

# Senate Judiciary & Rules Committee

Minutes  
2009



## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** January 14, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:**

**GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

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

**RULES: DOCKET NO. 06-0101-0801** **Rules Review-Board of Correction**  
Notice of Proclamation. The proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. **Vice Chairman Jorgenson** introduced **Lorenzo Washington**, Rules, Department of Correction, Mr. Washington explained the following sections of the rules would be amended: Definitions; Literature Distribution; Custody of Evidence; Research Requests; Executions; and Correspondence with Inmates.

**Senator Davis** asked for further explanation on page 10, (numbers viii and ix). He stated that it seemed to imply whether or not there was an execution contemplated or in process. It would preclude individuals from going into the execution area, specifically *A member of the victim's family; A friend or member of the offender's family.* The grammatical context of "a" means one. Why would we preclude any other individuals from witnessing or participation if they had a strong desire to attend? **Mr. Washington** stated the intent of the amendment is to limit the number of individuals allowed in the facility to twenty-one individuals; however, if the amount of individuals identified as allowed to attend is still short of twenty-one, other family members may attend. **Senator Davis** questioned by striking the phrase *during the execution procedures*, would that limit the individuals that were qualified for viewing the execution room if there was no execution being contemplated? **Mr. Washington** replied the intent of the word change was to limit the number of people in the area while an execution was taking place. Outside the scope of an execution the facility would work with individuals for viewing purposes. **Senator Davis** asked why the language *during the execution* had been struck everywhere except in the title and expressed his lack of confidence in the words as written. **Senator Davis**

clarified that the language in viii and ix is not intended to be an exclusion of other members by using the article *a*, but instead to say that at least a member is guaranteed the right to attend both of the victim's family and the offender's family, and if they were under twenty-one individuals then other family members would not be precluded from coming. **Mr. Washington** stated that was correct and would accept the recommendation to change the language to read 'the offenders family and the victims family'.

**Senator Kelly** asked if the offender's attorney was on the approved list? **Mr. Washington** replied they are not. Currently only the Prosecuting Attorney is listed, but it possibly could be added. **Senator Kelly** noted that should be an option in terms of justice.

**Senator Bock** questioned *why for the purposes of seeking or providing legal services only* was included on page 11, 402.02. Legal Mail? **Mr. Washington** stated that amendment was made because it helps the facility prevent attorneys from giving offenders documents or contraband that do not pertain to any legal services or matters. **Senator Bock** stated he was puzzled about what was appropriate communication between the offender and their attorney and what was not since it is confidential and they are unable to look at it. **Mr. Washington** responded that it was difficult to determine what was legal services and what was not, and they would be open for recommendations. **Senator Bock** then proposed the language in question be deleted as he felt it was unnecessary.

**Senator Hill** stated the reason for the language was for clarification for the attorney, so they would know what they are allowed to send. **Mr. Washington** responded that was correct, the intent was to define for the attorneys what constituted legal mail, and was recommended by the department's legal staff.

**Senator Davis** inquired if an attorney sent personal mail to an inmate using their legal letterhead, how would the department handle that? **Mr. Washington** deferred to **John Hardison**, Deputy Chief, Idaho Department of Correction. He explained that any mail coming into the facility that is marked legal mail is searched for contraband in front of the inmate that receives it. Detention department personnel are not allowed to read the mail, but are looking for contraband. **Mr. Hardison** stated to answer Senator Davis's question they would not know if it was a personal letter, because they would not read it, but rather scan over it for an escape plan or something of that nature. **Senator Davis** stated if personnel aren't going to be reviewing it why would they include the phrase *for purposes of seeking or providing legal services*, when all they are scanning it for are phrases including escape plan. **Mr. Hardison** responded that phrase was also included for the attorney's knowledge of the rules and what they are allowed to send.

**Vice Chairman Jorgenson** questioned page 8, 134. Research Requests. In response to Representative's Luker and Smith(24) citing that there was an amendment necessary to make it clear that the Internal Review and Human Subject Review Board were not affiliated with the

Department of the Board. He asked Mr. Washington for an explanation. **Mr. Washington** replied what they asked for was who they were referring to specifically in terms of that board, which is why they included subject to review board to clarify that question.

**Chairman Darrington** asked why in the explanation on page 2, numbers 116 and 134, do they refer to a Representative and Chairman's name rather than just take the action of the change of rule? **Mr. Washington** stated there was no particular reason, they were just trying to follow format. **Senator Davis** said he would discourage those kind of statements in the rulemaking process and would like that reflected in the minutes.

**Chairman Darrington** questioned the intent of Mr. Washington and if he was seeking for the rules to be affirmed by the committee or if he wants to come back with a set of rules that are somewhat different according to the session today? **Mr. Washington** responded if the committee recommended that some changes needed to be made, the IDOC would take those in consideration. Then they would be presented to Administrative Rules again and, if approved, they would be published. Thirty days from that point the rules would go into effect again.

**Ed Hawley**, Administrative Rules, reiterated that the rules change would go into effect and be final after thirty days. **Vice Chairman Jorgenson** asked if any members of the committee had questions for Mr. Hawley?

**Senator Davis** stated that he did not have a problem with what the rules say, but rather what they do not say. He said that page ten should include the language that limits the procedure of the time period during which there is an execution in process or the events immediately preceding. The department should define the term, and there should also be a provision for the defense counsel. A motion could be made under the provision that the department will go through appropriate rulemaking and include these two provisions. **Mr. Washington** responded they would go back through the process and address the concerns and make changes based upon the Committee's recommendations.

**MOTION:** **Chairman Darrington** made a motion upon the previous discussion that the rules be approved as presented. **Senator Davis** seconded the motion. The motion was carried by **voice vote**.

**PRESENTATION:** **Department Of Corrections Update by Brent Reinke**, Director of Corrections, distributed an overview and an annual statistical report for the 2008 year. As of today the population is 20,807 statewide of which 7,274 individuals are incarcerated and 13,533 are in community corrections throughout the state.

**Senator Davis** questioned if the twenty-two inmates that had been identified as the instigators in the riot, were any or all of the 300 that had been returned to Idaho from Texas on January 2, 2009? **Mr. Reinke** replied not one and noted that our best inmates are located out-of-state. He said bringing the 300 inmates back has been a calming force.

**Senator Darrington** noted that the out-of-state inmates flew back into Idaho two days after the riot took place.

**Senator Jorgenson** questioned which state paid for the transportation to return the inmates to Idaho. **Mr. Reinke** stated the Geo Corporation paid for it as it was in the original contract that it would be the responsibility of the Texas Department of Correction to return our inmates back to Idaho.

**Senator Jorgenson** questioned if prisoners that are the best are additionally punished by being sent out-of-state? **Mr. Reinke** stated other states will only take inmates that are not violent or have a history of bad behavior or on death row. **Senator Jorgenson** asked if this process would set up an improper motivation for prisoners to deliberately be bad in order to stay within the state? **Mr. Reinke** responded that does happen.

Mr. Reinke stated the key elements to maintain no growth in 2009 include:

- Fill every state bed every day
- Expedite opening lower cost beds
- Place inmates in the right beds
- Review all parole violations
- New violation matrix
- Launch Treatment Pathways
- Enhanced job duties

**Chairman Darrington** questioned when the cap facility is on line and the expansion at ICC is complete, what percent of Idaho inmates at about the number we have today will be in private hands? **Mr. Reinke** stated between 40-45%. **Chairman Darrington** asked if the Department of Corrections could certify to the committee, although they have agreements with the Commissions of Pardon and Parole, that they do not influence the Commission on the granting of paroles in numbers and is there autonomy recognized? **Mr. Reinke** replied absolutely.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** January 16, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Lodge, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:** Senator Davis

**GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

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

**RS 18288** **Relating to Sexual Contact with a Prisoner.** **Michael Henderson**, Legal Counsel for the Supreme Court, explained this statute contains a definition of the term "sexual contact" but inadvertently omits the word "contact" from that definition. This bill would clarify the statute by adding the word "contact" to the wording of the definition of "sexual contact."

**MOTION:** **Senator Hill** made a motion to send RS 18288 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**RS 18289** **Relating to Punishment for Manslaughter.** **Mr. Henderson** explained RS 18289 provides that if a vehicular manslaughter has resulted in the death of the parent or parents of a child, the defendant may be ordered to pay support for the child until the child reaches the age of 18, and that the support shall be established in accordance with the child support guidelines. They do not provide a method for determining the support obligation of a third party. This bill provides that the support obligation shall be determined on the basis of all relevant factors, including the financial resources and the condition and needs of the child.

**MOTION:** **Senator Jorgenson** made a motion to send RS 18289 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

**RS 18920`** **Relating to Vulnerable Adults.** **Mr. Henderson** explained this bill would provide a definition of "sexually exploitative material" that refers to vulnerable adults, rather than children.

**MOTION:** **Senator Hill** made a motion to send RS 18920 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

**RS 18921** **Relating to Compensation of Victims of Crimes.** **Mr. Henderson**

explained RS 18921 provides that for certain violent crimes the court may impose a fine of up to \$5,000 in addition to any other penalties imposed as part of the sentence. There is no statement in the statute as to whether the clerk of the court can take action to collect this fine. The absence of such a provision may leave the burden of enforcing the judgement on the victim. This bill would amend the statute so that the fine would continue to operate as a civil judgement in favor of the victim, but could also be collected by the clerk of the court and remitted to the victim.

**Senator Bock** questioned whether or not they would be better served using the language, "the judge shall" collect the fine. **Mr. Henderson** responded it was a possibility, however, they do not want the defendant to have to pay twice.

**MOTION:** **Senator Mortimer** made a motion to send RS 18921 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**RS 18297** **Relating to Compensation of Victims of Crimes.** **Mr. Henderson** explained RS 18297 amends these statutes to specifically authorize the use of collection agencies to collect restitution owed to victims of criminal acts.

**Senator Jorgenson** asked when it is determined that restitution may be paid, would that be viewed as a debt with a judgement? **Mr. Henderson** replied it can be enforceable. **Senator Jorgenson** stated that if there is a collection that already has a judgement, wouldn't it be much easier to collect? **Mr. Henderson** responded that could be correct, however, it would be appropriate that there be a variety of means to try and enforce restitution orders.

**MOTION:** **Senator Lodge** made a motion to send RS 18297 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

MINUTES

**SENATE JUDICIARY AND RULES COMMITTEE**

**DATE:** January 19, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:**

**GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

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

**Rules Review-Pending**

**DOCKET NO. 49-0101-0701** **Rules of Procedure of the Idaho Certified Shorthand Reporters Board.** **Roger Hales**, Attorney, Bureau of Occupational Licenses explained this docket updates office information as they are now located in the building of the Bureau of Occupational Licenses.

**MOTION:** **Senator Mortimer** made a motion to accept Docket No. 49-0101-0701. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**Rules Review-Fee**

**DOCKET NO. 49-0101-0801** **Rules of Procedure of the Idaho Certified Shorthand Reporters Board.** **Mr. Hales** explained the reason for the fee change is to move it from the law to the rules in order to be consistent with other boards. It also adds that fees are not refundable. Mr. Hales reviewed a few housekeeping changes including fees, renewal of licenses and the disciplinary penalty.

**Vice Chairman Jorgenson** questioned if there was any fiscal impact. **Mr. Hales** responded there was no fiscal impact.

**MOTION:** **Senator McKague** made a motion to accept Docket No. 49-0101-0801. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 1:43 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** January 21, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Lodge, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:** Senator Davis

**GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

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

**MINUTES:** **Senator Hill** made a motion to approve the minutes of January 14, 2009 as written. **Senator Lodge** seconded the motion and the motion carried by **voice vote**.

**Senator McKague** made a motion to approve the minutes of January 16, 2009 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.

**Senator Jorgenson** made a motion to approve the minutes of January 19, 2009 as written. **Senator Lodge** seconded the motion and the motion carried by **voice vote**.

**RS 18276** **Concurrent Resolution**-Honoring the 2009 Special Olympics World Winter Games and the Idaho Optometric Physicians who will participate in the visual screen for the 2009 Special Olympics World Winter Games. **Dr. Jack Zarybnisky**, Optometrist, Opening Eyes Clinical Director for the State of Idaho, stated there would be 3,000 athletes, 20,000 family members, and approximately 19,000 auxiliary personnel coming to the State of Idaho for the World Winter Games. The Healthy Athletes program started in 1996 and is designed to provide proper eye care to the athletes. During the 2008 World Games, the Idaho Optometrists provided 156 new pairs of glasses, 84 sport glasses, and 36 referrals to specialists. All of the athletes that were not prescribed prescription glasses were given a pair of sunglasses with a special ultra-violet coating to protect them from developing cataracts. Dr. Zarybnisky stated that Sun Valley is expecting an economical impact of approximately five million dollars on food and lodging.

**Senator Bock** questioned why there was such a high rate of cataracts?

**Dr. Zarybnisky** stated that because of their genetic make-up they have a higher rate of developing the disease. **Senator Bock** inquired if they would provide treatment there on the spot. **Dr. Zarybnisky** replied yes, and if it is at the operable stage they would contact their embassy in Washington D.C. and the athlete would receive the proper treatment in their country. Follow-up on the athlete is also provided.

**Senator Lodge** asked where they would be performing the tests and where do they get the equipment? **Dr. Zarybnisky** stated they would perform the tests at Boise State University's Student Union Building, second floor. Many of the Optometrists pay to have their own equipment shipped, or they borrow equipment from various places.

**Senator Hill** inquired if there were funds available to the doctors to help with the cost? **Dr. Zarybnisky** replied there is a small percentage of funds available to help with lodging, but this program is primarily done on a volunteer basis and most doctors pay for their own expenses.

**Senator Mortimer** questioned how many of the Optometrists would be participating from Idaho? **Dr. Zarybnisky** responded there would be 40 for the entire week and 12 additional for one to two days from Idaho.

**Senator Kelly** asked if he paid his own expenses on his work overseas? **Dr. Zarybnisky** stated yes, it was a donation.

**MOTION:** **Senator McKague** made a motion to send RS 18276 to print. The motion was seconded by **Senator Jorgenson**. The motion carried by **voice vote**.

**RULES:** **Rules Review-Idaho State Police**

**DOCKET NO. 11-0701-0801** **Rules Governing Motor Vehicles. Vice Chairman Jorgenson** introduced **Lieutenant Bill Reese**, Idaho State Police. He explained under the section of written interpretations, Senator Davis was concerned with the language in the second half of the written interpretations section, referring to declaratory orders. Declaratory orders are addressed in the administrative rules act and Senator Davis was concerned by having this in their rules as it created a conflict because it is also addressed in Idaho Code. Any written interpretations that are given by the department or director are informal interpretations and any of the declaratory orders will be handled in Idaho Code.

**MOTION:** **Senator Bock** made a motion to accept Docket No. 11-0701-0801. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 11-1101-0801** **Rules of the Idaho Peace Officer Standards and Training Council (POST). Vice Chairman Jorgenson** introduced **Jeff Black**, Executive Director, POST. Mr. Black explained because of high insurance issues with controlled dogs, the POST makes sure they provide adequate training to the dog team. They certify teams rather than just the handler or the dog. The particular issue with canine evaluators is the agency head should be required to be notified and actually sign off on the application. Prior to this recommendation the handlers could make that decision. This change allows the chief or sheriff to approve that their

employees can be a canine evaluator. On the re-training certification, Idaho currently requires 160 hours for patrol dogs, 80 hours for tracking, drug, and search dogs. The national standard ranges from 200 to 600 hours. Since there is a high liability issue, they recommend changing the required hours from 160 to 240 hours and from 80 to 160 hours. Currently all handlers in the State of Idaho meet this requirement, and any new handlers coming into the State of Idaho will have to meet the new requirement. There are very strict instructor requirements and they want to make sure it stays the same for canine instructors in the State of Idaho. Also they felt the Master Instructor Certification for detention dispatch and K-9's was not relevant at this time.

**Senator Mortimer** questioned if the increase in hours was standard through the Western United States? **Mr. Black** stated Idaho was actually lower, and they would like to gradually increase the amount of hours to meet the national standard.

**MOTION:** **Senator Mortimer** made a motion to accept Docket No. 11-1101-0801. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 11-1104-0801** **Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation.** **Mr. Black** explained that distinguishing primary colors in a correctional institute should not be a necessary requirement for employment.

**MOTION:** **Senator Hill** made a motion to accept Docket No. 11-1104-0801. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 11-1105-0801** **Rules of the Idaho Peace Officer Standards and Training Council for the Idaho Department of Juvenile Corrections Direct Care Staff.** **Mr. Black** explained Idaho will be one of the few states in the United States that will have training requirements at the state level under the Peace Officer Standards. The training and certification of direct care staff is critical for the proper staffing and operation of the new 24-bed co-occurring disorder unit in Nampa, due to open in FY 2009.

**MOTION:** **Senator Lodge** made a motion to accept Docket No. 11-1105-0801. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:06 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** January 26, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:** Senator Lodge

**GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

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

**MINUTES:** **Senator Bock** made a motion to approve the minutes of January 21, 2009 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

**RULES:** **Rules Review-Division of Veterans Services**

**DOCKET NO. 21-0101-0801** **Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure.** **Vice Chairman Jorgenson** introduced **Jim Adams**, Administrative Support Manager. Mr. Adams explained the revisions align the appeals process with the Administrative Procedure Act and provide changes designed to accommodate more complicated appeals. The rule also allows 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.

**MOTION:** **Senator Bock** made a motion to accept Docket No. 21-0101-0801. The motion was seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**DOCKET NO. 21-0104-0801** **Rules Governing the Idaho State Veterans Cemetery.** **Mr. Adams** explained the rule changes clarify the fees for interment, disinterment, and reinterment as the amount of reimbursement paid by the United States Department of Veterans Affairs (USDVA). Currently the rule states the Administrator shall charge a fee of three hundred dollars for Interment, Disinterment, and Reinterment. The Division of Veterans Services want to strike that writing and replace it with equal to the then current USDVA reimbursement for opening and closing an interment site.

**Senator Davis** stated he does not feel comfortable signing off on a rule in which they give to someone else the right to determine the amount of the fee. Mr. Davis asked why we would give another group of individuals the right to determine what our law should be here in Idaho? **Mr. Adams** replied that they do not have a say in what the rates will be as they are automatically set by the USDVA. They are unable to negotiate the price, up or down. The reason for the rule is when that allowance does change, they won't have to keep changing the rule to the specific amount allotted.

**Senator Mortimer** asked if the plot only costs three hundred dollars, why would they pay seven hundred dollars for the plot? **Mr. Adams** responded they are not paying for the plot, the plot is already there. It is the balance for the family to reimburse the cemetery for the opening and closing of the plot.

**MOTION:** **Senator Davis** made a motion to accept Docket No. 21-0104-0801. The motion was seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**DOCKET NO. 21-0104-0802** **Rules Governing the Idaho State Veterans Cemetery.** **Mr. Adams** explained the public has assembled on the upper level of the cemetery by the flag pole to watch fireworks displays throughout the valley, bringing with them beverage coolers, blankets, BBQ equipment, etc. Although a very advantageous spot to watch the fireworks, the cemetery is not an appropriate place for such activity. The rule change is necessary to provide that the cemetery will be closed at 6 p.m. when fireworks displays are planned on the order of the Division Administrator.

**Senator Darrington** questioned if the rate of burials was still increasing? **Mr. Adams** stated "yes".

**MOTION:** **Senator Mortimer** made a motion to accept Docket No. 21-0104-0802. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

**DOCKET NO. 21-0104-0901** **Rules Governing The Idaho State Veterans Cemetery.** **Mr Adams** explained that states receiving a grant for a veterans cemetery must deny interment to individuals convicted of certain capital crimes or who have avoided conviction due to flight.

**MOTION:** **Senator Kelly** made a motion to accept Docket No. 21-0104-0901. The motion was seconded by **Senator McKague**. The motion carried by **voice vote**.

**DOCKET NO. 21-0105-0801** **Rules Governing Medical Transportation Payment for Wheelchair Confined Veterans.** **Mr. Adams** explained this rule will increase the reimbursement for transporting veterans to medical appointments from fifty to one hundred dollars for one-way, and from one hundred to two hundred dollars for round-trip. This is necessary due to the increase in fuel and insurance costs.

**Senator Mortimer** asked if this service was only provided to and from a Veterans Hospital? **Mr. Adams** responded any medical appointment set up by the veteran, transportation service will be provided. **Senator**

**Mortimer** questioned if the rates they are anticipating are in addition to or comparable to the rates set up by medicaid and medicare? **Mr. Adams** stated he was unaware if they provided a service to pick up individuals in wheelchairs to take to medical appointments. **Senator Mortimer** inquired if this was limited to just individuals in wheelchairs? **Mr. Adams** replied they must be wheelchair bound and they must have a medical appointment. **Senator Mortimer** stated he understands there are services provided for handicapped and disabled, and he wants to make sure that they are not over or under compensating for the services provided. **Mr. Adams** responded this service is strictly created for veterans, whereas any other services that may be provided are for the community as a whole. Mr. Adams said this is a well needed service as some veterans do not have any family or friends that can assist in properly taking care of the veterans and making sure they are transported to and from medical appointments. **Senator Mortimer** stated he wants the veterans to be taken care of, however, his concern is to make sure they are not duplicating the service and paying more than market price for those services.

**Senator Jorgenson** questioned if there was an instance where allocation was not adequate? **Mr. Adams** responded when the program first started they were allocated \$30,000 and last year they cut back to \$20,000 thinking that would be enough. Now this year with the budget cuts an additional \$13,000 has been cut, thinking they would have enough money for the program, but now they are completely broke and are trying to get in touch with various civic organizations.

**MOTION:** **Senator Bock** made a motion to ratify Docket No. 21-0105-0801. The motion was seconded by **Senator McKague**. The motion carried by **voice vote**.

**RS 18195** **Relating to Crime Victims Compensation.** **George Gutierrez**, Industrial Commission, explained **RS 18195** will provide additional funding to the Crime Victims Compensation Program that provides financial assistance to those victims that have no other source of aid. It increases the fines imposed on convicted criminals - misdemeanors from \$25.00 to \$37.00; felonies from \$50.00 to \$75.00; and sex crime related convictions from \$200 to \$300.00. Funding generated through criminal fines has not kept pace with medical inflation and program growth, reducing the Crime Victims Compensation Fund 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.

**Chairman Darrington** questioned if the fund balance has dipped below one million dollars? **Mr. Gutierrez** responded that was correct, however, the balance is at a constant fluctuation as payments are going out and coming in to the fund, but more than likely the funds coming in will not meet the needs of the victims. **Chairman Darrington** asked Mr. Gutierrez to explain why this program was placed with the Industrial Commission. **Mr. Gutierrez** stated he understood that Idaho Victims Compensation reviewed how other surrounding states addressed victims compensation programs in their labor and industry department, and one

of the functional reasons the Victim's Compensation Program is with the Industrial Commission is related to appeals. When the victims disagree with decisions that Victim's Compensation makes regarding their benefits or payments on a specific claim, they have the right to appeal that decision. The families need to be able to speak before the Industrial Commission during the final appeal process hearing.

**Senator Hill** asked if the payments paid on behalf of the victims included medical expenses, psychiatric care, reimbursement for property loss or damage, or wages lost due to the crime? **Mr. Gutierrez** replied Victim Compensation provides payments for the directly injured party for medical treatment and care, psychological counseling, funeral services if they are deceased as a result of the crime, and if they are injured due to the crime then they will pay 66 2/3% of the lost wages. They offer a limited amount of mental health services to the immediate family members to deal with the trauma. They also provide loss of support or dependent death benefits for the dependent children of a deceased victim. **Senator Hill** questioned if the amount they paid for lost wages was taxable and if they issued a 1099 or a W-2 for that? **Mr. Gutierrez** stated from his understanding it was not taxable.

**Chairman Darrington** stated he believed a very small amount went out for lost wages. **Mr. Gutierrez** stated that was correct. Out of \$3.184 million, only \$81,000 went for lost wages.

**Senator Jorgenson** questioned the percentage of success in collecting the fines? **Mr. Gutierrez** stated that amount is difficult to determine, however, the best number they could find was two to three years ago and that it was below 70%.

**MOTION:** **Senator Jorgenson** made a motion to send RS 18195 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**RS 18422** **Relating to the Treatment and Care of the Developmentally Disabled.** **Robert Aldridge**, explained that RS 18422 states that guardianships and conservatorships 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 clear definitions 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 of the code, have not had those same updates. This has lead to 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.

**Senator Jorgenson** stated there have been situations in Idaho where a minor has needed a Guardian ad Litem and it is his understanding that they do not have a section of law that can deal with that? **Mr. Aldridge** responded they do not, in fact, a recently passed bill creates those protections in minor guardianship and it is now in the probate code.

**MOTION:** **Senator Mortimer** made a motion to send RS 18422 to print. **Senator**

**Jorgenson** seconded the motion. **Senator Bock** commented that in handling guardianships and conservatorships they need to make sure they maintain the status quo until there is a formal guardianship or conservatorship in place. The motion carried by **voice vote**.

**RS 18423**

**Relating to the Protection of Persons with Disabilities.** **Mr. Aldridge** explained Sections One, Two, and Three of the bill provides the same protections to the appointment of the guardian of a minor, including that the petition must include a statement as to whether the proposed guardian, or a person who resides at or frequents the proposed place of residence of the minor, is a felon. Section Three describes that the guardian must take reasonable steps to protect the minor from such felons. Section Four, covering adult guardianships, provides for similar inclusion in a petition for guardianship 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. Both Sections Four and Five require that existing powers and trust be revealed, since it is the duty of the Guardian ad Litem and Court Visitor to determine if existing powers and/or trusts can either eliminate the need for a conservatorship or guardianship, or allow a limited appointment.

Existing Idaho Law allows the closing of a guardianship case, but not a conservatorship case. Section Six of this bill 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. If a settlement is made for the claim of a minor, a court proceeding called a Minors Compromise is used. If the amount of the claim is over \$10,000, a conservatorship is usually instituted, which protects the funds.

**MOTION:**

**Senator Jorgenson** made a motion to send RS 18423 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**RS 18424**

**Relating to Disposition of Human Remains.** **Mr. Aldridge** explained RS 18424 makes clarifications of the code. Rather than trying to define when a prearranged plan exists, it simply provides that any matters not covered by a prearranged plan are settled as set forth in section 54-1142, Idaho Code. This gets rid of the "all or nothing" nature of the existing law and provides a practical way of covering all situations that might arise. Additionally, the bill makes it clear that alternate services may be held which do not involve the remains of the decedent. This is very clear and simple compared to the existing statute on alternate services, which has lead to court battles over alternate services. The net effect of the bill is to avoid emotional confrontations over incomplete prearranged plans.

**Senator Bock** questioned what kind of relationship do these sections have to a Will that contains burial instructions? **Mr. Aldridge** responded in Section 3, 54-1142, subpart (a) the traditional funeral burial letter that is made by the individual is usually in coordination and referenced to in the Will. This allows the individual to make their own choice.

**MOTION:**

**Senator Bock** made a motion to send RS 18424 to print. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

**RS 18173**

**Relating to the State Board of Corrections.** **Brent Reinke**, Director, Department of Corrections, gave a brief overview of RS 18173 and introduced **Jim Lockes**, Lead Investigator for the Office of Performance Standards, Department of Correction. **Mr. Lockes** explained RS 18173 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.

**Senator Davis** inquired if someone does not provide the documents then the Director or his designee will file a petition with the court and the petition along with an affidavit describing the position of the Director would be enough of a basis for the court to issue an Order to Show Cause. He stated that means the burden of proof is no longer on the Department, but is on the person that is objecting. Should the standard be higher than what is described in this language? Also should we legislatively tell the court what is and what is not in contempt of court, but rather should that be the court's discretion? **Paul Panther**, Deputy Attorney General, Idaho Department of Correction, replied that the idea was that if a petition was filed with the court it would be based on an affidavit from the Director or from the designee. The initial burden is on the Department to file a petition and there would have to be something supporting that on a factual basis, then the burden would shift to the individual that has received the subpoena to come forward and show cause why it should not be honored.

**Senator Kelly** questioned the use of the period and coma after the 4, page one, line 24? **Mr. Panther** said it could possibly be a typographical error and they would review it.

**Chairman Darrington** stated if it is a typographical error it would need to be corrected before it is sent to print. **Senator Hill** compared it to the hardback Idaho Code book and it appeared to be correct. **Chairman Darrington** stated the correct motion to make and one that the committee would accept is to print RS 18173 with an assurance that the number is correct.

**MOTION:**

**Senator Hill** made a motion to send RS 18173 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**PRESENTATION**

**Idaho Department of Correction-Orofino Briefing**

**Mr. Reinke** explained the Department of Correction is developing a request for information (RFI) to gauge the interest in a private company operating the Idaho Correctional Institution-Orofino. This is part of the Department's efforts to explore all options during the budget shortfall. The RFI should be ready to send out to vendors within 30-45 days. Once issued, potential vendors will have approximately two weeks to respond to the RFI. Mr. Reinke also noted that the Board of Correction has the authority to determine whether to pursue a private contract for running the facility.

**Senator Davis** stated he was troubled by this RFI and the handouts provided in a couple of meetings with the quotation of the Idaho Code §

20-209(2) providing that... *the Board shall have the authority to enter into contracts with private prisons, contractors for the site selection, design, design/building, acquisition, construction, construction management, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of those services subject to the requirements and limitations set forth in section 20-241A, Idaho code.*

Since these references have been made, does the Board feel it does not need any legislative input on private prisons? Is this what is happening?

**Mr. Reinke** stated it was his understanding from the legal counsel that the Board of Correction has the power and authority to privatize any existing facility. **Senator Davis** questioned without any legislative input? **Mr. Reinke** responded that was his understanding. **Senator Davis** inquired if the Board determined it wanted to privatize every prison in the State of Idaho today, do you believe without legislative input you have the authority to do that right now? **Mr. Reinke** replied that the Board has the authority to do that. **Senator Davis** asked if they had the legal authority to do that? **Mr. Reinke** stated, "yes", they do have the legal authority to carry that out. **Senator Davis** then inquired if they would be requesting any legislative oversight or input on the RFI process? **Mr. Reinke** stated that would be his wishes, however, he would have to take that to the Board of Corrections.

**Chairman Darrington** stated they would be having a confirmation hearing on a new appointee sometime in the month of February. **Mr. Reinke** responded that was correct.

**Senator Davis** stated he was stunned that the Board of Corrections views this issue that way and is inclined to go in that direction without a legal opinion. **Senator Davis** feels that is the wrong direction to go and advises against these actions.

**Chairman Darrington** states that he is also concerned when more than 35% of our jail beds are in private hands and that number should be a bench mark, as that is the same standard given to us by other states.

**Senator Davis** requested a copy of the legal opinion that has been rendered, if there has been one rendered, on the right of the Board to privatize its existing prisons without any additional legal or modifications to the Idaho Code. **Chairman Darrington** stated that it would be appropriate to request this information in the name of the committee.

**Greg Sali**, Research, Idaho Department of Correction, gave an overview of the annual statistical report for the fiscal year 2008. Mr. Sali pointed out the following items:

- Section one consisted of an overview of the department;
- Section two included incarcerated offender demographics;
- Section three discusses incarcerated offender population growth;
- Section 4 explains supervised offender demographics;
- Section five details supervised offender population growth;
- Section six discusses recidivism rates - Mr. Sali explained that Idaho has a recidivism rate between 37-38%, which is relatively low compared to other states; and

- Section seven deals with two special topics, sex offender management and the influence of methamphetamines on the Department of Correction's population.

**Mr. Sali** stated because of the increased incarceration rate from 1997 to 2007 the average length of incarceration has increased by twelve months. He also mentioned that the average age of incarcerated males went from 34.8 in 1997 to 36.9 in 2007.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:55 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

MINUTES

**SENATE JUDICIARY AND RULES COMMITTEE**

**DATE:** January 28, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:** Senators Hill, McKague, and Mortimer

**CONVENED:** **Chairman Darrington** called the meeting to order at 1:43 p.m.

**RS 18300** **Relating to Enforcement of Judgments in Civil Actions. Senator Davis** explained the purpose of this legislation is to modify the exempt property list to include medical savings accounts.

**MOTION:** **Senator Jorgenson** made a motion to send RS18300 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**RS 18320** **Relating to Telephone Communications. Senator Davis** explained the purpose of this legislation is to protect Idahoans against caller ID spoofing. The act criminalizes certain aspects of caller ID spoofing. Additionally, the act includes such spoofing within the purview of the Consumer Protection Act.

**MOTION:** **Senator Jorgenson** made a motion to send RS 18320 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** Due to scheduling conflicts **Chairman Darrington** deferred the rest of agenda until next week. There being no further business, **Chairman Darrington** adjourned the meeting at 1:47 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

MINUTES

**SENATE JUDICIARY AND RULES COMMITTEE**

**DATE:** January 30, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Vice Chairman Jorgenson, Senators Hill, McKague, Bock

**MEMBERS ABSENT/ EXCUSED:** Chairman Darrington, Senators Davis, Lodge, Mortimer, Kelly

**GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

**CONVENED:** **Vice Chairman Jorgenson** called the meeting to order at 1:34 p.m. No business was discussed as there was not a quorum present for the meeting.

**PRESENTATION** **Sex Offender Update**

**Mimi Carter**, Director, Center of Sex Offender Management presented a slide show and gave out handouts to the committee.

Established in June 1997, the Center for Sex Offender Management's (CSOM) goal is to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders who are in the community.

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

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Senator Michael Jorgenson  
Vice Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 2, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:34 p.m.
- MINUTES:** **Senator Kelly** made a motion to approve the minutes of January 28, 2009 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.
- Senator Jorgenson** made a motion to approve the minutes of January 30, 2009 as written. **Senator Bock** seconded the motion and the motion carried by **voice vote**.
- HCR 2** **A Concurrent Resolution Providing for Printing the Session Laws. Representative Jim Clark**, Chairman, House Judiciary, Rules & Administration Committee explained this concurrent resolution provides for the printing of the Session Laws for the House and Senate for the next two regular sessions. The resolution identifies the two parties who enter into the contract: the Joint Printing Committee and The Caxton Printers. The resolution also refers to the print requirements and the flexible price specified in the vendor's price quote, and the section of Idaho code that provides for the printing. The approximate fiscal impact for printing the Session Law for 2009 and 2010 is \$33,000 per year from the Legislative Fund.
- MOTION:** **Senator Bock** made a motion to send HCR 2 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- HCR 3** **A Concurrent Resolution Providing for Printing the House and Senate Permanent Journals. Representative Clark** explained this concurrent resolution provides for printing of the Permanent Journals for the House and Senate for the next two regular sessions. The resolution identifies the two parties who enter into the contract: the Joint Printing Committee and Custom Printing, Inc. This resolution also allows for

flexibility in the final price depending on the number of copies printed. The approximate fiscal impact for printing the Permanent Journals for the House and Senate for 2009 and 2010 is \$35,000 per year from the Legislative Fund.

**MOTION:** **Senator Jorgenson** made a motion to send HCR 3 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**HCR 4** **A Concurrent Resolution Providing for Printing of House and Senate Bills, Resolutions, Memorials and Amendments. Representative Clark** explained this concurrent resolution provides for the printing of the bills, resolutions, memorials, and amendments for the House and Senate for the next two regular sessions. The resolution identifies the two parties who enter into the contract: the Joint Printing Committee and the Bureau of Copy and Records Services. The resolution also refers to the print requirements specified in the bid specifications, the vendor's price quote, and Idaho law that provides for the printing. The approximate fiscal impact for printing the bills, resolutions, memorials, and amendments for the House and Senate for the 2009 and 2010 sessions is estimated to be \$18,000 per year from the Legislative Fund.

**MOTION:** **Senator Lodge** made a motion to send HCR 4 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**HCR 5** **A Concurrent Resolution Providing for Printing the House and Senate Daily Journals. Representative Clark** explained this concurrent resolution provides for the printing of the Daily Journals for both the House and Senate for the next two regular sessions. The resolution identifies the two parties who enter into the contract: the Joint Printing Committee and the Bureau of Copy and Records Services. The approximate fiscal impact for printing the Daily Journals for the House and Senate for the 2009 and 2010 sessions is estimated to be \$3,600 per year from the Legislative Fund.

**MOTION:** **Senator Hill** made a motion to send HCR 5 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**S 1003** **Relating to Sexual contact with a Prisoner. Michael Henderson**, Legal Counsel for the Supreme Court, explained *Idaho Code 18-6110* provides that it is a felony for any employee of the Department of Correction or Department of Juvenile Corrections, or any officer, employee or agent of a state, local or private correctional facility, to have sexual contact with a prisoner or juvenile offender. The statute contains a definition of the term sexual contact but inadvertently omits the word contact from that definition. This bill would clarify the statute by adding the word "contact" to the wording of the definition of sexual contact.

**MOTION:** **Senator Hill** made a motion to send S 1003 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**Relating to Punishment for Manslaughter.** **Mr. Henderson** explained S 1004 provides that if vehicular manslaughter has resulted in the death of the parent or parents of a child, the defendant may be ordered to pay support for the child until the child reaches the age of 18, and that the support shall be established in accordance with the child support guidelines. They do not provide a method for determining the support obligation of a third party. This bill provides that the support obligation shall be determined on the basis of all relevant factors, including the financial resources and the condition and needs of the child.

**Senator Davis** questioned why we provide this remedy for the courts to impose, for vehicular manslaughter, but do not provide it for voluntary and involuntary manslaughter? **Mr. Henderson** stated he was unaware of the specifics, but did know there was a general restitution available for voluntary and involuntary manslaughter.

**Senator Hill** expressed his concern with roman numeral vii that states "*The actual tax benefit realized by the party claiming the federal child dependency exemption.*" Senator Hill could not think of very many cases where the party that committed manslaughter would be entitled to a Federal Child Dependency exemption. They would have to be a member of the family or a member of the household. Senator Hill asked why this language would be included? **Mr. Henderson** replied it is appropriately in the child support statute because it is a question of who is going to get that exemption. Here the exemption presumably is going to belong to the surviving parent or guardian that is raising the child. The only point of having that in there is to lessen the burden of paying for the support of the child, which the court could take into account. **Senator Hill** suggested if that is the case, it should be expanded to include the Child Tax Credit which is worth much more than the Child Dependency Exemption. If one is included then the other one should be included. **Mr. Henderson** responded that it does include the language that *the court will consider all relevant factors*, so there would still be room for the court to consider that option as well as other factors that may come into play.

**Senator Mortimer** inquired if someone would be better off to commit voluntary or involuntary manslaughter than vehicular manslaughter, because they will be responsible for a greater amount of restitution? Is that correct under this statute? **Mr. Henderson** responded it depends on how the court decided to set the fine in the child support obligation, however, yes there is potentially more of a financial obligation. **Senator Mortimer** questioned why they did not suggest to place the clause requiring child support in voluntary and involuntary manslaughter? **Mr. Henderson** stated it would fall over into a policy area if it should be applied.

**Senator Bock** questioned if there was a possibility in a vehicular manslaughter case that the perpetrator would have insurance that would provide financial assistance to the child. Would the judge take that into consideration in determining whether or not to award any child support to the child? Was that a factor in drafting this legislation? **Mr. Henderson** replied both of the factors depend upon the financial resources of the child and of the defendant.

**Heather Reilly**, Deputy Prosecuting Attorney, Ada County Prosecuting Attorney's Office, spoke in favor of S 1004. The current statute is not helpful in determining what is a fair amount to assess against a person that has been convicted of vehicular manslaughter to assist the child. **Senator Davis** questioned Ms. Reilly in her experience, if they placed the language in any of the other sections would they see any money come out of it? **Ms. Reilly** replied in current restitution cases there are some instances where the perpetrator is incarcerated in prison. The restitution would then take years if it could ever be recovered.

**Senator Mortimer** inquired if the insurance was maximized before they get the child support in a settlement case? Do we have the ability to tack on the additional financial responsibility with this, in addition to the insurance coverage? **Ms. Reilly** responded it would be a case by case analysis depending on the factors involved, such as whether or not the perpetrator has insurance. In other cases it is the civil side of things to the criminal prosecution, which are separate. In the criminal matter they are allowed to seek out repayment to the insurance company.

**MOTION:** **Senator Davis** made a motion to send S 1004 to the 14<sup>th</sup> Order for amendment. **Senator Kelly** seconded the motion. **Senator Davis** explained that we should change the language in roman numeral vii as referred to by Senator Hill, which will serve as a reminder to the prosecutors to decide if there is any value in the additional verbiage. **Senator Hill** stated as he re-read the statute he felt as though it was written broadly enough, because you cannot have an exemption without qualifying for the Child Tax Credit.

**SUBSTITUTE MOTION:** **Senator Hill** made a substitute motion to send S 1004 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**S 1005** **Relating to Vulnerable Adults.** **Mr. Henderson** explained this bill would provide a definition of "sexually exploitative material" that refers to vulnerable adults, rather than children. This can be defined as any photograph, motion-picture, videotape, print, negative, slide or other mechanically, electronically or chemically reproduced visual material that depicts a vulnerable adult engaged in, participating in, observing or being used for explicit sexual conduct.

**Mr. Henderson** stated at the end of line 25 after *explicit sexual conduct* it should say *as defined in 18-1507*. For that reason Mr. Henderson requested this bill be sent to the 14<sup>th</sup> Order for amendment for correction.

**MOTION:** **Senator Jorgenson** made a motion to send S 1005 to the 14<sup>th</sup> Order for amendment. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

**S 1006** **Relating to Compensation of Victims of Crimes.** **Mr. Henderson** explained S 1006 provides that for certain violent crimes the court may impose a fine of up to \$5,000 in addition to any other penalties imposed as part of the sentence. There is no statement in the statute as to whether the clerk of the court can take action to collect this fine. The absence of such a provision may leave the burden of enforcing the judgement on the

victim. This bill would amend the statute so that the fine would continue to operate as a civil judgement in favor of the victim, but could also be collected by the clerk of the court and remitted to the victim.

**Senator Davis** asked how this additional language would apply to Title 11, Chapter 6, that refers to property exempt from execution. By adding this language are we taking what is a civil judgement and giving it increased collection power? As a civil judgement would it not otherwise be entitled to be received? **Mr. Henderson** stated he was not sure how that applied to collection fines. **Senator Davis** said they may be doing more then what they are intending, and suggested holding the bill, so that they may review the statutes further.

**Senator Bock** questioned if the collections would occur in the passive or active sense? **Mr. Henderson** replied in the active sense.

**MOTION:** **Senator Davis** asked for unanimous consent that S 1006 be held on the calendar until Wednesday or at the Chair's discretion. **Chairman Darrington** stated since there are no objections it is so ordered.

**S 1007** **Relating to Compensation of Victims of Crimes.** **Mr. Henderson** explained S 1007 amends these statutes to specifically authorize the use of collection agencies to collect restitution owed to victims of criminal acts.

**MOTION:** **Senator Mortimer** made a motion to send S 1007 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:33 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 4, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:** Senator Davis
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:33 p.m.
- MINUTES:** **Senator McKague** made a motion to approve the minutes of January 26, 2009 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.
- S 1006** **Relating to Compensation of Victims of Crimes.** **Mr. Henderson** explained S 1006 provides that for certain violent crimes the court may impose a fine of up to \$5,000 in addition to any other penalties imposed as part of the sentence. There is no statement in the statute as to whether the clerk of the court can take action to collect this fine. The absence of such a provision may leave the burden of enforcing the judgement on the victim. This bill would amend the statute so that the fine would continue to operate as a civil judgement in favor of the victim, but could also be collected by the clerk of the court and remitted to the victim. **Mr. Henderson** said he spoke with **Senator Davis** regarding his concerns of making sure this bill did not affect any of the exemptions that might apply to collection of this fine. **Mr. Henderson** requested that the legislation go to the amending order and be modified for clarification.
- MOTION:** **Senator Kelly** made a motion to send S 1006 to the 14<sup>th</sup> Order for possible amendment. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- RS 18503** **Relating to Disposition of Human Remains.** **Bob Aldridge** explained that rather than trying to define when a prearranged plan exists, this bill simply provides that any matters not covered by a prearranged plan are settled as set forth in section *54-1142 Idaho Code*. Additionally, the bill makes it clear that alternate services may be held which do not involve the remains of the decedent.
- MOTION:** **Senator Jorgenson** made a motion to send RS 18503 to print. **Senator**

**Bock** seconded the motion. The motion carried by **voice vote**.

**S 1047**

**Relating to the Treatment and Care of the Developmentally Disabled.**

**Mr. Aldridge**, explained that S 1047 states that guardianships and conservatorships 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 clear definitions 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 4, Title 66 of the code, have not had those same updates. This has led to 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.

**Chairman Darrington** asked Mr. Aldridge to address the emergency clause. **Mr. Aldridge** stated Legislative Services provided for an emergency effective date since these appointments are going on right now. In order to cover those being done currently, it is best to have it effective as soon as possible.

**Senator Kelly** inquired if this would jeopardize the existing appointments? **Mr. Aldridge** replied in most cases, "no."

**MOTION:**

**Senator Bock** made a motion to send S 1047 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**S 1048**

**Relating to the Protection of Persons with Disabilities.** **Mr. Aldridge** explained Sections One, Two, and Three of the bill provides the same protections to the appointment of the guardian of a minor. The petition must include a statement as to whether the proposed guardian, or a person who resides at or frequents the proposed place of residence of the minor is a felon. Section Three describes that the guardian must take reasonable steps to protect the minor from such felons. Section Four, covering adult guardianships, provides for similar inclusion in a petition for guardianship as to whether the proposed guardian, or a person who resides at or frequents the proposed place of residence of the minor, is a convicted felon. Both Sections Four and Five require that existing powers and trust be revealed, since it is the duty of the Guardian ad Litem and Court Visitor to determine if existing powers and/or trusts can either eliminate the need for a conservatorship or guardianship, or allow a limited appointment.

Existing Idaho Law allows the closing of a guardianship case, but not a conservatorship case. Section Six of this bill 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. If a settlement is made for the claim of a minor, a court proceeding called a Minor's Compromise is used. If the amount of the claim is over \$10,000, a conservatorship is usually instituted to protect the funds.

**Chairman Darrington** asked what would be the remedy for someone who would lie on the statement of disclosure? **Mr. Aldridge** replied the court has the ability to issue a contempt of court.

**MOTION:** **Senator Hill** made a motion to send S 1048 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**S 1042** **Relating to Prisoners.** **Dave Fulkerson**, Division of Financial Management, explained the proposed legislation makes changes to *Idaho Code, 18-2507*, 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, after approval of the claim by the Board of Examiners.

**Chairman Darrington** questioned how this would impact the General Fund? **Mr. Fulkerson** stated the current average yearly amount of these claims is less than \$30,000.

**MOTION:** **Senator Lodge** made a motion to send S 1042 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**PRESENTATION** **Update on Interstate Compact.** **Kevin Kempf**, Chief, Division of Community Corrections, explained the growth and strength of the Interstate Compact. The mission is an Interstate Commission for Adult Offenders Supervision (ICAOS) to guide the transfer of offenders, in a manner that promotes effective supervision strategies consistent with public safety, offender accountability, and victims' rights. The yearly Compact Fee to be part of the system is \$19,461.

Mr. Kempf briefed the committee on Interstate Compact Offenders Tracking System, (ICOTS), which is a computer system that tracks all interstate offenders from across the country.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:10 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 6, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:33 p.m.
- MINUTES:** **Senator Bock** made a motion to approve the minutes of February 2, 2009 as written. **Senator Lodge** seconded the motion and the motion carried by **voice vote**.
- Gubernatorial Appointment** **Pamela Huntsman-McCarroll** of Twin Falls, Idaho, was appointed to the Sexual Offender Classification Board to serve a term commencing January 1, 2009 and expiring January 1, 2015. Mrs. McCarroll was initially appointed to the Sexual Offender Classification Board in 1998. This is her second reappointment to the Board. During the past 11 years she has served the State of Idaho as a Senior Probation and Parole officer with the Department of Correction. Following Mrs. McCarroll's presentation, a few of the committee members asked questions regarding her experiences working with the Department of Correction and sexual offenders.
- Chairman Darrington** thanked Mrs. McCarroll and said the Committee would vote on her confirmation at the meeting Monday, February 9, 2009.
- S 1046** **Relating to Crime Victims Compensation. George Gutierrez**, Industrial Commission, explained S 1046 will provide additional funding to the Crime Victims Compensation Program that provides financial assistance to those victims that have no other source of aid. It increases the fines imposed on convicted criminals - misdemeanors from \$25.00 to \$37.00; felonies from \$50.00 to \$75.00; and sex crime related convictions from \$200.00 to \$300.00. Funding generated through criminal fines has not kept pace with medical inflation and program growth, reducing the Crime Victims Compensation Fund 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.
- Chairman Darrington** questioned at what point will the lines come together at the present rate of usage and collections to where the fund is no longer solvent. **Mr. Gutierrez** replied that is a difficult number to project because they can never project how many claims and what the cost of those will be.
- Senator Hill** questioned the source of funding for Victim's Crime Compensation. **Mr. Gutierrez** stated there were four areas of support.

The first and largest area of support comes from the fees and fines collected. The second is a federal grant. The third area is money they receive from the courts, such as restitution. The fourth area of support is from donations. **Senator Hill** asked if the amount paid out in fiscal year 2008, \$3.1 million on behalf of victims, also includes the cost of running the program. **Mr. Gutierrez** stated “no,” that amount is strictly payments made on behalf of the victims. **Senator Hill** stated since the assistance level has tripled in the last four years, it appears that the fund will be short approximately \$250,000 every year and questioned if they were asking for enough money to cover the program. **Mr. Gutierrez** replied that it is possible, however, they have been able to control spending and should have enough appropriations by adjusting their payment structures.

**Senator Kelly** inquired if they pass the fee increase, will it still be their intention to continue to pay out 75% of the claim? **Mr. Gutierrez** replied that is what they have anticipated for the remainder of 2009.

**Senator Mortimer** asked how many people were working in the department and Mr. Gutierrez replied that he had eleven staff members. **Senator Mortimer** then asked what the operating costs were for the department. **Mr. Gutierrez** said the cost for his administrative staff was \$750,000.

**Senator Davis** questioned if “criminal activity” includes felonies and misdemeanors. **Mr. Gutierrez** responded, “yes.” **Senator Davis** asked if the priority in paying these fines would set precedence over paying child support. **Mr. Gutierrez** deferred that question to Patti Tobias.

**Patti Tobias**, Administrative Director of the Courts, explained child support is paid through a different department, Health and Welfare, so there is no prioritization of those payments. They are currently reviewing different approaches to find the most beneficial in collecting restitution.

**Senator Jorgenson** stated he was concerned that the collections are going to out-of-state collection companies. **Ms. Tobias** stated the county government has the opportunity to enter into a collection agreement with any entity in or out-of-state.

**MOTION:**

**Senator Davis** made a motion to send S 1046 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT**

There being no further business, **Chairman Darrington** adjourned the meeting at 2:30 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 9, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock.
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:34 p.m.
- CONFIRMATION** **Committee Vote**  
**Chairman Darrington** stated the committee would now vote on the confirmation of **Pamela Huntsman-McCarroll** to the Sexual Offender Classification Board to serve a term commencing January 1, 2009 and expiring January 1, 2015.
- MOTION:** **Senator Lodge** made the motion to approve the appointment of **Pamela Huntsman McCarroll** to the Sexual Offender Classification Board. **Senator Hill** seconded the motion. The motion carried by **voice vote**. **Chairman Darrington** will be the sponsor of the candidate.
- S 1050** **Relating to Enforcement of Judgments in Civil Actions.** **Senator Davis** explained the purpose of this legislation is to modify the exempt property list to include medical savings accounts.
- MOTION:** **Senator Jorgenson** made a motion to send S 1050 to the floor with a do pass recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**.
- S 1051** **Relating to Telephone Communications.** **Senator Davis** explained the purpose of this legislation is to protect Idahoans against caller ID spoofing. The act criminalizes certain aspects of caller ID spoofing. Additionally, the act includes such spoofing within the purview of the Consumer Protection Act.
- Senator Davis** explained that it was his intention to send S 1051 to the 14<sup>th</sup> Order for amendment. The idea is to take the definition language that is in section 2 and move it over to the Consumer Protection section. Then pick up the language that ties it to the Consumer Protection Act.

**Senator Jorgenson** questioned if the term “spoofing” was defined in the legislation? **Senator Davis** replied it is not a specifically defined term, but is referenced to in the title. **Senator Davis** added spoofing means providing false or misleading information.

**Senator Kelly** asked what effect this may have on first amendment rights. **Senator Davis** replied other states have given their advice on caller ID and spoofing and have survived their state’s judicial scrutiny.

**Brett DeLange**, Attorney General, Office of the Attorney General, explained that spoofing is a misrepresentation of who you are on caller ID. Mr. DeLange explained that being charged with a misdemeanor is not enough of a deterrent to prevent caller ID spoofing. The Attorney General has suggested to include in the language that the spoofer had the sole intention to deceive. The Consumer Protection Act currently does not have the requirement that the defendant intended to deceive, but rather if the individual did any one of the enumerated acts, that would be a violation of the law.

**Senator Hill** questioned if the \$10,000 fine would be imposed on each instance a call was made. **Mr. Delange** stated he interpreted it as each time a false call was made, then that allows the court to determine the penalty.

**MOTION:**

**Senator Hill** made a motion to send S 1051 to the 14<sup>th</sup> Order for amendment. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**S 1056**

**Relating to the State Board of Corrections.** **Brent Reinke**, Director, Department of Corrections, introduced Jim Loucks, Investigator, Idaho Department of Correction. **Mr. Loucks** explained 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.

**Senator Jorgenson** questioned express enforcement positions in the law? **Mr. Loucks** deferred to **Paul Panther**, Deputy Attorney General, Idaho Department of Correction. **Mr. Panther** referred to the handout listing the agencies that have subpoena power without court intervention.

**Senator Davis** stated this subpoena power seems parallel to some of the other agencies, however, on page two, line 20 & 21 in sub par 4 it states, *If the custodian fails to obey the court’s order, he shall be deemed in contempt of court.* This is not saying we will decide whether or not the court will hold them in contempt of court, and the court has their own rules as to how they would arrive at that conclusion. In other referenced legislation on medical savings accounts, it states, *upon failure to obey the order the witness shall be dealt with for contempt of court,* which is different than saying he shall be deemed in contempt of court. The separation of powers needs to be understood. Senator Davis then asked if this legislation could go through the 14<sup>th</sup> Order for amendment to clarify the referred to language. **Mr. Panther** stated that change would not effect what the department is trying to accomplish.

**Senator Bock** stated he was also concerned with the paragraph Senator Davis referred to because there is no demonstration of affidavit shown. Someone could be held in contempt of court without it showing that the judge was given information by the Department of Correction. **Mr. Panther** clarified that Senator Bock was requesting a petition supported by an affidavit stating why the Department thinks the subpoena is necessary.

**Senator Jorgenson** questioned the enforcement of a subpoena outside the state of Idaho, would that be enforceable? **Mr. Panther** stated that would be covered in section 5, *when documents are sought from a custodian who is not a resident of this state...the director of correction is authorized to obtain subpoenas issued by the clerk of the district court of Ada county.*

**MOTION:** **Senator Davis** made a motion to send S 1056 to the 14<sup>th</sup> Order for amendment. **Senator Mortimer** seconded the motion. **Senator Davis** invited Mr. Panther to draft proposed amendments consistent with the discussion. The motion carried by **voice vote**.

**PRESENTATION** **Juvenile Justice in Idaho**

**Larry Callicutt**, Director of the Department of Juvenile Corrections, gave an overview of the current juvenile statistics in the justice system. Currently there are 9,100 youth involved with the justice system. **Mr. Callicutt** went on to discuss holdbacks, the co-occurring disorders units, and state distribution to counties. The juveniles that are most difficult to work with have a history of mental health and substance abuse issues.

**Mr. Callicutt** informed the committee that Idaho was the first state to develop an active Council for Interstate Compact for Juveniles. When advising the committee on population demographics, Mr. Callicutt stated the average length of custody including sex offenders is 19.1 months. The Idaho Department of Juvenile Corrections assess the offenders when they first enter into the facility, then reassess every two months to evaluate how the offenders are responding to treatment.

**Senator Bock** questioned if there was a correlation between the risk level and the recidivism rate. **Mr. Callicutt** stated there was a clear correlation between the high risk juveniles having a higher recidivism rate.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:30 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** February 11, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:** Senator Lodge

**GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

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

**MINUTES:** **Senator Kelly** made a motion to approve the minutes of February 4, 2009 as written. **Senator Hill** seconded the motion and the motion carried by **voice vote**.

**Senator Mortimer** made a motion to approve the minutes of February 6, 2009 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

**S 1062** **Relating to Disposition of Human Remains. Bob Aldridge**, Trust & Estate Professionals of Idaho, explained that this bill simply provides that any matters not covered by a prearranged plan are settled as set forth in section *54-1142 Idaho Code*. Additionally, the bill makes it clear that alternate services may be held which do not involve the remains of the decedent.

**Senator Hill** questioned if there would be any consequences by having a pre-arranged funeral plan. Also how does this binding agreement affect the heirs? **Mr. Aldridge** stated the prearranged funeral plan is binding, and is a contractual agreement between the decedent and the funeral home.

**Senator Bock** inquired what would happen if there was a conflict between the will and the pre-arranged funeral plan. **Mr. Aldridge** replied the will does not effect pre-arranged funeral plans.

**MOTION:** **Senator Bock** made a motion to send S 1062 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**PRESENTATION** **State Appellate Public Defender Update. Molly Husky**, State Appellate

Public Defender, discussed how the Capital Crimes Defense Fund works for counties that participate in the program. She advised that if a county has a capital crime case and it participates in the program, then it is given funds to help defray some of the defense costs associated with the trial. Jefferson County is the only county in Idaho that does not participate in the program. Ms. Husky stated that her department only handles felony type cases. Currently there are 21 full-time employees in the office, and they will be asking for three additional attorneys. If that does not work out then they will continue to use contract attorneys.

**Senator Kelly** questioned if the money would come from the county to add another three attorneys. **Ms. Husky** stated they do not receive any money from the counties. They are general fund appropriation funded.

**Senator Hill** commented that it has been 15 years since there has been an execution in Idaho. He then questioned if any of the offenders getting close to the end of their appeals process would reduce their caseload in the future. **Ms. Husky** stated executions are under the jurisdiction of the Federal Court.

**Senator Mortimer** asked if they had any reserves available. **Ms. Husky** replied they receive a yearly budget, and any extra money from the previous year does not rollover.

**ADJOURNMENT**

There being no further business, **Chairman Darrington** adjourned the meeting at 2:09 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** February 16, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Lodge, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:** Senator Davis

**CONVENED:** **Chairman Darrington** called the meeting to order at 1:33 p.m.

**MINUTES:** **Senator Lodge** made a motion to approve the minutes of February 9, 2009 as written. **Senator McKague** seconded the motion and the motion carried by **voice vote**.

**Senator Bock** made a motion to approve the minutes of February 11, 2009 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

**RS 18573** **Relating to Motor Vehicle Registration Fees and Emergency Medical Services Fees.** **Steven Millard**, President, Idaho Hospital Association, explained the purpose of the statewide trauma registry is to collect data needed to analyze the incidence, severity, causes, costs and outcomes of trauma in Idaho in order to improve emergency medical systems and to prevent serious injuries. Injuries are the leading cause of death for Idahoans aged one to 44 years and among the leading causes of death for Idahoans overall. Motor vehicle collisions are the second leading cause of traumatic injuries in Idaho. Only 29 percent of traumatic injuries are covered by private insurance, about one-third were covered by government insurance, and an additional 22 percent were reported as self-pay. The proposed legislation increases the Emergency Medical Services fee portion of the motor vehicle registration fees by thirty cents and dedicates that amount to the operation of the Idaho Trauma Registry.

**Chairman Darrington** stated this legislation would increase the fees from one dollar and twenty-five cents to one dollar and fifty-five cents. He then asked Mr. Millard to explain to the committee why they were only asking for an additional thirty cents. **Mr. Millard** replied that increase was sufficient to meet the needs of the trauma registry.

**Senator Mortimer** inquired how long ago was the last fee increase. **Mr. Millard** deferred the question to **Dia Gainor**, Idaho Health & Welfare Dept. Bureau Chief. She stated the last increase took place in 1990.

**Senator Hill** asked for a few examples of what this committee has accomplished and the recommended changes as a result of this program.

**Mr. Millard** stated it has been in the pilot phase up until the fall and they have been able to collect data on the larger hospitals. Approximately 75% of the trauma cases have been collected.

**Chairman Darrington** stated it was his understanding when the trauma registry is fully implemented there will be emphasis on outcomes. **Mr. Millard** replied that is exactly what it is designed to accomplish.

**MOTION:** **Senator Jorgenson** made a motion to send RS 18573 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**RS 18471** **Relating to Visitation Rights of Grandparents.** **Robert Aldridge**, Attorney, Trust & Estate Professionals, explained this bill takes a conservative approach to guarantee constitutionality of grandparent visitation in Idaho until there is a clear judicial statement that some lesser standard might be allowable.

**Senator Jorgenson** questioned the frequency of this type of problem. **Mr. Aldridge** stated this is a continual cycle that is occurring more frequently.

**Senator Bock** inquired if this would expand or restrict grandparent visitation rights. **Mr. Aldridge** explained that Idaho's statute was too expansive and this legislation shrinks the rights of grandparents.

**MOTION:** **Senator Lodge** made a motion to send RS 18471 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**RS 18577** **Relating to Crimes and Punishments.** **Heather Reilly**, Deputy Prosecuting Attorney, explained this legislation will give authority for judges to order restitution upon conviction for driving while under the influence offense. It will give authority for reimbursing law enforcement agencies for the cost to withdraw blood samples, perform laboratory analysis, preserve evidence and present blood analysis testimony during judicial proceedings. The legislation will direct that the moneys reimbursed to the Idaho State Police be deposited into the current State operating fund for drug enforcement.

**Senator Mortimer** questioned who would be reimbursed from this fund. **Ms. Reilly** stated this fund only relates to Idaho State Police (ISP) restitution, and the agencies themselves are reimbursed separately.

**Senator Bock** inquired if the reimbursement was only for the cost of drawing blood. **Ms. Reilly** referred to page 5, line 1, *the court may order restitution for the reasonable costs incurred by law enforcement agencies to withdraw blood samples, perform laboratory analysis, transport and preserve evidence, preserve evidentiary test results and for testimony relating to the analysis in judicial proceedings, including travel costs associated with the testimony.* **Senator Bock** stated there were drafting problems with the legislation, and he felt there would be difficulties enforcing restitution on all the other tests besides drawing blood. **Ms. Reilly** replied that she would be happy to meet with Senator Bock after the meeting to go over the details in-depth.

**Senator Jorgenson** inquired what was the average cost to draw and

preserve blood. **Ms. Reilly** replied it is between \$200-\$250 for a blood draw if they use an EMT or a paramedic. The lab charges the city \$100 for each analysis.

**MOTION:** **Senator Kelly** made a motion to send RS 18577 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:10 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 18, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:** Senator McKague
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** In the absence of **Chairman Darrington, Vice Chairman Jorgenson** called the meeting to order at 1:33 p.m.
- Vice Chairman Jorgenson** explained the Resources and Environment Committee requested the printing of three concurrent resolutions:
- RS 18706** **Concurrent resolution rejecting a pending rule of the Fish and Game Commission relating to Rules Governing Licensing.**
- RS 18707** **Concurrent resolution rejecting a pending rule of the Fish and Game Commission relating to Rules Governing the Taking of Big Game Animals in the State of Idaho.**
- RS 18708** **Concurrent resolution rejecting a pending rule of the Department of Parks and Recreation relating to Rules Governing the Administration of Park and Recreation Areas and Facilities.**
- RS 18691** **The Senate Education Committee** unanimously requested RS 18691, Requiring Virtual Charter Schools to Notify Affected Districts of Intent to Establish, be sent to print and then referred back to the Education Committee for further action.
- RS 18207C2** **The Commerce and Human Resources Committee** unanimously requested RS 18207C2, relating to amendments of three PERSI statutes, be sent to print and then be sent directly to the floor.
- MOTION:** **Senator Davis** made a motion to send RS 18706, RS 18707, RS 18708, RS 18691, and RS 18207C2 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.
- Chairman Darrington** joined the meeting in progress, but asked **Vice Chairman Jorgenson** to continue to chair the meeting.

**PRESENTATION**

**Child Sexual Abuse Statistics.** Stephen Bywater, Division Chief, Criminal Law Division, reviewed the annual report on the prosecution of child sexual abuse. The report was a compilation of resources from the Department of Health & Welfare, state and local law enforcement agencies, the county prosecuting attorneys, the courts and the Department of Correction. He said the report includes data pertaining to reported incidents, cases filed, dispositions and offenders discharged in child sexual abuse cases. Mr. Bywater pointed out a chart that showed the total child sexual abuse cases reported for each county in Idaho by adult or juvenile offender. A total of 539 child sexual abuse cases were filed (420 adult cases, 119 juvenile petitions) in district and juvenile courts in 2008. Convictions were reported in 286 cases; 83 received probation, 51 were placed on retained jurisdiction, and 152 were committed to prison.

**Vice Chairman Jorgenson** questioned if there is plea bargaining that takes place, could that take some of the cases out of the count? **Mr. Bywater** replied that could be true, however in most cases when plea bargaining takes place it will involve reductions in the number of counts. **Vice Chairman Jorgenson** asked if there were incidents that could not be plea bargained? **Mr. Bywater** stated there is no case that cannot be plea bargained, the prosecutor has the discretion to decide what should be charged and how many counts should be pursued.

**Mr. Bywater** stated the Commission of Pardons and Parole granted parole to 1585 inmates during the 2007 calendar year. Of those released approximately 129 were offenders serving sentences for committing child sexual abuse crimes.

**ADJOURNMENT**

There being no further business, **Vice Chairman Jorgenson** adjourned the meeting at 2:02 p.m.

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Senator Michael Jorgenson  
Vice Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 23, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:33 p.m.
- MINUTES:** **Senator Jorgenson** made a motion to approve the minutes of February 16, 2009 as written. **Senator Bock** seconded the motion and the motion carried by **voice vote**.
- Senator Mortimer** made a motion to approve the minutes of February 18, 2009 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.
- RS 18655** The **Senate Health and Welfare Committee** unanimously requests that RS 18655, relating to the Idaho Rural Health Care Access Program, be sent to print and referred back to the Health and Welfare Committee for further action.
- MOTION:** **Senator Hill** made a motion to send RS 18655 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- Gubernatorial Appointments** **Mark Funaiole** was appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2009 and expiring January 1, 2012. Mr. Funaiole has previously served on the board and has gained additional experience by attending the Association of Paroling Authorities International schooling, which is a national course aimed to educate parole board members.
- The committee asked various questions regarding Mr. Funaiole's involvement and observations while on the board. Mr. Funaiole stated that he works with many professional individuals that take their involvement on the board very seriously as they review and prepare a report in advance before the parole hearings. Mr. Funaiole stated the importance of an inmate having a plan prepared before the inmate's hearing. The board reviews if the inmate will be living in an appropriate

place, who they would be residing with, if they have a job, and the programming they plan to continue in order to maintain a functioning role in society.

**Bill Young** was appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2009 and expiring January 1, 2012. Mr. Young explained he has previously served on the board and his involvement with education for 26 years has given him the ability to work with and encourage the inmates to meet their program requirements so that they might be eligible for parole.

The committee asked Mr. Young various questions regarding his involvement with the board. Mr. Young stated that his goal as a board member is to rehabilitate the inmates and get them functioning back in the community with a changed behavior. With the budget cuts it has been difficult because some of the hearings are done over video feed. Mr. Young felt the best interviews are done in person.

**Chairman Darrington** thanked Mr. Funaiole and Mr. Young and told them the Committee would vote on their confirmation at the meeting on Wednesday, February 25, 2009.

**S 1106**

**Relating To Crimes and Punishments.** **Heather Reilly**, Deputy Prosecuting Attorney, explained this legislation will give authority for judges to order restitution upon conviction for the offense of driving while under the influence. It will also give authority for reimbursing law enforcement agencies for the cost to withdraw blood samples, perform laboratory analysis, preserve evidence and present blood analysis testimony during judicial proceedings. The legislation will direct that the moneys reimbursed to the Idaho State Police be deposited into the current State operating fund for drug enforcement.

**MOTION:**

**Senator Jorgenson** made a motion to send S 1106 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT**

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 25, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:30 p.m.
- CONFIRMATION** **Chairman Darrington** stated the committee would vote on the confirmation of **Mark Funaiolo** to the Commission on Pardons and Parole to serve a term commencing January 1, 2009 and expiring January 1, 2012.
- MOTION:** **Senator Mortimer** made a motion to send the re-appointment of **Mark Funaiolo** to the Commission on Pardons and Parole to the Senate floor with a **do confirm** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- CONFIRMATION** **Chairman Darrington** stated the committee would vote on the confirmation of **Bill Young** to the Commission on Pardons and Parole to serve a term commencing January 1, 2009 and expiring January 1, 2012.
- MOTION:** **Senator Jorgenson** made a motion to send the re-appointment of **Bill Young** to the Commission on Pardons and Parole to the Senate floor with a **do confirm** recommendation. **Senator McKague** seconded the motion. The motion carried by **voice vote**.
- RS 18728C2** The **Senate Local Government and Taxation Committee** unanimously requests that RS 18728C2, relating to the Tax Commission's Settlement and Closing Agreements, be sent to print and then referred back to the Local Government and Taxation Committee for further action.
- MOTION:** **Senator Kelly** made a motion to send RS 18728C2 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- RS 18755** **Relating to the Revised Uniform Anatomical Gift Act.** **Ken McClure**, Attorney, representing the Idaho Medical Association, explained this legislation contains a clarifying amendment. It provides that, if a patient

who is an organ donor also has a document directing the withholding or withdrawal of life support systems which conflicts with organ donation, the patient or the patient's designated decision maker and the patient's attending physician must confer and resolve the conflict.

**Senator Jorgenson** questioned what would constitute a vegetative state? **Mr. McClure** stated the living will and durable power of attorney become effective only when the patient cannot speak for themselves and it is clear they are in a permanent vegetative state. The physician also determines that the individual will not become a functioning human being again.

**MOTION:**

**Senator Hill** made a motion to send RS 18755 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**S 1105**

**Relating to Visitation Rights of Grandparents. Robert Aldridge**, Attorney, explained in 2000, the U.S. Supreme Court, in *Troxel v. Granville*, overturned a Washington grandparent visitation statute and stated, both directly and indirectly, minimum constitutional standards for such statutes. The existing Idaho statute, 32-719, violates one or more of those constitutional standards. Later, the Idaho Supreme Court, in *Leavitt v. Leavitt*, affirmed that a clear and convincing standard of proof was needed in the Idaho statute, at minimum, to pass constitutional muster.

This bill modifies 32-719 to meet the highest possible constitutional standards for grandparent visitation. Until the U.S. or Idaho Supreme Court, or both, address the issue in more detail, using any lesser standards risks having the statute held unconstitutional. Therefore, this bill takes a conservative approach to guarantee constitutionality of grandparent visitation in Idaho until there is a clear judicial statement that some lesser standard might be allowable.

**Tracee Crawford**, Chairman for Treasure Valley Grandparents as Parents, Secretary of the national Committee of Grandparents for Children's Rights, spoke in opposition to S 1105. Mrs. Crawford's main objection to the legislation was the inclusion of the "harm standard". She stated that only five states have adopted this standard and the grandparents that reside in those states have never won visitation with their grandchildren. Requiring grandparents to prove that a parent's decision about visitation creates a risk of harm to a child's mental, physical or emotional health would set the bar higher than what the U.S. Supreme Court case *Troxel v. Granville* required. It would diminish the purpose of the visitation statute which is to assure the continued contact between grandchildren and grandparents. Mrs. Crawford concluded the harm standard assumes that no benefit from the grandparents relationship would justify intrusion into family life.

**Georgia Mackley**, Past President of Grandparents as Parents in Boise, Idaho KinCare Coalition, testified against S 1105. Mrs. Mackley believes this legislation as written would make it impossible for grandparents to meet all of the requirements. Specifically section 2 (a) that requires clear and convincing evidence that the loss of the relationship between the petitioner and the grandchild is likely to harm the grandchild.

**David High**, Retired Attorney, Vice President for Idaho Voices for

Children, spoke in favor of this legislation. Mr. High feels as though it is absolutely necessary to pass this legislation in order for grandparents to get a visitation order. If nothing happens with this legislation, grandparents will have to wait another year before they can legally be granted visitation rights under Idaho Code. In conclusion Mr. High stated it is better to have a clear law that is constitutional in order to seek grandparent visitation.

**Marietta Hauser**, Grandparents as Parents in Boise, spoke in opposition to S 1105. Mrs. Hauser believes the “show harm” and “clear and convincing evidence” standards are set too high for grandparents to show cause for visitation rights.

**Chairman Darrington** stated due to time restraints, additional testimony on S 1105 will be heard on March 4.

**ADJOURNMENT**

There being no further business, **Chairman Darrington** adjourned the meeting at 2:10 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

MINUTES

**SENATE JUDICIARY AND RULES COMMITTEE**

**DATE:** March 2, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Lodge, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:** Senator Davis

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

**MINUTES:** **Senator Bock** made a motion to approve the minutes of February 23, 2009 as written. **Senator McKague** seconded the motion and the motion carried by **voice vote**.

**RS 18740** **Relating to Motor Vehicle Financial Responsibility.** The Senate **Transportation Committee** unanimously requests that RS 18740, be sent to print and then referred back to the Senate Transportation Committee for further action.

**RS 18752** **A Concurrent Resolution Urging Congress to Increase Funding of Medical Residency Programs.** The Senate **Education Committee** unanimously requests that RS 18752, be sent to print and then sent to the 10<sup>th</sup> Order.

**RS 18618** **Relating to Worker's Compensation and Related Laws.** The Senate **Commerce and Human Resources Committee** unanimously requests that RS 18618, relating to worker's compensation be sent to print and then be sent directly to the floor.

**MOTION:** **Senator Jorgenson** made a motion to send RS 18740, RS 18752, and RS 18618, to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 1:33 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** March 4, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:33 p.m.
- MINUTES:** **Senator Jorgenson** made a motion to approve the minutes of February 25, 2009 as written. **Senator Kelly** seconded the motion and the motion carried by **voice vote**.
- Senator Kelly** made a motion to approve the minutes of March 2, 2009 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.
- REFERRALS:** The **Senate Transportation Committee** unanimously requests that RS 18501, Relating to Safety Restraints and RS 18763 Relating to the Safe Boating Act, be sent to print and then referred back to the Senate Transportation Committee for further action.
- RS 18787**  
**RS 18776C1** The **Senate Local Government and Taxation Committee** unanimously requests that RS 18787 Relating to Low-Income Housing and RS 18776C1 Relating to Local Land Use Planning, be sent to print and then referred back to the Local Government and Taxation Committee for further action.
- MOTION:** **Senator Hill** made a motion to send RS 18501, RS 18763, RS 18787, and RS 18776C1 to print and referred back to the germaine committee. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.
- RS 18792** **Relating to Exemptions from Attachment.** **Senator Bart Davis** explained this legislation amends some of the exemptions of personal property, protecting the same from execution.
- Senator Mortimer** questioned if this was only for bankruptcy exemption. **Senator Davis** stated it applies in any collection effort.

- MOTION:** **Senator Hill** made a motion to send RS 18792 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- S 1105** **Relating to Grandparents Visitation.** **Chairman Darrington** stated the committee would not act on the bill due to the language disagreement that was discussed at the meeting on March 3rd. **Chairman Darrington** then asked Robert Aldridge, Attorney, John Watts, Legislative advisor, Voices for Children, and Georgia Mackly, Grandparents as Parents, to make brief statements.
- H 59** **Relating to Compensation of Victims of Crimes.** **Bill von Tagen**, Deputy Attorney General, explained 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:** **Senator Bock** made a motion to send H 59 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- H 60** **Relating to Witnesses in Criminal Proceedings.** **Steven Bywater**, Attorney General's Office, explained this legislation 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 to law enforcement to identify, in the investigative stage, the location and ownership of computers being used to commit crimes against children. The records to be 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.
- Senator Jorgenson** questioned what constitutes a crime committed over the internet if that material pops up on the computer? **Mr. Bywater** responded the individual must be in knowing possession and has handled and identified the material.
- MOTION:** **Senator Jorgenson** made a motion to send H 60 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.
- H 70** **Relating to the Sexual Offender Registration Act.** **Jessica Lorello**, Office of the Attorney General, explained this legislation establishes the requirements and process for a sex offender to petition to be removed from the sex offender registry.

**Senator Davis** questioned line 27 which states, *participate as a party at any time in the case*. He asked why notice would need to be given as a right to intervene or participate in the process. This language seems to suggest that an individual may participate at a later date and could be misapplied by an individual. Senator Davis stated he supported the bill, however, he did have some concern over the language and asked Bill von Tagen to speak to the legislation.

**Mr. von Tagen** stated the reason is that sometimes notices are not received or not all of the information regarding the individual is provided. **Senator Davis** responded that he still had a difficult time with the language as it would give another opportunity for the Central Registry that isn't given to other entities. **Mr. von Tagen** replied it was not the intention of the legislation to give the State a second chance. However, sometimes the Central Registry is not always given the chance to bring matters to the court. **Senator Davis** questioned why the language "*at any time*" has to be in the legislation? **Mr. Von Tagen** said it is only there in case things do not happen as the statute say they must. It was placed in the legislation as a fail safe provision.

**MOTION:** **Senator Hill** made a motion to send H 70 to the 14<sup>th</sup> Order for amendment. **Senator Davis** seconded the motion. The motion carried by a **majority vote**. **Chairman Darrington** voted **nay**.

**Presentation:** **Criminal Justice Commission. Brent Reinke**, Director, Idaho Department of Correction, gave an update on the Idaho Criminal Justice Commission and handed out a packet to the members of the committee. Some key points that Mr. Reinke touched on are:

- Crime is down from 12,060 felony cases in 2005 to 10,863 felony cases in 2007.
- Idaho's prison population is down for the first time in a decade from 7,373 inmates in July of 2007 to 7,253 inmates in February 2009.
- More individuals are completing treatment. In 2007, 28% of individuals completed treatment and in 2008, 43% of individuals completed treatment.

**Mr. Reinke** introduced Gary Raney, Ada County Sheriff, Vice-Chair, Sheriffs Association. **Mr. Raney** explained that Idaho has adopted the GAIN assessment which the Ada County Jail uses to evaluate the offenders as they come into the system. **Mr. Raney** then gave an overview of the guidelines for recidivism reduction in the State of Idaho. First, agencies should use evidence-based risk assessment tools. Second, agencies should use standardized risk assessment tools to allow better information sharing and a statewide common frame of reference. Also, new tools should only be adopted and standardized if they significantly improve the assessment process. Third, the risk assessment tools should be used to manage caseloads and develop individualized supervision and treatment plans that address specific risks and needs identified in the assessment. Substance abuse programs should be evidence-based and rely upon the 13 Principles of Drug Abuse Treatment

for Criminal Justice Populations.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** March 9, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:33 p.m.
- REFERRALS:**
- RS 18808** The **Senate Education Committee** unanimously requests that RS 18808, A joint memorial, Urging Congress to Increase Funding of Medical Residency Programs be sent to print and then sent to the 10<sup>th</sup> Order, Motions and Resolutions.
- RS 18822** The **Senate Health and Welfare Committee** unanimously requests that RS 18822, Relating to Food Establishments be sent to print and then referred back to the Health and Welfare Committee for further action.
- RS 18816** The **Commerce and Human Resources Committee** unanimously requests that RS 18816, relating to the Fire Protection Board be sent to print and then referred to the Senate Local Government and Taxation Committee for further action.
- MOTION:** **Senator Hill** made a motion to send RS 18808, RS 18822, and RS 18816 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- RS 18818** **Relating to Firearms, Explosives and other Deadly Weapons.** **Senator Mike Jorgenson** explained the purpose of this amendment is to maintain consistency with Idaho Code 18-3302 that exempts information from applications for concealed weapons permits from public records disclosure. This will also protect retired law enforcement officers whose personal information will not be able to be obtained through this loop hole in the current law.
- MOTION:** **Senator Kelly** made a motion to send RS 18818 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**H 87** **Relating to Vulnerable Adults.** **Heather Reilly**, Attorney, explained this legislation modifies section 18-1505(4)(e), Idaho Code. Regarding 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.

**Senator Kelly** questioned why property and resources were included in the definition? **Ms. Reilly** replied they pulled that language from the exploitation (lines 25-27), so they are talking about a person’s funds, property, or resources that are unjustly or improperly used for profit or advantage by another individual(s). **Senator Kelly** asked for an example of property and resources. **Ms. Reilly** stated resources would include anything the individual relies on to survive, i.e., social security, retirement etc. It is also the same philosophy with an individual’s property, if an individual sells the home of a vulnerable adult unjustly or improperly.

**MOTION:** **Senator Lodge** made a motion to send H 87 to the floor with a do pass recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**H 103** **Relating to County Fees and the Protection of Persons under Disability.** **Patricia Tobias**, Administrator, The Courts, explained in 2005 the Legislature enacted HB 131 creating the Guardianship Pilot Project. The purpose of the project was to evaluate and improve the monitoring of guardianship and conservatorship cases so that the assets of our most vulnerable population could be protected. The bill had a sunset provision with a date of July 1, 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. In order to further pursue the goals of HB 131 and implement the policies, procedures and forms thus far developed in all counties, this bill would repeal the sunset provision of HB 131. It would specifically provide that reports, accounts, and inventories filed in conservatorship cases are subject to review as provided by rules adopted by the Idaho Supreme Court.

**MOTION:** **Senator Mortimer** made a motion to send H 103 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**H 104** **Relating to Coordinated Family Services.** **Ms. Tobias** explained the purpose of this bill is to provide a statutory framework for the expansion of domestic violence courts to each judicial district. Domestic violence courts hold offenders accountable, increase victim safety, and provide greater judicial monitoring. Further, through effective case management and coordination, domestic violence 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 would be assessed a \$30 fee to be deposited into the statewide Drug Court, Mental Health Court, and Family Court Services Fund.

**Ms. Tobias** introduced **Judge Michael Dennard**, who worked as a Magistrate Judge in Ada County for over twenty-six years with a specific focus on family law cases.

**Judge Dennard** stated with the help of a Domestic Violence Coordinator, they now have the type of tools and the support needed to handle domestic violence cases more efficiently and effectively. The ability to coordinate efforts of prosecutors, defense attorneys, court staff, family court services, probation officers, victim witness coordinators and service providers are essential to the success of the courts. Also the judges believe in expediting these cases on the calendar, while at the same time obtaining quality assessments and treatment recommendations, and addressing custody and support issues. This helps serve the family and children involved while at the same time holding the offender more accountable.

**Senator Davis** questioned what would be the best method to get and keep individuals in the program, so that they can get the most out of the program. **Judge Dennard** stated the best approach is to reach these individuals early on and get them engaged in an effective plan.

**Senator Mortimer** inquired how the domestic courts are funded today. **Ms. Tobias** responded that funding for the court personnel is provided by the county, and the State of Idaho funds the service provided by judges.

**Senator Jorgenson** asked if this would be creating a new revenue and if it would divert any funds away from the criminal victims fund. **Ms. Tobias** stated this would be creating new revenue as it is a new fee and would be added to all criminal convictions, criminal substance abuse, and domestic violence convictions on top of existing fees.

**MOTION:**

**Senator Jorgenson** made a motion to send H 104 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**H 105**

**Relating to Fees for Small Claims Cases.** **Ms. Tobias** explained this bill modernizes the basic filing fee statute by eliminating the disparate fees charged for various types of civil cases; providing a thorough list of those cases for which no filing fee is paid; and eliminating the different filing fee charged to interveners. It clarifies that where two or more defendants make an appearance in the same filing, only one filing fee is charged for the filing, rather than a separate filing fee for each of the defendants. The bill also corrects an omission that occurred in 2006 when the Legislature created the Senior Magistrate Judges Fund to purchase additional years of service for retiring magistrate judges who made a commitment to serve as senior judges. The Fund is supported by a \$6.00 fee for filing civil cases. This bill provides that this fee would also be charged for filing small claims cases, which are presided over by magistrate judges.

**MOTION:** **Senator Hill** made a motion to send H 105 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:37 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** March 11, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:32 p.m.
- MINUTES:** **Senator Mortimer** made a motion to approve the minutes of March 4, 2009 as written. **Senator Bock** seconded the motion and the motion carried by **voice vote**.
- REFERRALS:**
- RS 18807** The **Senate Resources and Environment Committee** unanimously requests RS 18807, Relating to Fish and Game, be sent to print and referred back to the Senate Resources and Environment Committee for further action.
- RS 18823** The **Senate Agricultural Affairs Committee** unanimously requests RS 18823, Relating to Aquatic Invasive Species, be sent to print and referred back to the Senate Agricultural Affairs Committee for further action.
- RS 18832C1** The **Senate Transportation Committee** unanimously requests RS 18832C1, Relating to Abandoned Motor Vehicles, be sent to print and referred back to the Senate Transportation Committee for further action.
- RS 18784** The **Commerce and Human Resources Committee** unanimously requests RS 18784, Relating to the Payday Loans, be sent to print and referred back to the Senate Commerce and Human Resources Committee for further action.
- MOTION:** **Senator Davis** made a motion to send RS 18807, RS 18823, RS 18832C1, and RS 18784 to print and referred back to the germane committee. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- RS 18813** **Relating to Worker's Compensation.** **Senator Davis** explained this legislation allows worker's compensation benefits paid from other states

to be exempt from execution in the event of a bankruptcy.

**MOTION:** **Senator Kelly** made a motion to send RS 18813 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**S 1140** **Relating to Exemptions from Attachment.** **Senator Davis** explained this legislation amends some of the exemptions of personal property, protecting the same from execution.

**MOTION:** **Senator Jorgenson** made a motion to send S 1140 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**H 107** **Relating to Execution.** **Lamont Anderson**, Criminal Division, Office of the Attorney General, explained this legislation will amend Idaho Code, Section 19-2719 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. This amendment is also consistent with the standard operating procedures for executions, which currently provides for four lethal injection substances, which include an ultra-short-acting barbiturate and a paralytic agent. This amendment will also enable the director to approve alternative substances as necessary to comply with evolving medical and legal standards. This legislation will also permit a coroner or deputy coroner, rather than a licensed physician, to pronounce death. Further it will eliminate death by a firing squad as an alternative method of execution. The elimination of the alternative method of death by firing squad is deemed appropriate in light of a recent ruling by the United States Supreme Court.

**Senator Kelly** and **Bock** both expressed their concern over the broad terms used under the discretion of Director.

**MOTION:** **Senator Jorgenson** made a motion to send H 107 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. **Senator Kelly** stated she was uncomfortable with the amount of discretion and the lack of guidance given to the Director but she would support the motion. The motion carried by **voice vote**.

**H 179** **Relating to Guardianships.** **Representative Lynn Luker** explained the Idaho uniform probate code under Title 15, provides for nomination by will of a guardian for incapacitated persons. Under the code, the definition of "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 in the probate code 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:** **Senator Hill** made a motion to send H 179 to the floor with a do pass recommendation. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

**H 184** **Relating to Bail. Judge Barry Wood**, explained this bill 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, long before the development of the commercial bail industry. As the Idaho Supreme Court noted in a recent case, the current statutes "do not address bail bonds because bail bonds did not exist when they were enacted." To remedy this situation, the Supreme Court formed the Bail Bonds Guidelines Committee in 2006, bringing together judges, trial court administrators, prosecutors, defense counsel, sheriffs, and representatives of the bail industry. The Committee has 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.

**Senator Jorgenson** questioned if this bill provides uniformity for all seven judicial districts. **Judge Wood** stated that was the intent of the legislation. **Senator Jorgenson** asked if the defendant was held in another jurisdiction which prevented them from making the appearance, would forfeiture of bail occur? **Judge Wood** replied if there is an adequate explanation at the time then they would not be subject to forfeiture. **Senator Jorgenson** inquired if this applied only to appearance bonds. **Judge Wood** stated it only applies to appearance bonds.

**MOTION:** **Senator Bock** made a motion to send H 184 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:37 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** March 16, 2009
- TIME:** 1:30 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:30 p.m.
- MINUTES:** **Senator Hill** made a motion to approve the minutes of March 9, 2009 as written. **Senator McKague** seconded the motion and the motion carried by **voice vote**.
- RS 18833** **Relating to Driving Under the Influence. Michael Henderson**, Attorney, explained that current Idaho Law requires that repeat DUI offenders serve a license suspension of at least one year with no driving privileges whatsoever. Until June 6, 2008, federal law required that the one-year absolute suspension of driving privileges be imposed on repeat DUI offenders in order for a state to avoid a transfer of a portion of its federal highway funds. That federal law has now been amended to allow states the option of granting limited driving privileges to repeat DUI offenders who have served an absolute suspension of at least 45 days. This bill would allow judges to grant restricted driving privileges to DUI offenders, including repeat offenders, who are participants in good standing in drug courts or DUI courts. Such privileges could be granted only to those participants who have served at least 45 days of the driver's license suspension with no privileges whatsoever, had provided proof of liability insurance in the amounts required by law, and whose vehicles were equipped with an ignition interlock system. The limited driving privileges could be used only for the purpose of getting to and from work, school, or an alcohol or drug treatment program.
- MOTION:** **Senator Jorgenson** made a motion to send RS 18833 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- H 164** **Peace Officer Standards and Training Council. Michael Kane**, Idaho Sheriffs Association, explained the purpose of this legislation 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.

**Senator Kelly** questioned if this would be applicable to all agencies. **Mr. Kane** stated it would apply to all law enforcement individuals. **Senator Kelly** asked if this information would include only chronological order of employment or also contain personal information. **Mr. Henderson** stated limited information that is specifically defined as law enforcement employment history by agency and date of service. **Senator Kelly** inquired if P.O.S.T could perform this job without having to change the code? **Mr. Henderson** replied, "no," P.O.S.T's mission is in statute and as of now this is not included and cannot be done until it is approved by the legislative body.

**Senator Hill** questioned how this would effect Police Officers that have worked out-of-state, and what responsibility the council has of getting that information because the bill does not limit it to Idaho employment. **Mr. Henderson** stated this would only apply to certified officers.

**MOTION:** **Senator Kelly** made a motion to send H 164 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**H 168** **Relating to the Sexual Offender Registration Act.** **Representative Jim Clark**, explained currently, persons who are required to register as sexual offenders must list their address or a description of where they are living. However, many of those who have a transient status do not have a physical address, nor do they have a mailing address. A person with no physical address must report, in person, once every seven days to the sheriff of the county in which he resides. He must describe the location where he resides and the sheriff will visit the described location once a month. This will allow law enforcement to track the location of these individuals until they are able to establish a residence with a physical address.

**MOTION:** **Senator Bock** made a motion to send H 168 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** March 18, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Hill, McKague, Mortimer, and Bock

**MEMBERS ABSENT/ EXCUSED:** Senators Kelly and Lodge

**GUESTS:** The sign-in sheet(s) and any attachments will be retained with the minutes in the Senate committee's office, Room 209, until the end of the 2009 Legislative Session and then will be on file with the minutes in the Legislative Services Library.

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

**MINUTES:** **Senator Jorgenson** made a motion to approve the minutes of March 11, 2009 as written. **Senator Bock** seconded the motion and the motion carried by **voice vote**.

**REFERRALS:**

**RS 18804** The **Senate Transportation Committee** unanimously requests that RS 18804, Relating to the Director of the Idaho Transportation Department, be sent to print and then referred back to the Senate Transportation Committee for further action.

**RS 18857** The **Senate Commerce and Human Resources Committee** unanimously request that RS 18857, Stating Findings of the Legislature; Supporting and Encouraging all Government and Business Employers in the Development and Implementation of Telework Policies and Programs for Their Employees, be sent to print and then returned to Commerce and Human Resources Committee for a hearing.

**RS 18854** The **Senate Education Committee** unanimously requests that RS 18854, Relating to Financial Incentives for Public School Deconsolidation, be sent to print and then referred back to the Education Committee for further action.

**MOTION:** **Senator Jorgenson** made a motion to send RS 18804, RS 18857, and RS 18854 to print and referred back to the germane committee. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**RS 18805C1** **Relating to Electronic Recoding Commission. Teresa Barker**, Prosecuting Attorney's Office, explained the purpose of this bill is to create the Electronic Recording Commission within the office of the

Secretary of State and to provide the ability for the Commission to promulgate rules and standards in accordance with Property Records Industry Association.

**MOTION:** **Senator Mortimer** made a motion to send RS 18805C1 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**S 1036** **Relating to Bribery and Corruption.** **Senator Schroeder** explained the purpose of this legislation is to amend 18-1356, Idaho Code, to add the Presidents of public postsecondary institutions of instruction to the list of those prohibited from accepting pecuniary benefits from those that have matters before them.

**Senator Hill** stated the language in the bill that refers to, "any matter" is too broad and does not tie it to any particular transactions or types of matters.

**MOTION:** **Senator Hill** made a motion to hold S 1036 in the committee. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 1:55 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** March 23, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock

**MEMBERS ABSENT/ EXCUSED:**

**GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

**MINUTES:** **Senator Mortimer** made a motion to approve the minutes of March 16, 2009 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

**Senator Bock** made a motion to approve the minutes of March 18, 2009 as written. **Senator Kelly** seconded the motion and the motion carried by **voice vote**.

**REFERRAL:**

**RS 18875** The **Resources and Environment Committee** unanimously requests that RS 18875, be sent to print and then referred back to the Senate Resources and Environment Committee for further action.

**MOTION:** **Senator Hill** made a motion to send RS 18875 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**S 1161** **Relating to the electronic Recording Commission.** **Senator Davis** explained the purpose of this bill is to create the Electronic Recording Commission within the office of the Secretary of State and to provide the ability for the Commission to promulgate rules and standards in accordance with Property Records Industry Association (PRIA).

**MOTION:** **Senator Mortimer** made a motion to send S 1161 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**S 1153** **Relating To Driving Under the Influence.** **Michael Henderson**, Attorney, explained that current Idaho Law requires that repeat DUI offenders serve a license suspension of at least one year with no driving privileges whatsoever. Until June 6, 2008, federal law required that the

one-year absolute suspension of driving privileges be imposed on repeat DUI offenders in order for a state to avoid a transfer of a portion of its federal highway funds. That federal law has now been amended to allow states the option of granting limited driving privileges to repeat DUI offenders who have served an absolute suspension of at least 45 days. This bill would allow judges to grant restricted driving privileges to DUI offenders, including repeat offenders, who are participants in good standing in drug courts or DUI courts. Such privileges could be granted only to those participants who have served at least 45 days of the driver's license suspension with no privileges whatsoever, had provided proof of liability insurance in the amounts required by law, and whose vehicles were equipped with an ignition interlock system. The limited driving privileges could be used only for the purpose of getting to and from work, school, or an alcohol or drug treatment program.

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

**H 72** **Relating to Disposition of Fines, Forfeitures and Costs. Mr. Henderson** explained this 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 superseded by section 19-4705, Idaho Code, governing the disposition of fines and forfeitures, first enacted in 1969. Section 19-4705 contains the formula currently in use to distribute fines and forfeitures. Section 19-4705 also states other existing laws regarding the disposition of fines and forfeitures are hereby repealed to the extent such laws are inconsistent with the provisions of this act except as provided in section 49-1013(3), Idaho Code. Section 19-4701 remains on the books and was last amended in 1929, it is not currently being utilized, and is inconsistent with and repealed by section 19-4705. This bill will correct the prior mission and accord with current practice under the more recent section 19-4705.

**MOTION:** **Senator Lodge** made a motion to send H 72 to the floor with a do pass recommendation and to the Consent Calender. Senator Jorgenson seconded the motion. The motion carried by **voice vote**.

**H 106aa** **Relating to Judgment. Mr. Henderson** explained this bill would amend 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 of the defendant will be a significant factor at sentencing and for good cause shown. 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 if the court believes there is sufficient cause. The bill would also clarify that a report of an examination of the defendant's mental examination that has previously been conducted pursuant to Idaho Code, Section 19-2524, may be used to satisfy the requirements of Idaho Code, 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:** **Senator Jorgenson** made a motion to send H 106aa to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:10 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

MINUTES

**SENATE JUDICIARY AND RULES COMMITTEE**

**DATE:** April 1, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 211

**MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, Mortimer, and Kelly

**MEMBERS ABSENT/ EXCUSED:** Senators McKague and Bock

**GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Darrington** called the meeting to order at 2:00 p.m.

**MINUTES:** **Senator Kelly** made a motion to approve the minutes of March 23, 2009 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

**RS 18865** The **Senate Transportation Committee** unanimously requests that RS 18865, Relating to Motor Vehicles and License Plates, be sent to print and then referred back to the Senate Transportation Committee for further action.

**RS 18880** The **Senate Transportation Committee** unanimously requests that RS 18880, Relating to Motor Vehicle Registration, be sent to print and then referred back to the Senate Transportation Committee for further action.

**MOTION:** **Senator Jorgenson** made a motion to send RS 18865 and RS 18880 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:10 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary