Lodge** made a motion to send RS 17014 to print. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

RS 16995 **Relating to Judges. Patty Tobias**, Administrative Director of the Court, explained this bill would add a new district judge position in the Fourth District with resident chambers in Ada County. There have been no judge positions added in this district since 1998. With the expanding demands of Ada County's Drug and Mental Health Courts this additional judicial resource is necessary.

MOTION: A motion was made by **Senator Lodge** to send RS 16995 to print. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

RS 17002 **Relating to Bail. Senator Jorgenson** explained a lot of work and effort went into this bill to revise descriptive language, and set forth the purpose of bail; and amend Idaho Code to revise provisions applicable

to forfeiture of bail.

MOTION:

Vice Chairman Richardson made a motion to send RS 17002 to print. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT:

Mike Matthews is reappointed to the Commission on Pardons and Parole to serve a term commencing January 17, 2007 and expiring January 1, 2010. **Mr. Matthews** said he is now the veteran member of the Pardons and Parole Commission. He was born and raised in Declo, is a retired teacher/administrator, and has been married 39 years. He said he thoroughly enjoys being on the Commission. It's a rewarding position and also very concerning, all in the same day. He feels the system is working and making a difference for those who want to change and have a better life.

Mr. Matthews is proud of the work he's doing. He thinks he is the voice of society. If a prisoner has been a model prisoner and done good work while in prison, the Commission will take a hard look at that. He believes that drug use and the sale of drugs is a violent crime. **Mr. Matthews** feels his sense of humor helps on the job and he will not get upset because of other people's choices. He looks at possible parolees and assesses their history, what they have done in prison to better themselves, and their attitude. He also considers if he would want them as a neighbor.

GUBERNATORIAL APPOINTMENT:

Bill Young is appointed to the Commission on Pardons and Parole to serve a term commencing July 31, 2006 and expiring January 1, 2009. **Mr. Young** is also retired from education and has been married for 44 years. He just retired in July and wasn't going to do anything for a year. Three days later he got a call from the governor, and here he is.

Mr. Young has no close associates, friends, or family incarcerated that would affect his ability to make objective judgements. **Mr. Young** and **Vice Chairman Richardson** served together on the Idaho Athletic Association for many years. **Mr. Young** believes that parolees need to be integrated back into society. Wherever we go in life we have rules. People who have trouble following rules, have trouble being on Parole. **Mr. Young** is very conservative and has never affiliated himself with any party, but he's pretty much Republican. **Senator Lodge** has known **Mr. Young** for 44 years and noted what a fine person he is. **Mr. Young** said once a person is addicted to meth they usually hurt the ones they care about. He enjoys his association with Pardons and Parole and feels he is in a position to make a contribution.

GUBERNATORIAL APPOINTMENT:

Pat Galvin is appointed to the Commission on Pardons and Parole to serve a term commencing November 22, 2006 and expiring January 1, 2008. **Mrs. Galvin** is a native Idahoan and has been married for a number of years. She worked on a farm for most of her married life. She ran for Canyon County Commissioner and was elected 3 different times. **Mrs. Galvin** is very active in the Republican Party on the county and state level.

Mrs. Galvin believes that drugs destroy lives. She feels a woman should be on every Commission as they have a different outlook on things and do an exceptional job at whatever they do. **Mrs. Galvin** explained she has a granddaughter incarcerated on drug charges. However, she feels that in no way will conflict with her responsibilities on the Commission. **Mrs. Galvin** thinks her experience as a County Commissioner will benefit her on the Board of Pardons and Parole. She has only sat in on four hearings and they were real eye-openers. She explained most of the possible parolees had not graduated from high school and were from broken homes. She said you are taking a chance every time you parole an individual. She feels the state has done their job for these individuals as far as education and programs. If the inmates have participated and completed all that is asked of them they should be ready for parole. **Mrs. Galvin** mentioned she was not quite sure what experiences had best prepared her for this responsibility, possibly her experience as County Commissioner, as a farmer's wife, and raising her three daughters. She is also level headed and has common sense. As of this time, she has received no formal training for this position.

All of the appointees were asked how they felt about blue collar crimes. They all seemed to feel if you do the crime, you do the time.

PRESENTATION:

Olivia Craven, Director of Commission on Pardons and Parole gave a short update. Last year the Commission conducted 2,400 hearings. They have a 67% overall parole rate. On first initial hearings the parole rate is 68%. They had 542 revocation hearings last year. The commission reinstated 254 parolees back to parole without a long jail/prison stay. 68% of those reinstated committed new felony or misdemeanor crimes. They didn't know where 18% of them were and only 14% were technical violators. Their parole grant rate is about the highest in the country, but their return rate is the lowest. Their philosophy is protection of the public. They do this by keeping criminals in prison who are unwilling to change, providing tools for those inmates who want to change, and releasing those who have earned parole. **Ms. Craven** said there are very few first time offenders. Those who are in prison work hard to get there. It is really up to the offenders to want to change and to make use of the tools that are provided within the system. The Commissioners and staff work hard making the process work efficiently.

Chairman Darrington noted that one out of every 36 adult males in Idaho have committed crimes. **Ms. Craven** agreed. It would be great to have fewer people committing crimes. However, Idaho does have one of the lowest crime rates because we have a good criminal justice system. **Ms. Craven** stated most criminals know when they are committing a crime. She quoted an offender who said, "I'm a business man; my business is crime, and sometimes I have to go to prison. That's just part of doing business".

In response to a question from **Senator Jorgenson**, **Ms. Craven** explained that new Parole Board members attend training with the

National Institute of Corrections in Kansas City, Missouri. Most training is on the job.

RECOGNITION: The committee recognized and presented **Page Ben Larsen** with a gift and letter of recommendation for a job well done.

ADJOURNMENT: There being no further business, **Chairman Darrington** adjourned the meeting at 2:50 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 19, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

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

MINUTES: **Senator McKague** made a motion to approve the Committee Minutes of February 14, 2007 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

REAPPOINTMENT: Committee consideration of the Gubernatorial Reappointment of **Mike Mathews** to the Commission on Pardons and Parole.

MOTION: **Senator Hill** made a motion to send the reappointment of **Mike Mathews** to the Commission on Pardons and Parole to the Senate Floor with a **do confirm** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

APPOINTMENT: Committee consideration of the Gubernatorial Appointment of **Bill Young** to the Commission on Pardons and Parole.

MOTION: A motion was made by **Vice Chairman Richardson** to send the appointment of **Bill Young** to the Commission on Pardons and Parole to the Senate Floor with a **do confirm** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

APPOINTMENT: Committee consideration of the Gubernatorial appointment of **Pat Galvin** to the Commission on Pardons and Parole.

MOTION: **Senator McKague** made a motion to send the appointment of **Pat Galvin** to the Commission on Pardons and Parole to the Senate Floor with a **do confirm** recommendation. **Senator Lodge** seconded the motion. The motion passed by **voice vote**.

RS 17044 **Relating to warrants.** **Mike Kane**, attorney with Kane and Tobiason explained this bill seeks to amend the law that was written in 1864 in regard to how search warrants are served. It will allow officers to mail, fax or e-mail search warrants in appropriate cases.

MOTION:

Senator Hill made a motion to send RS 17044 to print. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

S 1045

Relating to Attorney's Fees in Civil Actions. **Senator Tim Corder** said that attorneys and the Courts seem to be split on this issue. This is a situation where words mean everything. **Senator Corder** explained the case of Gillihan vs. Gump. This legislation was intended to reverse the impact of litigation under \$25,000 as a result of Justice Shroeder's decision in Gillihan vs. Gump.

Ken McClure, attorney with Givens Pursley, LLP and Coordinator for Idaho Liability Reform Coalition (ILRC) spoke in opposition to this bill. ILRC is struggling to understand why the state law opted to make one party whole if it acts reasonable in litigation, and not the other party. They view this as an extremely lopsided and one-sided piece of legislation. **Senator Hill** asked why didn't they express their concerns previously. **Mr. McClure** explained they weren't aware of this problem before.

Russ Johnson, attorney with Johnson and Lundgreen spoke in favor of S 1045. **Mr. Johnson** deals with a lot of cases that fit this parameter.

Rich Peterson, attorney with Farm Bureau Insurance Company, said they are a mutual company (don't have shareholders, are owned by policy holders) and they oppose this legislation. They feel this bill will increase the cost of insurance and create court congestion. **Senator Davis** asked, since Gump came out, has Mr. Peterson noticed a change in the way plaintiff's practitioners approach litigation? **Mr. Peterson** said he can't answer that question because he is not on the firing line, like the adjusters.

Alex LaBeau, from Idaho Association of Commerce & Industry (IACI) and President of the Idaho Liability Reform Coalition, spoke in opposition to this bill and asked the Committee to hold this legislation.

Bill Litster, attorney, believes this legislation levels the playing field. He urged the Committee to vote in favor of this bill.

In conclusion **Senator Corder** wanted to make it clear he doesn't want this to be an issue of contention between anyone. It is clear that things were one way before Gillihan vs. Gump, and different since. This bill is simply a matter of the Legislature needing to correct this error.

Senator Jorgenson asked **Barbara Jorden**, Idaho Trial Lawyers Association (ITLA) if it was their intention to bring this legislation this year. **Ms. Jorden** said ITLA supports Senator Corder with this bill, however, they did not intend to bring this change.

Vice Chairman Richardson said he felt there may be a potential conflict for him because his son is a lawyer. **Senator Burkett** also felt a potential conflict because he handles a limited number of these cases himself.

MOTION: **Senator Davis** made a motion to send S 1045 to the floor with a do pass recommendation. **Senator Kelly** seconded the motion.

Senator Burkett made a comment that 12-120, as it previously was, leveled the playing field. We will continue to see a more coercive practice where people will go forward with various small claims, under threat of paying huge attorneys fees or going bankrupt. It's important to get back to that level playing field.

ROLL CALL VOTE: Voting yes to send S 1045 to the floor with a do pass recommendation were **Vice Chairman Richardson, Senators Davis, Burkett, and Kelly**. Voting no were **Chairman Darrington, Senators Lodge, Jorgenson, Hill and McKague**. The motion failed.

S 1150 **Relating to Commission of Pardons and Parole.** **Olivia Craven**, Executive Director of the Commission of Pardons and Parole, explained this bill is asking for an increase of compensation for the Parole Board Members from \$150 to \$200 a day. They are paid only for the days they serve in parole hearings.

MOTION: A motion was made by **Senator Davis** to send S 1150 to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

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

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 21, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

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

RS 17047 **Relating to Business Entities. Mike Brassey**, Idaho Uniform Law Commissioner explained this RS contains a uniform law that makes the requirements for registered agents uniform across all of the areas where such agents are required. It also applies to Unincorporated Nonprofit Associations.

MOTION: **Senator Davis** made a motion to print RS 17047. The motion was seconded by **Senator Hill**. The motion carried by **voice vote**.

RS 17071 **Relating to Long-Term Care Partnership Program. Steve Tobiason** of America's Health Insurance Plans (AHIP) said this legislation modifies existing Idaho statutes to be consistent with the 2006 changes in federal law for the Long-term Partnership Program. Idaho is the first state in the nation to have this program off the ground since the 2006 Federal Deficit Resolution Act. The purpose is to use language in this statute, so as this program moves to the other 49 states the notice will be consistent with policies issued.

Senator Davis asked for an explanation of a long term care policy. **Mr. Tobiason** explained a long term care policy is one that would pay the expenses and cost for a nursing care facility pursuant to the terms of the policy. The reason this program is promoted is if people bought long term care there would be less reliance on Medicaid. Long-term Care Partnership Policy is a particular kind of policy, based upon federal law that was passed in 2006 called Deficit Reduction.

MOTION: A motion was made by **Senator Davis** to send RS 17071 to print. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

RS 17013 **A Concurrent Resolution rejecting certain rules of the Department**

of Health and Welfare relating to Medicaid Enhanced Plan Benefits. **Senator Lodge** explained this resolution would reject two subsections of the pending rules of the Department of Health and Welfare, pertaining to Medicaid Enhanced Plan Benefit Plans. If adopted by both House and Senate the agency rule would not go into effect. Upon print, this resolution will go directly to the Tenth Order.

MOTION: **Senator Davis** made a motion to print RS 17013. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

RS 17016 **A Senate Concurrent Resolution rejecting certain rules of the Idaho Board of Pharmacy.** **Senator Lodge** said this resolution would reject a rule of the Idaho Board of Pharmacy. If adopted by both House and Senate the rule would not go into effect.

MOTION: A motion was made by **Senator Hill** to send RS 17016 to print. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

RS 17080 **Relating to Actions for Injury.** **Senator Kelly** explained this legislation amends the statutes regarding what damages can be collected in a personal injury action. Such action may include damages for the loss of companionship, comfort, love and society suffered by parents of an injured minor child or by the minor child of an injured parent. **Senator Davis** wanted to make it clear this bill has no connection with the death of his son.

Senator Hill asked for a range of awards being made. **Senator Kelly** said it would be subject to all the normal evidentiary rules and damage limitations under tort law.

MOTION: **Senator Lodge** made a motion to print RS 17080. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

S 1151 **Relating to Tort Claims Against Governmental Entities.** **Michael J. Kane**, Attorney representing Idaho Counties Risk Management Program (ICRMP), explained this bill proposes to treat supervising physicians as employees of the governmental entity under the tort claims act. The governmental entity will then be able to provide insurance coverage to the physician. There will be no impact on the general fund of the state as a result of this bill. If there is any additional cost, that cost will be absorbed by the insurer.

Ken McClure, attorney with Givens Pursley, LLP and Coordinator for Idaho Liability Reform Coalition spoke in support of this bill. **Mr. McClure** said the Idaho Medical Association appreciates the efforts of ICRMP and Trial Lawyers Association with regard to this bill.

Barbara Jorden, Idaho Trial Lawyers Association (ITLA) said she was pleased to work with these gentlemen on this bill and ITLA supports this bill.

MOTION: **Vice Chairman Richardson** made a motion to send S 1151 to the floor with a do pass recommendation. The motion was seconded by **Senator**

Lodge. The motion carried by **voice vote**.

S 1159

Relating to Acknowledgments of Written Instruments. **Robert Aldridge**, Trust & Estate Professionals of Idaho, Inc., explained this bill sets forth the method of the execution of a document, by mark or by direction, and of notarization of the executed document. **Mr. Aldridge** was contacted by Secretary of State that there will be new notary legislation in the near future.

Senator Davis asked if this would affect currently pending litigation. **Mr. Aldridge** said there are no existing cases that they are aware of.

Senator Hill read a short blurb from the Notary Handbook, and had a concern that the power and authority of the notary was being diluted. **Mr. Aldridge** explained this is from a model act and there are going to be consistent changes with this throughout the notary legislation. **Chuck Goodenough**, Deputy Secretary of State, Commercial Division also read from the Notary Handbook regarding notaries being instructed to use creditable witnesses familiar with the signer.

There seems to be a discrepancy as to what the difference is from a mark and signature. **Mr. Goodenough** explained that a signature is anything you want. **Senator Davis** expressed that, if he as a notary, notarizes a signature, how does he know if the signature or mark apply. **Mr. Goodenough** said if it's intended to be a signature, it's a signature.

A unanimous consent request was made by **Senator Davis** to hold S 1159 in committee for a week. It was held to a time certain on Wednesday February 28 without objection.

S 1160

Relating to Judges. **Senator Darrington** explained this bill simply provides for another district judge in Ada County. This was suggested by the Legislative Budget Office because of the tremendous population growth within this valley and the increase in number of special courts.

MOTION:

Senator Hill made a motion to send S 1160 to the floor with a do pass recommendation. The motion was seconded by **Senator Jorgenson**. The motion carried by **voice vote**.

WELCOME:

Chairman Darrington welcomed a Government Class from Boise High School. He explained how and what this committee deals with. He told the students that they have greater opportunities today than ever before. If you have any skill that is marketable, you will have a good living and enjoy a good lifestyle. Choose not to break the law; prison is not fun. You have a good life ahead of you if you want it.

Senator Hill noted he never gives up an opportunity to give young people a lecture. He told these students they were a good looking bunch. He hopes their teacher is getting them excited about government. It's a slow process, but is the greatest process in the world.

Vice Chairman Richardson told them it won't happen unless you get

involved. Success is getting involved and making it happen.

Senator Lodge said, as a former teacher, the most important thing that can happen in your life is the opportunity for education. Take advantage of the education you're receiving today and make plans for the future. Become the best you can be.

Senator Burkett challenged these students to do a study about the prison rate of graduates from Boise High's advance government class vs. the prison rate (not in Idaho) of Legislatures across the nation.

Senator Jorgenson said considering he's much younger than the rest of the committee members, he can better communicate with the students. He attended Boise High School and would come to the Capitol on his lunch hours, never dreaming he might be here one day. His motto is "you only get out of life what you're willing to settle for."

HCR 11

Providing 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. **Senator Hill** said this is a new resolution because of the numerical error he discovered in the previous printing bill.

MOTION:

A motion was made by **Senator Burkett** to send HCR 11 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

PRESENTATION:

The Office on Violence Against Women - Department of Justice Overview. **Robbie Barrutia**, previous Senator, Project Director for Idaho State Independent Living Council (SILC), said she is a recovering political-alcoholic. She explained the mission statement of SILC to advocate for and achieve independence, choice, self-determination, equal access and equal opportunity for Idahoans with disabilities through systems change, policy involvement and public education. Idaho is the only independent living council to have been awarded a Department of Justice grant. They will be receiving \$750,000 over the next 3 years. Their goal is to develop and strengthen responses to violence against women with disabilities. Men with disabilities who experience violence will also have the same education and technical training.

Senator Burkett asked if this was only focused on training. **Ms. Barrutia** said this is a technical and education assistance grant, and has to be used for training. They can't provide any concrete building or direct services. **Senator Burkett** was curious why there are more female than male disabled. **Kelly Buckland**, Executive Director of SILC, said disability doesn't treat people equally and it just happens when it happens. It doesn't follow along gender lines.

Senator Davis asked if there are parallel grants being pursued simultaneously in other states that would mirror the work being done here? **Ms. Barrutia** said she had a conference call this morning with Kansas, Washington and New York, and they are all in the same grant phase as Idaho.

ADJOURNMENT: **Chairman Darrington** reminded the committee that Friday's meeting will be at 1:00 p.m. There being no further business, **Chairman Darrington** adjourned the meeting at 2:50 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 23, 2007

TIME: 1:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: NONE

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

CONVENED: Chairman Darrington called the meeting to order at 1:05 p.m.

MINUTES: **Senator Burkett** made a motion to accept the minutes of February 19, 2007 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS 17050C1 **A Concurrent Resolution rejecting a certain rule of the Industrial Commission.**

RS 17052 **A Concurrent Resolution rejecting certain rules of the Division of Human Resources and Personnel Commission.**

RS 17073 **A Concurrent Resolution rejecting a certain rule of the Division of Human Resources and Personnel Commission.**

RS 16962 **Relating to Payments from the Public School Income Fund.**

MOTION: A motion was made by **Senator Davis** to send RS 17050C1, RS 17052, RS 17073, and RS 16962 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

RS 17081 **Relating to the Board of Health & Welfare. Bill Walker**, Deputy Director of Department of Health and Welfare, this legislation increases the honorarium provided to members of the Idaho Board of Health and Welfare.

Chairman Darrington asked **Mr. Walker** to address the fiscal impact of this bill. **Mr. Walker** explained there is no fiscal impact. They were able to accommodate the increase in the compensation for members of the Board of Health and Welfare within the existing budget. The current statute calls for a different level of reimbursement. They feel this is necessary due to the changes in the make-up of the board and the frequency of the board meetings.

MOTION: **Senator Davis** challenges the adequacy of no fiscal impact and moved to print RS 17081 with the corrected statement of impact reflecting the cost of the increase. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

S 1142 **Relating to Juvenile Corrections.** **Senator Stegner** explained this legislation is a recommendation from an interim committee on substance abuse and mental health that met over this past summer. This bill deals with the sentencing statute for juveniles and allows the judge to order a substance abuse assessment. Based on that assessment, the judge can order the juvenile to receive substance abuse treatment.

Larry Calicutt, Director of Department of Juvenile Corrections spoke in support of S 1142. From experience, having this option in the community is proactive rather than reactive. Right now 85% of the juveniles in custody have drug and alcohol abuse issues. In 2005 there were 32,750 drug tests given to juvenile probationers and 2,246 alcohol tests given to that particular group. **Mr. Calicutt** thinks this bill could slow the rate of an increase.

Senator Burkett asked if there was a difference between "evaluation" and "assessment." **Senator Stegner** said he was not an expert on the differences. He thinks the comprehensive substance abuse assessment is part of an overall plan to have uniform assessment statewide and allow judges to make more informed decisions about whether or not the treatment would meet the objective plans of the court. **Senator Burkett** wanted to know if these assessments will be conducted by Health and Welfare, or will they be privately contracted out? **Senator Stegner** explained most of the assessments would be by private providers, under the jurisdiction and direction of Department of Health and Welfare.

Kathleen Allyn, Administrator of the Division of Behavioral Health in the Department of Health and Welfare explained that although the Department takes no position on S 1142 and S 1149, they agree in principle with the intent to provide mental health and substance abuse services to people in the criminal justice system. Some might criticize these bills as criminalizing the mental health system. The reality is the criminal justice system is already full of people who have mental illness or substance use addiction or both. There is a need to provide services to these people with the hope it might prevent them from cycling back into the system.

Senator Stegner wanted to emphasize the success of this program is predicated on the availability of an adequate substance abuse treatment system within the regions of the state.

MOTION **Senator Davis** made a motion to send S 1142 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1149 **Relating to Substance Abuse and Mental Health Treatment.** **Senator Stegner** explained this bill is the same concept as in the juvenile sentencing statute. It is a little more comprehensive, and it also

encompasses mental health examinations for certain convicted felons and felony parole violators that appear before the court.

Ms. Allyn reiterated the same testimony above.

MOTION

A motion was made by **Senator Lodge** to send S 1149 to the floor with a do pass recommendation. The motion was seconded by **Senator Hill**. The motion carried by **voice vote**.

Senator Davis felt it was important to note this bill will not adversely affect the areas where you have mandatory minimum sentencing requirements.

S 1164

Relating to Warrants. **Mike Kane** representing the Sheriff's Association explained this is a joint law enforcement bill. **Mr. Kane** introduced Detective Bret Kissinger, Idaho State Police, Cyber Crimes Unit and Detective Quilter with the Boise Police Department as resources. **Mr. Kane** explained that since the 1984 statutes were adopted regarding search warrants, things have changed. This bill sets out to allow officers to serve a search warrant either in person, or by electronic mail, fax or mail. **Mr. Kane** said this does not change the way warrants are obtained and mainly pertains to records held by third party individuals. There still needs to be a proof of service filed with the court.

MOTION:

Vice Chairman Richardson made a motion to send S 1164 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. **Senator Davis** expressed some concerns/anxieties, and with reluctance, he will be supporting the motion. The motion carried by **voice vote**.

PRESENTATION:

Department of Corrections Update. **Brent D. Reinke**, Director, Idaho Department of Correction and Chairman of the Idaho Criminal Justice Commission introduced his board chairman **Robin Sandy**, board member **Carolyn Meline**, and also **Teresa Jones** and **Kevin Kempf**. **Mr. Reinke** said the Criminal Justice Commission has decided that its performance will be measured by its progress in the development of alternatives to incarceration for juveniles and adults, implementation of the Adam Walsh Act and development of evidenced-based programs.

Mr. Reinke pointed out the theme on his Capacity Report and Briefing Sheet of the black cowboy hat. **Mr. Reinke** presented **Chairman Darrington** with his own black cowboy hat, and explained it is his department's goal to become Idaho's premiere Black Hat Agency.

As shown on the Capacity Report, **Mr. Reinke** said Idaho's average prison population growth is about 39 inmates a month. As of February this year, the Idaho Correctional Center has added 242 beds. In January the Idaho State Correctional Institution added 50 beds. Seven hundred beds have been funded, 400 for the Correctional Alternative Placement Program (CAPP) and a 300-bed expansion of the Idaho Correctional Center. GEO Group offered another 68 beds in its Texas facilities currently housing Idaho inmates. Two counties, Elmore and Jefferson, plan to make more beds available.

Senator Davis noted he heard on the news this week that a court entered an order that California prisoners have a constitutional right to be housed in a prison within their state boundaries. **Mr. Reinke** said that was true and could have a profound impact here, depending how that plays out.

The Department has appealed a federal court injunction. If no stay is issued, 151 beds could be added to the Idaho State Correction Institution in 30 days. The average inmate in Idaho is a white male, 34 years old, and incarcerated for a nonviolent crime. **Chairman Darrington** noted that in the future this committee would like a breakdown of violent and nonviolent crime, with regard to particular drug related charges.

Mr. Reinke said the Department's mission is to protect the public. Their vision is to develop an organization respected for its professional integrity and its ability to protect its communities. Yesterday he had the opportunity to go to a graduation ceremony at ICC (state owned, privately run facility). They had 82 graduates, 20 of those were GED graduates and the rest were vocational certificate earners. **Mr. Reinke** talked about the growth and anticipated growth over the years.

Kevin Kempf, Division Chief for Community Corrections reminded the Committee just how dangerous a job our probation and parole officers have. They deal with convicted felons on a day to day basis. He spoke of an incident this past year where two staff members in Pocatello along with two officers were shot while serving a search warrant on a sex offender. He noted that Robin Sandy, the Board of Corrections Chairman, was on the site within three hours of the incident providing support. **Senator Jorgenson** asked about the condition of the two staff members. **Mr. Kempf** explained both of the staff members had their ballistic vests on and are doing okay physically although one is still struggling emotionally.

Under Mr. Reinke's leadership they have developed a threefold mission and focus for Community Corrections. They are: safety, partnerships and accountability. As far as safety is concerned they are formulating their training and policies to make sure staff have what they need to accomplish the mission. They are going to partnership better with law enforcement agencies, treatment providers and with city, county and state/local governments. They recently changed how they supervise offenders to make them more accountable.

Senator Lodge asked what vocational education programs they offer. **Mr. Kempf** said there are six different vocational programs including carpentry, plumbing, and electrical work. They are also working on a welding program. There is a certification process.

Senator Kelly wanted to know the case loads of these workers and how they compare with other states. **Mr. Kempf** explained their average case loads are around 74 offenders per officer. The higher risk offenders are supervised on a lower case load basis. Nationally, some other states carry caseloads up to 100 to 125 and misdemeanor probation officers

can have up to 200.

Chairman Darrington wondered if that is why we have less violators going back to prison. **Mr. Kempf** said he believes offenders here in Idaho are released at the right times, and those that need to be incarcerated are kept incarcerated.

Senator Kelly asked about retention rates of parole officers. **Mr. Kempf** said our turnover rate is about 8%, which is normal across the country. **Mr. Reinke** reminded the Committee that is only in the Community Corrections area, not in the prison area.

Senator Jorgenson wanted to know if there is any correlation between illegal aliens and the prisoner population. **Olivia Craven** said there are approximately 250 illegal aliens in prison. Idaho paroles about 90% of the illegal aliens. They have a concern now, because the federal government has changed their policy and or not saying whether or not they will deport them. This creates a problem because the illegals can bond out, with no supervision and we have to hope they show up for their court appearance. **Mr. Reinke** assured the Committee they were going to do their homework and figure out options to deal with any upcoming issues on the change of this federal policy.

Mr. Reinke shared that he had had a recent meeting with the Governor regarding inquiries from Legislators over the last two years dealing with mental health. He said the meeting dealt with three areas of mental health. The first, patient population, second, the inmate population, and third, the possibility of federal oversight of the mental health issues in the Department of Corrections.

ADJOURNMENT: There being no further business, **Chairman Darrington** adjourned the meeting at 2:45 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 26, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: NONE

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

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

MINUTES: **Senator Hill** made a motion to approve the Committee Minutes of February 21, 2007 as written. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Legal Aid. Teresa Molitar**, Lobbyist for Idaho Legal Aid Services introduced **Ernesto Sanchez**, Executive Director of Idaho Legal Aid Services since 1978. He explained that Legal Aid has expanded over the years. They are the largest provider of civil legal services to the poor in the state of Idaho, 85% funded through legal services corporation grants, domestic violence grants and the Idaho Law Foundation. They have seven offices in Idaho, are nonprofit and focus mostly on domestic violence and senior issues. Legal Aid only represent one of every five who come to their door.

Chairman Darrington asked for the federal guidelines for eligibility. **Mr. Sanchez** explained they use the federal poverty guidelines, they are authorized to increase the eligibility to 125%, and the case must be civil in nature.

Senator Hill asked about the number of attorneys they employ. **Mr. Sanchez** said they have 21 attorneys throughout the state, half of those work less then full time (either 80% or 60%).

Vice Chairman Richardson asked if they ever accept cases on a sliding pay scale. **Mr. Sanchez** said no, it depends totally on their eligibility requirements.

RS 17102 **Relating to Financial Statements Covering Farm Products. Chuck Goodenough**, Deputy Secretary of State, Commercial Division, presented this bill. **Mr. Goodenough** explained this legislation will

provide an alternative to the requirement that farm product financing statements utilize Social Security Account Numbers or Taxpayer Identification Numbers for debtors. The alternative will be a unique identifier selected by the Secretary of State and approved by the Secretary of Agriculture. The bill also eliminates requirements for signatures on farm product financing statements and amendments to facilitate electronic filing.

Chairman Darrington asked **Senator Davis** if it was his intention this legislation proceed this session, or circulate to be ready for next year. **Senator Davis** said it is their intent to run the bill.

MOTION:

A motion was made by **Senator Hill** to send RS 17102 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1171

Relating to Actions for Injury. **Senator Kelly** explained this bill would extend damages allowed to be recovered in a case of a minor child or parent who is injured. The change proposed would allow the person who is uninjured to recover loss of consortium.

Senator Jorgenson asked how damages are assessed. **Senator Kelly** asked that **John Bush**, attorney with Comstock and Bush answer that question. **Mr. Bush** said they use mortality tables and expected life spans. These cases are done on a case by case basis. It would be up to the plaintiff's lawyer to present a damage statement.

Mr. Bush gave an example of a case he handled where a father was injured, by no fault of his own. His family was left with extreme financial and emotional loss. He was unable to interact with his children, causing damage to their relationship. **Senator Hill** asked how money could help that situation. **Mr. Bush** said there was no right answer to that question. It is the only compensation that our civil system of justice can do for a loss.

Senator Kelly wanted to remind the Committee that there is already standards in place with regard to wrongful death scenarios. This bill is in regard to wrongful injury.

MOTION:

Chairman Darrington made a motion to send S 1171 to the floor with a **do pass** recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

H 106

Relating to Drug and Substance Abuse Policy. **Debbie Field**, Director, Idaho Office of Drug Policy presented this House bill. **Ms. Field** explained this legislation codifies the Office of Drug Policy, within the Office of the Governor. The legislation modifies the Interagency Substance Abuse Committee membership to include the administrator chairperson and creates a single point of budget coordination for substance abuse programs. Some of the agencies they will partnership with are: Health and Welfare, Department of Corrections, Department of Juvenile Corrections, Transportation, Idaho State Police, and Association of Cities and Counties. **Ms. Field** noted she has visited several small communities and was amazed to see these communities pulling

together. She hopes to have a consensus on an assessment tool by March 1st and implementation by next year.

Senator Davis asked if she had the health to do this job today. **Ms. Field** responded that she had the passion.

MOTION: A motion was made by **Senator Lodge** to send H 106 to the floor with a **do pass** recommendation. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**.

APPOINTMENT: **Gubernatorial Appointment: Colonel G. Jerry Russell** is appointed Director of the Idaho State Police to serve a term commencing January 19, 2007 and continuing at the pleasure of the Governor. **Colonel Russell** has been in law enforcement for 28 years and public service for 30 years.

PRESENTATION: **Idaho State Police. Colonel Russell** introduced **Kevin Johnson**, Deputy Director of his administration. **Colonel Russell** explained his background and philosophy. As Director of Idaho State Police (ISP) he believes all issues are local and he is committed to assisting the local chiefs, sheriffs, and prosecutors in finding solutions for the every-day issues in the law enforcement community. It is his goal to be a service provider and assist those agencies to be successful. His vision is to be responsive to criminal justice needs and create an atmosphere that is conducive to working together for the good of creating safer communities.

Chairman Darrington asked if **Colonel Russell** would be in a position in the near future to make recommendations to the Legislature on how we may implement DNA testing of all felons? **Colonel Russell** said yes, forensic services is very high on his list.

Senator Davis asked about ISP stepping on the toes of sheriff offices. **Colonel Russell** said it would be a balancing act, but he is committed to the fact that you build partnerships and work together. It is not his intent to push resources into a community where they don't need them.

Senator Davis also asked if Colonel Russell was post certified or intended to be post certified. **Colonel Russell** said he was certified in Oregon, but he's not post certified at this time. If post certification is required in the scope of his authority, he will get post certified.

Senator Hill said our local sheriff and police strongly feel the forensic lab is the greatest service the Idaho State Police render. He asked **Colonel Russell** what his priorities will be. **Colonel Russell** explained the priorities are providing services to locals. He will be looking for efficiencies and effectiveness in the forensic services. **Colonel Russell** talked about the Police Allocation Model which tells mathematically what is needed for staffing levels for patrol. **Colonel Russell** said he is looking at the services that ISP can provide to law enforcement communities, sheriffs, chiefs, and prosecutors to be successful and protect the citizens of this state.

Senator Kelly mentioned some concerns regarding the Alcohol Beverage Control Bureau (ABC). She asked if **Colonel Russell** had any ideas to make the regulations of ABC work more efficiently. **Colonel Russell** said it would be hard to speak to this subject with only 28 days under his belt. However, ABC has only three officers in this area. Other areas have 40 to 50 officers. He will take a hard look at what the code requires.

Senator Burkett asked **Colonel Russell** what he may have learned working in Oregon that might help him here in Idaho. **Colonel Russell** explained that after being a peace officer over 30 years, he realizes that there will never be enough police officers to deal with all the criminal issues out there. He has learned that law enforcement is only one leg in a three, four, or five legged stool, in dealing with the serious social problems of today. The importance of building strong partnerships makes everybody succeed. No one agency stands by itself; it's all built on cooperation and communication working together.

REMINDER: Regarding e-mails and comments on the Adam Walsh Act, **Chairman Darrington** reminded the Committee that the advice from the Office of the Attorney General is that he intends to bring legislation to comply with the Adam Walsh Act next year. The guidelines from the Department of Justice will not be out until later this spring.

ADJOURNMENT: There being no further business, **Chairman Darrington** adjourned the meeting at 2:25 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: February 28, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

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

MINUTES: **Senator Kelly** made a motion to approve the Committee Minutes of February 23, 2007 as written. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION: Confirmation of Gubernatorial Appointment of **G. Jerry Russell** as Director of Idaho State Police.

MOTION: **Vice Chairman Richardson** made a motion to send the appointment of **G. Jerry Russell** as Director of the Idaho State Police to the Senate floor with a **do confirm** recommendation. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

RS 16948 **Relating to the Optional Retirement Program.** The Senate Commerce & Human Resources Committee unanimously requested that RS 16948 be sent to print and referred back to the Commerce & Human Resources Committee for further action.

RS 17127 **Relating to Wholesale Drug Distribution.** The Senate Health and Welfare Committee unanimously requested that RS 17127 be sent to print.

MOTION: A motion was made by **Senator Davis** to send RS 16948 and RS 17127 to print. **Senator Kelly** seconded the motion. The motion passed by **voice vote**.

RS 17133 **Relating to the Uniform Interstate Family Support Act.** **Bill Walker**, Department of Health & Welfare, explained that the department learned just last week that the simple changes proposed in this legislation are required in order to comply with our state plan and the Uniform Interstate Family Support Act. The language requires social security numbers on initiating documents for child support/medical orders.

MOTION: **Senator Davis** made a motion to send RS 17133 to print. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Moscelene Sunderland** is appointed to the Sexual Offender Classification Board to serve a term commencing January 1, 2007 and expiring January 1, 2013. **Ms. Sunderland** told the committee that she was a victim's advocate on the Board and has been there since the inception of the Board in 1998. She said she became involved with victim's rights and treatment because of an unfortunate circumstance that happened in her family about twenty years ago. Moscelene said her basic philosophy has always been that when bad things happen, you must make the best of it.

Vice Chairman Richardson said that she obviously had a dedication to the position and sincere feeling for those who are victims of a crime of this nature. **Senator Kelly** asked, if in her experience on this board, there were things that the legislature could do to improve the process. **Ms. Sunderland** said that in her opinion she would suggest more education for children, better and accessible treatment for offenders, and for the untreatable, life time probation. **Vice Chairman Richardson** asked if more than one classification was needed. **Ms. Sunderland** said yes, that all sex offenders were not equal and she would support a tiered system.

The confirmation of Ms. Sunderland will be voted on by Committee at Friday's meeting.

PRESENTATION: **Sexual Offender Classification Board Update. Kathy Baird**, Management Assistant of the Sexual Offender Classification Board, explained that the board was created in 1998 to identify adult high-risk "violent sexual predators (VSP)." Offenders given this designation are required to register with law enforcement four times a year and verify their addresses every 30 days. It is also a lifetime designation. The Board is comprised of four voluntary members; the chairman is a Probation and Parole officer, two clinical providers, and an advocate for victims. Ms. Baird said they have reviewed two cases so far this year and have five more slated for review in the next few months. There are 36 offenders living in the community including 15 offenders who have been similarly classified in other states. She mentioned the Adam Walsh Child Protection and Safety Act which will impose additional procedures on states to identify and track sexual offenders. This Act will incorporate a 3-tiered risk level registration system. The risk levels will be determined by conviction vs. individually assessed risk. Currently, Idaho has a 2-tiered system; VSP's, and the remaining sex offenders.

Senator Hill asked three questions: 1) if offenders were classed at a certain level could they appeal? 2) can they be dropped to a lower classification? 3) what other factors are used beside conviction? **Ms. Baird** said when they were classified, they had 14 days to file an appeal for judicial review. It is a lifetime designation beyond that 14 day window, and there is no further appeal process. Therefore, there is no

lowering their classification. Referrals are identified by clinicians or probation officers through evaluations, and the Board then delves into more history of the offender.

Senator Richardson said he had received some criticism of Idaho from constituents because we had not joined in with “Jessica’s law?” **Ms. Baird** said she had reviewed the legislation that was passed last session that would be geared toward that law. She found that in comparison to “Jessica’s law” from Florida, our laws were very similar. **Senator Davis** asked if Kathy would pull together a comparison for the Committee. **Ms. Baird** said she would do that.

S 1159

Relating to Acknowledgments of Written Instruments. Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.

Senator Davis commented that Chuck Goodenough and Bob had met with him to discuss the “signature” and the “mark,” and Bob agreed to work on the language in the legislation. Senator Davis said we could either pull back and have less of an application, or we could define what constitutes a signature and what constitutes a mark for purposes of the acknowledgment statutes. Either way, the bill would have to go to the amending order.

MOTION:

Senator Davis made a motion to send S 1159 to the 14th Order for Amendment. **Senator Jorgenson** seconded the motion. The motion passed by **voice vote**.

S 1153

Relating to the Small Lawsuit Resolution Act. Senator Tim Corder explained that this legislation increases the claim amount from \$25,000 to \$50,000 which would increase usage of the Small Lawsuit Resolution Act (SLRA), save court time and expedite solutions. He referred to a couple of handouts which gave some history of the SLRA cases. He believes that this amendment is a good piece of legislation. The purpose of the SLRA was to reduce costs, encourage swift, fair and cost effective resolution of disputes.

TESTIMONY:

Ken McClure, representing the Idaho Liability Reform Coalition, said that he had asked Senator Corder to hold off another year. It may be a good idea, but there is not enough data. He urged the Committee to act with caution on voting on this legislation. If he was sure that the SLRA was going to be quicker and cheaper for the litigants so that people got money and lawyers didn’t, he would support it. Most civil suits get settled before trial. Another concern, he mentioned, is that litigants don’t decide to put a case into SLRA, one of the parties does and the other party must follow.

Senator Davis asked the following questions:

- 1) do you think the right number is \$25,000 because that is the minimum insurance amount for an automobile?
- 2) what number of years would give the most accurate database?
- 3) what is the harm in the increase from \$25,000 to \$50,000?

Mr. McClure answered the second question and said that we might extend the sunset until there is enough data and yet in another year, we

might have to deal with the amount of data that is given. In answer to the first question, his concern is not related to the minimum automobile insurance amount, but is it really cheaper and quicker. Lastly, there may be a harm to litigants. **Senator Davis** suggested that the court reform coalition might analyze more deeply the information to help the Legislature make a decision.

Senator Burkett asked if there were any attorneys or litigants who have raised the issue that they have wasted money on this mediation process? **Mr. McClure** responded that he had heard it reported, but he is not aware of any official statement. **Senator Burkett** mentioned that the goal of mediation is to get the case resolved and/or to narrow the case and close it. A third situation is that the case resolves at a later date. He said he had a hard time finding attorneys that said that money spent mediating was money not well spent. **Mr. McClure** agreed with the Senator in regard to those cases in which the parties agree to mediate. In the cases in which one party says we are going to do this whether you like it or not, which is what the SLRA does, the outcome is likely to be different.

Senator Jorgenson asked if the requests for SLRA was driven by a plaintiff lawyer or a defense lawyer. **Mr. McClure** believes that more cases are started by plaintiffs than defendants, but is not sure if that is a fact. **Senator Jorgenson** asked if the fee basis might influence some of the numbers of cases. **Mr. McClure** said that was possible.

TESTIMONY:

Phil Barber, representing American Insurance Association and also other members of the Property Casualty Insurance, said he agrees with Mr. McClure's concerns that the data isn't very telling. Mr. Barber would suggest that they look into other kinds of data concerning alternative dispute resolutions. He said that the SLRA applies to all civil lawsuits, not just personal injury cases or just torts. He believes there are better alternatives; that the SLRA is adversarial. The SLRA is a distraction from the mediation process, which is structured negotiation.

TESTIMONY:

Russ Johnson, attorney in a small firm, said he has done these cases and is surprised that it is not used more. He used the analogy of his days being raised on the farm. He said his dad always had a crescent wrench on every tractor and even though you couldn't fix every breakdown with a crescent wrench, but you could fix a lot of them. He felt it would work to go ahead and increase the size of the crescent wrench. He couldn't see the downside of raising the amount to \$50,000. He pointed out that if you take on an evaluation case, you were limited to receiving only \$1,000 compensation even if the bill is more than that. Another important issue, according to Mr. Johnson, is that when you read through the Act, mediation is an option. He was confused that mediation was set in one spot and evaluation in another spot. If the parties agree, or if not, they can go to the Board for assistance on this, but mediation is one of the options that is built into the Act. Mediation would be a viable option.

SUMMARY:

Senator Corder said the Committee must make a decision based on your best judgment, having heard testimony from both sides. He said

his attorney said he needs this amount higher to be able to use this better. He said the Act did not apply to all civil actions as was asserted. It does not apply to appeals, small claims and where punitive damages are sought. The data may not be as good as we would like, but it is good legislation.

Senator Jorgenson asked if this was supported by Idaho Trial Lawyers Association (ITLA). **Senator Corder** replied that he suspected so.

MOTION: A motion was made by **Senator Hill** to send S 1153 to the floor with a **do pass** recommendation. The motion was seconded by **Senator McKague**. The motion carried by **voice vote**.

ADJOURNMENT: There being no further business, **Chairman Darrington** adjourned the meeting at 2:53 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 2, 2007

TIME: 1:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

CONVENED: **Chairman Darrington** called the meeting to order at 1:00 p.m.

MINUTES: **Senator Jorgenson** made a motion to approve the Committee Minutes of February 26, 2007 as written. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION: Confirmation of Gubernatorial Appointment of **Moscelene Sunderland** to the Sexual Offender Classification Board.

MOTION: **Senator Davis** made a motion to send the appointment of **Moscelene Sunderland** to the Sexual Offender Classification Board to the Senate Floor with a **do confirm** recommendation. The motion was seconded by **Senator Jorgenson**. The motion carried by **voice vote**.

H 193 **Relating to Judges. Patricia Tobias**, Administrative Director of the Courts explained this legislation would increase the annual salary by 5% of justices of the supreme court, judges of the court of appeals, district judges and attorney magistrate judges beginning July 1, 2007. **Ms. Tobias** assured the Committee they could be very proud of Idaho's judges.

Chairman Darrington noted this legislation was recommended by the Chairman of the Senate Finance Committee and his staff.

MOTION: A motion was made by **Senator Hill** to send H 193 to the floor with a **do pass** recommendation. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

H 126 **Relating to Subpoenas. Michael J. Kane** attorney with Kane and Tobiason, representing the Idaho Sheriff's Association presented this bill which repeals an ancient code pertaining to service by sheriffs of subpoenas.

- MOTION:** **Senator Davis** made a motion to send H 126 to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion passed by **voice vote**.
- H 127** **Relating to Bail.** **Mr. Kane** explained this legislation will simply put into law that which has already been happening in regards to setting conditions of bail.
- MOTION:** A motion was made by **Vice Chairman Richardson** to send H 127 to the floor with a **do pass** recommendation. The motion was seconded by **Senator Jorgenson**. The motion carried by **voice vote**.
- H 128** **Relating to Prisoner Reimbursement to Counties.** **Mr. Kane** explained 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.
- MOTION:** **Senator Davis** made a motion to send H 128 to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion passed by **voice vote**.
- H 129** **Relating to Escape of Persons Charged with or Convicted of Crimes.** **Mr. Kane** said this bill deals with the law of escape. This bill sets forth what happens if a person that is charged with or convicted of a crime leaves home detention or GPS monitoring and avoids the rules of the court. That person could then be charged with the criminal offense of escape. The courts must have notified the person of this requirement. **Mr. Kane** said specifically a person cannot be charged if they have to leave their home detention for a medical emergency.
- MOTION:** A motion was made by **Senator Jorgenson** to send H 129 to the floor with a **do pass** recommendation. The motion was seconded by **Senator Lodge**. The motion carried by **voice vote**.
- PRESENTATION:** **Update on State Prison and County Jails.** **Mr. Kane** introduced **Walt Femling**, Sheriff of Blaine County and the Chairman of the Idaho Sheriff's Association's Jail Standards Committee. **Sheriff Femling** explained the Jail Standards Committee's mission is to write and enforce jail standards, inspect all jail facilities, issue certificates of compliance, oversee new jail construction, and provide technical service to jails. All jails must provide monthly reports dealing with jail population, demographics, and cost per day of running their facilities to their jail coordinator. The Jail Standards Committee reports to the Judiciary and Rules Committee every three years on these monthly reports. **Sheriff Femling** explained the state average cost per day for county jails is \$59.65. There are 4,379 beds statewide. Two new jails will be opening in the next two months, one in Elmore County and one in Jefferson County. The last increase for daily jail rates from the state to the counties was seven years ago. In the last seven years there have been significant increases in utility, food and medical costs. A positive step in the direction of controlling costs is that the Idaho Sheriff's Association will be meeting with Director Reinke to discuss partnerships and future bed needs of the Department of Corrections.

Chairman Darrington asked if **Sheriff Femling's** per day figures were verifiable and were reliable enough to present to a legislative body. **Sheriff Femling** said they have a form that all jails must fill out, and it follows the federal form on how to figure costs per day.

Senator Davis asked if the committee ever received an update on the California litigation regarding their prisoners be housed in state. **Pam Sonner**, Administrator of Operation for Idaho Department of Corrections said nothing had been heard regarding the effect of this litigation. There has not been a final analysis how it might apply to the Department of Corrections.

Sheriff Femling noted that the Department of Corrections' forecast over the next seven years shows they will need to continue to send inmates out of state. If every county jail bed is filled, they will be 1,000 beds short of what is needed according to that forecast.

Chairman Darrington spoke of a ten-year plan that was in the works regarding community correction alternatives.

There was a short discussion of medical services costs for inmates.

ADJOURNMENT: There being no further business, **Chairman Darrington** adjourned the meeting at 1:35 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 5, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

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

MINUTES: **Vice Chairman Richardson** made a motion to approve the Committee Minutes of February 28, 2007 as written. **Senator Burkett** seconded the motion. The motion carried by **voice vote**.

H 171 **Relating to the Child Protective Act. Michael Henderson**, Legal Counsel for the Courts, explained that this bill is a recommendation of the Supreme Court's Child Protection Committee. Five sections of the Child Protective Act would be amended with this bill. The most significant change refers to modification of language to prevent the removal of a child from the home, or to prevent placement of the child in shelter care. This modification would bring the provision in compliance with federal requirements. Other amendments would remove inconsistencies, unnecessary language, and simplify other provisions. It would specify that the court make written findings as to whether the Department of Health and Welfare had made reasonable efforts to finalize a permanency plan.

Chairman Darrington noted the structure of the new language to be clearer. He asked what the Federal Government's issues were with the old language. **Mr. Henderson** said the old language referred to situations regarding the immediate danger of the child and that reasonable efforts could not be provided. The Federal Government felt that in any situation, other than aggravated circumstances, it's not good enough to say reasonable efforts cannot be provided.

A lengthy discussion followed regarding the change of language in reference to shelter care hearings (16-1615.(b)(i) and (ii)). **Mr. Henderson** said it is up to the state to prove one of the alternatives, either (i) or (ii), which shows that reasonable efforts were made and were unsuccessful. **Senator Davis** noted he was struggling with the words. **Mr. Henderson**

agrees that this is not the most eloquent language, but it came about after extensive discussions. **Chairman Darrington** said the reason for subparagraph (i) and (ii) is to preserve the family at all costs, and these are the exceptions, when a family can't be preserved. **Mr. Henderson** agreed, and said that was the policy adopted and also the requirement of federal law.

Senator Kelly felt this language was extremely awkward, and asked if the language was mirroring some language from the federal code. **Mr. Henderson** said the language didn't mirror language in the federal code, but was negotiated word by word.

Senator Burkett asked if Mr. Henderson was concerned that the Department might be open for liability by having the standard that says they have made reasonable efforts, and then determine that no preventive service could be offered. **Mr. Henderson** said no, because reasonable efforts must be discussed in any event, and there are other statutes that limit and address the Department's liability.

MOTION:

Senator Hill made a motion to send H 171 to the floor with a **do pass** recommendation. **Vice Chairman Richardson** seconded the motion.

Senator Davis said he just couldn't wrap himself around this language. He suggested this bill go back to the Federal Government noting that the Senate wanted the language written in a fashion that anyone could understand. That's not the motion he's voting on so he said he would quietly vote no.

Senator Jorgenson admitted he was confused and would look to someone with experience and knowledge that could give the Committee more reassurance.

The voice vote was taken, but the Chair was unsure. A Roll Call Vote was requested by **Chairman Darrington**.

**ROLE CALL
VOTE:**

Voting Yes to send H 171 to the floor with a do pass recommendation were **Chairman Darrington, Vice Chairman Richardson, Senators Hill and Kelly**. Voting no were **Senators Davis, Lodge, Jorgenson, McKague and Burkett**. The motion **failed**.

Senator Davis said he didn't want to lose this House bill. He suggested the sponsor of the bill find some language to get the Committee closer to the targeted language, and maybe the Committee could revisit before Session's end, if it works within the **Chairman's** calendar. **Chairman Darrington** said he would take that under advisement and await counsel.

H 176

Relating to Motor Vehicle Offenses. **Heather Reilly**, Deputy Prosecuting Attorney, representing Ada County Prosecuting Attorneys Association, said this is legislation that creates a new felony in Idaho Code called aggravated reckless driving. There has been a need to create this felony level of reckless driving when it results in great bodily harm, permanent disability or permanent disfigurement to someone other than the reckless driver. This language has been modeled after and

mirrors the aggravated DUI statutes. Prosecutors would be required to screen which cases rise to felony level. This legislation also creates a discretionary five year sentence and/or a \$5,000 fine. The felony penalty provision allows for better accountability for offenders and increased protection for citizens traveling upon Idaho's roadways. With the enhanced penalty, the court may order longer supervised probation, including extended time for restitution payments to be made to victims. **Ms. Reilly** distributed a letter from Patti Powell, Chairman of Law Enforcement Legislative Council in support of this legislation.

Senator Jorgenson asked why this bill does not include death. **Ms. Reilly** explained that we have vehicular manslaughter legislation which is a felony and the maximum penalty for that is 15 years.

Senator Burkett asked Ms. Reilly if she saw a distinction between a DUI and people who commit this crime which is just negligence? **Ms. Reilly** said that with this bill, the prosecutors office has to prove the driver acted carelessly and heedlessly, or without due caution and circumspection, and drove at a speed or manner as to endanger or be likely to endanger any person or property. She said this bill is to create a statute that addresses individuals that cause serious injury to others by intentional, aggressive and reckless driving. This bill is not to be used for inattentive driving.

Senator McKague mentioned that she had recently inadvertently turned into a one-way street and wondered if this law would mean that she had committed a felony. **Ms. Reilly** replied that it could be an infraction, or perhaps inattentive, depending on what you were doing at the time. It would be evaluated and would depend on the circumstances. **Senator Burkett** commented that in that situation if she hit someone and caused bodily harm she would be guilty of the statute with enhanced penalties. **Ms. Reilly** replied that it would depend on the circumstances. Each situation would need to be screened. **Senator Burkett** said that the statute says that she is without due caution because she has turned the wrong way on a one-way, and if she has caused great bodily harm, she fits within the frame of the statute and could be charged accordingly. **Ms. Reilly** again said it would depend on the circumstances.

Senator Davis asked what the word "wanton" means, and how it applies in reckless versus inattentive. **Ms. Reilly** said "wanton conduct" as defined in Black's law based upon a criminal law treatise, is that the person is intending the action and is indifferent to the resulting harm. The distinction in terms of reckless driving is reckless includes intentional conduct with no intent to cause harm. In the case of road rage situations, someone is angry, speeding and passing cars, weaving in and out, recognizing that what they are doing is dangerous and doesn't care. The other circumstance could be that you are late for an appointment and speeding, but the last thing in your mind is to cause harm or crash.

Senator Richardson commented that these don't appear to be mandated sentences and the judge has some decision making, is that correct? **Ms. Reilly** said it would be up to the state to prove beyond a reasonable doubt

that the defendant is guilty.

MOTION: A motion was made by **Senator Davis** to send H 176 to the floor with a **do pass** recommendation. The motion was seconded by **Senator Lodge**. The motion carried by **voice vote**.

S 1185 **Relating to the Uniform Interstate Family Support Act. Bill Walker**, Deputy Director of Department of Health and Welfare, explained that this legislation simply adds the language to require social security numbers of all parties on documents to register or modify child support orders. This bill allows us to be in compliance with the Uniform Interstate Family Support Act (UIFSA) and puts our Idaho code in compliance.

Senator Hill asked if these were confidential documents. **Mr. Walker** deferred the answer to **Kandace Yearsley**, Child Support Director of Operations. **Ms. Yearsley** replied that the documents were court records and public. **Senator Hill** said he thought the federal government had been trying to get away from using social security numbers due to identity theft. **Ms. Yearsley** said the reason the documents need the social security numbers is not so they would be public record; they are not on the actual court orders. The numbers are provided so that if the case is moved to another state, the person can be identified by more than a name. **Senator Kelly** asked if someone presented a public record request would they be able to get the document which would have someone's social security number on it. **Ms. Yearsley** replied that yes, they could, as they can now. She said that when that information was put into statute last year, the social security verbiage was dropped because of the privacy act. Two weeks ago we received notification from the federal government that they would not approve our waiver without that language. The federal government requires the Health and Welfare Child Support Division provide the social security number on the document; it does not require the Courts to release that information.

MOTION: **Senator Burkett** made a motion to send S 1185 to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion passed by **voice vote**.

S 1182 **Relating to Financing Statements Covering Farm Products. Chuck Goodenough**, Deputy Secretary of State, Commercial Division, explained that this bill deals with liens on farm products. In the past, filings that were made on farm products in our office had been required to contain both a signature and a social security number. The intent is to provide a unique identifier as selected by the Secretary of State and approved by the Secretary of Agriculture. There is no signature requirement in these farm financing liens so that lenders will be able to file these electronically.

MOTION: A motion was made by **Vice Chairman Richardson** to send S 1182 to the floor with a **do pass** recommendation. The motion was seconded by **Senator Davis**. The motion carried by **voice vote**.

S 1179 **Relating to the Idaho Criminal Gang Enforcement Act. Senator McGee** explained that this bill revises the term "person" to "an adult, or any juvenile waived to adult court" and clarifies punishments for adults

and juveniles. **Senator McGee** said that the juveniles are committing the crimes, but are influenced by the adults. He passed out a document from a recent gang related arrest in Caldwell. **Mayor Garret Nancolas** of Caldwell took the podium. Mayor Nancolas said he appreciated the legislation that was enacted last year and wanted to speak to how it relates to this current bill. We are trying to find ways to deal effectively with gang members and send a message that these types of crimes will not be tolerated in our communities. As Senator McGee stated, most of the crimes that are committed in these gangs are actually committed by juveniles under the age of eighteen years old. Recently there was a young man caught in Caldwell High School with a gun. This young man was in detention just a few days before this happened. He has a long list of arrests and within 24 hours of his release from probation, there were eight drive-by shootings in Caldwell, and we think they were all related to him and his other gang members in the form of retaliation. This is a direct example of how this law could have been an extra tool had it been extended to the juvenile sector because this young man would not have been out of jail. Mayor Nancolas assured the Committee that if law officers have these tools they will use them.

Senator Kelly said she would like more clarification on this bill since she was concerned that we might be subjecting some fourteen year olds to some pretty heavy potential punishment. **Heather Reilly** responded that what this legislation does related to juveniles that are waived is no different than we can currently do and it depends on the charge.

ADJOURNED:

Chairman Darrington stated that he could see that there was no way we could finish this today and would have to revisit S 1179 on Friday, March 9. He interrupted the hearing and adjourned the meeting at 3:00 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 7, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Burkett

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

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

MINUTES: **Senator Kelly** made a motion to approve the Committee Minutes of March 2, 2007 as written. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

S 1161 **Relating to Bail.** **Senator Jorgenson** explained this bill effects public/private partnership between the Idaho Criminal Courts and private bail bond agencies to ensure criminal defendants appear, as required, in court. It clarifies the legislatures intent regarding the issuance of a bench warrant, specifies the notice for forfeiture, and must be provided to the individual or entity responsible for paying the forfeiture. It also increases the rate for recovering fugitive defendants by providing additional time for bail agents to locate and return the fugitives to Idaho. **Senator Jorgenson** said the sheriffs are in support of this bill. It clears up a lot of issues and removes costs that counties might otherwise have to pay.

Steve Tobiason, attorney representing Aladdin Bail Bonds spoke in support of this bill. He says there has been travel from Coeur d'Alene to Soda Springs regarding this issue and this bill is a fair and realistic compromise. The key in this type of situation is that the time starts running when the forfeiture is entered by the court. It is important to have a bench warrant issued at, or about that same time. In terms of the extension, **Mr. Tobiason** thinks that will return more defendants into our system. Because of where a defendant will be returned, this bill will have substantial monetary benefits to the counties.

Skip Smyser, Connelly & Smyser, on behalf of the Association of Professional Bail Bond Agents of Idaho, said he did not come here to speak in opposition to this bill, but to ask the question why. They are concerned because this and other bills in this area have been before the legislature the last two years. There has been controversy about those pieces of legislation. As a result, the Supreme Court has organized a committee that is comprised of court administrators, district judges,

magistrates, bail bonds, sheriffs, counties, as well as the insurance industry. This committee has had three meetings. They are preparing to go forward with a comprehensive review of all the code provisions that deal with bail in the state of Idaho. It is his client's belief that this committee will come back next year with legislation that will deal with the issues comprehensively.

Chairman Darrington informed the Judiciary and Rules Committee that the following groups are neutral on this legislation; prosecutors, counties and the courts. The sheriffs favor this legislation.

Senator Kelly asked why not wait for the work of the committee that **Mr. Smyser** spoke of. **Senator Jorgenson** said this committee has yet to decide if there should be recommendations of short term fixes, or whether there should be a complete overhaul of the entire system. He is not certain, and no one can guarantee this will get done this year, or even be ready for the next session.

Chairman Darrington noted that **Senator Jorgenson** attends these meetings at the request and approval of the Chair of this Judiciary and Rules Committee.

MOTION:

Vice Chairman Richardson made a motion to send S 1161 to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

H 124

Relating to Crime. **Representative Ruchti** presented this bill to extend the statute of limitations on the criminal side for failure to report abuse, abandonment or neglect. The statute of limitations would be extended from one year to four years.

Senator Davis wanted to know the difference between sub (1) and sub (2). **Representative Ruchti** said, if there is a misdemeanor crime and there is no other statute of limitation provided for that misdemeanor crime, then the statute of limitations is one year.

Senator Hill asked why four years is preferable. **Representative Ruchti** explained they talked to the Association of Prosecutors on this bill and asked if extending the statute would assist them. Sometimes these cases are delayed in coming out, and any extension allows the prosecutors more time to evaluate.

MOTION:

A motion was made by **Senator Hill** to send H 124 to the floor with a **do pass** recommendation. The motion was seconded by **Senator Jorgenson** . The motion carried by **voice vote**.

H 125a

Relating to Child Abuse. **Representative Ruchti** explained this bill takes us to the civil side and also deals with statutes of limitations for child sexual abuse cases. This bill would 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 and its relationship to an injury suffered by the child. The bill also includes amendments to allow, subject to the evidentiary restrictions, a cause of action against the employer of the individual who committed the abuse.

Chairman Darrington asked for clarification with the words “its causal relationship”. **Representative Ruchti** explained it is a term borrowed from the law. Under tort law, before you can succeed in a court claim you have to be able to prove there was an injury and negligence, and that negligent act by the individual you are bringing the law suit against is causally related to whatever injury you are claiming.

Senator Jorgenson has some concerns regarding the way the language is framed in the sense that an employer may have liability and a volunteer may not. **Representative Ruchti** said that is right; there is a distinction, and this is a valid concern. They were looking for some statutory language that would set a very high standard. They didn't want a law suit alleged against an employer because of an act of someone that worked or volunteered for them. It is not just imputed that this person was molested, and you are the employer and are guilty. You must show that the employer did something wrong. The only statute they could find that set that high threshold did not address volunteers. The other challenge was they did not want to chill the efforts of organizations to use volunteers in their organizations to do good work. **Senator Jorgenson** asked if this in effect creates an exemption of a group. **Representative Ruchti** said he wouldn't call it an exemption, he thinks it takes this law and applies it to the employer.

Vice Chairman Richardson asked about a story involving repressed memory from his area. **Representative Ruchti** said that case would be precluded from this law because the standards in the industry have become better and when talking about discovery, we are talking about a broader scope than just a suppressed memory.

Senator Hill asked what liability this might place on our school systems. **Representative Ruchti** said schools would be under an obligation to act as reasonable school districts would act. Teachers would be under an obligation to act as reasonable teachers would act.

Senator Hill doesn't understand why the Attorney General's Office is more comfortable with this language than the language in the original bill. **Representative Ruchti** said the Attorney General's Office was concerned that the language in the original bill was too vague.

Paul Steed, an educator from the Pocatello area spoke in support of H 125a. **Mr. Steed** thanked the committee for their support last year. By 1997, twenty-eight states had already adopted the discovery clause. This clause allows a victim, when they do come forward, a window of time in which they have civil recourse. It also shuts that window and provides closure in their life. In regard to the volunteer sector they realized it was a very slippery slope. In the attempt to make all things equal, you would have to put a Sunday school teacher on the same level as a paid employee and under the same scrutiny. Idaho is second in the nation per capita for volunteerism. They didn't want to be responsible for legislation that would discourage that wonderful attribute of our state.

Senator Davis mentioned he knew Mr. Steed's family was involved in some litigation and asked if he believed this legislation would have any

impact on the statute of limitation defenses raised? **Mr. Steed** said this legislation would have no implications on such litigation.

Kathy Downes, Licensed Clinical Professional Counselor and Executive Director of Bright Tomorrows Child Advocacy Center in Pocatello. She spoke in support of H 125a. She has worked in the area of child sexual abuse for 16 years. The statistics are high, one in four females and one in six males will be abused by the age of 18. **Ms. Downes** believes it is important for victims to have the opportunity to approach the civil law and receive compensation for clinical services.

Senator Hill said that it was his understanding that this bill does not extend the statute of limitations for disclosure, except as it relates to discovery. **Representative Ruchti** replied that is correct.

Dr. Mark Baker, Oral Surgeon from Pocatello, and the father of 10 children spoke in support of this bill. He believes Idaho needs to strengthen the civil statute of limitations. Experts teach us that victims come forward when they are ready to come forward, if at all. **Dr. Baker** believes there can't be a time limitation on the criminal or the civil prosecution of pedophiles.

Chairman Darrington mentioned that the state of Idaho has some of the strongest statutes in the nation on sex abuse of children.

Representative Ruchti thanked the committee for hearing these bills. He explained they wanted to balance the needs of the victims with the rights of the accused and the protection of business in our society. In regard to **Senator Jorgenson's** question, **Representative Ruchti** explained the difference in treatment between a Catholic Priest and a Mormon Bishop. If they had written this legislation in such a way that it would apply broadly to volunteers, as well as employees, it would have put a heavy burden on churches, girl and boy scout organizations. That also would put a chilling effect on their desire and financial ability to do the good work that they do in our communities.

Senator Jorgenson said he has worked on cases that have involved several religions and anybody who is involved in these organizations should be held to the highest possible standard. The people who offend are usually people children know and trust. He believes no group should be exempt from this type of accountability.

MOTION:

Senator Jorgenson made a motion to send H 125a to the 14th order for amendment. The motion was seconded by **Senator McKague**.

SUBSTITUTE MOTION:

Senator Davis made a substitute motion to send H 125a to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Senator Davis explained that most religions have lay clergy. The public policy that needs to be asked is: should a target defendant be held to the same standard of care towards volunteers as it's employees? He thinks the answer to that is no. He supports the motion.

H 174a

Relating to Reporting Child Abuse Actions in Bad Faith.

Representative Nielsen explained this is a very simple bill. This bill will amend the penalty of a crime that has become more difficult to prosecute because of the electronic means of communication and helps provide a deterrent from \$500.00 to \$2,500.00.

Chairman Darrington asked for the source of data that would indicate the frequency with which this occurs. **Representative Nielsen** does not have that information.

MOTION:

A motion was made by **Senator McKague** to send H 174a to the floor with a **do pass** recommendation. The motion was seconded by **Vice Chairman Richardson**. The motion carried by **voice vote**. **Chairman Darrington** voted no.

H 194

Relating to Disturbing the Peace. **Representative Anderson** said this bill is one that you wish you didn't have to bring forward. He felt this would protect the families of fallen military Idahoans and save them from the discomfort of having protesters at their funerals. This bill provides for the safekeeping of the dignity and reverential nature of any funeral, memorial service, funeral procession, burial ceremony, or viewing of a deceased person.

Chairman Darrington asked if this was a problem in Idaho yet. **Representative Anderson** said no. We have had some protesters at law enforcement funerals.

MOTION:

Senator Lodge made a motion to send H 194 to the floor with a **do pass** recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT:

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

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 9, 2007

TIME: 1:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Lodge

GUESTS: Sign in sheet attached to original minutes on file in the Committee office until the end of the 2007 legislative session, after which it will be retained in the Legislative Library (Basement).

CONVENED: **Chairman Darrington** called the meeting to order at 1:05 p.m.

MINUTES: **Senator Burkett** made a motion to approve the Committee Minutes of March 5, 2007 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

S 1179 **Relating to the Idaho Criminal Gang Enforcement Act.**

Senator Kelly noted part of the reason this bill was held over was for her to better understand this bill. **Mr. Hensley** has since walked her through the bill.

MOTION: A motion was made by **Senator Hill** to send S 1179 to the floor with a **do pass** recommendation. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

H 171a **Relating to the Child Protective Act.**

Senator Davis noted there seemed to be some discrepancy with the language on page two at the last meeting. Since then **Senator Davis** has met with **Michael Henderson** and the Judge that principally works in this area. They came up with some language that can make the negative language more understandable.

MOTION: **Senator Davis** made a motion to send H 171a to the 14th order. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT:

Chairman Darrington reminded the committee he was waiting for two appointments to come across the desk. One is for appointment to the Idaho State Bar, and one is for the new parole commissioner from Lewiston.

There will not be a meeting on Monday.

There being no further business, **Chairman Darrington** adjourned the meeting at 1:10 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary

Barbara Davidson
Assistant Secretary

MINUTES

SENATE JUDICIARY AND RULES COMMITTEE

DATE: March 14, 2007

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Richardson, Senators Davis, Lodge, Jorgenson, Hill, McKague, Burkett, and Kelly

MEMBERS ABSENT/ EXCUSED:

GUESTS: No one signed the sign-in sheet.

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

MINUTES: **Senator McKague** made a motion to approve the minutes of March 9, 2007 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Hill made a motion to approve the minutes of March 7, 2007 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

APPOINTMENT: **Judge Ronald J. Wilper** is appointed by the Idaho State Bar to replace Judge Randy Smith's position on the Judicial Council. The remainder of that term expires June 30, 2007. **Judge Wilper** explained that the Judicial Council is comprised of seven members and the Chief Justice of the Supreme Court acts as the Chairman. There is one district judge appointed by the state, one commissioner, two attorney members and three at-large members from various geographical regions of the state. He said he would be taking Judge Smith's position as the district judge representative.

Senator Darrington asked if he could manage his court calendar so it would not interfere with conference calls and meetings in other towns that have openings for district judgeships to do interviewing. **Judge Wilper** replied that he believed he could even though they had a big case load in the 4th Judicial District, but we have nine district judges and we all share the load with one another. **Senator Darrington** mentioned that approving another judge was currently in process. **Judge Wilper** said his was the last new judgeship, and he has been on the bench for nine years. This would be the tenth district judge in the 4th Judicial District and they can really use the extra help. **Senator Darrington** asked what characteristics he would look for as he recommends qualified attorneys to the office of Governor for appointment to judgeships. **Judge Wilper** replied that integrity, honesty, good reputation, learned in the law, and fairness were most important.

Senator Kelly asked how he felt about the disciplinary function of the Judicial Council. **Judge Wilper** said that complaints about judges were solicited by the Council and by clicking on their web site one could fill out the form. If they are verifiable and an investigation is needed, then it becomes public and goes to the Supreme Court who makes the decision of whether or not to sanction that judge. He believes it is a pretty good method especially with keeping the matter confidential which protects the complaining party as well as the judge's reputation if the complaint is made in bad faith.

Senator Richardson asked if it was common that your Council would have to meet often in viewing judges and their decisions and behaviors. **Judge Wilper** replied that as he understands it, last year there were 112 total complaints and the majority of those were dismissed. Many were complaints about the harshness of prison sentence, and it is not within their jurisdiction. He was not sure how frequently the Judicial Council has to convene to consider legitimate complaints that are verified and that have to be investigated.

Senator Lodge asked how he resolved the stress that a judge has to endure. **Judge Wilper** said he and his wife take a one-hour walk on the greenbelt every day. He also enjoys family and his hobby of Idaho History, especially the Haywood Trial and one of his heroes, Fremont Wood, the judge who presided at that trial.

Senator Davis asked about the importance of the confidential nature of the work the Council does. **Judge Wilper** responded that the matters are confidential and exempt from the Idaho public records law and the legislature intended to make those initial inquiries confidential in order to protect the complaining party and also to protect the integrity and reputation of the judge.

MOTION:

Senator Davis made a motion to send the appointment of **Judge Ronald Wilper** to the Judicial Council to the Senate Floor with a **do confirm** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT:

Dr. Richard Moore of Lewiston is appointed to the Commission of Pardons and Parole to serve a term commencing February 21, 2007 and expiring January 1, 2010. Dr. Moore told the committee that he was a retired professor of Lewis and Clark State in political science and he received his PhD at the University of Arizona. He mentioned that his first experience as Commissioner was yesterday and the characters range from the real bandito bad guys to people who are the type that "there, but for the grace of God, go I." He is impressed with the three Commissioners on the Board now as they are knowledgeable, concerned and helpful. He stated that he was an Army officer for six years prior to his 27 years at Lewis & Clark. His hobbies are fly-fishing, astronomy, and he is on the board of Idaho Public Television. **Senator Darrington** asked if he had any preconceived notions as to what his philosophy should be as to who should get out and who should stay in? **Dr. Moore** said that he believes in protecting society first and foremost.

Senator Richardson asked if he would have any problem making decisions on life and death sentencing. **Dr. Moore** said it may be a difficult decision, but he could do what needed to be done. Many cases are not black and white, but gray.

Senator Davis asked which commissioner was being replaced by this appointment? **Senator Darrington** said he was replacing Delray Holm from Mud Lake. **Senator Davis** asked if his perception of the world and the use of drugs constitutes a violent crime. **Dr. Moore** replied that drug use is a pervasive problem in our society. It seems like all of the violent crimes that I have seen in my brief exposure have been drug related. It seems to reduce inhibitions of standard social behavior.

Senator Lodge asked how he would use his academia background? **Dr. Moore** said that being a speed reader would be most helpful. He also knows and understands statistics. Other than that, his being a professor in political science is not necessarily helpful.

Senator Hill said it would seem to him that a PhD of Political Science would have a lot to offer regarding philosophies of punishment versus rehabilitation. **Dr. Moore** responded that he made his students in his Introduction to Political Science class memorize POP (Peace, Order, and Prosperity), which is what government has to provide to the people. He sees the same order of business in this position, helping to maintain an orderly society. He believes that public safety is a fundamental requisite of government. Governments govern best that govern least.

Senator Burkett asked, if in his position on the parole board, would the due process aspects of how a particular parole applicant came into the system have impact on your decision? **Dr. Moore** said that while due process was essential, this was about privilege. I don't understand the relationship of these privileged paroles and due process so that's a long way of saying "I don't know."

MOTION:

Senator Kelly made a motion to send the appointment of **Dr. Richard Moore** to the Commission of Pardons and Parole to the Senate Floor with a **do confirm** recommendation. **Vice Chairman Richardson** seconded the motion. The motion carried by **voice vote**.

S 1213

Relating to the Idaho Security Medical Program. David Hensley, Legal Counsel for the Governor, explained that this legislation will replace the word "facility" with "program" throughout Chapter 13, Title 56. Additionally, there would be minor technical changes in the same chapter. He wanted to stress what this legislation would not do. It does not diminish the Department of Corrections responsibility to provide care or treat individuals displaying evidence of mental illness requiring diagnostic service and treatment in a maximum security setting. This legislation is important for three reasons:

1. It would modernize a section of code to reflect the Departments current approach in providing care for this segment of individuals. Back in 1976 when this law was originally passed,

- the state had a facility already in place and it was being operated as a secure medical facility at the old state pen.
2. It would reduce potential liability to the state. The Governor's office and the Department of Corrections believe that they are meeting the current law by providing care and treatment in a very secure setting.
 3. This bill would give the Governor and the Legislature time and flexibility to address this issue of how to provide care and treatment in a secure setting in the future while maintaining the level of care and treatment of individuals.

Senator Burkett asked Mr. Hensley if the idea was to be relieved from the requirement that has the facility be separate from and adjacent to the prison and that it would be inside the prison. **Mr. Hensley** said that was true.

Senator Davis mentioned that this is only the beginning and a short term posturing while finding a better long term solution. We are now making the statute consistent with what we are doing.

Senator Kelly asked why the situation was urgent. **Senator Davis** said there had been a couple of actions brought to federal court that have been settled that are nominal settlements in nature and Judge Windmill has, in part, used the current language of the statute, but this gives us an additional argument while we go forward over the next couple of years to provide a better long-term strategy.

Senator Burkett asked if the federal oversight requires a separate facility only if Idaho law requires it. **Director Reinke** introduced **Dr. Mary Perrien** to respond. Dr. Perrien said we have obligations of care and where we house and because of the way the statute is written now, it is better to show what we are doing and what we plan to do.

MOTION:

Senator Hill made a motion to send S 1213 to the Senate Floor with a **do pass** recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT:

There being no further business, **Chairman Darrington** adjourned the meeting at 1:50 p.m.

Senator Denton Darrington
Chairman

Leigh Hinds
Secretary