

House Judiciary, Rules & Administration Committee

Minutes
2009



MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 15, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representative McGeachin

GUESTS: Bonnie Alexander, Chief Clerk

Chairman Clark called the meeting to order at 1:35 p.m. The Chairman explained some of the procedures for processing legislation which comes before the Committee. He recognized Representatives Burgoyne, Jaquet and Killen and welcomed them to the Committee.

The Chairman appointed the Subcommittee members as follows: Representative Leon Smith, Chairman; Representatives Wills, Luker, Burgoyne and Killen. Representative Smith said the Subcommittee would review the Administrative Rules on Wednesday, January 21, at 1:30 p.m.

The Chief Clerk was recognized to explain the Concurrent Resolutions listed on the agenda.

HCR 2: Prior to the explanation, Chairman Clark pointed out that the Concurrent Resolutions pertaining to printing costs now have Statements of Purpose attached.

The **Chief Clerk** said **HCR 2** provides for the printing of the Session Laws for the House and Senate for the next two regular sessions. The resolution now allows that the number of copies may be determined at the time the order is placed and that number can be adjusted each year according to the demand.

The cost is estimated to decrease slightly from last session. The price for printing has remained the same, but the number of books ordered is getting smaller each year. The contract was awarded to Caxton Printers.

MOTION: **Representative Smith** moved to send **HCR 2** to the floor with a DO PASS recommendation. **Motion carried by voice vote.** Representative Clark will carry the bill on the floor.

HCR 3: The **Chief Clerk** said **HCR 3** provides for the printing of the Permanent Journals for the House and Senate. This resolution allows that the number of journals to be printed may be determined at the time the order is placed. The total number of pages printed cannot be determined until the final drafts are completed at the end of the session. The cost for

printing has remained about the same as last year. The contract was awarded to Custom Printing, Inc.

MOTION: **Representative Wills** moved to send **HCR 3** to the floor with a DO PASS recommendation. **Motion carried by voice vote.** Representative Clark will carry the bill on the floor.

HCR 4: The **Chief Clerk** said **HCR 4** provides for the printing of the bills, resolutions, memorials and amendments for the House and Senate.

The cost for printing is estimated to be significantly lower than last session. The total cost is calculated at a price per page and that price has dropped by about 40%. The resolution allows that the number of bills printed can be adjusted at any time during the session. As the demand for printed legislation decreases with the increasing use of the legislative website, an even more significant cost saving should be reflected. The contract was awarded to the Bureau of Copy and Records Services.

MOTION: **Representative Boe** moved to send **HCR 4** to the floor with a DO PASS recommendation. **Motion carried by voice vote.** Representative Clark will carry the bill on the floor.

HCR 5: The final concurrent resolution on the agenda was **HCR 5** and the **Chief Clerk** said it provides for the printing of the Daily Journals for both the House and Senate.

The demand for printed copies is decreasing as more people are learning to use the legislative website. This resolution provides for changing the number of copies to be printed at any time throughout the session. The cost for printing is based on a price per page and that price has dropped almost 60%. Again, the contract went to the Bureau of Copy and Records Services.

MOTION: **Representative Labrador** moved to send **HCR 5** to the floor with a DO PASS recommendation. **Motion carried by voice vote.** Representative Clark will carry the bill on the floor.

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

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

DATE: January 21, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Smith(24), Representatives Wills, Luker, Burgoyne, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Roger Hales, Idaho Bureau of Occupational Licenses; Jim Adams, Administrative Support Manager, State Division of Veterans Services; Julie Weaver, Deputy Attorney General; Ed Hawley, Administrative Rules; Lt. Bill Reese, Idaho State Police; Jeff Black, Director, POST Academy; Dir. Larry Callicutt, Juvenile Corrections; Frank Riley, Juvenile Corrections, Marcy Chadwell, Juvenile Corrections

Chairman Smith called the meeting to order at 1:30 p.m. and recognized Jim Adams to explain the Administrative Rules for the Division of Veterans Services.

DOCKET #21-0101-0801: **Jim Adams** said these pending rules of the Division of Veterans Services govern the admission, residency and maintenance charges in Idaho State Veterans Homes.

Mr. Adams said the Division of Veterans Services has been involved in increasingly complicated appeals. The revisions align the appeals process with the Administrative Procedure Act and provide changes designed to accommodate more complicated appeals.

The Division has also noted gaps in its rules concerning notices to applicants and residents. The revisions provide provisions to address these gaps. The revisions establish provisions addressing notices of transfer and notices of discharge for bases not previously addressed. They allow the Administrator to designate a hearing officer other than the Veterans Affairs Commission where the issues are legally complex or where the Commission does not have sufficient time to handle the matter.

The proposed rules also revise the procedures relating to appeals to provide a more efficient process that aligns the procedures with the Administrative Procedure Act.

MOTION: **Representative Wills** moved to recommend to the full Committee that **Docket 21-0101-0801 be approved. Motion carried by voice vote.**

DOCKET #21-0104-0801: **Jim Adams** was recognized to explain the pending fee rules of the Division of Veterans Services.

Defining the fees for interment, disinterment and reinterment as the amount

of reimbursement paid by the United States Department of Veterans Affairs maintains the ability of applicants to determine the fee quickly while allowing the Division to recoup the full amount of federal funds available for its services.

Instead of setting a dollar amount for the fees, the verbiage has been changed to reflect that the Administrator shall charge a fee equal to the United States Department of Veterans Affairs. In addition, the Administrator shall charge a fee of \$500 instead of the previous \$300 for preparation of an interment site not containing a pre-placed crypt.

MOTION: **Representative Wills** moved to recommend to the full Committee that **Docket 21-0104-0801 be approved. Motion carried by voice vote.**

DOCKET #21-0104-0802: **Jim Adams** was recognized to explain the pending rules governing the Idaho State Veterans Cemetery.

The upper level of the cemetery offers a view of the entire valley. The public has been gathering there to watch fireworks and they bring with them beverage coolers, blankets, BBQ equipment, etc. Although a very advantageous spot to watch fireworks, the cemetery is not an appropriate place for such activity. This rule change provides that the cemetery will be closed at 6:00 p.m. when fireworks displays are planned on the order of the Division Administrator.

MOTION: **Representative Luker** moved to recommend to the full Committee that **Docket 21-0104-0802 be approved. Motion carried by voice vote.**

DOCKET #21-0104-0901: **Jim Adams** explained the temporary rules governing the Idaho State Veterans Cemetery.

In compliance with Sections 67-5226, Idaho Code, the action of this temporary rule is authorized pursuant to Sections 65-202 and 65-204, Idaho Code. 38C.F.R. Section 39.5(d) mandates that states receiving a grant for a veterans cemetery must deny interment to individuals convicted of murder and sentenced to death.

The rule change is necessary to comply with deadlines in amendments to governing laws and federal programs.

MOTION: **Representative Wills** moved to recommend to the full Committee that **Docket 21-0104-0901 be approved. Motion carried by voice vote.**

DOCKET #21-0105-0801: **Jim Adams** was recognized to explain. This pending rule change increases the reimbursement to transportation providers for transporting wheelchair confined veterans to medical providers. The rule change confers a benefit on disabled veterans. The increase will attract new providers and retain current providers.

The rule will increase the reimbursement for veterans' transportation. This reimbursement will not exceed the appropriation for the program.

Mr. Adams said there are currently no more funds to cover the expense of

transporting these veterans.

MOTION: **Representative Luker** moved to recommend to the full Committee that **Docket 21-0105-0801 be rejected**. In support of his motion, Representative Luker said the exigency is not there. There should not be a fee increase at this time.

In answer to questions posed by the members as to why this change should be approved, Mr. Adams said some money is needed to restart these services. Currently, there is no money to cover medical transportation of these veterans.

In the past, the disabled veteran applies for and receives a voucher to pay for transportation. If that voucher is not enough, the veteran must pay the difference.

SUBSTITUTE MOTION: **Representative Wills** moved to recommend to the full Committee that **Docket 21-0105-0801 be approved**.

In support of his original motion, Representative Luker said this is not the time to increase spending. Representative Wills, in support of his substitute motion, said fuel costs will be going up again and this funding is needed.

ROLL CALL VOTE: **Substitute Motion passed 4-1-0**. Voting AYE: Representatives Smith, Burgoyne, Killen and Wills. Voting NAY: Representative Luker.

Chairman Smith recognized Roger Hales to explain the pending and fee rules of the Idaho Certified Shorthand Reporters Board.

DOCKET #49-0101-0701: **Roger Hales** said the proposed pending rule changes are necessary to make a technical correction to the Idaho Code citation regarding the Board's authority and to provide the correct address and contact information for the Board.

MOTION: **Representative Luker** moved to recommend to the full Committee that **Docket 49-0101-0701 be approved. Motion carried by voice vote**.

DOCKET #49-0101-0801: **Roger Hales** said these pending fee rule changes are necessary to comply with the law. Rule 008 changes the requirement for notification of name or address change from immediately to 14 days. Rule 125 establishes fees which have not changed, but have been moved from the law to the rules to be consistent with other boards.

Rule 150 clarifies that renewals and reinstatements are subject to the Bureau's statute, Idaho Code 67-2614. Rule 200 allows the board to terminate applications that have lacked activity for a year. Rule 400 changes temporary certification to a temporary permit.

Rule 500 allows the board more flexibility in discipline and gives them the ability to impose a civil fine of up to \$1,000 for each violation of the board's code. It also allows the board to recover costs and fees of investigation and prosecution.

In response to questions posed by the members regarding the civil fine, Mr. Hales said the board has permission to impose a fine according to a Supreme Court ruling. It gives the board more options to discipline. It does not say the board must enact a fine.

In response to a question as to what other disciplinary penalties might be available, Mr. Hales said it really depends upon how the statute is interpreted. Asked what authority the board has to impose a fine, Mr. Hales said that is covered in another section of the code.

MOTION: **Representative Luker** moved to recommend to the full committee that **Docket 49-0101-0801 be approved with the exception of subsection 500.01** relating to civil fine. **It is recommended that this subsection be rejected.** In support of his motion, Representative Luker said that part of the rule does not appear to be in accordance with legislative intent. **Motion carried by voice vote.**

DOCKET #11-0701-0801: Chairman Smith recognized Lt. Bill Reese to explain the pending rule.
Lt. Reese said this rule removes unnecessary and conflicting language regarding formal declaratory orders.

MOTION: **Representative Killen** moved to recommend to the full committee that **Docket 11-0701-0801 be approved. Motion carried by voice vote.**

DOCKET #11-1101-0801: Chairman Smith recognized Jeff Black, executive director of POST, to explain the pending rule.

Mr. Black said this rule modifies the requirements for canine evaluators so a letter of recommendation comes from the agency administrator rather than an Idaho POST-certified canine evaluator, and requires an evaluator to evaluate a minimum of four dogs for every two years in order to retain certification. The rule increases the amount of training that canine teams must complete in order to be POST-certified; establishes the requirements for becoming a POST-certified canine instructor; and removes the general subjects of detention, dispatch, and K-9 from the list of high liability subjects for master instructor certification.

To be eligible for the award of a canine evaluator certificate, each applicant must, among other requirements, be actively involved in a law enforcement canine program, have 3 years of canine handler experience and have 390 hours of POST-certified or federally-approved canine-related training.

In answer to a question regarding the cost to train a canine, Mr. Black said there is a substantial cost involved in training a patrol dog.

MOTION: **Representative Luker** moved to recommend to the full committee that **Docket 11-1101-0801 be approved. Motion carried by voice vote.**

DOCKET #11-1104-0801: **Jeff Black** was recognized to explain. This pending rule eliminates the requirement that correction officers must demonstrate the ability to distinguish primary colors. These colors are not significant. In correctional officers, the primary color is denim.

MOTION: **Representative Wills** moved to recommend to the full committee that **Docket 11-1104-0801 be approved. Motion carried by voice vote.**

DOCKET #11-1105-0801: **Jeff Black** was recognized to explain. This pending rule establishes the training and certification requirements for the Idaho Department of Juvenile Corrections direct care staff. In the past, there have been very few guidelines. This training can be done very cost effectively.

MOTION: **Representative Killen** moved to recommend to the full committee that **Docket 11-1105-0801 be approved. Motion carried by voice vote.**

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

Representative Leon Smith
Subcommittee Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 27, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Brent Reinke, Director, Department of Correction; Lorenzo Washington, Policy Coordinator for the Department of Correction; Shane Evans, Department of Correction; Paul Panther, Deputy Attorney General; Bill Spence, reporter

Chairman Clark called the meeting or order at 1:30 p.m. and asked the members to review the minutes of the meeting held on January 15, 2009.

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on January 15, 2009. **Motion carried by voice vote.**

MOTION: **Representative Smith** moved to approve the minutes of the Smith Subcommittee meeting on review of administrative rules. **Motion carried by voice vote.**

Subcommittee Chairman Smith presented Chairman Clark with a letter from the subcommittee with its recommendations on the administrative rules submitted to the subcommittee for review.

MOTION: **Representative Smith** moved that the full committee approve all the pending, temporary and fee rules submitted for study by the Idaho State Police, Division of Veterans Services and the Board of Certified Shorthand Reporters with the following exception: the fee rule of the Idaho Certified Shorthand Reporters Board, Docket No. 49-0101-0801, IDAPA 49.01.01, subsection 500.01, which the subcommittee recommends be rejected. **Motion carried by voice vote.**

**Board of
Correction
Proclamation
Docket #
06-0101-0801:** Chairman Clark recognized **Lorenzo Washington**. Mr. Washington said the Board amended six sections of the proclamation passed last year in order to reflect current Idaho Department of Correction practices, standards, policies, procedures and directives. The changes are as follows:

Section 010. Definitions - the amendment makes the IDAPA rule definitions consistent with the standardized terms and definitions approved by the Department's Standards and Operating Procedure Review Committee.

Section 109. Literature Distribution - the amendment clarifies that this section only pertains to non-department literature and includes division

chiefs and facility heads as authorities for approving the posting of any non-department literature.

Section 116. Custody of Evidence - the amendment ensures that the Department also disposes of contraband pursuant to any laws that are applicable.

Section 134. Research Requests - the amendment is necessary to make it clear that the Internal Review and Human Subject Review Boards are not affiliated with the Department or the Board.

Section 135. Executions - the amendment makes Subsection 135.06, Witnesses to the Execution, consistent with standard operating procedure.

402. Correspondence with Inmates - the amendment is necessary to make Subsection 402.01, Incoming Mail; Subsection 402.012, Legal mail; Subsection 402.03, confidential mail; and Subsection 402.04, prohibited mail consistent with standard operating procedure regarding mail handling in correctional facilities.

In answer to a question regarding "role playing" Shane Evans was recognized. Mr. Evans said the goal is to eliminate anything that causes improper behavior with the inmates. Some publications that currently come into the institution cause deviant behavior.

In answer to a question regarding an possible explosive situation when individuals present at the execution include a member of the victim's family and a friend or member of the offender's family, it is the intent to make sure both the victim and the offender are represented.

MOTION:

Representative Smith moved to approve Docket 06-0101-0801. Motion carried by voice vote.

**UPDATE ON
DEPARTMENT OF
CORRECTION**

Director Brent Reinke was recognized by the Chairman to give the Committee an update on the Idaho Department of Correction. Director Reinke gave the members an informational handout regarding the goals of the department (attachment.)

The Director opened his presentation by briefly discussing the riot on January 2, 2009 at the Idaho State Correctional Institution. Four inmates were hurt during the riot, but all injuries were minor. The riot was under control approximately 1 ½ hours later. The department is thankful there were no serious injuries. The incident was quickly controlled.

Current inmate population is 7,285, which is 611 lower than the FY 2008 forecast. Idaho ended the year with 90 fewer inmates than were in custody last January. The department's no growth in 2009 initiative will save nearly \$5 million during the next fiscal year.

The department will increase efficiencies in all areas of offender management in 2009. It will place inmates in the right beds at the right time. Treatment pathways will guide inmate movement according to program needs. This will allow the department to use treatment resources more effectively. The goal of the treatment pathways is to meet initial parole

eligibility dates, receive favorable parole hearings and be paroled.

The Director discussed the Idaho Correctional Institution in Orofino. Inmate capacity at the institution is 541, there are 141 state employees and 24 contractors. This is the only facility in the state to manage inmates of all custody levels from close to community custody.

The facility also manages those in protective custody. The seven housing units include a therapeutic community, education and a 140-bed work camp for low risk offenders.

The department is developing a request for information to gauge the interest in a private company operating the Orofino institution. It is a part of department efforts to explore all options during the budget shortfall.

ADJOURN:

The Chairman thanked the Director for the presentation. There being no further business to come before the Committee, the meeting was adjourned at 2:30 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 29, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representative Hart

GUESTS: Mimi Carter, Director, Center for Sex Offender Management; Kevin Kempf, Chief, Idaho Department of Correction, Director Brent Reinke, Idaho Department of Correction, Tony Wilkerson, Idaho Criminal Justice Commission Project Manager; Fairy Hitchcock, citizen

Chairman Clark called the meeting to order at 1:35 p.m. and asked the members to review the minutes.

MOTION: **Representative Luker** moved to accept the minutes of the meeting held on January 27, 2009, as written. Motion carried by voice vote.

The Chairman recognized Mimi Carter, director, Center for Sex Offender Management.

Mimi Carter said she was from an organization called the United States Department of Justice. Their work is in all types of criminal justice. Ms. Carter said she was somewhat new to this field, although she has been with the justice department for 12 years. When she became director of the Center for Sex Offender Management, she gathered every piece of research that was available dealing with sexual offenders to figure out how to do a better job of protecting our communities. The goal of sex offender management is to promote public safety by reducing the risk of recidivism among sex offenders.

It is necessary to understand the relationship between victims and offenders. These offenses often occur when the victim and the offender know each other, sometimes very well. This is particularly true of children under 12 years of age. The offender is often a family member or a friend of the family. In terms of where this offense typically occurs, it is often within the victim's own home or the home of a family member or friend.

Juvenile offenders represent less than 1% of all the crimes committed around the state. Most of these offenses are committed by males. However the number of female offenders is growing.

When the victim and the perpetrator know each other, there is often

hesitancy to bring these cases forward, so there is a significant unreported problem.

If all the sex offenders were brought together and an informal survey was conducted, a lot of the same characteristics would be found. However, what needs to be done is to focus more on how the offenders are different rather than what they have in common. There are vast differences between adult offenders and juveniles. With juveniles, their patterns are not ingrained. Some of the acts are experimental in nature. Their sex offenses tend to be less violent. It should not be assumed that these juvenile offenders will become adult offenders.

Research demonstrates that recidivism rates for sexual, violent and non-violent crimes are lower when sex offenders receive appropriate interventions, such as proper supervision and treatment. Recidivism rates for juveniles are significantly lower than for adults. With adult sex offenders, the recidivism rate is approximately 27%. One out of four will reoffend. However, most of these offenders will commit another type of crime.

The "Comprehensive Approach" to sex offender management is one framework that has been developed to define and encourage a strategic and collaborative response to managing sex offenders and reducing recidivism. The impact on victims and communities must be a paramount consideration in sex offender management efforts. Focusing only on the offender will do little to engender public confidence in the criminal justice system or to prevent further victimization.

Through assessment, a better understanding of sexual predator types can be accomplished. Of all the sex offenders, about 40% are returned to prison. Many of their crimes are technical violations.

Because adult and juvenile offenders are such diverse populations, "one size fits all" approaches are neither appropriate nor effective. Determining how to deal with which offenders demands careful consideration to the varied levels of risk, needs, development and functioning of these individuals. This requires having access to comprehensive and sex offender-specific assessment information. Well executed assessments are the key to informed decision making throughout the case management process.

It has been discovered that if our best ammunition is directed toward the low-risk offenders, those offenders get worse. There is also a relationship between the length of a sentence and recidivism. The offender who is incarcerated longer is more likely to offend again.

Things like vocation, education and work release programs are proving effective. When some of these individuals offend again, it is not always because treatment givers messed up. It is not always possible to predict human behavior. By giving the appropriate treatment by qualified individuals, there is a significant reduction in recidivism.

Treatment is an essential component of a comprehensive sex offender management system. The goal of sex offender treatment is to assist individuals to develop the necessary skills and techniques that will prevent them from engaging in sexually abusive and other harmful behaviors in the future. Tailoring the intensity and duration of treatment to the risk level of the

offender and the use of an integrated model through which other professionals involved in the management process are able to provide input and seek information about offenders are central to promising sex offender management practices. Ensuring that offenders nearing release are provided necessary risk reducing treatment, are linked to treatment services in the community and are provided with other stabilizing supports is vital to successful offender reintegration. Offenders need to be stable within the community.

Electronic monitoring has not been effective in reducing recidivism.

In conclusion, Ms. Carter said additional research is needed. Such research will provide considerable benefits to the field by ensuring that policies and practices are well-informed, maximally effective, and offer the greatest potential to safeguard communities.

When asked if an extended probation and parole has a positive effect, Ms. Carter replied in the affirmative. When asked how to reach a balance to satisfy the public and allow the judges to give the appropriate sentence, Ms. Carter said there needs to be more investment in public education. The public needs to better understand that sex offenders can be rehabilitated.

Registration by these offenders is not a particular concern. Notification available to the public has caused a lot of negative consequences. The more destabilized the offenders are, the more likely they will offend again.

Sex offender management efforts should include victim advocates in the development of policies and procedures to ensure that their perspectives are understood and to consider the impact that such policies and practices may have on past and potential victims and their families.

ADJOURN:

Chairman Clark thanked Ms. Carter for her informative presentation. There being no further business to come before the Committee, the meeting was adjourned at 2:55 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 3, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representatives Nielsen and Jaquet

GUESTS: Director Callicutt, Idaho Department of Juvenile Corrections; Fairy Hitchcock, citizen

Chairman Clark called the meeting to order and asked the members to review the minutes.

MOTION: Representative Bolz moved to approve the minutes of the meeting held on January 29, 2009, as written, with two typographical errors corrected. Motion carried by voice vote.

Chairman Clark recognized Director Larry Callicutt, Idaho Department of Juvenile Corrections, to give an update on the department.

Director Callicutt gave the members a handout showing the current statistics of the department. The Director said the department's mission statement is to prevent and reduce juvenile crime in partnership with communities.

Nine thousand one hundred youth are involved with the justice system. There are 8,502 juveniles on county probation and diversion, 424 juveniles in custody and 174 20-year olds and under in adult corrections. Of the 424 juveniles in custody, 74% will not have committed another criminal act at the end of a 12-month follow-up period. Of the 174 in adult corrections, 25% were in prior custody.

There is a co-occurring disorders unit which is a 24-bed addition to the current Nampa facility. These juveniles have at least one mental health disorder and a history of substance use, abuse or dependence. Juveniles are in the program for up to one year.

The treatment includes accredited education, victim accountability and involvement of families. Treatment methods differ through having a more individualized approach to the needs of the juveniles, increased clinical and psychiatric services, and having a clinician liaison from the Department of Health & Welfare which assists juveniles and their families in preparing for the juveniles to return to their home communities.

An interstate compact for juveniles has been ratified. Idaho is the first state to develop an active council.

In conclusion, the Director discussed funding saying revenue from cigarette and tobacco tax has exceeded the department's appropriation for several years. As a result the department's appropriation was increased in FY09 by \$136,000 with the intention of increasing the distribution to counties and depleting the cash reserve that was building up. The department's plan to offset further reductions in the Juvenile Corrections Act funds in FY10 through a greater increase in the distribution of tobacco tax holds counties harmless throughout the hold back/base reduction actions.

The Chairman thanked Director Callicutt for his presentation. The first piece of legislation on the agenda is **RS18287** and Bill von Tagen with the Attorney General's office was recognized to explain.

RS18287:

Mr. von Tagen said this proposed legislation will amend Idaho Code Section 19-5307, which establishes authority for the courts to assess fines for the direct benefit of the victims of certain crimes of violence as a punitive measure.

The legislation is intended to remedy the fact that, under the current statute, victims of the violent crime of sexual battery of a minor child sixteen or seventeen years of age are not entitled to the protection of the statute. The legislation will add Idaho Code Section 18-1508A to the list of statutory violations covered by this section.

MOTION:

Representative Killen moved to introduce RS18287. Motion carried by voice vote.

RS18357:

The Chairman recognized **Mr. von Tagen** to explain the proposed legislation.

This will create a new Idaho Code Section 19-3004A. It will grant to prosecuting attorneys and the attorney general a limited power to issue administrative subpoenas to internet service providers in the investigative phase of crimes committed against children through the use of the internet or other electronic communication services. Such records are essential for law enforcement to identify, in the investigative stage, the location and ownership of computers being used to commit crimes against children.

The records will not include the content of any communications or the sites accessed, but are limited to the name, address, period of access, type and duration of service, network addresses and means and source of payment for services. Certification is required of the issuing prosecutor that the records are sought in connection with the investigation of a crime against a child. Means are provided to challenge a subpoena in court and to enforce compliance through the courts.

MOTION: **Representative Smith moved to introduce RS18357. Motion carried by voice vote.**

ADJOURN: Prior to adjournment, the Chairman introduced Danielle, the new page. There being no further business to come before the Committee, the meeting was adjourned at 2:00 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 5, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** None
- GUESTS:** Rod Leonard, Department of Correction; Lyn Darrington, City of Boise; Dawn Peck, Idaho State Police; Stephanie Altig, Idaho State Police; Fairy Hitchcock, citizen
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.
- MOTION:** Representative Bolz moved to approve the minutes of the meeting held on February 3, 2009, as written. Motion carried by voice vote.
- RS18324C1:** The first item on the agenda was **RS18324C1** and the Chairman recognized **Bill von Tagen** to explain.
- This proposed legislation will amend Idaho Code Section 18-8310 which establishes the requirements and process for a sex offender to petition to be removed from the sex offender registry.
- The legislation is intended to clarify the role of the central registry in the petition for removal process and to clarify the findings to be made by the courts in these cases.
- The amendments require that the central registry be notified of the filing of a petition and be permitted to appear and participate at the hearing. They clarify that the court hearing the petition must issue written findings in its decision. The court must also review the petitioner's criminal history, recidivist status and status as an aggravated offender or violent sexual predator.
- The legislation provides definitions for recidivist and violent sexual predator. It says the central registry may appear at any time during the process. The definition for the central registry is provided in another section of the code.
- MOTION:** **Representative Smith moved to introduce RS18324C1. Motion carried by voice vote.**
- RS18461:** **Bill von Tagen** was recognized to explain. This proposed legislation will

amend Idaho Code Section 19-2604 to clarify that this section of the code is not an "expungement" statute.

This section, as interpreted by the Idaho Supreme Court, allows the court to dismiss a case against a defendant only if he complies with all the terms and conditions of his probation.

In the past, the Idaho State Police have received orders purporting to expunge information which is not authorized by the statute. This amendment clarifies that any action taken by a court pursuant to Section 19-2604 will not result in expungement of all records and references to the charge.

In answer to a question concerning whether there is another statute that deals with the issue of when the person is innocent of a crime, **Dawn Peck** with the **Idaho State Police** was recognized. Ms. Peck said there is a provision where, if a person is acquitted or when the charges are not filed, that person can have that record removed. All that person needs to do is make a request.

MOTION: **Representative Wills moved to introduce RS18461. Motion carried by voice vote.**

RS18367: The Chairman recognized **Representative Luker** to explain.

This proposed legislation repeals Section 19-4701, Idaho Code, pertaining to the disposition of fines, forfeitures and costs. The reason for the repeal is that this section has been superceded by Section 19-4705 which governs the disposition of fines and forfeitures, first enacted in 1969.

Section 19-4705 contains the current formula used to distribute fines and forfeitures. It also states that other existing laws regarding such disposition are repealed to the extent that such laws are inconsistent with the provisions of this act, except as provided in Section 49-1013(3), Idaho Code.

Michael Henderson with the Idaho Supreme Court said Section 19-4701 is one of the conflicts in the law that currently exist.

MOTION: **Representative Smith moved to introduce RS18367. Motion carried by voice vote.**

RS18376C1: **Representative Luker** was recognized by the Chairman. This bill amends Section 31-2606 to prohibit a prosecutor from settling, dismissing or otherwise dropping a criminal prosecution in exchange for payment or a contribution outside the fine distribution structure provided by law.

Under this legislation, such a diversion is deemed to be a misuse of public funds. The legislation also updates old language and provides for penalties.

A judge said that it has been rather a common practice for a prosecutor to allow a payment to a charity to take care of dismissing a criminal

prosecution. Even though this statute addresses a small amount of money, this type of action should be prohibited. When this legislation was drafted, the prosecutors were concerned about unknown consequences. In order to address those concerns, the legislation provides for payment of fines and forfeitures to the District Court or as otherwise provided by law.

The legislation says that no prosecuting attorney shall compromise or dismiss a prosecution, agree to a forfeiture of bond, or otherwise not prosecute a case by conditioning the same upon payment of moneys or other consideration of value in any manner other than payment to the clerk of the court.

In answer to other questions from the members, Representative Luker requested that the Committee **introduce RS18376C1** so that it can have a full hearing. If something needs to be changed, it can be done at that time.

MOTION: **Representative Hart moved to introduce RS18376C1. Motion carried by voice vote.**

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 9, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Heather Reilly, Idaho Prosecuting Attorneys; Dawn Peck, Idaho State Police; Michael Kane, Idaho Sheriffs Assn.; Jessica Lorello, Criminal Justice Commission; Benjamin Davenport, Lobbyist; Dennis Tanikuni, Lobbyist

Chairman Clark called the meeting to order and asked the members to review the minutes. Representative Luker moved to amend the minutes to change some language to more accurately reflect his presentation on RS18376C1. A motion on the minutes was postponed until the meeting to be held on February 11, 2009.

RS18378: **Representative Luker** was recognized to explain the proposed legislation. This is a House Resolution to address the definition of proclamations. It provides for the addition of a new rule 78. Several times each session, proclamations are presented for approval in the House. There is presently no rule defining a proclamation, or providing for procedures for processing a proclamation.

This new rule not only provides a definition, but provides that for the purposes of the calendar a proclamation shall be treated as a petition.

MOTION: **Representative Luker moved to introduce RS18378. Motion carried by voice vote.**

RS18379: **Representative Luker** was recognized to explain. This resolution has to do with Joint Rule 2. Sometimes there are proclamations that may be best addressed by one house or the other. This allows a proclamation to be acted on in either one chamber or the other.

MOTION: **Representative Nielsen moved to introduce RS18379. Motion carried by voice vote.**

RS18380: **Jessica Lorello** with the Attorney General's office, Criminal Justice Division, was recognized to explain. This legislation amends Section 18-8308, Idaho Code, relating to the Sexual Offender Registration Act, to further define terms and make technical corrections.

It also amends Section 18-8304 to provide that Chapter 83, Title 18

applies to persons convicted of certain crimes and clarifies that an offender is not required to comply with the sex offender registration requirements while incarcerated. It amends Section 18-8308 to require electronic monitoring of violent sexual predators for the duration of the individual's probation or parole period.

Representative Killen suggested that on page 2, subsection (13), an "s" be added in the new language wherever "place" or "locale" is used.

In answer to a question about a homeless person having a P.O. Box, **Dawn Peck**, Idaho State Police, was recognized. Ms. Peck said the registration forms provide for a residential address, a P.O. Box or a family's residence.

MOTION: **Representative Smith moved to hold RS 18380 for seven days and come back with RS18380C1. Motion carried by voice vote.**

RS18383: **Michael Kane**, Idaho Sheriffs Association, was recognized to explain. This legislation repeals Chapter 27, Title 54, Idaho Code, and adds a new Chapter 27, Title 54, Idaho Code.

The purpose of this legislation is to modernize the laws dealing with the buying and selling of scrap metal. Scrap is clearly defined and a streamlined system is set up for transactions between businesses and scrap dealers. Record keeping requirements are clearly delineated to assist law enforcement in the investigation of stolen metal.

There is currently a model bill being circulated around the country, which has been adopted by the state of Washington. This is drafted after that bill.

The legislation includes provisions for records required for purchasing nonferrous or stainless steel metal. It includes requirements for setting up a commercial account.

In response to some Committee questions regarding misdemeanor and felony penalties, Mr. Kane said that language needs to be clarified.

MOTION: **Representative Jaquet moved to introduce RS18383.**

SUBSTITUTE MOTION: **Representative Boe moved to introduce RS18383 with the provision that Mr. Kane clarify the language.**

AMENDED SUBSTITUTE MOTION: **Representative Killen moved to return RS18383 to the sponsor. Chairman Clark asked for a show of hands from those in favor of the amended substitute motion. Nine members voted in favor. Motion carried.**

RS18494: **Heather Reilly** with the Idaho Prosecuting Attorneys, was recognized. Ms. Reilly said this legislation does not create a new felony or misdemeanor. It modifies section 18-1505(4)(e), Idaho Code, relating to abuse, exploitation or neglect of a vulnerable adult. It revises the definition "vulnerable adult" to not only refer to the vulnerable adult's lack of sufficient understanding or capacity to make or communicate or

implement decisions regarding his person, but also clarifies the definition to include the person's funds, property or resources.

MOTION: **Representative Nielsen moved to introduce RS18494. Motion carried by voice vote.**

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 11, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representative Wills
- GUESTS:** Representative Lake; Patricia Tobias, Administrative Director of the Courts; Bill von Tagen, Deputy Attorney General; Hannah Saona, ACLU of Idaho; Erin Armstrong, Lobbyist; LaMont Anderson, Deputy Attorney General
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review two sets of minutes.
- MOTION:** **Representative Luker** moved to approve the minutes of the meeting held on February 5, 2009, as written. Motion carried by voice vote.
- MOTION:** **Representative Bolz** moved to approve the minutes of the meeting held on February 9, 2009, as written. Motion carried by voice vote.
- RS18452:** Chairman Clark recognized **Representative Lake** to explain the proposed legislation. This bill establishes a standard seven year statute of limitations for procedural and jurisdictional challenges to the creation of governmental districts under Idaho law. This will eliminate unreasonably delayed legal challenges to the procedures used by the County Commission after seven years have passed, the districts are in place and have been relied upon by the citizens and the county.
- MOTION:** **Representative Luker** moved to introduce **RS18452**. Motion carried by voice vote.
- RS18491:** The Chairman recognized **Patricia Tobias**, Administrative Director of the Courts, to explain. This piece of legislation has a long history of legislative support and interest in monitoring the assets of those persons who need protection under a conservatorship or guardianship case filed in the district court. In 2005 the Legislature adopted H 131, which established the Guardianship Pilot Project, requiring annual reports to the Legislature and providing a sunset clause.
- Section 1 of this legislation repeals the sunset provision relating to the Guardianship Pilot Project fund, allowing the pilot project fees and funding to go forward after July 1, 2009.

The remaining sections provide that the financial plans required to be filed with the court, the inventory required to be filed in 90 days and all accounts and reports required to be filed annually would now be subject to examination and review, as provided by the rules adopted by the Idaho Supreme Court.

If the Committee introduces this legislation to print, it would be the Court's intention to invite Judge Ron Hart from Soda Springs to describe the important work of the Court's Guardianship and Conservatorship Committee.

Ms. Tobias continued by saying in just the 6 pilot counties, over 88 million dollars in assets were under the supervision of conservators. Third-party review of all of these financial reports is absolutely critical to ensure the protection of assets. This legislation extends third-party review to all conservatorship cases in all counties.

MOTION: Representative Killen moved to introduce RS18491. Motion carried by voice vote.

RS18493: Ms. Tobias was recognized to explain. This legislation provides a statutory framework for domestic violence courts and funding to assist some counties in hiring a domestic violence court coordinator. It adds the coordinator as another key person in an effective response to address the needs of families and children involved in these difficult court cases.

Domestic violence courts hold offenders accountable, increase victim safety and provide greater judicial monitoring of these cases. Each person convicted of specified alcohol, substance abuse or domestic violence related offenses would be assessed a \$30 fee to be deposited into the statewide drug court, mental health court, and family court services fund to be used in accordance with section 1-1625, Idaho Code.

Ms. Tobias said if RS18493 is introduced to print, Judge Dennard, a recognized expert in cases affecting children and families, will come forward to testify to the effectiveness of these courts.

MOTION: Representative Nielsen moved to introduce RS18493. Motion carried by voice vote.

RS18490: Ms. Tobias was recognized to explain. Although this piece of legislation is 8 pages long, all it does is update 2 sections of the code and, hopefully, makes life easier for deputy court clerks statewide.

In Section 1, it corrects an omission from a few years ago and adds the \$6.00 senior magistrate judges fee to small claims cases. This is already assessed in all other civil cases.

Section 2 of the legislation simplifies the filing fees collected by deputy court clerks statewide for the filing of new civil cases regardless of the amount in controversy. The fee of \$50.00 as shown in line 36 will now apply and on page 2, the disparate filing fees of \$28.00 and \$30.00 for differing amounts of money or damages claimed, or for different types of actions, are deleted.

The legislation has a favorable impact on state and county funds. This legislation simplifies last year's bill and makes it easier to understand. Ms. Tobias said she would supply the members with a chart showing all of the charges included in the final fee if this legislation is introduced. In response to further questions, Ms. Tobias said the fee schedule is currently on the web sight, but she would immediately provide a copy to each member on the Committee.

MOTION: Representative Smith moved to introduce RS18490. Motion carried by voice vote.

RS18492: The Chairman recognized **Ms. Tobias** to explain. This legislation amends Idaho Code, Section 19-2522, addressing the examination of a defendant's mental condition where there is a reason to believe that the condition will be a significant factor in sentencing.

Subsection (1) allows the court to appoint "other professionals" besides a psychiatrist or licensed psychologist to examine the defendant's mental condition, thus providing greater flexibility in conducting examinations. The legislation also clarifies that a report of an examination of the defendant's mental condition that has previously been conducted pursuant to Idaho Code, Section 19-2524, may be used to satisfy the requirements of Section 19-2522 if the court finds that the earlier examination and report are sufficient. The defendant will retain the ability to be examined by an expert of his or her own choice.

MOTION: Representative Bolz moved to introduce RS18492. Motion carried by voice vote.

RS18536: Bill von Tagen, deputy attorney general, was recognized to explain the legislation. This proposed legislation will amend Idaho Code, Section 19-2716, to eliminate reference to specific lethal injection substances in light of the authority of the director of the department of correction to determine the substance or substances used.

The amendment also enables the director to approve alternative substances as necessary to comply with evolving medical and legal standards. It will permit a coroner or deputy coroner, rather than a licensed physician, to pronounce death. Thus, it will avoid issues that may arise relating to a physician's ability to participate in an execution in light of medical professional standards and the interpretation of those standards.

The legislation also eliminates death by a firing squad as an alternative method of execution. This is deemed appropriate in light of the United States Supreme Court's opinion where the Court concluded that a "humane lethal injection protocol" does not constitute cruel and unusual punishment. Also, Idaho is only one of two states that have a firing squad as a method of execution. With respect to a coroner or deputy coroner, the legislation is realistically talking about the Ada County coroner.

MOTION: Representative Shirley moved to introduce RS18536. Motion carried by voice vote.

ADJOURN:

Prior to adjournment, Chairman Clark said the remainder of the RSs in Committee would be heard on the following Tuesday and Thursday of next week. There will be no meeting on Friday. There being no further business to come before the Committee, the meeting was adjourned at 2:10 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 17, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representative McGeachin

GUESTS: Michael Kane, Idaho Sheriffs Association; Will Hart, Idaho Consumer-Owned Utilities Assn.; Rich Hahn, Idaho Power; Benjamin Davenport, Lawyer; Representative Jarvis

Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.

MOTION: Representative Bolz moved to approve the minutes of the meeting held on February 11, 2009, as written. Motion carried by voice vote.

RS18383C1: Chairman Clark recognized **Michael Kane** to explain the proposed legislation. This is the same RS that was brought before the Committee at the meeting held on February 9, 2009. It reflects a correction in the language so that a person found guilty of violating the provisions of this section for a second time within five years is guilty of a felony.

MOTION: **Representative Kren moved to introduce RS18383C1. Motion carried by voice vote.**

RS18495: **Michael Kane** was recognized to explain. The proposed legislation deals with an issue that has existed in law enforcement for some time. The purpose of this bill is to set up a clearinghouse for information regarding certified peace officers in regard to peace officer employment. In this way, law enforcement entities will be able to determine the prior law enforcement history of potential employees.

It requires the peace officer standards and training council to maintain permanent files and transcripts, including the law enforcement employment history by agency and dates of service of the officer. It provides that such information shall be made available to any law enforcement agency upon request when a person applies for employment at the requesting law enforcement agency.

It also requires that the council maintain permanent files and transcripts for all county detention officers certified by the council to include any additional courses or advanced courses of instruction successfully completed by such officers while employed in Idaho.

- MOTION:** **Representative Bolz moved to introduce RS18495. Motion carried by voice vote.**
- RS18496:** **Mr. Kane** was recognized to explain. This proposed legislation is an amendment to the public records laws. It clarifies that an individual who is the subject of an inquiry or investigation by a governmental entity cannot prevent the obtaining of personnel records needed to further the investigation. The legislation also says that no public agency or law enforcement agency, or such agency's employees acting within the course and scope of their duties, shall be liable for damages for supplying or receiving personnel records of a current or former public official.
- MOTION:** **Representative Smith moved to introduce RS18496. Motion carried by voice vote. Representative Hart asked to be recorded as voting "no" on the motion.**
- RS18497:** **Mr. Kane** was recognized to explain. This proposed legislation deals with a peace officer's status. It clarifies that no person deputized by a sheriff or a chief of police of a city in the state of Idaho shall have peace officer status outside the county or city in which he was deputized, except as provided in section 19-701A, Idaho Code.
- MOTION:** **Representative Smith moved to introduce RS18497. Motion carried by voice vote.**
- RS18556:** **Representative Jarvis** was recognized to explain the legislation. This legislation amends Section 32-717 of the Idaho Code to provide additional relevant factors concerning a child's performance in school including, but not limited to, attendance and tardiness records, assignment completion, scholastic performance trends and reports by school personnel.
- Representative Jarvis said there have been many school dropouts. This legislation is important with regard to the best interests of the child. It would be the function of a judge to make a decision regarding the child. When asked if Representative Jarvis had talked to the courts regarding this legislation, the Representative said he had not.
- MOTION:** **Representative Smith moved to introduce RS18556. Motion carried by voice vote.**
- RS18564:** **Representative Clark** turned the chairmanship over to Vice Chairman Leon Smith in order to explain the legislation. A request for this legislation came from the Kootenai County sheriff's office. It deals with people who have a transient status. Current law says these persons only have to provide a post office box number.
- On page 2 of the legislation there is a new section 3 which says a sexual offender who does not provide a physical residence address at the time of registration shall report, in person, once every seven days to the sheriff of the county in which he resides. At that time, the offender shall complete a form which includes his name, date of birth, social security number and a detailed description of the location where he resides. The sheriff shall visit the location at least once each month to verify the location of the offender. This will guarantee the community right to know act. In answer

to a question concerning whether a sheriff's designee could be used instead of a sheriff, Representative Clark said that would seem to be implied, but language can always be added if it is deemed necessary.

MOTION: **Representative Bolz moved to introduce RS18564. Motion carried by voice vote.**

ADJOURN: Prior to adjourning, Chairman Clark said the remaining RSs in Committee will be heard at the Thursday, February 19, meeting. Then next week the Committee will begin hearing bills. There being no further business to come before the Committee, the meeting was adjourned at 2:05 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 19, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representatives Nielsen and Wills
- GUESTS:** Dawn Peck, Idaho State Police; Rob Lee, Bethel Ministries; Jessica Lorello, Criminal Justice Commission; Kathy Baird, Idaho Department of Correction; Representative Rusche; Fairy Hitchcock, citizen; Jim Baugh, Co-Ad
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.
- MOTION:** Representative Bolz moved to approve the minutes of the meeting held on February 17, 2009, with a correction made to the date of the meeting. Motion carried by voice vote.
- RS18380C1:** **Jessica Lorello** was recognized by the Chairman to explain the proposed legislation. Ms. Lorello said this RS was previously presented to the Committee and there was a recommendation at that time that an "s" be added to the words "place" and "locale" on page 3, section (13). Those changes are reflected in the legislation.
- Some questions were posed by members and the conclusion was drawn that the RS should be introduced and come back before the Committee as a bill so it can get a full hearing and be amended, if necessary.
- MOTION:** **Representative Smith moved to introduce RS18380C1. Motion carried by voice vote.**
- RS18680:** Chairman Clark recognized **Patricia Tobias** who introduced **Judge Barry Wood**. Ms. Tobias said the Judge was appointed a magistrate judge in Lincoln County in 1987. He was elected District Judge in 1950 and hears cases throughout the 5th Judicial District. He has also served as the Snake River Basin Adjudication Judge and twice as Administrative District Judge.
- Judge Wood** has written the most comprehensive set of bail bond guidelines in the state. He agreed to Chair the Supreme Court's Bail Bonds Guidelines Committee. He is before the members today to present the work of that Committee.
- RS18680** repeals the existing chapter 29 of title 19, and adopts a new

chapter setting forth standards for bail in criminal cases. Idaho's current bail statutes, with limited amendments, date back to 1864. As a result, the current statutes do not address bail bonds because bail bonds did not exist when the original laws were enacted.

The Court's Bail Bonds Guidelines Committee was formed in 2006, bringing together judges, trial court administrators, prosecutors, defense counsel, sheriffs and representatives of the bail industry. The Committee worked over the last two years to draft this bill, which eliminates the archaic provisions of the existing statutes and directly addresses and clarifies procedures for cash bail, property bonds and commercial bail bonds.

The bill includes provisions for the setting and posting of bail, the surrender of defendants, forfeiture of bail, reinstatement of bail, motions to set aside forfeitures, remittance of forfeitures, revocation of bail and exoneration of bail.

MOTION: Representative Smith moved to introduce RS18680. Motion carried by voice vote.

RS18390C1 Representative Luker was recognized to explain the proposed legislation. This provides for nomination by will of a guardian for incapacitated persons. Under current code, the definition of an incapacitated person specifically excludes those who fall within the separate definition of developmentally disabled. A separate procedure for appointment of guardians for developmentally disabled persons is provided for under section 66-404.

Because of the exclusion of developmentally disabled persons from the definition of incapacitated persons in the probate code, and the lack of a nomination provision under Title 66, Chapter 4, there is no provision allowing a parent to make a testamentary nomination of a guardian for a developmentally disabled child.

This bill corrects that omission by extending the provision for testamentary nomination of a guardian to include developmentally disabled persons. Section 66-404, governing the procedure for appointing guardians for developmentally disabled persons, is also amended to allow recognition of the testamentary nomination.

MOTION: Representative Shirley moved to introduce RS18390C1. Motion carried by voice vote.

RS18576: Representative Clark turned the chairmanship over to Representative Smith in order to explain the legislation. This legislation has been drafted in order to strengthen Idaho's drunk driving laws by prohibiting the sale, giving, or furnishing of alcoholic beverages to convicted drunk drivers for varying periods of time based on how many times they have been convicted of drunk driving. It establishes a definition of an "interdicted person.

Interdicted person means a person to whom the sale, delivery, giving or furnishing of alcoholic beverages is prohibited under law, except when an

alcoholic beverage is given or furnished in connection with the practice of the religious tenets of any place of worship.

The legislation requires a permanent designation as an interdicted person if that person causes great bodily harm, permanent disability or permanent disfigurement to another person while driving under the influence with an alcohol concentration of 0.08 or higher and it provides penalties.

An interdicted person shall be required to obtain, at his own expense, a new driver's license or a new identification card, or both. It requires that the identification card include a notation saying "no alcohol until a certain date."

It makes it a misdemeanor for an interdicted person to purchase, attempt to purchase, consume or possess any alcoholic beverage. However, an interdicted person may sell, serve or dispense liquor, beer, wine, in the course of lawful employment. And it requires licensees to check photo identification prior to selling or furnishing alcoholic beverages. This legislation offers a new way to deal with repeat offenders and, hopefully, will put a stop to these offenders getting multiple DUI convictions.

Representative Clark said he has briefly talked to the courts and to the sheriffs and they would like to see this come forward as a bill.

MOTION: **Representative Jaquet moved to introduce RS18576. Motion carried by voice vote.** In support of her motion, Representative Jaquet said it would be interesting to hear comments from all interested parties.

RS18593: **Representative Rusche** was recognized to explain. The purpose of this legislation is to amend Idaho Code, Section 37-3303, concerning retail sales of pseudoephedrine products, to revise the amount that can be sold, transferred or furnished by a retailer in a single transaction, to provide a daily sales limit, to revise a thirty day purchase limit, to provide for a log book, to remove a distribution or sale requirement and to require photographic identification. This legislation brings the requirements in line with the current federal requirements.

MOTION: **Representative Jaquet moved to introduce RS18593. Motion carried by voice vote.** Representatives Hart and Kren asked to be recorded as voting "no" on the motion.

RS18594C1: **Representative Clark** was recognized to explain. This legislation provides for additional acts that constitute injury to children. It provides for a penalty of incarceration in the county jail not exceeding one year, or in the state prison for not less than one year, nor more than ten years for any person who willfully causes or permits sexual contact with a child, willfully permits a minor child to witness an act of sexual conduct or willfully commits or permits any lewd act upon any part of the body of a child.

Representative Clark said if the RS is introduced it would be his intention to submit the bill to the Attorney General's office for an opinion. This

legislation would stop prosecutors from pleading down to injuries to a child in order to prevent the offender from being designated as a sexual predator.

MOTION: **Representative Luker moved to introduce RS18594C1. Motion carried by voice vote.**

RS18614: **Representative Hart** was recognized to explain. This bill provides statutory authority for a judge in the state of Idaho to expunge the record of a person who has not been found guilty of a crime. It allows a person to petition the court. A judge would make the determination of whether an expungement would be allowed.

In 2005, H 583 was brought forward dealing with this same subject. It passed the House, but was held up in the Senate.

MOTION: **Representative McGeachin moved to introduce RS18614. Motion carried by voice vote.** Representatives Boe, Burgoyne and Killen asked to be recorded as voting "no" on the motion.

RS18681: **Chairman Clark** said the sponsor asked that the RS be returned. A unanimous consent was requested. Consent was given and **RS18681 was returned to the sponsor.**

ADJOURN: Prior to adjournment, Chairman Clark presented the page with a gift and thanked her for all her hard work during the first part of the session. There being no further business to come before the Committee, the meeting was adjourned at 2:30 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 23, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** None
- GUESTS:** Dawn Peck, Idaho State Police; Stephanie Altig, Jessica Lorello, Bill von Tagen, and Steve Bywater, Attorney General's Office; Sarah Wine, reporter
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.
- MOTION:** Representative Bolz moved to approve the minutes of the meeting held on February 19, 2009, with the inclusion of Representative Burgoyne asking to be recorded as voting "no" on the motion to introduce RS18614. Motion carried by voice vote.
- H 59:** **Bill von Tagen** was recognized to explain the bill. This bill amends Idaho Code, Section 19-5307, which establishes authority for the courts to assess fines for the direct benefit of the victims of certain crimes of violence as a punitive measure.
- The legislation is intended to remedy the fact that, under the current statute, victims of the violent crime of sexual battery of a minor child sixteen or seventeen years of age are not entitled to the protection of the statute. Leaving this out was an oversight when the bill was originally crafted in 1992.
- MOTION:** **Representative Wills moved to send H 59 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative McGeachin will carry the bill on the floor.
- H 60:** **Steve Bywater** was recognized to explain the bill. This is a bill sponsored by the Attorney General's office. It grants to prosecuting attorneys and the attorney general a limited power to issue administrative subpoenas to Internet service providers in the investigative phase of crimes committed against children through the use of the Internet or other electronic communication services. Such records are essential to law enforcement to identify, in the investigative stage, the location and ownership of computers being used to commit crimes against children.
- The records provided under such a subpoena will not include the content of any communications or the sites accessed, but are limited to the name,

address, period of access, type and duration of service, network addresses and means and source of payment for services. Certification is required of the issuing prosecutor that the records are sought in connection with the investigation of a crime against a child.

Mr. Bywater said 85% of the people involved in child pornography have physical contact with their victims. People guilty of this crime have to be signed on and have child pornography on their computer.

When asked if this bill is copied from other states, Mr. Bywater said this type of bill is used in other states. When crafting the bill, the states of Washington and Oregon, as well as federal legislation, were looked at. The language of the bill has been refined and narrowed to fit the state of Idaho. Relating to privacy issues, Mr. Bywater said a person must sign in and be sharing files on the network. In order to receive pornography, you must be willing to give pornography. As long as that person does business in the state of Idaho, he can be subpoenaed.

In answer to a question regarding why a person would have to go to the county that issues a subpoena to respond, Mr. Bywater said the county where the subpoena was issued seemed to be the most appropriate place to respond.

MOTION: **Representative Smith moved to send H 60 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Killen will carry the bill on the floor.

H 70: **Bill von Tagen** was recognized. He said amendments had been drafted for the bill which had been handed out to the members and he would like withdraw those amendments without being heard. He then asked if Jessica Lorello might explain the bill.

Ms. Lorello said H 70 amends Idaho Code, Section 18-8310, which establishes the requirements and process for a sex offender to petition to be removed from the sex offender registry. The legislation is intended to clarify the role of the central registry in the petition for removal process and to clarify the findings to be made by the courts in these cases.

The amendments will require that the central registry be notified of the filing of a petition and be permitted to appear and participate at the hearing on the petition. It clarifies that the court hearing the petition must issue written findings in its decision on a petition and review the petitioners criminal history, recidivist status and status as an aggravated offender or violent sexual predator.

MOTION: **Representative Bolz moved to send H 70 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Clark will carry the bill on the floor.

H 71: **Jessica Lorello** was recognized to explain. This bill amends Idaho Code, Section 19-2604, to clarify that Section 19-2604 is not an expungement statute. Rather, this section, as interpreted by the Idaho Supreme Court, only allows the court to dismiss a case against a defendant if he complies

with all the terms and conditions of his probation. Notwithstanding the plain language of Idaho Code, Section 19-2604, and the Idaho Supreme Court's interpretation of that statute in the case of State v. Parkinson, the Idaho State Police have received orders purporting to expunge information, which is not authorized by the statute. This amendment provides that the discharge of a defendant shall not result in the expungement of the defendant's criminal history record.

Problems have occurred in relation to the ability to withhold judgment which have resulted in some confusion on the part of the courts. When asked if this law would affect expungement of records granted in the past, Ms. Lorello said this law would not affect those.

MOTION: **Representative Wills moved to send H 71 to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: **Representative Hart moved to send the bill to General Orders with the following Committee amendments: on page 2, line 4, strike out "shall not" and insert "may" and on the first page, line 10, strike "criminal history record not expunged." Substitute Motion failed on voice vote.**

ORIGINAL MOTION: **Original Motion passed on voice vote.** Representative Labrador asked to be recorded as voting "no" on the motion. Representative Burgoyne will carry the bill on the floor.

HCR 14: **Representative Luker** was recognized to explain the bill. Proclamations are occasionally presented for approval in the Senate and the House of Representatives. Some proclamations are appropriately the subject of both bodies, while others pertain to only the Senate or only to the House. Currently, Joint Rule 2 of the Senate and the House provides that proclamations passed in one house shall be sent to the other house for passage.

This concurrent resolution amends Joint Rule 2 and clarifies that not all proclamations must be sent to the other house, but only as appropriate for joint action of the Senate and the House of Representatives.

MOTION: **Representative Shirley moved to send HCR 14 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Luker will carry the bill on the floor.

HR 2: **Representative Luker** was recognized. Several times each session, proclamations are presented for approval in the House. However, there is presently no rule defining a proclamation, or providing for procedures for processing a proclamation. This resolution adds a new rule, Rule 78, to the Rules of the House of Representatives to define a proclamation and provide that for the purposes of the calendar a proclamation shall be treated as a petition.

MOTION: **Representative Nielsen moved to send HR 2 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative

Luker will carry the bill on the floor.

**SMITH SUB-
COMMITTEE:**

Chairman Clark said the Smith Subcommittee, consisting of Leon Smith, Chairman, Representatives Wills, Luker, Burgoyne and Killen would meet on a date set by Representative Smith to listen to two Senate bills: S 1047 and S 1048.

Representative Smith said the Subcommittee would meet immediately following the full Committee meeting held on Wednesday, February 25.

ADJOURN:

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 25, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Representative Hartgen; Heather Reilly, Idaho Prosecuting Attorneys; Patricia Tobias, Administrative Director of the Courts; Jan Sylvester, Idaho PTA; Paul Jagosh, Fraternal Order of Police; Fairy Hitchcock; Citizen; Kelly Buckland

Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to read the minutes.

MOTION: Representative Smith moved to approve the minutes of the meeting held on February 23, 2009, as written. Motion carried by voice vote.

H 82: **Representative Hartgen** was recognized by the Chairman to explain the bill. This bill was heard and introduced in the State Affairs Committee. Since the bill deals with criminal offenses committed in the state of Idaho, the printed bill was sent to the Judiciary, Rules and Administration Committee.

This bill expands Idaho Code 18-6710 by prohibiting harassment of another person via emails, text messaging, internet posts or personal blogs. It provides examples of internet sites to be covered and defines jurisdiction for a communication which "either originates in or is received in the state of Idaho."

This is an outgrowth of the "My Space" case in Missouri where a mother of a teenage girl, using the name of "Josh," emailed her daughter's friend, another 13 year old girl, telling her that the world would be a better place without her. As a result, the girl subsequently committed suicide. That mother was convicted of a secondary offense in the court.

The Attorney General's office recommended that the existing statute be amended. The bill provides a definition for internet posts as used in this section. It provides various conditions under which the bill would apply. The first offense would be a misdemeanor. All subsequent offenses would be felonies. Section 5 of the bill on page 2 contains a jurisdiction determination.

There was some discussion as to whether this would be invasive. The Court of Appeals held that the telephone harassment statute was not

unconstitutionally over broad or vague. Use of a telephone solely to inflict injury is not protected speech. This does not prevent a citizen from contacting or emailing an elected official in any way. The statute does not deal with the law of libel. Representative Hartgen said this amendment corrects a deficiency in the Idaho law.

When asked if there was any connection between this bill and H 175 which was enacted in 2007, the answer was no, it is not connected. It does not deal with the libel statute.

The statute does not prohibit the mere expression of ideas or information, but prohibits only telephone contacts made with specific and exclusive intent to annoy, terrify, threaten, intimidate, harass or offend.

When asked whether high school students who take pictures in showers and locker rooms would be committing a crime under this statute, Representative Hartgen said that would be left to the discretion of the prosecutor as to whether that was inappropriate action.

When asked how many people have been charged under this statute, the Representative said it is a relatively unused statute, so there haven't been very many. The statute has been expanded to include the internet. With regard to the "no call list," that list is handled as a consumer protection act.

When asked about this statute being more appropriate at the federal level, the Representative said he was not sure all of the states would agree as to what the language should be.

- CON:** **Fairy Hitchcock** was recognized by the Chairman. Ms. Hitchcock spoke against the bill.
- PRO:** **Paul Jagosh**, Idaho Police, spoke in support of the bill saying the Fraternal Order of Police believe this is an important piece of legislation which will help in determining various types of situations that come up. Officer discretion is used on a case by case basis. These types of aggressive behaviors often lead to domestic violence and actions to terrify a victim. This bill will help officers prevent these types of actions when there is criminal intent.
- PRO:** **Heather Reilly**, Idaho Prosecuting Attorneys, was recognized. Ms. Reilly said the prosecutors would like to express their support of the bill. Under this statute, it is necessary to prove elements of a crime. Any person with the intent to terrify with calls, emails or posts on the internet is guilty of a crime. However, the burden of proof must be proven beyond any reasonable doubt.
- With regard to jurisdictional issues, Ms. Reilly said the calls must be made within the state of Idaho or received within the state of Idaho. There must be a specific intent to annoy or terrify a certain person. Mailing a threatening letter would most likely come under the statute of "stalking."
- CLOSING:** **Representative Hartgen** was asked to give closing remarks. This is a case of updating the laws of the state which were last updated in 1994.

There probably won't be many of these cases, but when they happen this law would stop them. This is being kept in a very narrow parameter. It reflects modern means of communication.

MOTION: **Representative Nielsen** moved to send H 82 to the floor with a Do Pass recommendation.

SUBSTITUTE MOTION: **Representative Luker** moved to hold H 82 for a time certain until the meeting to be held on Thursday, March 5. Representative Luker said the intent of the bill is good, but he was concerned about expanding problems and he would like more time to study the court case that Representative Hartgen brought before the Committee. Representatives Hart and McGeachin spoke in support of the substitute motion. Representative Jaquet said she would like to know what the other 13 states are doing, such as whether they drafted a broader interpretation. **Substitute motion passed on voice vote.**

H 87: **Heather Reilly** was recognized to explain. This legislation modifies section 18-1505(4)(e), Idaho Code, relating to the abuse, exploitation or neglect of a vulnerable adult.

It revises the definition of "vulnerable adult" to not only refer to the vulnerable adult's lack of sufficient understanding or capacity to make or communicate or implement decisions regarding his person, but also clarifies the definition to include the person's funds, property or resources. This will allow prosecutors to more thoroughly pursue these cases.

MOTION: **Representative Killen** moved to send H 87 to the floor with a Do Pass recommendation. **Motion carried by voice vote.** Representative Jaquet will carry the bill on the floor.

H 103: **Patricia Tobias** was recognized to explain the bill. Ms. Tobias said this bill comes to the Committee with a long history of legislative support and interest in monitoring the case of persons and their assets under a conservatorship or guardianship case filed in the district court.

The legislature established the Guardianship Pilot Project in 2005 requiring annual reports to the legislature and providing a sunset clause of July 2009. The project has been extremely effective; between 2005 and 2007, compliance with required reporting in the six project counties has increased from less than 30% to 85%.

Independent third-party review of reports has been implemented, technology for the tracking of accounting and reporting has been developed and many cases of potential fraud have been referred for investigation.

Prior to introducing Judge Hart to speak in support of the bill, Ms. Tobias said section 1 repeals the sunset provision, allowing the pilot project fees and funding to go forward after July 1, 2009. The remaining sections 2, 3 and 4 provide that the financial plans, the inventory and all accounts and reports required to be filed with the court would now be subject to examination and review, as provided by rules adopted by the Idaho Supreme Court.

Ms. Tobias introduced **Judge Ron Hart** from Soda Springs to describe in more detail the important work of the Court's Guardianship and Conservatorship Committee which he chairs.

Judge Hart said as a judge in Caribou County, a small rural county, he handled matters dealing with the protection of persons and their estates for a long time. About seven years ago, he started handling these matters in Bannock County which resulted in seeing and hearing many more cases.

The purpose of the Guardianship Pilot Project Committee was to establish pilot projects designed to improve reporting and monitoring systems and processes for the protection of persons and their estates. Since it was established in 2006, the committee has accomplished some very significant goals in the area of protection of a person's estate in conservatorship proceedings.

Standard reporting forms have been developed which provide uniform reporting in all counties making it possible to conduct consistent reviews. Additionally forms have been established to remind conservators that reports are past due and to hold them accountable.

The Idaho Supreme Court case management system - called ISTARs - used by courts in Idaho to manage cases was augmented to enhance the monitoring conservatorship and guardianships, making it possible to enter the dates when reports are due and monitor those dates. A system was established for review by a third party to determine the adequacy of the reports.

With approximately \$88 million in the six pilot counties being managed by conservators, the potential for misuse, fraud or exploitation is great. The five judges who serve on the committee plus the attorneys and other professionals who serve are all in unanimous agreement that the work of the committee should be continued.

Looking to the future, the committee would work towards improving reporting and monitoring the duties of guardians with the additional goal of improving the quality of care and reducing exploitation of vulnerable adults. The court and the committee would urge further attention to developing standardized forms and a system of third party review for guardianship cases, a system for appointment of guardians ad litem, and a system for in-person visits to protected persons.

The court and committee would also urge the establishment of best practices in the care of developmentally disabled individuals and the care of minors in guardianship matters.

MOTION:

Representative Labrador moved to send H 103 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Labrador will carry the bill on the floor.

H 104:

Patricia Tobias was recognized to explain. The purpose of this bill is to provide a statutory framework for Domestic Violence Courts and funding to assist some counties in hiring a domestic violence court coordinator. There are currently seven domestic violence courts operating in the state. These courts hold offenders accountable, increase victim safety and provide greater judicial monitoring.

Further, these courts ensure that decisions in one case do not conflict with existing orders in other civil and criminal cases. Each person convicted of specified alcohol, substance abuse or domestic violence related offenses will be assessed a \$30 fee to be paid by the offender.

Ms. Tobias introduced **Judge Michael Dennard** who is the recognized statewide expert in cases affecting children and families.

Judge Dennard said he was a career family court judge prior to his retirement and he has witnessed first hand the impact domestic violence has on children and families. He has also seen judges struggle to find ways to ensure victims are safe from domestic violence and to make offenders more accountable.

The judge said he did not fully understand how pervasive a problem domestic violence was. These families are affected by serious problems such as drug and alcohol abuse, untreated mental health issues, emotional and financial problems and parenting deficiencies.

Domestic violence courts completely change the way the judges have traditionally processed these types of cases. The judges who preside over Domestic Violence Courts firmly believe that with the help of the domestic violence court coordinator, they now have the tools and support needed to handle these cases more effectively and efficiently.

They feel the coordinator provides a central point of contact with the court which allows them to rapidly provide, receive and exchange information relevant to a case which does not exist in the traditional criminal process. The judges also believe the ability to expedite these cases on the calendar while obtaining quality assessments and treatment recommendations as well as addressing custody and support issues, all serve to benefit the family and children involved.

In short, these courts provide a very focused examination of the offender and family involved, a very structured approach to the assessment and treatment of issues and the monitoring needed to ensure greater compliance. The bottom line is that Domestic Violence Courts provide an improved approach to the prevention and reduction of family violence.

In answer to questions about the assessed fees, Ms. Tobias said the fees go into a central fund. It is not necessary or advisable to segregate these funds.

MOTION:

Representative Bolz moved to send H 104 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Bolz will carry the bill on the floor.

H 105: Patricia Tobias was recognized to explain. She said this is a so-called “mulligan” bill per Chairman Clark. She explained that a mulligan, in a game, happens when a player gets a second change to perform a certain move or action. It is also sometimes called a “do over.”

Last year, the court introduced a bill that brought together all the civil filing fees into one statute. Chairman Clark asked for a “do over.” Even though this bill is eight pages long. All it does is update 2 sections of the code and, hopefully, makes life easier for some 500 deputy court clerks statewide.

Section 1 corrects an omission from a few year ago and adds the \$6.00 senior magistrate judges fee to small claims cases. Section 2 simplifies the filing fees collected by deputy clerks statewide for the filing of new civil cases regardless of the amount in controversy. The fee of \$50.00 will now apply. The disparate filing fees of \$28.00 and \$30.00 for differing amounts of money or damages claimed are deleted.

There will now be a complete list for the deputy court clerks and attorneys and the public where the legislature has already said no fee will be charged. The bill clarifies that when two or more defendants make an appearance in the same filing, the deputy clerk should only collect one appearance fee. This conforms to existing practice.

A separate intervener fee is deleted. The rest of the bill adds titles to sections making it easier to read and makes a technical correction. The bill simply streamlines and makes clear a statute that many people work with on a daily basis.

MOTION: **Representative Smith moved to send H 105 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Wills will carry the bill on the floor.

H 106: **Patricia Tobias** was recognized. Ms. Tobias asked that the Committee not take up this bill. Amendments are currently being worked on.

MOTION: **Representative Smith moved to hold H 106 in Committee at the call of the Chair. Motion carried by voice vote.**

H 167: **Chairman Clark** said that the sponsor of the bill asked that it be held in Committee. Therefore, the Chairman asked for **Unanimous Consent** to hold the bill. **There being no objection, H 167 will be held in Committee.**

ADJOURN: Prior to adjourning, Representative Smith reminded the subcommittee members that there would be a meeting immediately following the full Committee meeting. There being no further business to come before the Committee, the Chairman adjourned the meeting at 3:55 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE SMITH SUBCOMMITTEE

DATE: February 25, 2009

TIME: 3:55 p.m.

PLACE: Room 240

MEMBERS: Chairman Smith(24), Representatives Wills, Labrador, Luker, Burgoyne, Killen

**ABSENT/
EXCUSED:** None.

GUESTS: Robert Aldridge, Trust & Estate Professionals of Idaho, Inc.

Chairman Smith called the meeting to order at 3:55 p.m. and recognized Robert Aldridge to explain the legislation before the committee.

S 1047: **Robert Aldridge** said this bill adds a new section to Chapter 4, Title 66, Idaho Code, to be known and designated as Section 66-418. It changes the language of the Probate Code provisions by referencing the developmentally disabled person as respondent instead of a ward or incapacitated person and inserts that language into two new sections.

Because Title 66, unlike the Probate Code, does not address appointment of guardians and conservators in separate sections, Section One provides for the appointment of a temporary guardian or conservator in a combined single section, but with the same provisions and protections as the Probate Code provisions. Section Two provides the duties, rights, and powers of a guardian ad litem by direct cross reference to the Probate Code provisions. Section Three declares an emergency and makes the bill effective upon passage.

The bill will provide clarification for developmentally disabled proceedings and will avoid delays and confusion.

Some of the members voiced concern regarding filing ex parte petitions and appointing temporary guardians or conservators. Mr. Aldridge said the court may make that appointment only upon a finding supported by a statement made under oath that an emergency situation does exist. Mr. Aldridge said the term "ex parte" has been used for many years. When asked about the emergency clause, Mr. Aldridge said legislative services recommended that it be included. Again, the appointment can only be made without notice if the court finds there is substantial harm being done.

If the court appoints a temporary guardian or a temporary conservator or both, the petitioner shall give written notice of the appointment to the respondent, his attorney and other interested persons within 48 hours of

his appointment.

MOTION: **Representative Wills moved to recommend to the full committee that S 1047 be sent to the floor with a Do Pass recommendation.**

SUBSTITUTE MOTION: **Representative Luker moved to return S 1047 to the full committee without recommendation so that the bill can receive a full hearing with all germane parties in attendance.**

In support of the original motion, Representative Wills said concerned individuals have had adequate time to study this bill. Representative Burgoyne said he was concerned about the notice issue. People involved in these issues are highly emotional.

Substitute motion carried by voice vote.

S 1048: **Robert Aldridge** was recognized to explain. Current Idaho law provides that a convicted felon should not be appointed guardian of an adult incapacitated person unless the court finds that such appointment is in the best interests of the incapacitated person.

Sections one, two and three of the bill provide the same protections to the appointment of the guardian of a minor. Section 4 provides for similar inclusion in a petition for guardianship of a statement as to whether the proposed guardian, or a person who resides at or frequents the proposed place of residence of the ward, is a convicted felon. Section five requires the same information in a petition for conservatorship of a minor as it does for an adult.

Section six corrects the lack of an express procedure to close a conservatorship case and also clarifies who may request such a closure. Section seven corrects an existing failure of the code to adequately protect the funds of minors in certain proceedings.

In answer to a question regarding the burden of proof, Mr. Aldridge said that is the same language as is used for adults and the police requested that language be inserted in the bill. Some members were concerned with compromises and there being no standard for the court to apply. The language in the bill seems over broad.

Chairman Smith recommended some amendments to the bill as follows: On page 1, line 28, strike "by clear and convincing evidence" and on page 2, line 2, add a period after "residence" and strike the remainder of the sentence. Then on page 4, line 9, add a period after "residence" and strike the rest of the sentence and, on page 5, line 16, add a period after "residence" and strike the remainder of the sentence.

In response to those recommendations, Mr. Aldridge said the law would provide more protection for adults than for children.

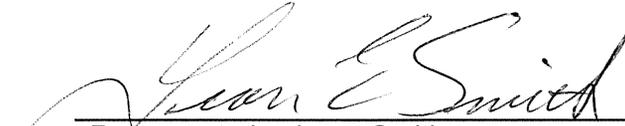
MOTION: **Representative Luker moved to return S 1048 to the full committee with the recommendation that it be held.**

**SUBSTITUTE
MOTION:**

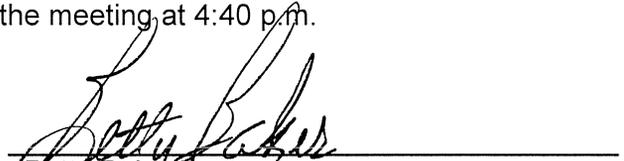
Representative Killen moved to return S 1048 to the full committee without recommendation so that the bill could receive a full hearing. Substitute motion carried by voice vote.

ADJOURN:

There being no further business to come before the subcommittee, Chairman Smith adjourned the meeting, at 4:40 p.m.



Representative Leon Smith
Subcommittee Chairman



Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 3, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representatives Smith, Burgoyne and Shirley
- GUESTS:** Jessica Lorello, Deputy Attorney General; Bill von Tagen, Deputy Attorney General; LaMont Anderson, senior deputy attorney general; Sheriff Ben Wolfinger; Fred Riggens, citizen; David Navarro, Juliet McMahon, Amber Allen, Courtney Brokaw, Boise State University; Fairy Hitchcock, citizen; Katy Kreller, Idaho Statesman; Judge Barry Wood; Michael Henderson, Idaho Supreme Court; Donna Murphy, intern, Supreme Court; Hannah Saona, ACLU; Katie Killpack, DFM; Jay Kiiha, Aladdin Bail Bonds; Dale Dutt, citizen
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.
- MOTION:** Representative Bolz moved to approve the minutes of the meeting held on February 25, as written. Motion carried by voice vote.
- H 184:** Chairman Clark recognized **Judge Barry Wood** to explain the bill. Judge Wood said the Bail Bonds Guidelines Committee was formed in 2006, bringing together judges, trial court administrators, prosecutors, defense counsel, sheriffs and representatives of the bail industry. The committee worked over the last two years to draft this bill which eliminates archaic provisions of the existing statutes and directly addresses and clarifies procedures for cash bail, property bonds and commercial bail bonds.
- The task of the committee was to try to modernize the existing statute. The Bail Bond Act provides a uniform and comprehensive statewide process for the administration of bail in criminal cases. Any person charged with a crime who is not released on his own recognizance is entitled to bail before a plea or verdict of guilty, except when the offense charged is punishable by death and the proof is evident or the presumption is great.
- Definitions are included for bail, bail agent, bail bond, bench warrant, cash deposit and certificate of surrender. Conditions of release, exoneration, forfeiture and order of recommitment are some of the other definitions contained in the bill.
- When bail has been posted by cash deposit and remains on deposit at the time of the judgment, the clerk of the court shall apply the money in

satisfaction of fines, fees, costs and restitution imposed in the case and fines, fees, costs and restitution imposed against the defendant in any other criminal action. Any surplus shall be refunded to the person posting the cash deposit. A property bond may be posted on behalf of the defendant.

A question was asked concerning when a third party puts up a cash deposit or property bond and there is a violation of the condition of release, as to what happens to the security deposit. The judge answered if a relative puts up the bond and uses the defendant's name, that would be a problem. When the person posting the bond does so in his own name, that person will get the bail back.

MOTION: **Representative Wills** moved to send H 184 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Clark will carry the bill on the floor.

H 107: **LaMont Anderson**, senior deputy attorney general, was recognized to explain the bill. This bill will eliminate reference to specific lethal injection substances in light of the authority of the director of the Department of Correction to determine the substance or substances used. The amendment is consistent with the standard operating procedures for executions, which currently provide for four lethal injection substances, which include an ultra-short-acting barbiturate and a paralytic agent. The bill is designed after a similar statute in Kentucky. A United States Supreme Court ruled in a case brought by Kentucky death-row inmates that lethal injections pass constitutional muster.

The legislation will permit a coroner or deputy coroner, rather than a licensed physician, to pronounce death. This will avoid issues that may arise relating to a physician's ability to participate in an execution in light of medical professional standards.

The legislation also eliminates the alternative method of death by a firing squad. Idaho is the only state that has the firing squad as a method of execution. The state of Utah did away with that method in 2004, though it may still be an option for inmates who selected it prior to that date.

This bill will result in a more expeditious means of execution.

MOTION: **Representative Labrador** moved to send H 107 to the floor with a Do Pass recommendation.

In answer to a question, Mr. Anderson said the director has worked with other states to determine what drugs and protocol will mirror those used by the state of Kentucky.

Motion carried by voice vote. Representative Labrador will carry the bill on the floor.

H 178: Jessica Lorello, deputy attorney general, was recognized to explain. The bill makes technical amendments and updates to Idaho Code, Sections 18-8303, 18-8304 and 18-8308. Idaho Code section 18-8303(1) is amended to include, as aggravated offenses, first-degree kidnaping for

the purpose of rape, committing an infamous crime against nature, committing any lewd and lascivious act upon any child under the age of sixteen years or for purposes of sexual gratification.

In Section 18-8602(1) aggravated offenses include sex trafficking and any other offense set forth in section 18-8304 if, at the time of the commission of the offense, the victim was below the age of thirteen years.

The amendments include the Department of Juvenile Corrections in the definition of "incarceration." There is a definition to further define "habitually lives."

Section 18-8304(2) is amended to clarify that an offender is not required to comply with the sex offender registration requirements while incarcerated. Finally, Section 18-8308 is amended to incorporate existing electronic monitoring requirements for violent sexual predators.

A member said he was still struggling with "habitually resides." Ms. Lorello said that language has been taken from federal legislation. Electric monitoring was put into code last year. These homeless people have to register at all the places where they are during the day and night if they don't have a permanent address.

Chairman Clark said the bill could be sent to the amending order if there is a problem with the definition of "residence."

When asked if aggravated offense language was used any more than once in the bill, Ms. Lorello said that language is referenced in another code section. Ms. Lorello said the crimes listed under the definition of aggravated offenses are already crimes, they are simply being added to aggravated offenses as defined in this bill.

Citizens Fairy Hitchcock and Dale Dutt testified against the bill.

MOTION: Representative Nielsen moved to send H 178 to the floor with a Do Pass recommendation.

SUBSTITUTE MOTION: Representative Luker moved to send H 178 to General Orders with committee amendments attached as follows: On page 2 of the printed bill delete lines 25 through 29 and insert: "(13) "Residence" means the offender's present place of abode." Representative Jaquet spoke in support of the substitute motion. **Substitute motion carried by voice vote.** Representative Nielsen asked to be recorded as voting "no" on the substitute motion. Representative Clark will carry the bill on the floor. Representative Luker will carry the amendments.

H 179: Representative Luker was recognized to explain. This bill amends testamentary appointment of a guardian for incapacitated persons to include developmentally disabled persons. Because of the lack of inclusion of developmentally disabled persons in the probate code, there is no provision allowing a parent to make a testamentary nomination of a guardian for a developmentally disabled child. This bill corrects that omission. Section 66-404, governing the procedure for appointing

guardians for developmentally disabled persons is also amended to allow recognition of the testamentary nomination.

MOTION: **Representative Bolz moved to send H 179 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Luker will carry the bill on the floor.

H 183: **Chairman Clark said the sponsor of H 183 asked that it be held in committee.** The Chairman asked for unanimous consent to hold the bill. **There being no objection the bill was so held.**

H 168: **Chairman Clark** turned the Chair over to Representative Wills in order to explain the bill. This bill attempts to solve some of the problems regarding registered sexual offenders listing their address or a description of where they are living. Many of these people do not have a physical address nor do they have a mailing address.

This legislation came through the Kootenai County sheriff's office. Representative Clark turned the podium over to **Sheriff Ben Wolfinger** from Kootenai County for further explanation.

Sheriff Wolfinger said this bill deals with a minor loophole in the current law that allows the sheriffs to keep track of registered sex offenders. Violent sexual predators are sent a non-forwardable post card once a month by the State Registry. This card must be signed by the offender and returned within 7 days. For all of the rest of the sex offenders, this mailing occurs once every four months.

The problem comes from those persons who are required to register, but do not have a mailing or permanent address. They are homeless, or choosing to live in non-traditional locations where it is more difficult for them to be found by law enforcement and where the postal service does not deliver. Sheriffs commonly find these people living under bridges or camped near towns. Currently, if a person lists "homeless" or "transient" for their physical address, the registry lists the local sheriff's office as their mailing address.

This bill addresses those persons who do not have a permanent address or one where they can be found by the postal service. This bill will require these people to check in with the local sheriff's office every week. Since they are so transient, it will also require the sheriff's office to check on them at least once a month at their camp site.

The sheriffs see the bill doing three things: First, it will help keep track of these individuals so they don't just fall through the cracks and disappear. Second, it will encourage them to find housing that eliminates the need for weekly check-in and monthly visits from law enforcement. Third, it will not require them to do a change of address update to the registry every time a transient camp moves.

MOTION: **Representative Clark moved to send H 168 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Clark will carry the bill on the floor.

ADJOURN:

Prior to adjourning, Chairman Clark said there was a letter from Subcommittee Chairman Smith stating that S 1047 and S 1048 had been reviewed by his subcommittee and it was their decision to return the bills to the full committee without recommendation in order that they will receive a full hearing. There being no further business to come before the committee, the meeting was adjourned at 2:45 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 5, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representative Shirley
- GUESTS:** Michael Kane, Idaho Sheriffs Assn.; Dennis Tanikuni, Idaho Farm Bureau; Jennifer Hannah, Health & Welfare; Sarah Fuhrman, lobbyist; Benjamin Davenport, lobbyist; Jeff Black, Director of POST; Rich Hahn, Idaho Power
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.
- MOTION:** **Representative Bolz** moved to approve the minutes of the meeting held on March 3, 2009, as written. Motion carried by voice vote.
- Chairman Clark said the sponsor of H 82**, on the agenda for today, asked that the bill be held. There being no objection, **H 82 was so held.**
- H 72:** **Representative Luker** was recognized to explain the bill. This is a simple bill to delete section 19-4701 of the Idaho Code pertaining to the disposition of fines, forfeitures and costs which is no longer used. That section has been superseded by section 19-4705. Section 19-4705 also repeals other laws regarding the disposition of fines and forfeitures to the extent such laws are inconsistent with the provisions of this act except as provided in section 49-1013(3), Idaho Code.
- MOTION:** **Representative Jaquet** moved to send H 72 to the floor with a **Do Pass recommendation. Motion carried by voice vote.** Representative Luker will carry the bill on the floor.
- H 73:** **Representative Luker** was recognized to explain. This bill was drafted to prohibit a prosecutor from settling, dismissing or otherwise dropping a criminal prosecution in exchange for payment or a contribution outside the fine distribution structure provided by law. Also, although section 31-2606 prohibited certain actions by prosecutors, it did not prescribe a penalty. That omission has been addressed in this bill.

Some concerns with some of the wording of the bill were raised by the prosecutors, so amendments to the bill were drafted to satisfy those concerns. Those amendments are as follows: on page 1, line 28, delete "to the victim as defined in section 19-5304"; delete line 29 and insert: "as

provided in law, or to payments for assessments, treatments, education classes, bad check recovery or other remedial programs.”.

With these amendments in place, lines 27,28 and 29 of the bill would read as follows: “The provisions of this subsection shall not apply to payments of restitution as provided in law, or to payments for assessments, treatments, education classes, bad check recovery or other remedial programs.”

MOTION: **Representative Smith moved to send H 73 to General Orders with the above mentioned committee amendments attached. Motion carried by voice vote.** Representative Luker will carry the bill on the floor.

H 163: **Michael Kane**, Idaho Sheriffs Association, was recognized to explain the legislation. This bill is a product of a lot of hard work by many interested parties, including Representatives Kren and Jaquet. A letter came from the Food Producers of Idaho, Inc. in support of the bill (attachment.) The purpose of the bill is to modernize the laws dealing with the buying and selling of scrap metal. Scrap is clearly defined and a streamlined system is set up for transactions between businesses and scrap dealers. Record keeping requirements are clearly delineated to assist law enforcement in the investigation of stolen metal. This bill is based upon a model bill by the insurance agencies. A first time violation is a misdemeanor. A second violation within five years is a felony.

MOTION: **Representative Kren moved to send H 163 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Jaquet spoke in support of the motion and said the Idaho Farm Bureau Federation was involved in drafting the legislation and supports the bill. The stealing of scrap metal is a big problem. This is a good bill. **Motion carried by voice vote.** Representatives Kren and Jaquet will carry the bill on the floor.

H 164: **Michael Kane** was recognized to explain. The purpose of this bill is to set up a clearinghouse for information regarding certified peace officers in regard to peace officer employment. In this way, law enforcement entities will be able to determine the prior law enforcement history of potential employees.

This bill was drafted because law enforcement discovered there are a series of officers who leave one job just a step before they get fired and these officers go to another agency for employment. This legislation will help law enforcement weed out the bad apples.

MOTION: **Representative Nielsen moved to send H 164 to the floor with a Do Pass recommendation.** A question was posed regarding the Fiscal Note indicating there will only be a “negligible” impact on the general fund. **Director Jeff Black** with the POST Council was recognized to address that question. The Director said staff is already in place to do this. This is looking for employment history only. **Motion carried by voice vote.** Representative Nielsen will carry the bill on the floor.

H 165:

Michael Kane was recognized to explain. The purpose of this bill is to clarify that an individual that is the subject of an inquiry or investigation by a governmental entity cannot prevent the obtaining of records needed to further the investigation and held by a governmental entity under the guise of the public records laws. In the past, when this type of information was requested, under the public records law the information could not be given. The question has arisen regarding if the public records law can be used as a sword against government entities. This bill addresses that problem.

The bill immunizes one government who gives another government the information it requires. The use of the word "inquiry" has been questioned. Mr. Kane said the bill could be amended to remove that word.

Director Black was recognized to give his comments. The Director said this has been litigated in the County of Bonneville and they were able to obtain the records they needed. The POST Council would be willing to litigate again, but litigation is expensive for the taxpayer. This bill is needed and it will make it clear that it is safe to give out the information. Counties have been unwilling to give out this information because the theory is that they would be liable without obtaining the direction of the court. It was pointed out that these personnel files are private to the public.

MOTION:

Representative Luker moved to send H 165 to General Orders with Committee amendments attached as follows: On page 2 of the printed bill, line 1, delete "public agency or" and on line 2, delete "public agency or" and "or inquiry". Motion carried by voice vote. Representative Kren will carry the bill on the floor.

ADJOURN:

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 9, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Kevin Krieg; Elizabeth Campbell; Brent Reinke, Director, Idaho Department of Correction; Paul Panther, Deputy Attorney General, IDOC; Dana Borquist, Lieutenant, Ada County Sheriff; Russ Newcomb, Lobbyist, Idaho Medical Association; Jim Baugh, Executive Director, Co-Ad; Michael Henderson, Counsel, Supreme Court; Rob Lee, Executive Director, Bethel Industries; Fairy Hitchcock, Advocate Volunteer; Diane Anderson, Advocate; Ed Pemble, Driver Services Manager, Idaho Transportation Department; Pam Eaton, President, Idaho Retailers Association, and Idaho Lodging & Restaurant

Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on March 5, as written. Motion carried by voice vote.

Director Brent Reinke gave each member a handout relating to the Idaho Criminal Justice Commission (attachment) and gave a brief update on the Commission. The Director said the Commission is made up of 26 members, all three branches of government, county, city and citizen representatives. Those partners are engaged in collaborating to reach consensus on critical issues facing Idaho's criminal justice system.

Six subcommittees help guide major projects which include early intervention, gang strategies, criminal justice research alliance, sex offender issues and legislation, violent sexual predators issues, public defenders statewide study and misdemeanor probation. Misdemeanor probation manages 15,000 Idahoans statewide.

The state and counties will create regional offender management centers. The facilities will provide long-term housing solutions, and programming services for a full spectrum of adult in-custody and community custody offenders. Shared building funding, governance and the operation of the facility will help create efficiency. The goal is safer communities through the creation of partnerships that utilize taxpayer dollars more efficiently and effectively.

Guidelines for recidivism reduction in Idaho include evidence-based

assessment tools. Risk assessment tools should be used to manage caseloads and develop individualized supervision and treatment plans that address specific risks and needs.

The Director pointed out that drug addiction is a brain disease that affects behavior. Recovery requires effective treatment, followed by management of the problem over time. Assessment is the first step in treatment. Treatment should target factors that are associated with criminal behavior. Continuity of care is essential for drug abusers re-entering the community.

Regarding crime prevention and re-entry programs in Idaho, the public health district offices are working together to implement a nurse-family partnership program that would provide health services and parenting education to first-time, low-income mothers. The Idaho Department of Correction is developing vocational and work programs for inmates. Both the Department of Correction and Health and Welfare are developing a program to refer inmates with substance abuse issues to multiple services upon their release.

The Director described the various crime prevention and re-entry programs in Idaho. In the summer of 2008, the Department of Criminal Justice interviewed key stakeholders and reviewed numerous documents to determine how the State of Idaho handles juvenile offenders with substance abuse and mental health issues and developed strategic policy recommendations on improving these services based on best practices.

Best practice services in Idaho include transitional housing aftercare, juvenile drug court, functional family therapy and diversion programs. For mental health issues, there are multi systemic therapy, cognitive behavioral therapy, treatment foster care and juvenile mental health court.

Services for juveniles in the state of Idaho are rapidly improving. Idaho is considered a leader when it comes to innovative interventions for the treatment of juveniles.

Gang membership is addressed including the causes of gang membership, gang prevention programs and reentry programs.

Alternatives to incarceration for juvenile offenders have been reviewed. In June 2008, 242 juveniles were held in the Juvenile Corrections facilities. Out of all the programs encountered during this review, only four were effective: community diversion based on restorative justice principles for general offenders, family or group conferences, diversion to community treatment, juvenile drug courts and functional family therapy.

As part of a broad-based examination of alternatives to incarceration for adult offenders, the Department of Criminal Justice reviewed more than 100 peer-reviewed articles, government research publications and state government websites to identify programs that effectively reduce recidivism of offenders. The two programs that work are diversion to community treatment and drug courts.

Finally, there is a project to help children of incarcerated parents. This project addresses raising awareness about the challenges these children

face. These children have not had an identity as a distinct service category and have consequently fallen through the cracks. Current policies need to be evaluated and changes made that are sensible and can benefit children.

The Director said the prosecutors are involved in these projects.

In response to a question, the Chairman said a letter is currently being drafted asking for a one year extension of time on the Adam Walsh Child Protection and Safety Act before Idaho implements the provisions of the act. There are certain things in the act that the Commission has had a very difficult time with. One concern is the juvenile records. Under that act, the juvenile record remains with the juvenile for the rest of his life. No states have been able to comply with the act except Ohio and that state now has lawsuits pending against it.

S 1056a:

Director Reinke was recognized to explain the bill. This legislation creates a new statute to allow for administrative subpoena power for the Department of Correction to fully investigate issues involving offenders, prison security and staff misconduct. Subpoena power is an essential tool for internal investigations to maintain secure facilities. The Director asked to turn the podium over to Paul Panther to explain the bill in more detail.

Paul Panther said fifty percent of the State Department of Corrections that responded to a survey have subpoena power for either investigations of crimes committed at prisons, inquiries into management and governance of facilities and/or warrants for escapes.

Two states also have inspector general's offices. California is separate from the department and the chief counsel and other attorneys have authority to issue subpoenas. Colorado's Inspector General can secure arrest and search warrants. Subpoenas are issued by administrative judges on personnel matters and the executive director can issue an administrative warrant for the arrest of fugitives. Fifty percent of the State Department of Corrections have no subpoena power.

Essentially this bill enhances the operation of the prison by allowing the department to subpoena. The director would be able to issue an administrative subpoena. The director could go before the district court with a prima facie showing the need for the documents. When the bill was presented in the Senate, Senator Davis was concerned about over-reaching language, so amendments were drafted which satisfied those concerns.

In response to a question regarding whether prosecutors are notified when a subpoena is issued, Mr. Panther said they are notified if it is believed that a crime is involved. In response to a question regarding whether "custodian" is defined, Mr. Panther said that definition is provided in another section of the code.

CON:

Fairy Hitchcock was recognized to speak to the bill. Ms. Hitchcock spoke against the bill in her capacity as an advocate for women's rights

when those women are inmates.

MOTION: **Representative Smith moved to send S 1056a to the floor with a Do Pass recommendation.** Representative Nielsen said the amendments **to the bill seem to address some of the concerns of Ms. Hitchcock.** **Motion carried by voice vote.** Representative McGeachin will carry the bill on the floor.

S 1003: **Michael Henderson** with the Courts was recognized to explain the legislation. This is one of the bills that the Supreme Court has recommended to correct defects in the law. This statute was enacted in 1993. It makes it a felony for employees of the department of correction to have sexual contact with a prisoner or for employees of the department of juvenile corrections to have sexual contact with a juvenile offender.

The statute contains a definition of the term "sexual contact" and includes a list of the various types of contact that constitute sexual contact. This list was taken from the lewd conduct statute. That lewd conduct statute includes the word "contact" after each of the listed hyphenated adjectives, while this statute omits that word, leaving those adjectives unconnected to any noun. This bill will insert the word "contact" where it belongs in the definition of "sexual contact" in order to remove any confusion or any issues about the vagueness or uncertainty of the statute.

When asked if the lack of that word has created any problems, Mr. Henderson said in criminal jury instructions this became a matter of concern. This removes that concern.

CON: **Fairy Hitchcock** was recognized to speak to the bill. Ms. Hitchcock said the adding of the word "contact" will not help any of the incarcerated women who have complained about being sexually assaulted. Ms. Hitchcock said she would like to see another bill come forward to provide relief to these women.

MOTION: **Representative Jaquet moved to send S 1003 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Jaquet will carry the bill on the floor.

S 1004: Michael Henderson was recognized to explain the bill. This bill is one of the bills that have been recommended by the Supreme Court to correct defects in the law. Section 1 simply makes technical corrections to Idaho Code section 18-4006, which is the statute that defines the crime of manslaughter. Section 2 corrects section 18-4007 which is the statute that sets out the penalties for manslaughter.

Section (3)(d) of section 18-4007, states that any person convicted of vehicular manslaughter which results in the death of a parent or parents of a minor child may be ordered by the court to pay support for each minor child until that child reaches the age of 18.

The current statute says that the amount of support shall be established according to the child support guidelines. This provision has caused serious problems for judges, prosecuting attorneys and defense counsel in these cases. The problem is that the child support guidelines have

been established by the Supreme Court to divide the child support obligation in a fair way between the child's parents. The guidelines simply do not work well when they are applied to child support that is being paid by persons other than the parents.

This bill addresses this problem by removing the requirement that child support in vehicular manslaughter cases must be determined according to the child support guidelines. Instead, judges would consider all relevant factors. These factors would include the financial resources of the child, the financial resources, needs and obligations of the defendant, the standard of living the child enjoyed during the life of the parent or parents, and the physical, emotional and educational needs of the child.

In this way, the courts will be able to balance all of the relevant factors and make fair child support awards without being bound by guidelines that were only designed to divide the child support obligation only between parents.

A question was posed regarding adding the language "but not limited to" on page 1, line 18 and Mr. Henderson said he would not be opposed to that language being added to the printed bill. Mr. Henderson said the child support is going to be tied to the resources and ability to pay by the defendant. The support may be ruled by the court.

MOTION: Representative Luker moved to send S 1004 to General Orders with the following Committee amendments: on page 2, line 22 of the printed bill, add a period after the word "factors", then striking the rest of the language through line 36. Representative Nielsen expressed concern over the fact that the bill would then not give any boundaries at all.

SUBSTITUTE MOTION: Representative Jaquet moved to send S 1004 to General Orders with the following Committee amendments: on page 2, line 22, after "including" strike the colon and add "but not limited to:" Representative Burgoyne spoke against the substitute motion and in support of the original motion. In support of her motion, Representative Jaquet said it is important to give some guidelines. The judiciary is asking for these kinds of factors.

Representative Hart spoke in favor of the original motion. Representative Luker expressed belief in the courts being able to make these decisions. Keeping the language simple will still accomplish the main purpose.

AMENDED SUBSTITUTE MOTION: Representative Nielsen moved to hold S 1004 in Committee at the call of the Chair.

Amended Substitute Motion failed by voice vote.

SUBSTITUTE MOTION: Motion failed by voice vote.

ORIGINAL MOTION: Original Motion to send S 1004 to General Orders with Committee amendments attached passed by voice vote. Motion was moved by

Representative Luker, seconded by Representative Burgoyne.
Representative Luker will carry the bill on the floor.

- H 106:** **Michael Henderson** was recognized to explain. This bill amends Idaho Code section 19-2522, which requires an examination of the mental condition of the defendant in a criminal case if there is reason to believe that the mental condition will be a significant factor at sentencing. The statute currently requires the court to appoint a psychiatrist or licensed psychologist to make the examination. This bill would allow the court to appoint other qualified professionals, such as licensed counselors, to make the examination where the court believes that to be sufficient.
- The bill will also clarify that a report of an examination of the defendant's mental examination that has previously been conducted may be used to satisfy the requirements of section 19-2522 if the court finds that the earlier examination and report are sufficient. The defendant will retain the ability to be examined by an expert of his or her own choice.
- Amendments have been drafted which remove all of the changes to subsection (1) which would have permitted a court to appoint a qualified professional other than a psychiatrist or licensed psychologist to conduct the mental examination. Language has been added to the new subsection (6) to clarify that a court may use an examination conducted pursuant to section 19-2524, even if not conducted by a psychiatrist or licensed psychologist, for purposes of section 19-2522.
- PRO:** **Russ Newcomb**, representing the Idaho Medical Association, spoke in support of the bill by the association as long as the amendments were included.
- CON:** **Diane Anderson**, citizen advocate, spoke against H 106. She expressed concern over the broadness of the language. The legislature needs to add some guidelines for the judiciary to determine who is qualified to do mental examinations.
- CON:** Fairy Hitchcock was recognized. Ms. Hitchcock spoke against the bill.
- PRO:** Gary Payne, representing Jim Baugh, executive director of Co-Ad, spoke in favor of the bill.
- MOTION:** **Representative Smith moved to send H 106 to General Orders with Committee amendments attached.** Representative Luker spoke in favor of the motion.
- SUBSTITUTE MOTION:** **Representative Nielsen moved to hold H 106 in Committee.**
- ROLL CALL VOTE:** On the Substitute Motion to hold H 106 in Committee, voting AYE: Representatives Nielsen, McGeachin, Labrador, Kren and Boe. Voting NAY: Representatives Smith, Luker, Burgoyne, Jaquet, Killen and Clark. **Motion failed 5-6-4.**
- ORIGINAL MOTION:** **The original motion passed by voice vote.** Representative Smith will carry the bill on the floor. Representatives Nielsen and McGeachin asked

to be recorded as voting “no” on the motion.

S 1042: **Dave Fulkerson** was recognized to explain. This legislation makes changes to 18-2507, Idaho Code, relating to the expense of prosecution of state prisoners. This change would speed up the process so that claims could be paid within 60 days, consistent with 67-2302, Idaho Code, after approval of the claim by the Board of Examiners.

MOTION: **Representative Killen moved to send S 1042 to the floor with a Do Pass recommendation. Motion carried by voice vote.** Representative Killen will carry the bill on the floor.

H 180: **Chairman Clark** turned the gavel over to Vice Chairman Smith in order to explain the bill. Representative Clark said he would walk the members through the bill briefly and then talk about problems and changes. This legislation will strengthen Idaho’s drunk driving laws by prohibiting those persons with multiple driving under the influence offenses from offending again.

The bill defines an “interdicted person” as a person to whom the sale, delivery, giving or furnishing of alcoholic beverages as defined in section 23-1401(1) is prohibited under law, except when an alcoholic beverage is given or furnished in connection with the practice of the religious tenets of any church, synagogue or other place of worship.

The bill provides that any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a) for the first time, but who has an alcohol concentration of 0.20 shall be guilty of a misdemeanor and shall be designated as an interdicted person for a period of five years.

Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004 and who has an alcohol concentration of 0.20 or who has previously been found guilty of or pled guilty to one or more violations shall be permanently designated an interdicted person and shall be ordered to obtain, at his own expense, a new driver’s license, a new identification card, or both.

Driver’s licenses and/or identification cards issued for any person designated as an interdicted person shall include a notation “no alcohol until (month, day, year), shall be of the same format as drivers’ licenses issued to persons under the age of 21 years and shall be subject to a non-refundable fee.

Representative Clark said he had some amendments to the bill on page 13 deleting in line 28 “(1)” and deleting lines 35 through 37 which read as follows: “any person licensed to sell beer at retail or wholesale, or any agent or employee of such retail or wholesale licensee, shall not sell or furnish any alcoholic beverage to any person without first checking the person’s driver’s license or identification card.”

Representative Clark said there is a problem regarding how to enforce this. There is also a problem with the fiscal impact which will be addressed by an individual from the Idaho Transportation Department.

There is an issue regarding withheld judgments. Another issue is how to solve the problem of out-of-state people getting a DUI in Idaho and then going back to their state where interdiction is not that state's law.

PRO: **Kevin Krieg** was recognized to speak to the bill. Mr. Krieg said almost anyone you talk to can name people who have had multiple DUI's and those people are still driving. All that has ever been done is to target the people behind the wheel. The drinking problem has never been addressed. This legislation did not come about suddenly. There have been objections to the cost and carding, but if that is what it takes to keep these people from drinking and driving a law should be passed.

Many of those people who sell alcohol already card everyone. Since the state already does this for persons under the age of 21, the state should also be able to do the same for adults. This bill is attempting to stop repeat offenders. Jackson Mini Marts are required to card everyone who buys tobacco. It is not that far of a stretch to card others. These offenders can be kept from obtaining what causes them to be dangerous on the highway. This provides a mechanism to be used by law enforcement. It will provide protection to the person who has been ordered not to drink and drive for a designated period of time. Mr. Krieg asked that the bill be passed without the amendment.

PRO: **Dana Borquist**, Lieutenant, Ada County Sheriff's office, was recognized. Mr. Borquist said the sheriffs feel that this is a great bill which should be passed.

Ed Pemble, Driver Services Manager, Idaho Transportation Department was recognized. Mr. Pemble said he is before the Committee to speak about the fiscal impact on the bill. There are a number of changes the Department can make to drivers' licenses. This legislation requires a format change. On drivers' licenses for those young adults under the age of 21, there is a red border around the license.

In response to a question regarding how long it would take to initiate changes on adult drivers' licenses, Mr. Pemble said it would probably take until December 31, 2009. The red border could not be used. The procedure is highly automated. It would cost approximately \$250,000 to do.

CON: **Pam Eaton**, representing the Idaho Retailers Assn. and the Idaho grocers and restaurants, was recognized. Ms. Eaton said this would require a lot of work and a lot of extra time. More importantly, the reason for the grocers and restaurants concern is the liability impact. The amendment is appreciated and, if the bill is passed, the amendment should be included.

MOTION: **Representative Kren moved to send H 180 to General Orders with Committee amendments attached.**

SUBSTITUTE MOTION: **Representative Luker moved to hold H 180 for one year to study the language.** There are some technical problems that bear some examination. Also the fiscal impact is a concern.

Representative Burgoyne said the bill is a good one. All laws are difficult to enforce. This is a step in the right direction.

Representative Killen said the licenses require a notation. He asked if that cost would be included in the \$250,000. The answer was yes. The cost is really in the formatting.

When asked about further amendments, Representative Clark said the only one he would suggest would be on page 14 to change the effective date and make changes to the fiscal impact on the Statement of Purpose.

Representative Kren called for the question.

**AMENDED
SUBSTITUTE
MOTION:**

Representative Boe moved to hold H 180 until Wednesday, March 11, 2009, so that amendments to the bill can be reviewed.

**ROLL CALL
VOTE:**

On the Amended Substitute Motion to hold for a time certain, voting AYE: Representatives Nielsen, McGeachin, Luker, Boe and Killen. Voting NAY: Representatives Smith, Bolz, Labrador, Kren, Burgoyne, Clark. **Motion failed 5-6-4.**

On the Substitute Motion to hold for one year, voting AYE: Representatives Smith, Nielsen, McGeachin, Luker, Boe, Killen. Voting NAY: Representatives Bolz, Labrador, Kren, Burgoyne and Clark. **Motion passed 6-5-4.**

ADJOURN:

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 11, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** None
- GUESTS:** Michael Henderson, Counsel, Supreme Court; Bob Aldridge, Attorney, Trust Estate Professionals of Idaho; Michael Kane, Idaho Sheriffs Association; Steve Rutherford, Association of Idaho Cities; Heather Reilly, Idaho Prosecuting Attorneys Association; Jason Rose, Officer, Boise Police Department; Mike Ruffalo, Officer, Boise Police Department; Fairy Hitchcock, Citizen; Charlene Quade, Attorney; Chad Cardwell, Program Manager, Department of Health & Welfare; Jim Baugh, Co-Ad
- S 1005a:** Chairman Clark called the meeting to order at 1:30 p.m. He recognized **Michael Henderson** to explain the bill. This bill has been recommended by the Supreme Court to correct a defect in the law. Idaho Code 18-1505B makes sexual abuse or sexual exploitation of a vulnerable adult a felony. Sexual exploitation of a vulnerable adult is essentially the production, publication, selling, financing, advertising, distribution or possession of pornography involving a vulnerable adult.
- The key term used in the statute is “sexually exploitative material.” In particular, subsection (4)(b) of the statute refers to “sexually exploitative material as defined in section 18-1507, Idaho Code, which is the statute that addresses sexual exploitation of children. It defines sexually exploitative material as various visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.
- The reference to material involving a child is inapplicable to the statute prohibiting sexual exploitation of a vulnerable adult and could cause confusion as to the elements of the crime. If applied literally, this would mean that in order to prove sexual exploitation of a vulnerable adult, the state would have to show that both a vulnerable adult and a child were used in the pornography. This obviously is not what was intended.
- This bill would remedy this problem by including a definition of “sexually exploitative material” in section 18-1505B. The definition would be identical to the definition of that term in 18-1507, except that the term “vulnerable adult” would be substituted for the word “child.”
- MOTION:** **Representative Shirley moved to send S 1005a to the floor with a Do**

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

S 1006a:

Michael Henderson was recognized. This is one of the bills that has been recommended by the Supreme Court to correct defects in the law. Idaho Code 19-5307 provides for additional fines of up to \$5,000 in cases involving crimes of violence. These fines are paid directly to the victim of the violent crime or, in the case of homicides or crimes against children, to the family of the victim. The statute states that these fines operate as civil judgments.

If that were the only way in which these fines could be collected, the burden would be entirely on the victim to enforce the collection of the fine from the criminal. That would not seem to be what the legislature intended. This bill makes it clear that the clerk of the court can also collect this fine in the same way as any other fine, and then pay the money collected to the victim.

The amendments were added to the bill in the Senate to make it clear that the exemptions from execution of a judgment, including the exemptions for homesteads and worker's compensation claims, would still apply.

When asked about prioritization of the fines, Mr. Henderson said the Court does have a priority schedule.

MOTION;

Representative Wills moved to send S 1006a to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Wills will carry the bill on the floor.

S 1007:

Michael Henderson was recognized to explain. This bill has been recommended by the Supreme Court to correct a defect in the law. It is intended to make it clear that the clerks of the district courts may contract with collection agencies to collect restitution owed to victims of crime.

Idaho Code 67-2358 already provides that public agencies may retain collection agencies for the purpose of collecting public debts, including restitution, but the statutes in other sections of the code that address the use of collection agencies do not address the collection of restitution. Idaho Code 19-4708 provides for the use of collection agencies by the clerks of the district courts for the collection of "debts owed to courts," which are defined as including fines, courts costs, fees and various other charges, but there is no mention of restitution.

Section 1 of this bill corrects this oversight by adding "restitution" to the definition of debts owed to courts in 19-4708. Section 2 of the bill amends 19-5303, which deals with the collection of restitution, by providing that the clerk may take action to collect restitution, including the use of collection agencies. Section 3 amends 20-520, the sentencing provision of the Juvenile Corrections Act, to provide that the clerk may contract with collection agencies to collect restitution.

In all of these situations, the contracting with collection agencies could be undertaken only with the approval of the administrative district judge of that district.

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

S 1047: **Bob Aldridge** was recognized to explain the bill. Guardianships and conservatorship under the Idaho Probate Code have had extensive enactment of provisions to provide for temporary appointments of guardians or conservators when needed and to provide for a clear definition of the duties and powers of the Guardian ad Litem, an attorney appointed by the Court to represent the incapacitated person. However, the Developmental Disability provisions in Chapter Four of Title 66 have not had those same updates.

This has caused problems since there are no provisions in the Developmental Disability area to appoint temporary emergency guardians or conservators, which leaves the developmentally disabled person in limbo and without protection until a hearing can be held on the petition. Similarly, although the code requires the appointment of a Guardian ad Litem in most cases, there is no definition of either the duties or of the powers of the Guardian ad Litem.

This bill changes the language of the Probate Code provisions to reference the developmentally disabled person as respondent instead of a ward or incapacitated person. Section One provides for the appointment of a temporary guardian or conservator in a combined single section, but with the same provisions and protections as the Probate Code provisions. Section Two provides the duties, rights and powers of a Guardian ad Litem by direct cross reference to the Probate Code provisions. Section Three declares an emergency and makes the bill effective upon passage.

The bill provides clarification for Developmentally Disabled proceedings and will avoid delays and confusion.

When questioned about the vagueness of the language in subsection (d), lines 34 and 35 on page 1, Mr. Aldridge said that language is used in the Probate Code and other sections. It covers situations which are not easy to define. The appointment of a temporary guardian or conservator could only be made if it was shown that substantial harm might be done before the hearing on the petition can be held.

PRO: **Charlene Quade**, an attorney in Boise, was recognized to speak to the bill. Ms. Quade said she has served as a Guardian ad Litem. Ms. Quade helped draft the legislation because it solves a growing problem.

PRO: **Chad Cardwell**, Department Manager for the Department of Health & Welfare, was recognized. Mr. Cardwell said the Department supports S 1047. Guardianships are serious matters. In emergency situations, time is not always available to go through a hearing on the petition. This bill will increase consistency and add clarity and authority. Mr. Cardwell asked that the bill be passed.

Representative Smith said the Smith Subcommittee considered this bill and one of the concerns was that in subsection (b), lines 29 and 30, and in subsection (d), line 34, that language is pretty subjective. The

Subcommittee was concerned that a party could come in and go before the judge all by himself and obtain an order.

Representative Luker suggested that a safety net be inserted in the language. Representative Burgoyne said there was concern concerning the ex parte provision.

MOTION: **Representative Smith moved to send S 1047 to General Orders with the following amendment: On line 17, page 1, after “petition” add “this section shall not apply to a petition seeking replacement of an existing guardian.”**

SUBSTITUTE MOTION: **Representative Wills moved to hold the bill for a time certain until next Tuesday, March 17, so that the language to amend the bill can be worked out. Substitute Motion carried by voice vote.**

S 1106: **Heather Reilly** was recognized to explain the bill. Ms. Reilly said this bill is supported by the Idaho Prosecuting Attorneys Association, the Fraternal Order of Police, the Idaho Sheriffs Association, the Association of Idaho Cities and the Idaho Chiefs of Police. The bill amends 18-8002 and 18-8003, Idaho Code, to provide authority for judges to order restitution, upon conviction for driving while under the influence offense, reimbursing law enforcement agencies for the cost to withdraw blood samples, perform laboratory analysis, preserve evidence and present blood analysis testimony during judicial proceedings.

Added language states “The court may order restitution pursuant to the provisions of section 18-8003(3) Idaho Code.” Blood draws make up a small percentage of DUI investigations. The majority of investigations are based upon breath tests. However, the cost of blood draws can have a significant impact on some law enforcement agencies. Boise City Police had an estimated 2100 DUI cases in 2008. Approximately 10% were blood draws. The cost of blood draws can have a significant impact on some law enforcement agencies.

If paramedics did the blood draw, the cost ranged from \$200 to \$210 per draw. The restitution ordered, if any, will vary greatly from jurisdiction to jurisdiction depending upon the number of DUI convictions that were based upon a blood draw investigation. This legislation gives law enforcement agencies the ability to be reimbursed by a convicted defendant for the cost of an essential part of the investigation.

The offender who chooses to put the community at risk by driving while under the influence should bear the cost of the blood draw and lab analysis conducted as a result of his or her dangerous behavior. It is not intended that insurers of the convicted party be billed by the courts or the prosecutors for the cost of the blood draw.

Blood draws are only done if, for example, the offender is throwing up or if the person has used a controlled substance. In these cases, a breath test could not be made.

MOTION: **Representative Nielsen moved to send S 1106 to the floor with a Do**

Pass recommendation.

Ms. Reilly said the breath test is quick and the least intrusive of the tests. Law enforcement makes the decision on which test will be used.

PRO: **Michael Kane**, representing the Idaho Sheriffs Association, was recognized to speak to the bill. Mr. Kane said the sheriffs support the bill.

CON: **Fairy Hitchcock** was recognized to speak against the bill. Ms. Hitchcock expressed concern because of the blending of alcohol and drug use, saying the legislation was not well written.

MOTION: **The motion passed by voice vote.** Representatives Nielsen and Wills will carry the bill on the floor.

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** March 17, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representative Jaquet
- GUESTS:** Senator Bart Davis; George Gutierrez, Bureau Chief, Industrial Commission; Patricia Tobias, Administrative Director of the Courts; Fairy Hitchcock, Advocate Volunteer
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes of the previous two meetings.
- MOTION:** Representative Smith moved to approve the minutes of the meeting held on March 11, 2009, as written. Motion carried by voice vote.
- MOTION:** Representative Wills moved to approve the minutes of the meeting held on March 9, 2009, as written. Motion carried by voice vote.
- S 1046:** The Chairman recognized **George Gutierrez** to explain the bill. The Idaho Industrial Commission, Crime Victims Compensation Program (CVCP) is proposing a change to Idaho Code 72-1025 relating to fines imposed on misdemeanor, felony and sex offense convictions, paid into the Crime Victims Compensation Fund. These fines serve as the primary funding source for payments made on behalf of victims and for CVCP administration.
- The bill increases the fines imposed on convicted criminals as follows: misdemeanors from \$25 to \$37; felonies from \$50 to \$75; and sex crime related convictions from \$200 to \$300. Funding generated through criminal fines has not kept pace with medical inflation and program growth, reducing the CVCP to levels that are insufficient to meet current and future needs. This fine increase would generate approximately \$966,869 additional monies annually to help keep up with the increasing demand for services and medical inflation.
- The Crime Victims Compensation Program is funded solely by fines assessed on criminal convictions in Idaho, a matching federal grant, restitution and subrogation collections and donations. Since FY 2004, the program has seen a 151% increase in victims seeking assistance and a 206% increase in payments made on behalf of victims. In FY 2008, \$3.18 million was paid out on behalf of victims, while fines collected were only \$1.9 million. This bill would have no impact on the general fund.

Since 1993, several benefits were added, without increases in funding. Those benefits were sexual assault forensic examinations, funeral benefits, family mental health benefits and additional mental benefits to victims with extenuating circumstances. The current fund balance is \$833,051.

In order to contain costs, the following efforts have been made: a 25% reduction in payments for treatment of injuries; reduced operating expenses by 27%; aggressive research and analysis of atypical third party payment sources; restructured staff to maximize personnel dedicated to recovering funds through the criminal and civil courts.

In answer to a question regarding how victims find out about the Crime Victims Compensation Program, Mr. Gutierrez said applications are made available to them. Training is provided to various victim advocate groups. The applications are available online. Police and prosecutors have them.

In response to a question regarding the number of employees, Mr. Gutierrez said there are eleven people directly responsible. Two others work on computers. The CVCP is currently spending approximately \$700,000. Information on the collection rate is very difficult to find.

The worst repay is 41% which is for felonies. **Patricia Tobias** was recognized to explain other repays. For misdemeanors, the collection rate is 80%. For infractions, the collection rate is 96% to 97%.

When asked how co-pay worked, Mr. Gutierrez said the program is only seeking money that has been paid out.

MOTION: **Representative Shirley moved to send S 1046 to the floor with a Do Pass recommendation.**

CON: **Fairy Hitchcock** was recognized to speak to the bill. Ms. Hitchcock said she was distressed by the bill. She cited a case where a girl was violently raped and in the two years following she has received a total of \$600 from the CVCP. She questioned where the funds go.

Mr. Gutierrez said the money goes to the individual providers including medical counselors, funeral homes, dental expenses, prescriptions and forensic examiners.

Motion carried by voice vote. Representative Shirley will carry the bill on the floor.

S 1050: The Chairman recognized **Senator Bart Davis** to explain the bill. This bill is an amendment to Idaho Code section 11-603, which deals with property exemptions, to add medical savings accounts. An amount of up to \$2,000 a year can be put into that account, which would be excluded from tax in Idaho. A medical savings account is not exempt from execution. These are funds put in each year for the payment of medical bills that are incurred.

- MOTION:** **Representative Nielsen moved to send S 1050 to the floor with a Do Pass recommendation.**
- Representative Burgoyne** said it didn't seem fair that if someone were injured at someone else's hands, that plaintiff would not be able to obtain funds from the medical savings account money. Only the person who owns the account can use the money.
- Representative Hart** spoke in favor of the motion. This medical savings account can only be accessed by the person who owns it. This will probably reduce expenses to the state. This is good public policy.
- SUBSTITUTE MOTION:** **Representative Luker moved to send S 1050 to General Orders with Committee amendments as follows: In line 19 of the printed bill, after the word "amount" insert "not exceeding \$5,000".** Also, the caption would need to be amended.
- Representative Labrador** spoke against the substitute motion. He disagreed with putting a cap on the legislation saying there won't be that much of a problem.
- Representative Nielsen** spoke in support of his motion.
- Representative Luker withdrew the substitute motion.** He said he would like to see a bill come back in another section of the code with some limitations.
- ORIGINAL MOTION:** **Original motion to send to the floor with a Do Pass recommendation carried by voice vote.** Representatives Luker and Burgoyne asked to be recorded as voting "no" on the motion.
- S 1047:** Chairman Clark said this bill was heard previously and held until today's meeting so that amending language could be worked out. **Bob Aldridge, the sponsor of the bill, asked that the bill be held in Committee.** More time was needed for all interested parties to get together. There being no objection, **S 1047 was held in Committee.**
- ADJOURN:** Prior to adjourning, the Chairman said three bills on the agenda for Thursday, March 19, 2009, will be heard for informational purposes only. No vote will be taken on those bills. There being no further business to come before the Committee, the meeting was adjourned at 2:30 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 19, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representatives Smith (24) and Killen

GUESTS: Please see attached sign-in sheet

H 223: Chairman Clark called the meeting to order and said the sponsor of **H 223 asked that the bill be held in Committee. There being no objection, H 223 was so held.**

The Chairman said he would take testimony on **H 235, H 236 and H 234** on the agenda. **However, the hearing would be for informational purposes only and no vote would be taken on any of the bills.**

H 235: **Representative Luker** was recognized to explain the bill

This bill modifies deed of trust foreclosure law to provide similar protection to guarantors of obligations secured by deeds of trust as is given to borrowers. In 1988, the Idaho Supreme Court ruled in the case of *First Security Bank of Idaho v. Gaige*,. 115 Idaho 172 (1988), that Idaho law does not provide guarantors the same protection as borrowers under Idaho's foreclosure laws and that the issue was best left for the legislature to decide.

The present economic turmoil has brought emphasis to this issue as some lenders seek judgments against guarantors for payment of loans without first resorting to the property pledged as security for the loan. As lenders go for the cash instead of the property, working capital of guarantors is impaired, causing a domino effect of failure in other projects and a race to sue guarantors first instead of resorting to the security first.

Section 45-1503, Idaho Code, relating to foreclosure of deeds of trust, is amended to include guarantors within the protections of the statute and to apply a single action rule. The amendment also provides that if the lender claims the property is substantially valueless, the lender may bypass a foreclosure sale and proceed to sue upon the debt in lieu of resorting to the security.

Section 45-1508, Idaho Code, includes guarantors within the protections of the deed of trust deficiency judgment law by requiring a single action; however, guarantors are still obligated for the total amount of their guarantee exceeding the value of the real property security. Credit for

default insurance paid for by the obligor or guarantor is given against any deficiency. Contractual waiver of the statutory protections is prohibited.

In answer to a question regarding what problem does this legislation address, Representative Luker said that because of the current economic situation, lenders are now seeking judgment against guarantors first without going after the property which has been pledged as security.

H 236:

The Chairman recognized **Representative Luker** to explain. Representative Luker said this legislation is basically the same as H 235, but it addresses mortgages. The amendment includes guarantors within the protections of the mortgage deficiency judgment law by requiring a single action. However, guarantors are still obligated for the total amount of their guarantee exceeding the value of the real property security. The value of the real property for determining a deficiency is modified from "reasonable" value at an unstated time to "fair market" value at the time of the sale.

H 234:

Dawn Justice, Idaho Bankers Association, was recognized. Ms. Justice asked to turn the podium over to **Ken Howell**, general counsel to the Idaho Bankers Association. Mr. Howell said the depth of the current financial crisis, and the speed of its decline, is readily apparent today. The Bankers Association fully understands that individuals testifying today have suffered an astonishing reversal in their investment activities because of the decline.

While lenders are not partners in developments and don't share in the possible lucrative profits, they are affected by the failure of developments and are experiencing substantial set-backs from their own devalued investment and loan portfolios. Lenders place their working capital at risk in the form of loans, and they are required by regulation and good business practices to put in place adequate security that these loans will be repaid.

One form of that security is the personal guaranty. These bills before the Committee have the effect of adding additional protection to guarantors. However, they have the undesirable effect of reducing the value of that guaranty. The net effect of the proposed changes is primarily serving to remove choices from the marketplace that have been available to the borrower and guarantor since before statehood. The legislative proposals require a prescribed manner of dealing with all loans in default that will not suit every circumstance, nor be to every borrower's, guarantor's or lender's benefit.

For the borrower, a guarantor brings an essential piece of security in lieu of providing additional collateral or placing additional equity at risk in an investment. The guarantor stands in a substantially different relationship to the lender than does a borrower. Rules that apply to a borrower cannot be applied to a guarantor without changing the inherent nature of a guaranty. If H 235 passes, it will result in more collateral or additional equity being required to support a loan. Lenders believe that the free market system should allow borrowers, guarantors and lenders to negotiate the best terms for a contract based on the unique circumstances of each individual loan.

H 235 and H 236 would impose a delay of many months that can turn into years before a guarantor can be required to make good on a promise to repay a loan. H 234 reduces that delay to a period of three months. Lenders believe even this provision has potentially serious effects on the ability to have a guarantor satisfy a promise of repayment.

The impact of the legislation will be to reduce the availability of credit, slow business development and, in the case of H 236, would have a significant impact on agricultural loans. A handout has been given to the members from the Food Producers of Idaho (attachment) that states their serious concerns.

The impact of these bills would also apply to the Idaho small business owner, farmer, entrepreneur and homeowner. The lenders are not promoting H 234, but feel it does less harm than H 235 and H 236.

H 234 is designed to do three things. First, it would impose a three-month limitation on the lender before the lender can go to a guarantor for repayment. During that time the property is offered for sale at a public auction. After that period, any sales proceeds will be applied to the loan balance and the lender can pursue the borrower and the guarantor for any remaining balance.

H 234 also clarifies that whenever a property securing a loan is sold by foreclosure, the proceeds must be applied to reduce the loan balance. The bill also proposes to set the foreclosure sale price as the presumed fair market value, but to do so only as an opening value. Either party is free to present evidence that the fair market value is something different.

The changes proposed by H 234 will apply only to new loans. H 235 and H 236 do not clearly specify current loans which opens up the likelihood of litigation, delays, costs, and from a lender's perspective, a reason to take defensive action that will be adverse to borrowers.

Mr. Howell said no other state imposes a single action rule, a "security first" rule, deficiency limitations on borrowers and guarantors and applies them to commercial properties.

Mr. Howell said a rebuttal presumption is an assumption that can be disproved at any time. It is a starting place. Foreclosure sales are sales where anyone can show up and bid.

Jim Latta was recognized to speak to the bill. Mr. Latta said he is the president and CEO of Idaho Banking Company, a locally owned bank with 4 retail branches and a home loan and construction loan facility based in the Treasure Valley. Mr. Latta has been a banking professional for over 34 years.

Mr. Latta said borrowers and guarantors have choices about how a loan is structured. They may want to limit the liability of a guarantor, so choose to bring additional cash or other collateral to the deal. All of the provisions that would be required which are being discussed are available today as voluntary options at the time the loan is being underwritten.

House bills 235 and 236 require a lender to go to the collateral first before

a repayment from the guarantor can be sought. That requirement presents several important problems and directly diminishes the value the guarantor brings to the loan underwriting process. The results will be to restrict and increase the cost of credit.

When a borrower approaches a bank for a loan, it is the bank's duty to make sure that the loan is secured properly to mitigate risk and that means having a guaranteed repayment source. Almost all commercial real estate loans today are secured with a guarantor. To devalue that security is to substantially change the underwriting process in a way that will have negative impacts to the borrower. With relatively few exceptions, commercial real estate loans in Idaho are being repaid according to the terms of their individual contracts, so there is no statewide crisis that calls for major changes to the laws.

The issues being discussed are not about Idaho banks. There are some out of state banks that have no deposit-taking branches in Idaho. These banks may be acting in a harsher manner towards borrowers and guarantors than Idaho banks that have local loan and deposit customers and employ a great many people in Idaho. Most Idaho lenders work well with their clients to structure good loans for the client and the bank. Changes to the law that bring on unintended consequences are not in the best interest of our economic recovery.

Having the flexibility for the bank and the borrower to work together to arrive at a mutually agreeable solution is essential. Under the provisions of the three bills, a bank's risk is greatly increased and it will be less likely to work with customers to resolve problems.

Tom Ripke was recognized to speak to the bills. Mr. Ripke said he is a member of the Board of Directors of Idaho Trust Bank, one of the state-chartered banks serving Idaho. He has been in banking since 1968 with the majority of that time being devoted to lending, credit risk management and credit policy.

Legislation which changes the order and manner in which lenders can pursue judgment and repayment by the guarantor should not be passed as such changes will impede the availability of credit at precisely the time our nation is trying to do everything possible and spending billions of our tax dollars to unfreeze the credit markets and stimulate lending.

Banks are not business partners with their borrowers. Banks do not share in the potential profits of the borrower's business enterprise, nor do banks expect to share in the possible losses of the borrower's venture. Banks also do not have the right to tell borrowers how to run their business.

The economy is in a recession and some commercial borrowers may be having difficulty repaying their loans. Most of these loans are what are called guarantor reliant, which means when the bank made the loan, a significant amount of the credit judgment was placed on the financial support the guarantor provided to the overall credit.

It would appear to be imprudent to limit or reduce the number of options that can be used in structuring a loan as proposed in these bills. All types

of loans need to have maximum flexibility which is to the benefit of borrowers, lenders and economic growth, Trying to create a simple one-size-fits-all process to handle defaults will have serious unintended consequences.

Banks realize foreclosing and getting back the property pledged to support the loan will result in an even greater economic loss. Bank owned property that is on the market for sale is most usually referred to as distressed property for good reason. Banks are not allowed to own real estate for speculative investment purposes. In fact, banks are required by regulation to dispose of foreclosed real estate within five years. The typical process encouraged by bank regulators requires the bank write off 1/5th of the booked value of the real estate each year.

The typical bank is very motivated to negotiate some sort of forbearance allowing the borrower or guarantor to go forward with a reasonable alternate plan for repayment of a loan. Current law allows such negotiations to be carried out by both the lender and the borrower or guarantor.

There are many positive attributes to guarantor reliant loans as they exist today. Changing the current law will only serve as a disincentive to a lender's willingness to consider and accept such arrangements.

Gary Mahn was recognized. Mr. Mahn said he served as the Idaho Director of the Department of Commerce and he currently serves on the board of directors for Idaho Independent Bank. He also is a small business owner.

During his 37 years of doing business in Boise, he has found it necessary to borrow money from Idaho banks to finance various business pursuits. Some of these loans were used to finance inventory and accounts receivable and other loans were used for the purchase of commercial real estate. For these loans, Mr. Mahn was the mortgage guarantor. The banks loan him money on which he pays interest. Other than some nominal fees, all the banks get out of this loan is their interest and a promise that they will be repaid.

Changing the way mortgage guarantees work would have serious implications on the availability of commercial loans in Idaho. Risk is one of the components used by all lenders in deciding whether or not to make a loan and in determining what the borrower will pay for the loan.

Rural parts of the state may suffer the most if the value of mortgage guarantor is limited, as small businesses, agriculture, and entrepreneurs will be severely restricted in their ability to get credit and the potential cost of that credit will be higher. Mr. Mahn said he sees no reason to change laws that have worked well for many years.

Mark Lliteras was recognized. Mr. Lliteras said he is an executive vice president at Wells Fargo Bank managing a commercial banking office covering southern Idaho.

The proposed changes contained in H 235 and H 236 would likely reduce the availability of commercial real estate loans due to the significant

increase in risk they pose for lenders which will result in fewer real estate related loans being made and the cost being higher to the borrowers for the loans made.

H 234 would also hurt Idaho's small business, entrepreneurs and our economy, though not as significantly as the other two bills. Changing the existing statutes as to the responsibilities of guarantors of commercial real estate loans is bad public policy as it takes away valuable options and it mandates to all borrowers what their options are in applying for a loan.

Lenders want to be the ally of their clients. They make loans in cash and want to be repaid in cash, not forced to foreclose and, in some cases, take over management of a commercial enterprise. As bankers evaluate loan requests, they base their analysis on the five "Cs" of credit: character, capacity, capital, collateral and conditions, all designed for a bank to determine the risks and benefits of a loan request.

A guarantor is considered a potential key source of repayment because of the liquidity, income stream or assets that he or she has that are not dependent on the project for which the loan was made. A guarantee demonstrates commitment to the project by the owners and is a valuable and integral part of the loan.

T.J. Angstman was recognized to give his testimony. Mr. Angstman said his law firm is defending a lot of cases where banks are suing the guarantors. The banks are not willing to work with some of their clients. These bills treat guarantors equally with borrowers. This is particularly important for the farmers. You should be able to pursue both the guarantor and the borrower. Mr. Angstman spoke in favor of H 235 and H 236 and against H 234.

Blair Wilson was recognized to speak to the bill. Mr. Wilson said he represents Northwest Farm Credit Services which is strongly opposed to legislation which in any way delays, stays or otherwise impacts its ability to collect a debt from a non-performing borrower or guarantor, or to foreclose a loan, pursue a deficiency judgment or acquire and resell a mortgaged property of a non performing borrower or guarantor.

These bills would have a direct and negative impact on the availability and cost of agricultural credit. This impact would be most severe for young, beginning and/or small producers who are more likely to require guarantors as a condition of loan approval. Additional costs and loan losses caused by this legislation would be directly borne by the farmer/rancher owners of Northwest Farm Credit.

Farm Credit already gives its customers very substantial borrower rights, including the right to have distressed loans restructured prior to foreclosure and credit review committee appeal options on any foreclosure action.

Alan Cameron was recognized. Mr. Cameron spoke in opposition to H 235 and H 236. Mr. Cameron said this legislation will only reduce and harm Idaho lenders and families. He said that was not the original intent of the legislature. Also, the court has the right to make the determination on fair market value. Mr. Cameron said he sympathizes with the issue,

but the bills don't resolve the problem. There would seem to be sufficient law and guidelines in case law today.

Dave Callister was recognized. Mr. Callister spoke in favor of H 235 and H 236 and against H 234. He said H 235 and H 236 simply clarify and make uniform two principles. They clarify that there is no difference between borrowers and guarantors. They reaffirm pledged property has a value and must be recognized.

For most people, a loan from a bank is the most complicated transaction they will ever encounter and most of the populace cannot understand these documents. It most commonly takes two to three months for a loan to be obtained. Very rarely are these documents negotiated. The two bills will not slow down loaning. Often the originator and the guarantor is the same person.

Gavin Gee was recognized. Mr. Gee said he is the director of the Department of Finance. Mr. Gee said the Department takes no position on the bills, but would like to offer five factors from a regulatory and public policy perspective.

First of all, Idaho based banks did not create the current banking and credit crisis. Much of the crisis was initially caused by subprime lending and related investments that large money center financial institutions created, which have resulted in multiple billions of dollars in losses.

Idaho has been fortunate to date that the state has not had any Idaho headquartered bank failures. However, the dollar amount of non-performing loans and losses from bad loans has grown significantly. Idaho-based institutions charged off nearly \$50 million of troubled loans in 2008 which was a significant increase from the \$5.7 million charged off in 2007.

All three bills, especially H 235 and H 236, if enacted, would have bank safety and soundness ramifications. It is expected that banks look first to the borrower, co-borrower and guarantor for repayment. Foreclosing on the real estate is usually the last effort made to seek repayment on a loan. These bills would change the role of banks from one where they take all available actions to have the loan perform to one where they are forced to foreclose and sell property, and often own and hold it.

From a regulator's perspective, forcing banks to foreclose before pursuing other means of repayment creates safety and soundness issues and changes the fundamental nature of these guarantees.

House Bills 235 and 236 raise further concerns. The bills appear to leave open the question of retroactive application of the provisions. The question of retroactivity will lead to unnecessary confusion, uncertainty, litigation and additional expense.

The proposals could negatively affect economic development in Idaho. There is a concern that by lessening the value of guarantees, these bills will have the practical effects of loans being priced higher and credit being less available.

If federal regulators conclude that passage of these bills will impede the ability of federally chartered institutions to conduct business in Idaho, the law could be preempted as to those institutions. If it were preempted for federally chartered institutions, it would only apply to state chartered financial institutions, which would not only place them at a competitive disadvantage, but would also mean that the law does not apply to the institutions with the largest market share in our state.

In conclusion, Mr. Gee said the timing of these proposals should be carefully considered.

MOTION: **Representative Luker moved to hold H 235 and H 236 for a time certain until Monday, March 23rd. The Chairman replied that this was an informational hearing only and the motion was ruled out of order.**

Wyatt Johnson, attorney, was recognized to speak to the bills. Mr. Johnson spoke against H 234 and in favor of H 235 and H 236. Mr. Johnson said H 235 and H 236 simplify the law. The difference between the originator and the guarantor is that the originator is a debt that is secured and the guarantor is not secured. The benefit from the bills is that the problem is dealt with one time. It is best to have one fast expedited process. Mr. Johnson said he would caution against additional process without purpose.

Nancy Merrill was recognized. Ms. Merrill said H 235 and H 236 call for a one action rule. Nevada has a one action rule and Arizona has a similar law. The economy in those two states is robust. This legislation tries to help the borrowers by one action only. In conclusion, Ms. Merrill asked that the two bills be passed.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 4:00 p.m. Any future meetings will be subject to the call of the Chair.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** April 1, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 240
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representative Hart
- GUESTS:** Michael Henderson, Counsel, Supreme Court; Senator Les Bock; Kathie Garrett, Legislative Advisor; Hal Putnam, Idaho Transportation Department
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.
- MOTION:** Representative Bolz moved to approve the minutes of the meeting held on March 17, 2009, as written. Motion carried by voice vote.
- MOTION:** Representative Wills moved to approve the minutes of the meeting held on March 19, 2009, as written. Motion carried by voice vote.
- S 1153:** **Senator Bock** was recognized to speak to the bill. This legislation provides an additional tool for the drug courts to use to increase the chances for improving the lives of DUI offenders. A similar bill, H 254, was brought forward in 2007, but there were some concerns raised. This bill satisfies those concerns. The Senator asked to yield to Michael Henderson with the Courts, to explain the bill.
- Michael Henderson** said this bill would give judges presiding over drug courts and DUI courts discretion to issue restricted driving privileges for the purposes of work, school or alcohol treatment to participants in those courts who would otherwise be ineligible for such privileges.
- Current Idaho law requires repeat DUI offenders to serve a license suspension of a least one year with no driving privileges whatever. Until recently this was a requirement of federal law. Any deviation from this requirement would have resulted in the loss of a portion of federal funds.
- On June 6, 2008, the federal law was amended when Public Law 110-244 was signed into law. Now, federal law mandates a one year absolute suspension, or 45 days absolute suspension, followed by limited driving privileges for work, school, or alcohol treatment programs, and an ignition interlock device on all vehicles owned or operated by the individual. This change has been made with respect to the sanctions imposed on repeat DUI offenders and with respect to repeat ALS suspensions within a five-

year period.

This bill would follow the three federal requirements, but add the requirements that (1) the individual be a participant in good standing in drug court, and (2) have proof of the required liability insurance.

Judges would have the discretion to grant these privileges. They would not have to grant them and could revoke them for failure to comply with the terms of probation or with the conditions of the drug court program.

The bill would further the usefulness of drug courts and DUI courts and allow judges to use the restricted driving permit as both an incentive and as a tool to increase a participant's chances for success.

In answer to a question regarding restricted driving privileges to enable an offender to practice his or her religion, Mr. Henderson said this bill follows federal legislation. A member said the word "which" as used in the bill, concerned him. Mr. Henderson said that would be one of the things to be addressed when the form is prepared.

MOTION:

Representative Jaquet moved to send S 1153 to the floor with a Do Pass recommendation. In support of her motion, Representative Jaquet said this would provide further incentive to stay in the drug court program. This is a good piece of legislation.

In answer to a question regarding whether the restricted license would be a temporary license, Mr. Putnam with the Idaho Transportation Department, said the permit would be a paper document. The actual driver's license would be held for the term of the sentence.

Motion carried by voice vote. Representative Jaquet will carry the bill on the floor. Representative Kren asked to be recorded as voting "no" on the motion.

ADJOURN:

Chairman Clark said future meetings would be subject to the call of the Chair. There being no further business to come before the Committee, the meeting was adjourned at 2:00 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: April 7, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Please see attached sign-in sheets

Chairman Clark called the meeting to order at 2:45 p.m. and asked the members to review the minutes.

MOTION: Representative Bolz moved to approve the minutes of the meeting held on April 1, 2009, as written. Motion carried by voice vote.

S 1148: Chairman Clark recognized **David Hensley**, legal counsel to the Governor, to explain the bill.

S 1148 is a piece of legislation which is the product of work by the Governor's Task Force on Alcohol Beverage Laws. The Task Force has been in place since 2007 and it is comprised of legislators and various representatives from the Idaho State Police (ISP), Idaho Liquor Dispensary (ILD), the Association of cities and Counties, Idaho Licensed Beverage Association, Idaho Retailers Association, Lodging and Restaurant Association, Beer and Wine Distributors, Wine Commission and the Governor's office.

The Governor asked the Task Force to identify problems with the current system. In addition to that, he asked them to look at balancing economic development with the constitutional mandate preserving morality and temperance. The Task Force was asked to develop legislation for this session with the problems identified and to minimize the impact to the existing license holders.

S 1148 removes the state from issuing new licenses while grand fathering in the existing licenses. It empowers cities and counties to issue non-transferable liquor-by-the-drink licenses without reference to a state imposed population quota system in accordance with the economic development needs of the community. It separates the law enforcement functions of the Department of Idaho State Police from administration of the licensure functions of the Department and provides state administrative support for local license issuance by cities and counties.

The bill creates dedicated revenue sources for state enforcement activities. It also requires enhanced responsibility of servers who sell

alcohol beverages to underage persons, or who serve alcohol beverages to obviously intoxicated adult consumers, as part of a regulatory framework including requirements for server training and graduated licensee civil penalties dependent upon training status of the licensee's employees.

Mr. Hensley said there are currently three ways to obtain a liquor license: 1) you can buy one; 2) get on a waiting list; and 3) you can ask the Legislature for an exemption to the population requirement. The specialty licenses have primarily revolved around licenses in the county for golf courses and ski resorts. With this bill, population restrictions are removed and a new restriction is replaced. It will allow cities and counties to issue licenses to eating establishments and lodging facilities. These licenses cannot be transferred to another person or location.

There are currently 1,100 state liquor licenses. Two hundred thirty five of those are specialty licenses. The existing liquor license holders will receive a discount of ten percent on purchases. Over the long term, this represents a return on their investment and hopefully minimizes the impact of additional municipal licenses. There are currently 875 licenses which can be transferred or sold anywhere in the state where liquor-by-the-drink is allowed.

The last distinction between the municipal and existing licenses is the amount of money a person could anticipate paying annually to renew their license. The bill sets forth a renewal fee at \$3,000 in comparison to \$1,500 for an existing state license. The bill would allow counties to impose a fee not to exceed 25% of the state's annual renewal fee for state licenses outside of an incorporated city and would allow cities to impose a fee not to exceed 75% of the state's annual renewal fee for state licenses within their jurisdiction.

If the licensed premises is in a city under 1000 people or a county under 10,000 people, the annual renewal fee would be \$375. A city between 1000 and 3000 people or a county between 10,000 and 25,000 people would pay an annual renewal fee of \$600. A city over 3000 people or a county over 25,000 people would pay an annual renewal fee of \$900. A beer wholesale license would increase to \$450; beer retail licenses for on premises consumption would be \$75; beer retail licenses for off premises consumption would be \$75 and for licensees that retail beer for on and off premises consumption would be \$100.

A background check will still be required for the issuance of a municipal license. If a licensee has a municipal license and the state beer license is revoked, the municipal license will also be revoked.

It is the intent of the legislation to not only empower the cities and counties to determine their own needs with reference to the presence of additional premises for the sale of liquor-by-the-drink, but also to eliminate the trafficking in the state licenses which has resulted from the state quota system imposed on the local government.

The legislation will increase state beer license fees approximately 33%

and liquor-by-the-drink license fees approximately 20-25%. As a result of the increase in state fees and the removal of the obligation of general fund revenues for liquor law enforcement and licensure, it is estimated that the decrease in general fund revenues resulting from the passage of this legislation, if any, will not exceed \$270,000.

In reply to a question regarding the term "obviously" intoxicated, Mr. Hensley said that term is in current law. Mr. Hensley said any authority of the cities and counties to issue licenses must come from the explicit authority of the Legislature. It is the intent of the Task Force that the Director of the Idaho State Police promulgate rules to be approved by the Legislature. The utilization of outside companies for enforcement of the law will be set by administrative rule which will be adopted.

CON;

James R. Laski, representing SWIG, LLC, the owner of an Idaho State Liquor License in Ketchum was recognized. Mr. Laski said the bill proposes an amendment to liquor sales and licensing provisions to expand the availability of licenses to serve liquor-by-the -drink by allowing counties and municipalities to issue an unlimited number of licenses to qualified restaurants and any hotel without regard to population. The bill proposes to allow presently existing state licenses to be freely transferrable throughout the state as well as to provide a 10% discount on the price of liquor purchased.

Under the present system of issuing licenses, which was enacted in 1947, the availability of liquor licenses was limited, thereby creating significant value for the holders of these licenses. These values have been maintained through the state as the present law allows licenses to be sold to third parties with the state taking a transfer fee in the amount of 10% of the sale price of the license. In resort areas, such as Ketchum, licenses have sold for in excess of \$400,000. This value is supported in a large part by the significant barrier to entry of competition imposed by the existing statute.

The revisions proposed by S 1148 will have a significant and disparate impact on the value of these licenses throughout the state. The bill proposes that existing state licenses will be freely transferrable throughout the state. The result will be a windfall to owners of liquor licenses in smaller communities, while significantly diluting the present license values in resort communities such as Ketchum and Coeur d'Alene. The increase in transferability provides no just compensation to those who paid significant amounts to purchase a license under existing law. Further, it will result in real damages to the license holders who have pledged their licenses as collateral for acquisition loans, or to support operating lines of credit as these loans will be called and/or not renewed due to the decrease in collateral value.

The recalibration of the market values of existing liquor licenses which will necessarily result if the proposed legislation is passed raises significant issues relating to due process, takings and equal protection under both the state and federal constitutions. Given the obvious constitutional infirmities associated with the proposed bill, its passage will likely result in significant litigation as these issues are sorted through. Mr. Laski concluded his testimony by respectfully urging the Committee to vote against the passage of S 1148.

- PRO:** **Michael Weems** was recognized. Mr. Weems said he has been a license holder for 35 years at three establishments. It has always been his opinion that they purchased liquor licenses in order to conduct business. Mr. Weems said it is high time to pass this type of law. No matter what is done, not everyone will be happy. This legislation is fair. It will give a lot more teeth in the law and people will be held accountable. Mr. Weems would welcome formal training of his staff.
- CON:** **Rod Nielsen**, resident in McCall, Idaho, was recognized to testify. Mr. Nielsen said the town is fairly well saturated with licenses. The McCall City Council had no clue about this bill. It seems that small towns are trying to figure out how this will affect them. The lodging facility definition appears to mean a building with overnight accommodations. There doesn't seem to be any other restrictions to obtaining a license. The lack of definition in the bill will close the door to untold numbers of bars all over the state. This legislation needs to go back to the Task Force for further input.
- CON:** **John Prokschl** was recognized. Mr. Prokschl said the vote on this will directly impact him and his wife. They own a small bar in Pocatello. It is very difficult to run a reputable establishment. They are still paying on their liquor license. If there are more licenses granted, the value of their license will drop. They didn't intend to speculate when they purchased a license.
- CON:** **Brad Burtenshaw** was recognized. Mr. Burtenshaw said he owns two liquor licenses in his restaurants in Pocatello. He didn't buy those licenses to speculate. This legislation is very serious. It isn't fair to cause the value of his licenses to go down. Mr. Burtenshaw also expressed concern about policing and about the growth in the number of bars.
- CON:** **Bob Thronson** was recognized. Mr. Thronson said he has owned a restaurant and had a license for many years. That license does have value. There are laws in place that license holders have to adhere to. He said he would have a lot to lose with the passage of this legislation. Payment for a license will be a lot less with this bill.
- CON:** **Kurt Payne** from Idaho Falls was recognized. Mr. Payne said he is in the second year of a fifteen year loan to pay for two liquor licenses. If this bill passes, the supply of liquor licenses will be unlimited. If the supply is unlimited, the value will plummet. There are some good things about the bill such as the training which Mr. Payne said he would implement. However, the legislation changes the rules. With the saturation of new licenses, his businesses will suffer. Those businesses are his family's only retirement plan.
- PRO:** **Ron Swearingen** was recognized. Mr. Swearingen said he is the director of economic development for the City of Mountain Home. This bill will enhance economic development, encourage investment and create jobs. Mr. Swearingen said there is a developer who wants to build a large restaurant facility in Mountain Home. The \$1.5 million dollar facility would employ 45 people. The developer would use Idaho contractors and vendors. However, there are currently no licenses available for purchase. This legislation provides a vehicle for economic development and also

gives some value protection to state license holders because the state licenses carry much lower annual renewal fees, may be sold or transferred and the owners get a substantial discount at the State Liquor Dispensaries.

PRO: **Julie Pipal**, lobbyist for the Boise Metro Chamber, was recognized. Ms. Pipal said the Chamber supports the legislation. The bill is a compromise solution that reflects good public policy. It separates the licensing and enforcement aspects of the program by placing the administrative component under the Bureau of Occupational Licenses and leaves the enforcement authority to the Idaho State Police. This neutralizes any concept of one entity being judge and jury and allows both functions to operate efficiently. The licensees will pay for the cost of the administration and enforcement. The bill promotes server training and it is good for business in the state of Idaho and helps to ensure that those businesses involved in the sale and service of alcohol are professionally operated.

CON: **Brian Donesley**, an attorney and former State Senator, was recognized to testify. Mr. Donesley said he was once a Liquor Chief. There is a constitutional problem with this bill. The system does not need a major overhaul and this bill will create more problems that it will fix. The Constitution states we have to regulate and encourage temperance, sobriety, morality and family. This is an economic development bill. With this bill, there will be lost revenue. It will put the state in the business of promoting liquor sales to substitute for lost revenue due to the enhancement of the availability of liquor licenses. The taking argument will be pronounced. A taking is property which is devalued. The bill authorizes too much too fast.

CON: **Representative Trail** was recognized to testify. Representative Trail said the first concern of all good government is the virtue and sobriety of the people and the purity of the home. The Legislature should further all wise and well directed efforts for the promotion of temperance and morality. The Constitution clearly notes that the state of Idaho shall have full power and authority to permit, control and regulate or prohibit the manufacture, sale, keeping for sale and transportation for sale of intoxicating liquors for beverage purposes.

Representative Trail said Sheriff Wayne Rausch of Latah County and the incoming president of the Idaho Sheriffs Association has said that this bill would greatly increase the illegal activities surrounding alcohol serving establishments by increasing the number of establishments the state will have to deal with.

Representative Trail said the sponsors of this legislation have failed to fully document the full cost to the state of Idaho. There will be added costs of a new division created within self-governing agencies. The far greater social costs that will be unleashed if this bill is passed will include the added costs to law enforcement and the judicial system and the cost of housing additional felons in our already overcrowded prison system. This bill is said to be business friendly, but where is the support from the general public? The bill is opposed by the PTA, MADD, various drug rehabilitation organizations and the Idaho Education Association. These

groups should have been consulted when the bill was being drafted. Representative Trail concluded by asking the committee members to oppose the bill.

PRO: **Elisha Figueroa**, with the Meridian Police Department, was recognized to speak to the bill. Ms. Figueroa said this bill will make it more difficult to obtain alcohol. It makes server training mandatory. Once a server has been trained, this legislation provides for a civil penalty. Although the legislation is not perfect, it is a step in the right direction. In answer to a question regarding the growth of establishments, Ms. Figueroa said it is the understanding that most of these establishments will be restaurants. The annual compliance checks are also very important.

CON: **Denise Rogers** was recognized to give her testimony. Ms. Rogers said she was the Administrative Assistant for Alcohol Beverage Control from 1992 until 2004. Her expertise is alcohol laws. This bill lacks consistency and definition and it is detrimental to Idaho businesses. Ms. Rogers said she has never found a lack of available licenses. In twenty years, she has never seen any restaurant not prepared to pay the current market price for a license in Idaho.

Ms. Rogers expressed concern that in this time of recession, when state agencies have been asked to cut their budgets by at least 5%, and state employees and teachers are being let go, that this bill creates a new bureaucracy, especially with dedicated funds. The need for 40% of the money collected by the new division to fund state enforcement is unbelievable. She also expressed concern that the bill appears to double the fine for a licensee who has not trained their servers, while the words "all of the licensee's employees" will give the enforcement agency an excuse to charge the full amount if a bookkeeper, dishwasher or bus-person has not received server training. Also, it is suggested the convenience stores do voluntary training. These businesses should also be required to train their employees.

Ms. Rogers said she has known and worked with licensees for years. They are good, reasonable business people. They have not bought or sold licenses on the "black market." All license owners and/or operators must apply to the state, pass a background investigation and pay a 10% tax to the state for the transfer of the license.

This bill has been passed by the Senate without regard to the illegal takings issue and without regard to these business owners. The bill is not ready for approval. It is expensive, full of errors and unfair to Idaho businesses. It does not uphold the constitutional directive to promote sobriety and temperance and morality.

ADJOURN: Chairman Clark thanked the people in the audience and said testimony on the bill would be resumed at the meeting to be held on April 9, 2009, at 1:30 p.m. or upon afternoon adjournment. There being no further business to come before the Committee, the meeting was adjourned at 5:04 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: April 9, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Please see attached sign-in sheets

Chairman Clark called the meeting to order at 1:30 p.m. and asked for approval of the minutes.

MOTION: Representative Bolz moved to approve the minutes of the meeting held on April 7, 2009, as written. Motion carried by voice vote.

S 1148: The Chairman said testimony would continue to be taken on the bill which was presented to the Committee on April 7, 2009 and continued to this meeting. The Chairman recognized Karen Des Aulniers to speak to the bill.

CON: **Ms. Des Aulniers** spoke against the bill. She agreed with the server training portion, but there are flaws with the bill. She had asked to sit in on the Task Force meeting and was told absolutely not. An overwhelming fact is that alcohol abuse costs this country \$200 billion each year. Underage drinkers in the state of Idaho cost \$240 million. Passing this bill will not help the people of Idaho. Law enforcement agencies do not have enough people to enforce this legislation.

PRO: **Melissa Delaney** was recognized. Ms. Delaney said she was with the Meridian Police Department. Ms. Delaney said the legislation is a great step. The bar needs to be raised and this bill seems to provide this. Mandatory is a great step for training. With all involved working together, our neighborhoods will be strengthened. The current 2 ½ enforcement officers for the entire state does not provide justice. The communities need additional local control. Ms. Delaney said she fully supports the passage of this bill. In answer to a question regarding the increased places with liquor licenses, Ms. Delaney said there will be more people watching over those establishments.

PRO: **Brenda Murdock** was recognized. Ms. Murdock said she has been with the Meridian Police for 28 years in law enforcement. She is here to support the bill. The legislation takes the city of Meridian in the right direction. The city will be able to choose who is able to sell alcohol. The city has already established server training.

CON: The Chairman recognized **George Tate**. Mr. Tate said he owns a state liquor license in the city of Twin Falls. This bill will let almost anyone get a liquor license. As a result, his license will lose value.

CON: **Susan Jenkins** was recognized. Ms. Jenkins said she is from Emmett and she is a retired school teacher. She has been a bar owner for about a year. Her first concern is public interest. This bill will have unintended consequences. She has to rely on data someone has gathered. This bill deals with extremely important issues. It has the capacity to affect everyone in the state. She expressed concern over why such sweeping changes are necessary in Idaho. Ms. Jenkins said she would like to see the data that has been collected. She said she couldn't justify the language contained in the bill where training is mandated. She questioned how qualified the trainers would be. She has an aversion to legislation which will cause more harm than good. In conclusion, she asked the members to really think about this and vote no on the bill.

CON: **Larry Jenkins** was recognized. Mr. Jenkins testified in opposition to the bill. This bill will not help small businesses like his. It is poorly written with unclear intent. The language is ambiguous. In the bill there is a minimum fee of \$3,000 for a licence, but is isn't clear how much can be charged. Current law enforcement comes through his establishment in Emmett at least once a week. This bill is not a stimulus bill. It will allow large chain restaurants to come into the state if they are able to obtain a license. There is no data to support the economic benefits. He questioned whether voters really want more bars in their cities.

CON: **Philip Roderick** was recognized. Mr. Roderick said he built a business in Idaho and is familiar with the pain of being close to bankruptcy. Idaho does not have the right to put him at risk with this legislation. He bought his liquor license under the current laws. The transfer of his business and assets to someone else is uncomprehensible. This bill will cause harm. It has no place in the citizens' way of life. The restaurant and lodge definitions need to be tightened. There is a handout about Crime in Idaho which has been passed out (attachment) which has a title saying "You Can't Manage What You Can't Measure." It shows potential crime rates in Idaho towns and cities if the bill is passed.

CON: **Wesley Harris**, a resident of Star, Idaho, was recognized. Mr. Harris said he does not support the bill because he doesn't believe there is a need for it. The bill is being proposed as a way of increasing the amount of licenses available as there is an assumed shortage. The bill is also promoted as an economic stimulus program that will increase the sale of alcohol in the state and encourage new businesses to open. There were over 30 liquor licenses returned to the state last year and there was no demand for them. The fact is, there are no shortages of licenses in the state. Any business that wants a license can currently buy one.

The average license in this state sells for about \$60,000. The purpose of this bill is to reduce the price of a liquor license to a few thousand dollars and make those licenses available to most every restaurant, hotel and motel in the state. Mr. Harris said he has to question the wisdom behind a proposed law that promotes the increased use and sale of alcohol as an

economic stimulus program. It is being proposed without research into the adverse effects or the repercussions that these actions will have on the current license holders and the people of the state. Mr. Harris then asked for and was granted permission to give the following quote:

“Over-concentration of alcohol outlets is part of neighborhood economic and social disintegration. The area’s economic base loses its diversity and becomes less attractive to both residents and potential retail customers. The proliferation of alcohol outlets is thus both a symptom of economic decline and a factor that worsens the decline.” Quoted from Chicago IL: Woodstock Institute, 1997.

Mr. Harris said in other states, where the quota system was abolished, there was a dramatic increase in alcohol related incidences including underage drinking. This bill will serve to destroy local businesses. Mr. Harris concluded his remarks by asking the members to hold this bill that will be so detrimental to our businesses, our way of life and the safety of the people of Idaho.

PRO: **Richard Riggs** was recognized. This is a good bill which should be passed. It is a preventative measure that takes place before a problem starts, all because of the training and licensing. Last year, Mr. Riggs said he testified for a bill to train people who serve alcohol. The bill was sent back to be rewritten. This bill requires enhanced responsibility for servers who are trained. There are currently 26 states with alcohol training and serving permits or licensed servers and, for 13 of the states, this training is mandatory. It is true that an ounce of prevention is worth more than a pound of cure. When there are 545 DUI convictions in the first six months of 2008 in Canyon County, changes need to be made. It has been 62 years since the law has been reviewed and updated. Mr. Riggs asked that the bill be passed.

CON: **Representative Robison** was recognized. Mr. Robison said the bill includes provisions that would weaken enforcement of laws against underage drinking and make licensees less accountable for violations. Underage drinking is a huge problem in Idaho. Recent surveys show that nearly half of Idaho high school students drink. Surveys indicate that 20 to 30 percent engage in binge drinking which consists of five or more drinks at one time. Surveys also show that 25 to 30 percent report having ridden with a drinking driver in the past month.

The primary purpose of this bill seems to be to transfer authority for liquor-by-the-drink licenses from the state to the local level and to allow more establishments to have licenses. Unfortunately the bill also reduces the responsibility of licensees for violations of the law, including sale to minors. The licensees are no longer subject to possible license suspension. There will only be a warning for the first two violation and a maximum \$500 fine for a third.

The changes in section 23-603 apply not only to licensees selling liquor by-the-drink and restaurants selling beer or wine, but also to convenience stores and other retail stores that sell beer. They are also shielded from possible suspension for up to three violations in three years. The bill requires training for by-the-drink servers, but not for clerks selling beer.

There is a new section, 23-924, on page 23, which would take away or weaken an important enforcement tool. In lines 38 and 39, minors are barred from making any false statements regarding their age. Since the purpose of the inspection is to determine whether they will be asked to show identification, this defeats the purpose.

CON: **Jan Sylvester**, legislative representative with the Idaho PTA, was recognized. She said the organization agrees with Representative Robison's remarks. The PTA tries to get students involved in government.

CON: **Jason Crawford** was recognized. Mr. Crawford said he owned a bar for several years. There are parts of the bill that he agrees with, such as the training. His employees are certified. He also agrees with limiting the power of the ABC. He never had a single violation in his bar. He has had two violations in his restaurants. The concerns he had are economic, social and personal issues. This legislation could cause some bars and restaurants to go out of business. He said he paid \$160,000 for his liquor license and when he couldn't afford it anymore, he leased it. If there are more places to buy liquor, there will be that many more places to police. The legislation is as close to eminent domain as it can be. Perhaps training should be a separate bill. There needs to be more time given to people so they will know that this is going to happen.

PRO: **Kevin Settles**, owner of the Bardenay Restaurant, was recognized. Mr. Settles said he was on the Task Force and he has been involved at least five years with this legislation. The current regulations in the state are not a good way to do business. The quota system will go away someday and he wants to do the best that he can for himself and the industry. Taking the license out from under the control of the state will allow it to be treated like a business. The five percent discount provides some incentive and over time there is a chance the value of the license will increase.

Mr. Settles said he likes that it will discourage third party profiteering. His right to sell liquor should be between him and the licensing agency. He said he is a huge proponent of server training and has been doing it for years. The training programs are easy, inexpensive and readily available. They will ensure that the person who serves a minor is held accountable. Currently the server is not liable for serving a minor, but as the license holder, he has to pay the penalty.

CON: **Pug Ostling** was recognized. Mr. Ostling has owned twelve different restaurants and has employed between eight to nine thousand people over the years. He would never take the risk of not training his employees. Mr. Ostling said he was concerned about how the Task Force was selected. Germane people were excluded. Small businesses don't speak legalese. There is this continuous reference to speculation. There should be careful consideration given for the small business owners. Mr. Ostling said he didn't understand the rush to get this legislation passed. There might be alternatives that will be less harmful. Excellent local restaurants have closed recently. If the bill passes, the state will lose the uniqueness it has had with its restaurants. Also, policing will be a problem. With this legislation, every city and county has been given a lot of leeway. He questioned how the enforcement funding

would be obtained and asked how this bill would benefit the people of Idaho. In conclusion, he asked the members to do the right thing and give a no vote on the bill.

PRO: **Butch Morrison** was recognized. Mr. Morrison said he owns The Crescent “No Lawyers” Bar and Grill in Boise. He is also the president of the Idaho Licensed Beverage Association. The Association was an active participant in the effort to draft this legislation. This legislation represents a change in the alcohol business and the Association believes it is a good one. Although not everything is perfect in the bill, it is a good step in the right direction.

CON: **Russell Purcell** was recognized. Mr. Purcell said he opened his first bar in Boise in 1986. At that time he leased a liquor license. Then he made the decision to invest in a liquor license for the future of his family and to support his business. In 2001, they opened another business and purchased a liquor license. At various times, he financed the purchase of the liquor license and pledged the licenses as collateral for loans from banks. This was his savings account and was expected to be his retirement investment for the future. If something were to happen to him, those liquor licenses are currently liquid assets.

Mr. Purcell asked the Committee to consider his request to vote no on the legislation. The bill will take away his equity in his licenses and it will make it impossible to compete with the many more liquor licensees who will be spreading the business too thin. In conclusion, Mr. Purcell said the bill represents a disaster for him and for others who have invested so completely in the Idaho beverage and hospitality industry.

CON: **Jeff Peters** spoke in opposition to the bill. He said by saturating the market with liquor licenses, it will take away the value of those licenses. He does support the training section of the bill. He owns a bar in Nampa which is checked at least once a month. He felt it was important to be able to express his views before the Committee.

PRO: **Pam Eaton**, President of the Idaho Retailers Association and the Idaho Lodging and Restaurant Association, was recognized. Ms. Eaton said both groups support S 1148. Before the Task Force was even formed, there were several groups that wanted this legislation. Ms. Eaton said all of the big chain convenience stores already do training. As for the smaller stores, training is needed but they wanted to have a program developed for the training. There are incentives to do voluntary training. Voluntary training will do more than mandatory training. Most people choose to belong to the association that represents them. Information is mailed out to members on a regular basis. Ms. Eaton said this is a good bill and the majority of the members are in full support.

When asked if there is some type of internet base to provide this training, Ms. Eaton said there is a program on line. When asked what the existing problem is, Ms. Eaton replied part of the problem is the waiting list trying to find someone who wants to sell a license. People who want to open a business can't afford a license under the current system. In reply to a

question regarding the definition of lodging, Ms. Eaton said lodging establishments can hold a liquor license and it is up to the municipalities to regulate that.

PRO: **Ken Burgess**, Legislative Advisor for the Idaho Licensed Beverage Association, was recognized. Mr. Burgess said in the past 18 months he has had the opportunity to know these liquor licensees. All the members are hard working, fiercely independent and they are busy conducting their business. None of the operations run in the same manner. This was not an easy decision for people to come together to support this bill. Mr. Burgess said he has heard from a number of licensees who claim they haven't heard anything about this process. Mr. Burgess said the Task Force tried to send information to all licensees. The Task Force tried to update them on the issue. These licensees expect fair value for their licenses.

The Task Force has tried to protect the value of these licenses. This will keep in place a level of value. Current state licenses are transferrable statewide. A municipal license is non-transferrable. The municipal licensees get no discount. There will now be a 10% discount for state license holders. The market will level itself out. There will be no other state licenses issued. There is a cap on those licenses. The Task Force spent a lot of time and effort on this bill. Mr. Burgess asked that the bill be given a do pass recommendation. He said he didn't believe there would be this huge proliferation of liquor licenses for these restaurants. In answer to a question regarding making the training portion a separate piece of legislation, Mr. Burgess said the training in the legislation was a compromise. The positive outweighed the negative in the bill. The idea was to balance out the market. With regard to an extension of time on the legislation, Mr. Burgess said that would probably cause people to not buy a license until other legislation came out.

PRO: **Jerry Russell**, Director of the Idaho State Police, stated that he stands before the Committee in support of the bill. For the last two years he served as a member of the Governor's Task Force which evaluated and made recommendations for the revamping of Idaho's Alcohol Beverage Code. This bill represents the work product that the Task Force produced and is a consensus of those individuals and the diverse interests they represent.

As a law enforcement professional with nearly three decades of experience, Colonel Russell said he firmly believes that the bill provides for good and enforceable law. It provides consistent administrative oversight and strong enforcement of penalty provisions. It continues to require background checks for all license applicants. The bill continues to charge the Idaho State Police for the enforcement of the penal provisions of the alcohol beverage laws which include compliance checks for state licenses.

Currently there are 2.5 police officers to provide both administrative and enforcement functions. Not only will this bill allow for increased state enforcement of the penal provisions, but it identifies a dedicated funding source which will provide for long-term stable enforcement funding. The newly established Division of Alcohol Beverage Licensing will be

responsible for the administration and oversight of alcohol licenses. By removing the Idaho State Police from administrative responsibilities, the bill allows the police to focus on enforcement activities which will provide a greater statewide enforcement presence.

Through a combination of education, incentives, and enforcement when dealing with the business owners, the servers and the consumers, this bill goes a long way in positively affecting the change necessary to reduce problems. It requires mandatory training of servers. It places the responsibility on the server who serves a minor and on the minor who knowingly misrepresents his age making it a misdemeanor. Colonel Russell concluded his remarks by saying he believes that the bill serves the common good of the citizens and it effects change through lawful and willful compliance.

In response to a question regarding the fact that there is no limitation on the number of licenses, Colonel Russell said he believes it is important that we take action to train and educate. The warnings contained in the bill are for the owners of the establishment, not the trained servers.

PRO: **Representative Chavez** spoke in support of the bill saying it is pro education. Training is so important. There are currently 21 states that require training. This training can be taken on line, as well as on site. There are a number of programs on line which are available. Irresponsible behavior cannot continue to be excused. This is not a perfect bill. Amendments can be added later as needed. In the meantime, the health and safety of Idaho youth is important.

PRO: **Bill Nary**, City Attorney for the City of Meridian, was recognized. Mr. Nary said he also represented the Association of Cities on the Task Force. Mr. Nary said the number one thing is the issue of rights. Most opponents believe there are property rights that exist in a future sale of a commodity in a process that can be changed annually. There really aren't property rights to a system that can be changed through specialty licenses, and there is no guarantee that the licenses have some property value. This bill will not change the process that is in place and the same requirements are still there in order for a liquor license to be issued. The cities and the counties support this legislation and the opportunity for cities to have a competitive economic opportunity that does not exist today. The current system is not working for many. There will not be restaurants on every corner. The bill creates the authority for cities and counties to regulate these licenses. It changes the way the state does business in a positive way. It makes owners more responsible for the servers.

CON: **Russell Westerberg**, representing Hagadone Hospitality, was recognized to speak to the bill. Hagadone Hospitality is the single largest customer of the state owned liquor dispensary. In 2008, when a total of \$31 million was purchased by 1,113 licensees from the state dispensary with an average purchase for the year of \$28,000, Hagadone Hospitality purchased close to \$600,000 from the state dispensary.

One would think if a group was going to be assembled to draft changes in how, where and by whom liquor is sold in Idaho, Hagadone Hospitality co-

owner and president, Jerry Jaeger, would have been invited to participate, or at least asked for some input. He was not, and was not even offered a peek at the bill until it was printed.

If Mr. Jaeger would have been asked for input, he would have advised a far more cautious and less risky approach to changing laws governing who can serve liquor-by-the-drink. The current economy is providing real challenges to Idaho's established hospitality industry and its many employees. The increase in competition that will result from chain restaurants locating in the suburbs adjacent to, but outside of Idaho's major cities because the bill will allow them a liquor license, is a legitimate concern to established business owners.

Mr. Westerberg said he visits Idaho communities large and small from Montpelier in the southeast corner to Bonners Ferry in the far north and many cities and towns in between. He has never had any difficulty locating a restaurant that also serves liquor-by-the-drink where he can invite clients or guests to join him for dinner. He is not aware of folks in any of Idaho's 42 counties where retail liquor-by-the-drink is allowed having any difficulty finding a state licensed retail liquor establishment ready and willing to serve them.

Mr. Westerberg questioned what the problem is that necessitates this bill. Quite often when governments change policy to correct a problem, they create another, sometimes greater problem. In an effort to eliminate the problem some say is caused by a waiting list for a license to serve liquor, it is unavoidable that more liquor will be served if this bill becomes law. DUI arrests, alcohol related traffic deaths, broken homes and other well known problems associated with the consumption of alcohol will surely increase along with consumption.

In conclusion, Mr. Westerberg asked the members to be certain in their minds before they vote to send the bill forward that its passage will not do irreparable harm to the owners and employees of Idaho's established hospitality industry.

PRO: **Sharon Burke** with the Idaho Association of Counties was recognized. Ms. Burke said the Association was a part of the Task Force which drafted the bill. The Association felt this was a very logical process. This is an additional resource for local government. A significant investment is required in order to open up restaurants.

CON: **Elaine Prokschl** was recognized. Ms. Prokschl said she supported part of the bill. All bar and restaurant owners want to protect themselves. Her biggest problem is that anything that is rushed alarms her. Ms. Prokschl said we need to know what we are voting on. An option would be for the state to continue to charge the going rate on a license. This legislation does not put a cap on the bars. The establishments share customers, so they must be able to be competitive in the price of the drinks served. She said she is always worried about losing her license and she watches the employees very closely. She said with a great cost comes great responsibility.

PRO: **Bill Roden**, representing the Idaho Beer & Wine Distributors Association,

was recognized. Mr. Roden said there has been adequate discussion of the legislation, so his remarks will be brief. Mr. Roden said his Association fully supports this legislation. This bill is the way to go. It does not change the days of sale of alcohol beverages, the legal age for consumption, hours of sale, proximity to churches or schools and it does not permit the sale of alcohol to obviously intoxicated or apparently intoxicated persons.

It does not lessen any potential administrative sanctions against beer, wine or liquor-by-the-drink licensees for the licensee's non-compliance with Idaho laws. It does not authorize any additional licenses. It empowers cities and counties and the voters within such locations, to determine the need for or benefit of the issuance of licenses. It provides benefits to existing liquor-by-the-drink licensees and it eliminates future obtaining of licenses for the purpose of speculative value.

There is no taking. The right to do business under state authority still exists. Licensees are allowed to deduct the value of a license over time as a business expense and they are allowed to recover an amount through income tax. Mr. Roden said he has been involved in these discussions for five years. It is his belief that this is a good consensus bill.

Chairman Clark said S 1148 is now before the Committee. Representative Wills pointed out that the members have been meeting for two days in order to hear all of the issues put on the table. This seems to be an emotionally packed issue.

MOTION:

Representative Wills moved to send S 1148 to the floor with a Do Pass recommendation. Representative Nielsen spoke in support of the motion.

Representative Luker spoke against the motion saying this is a titanic change in the way we handle liquor licenses in the state of Idaho. It has left out families and organizations that deal with families. The bill seems to have a number of flaws. It appears to have some constitutional problems. The Legislature has an obligation not to delegate authority and this is a total change of authority from the state to the counties and cities. The counties and cities will have to adopt a policy or have an election. Cities and counties will be pressured. They are going to have to make policy to satisfy all the folks.

There are some good things in the bill. However, the training is simply window dressing in this bill. The state of Idaho has already set up a system. It treats these licenses as property. This issue can be dealt with without delegating all this authority to the cities and counties. Also, money will go away from the general fund. There a lot of technical issues in this bill. There is also the problem with minors putting themselves at risk. Everyone should be held to the same standard. The licensees who have paid a lot for their license do have a strong incentive to enforce the law. With this bill, there will be a lot of unintended consequences. This is not the type of an issue to be slack on.

Representative Burgoyne said he would vote no on the original motion. With this bill, the licensees get away with two warnings and then a fine before their license is suspended. The focus of enforcement will shift onto

the servers who are typically earning a minimum wage plus tips. Representative Killen spoke in support of the bill. There are some potential problems. There are some potential constitutional issues, but the courts will let the legislature know if we got this wrong. Representative Killen said he likes to see local option opportunities.

SUBSTITUTE MOTION:

Representative McGeachin moved to hold S 1148 in Committee. This is a very complex subject. Representative McGeachin said she could not cast a vote today that will take someone's livelihood away from them. She also expressed concern about unintended consequences. The bill could impact a lot of businesses that the Legislature is not aware of.

Representative Hart spoke in favor of the substitute motion. There are some constitutional issues with the legislation.

AMENDED SUBSTITUTE MOTION:

Representative Smith moved to send S 1148 to General Orders with the following Committee amendments: changing the effective date of the bill to July 1, 2010.

Representative Bolz spoke in favor of the original motion. He liked the local option and said if he trained his employees, he should not be held responsible for a mistake they make. Representative Jaquet spoke in support of the original motion.

ROLL CALL VOTE:

On the amended substitute motion to send to General Orders with a change to the effective date, **motion failed 1-13-1.** Voting AYE: Representative Smith. Voting NAY: Representatives Nielsen, Shirley, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen and Clark.

On the substitute motion to hold in Committee, motion failed 7-7-1. Voting AYE: Representatives Shirley, McGeachin, Hart, Luker, Kren, Boe and Burgoyne. Voting NAY: Representatives Smith, Nielsen, Wills, Bolz, Jaquet, Killen and Clark.

On the original motion to send to the floor with a Do Pass, motion passed 8-6-1. Voting AYE: Representatives Smith, Nielsen, Wills, Bolz, Kren, Jaquet, Killen and Clark. Voting NAY: Representatives Shirley, McGeachin, Hart, Luker, Boe and Burgoyne.

ADJOURN:

There being no further business to come before the Committee, the meeting was adjourned at 5:40 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: April 15, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Representatives Smith, Wills, Boe and Kren

Chairman Clark called the meeting to order at 2:30 p.m. and asked for approval of the minutes of the last meeting.

MOTION:: Representative Bolz moved to approve the minutes of the meeting held on April 9, 2009, as written. Motion carried by voice vote.

Chairman Clark thanked the secretary and the members for their hard work this session.

ADJOURN: There being no new business to come before the Committee, the final meeting for the 2009 session was adjourned at 2:40 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary