

House Judiciary, Rules & Administration Committee

Minutes
2010



MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: January 19, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** Representative Wills

Chairman Clark called the meeting to order at 1:35 p.m. He welcomed the members and introduced the new page, Stephen Grammar, from Coeur d'Alene. The Chairman recognized **Brent Reinke**, Director, Department of Corrections, to update the members on criminal justice in Idaho and the Idaho Department of Correction.

**PRESENTATION
BY THE IDAHO
BOARD OF
CORRECTION:**

The Director requested that **Greg Sali** address the Annual Statistical Report of the Department for the fiscal year 2009.

Mr. Sali discussed the incarcerated offender population growth. Incarcerated status includes term, rider and parole violators. The male incarcerated offender population has increased an average of 7.2% per year. The female population has increased by 12.3%. The annual percent increase for both males and females has moderated over the last five years with an average annual growth of 4.7% for males and 5.7% for females.

Violent crime sentences have been relatively constant, while non-violent crime sentence length has steadily increased. During the period 1996 through 2009, violent offenders received an average full term sentence length of 136 months. Non-violent offenders sentence length increased from 64 to 93 months and averaged 79 months.

Mr. Sali said the pool of potential recidivists is limited to offenders who were discharged between July 1995 and June 2004. This allows each offender at least 60 months to recidivate. Idaho has a 33% recidivist rate, which is substantially lower than many other states. Idaho uses a discretionary parole release method.

With regard to inmate drug use offenders, meth was cited as the drug of choice by 53% in term status. Meth was cited as the only drug of choice for 35% of termers. As with riders and probationers, female termers tended to report meth use at a much higher rate than males. Many drug abusers are poly-drug users. While use of meth went down, reports of other drug use, especially marijuana, went up. The use of prescription drugs is on the rise.

Director **Brent Reinke** was recognized to give an update on the

Department of Correction. The Director said for every cut made by the Department, the focus has been to protect Idaho through safety, accountability, partnerships and opportunities for offender change. Each member was given a handout showing a legislative briefing and the Department's Annual Report for fiscal year 2009 (attachment.)

The Director said the Department was able to succeed with the "No Growth Initiative" last year and actually had a smaller prison population with 55 fewer inmates. As of today, there are 21,241 offenders in prisons or on probation and parole statewide. The prison population is higher, but is still below the high on May 16, 2008 of 7,463.

During 2009, the Department returned inmates, created pathways to put them in the right beds, opened more efficient beds and closed more costly beds. All inmates were returned to the state by July 15, saving Idaho \$1.4 million. As part of the efficiency and personnel savings efforts, the Department closed 150 department beds.

This fiscal year, the Department evolved from no growth to controlled growth for offender populations. The Department is currently experiencing moderate growth of about 4%. The Department is currently experiencing a lower crime rate by 30%, fewer probation revocations by 37% and accelerated parole releases by 33%.

The Education and Treatment Division achieved a new level of program completions in 2009, with 8,960 program completions. Within a year, the Department will provide a trio of options to reduce inmate population. There will be a correctional alternative placement program (CAPP), there is currently in place a retained jurisdiction program (Rider) and a proposed therapeutic community rider will make up the last option.

Another project in final design phase is the Secure Mental Health Facility. The design is just being completed so it is a little premature to estimate the cost per day of operating the facility.

The Director then turned his remarks to the **Idaho Criminal Justice Commission**. The Commission was established in 2005, has 25 members and includes 3 branches of government and county, city and citizen representatives..

The commission's work is done by the subcommittees. This year there are eight subcommittees which are addressing key criminal justice issues. This includes the addition of two new committees: one for regional offender management centers and one for the public defense system.

The gang subcommittee continues to work to make Idaho safer. There is not an exact Idaho count on gangs. It is known that gangs are active in prisons and communities. In fact, 82% of prison assaults are gang related. The subcommittee is proposing a 3-tiered approach to address Idaho's growing gang problem, The group will develop some evidence-based practices to deter youth from joining gangs. The three tiers are: prevention, intervention and suppression.

The Director said children of offenders are five times more likely than their peers to end up in prison. One in 10 will be incarcerated before reaching

adulthood. The number of women incarcerated has increased threefold in the last 10 years and in a recent survey of 180 offenders, 64 percent of the women and 48 percent of the men reported having two or more children.

Health and Welfare has developed a strategic plan to reduce risk. They have developed specialized teams to support incarcerated women and are continuing to advance efforts for tele-visitation between incarcerated parents and their children who are in foster care. Health and Welfare has 6 VISTA volunteers across the state who are developing resources at the local level for in-care providers who care for these children while their parents are incarcerated. A communication group has been formed to help parents share a positive and constructive message with their children during visits, phone calls and through letters.

A subcommittee on public defense has been formed with temporary acting co-chairs. The mission is to develop a plan for Idaho's Criminal Justice Public Defense System that will improve system gaps to reduce deficiencies and to draft or support new legislation.

Non-violent offenders are being paroled to the community with completed treatment and strong aftercare and support services. Some stay in the community and receive treatment without the Department having to pay for their room, board and medical bills in prison.

The Director concluded his remarks by saying treatment dollars available through the Office of Drug Policy in collaboration with Health and Welfare were part of the reason for a 55 inmate drop in the prison population. Efforts to build a continuum of care from prisons to communities, and from court into treatment have created a more robust criminal justice system that provides more options for treatment.

In response to some questions, the Director said the prison population will continue to grow. Other options in the community need to be looked at. Today, the prison is just shy of 99% capacity. An individual who is released needs a stable environment. The Department is doing everything it can to find sustainable incomes for these people. Tele-visiting is in the process of being developed. Right now it is just in the southwest. It will take a couple of years to set up.

RS19295

Chairman Clark turned the gavel over to Vice Chairman Smith in order to explain **RS19295**. This RS comes from the Kootenai County Division of Civil Actions. It is about three Supreme Court cases that have caused confusion in the area of zoning of specific types of parcels of property. The proposed legislation provides that all decisions pertaining to changes in the zoning of particular parcels or sites would be subject to judicial review by the District Court. If the RS is introduced, Representative Clark will then ask for an Attorney General's opinion as to its constitutionality. The new language can be found on page 6, lines 6 through 8 and lines 29 through 35.

MOTION

Representative Labrador moved to **introduce RS19295**. Motion carried on voice vote.

ADJOURN:

Prior to adjournment, Chairman Clark said there will be no meeting on Thursday, January 21, 2010. The next meeting will be on Monday, January 25, 2010. There being no further business to come before the Committee, the meeting was adjourned at 2:30 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 25, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW42
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representatives Boe and Jaquet
- GUESTS:** Timothy Vincent, Investigator, Idaho Lottery Enforcement; Amber French, Lottery Director; Lorenzo Washington, Department of Correction; Henry Atencio, Department of Correction; Jim Adams, Veterans Services; Fairy Hitchcock, Citizen; Paul Panther, Deputy Attorney General; Mike Kane, Idaho Sheriffs Assoc.; Jeff Anderson, Lottery Director; Jim Trent, State Farm; Ken McClure, Idaho Liability Reform Coalition; Lindsay Wright, Intern, Givens Pursley; Jan Sylvester, Idaho PTA; Sarah Fuhriman, Roden Law Office; Nick Draper, Post Register; Michael Henderson, The Courts; Lamont Johnston, Idaho State Police; Lt. Bob Clements, Idaho State Police
- MOTION:** Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on January 19, 2010, as written. Motion carried on voice vote.
- RS19193C1:** The Chairman recognized **Wayne Hammon** with the Division of Financial Management to explain **RS19193C1**. This proposed legislation aims at simplifying the section of code concerning assault or battery upon public employees. Current code lists specific types of employees while omitting many others engaged in similar work.
- Rather than adding additional classes of employees, and possibly causing more confusion, the proposed legislation replaces this outdated list with the simple term "an employee of the state of Idaho or any of its political subdivisions". Local prosecutors retain the discretion as to when this section of code is applied and if the enhanced penalties are merited.
- In answer to a question as to why this RS is being explained by the Division of Financial Management, Mr. Hammon said the language has gone through a lengthy review process and that process was organized by the department. In answer as to why this legislation is needed, Mr. Hammon said this provides an enhanced penalty. The local prosecutor can decide which penalty to use.
- MOTION:** **Representative Shirley** moved to **introduce RS19193C1**. **Motion carried on voice vote.**

RS19235: **Representative Bilbao** was recognized to explain **RS19235**. Currently there are no felony provisions in code relating to injury by graffiti. This proposed legislation will add that provision. Graffiti is a growing problem through the state and throughout the nation. It is a costly crime. Costs can run up to \$10,000 to remove graffiti.

A recommendation was made to change the word "shall" to "may" on line 16 of the legislation. The chairman said that would be considered if the RS is introduced and becomes a bill.

MOTION: **Representative Smith** moved to **introduce RS19235. Motion carried on voice vote.**

RS19257: **Representative Burgoyne** was recognized to explain **RS19257**. In 1989, the Idaho Supreme Court construed Idaho Code Section 12-117 to permit awards of costs and attorney fees to prevailing parties not only in court cases, but also in administrative cases. Under statute, such awards are only made if the non-prevailing party has pursued or defended the case without a basis in fact or law.

In June, 2009, in the case of Rammell v. Department of Agriculture, the Supreme Court reversed its 1989 decision and ruled that attorney fees could not be awarded in administrative cases.

This legislation will restore the law as it has existed since 1989 and it will become effective on May 31, 2009, so that those administrative cases which were pending when the Rammell decision was issued will not be adversely affected by the Supreme Court's ruling.

When asked about whether the act could be retroactive to May 31, 2009, Representative Burgoyne said he felt that it could be.

MOTION: **Representative Killen** moved to **introduce RS19257. Motion carried on voice vote.**

RS19258: **Representative Burgoyne** was recognized to explain **RS19258**. This bill repeals Idaho Code Section 18-3808, which prohibits law enforcement officers and prosecutors from using reasonable discretion in enforcing gambling laws and makes them guilty of a misdemeanor should they decline enforcement in any case. This repeal will restore reasonable discretion in the enforcement of gambling laws.

MOTION: **Representative Wills** moved to **introduce RS19268. Motion carried on voice vote.**

RS19319: **Chairman Clark** turned the gavel over to **Vice Chairman Smith** in order to explain **RS19319**. This legislation came from a Kootenai County attorney. It clarifies Idaho Code Section 18-8002A pertaining to the length of the suspension of a driver's license imposed by this section of law. These suspensions relate only to the suspension of a driver's license upon failure of evidentiary testing in the state of Idaho. If this RS is introduced, the lawyer from Kootenai County will come to present the bill to the committee.

MOTION: **Representative Hart** moved to introduce **RS19319**. **Motion carried on voice vote.**

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

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

DATE: January 25, 2010

TIME: 2:00 p.m.

PLACE: Room EW42

MEMBERS: Chairman Leon Smith; Representatives Wills, Luker, Burgoyne, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Lorenzo Washington, Policy Coordinator, Department of Correction; Lt. Bob Clements, Idaho State Police; Lamont Johnston, Captain, Idaho State Police; Steve Raschke, Interim Director, Idaho Peace Officers Training Academy; Jim Adams, Administrative Support Manager, Idaho Veterans Services; Erik Makrush, Lobbyist; Representative Jaquet

**DOCKET
06-0101-0901:** Chairman Smith called the meeting to order at 2:00 p.m. and said all the administrative rules, except for the rule on Juvenile Corrections, which is scheduled for review on Wednesday, would be reviewed by the committee today. He recognized **Lorenzo Washington** to explain the Board of Correction Pending Rule 06-0101-0901, Proclamation of Rulemaking.

This proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures and directives.

Section 010, Definitions. Amendment to Subsections 10, 26 and 27 is necessary to make the definitions consistent with the definitions currently being used in IDOC standard operating procedures.

Section 116, Custody of Evidence. Amendment is necessary to make the entire section comprehensively reflect operational procedures currently being used in the IDOC Office of Professional Standards, Division of Prisons and Division of Community Corrections standard operating procedures.

Section 145, Subpoenas. This new section is necessary to allow the IDOC to fully implement Sections 20-209G and 20-228A, Idaho Code. Section 20-209G, Idaho Code, went into effect July 1, 2009.

Regarding disposal of evidence, Mr. Washington said there is a process in place to do that.

MOTION: **Representative Luker** moved to recommend to the full committee that **Docket 06-0101-0910 be approved. Motion carried on voice vote.**

**DOCKET
11-0501-0902:** **Lt. Bob Clements** was recognized to explain the Temporary Rule of the Idaho State Police, 11-0501-0902, Rule Governing Alcohol Beverage Control.

This rule change establishes and clarifies differentiating hours of operation, when a minor can be within a movie theater and when the alcohol beverage licensee must post its premises as 21 years and over. Adoption of the rule permits movie theater owners who are also alcohol beverage licensees to immediately implement the changes in the rule.

The rule confers a benefit to those licensees by broadening their potential entertainment options while ensuring that they remain within the legal boundaries regarding the serving of alcoholic beverages.

When asked if this rule has been run through the industry, Lt. Clements said the only industry heard from was the theater industry. In answer to another question regarding the type of signs, the answer was they would be moveable signs. Regarding requirements on the size and where the signs are to be posted, those requirements are already in code.

Representative Jaquet spoke before the committee saying a gentleman in Hailey sees this rule as an economic development opportunity for the community. He has asked for approval.

MOTION: **Representative Wills** moved to recommend to the full committee approval of **Docket 11-0501-0902**. Representative Burgoyne said he would abstain from voting because of a conflict of interest. Representative Luker said there hasn't been a public hearing on this matter. He expressed concern that this would encourage youths to go to places that served alcoholic beverages. **Motion carried on voice vote.** Representative Luker asked to be recorded as voting "No."

DOCKET 11-0701-0901: **Capt. Lamont Johnston** was recognized to explain the pending rule of the Idaho State Police governing motor vehicles. This rulemaking updates the standards and specifications applicable to Title 49 - Motor Vehicles, Chapter 9 - Vehicle Equipment, Idaho Code, which are incorporated by reference into this rule, to current standards and specifications in federal guidelines. Most of the changes are updates. There is no significant change in the rule.

When asked why the term "flares" was removed under section 040. Federal Regulations, subsection 05., that term was removed because it does not belong in that section.

MOTION: **Representative Wills** moved to recommend to the full committee approval of **Docket 11-0701-0901**. **Motion carried on voice vote.**

DOCKET 11-1101-0901: **Steve Raschke**, Interim Director, Idaho Peace Officer Standards & Training Council (POST), was recognized to explain. This pending rule establishes that the certification of a former officer who is under decertification investigation will not lapse while he is under decertification investigation.

This allows POST Council to retain jurisdiction over the former officer while the decertification proceedings are being completed. Additionally, applicants will be required to disclose any prior decertification proceeding against them and those results. Those changes also apply to peace officers.

MOTION: **Representative Killen** moved to recommend to the full committee

approval of **Docket 11-1101-0901. Motion carried on voice vote.**

**DOCKET
11-1101-0902:**

Steve Raschke was recognized to explain. This pending rule updates contact information, establishes the requirements for Conducted Energy Device certification; updates the property language to encompass all disciplines POST Council certifies; adds a requirement that an officer charged with a felony or non-traffic misdemeanor notify the POST Executive Director; establishes that a decertified officer is not eligible for POST certification of any kind in the future, and that an officer under decertification investigation is not eligible for certification while under investigation. Once a person is decertified, that person will not ever be able to hold another job in law enforcement.

MOTION:

Representative Wills moved to recommend to the full committee approval of **Docket 11-1101-0902. Motion carried on voice vote.**

**DOCKET
11-1104-0901:**

Steve Raschke was recognized to explain. This pending rule updates contact information, allows the POST Executive Director to review "General Under Honorable Conditions: and "Uncharacterized" military discharges for possible waiver; and requires applicants to disclose any decertification proceedings against them and the results of those proceedings.

In the case of a discharge, or an "uncharacterized" discharge, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director will have the discretion to refer the application to the POST Council. In the case of a "general" discharge, the POST Council will review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho.

MOTION:

Representative Luker moved to recommend to the full committee approval of **Docket 11-1104-0901. Motion carried on voice vote.**

**DOCKET
21-0101-0901:**

Jim Adams, Administrative Support Manager, Division of Veterans Services, was recognized to explain this pending rule. The United States Department of Veterans Affairs established revised requirements concerning payments to state veterans nursing homes during the hospitalization of a resident. These rules conflict with the Idaho State Veterans Homes' established rules. The rule revisions remove reference to specific time periods and payment rates for residents admitted to a hospital and desiring to retain their residence at a state veterans home.

MOTION:

Representative Burgoyne moved to recommend to the full committee approval of **Docket 21-0101-0901. Motion carried on voice vote.**

**DOCKET
21-0103-0901:**

Jim Adams was recognized to explain this pending rule. The Veterans Support Fund began receiving funds through a check box on Idaho tax returns for 2008. In 2009, Idaho Legislature approved the addition of monies to the fund provided by the Gold Star license plate. These rules establish the framework for the expenditure of the funds through grants to projects and programs supporting veterans. Grants will not exceed the monies received by the Veterans Support Fund.

Last year, the Veterans Support Fund received \$40,000 plus. The Division is waiting to see what will happen this year. When asked about

accountability of funds received from the Gold Star license plate, Mr. Adams said those funds come through the Department of Transportation. The funds come from both the license plate and tax donations.

MOTION: **Representative Luker** moved to recommend to the full committee approval of **Docket 21-0103-0901**. **Motion carried on voice vote.**

DOCKET 21-0104-0901: **Jim Adams** was recognized to explain this final pending rule. The Code of Federal Regulations mandates 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. This rule change is necessary to enforce those requirements on applicants for interment in the veterans cemetery.

MOTION: **Representative Burgoyne** moved to recommend to the full committee approval of **Docket 21-0104-0901**. **Motion approved on voice vote.**

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

Representative Leon Smith
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** January 27, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW42
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representative Wills
- GUESTS:** Dawn Peck, Idaho State Police, Manager of Criminal Identification Bureau; Sharon Herrigfeld, Director Idaho Department of Juvenile Corrections; Nancy Bishop Deputy Attorney General
- Chairman Clark called the meeting to order at 1:35 p.m. and said the minutes had a small error which would be corrected so that they could be approved at the next meeting on Monday, February 1, 2010.
- RS19115:** The Chairman recognized **Dawn Peck**, Bureau Manager, to explain **RS19115**. This piece of legislation is a cleanup from when the Idaho Department of Law Enforcement was reorganized into the Idaho State Police. It simply endeavors to put into code what the current responsibilities of the Bureau of Criminal Identification are.
- Title 67, Chapter 30, governs the Bureau of Criminal Identification, and section 67-3004(1)(c) specifies the Bureau's responsibilities with regard to latent fingerprints. This section references the Bureau's responsibility to conduct crime scene investigations for the detection and identification of latent fingerprints. The Bureau no longer performs crime scene investigations. That function is now part of the forensics program. The Bureau does have responsibilities for processing latent fingerprints through the Automated Fingerprint Identification System.
- MOTION:** **Representative Hart** moved to **introduce RS19115. Motion carried on voice vote.**
- RS19202:** **Dawn Peck** was recognized to explain **RS19202**. One of the processes done at the Bureau is the processing of the criminal history background checks for concealed weapon permits and renewals. The applications are taken by the sheriffs, who forward the background check information to the Bureau. The original application includes fingerprints. Once the background is processed, the results are forwarded back to the sheriff for review to determine if the person should be issued the permit.
- Current code requires the application be done in triplicate. These triplicate forms have long been paid for from the budget of the Bureau. The cost has become a burden on the already stretched Bureau budget, costing over \$2,500 annually. Some sheriffs have asked if an electronic form could be

created. With such a form, it could be filled out via computer and printed out for the applicant's signature. This bill simply removes the word "triplicate" and gives the department the flexibility to create an electronic form and save taxpayer dollars.

Other minor changes add the place of birth and citizenship to the required information on the form. These two fields were added to keep the forms in compliance with federal laws.

MOTION: **Representative Luker** moved to **introduce RS19202**. It was pointed out that the removal of the semicolon on page 1, line 36, could be problematic. **Motion carried on voice vote.**

RS19203: **Dawn Peck** was recognized to explain **RS19203**. Ms. Peck said one area of her responsibility is the operational and administrative support of the Public Safety and Security Information System. Current code provides a process for law enforcement officers to report stolen vehicle information. This process was manual, is outdated and has not been used for years. This proposed legislation deletes the antiquated language and clarifies in statute the procedures that are used today.

MOTION: **Representative Burgoyne** moved to **introduce RS19203**. **Motion carried on voice vote.**

RS19207C1: **Dawn Peck** was recognized to explain **RS19207C1**. The National Instant Check System (NICS) Improvement Act of 2007 was signed into law on January, 2008. It amends the original "Brady Law." This proposed legislation is the work of the subcommittee of the Criminal Justice Commission, chaired by Idaho State Police Director Jerry Russell. The bill has two parts. It creates the "Relief from Disabilities Program" and provides clear authority for the Bureau of Criminal Identification to pass the mental health commitment information to the NICS program.

The "Relief from Disabilities Program" provides a method for a person no longer suffering from the condition that originally caused the mental commitment to go back to the court for relief. This means that someone who has a valid Idaho Concealed Weapon Permit can show it to the gun dealer when purchasing a weapon and the dealer does not have to perform the "Brady Check."

The second part authorizes the Bureau of Criminal Identification to obtain and electronically transmit data to the NICS program in accordance with federal law. The state will not be creating a database in-state; rather the data will be transmitted from the court system to the NICS program. If a person is granted relief, the data will be deleted from the NICS system through that same process. The information is used only for background checks required for purchasing a gun and is not accessible to any other groups.

Additionally, the NICS Act provides for financial assistance to aid states in sending records to NICS and provides financial penalties if they fail to provide records.

Ms. Peck concluded her remarks saying Deputy Attorney General Steven

Bywater and she recently had a conference call with attorneys to review this legislation. A minor revision to ensure compliance was suggested. Ms. Peck asked that the bill be printed with those changes.

This legislation has been modeled after current federal and state guidelines.

MOTION:

Representative Smith moved to **introduce RS19207C1** with the following changes: on page 1, line 14, after the word “to” add 18 USC §§922(d)(4) or (g)(4) or. Then, after the word state, delete or federal, and add the word or after the word law. That portion of (1) would then read: “Any person who is prohibited from receiving or possessing a firearm pursuant to 18 USC §§922(d)(4) or (g)(4) or state law or as a result of being involuntarily committed in this state to a mental institution under section 66-329, 66-406, 18-212 or 16-2418 may petition the magistrate court in each county in which any commitment was issued for relief from such prohibition. **Motion carried on voice vote.**

Prior to adjourning, **Chairman Clark** pointed out that on the right-hand side of the meeting room is a framed picture of previous Revenue and Taxation Committee chairmen going back to territorial times. On the left-hand side is a framed picture of previous Judiciary, Rules and Administration Committee chairmen, going back to territorial times. The chairman said he is the 50th chairman of the committee and the third chairman to come from Kootenai County. He plans on donating the picture back to the Idaho Historical Society

ADJOURN:

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE
SMITH SUBCOMMITTEE

DATE: January 27, 2010

TIME: 2:05 p.m.

PLACE: Room EW42

MEMBERS: Chairman Leon Smith; Representatives Wills, Luker, Burgoyne, Killen

**ABSENT/
EXCUSED:** Representative Wills

GUESTS: Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections;
Nancy Bishop, Deputy Attorney General

Chairman Smith called the meeting to order at 2:05 p.m.

**DOCKET
05-0101-0901:**

The Chairman recognized **Sharon Harrigfeld** to explain the Department of Juvenile Corrections pending rules for contract providers. Ms. Harrigfeld said these rules are basically housekeeping rules. The rules are specifically for contract providers. They clarify current rules for the benefit of the Department's Quality Assurance Group as they carry out audits of contract providers and clarify some of the rules based on requests from contract providers. They also remove redundancies.

It was discovered that one of the sections of these pending rules is not as clear as it should be and may present a conflict with another section. Therefore, the Department has submitted a proposed administrative rule form to the Department of Financial Management requesting a temporary and proposed rule to correct this conflict.

Ms. Harrigfeld asked the committee to approve these rules. The amount of training has been increased. Incidents requiring immediate notice are defined. Incidents requiring notice within ten days are defined. Pat down searches are allowed, but body cavity searches of juveniles will not be performed by staff, interns or volunteers. Visual inspections may only be performed by staff with appropriate training and visual inspection must be based upon a reasonable belief that the juvenile is concealing contraband. Looking into juveniles' mouths is not considered a body cavity search.

If a body cavity search is required, that must be done by a medical physician.

MOTION:

Representative Luker moved to recommend **Docket 05-0101-0901** to the full committee for approval with the understanding that the Department will draft a temporary rule correcting the notice provisions. **Motion carried on voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:20 p.m.

Representative Leon Smith
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 1, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW42
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representative Burgoyne
- GUESTS:** Robert Romero, Attorney; Dawn Peck, Manager, Idaho State Police Bureau of Criminal Identification; Ben Botkin, Reporter
- MOTION:** Chairman Clark called the meeting to order at 1:25 p.m. and asked the members to review two sets of minutes. Representative Bolz moved to approve the minutes of the meetings held on January 25 and January 27, 2010, as written. Motion carried on voice vote.
- H 423:** The Chairman recognized **Robert Romero** to explain **H 423**. The purpose of this amendment is to clarify Idaho Code Section 18-8002A pertaining to the length of the suspension imposed by this section of the law. These suspensions relate only to the suspension of a driver's license upon failure of evidentiary testing in the state of Idaho. If a person has two failures of evidentiary tests in Idaho, this amendment will clarify the authority of the Idaho Transportation Department to suspend the license for one year with no limited privileges.
- In answer to a question concerning whether evidentiary testing done outside the state of Idaho would be acceptable, Mr. Romero said he didn't believe that would be a problem. This type of testing needs to be done as soon as possible.
- MOTION:** **Representative Hart** moved to send **H 423** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Representative Hart will carry the bill on the floor.**
- H 420:** **Chairman Clark** asked for **Unanimous Consent** to hold **H 420** until the meeting to be held on February 15, 2010, as amendments were being drafted. There being no objection, **H 420 was so held.**
- H 443:** **Dawn Peck**, Manager of the Idaho State Police Bureau of Criminal Identification, was recognized to explain **H 443**. This piece of legislation is a cleanup from when the Idaho State Police was reorganized over ten years ago. It clarifies in the code what the current responsibilities are of the Bureau of Criminal Identification.
- Title 67, Chapter 30 governs the Bureau of Criminal Identification (BCI). Section 67-3004(1) (c) is specific to the BCI's responsibilities with regard

to latent fingerprints. The responsibility to conduct crime scene investigations for the detection and identification of latent fingerprints is now part of the Forensics program. The BCI does have the responsibilities for processing latent fingerprints submitted by agencies through the Automated Fingerprint Identification System.

MOTION: **Representative Jaquet** moved to send **H 443** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Representative Jaquet will carry the bill on the floor.**

H 444: **Dawn Peck** was recognized to explain **H 444**. The Bureau of Criminal Identification is responsible for the processing of the criminal history background checks required for concealed weapon permits and renewals. The applications for the permits are taken by the sheriffs, who forward the background check information to the Bureau for processing. For the original application, this also includes fingerprints. Once the criminal history background is processed, the results are sent back to the sheriff for his/her review to determine if the person should be issued the permit.

Idaho Code states that the license application shall be in triplicate, in a form to be prescribed by the director of the Idaho state police, etc. These triplicate forms have been paid from the budget of the Bureau.

The cost of these forms has become a burden on the already stretched Bureau budget, costing over \$2,500 annually. Some sheriffs have asked whether an electronic form could be used. With such a form, data could be filled out via computer and the application printed for the applicant's signature. This bill simply removes the word "triplicate" and gives the department the flexibility to create an electronic form.

Among other minor changes are adding the place of birth and citizenship to the required information. These two fields were added to ensure compliance with federal laws.

A question was asked regarding the removal of the word "or" on page 1 of the bill, lines 19 through 38 and on page 2, lines 2 through 8. Ms. Peck said the last "or" was left in and the drafters felt that removing the other "ors" made the bill cleaner. Another member said the semicolons should then be commas. Some discussion of the proper verbiage followed. Committee discussion followed on the proper format to be used..

MOTION: **Representative Luker** moved to send **H 444** to **General Orders** with an amendment attached clarifying the language. **Motion carried on voice vote.**

Representative Smith said the Smith Subcommittee has completed its work on reviewing the administrative rules and a motion is needed by one of the subcommittee members to approve the minutes of the meetings held on January 25 and January 27, 2010.

MOTION: **Representative Killen** moved to approve the subcommittee minutes of those two meetings as written. **Motion carried on voice vote.**

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 3, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW42
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** None
- GUESTS:** Ben Wolfinger, Major, Kootenai County Sheriff; Joel Teuber, Lobbyist, Fraternal Order of Police; Alex Neiwirth, Lobbyist, Idaho Association of Government Employees; Barbara Jordan, Lobbyist, Idaho Trial Lawyers Association; Sharon Harrigfeld, Director, Idaho Department of Correction; Benjamin Davenport, Risch Pisca, Kip Higby, Sergeant, Boise Police
- MOTION:** Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes. Representative Bolz moved to accept the minutes of the meeting held on February 1, 2010, as written. Motion carried on voice vote.
- MOTION:** The Chairman recognized **Representative Smith** to give a final report on the Smith Subcommittee review of the administrative rules. Representative Smith said there was only one dissenting vote on one of the rules which were reviewed by the subcommittee. Representative Smith moved that the committee as a whole approve all of the pending and temporary rules submitted to it for study. **Motion carried on voice vote.**
- IDAHO
DEPARTMENT
OF JUVENILE
CORRECTIONS
OVERVIEW:** The Chairman recognized **Sharon Harrigfeld**, Director, to update the members on the Department of Juvenile Corrections. The department's mission is to prevent and reduce juvenile crime in partnership with communities. As of the year 2010, 44 counties and the state are working together. In January, there was an average 343 juveniles daily in the state's custody. On average, 7 or 2% are out of state. The recidivism rate is 27.7% which represents a 12 month re-adjudication rate.
- There are 7,065 youth involved with the justice system. Of these, 72% will not have committed another criminal act at the end of a 12-month follow-up period.
- On January 28, 2009, the Chief Justice signed an order amending Idaho Juvenile Rule 19. This amendment states that a juvenile being considered for commitment to the department must be evaluated by a screening team. These screening teams consist of representatives from the County Juvenile Probation Office, the Department of Juvenile Corrections and the Department of Health and Welfare.
- From February 2009 to the end of September, 2009, there have been 119

juveniles staffed across the state. To date, 85.8% of those juveniles who are diverted have remained out of the department's custody. Benefits of the screening teams include projected savings for a year of approximately \$7.5 million, utilization of every resource available prior to commitment and maximizing opportunities for juvenile offenders to stay in the community.

There are 1,941 juveniles screened in Idaho Juvenile Detention Centers. Of those, 960 or 59% appeared to have a mental health issue. Females appeared significantly more likely to have mental health issues than males. There are 746 or 46% of screened juveniles who appear to have a substance abuse issue. Males appeared slightly more likely than females.

By refining case management, there has been a reduction in the amount of forms used by almost 30%, efficiencies have been gained by improving consistency, no duplication of paperwork has been ensured and the usage of electronic signatures and document storage has been maximized.

When asked if the drug use was causing the mental health issues, Ms. Harrigfeld said it isn't known if the mental health issue created the substance abuse issue or whether the substance abuse issue created the mental health issue. One of the things the department has been working on is refining its case management. It is necessary to have continuity throughout the system. The Department is trying to get rid of duplication. Some pilot programs are currently being implemented to accomplish those goals.

In answer to a question regarding the drug of choice, Ms. Harrigfeld said the drug of choice used to be alcohol. Now it is alcohol, marijuana and prescription drugs.

H 402:

Chairman Clark recognized **Representative Marv Hagedorn** to explain the bill. The bill amends current code descriptions that involve bomb threats and other such acts to include "Hoax Destructive Devices." It says that persons convicted of intentionally/knowingly selling, giving, mailing or using such devices with the intent that any other person will believe that such a hoax destructive device is a real destructive device shall be sentenced to a term of 5 years in the state penitentiary and be guilty of a felony.

Joel Teuber was recognized to explain the bill in more detail. It is currently not illegal to use a hoax device to rob a bank or threaten injury to a person. On page 2 of the bill, starting on line 13, a definition of a hoax device is provided. Hoax device means any object that, under the circumstances, reasonably appears to be or contain a destructive device or is proclaimed to be or contain a destructive device as defined in this section, but that is not in fact a destructive device.

After some questions regarding the language, Mr. Teuber said the language can be amended. It was pointed out that the statement of purpose had a typographical error which needs to be corrected. One member expressed concern about making a hoax device a felony. It was pointed out that a hoax device will not actually cause injury to someone. Proof of someone's intent to injure would be difficult to prove.

After many concerns were voiced from the members, Chairman Clark asked if the sponsor wanted to hold the bill for a time certain to draft amendments

or to start with a new RS. There is a problem with hoax devices, but this legislation does not seem to provide the correct remedy. The bill needs to be more clearly defined.

MOTION: **Representative Smith** moved to **hold H 402** in committee with the recommendation that the bill be redrafted in RS form resolving the concerns of all interested parties and be brought back before the committee. **Motion carried by voice vote.**

H 421: **Representative Burgoyne** was recognized to explain the bill. Representative Burgoyne said there is an Attorney General's opinion regarding the retroactive effect of the bill (attachment.) That opinion stated that section 2 of the bill will likely be adequate to give the bill retroactive effect except in cases that have already been finally adjudicated. There is also a letter from an attorney (attachment) written in support of the bill.

In 1989, the Supreme Court construed Idaho Code Section 12-117 to permit awards of costs and attorney fees to prevailing parties not only in court cases, but also in administrative cases. Such awards are only made if the non-prevailing party has pursued or defended the case without a basis in fact or law. In June, 2009, the Supreme Court reversed its decision and ruled that attorney fees could not be awarded in administrative cases.

This bill will restore the law as it has existed. It will become effective on May 31, 2009, so administrative cases which were pending will not be adversely affected.

The intent is not to change how the law has been applied. Clarifying language has been added to make the law more clear. A member said he agreed with this bill, but felt it doesn't go quite far enough. He asked about adding some amending language. In answer, Representative Burgoyne said it was his intent to bring forth another piece of legislation to address other issues. The intent of this bill is to restore the law as it has previously existed.

MOTION: **Representative Smith** moved to send **H 421** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** Representative Burgoyne will carry the bill on the floor.

Written testimony in favor of the bill was handed to the committee from M. Alex Neiwirth with the Idaho Association of Government Employees (attachment.)

H 422: **Representative Burgoyne** was recognized to explain. This bill repeals a section of the code which prohibits law enforcement officers and prosecutors from using reasonable discretion in enforcing gambling laws and makes them guilty of a misdemeanor should they decline enforcement in any case. This repeal will restore reasonable discretion in the enforcement of gambling laws. Representative Kren expressed some concern over the bill.

MOTION: **Representative Nielsen** moved to send **H 422** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** Representative Burgoyne will carry the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:55 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 9, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW42
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** None
- GUESTS:** Bill Roden, Attorney; Kathryn Morris, Health and Welfare; Chief Allan, Coeur d'Alene Tribe; Helo Hancock, Legislative Director, Coeur d'Alene Tribe; Drew Thomas, Risch Pisca; Mike Kane, Idaho Sheriffs Association; Dennis Tanikuni, Idaho Farm Bureau
- MOTION:** Chairman Clark called the meeting to order at 1:35 p.m. and asked the members to review the minutes. Representative Bolz moved to approve the minutes of the meeting held on February 3, 2010, as written. Motion carried on voice vote.
- RS19402:** The Chairman recognized **Representative Hart** to explain **RS19402**. This legislation amends Idaho Code 19-4902 by deleting the one-year time limitation for filing a post-conviction petition for fingerprint or DNA testing. Language is added to provide the right to petition for testing to those inmates who made either pleas or confessions that may have been involuntary. It allows DNA testing in appropriate cases at any time.
- MOTION:** **Representative Jaquet** moved to introduce **RS19402**. **Motion carried on voice vote.**
- RS19483:** The Chairman recognized **Bill Roden** to explain **RS19483**. Mr. Roden said he represents the Coeur d'Alene Tribe. He gave each member a handout regarding the state and Indian tribal cooperative law enforcement act (attachment). There is a great deal of misinformation about this bill. This proposed legislation is a necessary effort to end jurisdictional gaps for enforcement of state law within the boundaries of Indian reservations by encouraging Idaho Indian tribes and county sheriffs to negotiate and enter into cooperative agreements that will increase and enhance enforcement of Idaho state law.
- It is an effort to supplement and enhance law enforcement in rural areas of Idaho where resources are scarce and gaps in jurisdiction of enforcement agencies create safe havens for criminals. The Coeur d'Alene Tribe has long recognized the problem, and has a successfully operating cross-deputization agreement in force with the Kootenai County Sheriff.
- No Tribe will be mandated to accept the added burden of engaging in efforts

to enforce state laws within their boundaries. No sheriff will be required by this legislation to cross-deputize tribal peace officers. One of the most important features of the legislation is the provision creating a 180-day period of time, prior to the effective date of a tribal election, to allow tribal officers to engage in the enforcement of Idaho state law.

During this period, the Tribe must actively engage in negotiations with the sheriff of an affected county if the sheriff is willing to do so. The sheriff is not mandated to engage in those negotiations. However, the Tribe is mandated to invite such negotiations and participate in them. The legislation also permits the parties to the negotiation to extend the negotiation period beyond the 180-day period of time.

It is the intent of this legislation that such negotiations would lead to a mutually cooperative law enforcement agreement.

In the absence of such an agreement, the legislation authorizes, but does not mandate, the Indian tribe to permit its police department to engage in the enforcement of state law if the Tribe meets certain requirements. Tribal officers must be trained and certified through the Idaho POST academy. They must follow all state laws relating to arrests and notify the sheriff of the fact of the arrests.

In addition, all enforcement of state law by Tribal peace officers will be processed through Idaho state courts. No fines, costs or other compensation will be paid to the Indian tribe and there is no cost to the county, state or local government.

An Indian tribe assisting in enforcement of state laws must provide and maintain two million dollars in liability insurance, naming the county as an insured, which is payable to satisfy judgment or settlements arising out of conduct of tribal officers while engaged in enforcement of state laws. Neither the tribe nor the insurance company will raise a defense of sovereign immunity in an action for damages under state or federal law.

In answer as to why this legislation has been drafted, Mr. Roden said there are approximately 1,000 cases involving non-tribal members such as domestic violence cases or driving under the influence and the Tribal officers have been unable to respond. One member said he has several questions he would like answered if this legislation comes back as a bill.

MOTION: **Representative Nielsen** moved to introduce **RS19483**. **Motion carried on voice vote.**

H 392: **Representative Clark** said there were some concerns regarding the language in **H 392**, so he asked for **Unanimous Consent** to **hold** the bill in committee. A new RS will be drafted to answer the concerns and to replace the bill. There being no objection, **H 392 was so held.**

RS19455: **Representative Leon Smith** assumed the Chair in order for **Representative Clark** to explain **RS19455**. Representative Clark said about a year and a half ago he started working with family law attorneys regarding the current adoption laws and this bill is a result of that work. The need for adoption reform has been recognized nationwide by people who understand

the current state of the adoption industry as one that is highly unregulated and in need of a complete overhaul. This legislation identifies several areas of Idaho adoption statutes that are in need of revision. It removes and revises conflicting and confusing statutes. It protects the rights of both birth parents in the adoption process and it enhances current legislation in order to achieve the intent originally intended by the legislature.

In answer to some questions, Representative Clark said the legislation deals with the rights of the father of the baby. Paternity proceedings may be instituted at any time before the child reaches the age of majority. Other questions regarding the language will be answered by experts in the field if the RS is introduced.

MOTION: **Representative Jaquet** moved to introduce **RS19455. Motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:05 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 11, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** None

GUESTS: Patricia Tobias, Administrative Director of the Courts; Holly Koole, Attorney, Idaho Prosecuting Attorneys Association; McKinsey Miller, Lobbyist; Mike Brassey, Attorney

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

MOTION: Representative Bolz moved to approve the minutes of the meeting held on February 9, 2010, as written. Motion carried on voice vote.

RS19511 Chairman Clark recognized **Holly Koole**, Idaho Prosecuting Attorney, to explain **RS19511**. The purpose of this legislation is to amend Idaho Code Section 20-507 to authorize juvenile court to address timely filed probation violations after a former juvenile turns twenty-one. In a recent decision, In Re Doe, 147 Idaho 326, 208 P.3d 730, the Idaho Supreme Court concluded that the plain language of Idaho Code Section 20-507 required termination of juvenile court jurisdiction once the juvenile reached age twenty-one, even if the state filed a probation violation before the former juvenile's twenty-first birthday.

As the law is now, because juvenile court jurisdiction terminates at age twenty-one, a former juvenile cannot be held accountable for his/her probation violation unless the matter can be resolved before that person turns twenty-one. Even if the probation violation were filed prior to the former juvenile turning twenty-one, there can be no consequences for the probation violation upon the juvenile turning twenty-one. This creates incentive for a former juvenile to violate probation terms or abscond from probation because there can be no penalties once that person reaches twenty-one.

This legislation would close that loophole. By authorizing juvenile court to retain jurisdiction to be able to address timely filed probation violations and to sanction a former juvenile after that juvenile turns twenty-one would provide greater incentive for that juvenile to comply with the terms of probation and/or not to abscond from probation.

Age twenty-one would still be a limitation on juvenile court jurisdiction in

other matters, generally limiting juvenile court scope to persons under age twenty-one.

In answer to a question concerning how much longer the court could continue jurisdiction, Ms. Koole said the court would just be able to enforce the existing violation.

MOTION: **Representative Kren** moved to introduce **RS19511**. **Motion carried on voice vote.**

RS19552: Chairman Clark recognized **Patricia Tobias**, Administrative Director of the Courts, to explain **RS19552**. This legislation will keep the courthouse doors open to all Idahoans during the current financial crisis. The Court is absolutely committed to working with all parties to the maximum extent possible. However, the Judicial Branch must be able to administer justice for all Idaho communities.

The bill creates an emergency surcharge to be paid by persons who commit crimes and infractions. The surcharge would enable the Judicial Branch to continue to fulfill its constitutional responsibilities and to provide services that benefit the people of the state of Idaho. Each person found guilty or who pleads guilty to a criminal offense or infraction, committed between April 15, 2010 and June 30, 2013, would pay a \$25 fee for each offense or infraction.

Eighty percent of the fees collected would be deposited in the Drug Court, Mental Health Court and Family Court Services Fund, and twenty percent would be deposited in the Idaho Statewide Trial Court Automated Records System (ISTARS) Fund.

The Judicial Branch has participated fully in the budget hold backs and has searched for innovative ways to provide court services more efficiently. Further cuts would gravely impair efforts to provide Idaho's citizens the justice to which they are constitutionally entitled, and to continue such beneficial programs as drug courts and mental health courts.

These fees will be paid by users of the courts who have committed offenses. The emergency surcharge will shift approximately \$5.1 million of the budget off of the general fund, with this burden being taken up by dedicated funds.

The bill includes an emergency clause that will permit the application of the emergency surcharge to crimes and infractions occurring on or after April 15, 2010. It also provides, through what amounts to a sunset provision, that the emergency surcharge will not apply to offenses committed after June 30, 2013. This will permit further review over the next three years of the financial outlook and the needs of the Judicial Branch.

The courts are currently experiencing almost 500,00 cases filed per year. Ms. Tobias said if the proposed legislation is introduced, she will return to testify to the bill and explain more fully where the money will go. The budget for courts next year calls for a 7 percent cut in state funding, while caseloads are continuing to grow.

The start date and end date indicated in the sunset clause are unusual. It

was necessary to have a date certain in the legislation for the hundreds of thousands that might need to know the start date and the end certain date. If this is passed into law, these surcharges would not go into effect until April 15, 2010.

Currently, if a person drives 16 or more miles per hour over the speed limit, the fine would be \$140.00. That money is distributed as follows: \$16.50 for court costs, \$10.00 to the POST Academy for training, \$98.50 for the fine, \$5.00 to the county justice fund and \$10.00 to ISTAR. With this legislation, the fine would be \$165.00.

If an emergency didn't exist right now, the effective date would be July 1, 2010. This legislation is designed to shore up the budget of the Judicial Branch. This is for the entire court system. Because the budget is being cut from the general fund, the burden will be shifted to dedicated funds. Other issues need to be addressed with other proposals.

MOTION: **Representative Jaquet** expressed her concern over a lack of funding for Idaho Legal Aid Services. She moved to return **RS19552** to the Sponsor.

SUBSTITUTE MOTION: **Representative Hart** moved to introduce **RS19552**. **Motion carried on voice vote.** **Representatives Jaquet and Boe** asked to be recorded as voting **NAY** on the motion.

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 15, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW42
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Representative Burgoyne
- GUESTS:** Michael Henderson, Legal Counsel, Supreme Court; Holly Koole, Attorney, Idaho Prosecuting Attorneys Association; Fairy Hitchcock, Advocate; Rick Visser, Attorney, Idaho Innocence Project, Dr. Greg Hampikian, Director, Idaho Innocence Project
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.
- MOTION:** Representative Bolz moved to approve the minutes of the meeting held on February 11, 2010, as written. Motion carried on voice vote.
- H 498:** The Chairman recognized **Representative Hart** to explain **H 498**. This legislation would delete the one-year time limitation for filing a post-conviction petition for fingerprint or DNA testing. The bill would allow testing in appropriate cases at any time. This provides a remedy for a person who has pled guilty to a lesser charge of a crime to avoid going to trial.
- PRO:** **Rick Visser**, attorney representing Idaho Innocence Project, was recognized to speak to the bill. Mr. Visser said 47 states now have DNA testing statutes. Thirty five of those states have no time limitation on when a person may file a petition for DNA testing. Idaho is one of only two states that has a one-year time limit to file. The time limit is one year from the date of the judgment of conviction.
- Since 2001, through DNA testing, there have been 148 exonerations of wrongfully convicted people in the United States. Only two of those petitions occurred within one year of the person's date of conviction.
- In states that allow a petitioner to file a DNA petition at any time, there has not been a floodgate of litigation. In data collected from seven other states, there is a range of one petition filed for every 4,400 to 28,000 inmates per year. In Idaho, there are 6,400 inmates. Using the foregoing data, this would mean there would be 0 to 2 petitions per year in Idaho.
- In 27% of 250 exonerated cases, innocent defendants made incriminating statements, delivered outright confessions or pled guilty.
- Since the enactment of the DNA testing statute in 2001, the cost of DNA

testing has gone down. Given an estimate of 0 to 2 petitions per year, the estimated cost would be \$0 to \$1,000 per year. However, if this testing overturns a conviction, the state of Idaho will save \$20,000 plus per year for each person freed from prison.

In answer to a question regarding the impact this bill would have on the prosecutor's office, Mr. Visser said he couldn't see any difference between this type of a petition and petitioning for a new trial. There are only two accredited laboratories that currently do this testing. You can't use just any type of a laboratory. Mr. Visser stated that he represents the Idaho Innocence Project which is committed to freeing wrongfully convicted people.

CON: **Holly Koole** with the Idaho Prosecuting Attorneys Association was recognized. Ms. Koole said the prosecuting attorneys **oppose H 498**. This bill says a petition may be filed at any time. Prosecutors believe the one-year limitation is adequate. Also the bill says anyone can file. With this bill, there would be no end to victims and cases. It is not known how many petitions might be filed. There could be only a few, or there could be hundreds. If there are hundreds, there are not enough accredited labs to do the testing in a timely fashion. From the prosecutor's perspective, there must be a time limit.

In answer to a question as to how many petitions have been filed, Ms. Koole said there haven't been any filed within the one year.

PRO: **Fairy Hitchcock** was recognized to give her testimony. Ms. Hitchcock said she is for the bill. She has had personal experience where innocent people have been pressured to plead guilty. Sometimes these defendants run out of time before DNA testing can be done.

PRO: **Dr. Greg Hampikian**, Director of the Idaho Innocence Project, was recognized. Dr. Hampikian said he works with prosecutors throughout the country to obtain exonerations. This bill would not allow everyone to petition. There is no way anyone can anticipate further improvements that will come in DNA testing. That technology continues to advance and improve. Since 2001, there have been at least ten major advances made. A criminal defendant convicted prior to the development of new DNA testing or whose DNA testing was inconclusive, will now be able to utilize new testing to prove actual innocence.

Representative Hart was recognized to give closing remarks.. The prison population in the United States is between 1.5 and 2 million. There have been 251 exonerations nationwide. About 500 petitions have been filed out of 1.5 to 2 million cases. Not everyone in prison would have DNA evidence. The defendant is required to pay for the cost of testing when possible.

In response to a question regarding costs for testing being covered by the Idaho Department of Correction, Representative Hart said it is estimated that there would be between 0 and 2 petitions filed. This would cost a maximum of \$1000 per year.

MOTION: **Representative Hart** moved to send **H 498** to the floor with a **DO PASS** recommendation. Representative Nielsen spoke in favor of the motion. **The motion carried on voice vote.** Representative Hart will carry the bill on the

floor.

S 1253: Chairman Clark recognized **Michael Henderson**, Legal Counsel for the Supreme Court, to explain **S 1253**. This is one of a series of bills that the Supreme Court has recommended in its annual report to the Governor concerning defects or omissions in the laws. It deals with appeals in cases under the Child Protection Act concerning appeals in adoption cases and appeals in parental termination cases.

The Idaho Supreme Court has amended the Idaho Appellate Rules and the Idaho Rules of Civil Procedure to require appeals from the magistrate division in termination and adoption cases to be taken directly to the Supreme Court. Further, a party appealing the decision of a magistrate judge in any Child Protective Act case or other case involving the custody of a minor may seek an appeal by permission directly to the Supreme Court. This procedure should shorten the total appeal time in these critical cases by about one year. This provides the stability and certainty that are needed to ensure the welfare of the children who are affected.

Since July 1, 2009, there have been six or seven cases in which litigants, relying on the statutes, have mistakenly filed notices of appeal to the district court, resulting in unnecessary delay and confusion. This bill will help prevent these costly mistakes in the future.

MOTION: **Representative Smith** moved to send **S 1253** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** Representative Jaquet will carry the bill on the floor.

S 1254: **Michael Henderson** was recognized to explain. **S 1254** is one of a series of bills that concern defects or omissions in the laws. This bill amends Idaho Code Section 3-405 which lists the members of the Idaho State Bar. This statute has listed state judges as members of the bar since 1925. It was not amended, however, following the creation of the magistrate division of the district court, or following the creation of the Court of Appeals.

This bill brings the statute up to date by specifying that attorney magistrate judges and judges of the Court of Appeals are members of the bar. The Idaho State Bar has treated these judges as members of the bar, so this would represent no change in existing practice. Attorney magistrates still exist in law, although there currently are none.

MOTION: **Representative Shirley** moved to send **S 1254** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Representative Nielsen** asked to be recorded as voting **NAY** on the motion. Representative Shirley will carry the bill on the floor.

S 1255: **Michael Henderson** was recognized to explain **S 1255**. This bill corrects the wording of a recent amendment to the escape statutes, Idaho Code Sections 18-2505 and 18-2506. The crime of escape is defined in section 18-2505, pertaining to persons charged with or convicted of felonies, and section 18-2506 pertains to persons charged with or convicted of misdemeanors.

In 2007, a provision was added to both statutes which states that the crime

of escape includes the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a person's own recognizance with electronic or global positioning system tracking, monitoring and detention of the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care.

The words "and detention" are superfluous. The crime consists of leaving the area of restriction as set forth in the court order where there is electronic or GPS monitoring. The words "and detention" make it appear that there is another undefined element of detention that must be proven to establish the commission of this crime. This could lead to confusion. This bill would remove the superfluous words from these statutes and bring the provision into line with the legislative intent.

MOTION: **Representative Killen** moved to send **S 1255** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Representative Hart** asked to be recorded as voting **NAY** on the motion. Representative Killen will carry the bill on the floor.

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 17, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW42
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** None
- GUESTS:** Michael Henderson, Legal Counsel, Supreme Court; Louis Uranga, Attorney; Anne Solomon, Attorney; Fairy Hitchcock, Advocate; Kerrin Tenneson, Advocate; Holly Koole, Attorney; Michael Anderson, Attorney; Susan Burke, Citizen; Emma Beck, Advocate; Dan Kolilis, Citizen; Susan Dwelb, Department of Health and Welfare; Stephanie Miller, Department of Health and Welfare; Tammy Johnson, Citizen; Lyman Belnap, Legal Counsel, Family Services; Lori Schroath, Citizen; Shonni Stevens, Citizen; Jeannie Swenson, Social Worker, Cameron Gilliland, Bureau Chief, Department of Health and Welfare; Louise Samson, Operations Manager, A New Beginning Adoption Agency; Tony Smith, Eiguren Public Policy
- Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.
- MOTION:** Representative Bolz moved to approve the minutes of the meeting held on February 15, 2010, as written. Motion carried on voice vote.
- The Chairman recognized the page, Stephen Grammer, for his excellent work for the committee during the first six weeks of the session. He also recognized Senator John Goedde and Senator Grant Ipsen who were sitting in the audience.
- H 499:** The Chairman recognized **Anne Solomon** to explain **H 499**. Ms. Solomon said she is an attorney from Coeur d'Alene, Idaho. She obtained her law degree from the University of Idaho. She has handled adoptions for thirty-two years. During the adoption process, she makes sure all parties are in agreement.
- The need for adoption reform is recognized nationwide. This legislation identifies several areas of Idaho adoption statutes that are in need of revision. The goal is to protect and preserve biological families first and foremost. The revisions provide clear direction for everyone concerned with infant adoptions. It removes and revises conflicting statutes and protect the rights of both birth parents in the adoption process.
- This bill does not change the basic requirements for adoption. It addresses an unmarried father's rights. A father's rights can be terminated if the father is unsuitable or is incarcerated. This simply addresses the basic registry.

In section 7-1107, the legislation states that proceedings to establish paternity can be instituted at any time.

In section 16-1501, the legislation asks that a policy be established. On line 40, subsection (e) the bill states that children have a right to the care and upbringing of any fit biological parent who is willing and expressed a desire to raise them.

Subsection (g) states that an unmarried biological father must be afforded due process and actual notice so that he has a timely opportunity to demonstrate his commitment to providing support and establishing legal paternity before any adoption placement has occurred.

The bill asks that the biological father be given notice of intention to adopt. It asks that the unmarried mother disclose the name and, when possible, the address and telephone number of the biological father in order that he may be able to protect his rights and establish paternity pursuant to the provisions of Idaho law.

In section 16-1504(e), consent to adoption is required from an unmarried biological father unless the father has failed to appear or adequately assert a paternal interest within thirty days after receiving actual notice of an intended adoption proceeding, or thirty days after the birth of the child, whichever is later. However, if the biological father cannot be located after due diligence, nothing further will be done.

A question was asked whether the words "whichever is sooner" should be used instead of "whichever is later." Ms. Solomon said there must be a time specified and the thirty days isn't harmful. However, the word "later" can be changed to "sooner" if that is the desire of the committee.

Another member said he was concerned about the lack of privacy. In the past, the law has tried to make it easier for the mother to put the baby up for adoption. Ms. Solomon said the only issue addressed in the legislation is where the birth mother is trying to hide something.

Subsection (b) on page 5 of the bill states that a biological father shall make a good faith effort to perform all of the acts described prior to the adoption of the child or prior to the date of the termination of the parental rights of both birth parents, whichever event occurs later. The good faith language is further expanded on page 7, lines 8 through 11, which says "provided, however, that this requirement shall be waived if the biological mother, or person, or adoption entity has engaged in conduct or made misrepresentations to the biological father which affect his efforts to comply with the requirements."

Section 16-1505 on page 7 of the bill says that a notice of adoption proceedings shall be served on any person who has filed a registration form with the vital statistics unit of the department of health and welfare.

On page 8 of the bill there is a notice provision. It outlines what information the notice will contain. If the mother doesn't know who the father is, then there is no obligation.

On page 10, the language says that the registration of notice of the

commencement of paternity proceedings shall be posted on the website for the Idaho department of health and welfare along with a complete and accurate list of instructions for completing the notice of commencement online according to all of the requirements of section 16-1513.

Page 11 states that the notice of paternity proceedings must be filed no later than thirty days after receipt of the notice of the intended adoption proceeding, or 30 days after the birth of the child, whichever is later.

On page 12, lines 33 through 38 clarify that the unwed biological fathers must file a notarized registration of notice of commencement of paternity form with the vital statistics unit of the department of health and welfare at the address listed on the paternity form.

In answer to a question of whether an unmarried biological father who wasn't aware of the baby's birth would have any rights at all, the answer was that he wouldn't .

A committee member said he didn't know how to address the issue of fairness, but it should be an easy fix and not change the wording throughout the whole statute. Ms. Solomon said the only difference in the statute is if a birth mother is going to give the baby up for adoption, she must give notice. The birth father can then invalidate the adoption under the new language. If the birth father isn't around and hasn't registered, he will be unable to do so after 30 days.

Another member said the adoption process should be in the best interest of the child. Ms. Solomon said that is why the 30-day notice is required in the legislation. She said she was interested in hearing all comments on the bill.

CON:

Louis Uranga, attorney, was recognized to testify. Mr. Uranga said he has spent several years working with adoptions. He testified against the original law when it was crafted. He thought there were issues regarding the biological father. He applauds what this legislation is trying to do, but he still has issues with the language.

One issue regards the "good faith" condition. There is no way to tell if the father has made a "good faith" attempt. Also, the baby is physically passed to the perspective adoptive parents shortly after birth. Generally, the adoptions are finalized within 6 or 7 months. It would be difficult for all parties if that baby were to be returned to the birth father. Also, there are cases where the birth mother refuses to identify the birth father. That creates a problem with the notice. Mr. Uranga said he would also like to see the mental health history addressed.

PRO:

Kerrin Tenneson was recognized to give her testimony. Ms. Tenneson said it is her hope that the committee will understand the obstacles and maze of confusion that currently exists in the adoption laws. These result in injustice befalling the unwed biological fathers whose children are placed for adoption against their will.

Ms. Tenneson said her son lost his infant son in an adoption proceeding, even though her son wanted to raise the baby. When he was finally given primary care of his son, he was informed that the adoptive family did not

have a legal obligation to return the boy since they lived out of state. The family was then forced to hire an out of state attorney. By this time, the baby was over 7 months old and their son expressed concern for the potential harm that could result if the baby was taken away from the only family he had ever known. Therefore, he decided to allow his baby to remain with the adoptive family. She concluded her remarks by saying her son and she and her husband would have provided a good family for this baby boy.

CON: **Susan Burke** was recognized to speak to the bill. Ms. Burke said she and her husband adopted a baby boy. The best way to proceed with the adoption process is to obtain legal consent from both birth parents. She is very much a proponent of the sense of fairness to the birth father. However, she feels that H 499 is not quite in the best interests of the child. To file a notice 30 days after the birth of a child is too long a period of time. This legislation is not the right answer to the problem. Ms. Burke asked that the bill be set aside so that all interested parties can work together to draft a good law.

CON: **Emma Beck** was recognized. Ms. Beck said she has two adopted children. The notice by the birth father should be given before the birth of the baby. Babies need to be able to be placed in a loving permanent home. The law needs to be clear so that all attorneys follow the same adoption proceedings. This bill is not the right way to accomplish this.

CON: **Tammy Johnson** was recognized. Ms. Johnson said she owns an adoption agency. They provide services to birth mothers and birth fathers. The agency is concerned about the 30-day notice. The agency believes that the birth fathers should be involved in the process. Every agency in the state always wants to be proactive.

CON: **Lyman Belnap** was recognized. Mr. Belnap said he has represented adoption agencies in the state of Idaho. The rights of the biological father don't come into existence unless the father steps up. The proposed legislation is a fundamental change in concept. This shifts the burden to everyone but the birth father until the birth father is told about the baby. Mr. Belnap asked what form the notice would take.

The legislation says the birth mother must start a proceeding. If the birth mother wants to put the baby up for adoption, but the birth father says no, then the birth father has to file a petition. This could take up to 60 days. The language is confusing. The baby could be in limbo for possibly six months. Mr. Belnap expressed his anger at what has happened to birth fathers, but he doesn't know of any attorney in this state who would say there wasn't any interest on the part of the birth father when, in fact, there was.

Furthermore, you can't file a petition until you have a live birth. If the birth father is known and he is registered, the agency must notify the father of the proceedings.

CON: **Lori Schroath** was recognized. Ms. Schroath said if this bill was in effect when they adopted their baby, they would not have been able to get their son. There is a huge gap in that 30 days as it is set out in this bill. That gap could actually take up to six months.

CON: **Shonni Stevens** was recognized. Ms. Stevens said she and her husband have adopted four children. These proposed changes give too much power to the birth fathers. Currently, the birth mother does not have to tell about an abortion or if she chooses to keep the baby. This is almost a pro-abortion bill. Some birth fathers will file to get a baby out of spite.

When asked how much power the birth father should have, Ms. Stevens said the adoption proceedings affects both parents, but she felt it affected the mother more. The birth mother should have more rights than the birth father.

CON: **Jeannie Swenson**, social worker, was recognized. Ms. Swenson said she was an adoption worker for 20 years. She supports birth fathers receiving notice. However she is not in favor of the "good faith" wording in this bill. A change in the current law needs to be made. However, the language should be taken before family law and other interested parties in order to be properly written. A child has a right to know a full medical history and the adoption needs to be safe.

CON: **Cameron Gilliland** was recognized. Mr. Gilliland said he is the bureau chief with the Department of Health and Welfare family services division. This bill would affect the department in many ways. There are currently federal guidelines that must be followed. He asked the members to consider the impact this would have on the child. The department wasn't consulted when this bill was drafted. The department would be happy to help work on the wording of the legislation.

CON: **Donna Burkett** was recognized. She and her husband adopted a baby boy in the state of Texas. They adopted him when he was 8 days old and they got him home when he was 14 days old. It would be a disservice to change the adoption code to fix one exception. Termination takes months. In their case, it took ten months.

CON: **Senator Grant Ipsen** was recognized. The senator said he and his wife adopted a child 40 years ago. When that adoption was processed, it went very smoothly. Then about 1995 or so, the laws became more complicated. In about 1998, the legislature met and, over the next two years, passed several adoption bills. These were designed to encourage adoption. The senator said he is opposed to H 499.

CON: **Louise Samson** with A New Beginning Adoption Agency was recognized. This bill would prevent the agency from placing any child until after approximately six months. Even if both birth parents agreed to the adoption, the agency would not be able to place the child until termination occurs.

Anne Solomon was recognized to give closing remarks. Ms. Solomon said she had no idea there would be such an outpouring of comments on the bill. She said she would be happy to work with family law and the Department of Health and Welfare to come back with a new bill. The comments were well taken. She was grateful for the information.

MOTION: **Representative Labrador** moved to **hold H 499** in committee. In support of his motion, he said there are some problems with this bill that need to be addressed. Motion carried on voice vote.

H 523:

Holly Koole, representing the Idaho Prosecuting Attorneys Association, was recognized to explain the bill. This bill amends section 20-507, Idaho Code, relating to juvenile probation violations.

In a recent decision, *In Re Doe*, the Idaho Supreme Court concluded that the plain language of section 20-507 required termination of juvenile court jurisdiction once the juvenile reached age twenty-one, even if the state filed a probation violation before the former juvenile's twenty-first birthday.

The court stated that: " while it is true that Doe will escape punishment for his alleged probation violations, this is a policy consideration we are unable to consider in the instant case. The language of the statute is unambiguous. We are not free to rewrite a statute under the guise of statutory construction. That state's policy arguments are best directed to the legislature which has the power to amend section 20-507."

As it now stands, because juvenile court jurisdiction terminates at age twenty-one, a former juvenile cannot be held accountable for his/her probation violations. The loss of juvenile jurisdiction at age twenty-one creates incentive for a former juvenile to violate his/her probation terms or abscond from probation because there can be no penalties once the juvenile turns twenty-one.

This bill amends that section of the code to address timely filed probation violations after a former juvenile turns twenty-one. The court would have jurisdiction over only probation or informal dispositions. This would allow the court to impose only the underlying jail sentence that was suspended or the terms and conditions imposed at the time of sentencing.

The court would not have authority or jurisdiction to extend the former juvenile's probation or add additional terms and conditions.

The Juvenile Corrections Act is intended to protect the community, provide accountability and develop competency. This legislation would provide greater incentive for the former juvenile to comply with the terms of probation.

Michael Anderson, representing the Ada County Prosecuting Attorneys, spoke in favor of the bill. This is brought forward to have juveniles held accountable for their actions.

MOTION:

Representative Nielsen moved to send **H 523** to the floor with a **DO PASS** recommendation. Representative Burgoyne spoke in favor of the motion. Representative Luker said he couldn't support the bill the way it is written.

Fairy Hitchcock was recognized to testify. Ms. Hitchcock testified against the bill saying that it would send more people to prison.

Representative Luker expressed concern over the open-ended violation probation. There should be a cut off date in this bill. Representative Killen voiced the same concern.

SUBSTITUTE MOTION:

Representative Jaquet moved to send **H 523 to General Orders** with an amendment to set a time limit. Representative Nielsen spoke against the substitute motion. Representative Hart spoke in support of the substitute

motion. **Substitute motion passed on voice vote.** Representative Jaquet will carry the bill and the amendment on the floor.

S 1256: **Michael Henderson** was recognized to explain the bill. This is one of a series of bills that the Supreme Court has recommended in its annual report concerning defects or omissions in the laws.

This bill would remove obsolete language for Idaho Code, Section 11-101, which deals with the execution of civil judgments. That statute states that a party who has received a judgment in a civil case may have a writ of execution issued for enforcement of the judgment, but then states that this is subject to the right of the court to stay the execution "as herein provided." The statute then refers to several statutes that were repealed in 1975. Stays of execution of civil judgments are now addressed in Rule 62(b) of the Idaho Rules of Civil Procedure.

The bill amends the statute to state that courts may stay the execution of judgments as provided by the rules adopted by the Idaho Supreme Court.

MOTION: **Representative Killen** moved to send **S 1256** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** Representative Killen will carry the bill on the floor.

S 1257: **Michael Henderson** was recognized to explain **S 1257**. This is also one of a series of bills that the Supreme Court has recommended in its annual report concerning defects or omissions in the laws.

This bill would remove certain references to police courts, probate courts and justice of the peace courts, none of which any longer exist. These courts were replaced by the magistrate division of the district court, which came into existence in 1971.

The bill would repeal sections 19-3907 and 19-3908, which deal with the procedures for change of venue and disqualification of judges in justice courts and police courts. The bill would also remove a provision regarding police courts which deals with disposition of records upon disincorporation of a city. This bill will have no impact on existing practice.

MOTION: **Representative Jaquet** moved to send **S 1257** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** Representative Clark will carry the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:10 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

- DATE:** February 23, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room EW42
- MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** Rep. McGeachin
- GUESTS:** Brigadier General Alan C. Gayhart; Newal Squires, Idaho Bar Commissioner; Diane Minnich, Executive Director, Idaho State Bar; Senator Corder
- Chairman Clark called the meeting to order at 1:28 p.m.
- MOTION:** **Representative Bolz** moved to approve the minutes of the meeting held on February 17, as written. Motion carried on voice vote.
- S 1287:** **Senator Corder** was recognized to explain **S 1287**. This legislation corrects a 2002 oversight and allows Homeowners Associations five days rather than 24 hours to deliver a recorded lien to the land owner.
- In 2002, S 1326 added a new chapter to Idaho Code. Idaho Code 45-810 became the authorization for Homeowners Associations to file liens on accounts in default. The 24-hour period was consistent with the existing Idaho Code 45-507 regarding mechanics liens. Later, in the 2002 session, S 1454 was introduced that amended Idaho Code 45-507(5) changing the 24-hour time period, which was not realistic, to five days. That amendment was never effected on the Homeowners Association statute. This legislation corrects that error.
- MOTION:** **Representative Smith** moved to send **S 1287** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote**. Representative Killen will carry the bill on the floor.
- S 1267:** **Diane Minnich**, executive director of the Idaho State Bar was recognized to explain **S 1267**. This bill raises the license fees paid by Idaho attorneys. The purpose of this bill is to allow the Idaho State Bar to continue to administer its regulatory functions. This was presented to Idaho lawyers for a vote in November 2009 and was approved by a 64% majority.
- The last attorney license fee increase was in 2000. The proposed increase is phased in over a two-year period, 2011 and 2012. Even with the increase, Idaho attorney license fees are representative of those in the Western United States. The November 1 effective date is proposed so the increase is in effect for the 2011 attorney licensing process.
- Ms. Minnich said the State Bar doesn't ask for an increase often. This is

only the third time in 25 years. There is no fiscal impact since the Idaho State Bar is self funded and receives no tax dollars.

MOTION: **Representative Smith** moved to send **S 1267** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Representatives Nielsen and Kren** asked to be recorded as voting no on the motion. Representative Smith will carry the bill on the floor.

S 1308: **Brigadier General Alan C. Gayhart** was recognized to explain **S 1308.** This bill amends Idaho Statute 54-1139 to accommodate the expressed written wishes of service members through the execution of the federally prescribed "record of emergency data" DD Form 93, on which they designate a person authorized to direct disposition (PADD) of their human remains.

Because Idaho and many other states do not recognize or identify the federal form as an acceptable one for the service members, there have been several instances nationwide of civil actions between family members over the ultimate disposition of a fallen service member's remains. The DD Form 93 is the document used by the military services to identify the PADD to administer burial entitlements when service members die while on duty as defined in 10 USC 1481. The proposed legislation ensures that DD Form 93 will be recognized as the legitimate document with precedence in these circumstances.

MOTION: **Representative Bolz** moved to send **S 1308** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** Representative Clark will carry the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:45 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 25, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** None

GUESTS: Barbara Jorden, Lobbyist, Idaho Trial Lawyers Association; Andrew Chasan, Lawyer, Idaho Trial Lawyers Association; Tim Gresback, Lawyer, Idaho Trial Lawyers Association; Woody Richards, Attorney, Allstate, American Family and Farm Bureau Insurance Companies; Patricia Tobias, Administrative Director of the Courts; Former Chief Justice Trout; Donna Weast; Jim Trent, Lobbyist, State Farm; Kurt Holzen, Attorney; Phil Barber, Lobbyist, American Insurance Association

Chairman Clark called the meeting to order at 1:32 p.m. and asked the members to review the minutes. The Chairman also welcomed the new page, Zach Edenfeld, and welcomed Representative Steve Vick from the Hayden Lake area who is substituting for Representative Hart.

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on February 23, 2010, as written. Motion carried on voice vote.

H 593: **Representative Luker** was recognized to explain **H 593**. This bill is here to correct a Supreme Court decision. In 1991, the Idaho Supreme Court held in *Emery v. United Pacific Insurance Company*, that section 41-1839 Idaho Code applied to require attorney fees incurred in arbitration proceedings to recover amounts justly due, but now paid by the insurance company. The Idaho Supreme Court recently changed the law in *The Greasespot, Inc. V. Hanes*, reversing the Emery decision in a case in which section 41-1839, Idaho Code, was not directly at issue.

This bill restores the law as it has been interpreted and applied since 1991. Without this change, insurance companies are able to side-step the requirement of prompt payment of amounts justly due contained in section 41-1839, Idaho Code, by the contractual requirement that disputes be resolved through arbitration rather than in court. The attorney fee provision at issue only applies to claims by first party insureds (direct customers) of the insurance company, and not to third party claimants who have claims against insureds.

An amendment has been drafted to the bill which simply adds the words "or arbitration" with the words "action" or "actions" on page 1, lines 20, 27, 31 and 37. The change is also made on page 2, line 3 of the bill.

A second amendment is being drafted which resolves the concerns of the insurance companies and makes the bill consistent throughout in its reference to arbitration.

In conclusion, **Representative Luker** asked that **H 593** be sent to **General Orders** with the above committee amendments.

Barbara Jorden, representing the Idaho Trial Lawyers Association, was recognized to testify. Ms. Jorden said the Association supports the bill. Other members are in the audience today and would be happy to testify in support of the bill.

Phil Barber, representing the American Insurance Association, was recognized to say the Association supports the bill with the amendments. Mr. Barber said the insurance company would probably be back to recast the bill at a later date, but the association supports the bill.

MOTION: **Representative Smith** moved to send **H 593 to General Orders** with the amendment currently before the committee and the amendment that is being drafted. **Representative Luker** seconded the motion. **Motion carried on voice vote.** Representative Luker will carry the bill on the floor.

H 524: **Patricia Tobias**, Administrative Director of the Courts, was recognized to explain the bill. The bill literally keeps the courthouse doors open during this financial crisis. This legislation was developed in consultation with the co-chairs of the Joint Finance-Appropriations Committee and the chairs of the germane committees to permit the Idaho Courts to discharge their constitutional and statutory responsibilities to administer justice without delay.

The bill creates an emergency surcharge to be paid by persons who commit crimes and infractions. Each person who is found guilty or pleads guilty to a criminal offense or infraction, committed between April 15, 2010, and June 30, 2013, would be required to pay a surcharge fee for each offense or infraction. The bill originally asked for a fee of \$25, but when the budget was finalized, it was decided that the fee could be lowered to \$20.

Ms. Tobias said the Idaho courts are making extraordinary efforts to meet today's challenges. Some of Idaho's most vulnerable people such as battered women, abused and neglected children and victims of crime, turn to the courts for protection and justice. During these tough economic times, there are still families in crises and there is still crime. Victims have a constitutional and statutory right to timely disposition of cases.

Civil and business disputes are also being filed in greater numbers. The sooner these cases are resolved, the sooner businesses can get back on track. As businesses are able to enhance their productivity because cases have been resolved quickly, the sooner Idaho's economy will recover.

Ms. Tobias asked the members to remember that in any one year almost 500,000 new cases are filed with the courts. Eighty-one percent of the

cases filed are infractions and criminal cases which are included in the emergency surcharge being requested in this bill.

The Supreme Court has taken extraordinary steps to reduce its budget in light of declining state revenues. To meet the budget shortfalls, the Court stopped hiring. It has not replaced a single non-judicial position in 15 months. The use of court reporters has been cut. The guardian ad litem volunteer costs for abused and neglected children have been cut. Drug testing budgets have been slashed.

The hiring freeze has had far reaching consequences on court services. There are currently 17 positions left open. The hiring freeze has reduced the workforce and service to the public by 13%, excluding judges. The first judge position will be left vacant in Bear Lake County in less than 60 days. Magistrate judge positions in Adams and Fremont Counties will be left vacant at the end of the year.

The Joint Finance and Appropriations Committee set the court's budget on Tuesday, February 23, so there are now bottom line numbers of permanent base reductions. With the proposed committee amendments, which drop the surcharge from \$25 to \$20 per crime or infraction, \$4.1 million is estimated annually, which leaves a permanent reduction of \$900,000. The proposed surcharge legislation will shift a greater share of the budget from the General Fund to Dedicated Funds.

April 15, 2010, gives a specific date to provide certainty to the many law enforcement entities, prosecutors, defense counsel and court clerks. A sunset provision of June 30, 2013 is included in the legislation in order to give the Legislature an opportunity to assess the state's financial status and revenues.

Of the estimated \$4.1 million, 20% will be deposited in the ISTARs fund, and 80% will be directed to the drug court, mental health court and family court services fund.

In answer to some of the questions raised during the print hearing, Ms. Tobias said 100% of the court's budget is required by Idaho constitution and statutes. Eighty-one percent of the cases filed are crimes and infractions, which is why the surcharge has been crafted this way.

Ms. Tobias asked to turn the podium over to former Chief Justice Trout to speak in support of the legislation and to address questions raised about legal aid.

Former Chief Justice Linda Trout said some concerns had been raised during the print hearing on the bill regarding Idaho Legal Aid Services. A letter from Chief Justice Daniel T. Eismann addresses those concerns (attached). She asked the committee to please consider this legislation which will help keep the courts open and she asked for the members' support.

A member pointed out that the fiscal note needed to be corrected to reflect the change that will be made by reducing the surcharge fee.

In concluding remarks Ms. Tobias said it was hoped that this bill will provide a solution for the Court's budget. The legislation is necessary to keep the courthouse open. The judges have voluntarily worked many hours without pay and will continue to do so.

Answering a question about how the courts will handle the approximately \$1 million reduction in budget, the answer was that the solution wasn't known at this time. The court hasn't met to make that decision. Asked what would happen if the bill is not passed, Ms. Tobias said the mental, family and drug courts will suffer. She pointed out that the cut is first and foremost in the General Fund. The first priority must be the state and constitutional provisions.

MOTION: **Representative Smith** moved to send **H 524** to **General Orders** with committee amendments attached, changing the \$25 fee to a \$20 fee and with a corrected fiscal impact. Motion seconded by **Representative Clark**. **Motion passed on voice vote**. Representative Clark will carry the bill on the floor.

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 9, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** None

GUESTS: Patrick Braden, Attorney; Theresa Qadree, Mother; Fairy Hitchcock, Advocate; JoAnn Butler, Attorney; Cameron Gilliland, Bureau Chief, Health and Welfare; Tony Smith, Lobbyist; Diane Anderson, Advocate; Holly Koole, Attorney, Idaho Prosecuting Attorneys Association; Michael Henderson, Attorney, Idaho Supreme Court; Jeremy Pisca, Attorney; Senator Joyce Broadsword; Doug Payne, Attorney, Benewah County Prosecutor; Roy Eiguren, Attorney

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

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on February 25, 2010, as written. Motion carried by voice vote.

H 605: Chairman Clark recognized **Patrick Braden**, Attorney, Kootenai County, to testify on **H 605**. Mr. Braden said this bill is primarily designed to clarify the types of decisions on applications authorized under the Local Land Use Planning Act, Title 67, Chapter 65, Idaho Code, which are subject to judicial review.

Three recent 3-2 decisions of the Idaho Supreme Court regarding the zoning of specific parcels of property have caused much confusion with respect to the standard to be applied in reviewing such decisions on appeal.

This bill remedies the confusion arising from these decisions by expressly providing that all final decisions on applications for the establishment of one or more zoning districts upon annexation, changes in the zoning of specific parcels or sites, and conditional rezoning would be subject to judicial review by the District Court, where the standard of review set forth in Idaho Code, Section 67-5259, would apply in exactly the same manner as with subdivisions, variances, special use permits, or other similar applications required or authorized under the Local Land Use Planning Act.

The bill also includes attorneys within the class of persons who may act as a hearing examiner. It clarifies that all final decisions on land use applications must be accompanied by a notice of the applicant's right to request a regulatory takings analysis under section 67-8002, Idaho Code.

It also makes other miscellaneous technical corrections.

On page 3 of the bill section 67-6521 (1)(a) contains the meat of the bill. Other amendments in the bill refer back to that section. In answer to a question about the insertion of the words “bona fide”, Mr. Braden said those words ensure there is an actual interest in the property. In response to another question regarding the definition of a regulatory taking analysis, Mr. Braden said that term is described in another section of the code.

When asked who does the analysis, the answer was that could be any person involved in the case. The bill does not affect who can appeal.

JoAnn Butler, Attorney, representing landowners and developers who turn to the Local Land Use Planning Act (LLUPA) for guidance, spoke in support of the bill. Ms. Butler said she has also represented municipalities and counties and they, too, turn to the LLUPA for guidance.

Any local government quasi-judicial decision authorized by LLUPA gives a property owner permission, or a “permit” even though it may not be in the form of a piece of paper labeled “permit,” to do or not do something with their real property. Private property owner rights are a constitutional fact of life. What this legislature has done is ensure that private property owners have a remedy if those rights are violated. The legislature has consistently affirmed the right to judicial review and has enacted the Regulatory Taking Act to ensure that a local government stops and takes a second look at its decisions and, hopefully, corrects a mis-decision before it goes too far.

On the whole, local governments thoughtfully make good, fair decisions. However, sometimes they get it wrong. So if a local government decision does unreasonably restrict the use of property, it is only appropriate that a property owner has recourse outside of the local government process.

The language proposed in the bill is meant to ensure that “permission” given, or not given, to a private property owner by its local government may be scrutinized.

When asked if the words “bona fide” are necessary, Ms. Butler said those words could probably be deleted.

Jeremy Pisca, Attorney, was recognized. Mr. Pisca said the bill is a good pro-property rights provision. The words “bona fide” might be superfluous, but they don’t need to be removed from the bill. When asked if the provision of 28 days in the bill is enough time to seek judicial review, Mr. Pisca said the 28-days is currently in code.

MOTION: **Representative Nielsen** moved to send **H 605** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** Representative Nielsen will carry the bill on the floor.

H 613: Chairman Clark recognized **Representative Bolz** to explain **H 613**. The

purpose of this legislation is to move Correctional Industries to a "Management Review" from an annual audit. This process results in a more useful document while continuing to provide assurance of continued accountability and management control over financial operations similar to an audit report. Correctional Industries is a sub-part of the Board of Correction and the Department of Correction and uses the state's accounting system, controls and processes. Reviews are generally performed every three years. This bill provides assurance for continued accountability.

Don Berg was recognized. Mr. Berg said he asked Representative Bolz to sponsor the bill. Management Reviews will be done at least once every 3 years.

MOTION: **Representative Wills** moved to send **H 613** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Representative Bolz will carry the bill on the floor.**

S 1341: **Senator Broadsword** was recognized. The Senator asked to turn over her time to Attorney **Doug Payne**. Mr. Payne said this legislation was crafted because of a case where a three-year old girl was found in a condition close to death. Doctors were able to save her life, but she lost a kidney and some limbs. She now has permanent scarring on her body. She suffered from severe dehydration. There needs to be a way to punish adults further than the current maximum penalty in statute which is 10 years. This bill raises the maximum penalty to 20 years in cases where there is great bodily harm, permanent disability or permanent disfigurement to the child.

Asked why the maximum penalty is 20 years instead of 15 years, which is the penalty for aggravated battery, Mr. Payne said he was talking about a 2 or 3 year old child who had no way to protect herself. The prosecuting attorneys wanted to raise the maximum penalty to 25 years and 20 years seemed like the middle ground approach. This is a very difficult issue. When it comes to very young children, there must be consistency in the law. Regarding the cost that this will be to taxpayers, Mr. Payne said in his 16 years as a prosecutor, this is the first case he has seen like this. This was severe neglect. The impact to the state would be very small.

Regarding how the 20 years would be a bigger deterrent than 10 years, Mr. Payne said in his experience word gets out regarding these cases and the crime rate goes down.

In response to a member's concern over the words "great bodily harm", Mr. Payne said this child lost a kidney and some of her limbs. He wished there was a better term, but that was the one that has been used.

MOTION: **Representative Burgoyne** moved to send **S 1341** to the floor with a **DO PASS** recommendation.

Theresa Qadree was recognized to testify. Ms. Qadree said she is a grandparent. Her children were charged with negligence of a child and they served 10 years in prison. It was later discovered that the child had pancreatitis. At what point does this become neglect or an accident?

Families need to be educated on how to take care of a child. Her grandchildren have been awarded to the state. Words can be misconstrued in some of these cases.

Holly Koole, representing the Idaho Prosecuting Attorneys Association, was recognized. Ms. Koole said the association supports this legislation. In response to a question regarding the difference between the words “great bodily harm” and the words “great bodily injury,” Ms. Koole said the two terms were interchangeable.

Diane Anderson was recognized. Ms. Anderson said there are times when heinous crimes do occur. The injury to a child statute is a catchall and people are charged with this crime at the drop of a hat. She was charged with that crime and her parental rights were terminated. Her children suffered because of that charge. There are many cases where families are torn apart needlessly.

Senator Broadsword was recognized. There are currently 176 incarcerated inmates who have been convicted of felony injury to a child. Of those, approximately one third or 58 inmates received the maximum sentence. This legislation will provide the judges with a tool to prosecute these cases and impose a stronger sentence if they believe it is necessary. This bill applies to only serious injury to a child.

SUBSTITUTE MOTION:

Representative Hart moved to send **S 1341** to **General Orders** with the following amendments: In lines 15 and 16 of the bill, strike the words “great bodily harm,” and in line 17, change the maximum penalty from 20 years to 15 years.

Representative Luker suggested inserting the word “permanent” after the word “great” if the term “great bodily harm” is left in the bill.

Representative Labrador spoke in favor of the substitute motion. Although this was a particularly horrible situation, a backlog should not be created because of one bad case. **Representative Kren** spoke in favor of the original motion. **Representative Burgoyne** also spoke in favor of the original motion saying the judge has the discretion to put a person in jail for 20 years. Judges should be trusted to make that decision. This is a good bill. **Representative Killen** also spoke in support of the original motion, saying the 20 years is a subjective judgment. This is an appropriate range. **Representative Luker** then spoke in support of the substitute motion. **Representative Hart** pointed out that Idaho ranks number 10 out of the 50 states in number of incarcerations.

ROLL CALL VOTE:

Voting AYE on the Substitute Motion: Representatives Clark, McGeachin, Hart, Bolz, Labrador, Luker, Boe. Voting NAY: Representatives Shirley, Wills, Kren, Burgoyne, Jaquet, Killen. **Totals: 7-6-2. Substitute Motion passed. Representative Luker** seconded the motion. **Representative Hart will carry the bill on the floor.**

S 1312:

Senator Broadsword was recognized to explain **S 1312**. This legislation relates to the Child Protective Act by amending section 16-1619 Idaho

Code to include felony injury to a child on the list of offenses where the Department of Health and Welfare need not seek reunification with the parent. By adding felony Injury to a child and serious bodily injury to a child to this list, the department can seek foster care and avoid going through a lengthy and costly judicial process which is not in the best interest of the child.

Fairy Hitchcock, Advocate, was recognized. Ms. Hitchcock said she is against this bill. Sometimes there is no injury to the child. The child doesn't even have to be injured. What is seen here is non-reunification with parents.

Theresa Qadree was recognized. Ms. Qadree said this bill represents one of the reasons that her family did not get the grandchildren. Her mother and grandmother worked with the state and there was no reason why they were not granted custody.

Doug Payne spoke in favor of the bill. The Department of Health and Welfare doesn't have to pursue reunification in cases of great bodily harm.

Cameron Gilliland, Bureau Chief of Program Operations, Department of Health and Welfare was recognized. He said the Division of Family and Community Services is the department where these cases are handled. The Department tries to reunify these families whenever possible.

Diane Anderson was recognized. Ms. Anderson said she is opposed to the bill because it assumes that injury to a child is true and that is not always the case. This authorizes a government agency to usurp that constitutional right. Sometimes permanent harm is done by taking a child. Her children have suffered because of their forced separation from the parent.

MOTION: **Representative Killen** moved to send **S 1312** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Representative Hart** moved to **hold S 1312** in committee. In support of his motion, Representative Hart said he wasn't sure this bill was going to solve a problem. The bill should be held in committee until a better case is made for amending the language.

ROLL CALL VOTE: On the **Substitute Motion**, voting AYE: Representatives Clark, Nielsen, McGeachin, Hart, Bolz, Labrador, Luker. Voting NAY: Representatives Shirley, Wills, Kren, Boe, Burgoyne, Jaquet, Killen. **Totals: 7-7-1. Motion failed on tie vote.**

On the **Original Motion**, voting AYE: Representatives Clark, Shirley, Wills, Kren, Boe, Burgoyne, Jaquet, Killen. Voting NAY: Representatives Nielsen, McGeachin, Hart, Bolz, Labrador, Luker. **Totals: 8-6-1. Motion passed. Representative Killen will carry the bill on the floor.**

S 1371: **Roy Eiguren**, Attorney representing Aladdin Bail Bonds, was recognized. to explain **S 1371**. Mr. Eiguren said this legislation passed unanimously in the Senate. Mr. Eiguren asked to turn the podium over to **Michael**

Henderson, Legal Counsel for the Idaho Supreme Court, to explain the bill in more detail.

Mr. Henderson pointed out that last year the Legislature enacted H 184. That bill was drafted and recommended by the Supreme Court's Bail Bonds Guidelines Committee, which brings together judges, trial court administrators, prosecutors, defense counsel, sheriffs and representatives of the bail industry in an effort to improve the laws, rules and guidelines that govern bail in criminal cases.

This bill also comes from the Bail Bonds Guidelines Committee, whose recommendation for this legislation has also been accepted by the Administrative Conference of the Courts. It clarifies the respective responsibilities of the Courts and the Department of Insurance in regulating bail agents and surety insurance companies.

The legislation clarifies that the Director of the Idaho Department of Insurance has the exclusive authority to license bail bond agents in Idaho. It further provides that the Director shall also regulate bail agent transactions subject to the inherent authority of the Idaho Supreme Court to regulate the procedural aspects of bail transactions in the Idaho court system.

Bail agent, as referenced on page 4 of the bill, means an individual. A question was asked concerning the difference between the old definition and the new definition of a bail agent. **Shad Priest**, Deputy Director of the Department of Insurance was recognized to answer the question. Mr. Priest said there is no difference. Also, a licensed producer is simply a person who is licensed. Aladdin Bail Bonds is considered a licensed producer. People who work there are also licensed. This language restates what is currently in the Idaho Code.

MOTION: **Representative Burgoyne** moved to send **S 1371** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Representative Clark will carry the bill on the floor.**

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 11, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** None

GUESTS: Robert L. Kirts, Benewah County Sheriff; Douglas Payne, Prosecutor, Benewah County; Chris Goetz, Sheriff, Clearwater County; Don Ebert, Commissioner, Clearwater County; Mike Kane, Attorney, Idaho Sheriff Association; Dave Johnson, Sheriff, Bingham County; Paul Wilde, Sheriff, Bonneville County; Holly Koole, Attorney, Idaho Prosecuting Attorneys Association; Sandee Meyer, Idaho Prosecuting Attorneys Association; Clayne Tlyler, Idaho Prosecuting Attorneys Association and Clearwater County Prosecuting Attorney; Chris Smith, Sheriff, Canyon County; Michael Masterson, Police Chief; McKinsey Miller, Lobbyist, Gallatin Group; Wayne Hoffman, executive Director, Idaho Freedom Foundation; Helo Hancock, Legislative Director, the Coeur d'Alene Tribe; Bill Roden, Lobbyist, Coeur d'Alene Tribe; Keith Hutcheson, Chief of Police, Coeur d'Alene Tribe; Heidi Twoteeth, Dispatcher; Coeur d'Alene Tribe; Dean Salisbury, Coeur d'Alene Tribal Police Department; Officer Brand Hampton, Coeur d'Alene Tribal Police Department; Mike Meagher, Chief, Gateway Fire District, Plummer, Idaho; Jeanne Buell, Citizen, Plummer, Idaho; Laura Laumatia, Chair, One-Sky North Idaho, Plumber, Idaho; Chief Allan, Chair, Coeur d'Alene Tribe; Eric VanOrden; Coeur d'Alene Tribe; David Kerrick, Nez Perce Tribe' Jon Cantamessa; Shoshone County; Seth Grigg, Idaho Association of Counties; Dennis Tanikuni, Idaho Farm Bureau; Patricia Felts, Citizen, Joseph Felts, Citizen; Representative Dick Harwood; Samuel N. Penney, Nez Perce Tribe; Kent Lauer, Idaho Farm Bureau

H 500: The Chairman recognized **Bill Roden** to explain H 500. Mr. Roden asked for permission to have **Helo Hancock** give some background information on the bill because of the complexity of the issue.

Indian reservations were formed in the late 1800's. In 1887, Congress decided that Indians needed to be regulated. Homesteading was allowed on the reservations. This practice occurred for a few decades and proved devastating to the reservations. The Coeur d'Alene reservation is very beautiful. Therefore, the reservation was highly populated by non-tribal people, as was the Nez Perce reservation. On the Coeur d'Alene reservation there are about 10,000 residents. Only 1500 of those residents are Indians. Tribal police officers often come into contact with many non tribal people.

Generally speaking, Indian tribal officers do not have criminal jurisdiction over non-tribal people. Because of these legal frameworks, there are gaps in jurisdiction on the reservations. These gaps in jurisdiction of enforcement agencies create safe havens for criminals.

This bill was drafted to try to end jurisdictional gaps by encouraging Idaho Indian tribes and county sheriffs to negotiate and enter into cooperative agreements that will increase and enhance enforcement of Idaho state law within the exterior boundaries of Indian reservations.

Bill Roden was recognized to explain the bill in more detail. Mr. Roden said no tribe will be mandated to accept the added burden of engaging in efforts to enforce state laws within their boundaries. The issues surrounding law enforcement are different on different reservations. No sheriff will be required to cross-deputize tribal peace officers. The legislation will not prevent a sheriff and tribe from having such an agreement, but the legislation will not mandate that agreement.

One of the most important features of the legislation is the provision creating a 180-day period of time, prior to the effective date of a tribal election, to allow its tribal officers to engage enforcement of Idaho state law. During this period, the tribe must actively engage in negotiations with the sheriff of an affected county, if the sheriff is willing to do so. The sheriff is not mandated to engage in those negotiations, but the tribe is mandated to invite such negotiations and participate therein. The legislation also permits the parties to the negotiation to extend the negotiation period beyond the 180-day period.

During the 180-day period or an extended period, following a decision by the tribe to permit its officers to engage in state law enforcement, the tribe is not permitted to do so unless the sheriff has cross-deputized the tribal officers. It is clearly the intent of this legislation that such negotiations would lead to a mutually cooperative law enforcement agreement.

In the absence of such agreement, the legislation authorizes, but does not mandate, the Indian tribe to permit its police department to engage in the enforcement of state law if the tribe meets certain requirements. Tribal officers must, in making arrests for violations of Idaho state law: Be trained and certified through the Idaho Peace Officers Training Academy, follow all state laws, notify the sheriff of the fact of the arrest, transport the arrested person to the place designated by the sheriff and assist the sheriff and county prosecuting attorney, as requested by such county officers, in booking and prosecution of the arrested person in Idaho state court.

No fines, costs or other compensation will be paid to the Indian tribe or its officers. There is no cost to the county, state or local government. Tribal officers engaged in the enforcement of state law will be accountable to the Idaho POST Council. A tribal peace officer may be decertified by the POST Council for violations applicable to all other peace officers of the state and such decertification terminates the officer's authority to make arrests for violations of state law.

An Indian tribe assisting in enforcement of state laws must provide and maintain \$2 million in liability insurance, naming the county as an insured

under the policy, which is payable to satisfy judgments or settlements arising out of conduct of tribal officers while engaged in the enforcement of state laws.

A tribe making the election to enforce state criminal law accepts the requirement that, to the extent of the insurance coverage, neither the tribe nor the insurance company will raise a defense of sovereign immunity in an action for damages under state or federal law. Failure to maintain such insurance nullifies the authority of the tribal peace officers to enforce state law.

Mr. Roden gave each member a handout showing a map of the Coeur d'Alene reservation and giving more detail on the crime rate in Indian country. The handout also contains an opinion from the Attorney General regarding the constitutionality of the bill. And the handout contains a proposed amendment to H 500.

In answer to some questions, Mr. Roden said this bill only addresses criminal issues.

Mike Kane, representing the Idaho Sheriffs Association, was recognized to speak in opposition to the bill. Mr. Kane said he has been an attorney for 30 years and in law enforcement for most of that time. At the end of the day, these are all law enforcement people.

The sheriffs have reviewed this bill very closely. The proponents of the bill did come and talk with some of the sheriffs. There are some fundamental issues that have not been resolved.

The societal system that we have now is that the county sheriff has no criminal jurisdiction over any tribal member within the boundary of the reservation. In a sense this bill is something of a one-way street. The bill allows six months to come to an agreement in order to enforce state law. Under the bill, tribal police officers become a new law enforcement entity. No one would have authority over this entity.

The sheriffs support the POST Council. POST is not a regulatory agency, so POST cannot control the actions of these tribal officers. The bill says this will not affect the county sheriffs' current powers and duties. However, the sheriffs will have no control over those officers and there is no control granted to non-tribal citizens who live on the reservation.

There is a way to work together to make this happen. Many sheriffs are willing to enter into a cross-deputization agreement. That used to happen in Benewah County. Another way to accomplish what the bill is trying to do is to contract with the sheriff's office and the county and the sheriff can then put deputies on the reservation.

Law enforcement is a lot more than the ability to arrest. This bill does not limit the type of crime. The sheriff in Benewah County is willing to work with these tribal entities.

In answer to a question regarding why this issue hasn't been worked out prior to having H 500 before the committee, Mr. Kane said the sheriffs have tried to work it out. A member said the \$2 million dollar language in

the bill seems to be a settlement agreement. Mr. Kane said he didn't see this bill as a fix-it on the problem. The county's risk management program has taken no position on the bill. Asked where the fines go if a person is cited in a tribal court, the answer was that it most likely stayed in the tribal court.

Mr. Kane said there was no cooperative agreement in the legislation from above or from below. He has not seen the specific amendment, but has seen a document regarding an amendment about three weeks ago. He was informed that document was the proposed amendment.

Doug Payne, was recognized to testify in opposition to the bill. Mr. Payne said while tribal deputization is useful, its importance in non-emergencies has been overstated. It would be efficient and beneficial if Benewah County could rely upon Coeur d'Alene tribal officers not only as back-up, but as first responders and even occasionally in the absence of deputies should one be unavailable.

As Prosecuting Attorney, Mr. Payne said he has prosecuted every state crime in the county since 1994. It is basic police work for every officer to make and file a report in every serious incident, especially where public safety is at risk.

Only a handful of such reports were filed with his office in 2009 by tribal officers. The number of tribal officers deputized has had little effect on the number of cases filed in Benewah County. A decision to cross-deputize needs to be based on weighing the real utility versus the real problems. The Coeur d'Alene Tribal Council's attempts to impose tribal law on non-tribal persons have prevented cross-deputization.

The bill would undermine and not enhance state law enforcement. The bill appears to reduce state law enforcement on Indian reservations. The bill is intentionally not reciprocal. It will further displace state law because tribal officers are closer and more numerous than county deputies in some cases.

Idaho Code 67-2337 could be easily amended to allow tribal police extra-jurisdictional authority in emergencies. This bill is not necessary to grant Idaho tribes emergency powers. The bill will weaken the autonomy and integrity of state and tribal government. Congress clearly decided it was important to preserve tribal autonomy, culture and identity and, at the same time, meet its obligation to not deprive other citizens of representative government. To allow tribes to control non-tribal members would result in a class of citizens making decisions for the many based on what was advantageous for the few. Congress created two governments in the same place at the same time, each primarily responsible for its own subjects.

It is beneficial for counties and tribes to cooperate so long as each respects the other. The bill would prevent any true cooperation by removing the requirement of mutual assent and ignoring the will of non-tribal citizens. The bill causes confusion to the public. It upsets the balance of power, particularly on the issue of non-tribal persons in a tribal court. It causes aggravation which will only get worse.

There are five Indian reservations and each one has its own unique problems. Thirty percent of the residents in Benewah County signed a petition in one weekend asking that H 500 not be passed. The sheriff and prosecuting attorney will be happy to sit down with the tribal officers to work problems out.

Chris Goetz, sheriff in Clearwater County was recognized to speak in opposition to H 500. The sheriff said there is currently a very good working relationship between the Nez Perce tribe and the sheriffs department. Only 39 incidents have arisen involving tribal police and his officers. The wait time for deputies to respond to criminal activities on the reservation is between 20 to 30 minutes. Relationships are best resolved on a local level.

Keith Hutcheson, Chief of Police, Coeur d'Alene Tribe, was recognized to speak in favor of the bill. Mr. Hutcheson said he was hired in 2005 and has been working with the Coeur d'Alene tribal police for 5 years. The tribal police respond to calls from non-tribal members and they currently cannot get a prompt response from the county deputy. All his officers have been through the POST Academy training and teach POST training around the state. They have a policy procedure manual. The problem arises when the tribal police cannot act. Criminals come onto the reservations where tribal police cannot enforce the law. They have limited ability to follow up on investigations. The officers are required to have 40 hours of training every year.

When asked if there has been a way to document these slow responses or no responses, Mr. Hutcheson said those cases have not been documented. Tribal police have been unable to file reports. When asked if his police have the ability to detain a person until a deputy shows up, Mr. Hutcheson said they have able to detain a person until the sheriff or a deputy shows up. You can detain a person a reasonable amount of time to insure public safety. However, if a person has been drinking, the longer the wait, the lower the intoxication levels are.

Don Ebert, Commissioner from Clearwater County was recognized to speak in opposition to the bill. Mr. Ebert said they have experienced no problems with the Nez Perce tribe. For the last seven or eight years, the sheriff and the tribal police have been able to work together. He expressed a concern regarding unintended consequences with this legislation. The bill might make relations worse. Time and understanding have helped resolve any problems that might have existed in the past.

Jeanne Buell from Plummer, Idaho, was recognized to speak to the bill. Ms. Buell said she doesn't have an official position on the legislation. She has lived for 16 years on a reservation. Her husband and, later, her daughter were injured in separate automobile accidents and the tribal police were the first responders. She lives in the very southern part of Kootenai County. In both instances, the tribal police responded quickly.

They were polite and respectful. She said her only concern was public safety.

Dave Johnson, Sheriff, Bingham County, was recognized to testify in

opposition to the bill. There will always be issues, and these issues should be able to be worked out. This bill should not be a blanket bill to govern all Idaho reservations.

Heidi Twoteeth, Dispatcher with the Coeur d'Alene tribal police department, was recognized to speak in support of the bill. Ms. Twoteeth said she is an enrolled member of the Shoshone-Paiute Tribe of Duck Valley Nevada. For the past twelve years, she has resided on the Coeur d'Alene tribal reservation. She started her career in law enforcement in November of 2005 as the Administrative Assistant/Dispatcher. In October of 2007, she completed the Idaho POST Basic Dispatch Academy. She assists Kootenai County Dispatch with sending tribal officers to various calls for service.

She has dealt directly with incidents between the Coeur d'Alene tribal police and the Benewah County Sheriff's Department. On numerous occasions within the past couple of years, she called and requested assistance to calls in the county and the response has been that the sheriff's department either doesn't have a deputy on duty or their deputy is on the other side of the county. She has had to tell victims of domestic violence that she couldn't help them get their belongings because they lived in Tensed and the tribal police do not have jurisdiction over non-tribal matters in Benewah County. She said she would like to be able to help non-tribal residents and this bill will help.

Representative Dick Harwood was recognized to speak in opposition to the bill. Representative Harwood said a mediator is needed to work out problems as they arise. Kootenai County has tried to work with the tribal police to resolve the issue. There were two or three meetings to try to come up with an agreement. This bill does not solve the problem. The sheriff has no authority over the tribal police.

Samuel Penney, Chairman of the Nez Perce Tribal Executive Committee, was recognized to testify in support of H 500. The Tribal Executive Committee feels the issue being addressed is important. The Nez Perce Tribe supports the bill because it believes the legislation will help address some of the complex jurisdictional problems that constantly arise for tribal law enforcement within reservations. This bill provides a framework to allow the broadest protection possible of the general population by allowing tribal officers to cite non-tribal people into state court for violations of state law.

The Nez Perce Reservation covers 1,203 square miles and touches five different counties within Idaho. The legislation has the potential to make available more officers to cover this area because the bill would eliminate the duplication of law enforcement efforts that happen when a tribal police officer has to call in a county officer to cite a non-tribal member.

The Nez Perce Tribal Police currently has 16 officers. 10 of those officers have attended and completed POST Academy training. Three of those officers are non-tribal members.

The Tribe has heard the concerns regarding a lack of oversight authority

for the state over tribal police if this law were enacted. The Tribe believes these concerns are unfounded because in addition to the decertification provision provided for in the legislation, the Tribal Police Department is also subject to oversight by the Bureau of Indian Affairs Professional Standards Division Region 5 located in Billings, Montana. This other arm of oversight should provide additional assurance that the officers are held to high standards in conducting their duties.

The bill provides a tool that can be used to address jurisdictional issues while also providing safeguards to ensure the tool is used properly.

Jon Cantamessa, County Commissioner of Shoshone County, was recognized to speak in opposition to the bill. Mr. Cantamessa said many of the things he had to say have already been said. The sovereignty language in the bill is contradictory. An agreement cannot be reached when terms have been set in advance. The legislation does not allow for negotiation. Cooperative agreements have been used throughout the state. This bill solves one isolated circumstance. The fiscal note indicates no fiscal impact. Who then pays for arresting and housing these individuals. Concerns should be able to be taken care of at the local level.

Lt. Dean Salisbury, Coeur d'Alene Tribal Police, was recognized to speak in support of the legislation. Lt. Salisbury said in 2008, he responded to a domestic violence call where a non-tribal man had hit his girlfriend, pushed another girl down and threw a cell phone away to prevent a 911 call. He had the man detained and cuffed. He then called the Benewah County sheriff's department and they told him no one was available to come at that time. He offered to handle it for them, but he needed permission of the sheriff. The dispatcher said the Idaho State Police would take care of it. .

Tribal police still respond to calls every day that involve non-tribal members. They are told that Benewah County has nobody working or they are not in the area. They are told they cannot be deputized, so the tribal police hands are tied. This bill will help solve those problems.

Clayne Tyler, Board Member with the Idaho Association of Prosecuting Attorneys and Clearwater County Prosecuting Attorney, was recognized to speak in opposition to the bill. The voting public will not have the option to enforce a change in policies or procedures. Unilateral tribal policing authority over non-tribal members removes law enforcement from the public's general oversight by virtue of elections. There is limited control of the prosecutor's office's ability to effectively communicate with tribal officers, or to seek follow-up additional investigation.

There are no additional requirements written into the bill that would provide financial assistance to the county for the added expense and resources involved with another law enforcement agency operating within the prosecutor's jurisdiction.

The legislation is ineffective in its waiver of immunity. Idaho simply does not have the authority to waive sovereign immunity of any tribe on behalf of that tribe. Without a waiver of immunity, the county or the city will be

the primary defendant in a lawsuit involving a tribal police officer should one arise.

There is no clear line of authority in the bill. Should misconduct occur with a tribal officer, how would that be remedied? How would a case be resolved should a disagreement arise regarding the investigation or prosecution of that case.

Policing problems can be dealt with by cross-deputization agreements between each tribe and each county should both feel it appropriate. Those agreements have a built in remedy for violation by saying if one or the other violates the agreement, the other may terminate the agreement. This bill removes that remedy entirely.

Brad Hampton, Officer with the Coeur d'Alene Tribe, was recognized to speak in support of the bill. Mr. Hampton said he is a certified field trainer. He has over 1800 hours of POST training. He deals with non-tribal people often and he doesn't have a problem doing that. In one incident, he called for a Benewah County deputy and he waited for over an hour for that deputy to arrive. These incidents occur on a regular basis. If he were cross-deputized, he could handle these incidents as they arise. When asked if he could drive an individual to a jail, Mr. Hampton replied that he could be sued for kidnaping if he put a non-tribal person in his patrol car.

Dennis Tanikuni with the Idaho Farm Bureau was recognized to speak in opposition to the bill. The Farm Bureau is opposed to H 500 for the following reasons:

Negotiations for the cooperative agreement are initiated by the tribe. If no agreement is reached within 180 days, the tribe can enforce Idaho law within the exterior boundaries of the reservation without agreement if certain conditions are met.

The bill creates a law enforcement entity that is not accountable to a state or local political entity. In the event of a dispute, non-tribal members residing on the reservation will appeal to the Tribal Council, which is the policy setting body for the tribal law enforcement agency. Non-tribal members cannot vote for the Tribal Council.

Michael Meagher, Fire Chief in Plummer Idaho, was recognized to speak in favor of the bill. Mr. Meagher said public safety is the number one mission of all emergency services, With agreements between agencies, services can be provided which will help provide this safety to not only the public, but also for the officers and other emergency service personnel.

When this bill becomes law, it will be a great step in the direction of providing public safety for all of the people under these jurisdictions. A call can be placed to 911 and an officer will be able to enforce the law on the scene in a timely manner.

The bill will also provide a safe working environment for other public workers. It will speed up the response time of officers to emergency scenes to prevent injury and death. In conclusion, Mr. Meagher asked

that the bill be passed.

Seth Grigg, representing the Idaho Association of Counties, was recognized to say that the Association is opposed to the bill.

Chief Allen was recognized to speak in favor of the bill. Chief Allan said there have been many misconceptions and rhetoric regarding the State and Indian Tribal Cooperative Law Enforcement Act. The bill is just about public safety. The Chief said the tribes just want the bad guys off the street. There is currently no recourse on the reservations over non-tribal residents.

Mike Kane was recognized to give his closing remarks in opposition to the bill. Mr. Kane said it is not the desire of the sheriffs to denigrate the Coeur d'Alene Tribe or any other tribe. There isn't a fundamental issue that can't be resolved without this bill. The sheriffs don't believe this legislation is the right way to accomplish this.

Bill Roden was recognized to give his closing remarks in support of the bill. Mr. Roden said it has been an interesting discussion. He would have liked to have known about the issue of liability insurance. The prosecuting attorneys and sheriffs have been asked what they would like to see in the bill. Tribal governments are unique in the state of Idaho. Mr. Roden asked that the bill with the proposed amendments be passed. The bill must be passed now for public safety. The bill is talking about the imposition of a relatively small fine.

- MOTION:** **Representative Kren** moved to send **H 500 to General Orders** with committee amendments, as proposed, and the following amendments: On page 3, line 35, after two million dollars (\$2,000,000) insert "per occurrence" and on line 36, strike the words "and all."
- SUBSTITUTE MOTION:** **Representative Burgoyne** moved to send **H 500 to General Orders** with the above-mentioned amendments and inserting language stating that a tribal officer would not have the authority to try in tribal court a non-tribal person.
- AMENDED SUBSTITUTE MOTION:** **Representative McGeachin** moved to **hold H 500 for a time certain** until the meeting on Wednesday, March 17, in order for both parties to reach an agreement on the language of the bill regarding cross-deputization.
- ROLL CALL VOTE:** On the Amended Substitute Motion to hold H 500 for a time certain, voting AYE: Representatives Nielsen, Shirely, Wills, McGeachin, Hart, Bolz, Labrador, Luker, Kren, Boe. Voting Nay: Representatives Smith, Burgoyne, Jaquet, Killen and Clark. Totals: 10-5-0. **Motion passed.**
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 6:10 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 15, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** None

GUESTS: Senator Bart Davis; Marilyn Sword, Executive Director, Developmental Disabilities Council; Kathie Garrett, Partners in Crisis; Robbi Barrutia, SILC; Christine Pisani, Developmental Disabilities Council; Tiffany Southwick, ADA Task Force; Dana Gover, Citizen; Roger Howard, Living Independence Network Corporation; Jim Baugh, Disability Rights Idaho

Chairman Clark called the meeting to order at 1:40 p.m.

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on March 9, 2010, as written. Motion carried by voice vote.

S 1370: The Chairman recognized **Senator Bart Davis** to explain **S 1370**. This is a bill that modifies the provisions of Section 11-605. Idaho has a series of exemptions. Under this section of the code there are some value limitations.

This legislation amends some of the exemptions on personal property. Individuals, regardless of financial position, are allowed to hold onto certain assets. The primary reason for this legislation is for individuals that find themselves in a bankruptcy arena and, because of the way Idaho Code, Section 11-207 is written, wages that have been earned and not paid are subject to being taken.

The exemption on personal property is increased from \$500 to \$750 on any one item of property and not to exceed a total value of \$7,500, which reflects an increase from the previous \$5,000, for all items exempted under the subsection.

A new section (4) has been added saying an individual is entitled to an exemption of provisions of food or water together with storage containers and shelving, sufficient for 12 months for use of the individual or a dependent or dependents of the individual.

On page 2 of the bill beginning on line 26, a new section 12 has been added providing that an individual is entitled to an exemption for his disposable earnings, wages, salaries and compensation for personal services rendered to the extent such earnings, etc., have been earned but have not been paid to the individual. This amount is not to exceed \$1,500

in a calendar year. This exemption shall not affect the application or operation of the garnishment restrictions set forth in section 11-207, Idaho Code. Finally, an emergency clause is included in the bill.

MOTION: **Representative Hart** moved to send **S 1370** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Representative Nielsen** moved to send **S 1370** to **General Orders** with the following committee amendments: On page 2 of the bill, line 14, change the amount from one thousand dollars (\$1,000) to five thousand dollars (\$5,000.)

Representatives McGeachin and **Burgoyne** spoke against the Substitute Motion. **Substitute Motion failed by voice vote.**

ORIGINAL MOTION: The Original Motion to send **S 1370** to the floor with a **DO PASS** recommendation **passed by voice vote.** Representative Smith(24) will carry the bill on the floor.

S 1330: **Senator Bock** was recognized to explain **S 1330.** The purpose of this bill is to revise certain archaic terms in Idaho Code. This bill would replace them with terminology that is consistent with contemporary usage and diagnostic manuals. The current Idaho Code uses the terms “mentally retarded,” “mentally deficient,” “handicapped,” “lunatic,” and “idiot.” This bill would replace “mentally retarded” with “intellectually disabled”; “mental deficiency” with “mental disability”; “handicapped” with “disabled”; “lunatic” with “person with a mental disability”; and “idiot” with “person without understanding.”

Senator Bock said after the session last year, he met with Marilyn Sword with the Idaho Council on Developmental Disabilities and the Council convened a group of interested parties to review various drafts furnished by Legislative Services regarding any changes being made to the law. They discussed these changes with the Courts, the Attorney General’s office and others and they held at least 6 meetings trying to find appropriate language as they went through the bill page by page. They made absolutely sure that no changes were made to the content of the existing law. When the bill was heard on the Senate side, there were some concerns raised by the Attorney General’s office, so an amendment was drafted to resolve those concerns.

That amendment is as follows: On page 9 of the printed bill, delete lines 33 through 47; on page 10, delete lines 1 through 50; on page 11, delete lines 1 through 50; and on page 12, delete lines 1 through 12. Renumber subsequent sections accordingly.

A letter in support of the bill from Roger Howard, Executive Director of the Living Independence Network Corporation was given to each member (attachment.)

Marilyn Sword, Executive Director, Council on Developmental Disabilities, was recognized to testify. Ms. Sword said the Council is authorized in federal and state law to review laws, rules and policies that affect the lives of individuals with developmental disabilities and their families.

The Council is pleased to support S 1330 which updates archaic references in code regarding terminology affecting individuals with developmental disabilities.

The Council was contacted by Senator Les Bock last spring with the concept outlined in this bill. With Idaho just having hosted the Special Olympics World Winter Games, it was agreed that the time was right for these changes in Idaho law. Included in the group which was gathered to review various drafts were representatives of the Department of Health and Welfare, the Department of Education, the Department of Labor, the Department of Insurance, the courts, the State Independent Living Council, the Idaho Task Force on the Americans with Disabilities Act, Idaho Self Advocate Leadership Network, Disability Rights Idaho, and former State Representative Kathie Garrett. Each person brought their own knowledge and insights to the discussion.

The intent behind this bill was two-fold. One is to recognize that words matter and what we say reflects who we are. For decades, people with disabilities have lived with being called names that were slurs coined from the label of "mental retardation." By removing the term "retardation" from the law, it will hopefully discourage people from using "retard" or "retarded" when referring to someone or something of lesser value. The replacement term used in this bill is "intellectual disability" which is recognized nationally as equivalent in terms of diagnosis.

The second reason for the legislation is to update Idaho law to reflect current terminology. "Handicapped" is a term that is no longer appropriate. The term has been systematically removed from federal laws and programs. In this bill, it is replaced with the term "disability" and, when referring to parking placards, with the term "accessible."

Diagnostic manuals used in the field of disabilities have changed or are changing their terminology. The American Psychiatric Association is currently in the process of developing and testing the 5th edition of its manual of mental disorders. It will update terminology and categorization of various diagnoses.

In conclusion, Ms. Sword said S 1330 provides the Council with the opportunity to both update Idaho law and remove disrespectful terms that negatively impact Idaho citizens.

With regard to updating signage, Ms. Sword said the signage has usually been a wheelchair insignia which would not require updating.

Jim Baugh, Executive Director, Disability Rights Idaho, was recognized. Mr. Baugh said his association has been involved in the crafting of the bill. The term "mental impairment" has been left in the legislation. The parties were very careful not to change the actual meaning of the other terms. There are still signs out which say "handicapped parking." Those signs can be left the way they are. There are many types of disabilities and the wording attempts to accommodate all of the specific categories. The motivation in drafting the legislation is to change "retardation" without changing anything else in the law. Mr. Baugh said it was always tempting to make parts of the code better, but it was decided to just change the terms and leave the law as it has been written.

In closing, **Senator Bock** said this was approached with absolute vigor. If there was an error, it was in favor of not changing the law. This is just about the terminology. He asked that the bill be sent to the floor with a do pass recommendation.

MOTION: **Representative Killen** moved to send **S 1330a** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** Representative Shirley will carry the bill on the floor.

ADJOURN: Prior to adjourning, Chairman Clark said H 500 would be brought back before the committee on Wednesday, March 17, 2010, to see if both parties were able to reach an agreement on the legislation. There being no further business to come before the committee, the meeting was adjourned at 3:05 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 17, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** Representatives Luker and Wills

GUESTS: Larry Pegg, Citizen; Robert Kirts, Benewah Sheriff; Mike Kane, Idaho Sheriffs Association; Bill Roden, representing the Coeur d'Alene Tribe; Helo Hancock, representing the Coeur d'Alene Tribe, Jim Rehder, Idaho County Commissioner; Sarah Fuhrman, Roden Law Office

Chairman Clark called the meeting together at 1:30 p.m.

MOTION: **Representative Bolz** moved to approve the minutes of the meetings held on March 11 and March 15, 2010, as written. Motion carried on voice vote.

H 500: **Mike Kane** was recognized. Mr. Kane said an agreement was reached between Benewah County and the Coeur d'Alene Tribe on cross-deputization. That agreement will be signed by all elected officials. Bringing the parties together was in everyone's interest.

Helo Hancock was recognized. Mr. Hancock expressed his appreciation to the members for allowing time to work out the agreement. He said the Coeur d'Alene Tribe appreciated all the hard work that the committee and the sheriffs have put into the agreement. In concluding his remarks, Mr. Hancock asked the members to hold H 500 in committee.

MOTION: **Representative Smith** moved to **hold H 500** in committee. **Motion carried on voice vote.**

The Chairman thanked everyone for their time and effort in drafting the agreement.

ADJOURN: Prior to adjourning, the Chairman said the committee would be meeting on Friday, March 19, 2010. There being no further business to come before the committee, the meeting was adjourned at 1:40 p.m.

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 19, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** Representatives Shirley, Wills, Labrador and Kren

GUESTS: Bob Aldridge, Attorney; Sue Stadler; Daniel Lake; Michael Dennard, Judiciary; Tracee Crawford, Treasure Valley Grandparents as Parents; Marisa Mackley, Citizen; Georgia Mackley, Kincare Coalition; Patti Tobias, Courts; John Watts, Voices for Children; Vikki Miller, Idaho Voices for Children; Paul Panther, Attorney General's office; Barbara Jorden, Idaho Trial Lawyers Assn., Brandon Philips, Idaho Department of Correction, Diane Schwarz, Idaho Voices for Children; Fairy Hitchcock, Advocate; Director Brent Reinke, Idaho Department of Correction

Chairman Clark called the meeting to order at 1:30 p.m.

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on March 17, 2010, as written. Motion carried by voice vote.

S 1340a: The Chairman recognized **Barbara Jorden**, Idaho Trial Lawyers Association to explain the bill. This bill fixes a loophole in the law. Under current law, if an unmarried person suffers an injury caused by another person and incurs medical expenses and other actual economic losses, but later dies from an unrelated cause prior to the responsible person paying for the expenses, the person or insurance company that caused the problem is no longer responsible to pay. However, when a married person in the same situation dies, the spouse is allowed to continue the claim.

This change in the law will require liability insurance companies to pay for economic losses they have insured instead of requiring the children or other heirs of the unmarried person to pay the medical bills and other expenses that were incurred because of the carelessness of another person.

The amendment simply adds an "(a)" on page 2 of the bill in line 35 which was inadvertently left out when the bill was crafted.

MOTION: **Representative Smith** moved to send **S 1340a** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** Representative Smith will carry the bill on the floor.

S 1382a:

The Chairman recognized **John Watts** to explain **S 1382a**. Mr. Watts said this is his 27th year lobbying and this is the first time he has come before this committee. He represents Idaho Voices for Children. There are two people in the audience who have been involved in drafting this legislation. They are Professor Elizabeth Brandt and Attorney Bob Aldridge.

There are currently 18,000 children in the state of Idaho being raised by grandparents. This means that nine children are living with grandparents for every child that lives in a foster care setting. This number translates into 4% of all children under age 17.

Parental incarceration and substance abuse are the two most common reasons why grandparents assume the parenting role for their grandchildren. Relative care for these children is placement stability. Research shows that 85% of children placed with relatives live in the same home for a year or more, compared to 58% of children in the foster care system. An important reason to support grandparents raising grandchildren is cost. It could cost Idaho up to 60 million dollars if the state were to support the 18,000 children living with grandparents if those children came into the foster care system. Nationally, one-half of grandchildren living in a grandparent's home are younger than 6 years of age.

This legislation establishes a new custodial remedy for grandparents or other relative care givers seeking legal custody of grandchildren or relatives. It provides a process for a court to use when deciding whether or not to grant de facto custodian status to a grandparent or other relative. Further, it specifies standards and incorporates by reference present statutes to be applied when evaluating the best interests of a child when considering whether or not to award custody rights to a de facto custodian.

The legislation sets out content requirements of a petition or motion to be filed with the court to commence a de facto custodianship proceeding and it sets forth written requirements for notification to parties that may have an interest in the child. The legislation amends Title 15, Chapter 5, to align de facto custodian terms and standards with similar terms and references in proposed Title 32, Chapter 17. Mr. Watts said this is an in-between solution which fills a niche to keep families together.

Mr. Watts walked the members through the bill. He said the purpose of the de facto custodian act is to give constitutionally required deference to the decisions of fit parents in custody actions brought by third parties. Secondly, it allows a grandparent to ask for custody of a child.

Mr. Watts said some amendments to the bill were drafted to clarify and improve the language in the legislation. He then explained the amendments which are contained in the engrossed bill.

Professor Brandt was recognized to give her testimony. Professor Brandt explained that the difference between custodianship vs. guardianship is finding a flexible in-between situation. The first step would be the kin care giver would have to show that they have resided with the child for a prior amount of time which would be six months if the

child is less than a three years of age, or one year if the child is more than three years of age. During that time, they must have been the primary care giver and financial support of the child. Once a court finds that an individual meets that definition, the statute then provides that there would be a best interest of the child determination made using the factors of the existing best interests law. The factors in that code would determine what custody arrangement would be in the best interests of the child. Custody could be given exclusively to a de facto custodian, or the custody could be shared between the de facto custodian and one or both of the parents. The de facto custodian then has legal decision-making power.

This legislation is an attempt to assist parents who are having trouble taking care of children. This is not so permanent as a guardianship. The bill is affording flexibility. In response to a question regarding the lack of provisions for a parent who is serving in the military, Professor Brandt said there is a federal statute which would cover the parent in military service. This bill addresses the needs of children. Right now the law does not provide guidance for Idaho courts for custody proceedings where children have custodians who are not their parents.

Judge Dennard was recognized. Judge Dennard said he is before the committee today to provide information and comment from the courts on the de facto custody bill. The judiciary does not take positions either opposing or supporting legislation. However, it is their responsibility to provide any information at the judges' disposal which may help in consideration of any proposed legislation.

The amendments which were drafted take care of some of the concerns of the courts regarding the bill. Most of the concerns were on whether this legislation contains sufficient protections to a parent's fundamental constitutional right to the care, custody and control of his or her children. The Idaho Supreme Court, in considering a grandparent's request for visitation, held that a clear and convincing burden of proof is required because the fundamental constitutional right of a parent is affected by that decision.

The judges' concerns are founded in settled principles of constitutional law, the first of which provides that where legislation affects a fundamental constitutional right, it is subject to strict scrutiny and is justified only by a compelling state interest. Second, statutes affecting a fundamental constitutional right must be narrowly tailored to achieve that interest.

Under the bill, a relative who has at some point during a child's life had physical custody and provided support for a child for 6 months if the child is under age three, or a year if the child is older, is immediately elevated to the same constitutional status as a parent. Those time periods are not required to be continuous and there is no limitation in terms of when during the child's life these periods of time occurred.

Also, there is no requirement to show this arrangement was the result of abandonment, neglect, parental unfitness, or voluntary relinquishment of custody by the parents.

The following different scenarios demonstrate how a relative would qualify as a de facto custodian under this broad, general definition if consideration is not given to these kinds of issues. A parent in the military temporarily places his or her child with a relative while serving on active duty. A parent is in a car accident and becomes disabled. A young single parent allows a relative to provide care and support for the child while the parent is away attending school.

Regarding the impact this bill may have on the courts, that is a difficult question to answer. As with any new cause of action, it is difficult if not impossible to say how many new cases will be filed or how much time will be required to handle them. Judges have commented that they do believe this will generate additional litigation and some believe it will increase conflict within families.

Hollis Brookover, president of the board of Idaho Voices for Children, was recognized. Idaho Voices for Children is a statewide organization that works using data to find cost-effective and strategic policy solutions to problems facing Idaho's youth. Areas of interest are child health and safety, education and family economic security.

The organization's interest in the bill is to provide support for relative care givers, stability for the children involved and a way for parents when they are able to again assume responsibility for their child. The organization believes this bill is a step in the right direction for the following reasons: It provides a flexible method by which a third party who has cared for and supported a child can obtain legal and physical custody when it would be in the best interest of the child, the parents and the family.

The provisions calling for ongoing court oversight will insure the child remains in a stable situation. It will also allow adjustments to custody arrangements as appropriate in an effort to preserve family relationships. Finally, this legislation provides an avenue for parents to be considered for "restored" custody when they are better prepared to meet the needs of the child.

This legislation is smart public policy. It protects family relationships, minimizes stress and expense related to legal battles and provides children with a stable home environment.

Tracee Crawford, chairman of Treasure Valley Grandparents as Parents, was recognized. Ms. Crawford spoke in support of the legislation. The bill will recognize those situations where a parent has failed to provide adequate care for a child and where a grandparent has, therefore, already been serving in the role of a parent for an extended period of time. This law would give grandparents the same standing as parents in custody cases if they satisfy the definition of a de facto custodian.

Currently there is no guidance for Idaho courts for custody proceedings. This lack of guidance has resulted in situations where children were abruptly uprooted and removed from a relative's home to live with adults who are virtual strangers to them and, in some cases, cannot or will not provide a nurturing environment for the children.

Being eligible for de facto custodian status will enable grandparents or

other relative care givers the right to appear in court and be heard concerning the welfare of the child or children they have been raising.

The bill prescribes a time line for establishing a permanent solution for children. The legislation would require the court to apply the “best interest” of the child standard by a “preponderance of the evidence” which is the same standard currently used in child abuse cases. The court would apply the best interest standard after the care giver has proven by clear and convincing evidence that he has indeed been the de facto custodian to the child for the period of time required by law.

The de facto custodian provision will require the court to more closely consider the welfare of the child, rather than automatically favoring a parent.

Georgia Mackley, with Kincare Coalition, was recognized to testify. Ms. Mackley said she was before the committee on behalf of herself. This bill addresses the best interests of the child. It is not directed toward a minor family situation.

Marisa Mackley spoke in support of the bill. She said she has lived with her grandparents for five years. The bill is in the best interest of children.

Sue Stadler was recognized. Ms. Stadler said she acts as a mental health professional in custody cases which come before the court. When parents are unable to take care of a child, preserving the emotional bond is important. This bill addresses critical decisions. It is crucial that judges, attorneys and family members be given the tools they need. This bill provides flexibility and it will allow the de facto parent to petition for custody. If a custody evaluation is ordered, Ms. Stadler asked that the people involved in the cases be trusted to make a decision in the best interest of the child. Parents can gradually get custody of a child. Usually this takes place with a series of steps which show that they can adequately parent that child.

MOTION:

Representative McGeachin moved to send **S 1382a** to the floor with a **DO PASS** recommendation.

Bob Aldrich was recognized to speak in support of the bill saying this brings these cases back where they belong. As a guardian ad litem in guardianship cases, many of those cases would be much better served through a custody hearing. This bill will shift a number of cases from the guardianship or conservatorship arena into the custody arena where they can be dealt with on a more temporary basis with a great deal of flexibility in the court.

John Watts was recognized to give closing remarks. The language of the bill with the amendments is attempting to stay within the constitutional framework. No action will be taken unless the parents have failed to provide adequate care for a child and where a grandparent has already been serving in the role of a parent for an extended period of time.

Representative Nielsen and **Representative Burgoyne** spoke in favor of the bill.

Motion carried by voice vote. Representative Smith(24) will carry the bill on the floor.

S1383a:

Brent Reinke, director of the Idaho Department of Correction, was recognized to explain the bill. This legislation amends section 4 of Idaho Code, 19-2601. The bill will give Idaho judges and the Department of Correction the ability to ensure that certain persons convicted of crimes receive substance abuse treatment and/or programming as an alternative to long-term incarceration.

As part of the current retained jurisdiction program, judges only have the ability to order criminal defendants into the Department of Correction's custody for 180 days to receive enhanced evaluations, substance abuse treatment and/or programming. This legislation would extend the length of time up to 365 days. The legislation is not intended to extend the period of incarceration for a traditional retained jurisdiction program. The proposed change makes it clear that during the retained jurisdiction period, the Department of Correction is responsible for determining the defendant's placement and treatment/programming needs.

The amendment deals with the discharge of a defendant and amendment of judgment. Section 2 of Idaho Code 19-2604 allows a judge to reduce a felony to a misdemeanor if the defendant successfully completes his or her "rider" and then successfully completes probation.

MOTION:

Representative Killen moved to send **S 1383a** to the floor with a **DO PASS** recommendation.

Fairy Hitchcock, family advocate, was recognized to testify. Ms. Hitchcock spoke in opposition to the bill because of the extended time. She said there is quite a bit of abuse going on.

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

S 1384:

Director Reinke was recognized to explain. This legislation clarifies the Department of Correction's role in the event of an emergency at a privately operated facility that is under contract to house offenders for the department. Currently, the department's authority to suppress a riot or other serious disturbance at a private facility is not expressly stated in statute.

The Director turned the podium over to **Paul Panther** to explain the bill in more detail. The legislation amends Idaho Code §§ 20-111, 20-209B and 20-241A to make clear the department's authority to intervene in the event of an emergency. It also proposes to amend the code to provide that any contract between the department and a private prison contractor to house Idaho offenders must contain provisions to facilitate cooperation and provide for payment of expenses in the event of an emergency at the private facility. The legislation also proposes that Idaho Code 20-111 be amended to replace the anachronistic term "convict" with the more

commonly used term “prisoner” in reference to incarcerated persons.

The added programming space provided by the Correctional Alternative Placement Program (CAPP) makes this a natural evolution to create a more effective treatment option that reduces the inmate population into the future. This legislation, if enacted, could reduce the growth of the inmate population by an average of about 400 inmates a year.

In response to a question regarding whether the department would cover the cost if there were a disturbance, the answer was yes.

MOTION: **Representative Nielsen** moved to send **S 1384** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.**

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 23, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** None

GUESTS: Adrean Casper, American Heart Association; Dave Watkins, Idaho Prosecuting Attorneys Assn.; Sandee Meyer, Idaho Prosecuting Attorneys; Holly Koole, Idaho Prosecuting Attorneys; Jean Fisher, Ada County Prosecutors; Grant Loeb, Twin Falls Prosecutor; Renee McKenzie, Attorney; Greg Bower, Idaho Prosecuting Attorneys; Kristina Rowen; Citizen; R. J. Sandy, Chairman, Department of Correction; Diane Anderson, Citizen Advocacy Group; Fairy Hitchcock, Hitchcock Family Advocates; Rep. Ken Andrus; Brad Dixon, American Heart Association; Scott Axline, Citizen; Karl Joslin, Citizen; Representative Lake

Vice Chairman Smith assumed the Chairman's seat and called the meeting to order at 1:50 p.m.

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on March 19, 2010, as written. Motion carried by voice vote.

S 1390: **Adrean Casper**, Director of Government Affairs, American Heart Association, was recognized to explain the bill. Each year more than 250,000 Americans die from sudden cardiac arrest. That is equal to 600 people a day and nearly 25 lives per hour. Automated external defibrillators (AEDs) can mean the difference between life and death when deployed within 3 to 5 minutes of a sudden arrest event. For every minute without a shock to the heart, the chance of survival decreases by 7 to 10 percent. Unfortunately, many public places are reluctant to purchase an AED due to the liability inherent in Idaho law.

This legislation is directed at encouraging the placement of AEDs by providing civil liability protection to owners of AEDs. It increases the negligence standard from simple negligence to gross negligence, while still providing appropriate requirements regarding the maintenance of AEDs.

In response to a question regarding whether AEDs have been placed in the Capitol, Ms. Casper said some were placed in the Capitol, but not in the new wings. When asked if training were available, Ms. Casper said training is currently being done.

Ms. Casper pointed out that current statute provides that no cause of

action shall be maintained against a licensed physician, osteopath, physician assistant, nurse practitioner, nurse, or against emergency medical technicians, firemen, peace officers, ambulance attendants or other persons trained to use a defibrillator, or against a person or entity who acquires or maintains a defibrillator. The statute was amended two years ago to include lay responders. This legislation provides civil liability protection to owners of AEDs.

Brad Dixon, attorney representing the American Heart Association was recognized. This legislation increases the negligence standard from simple negligence to gross negligence, while still providing appropriate requirements regarding the maintenance of AEDs. If someone owns a defibrillator and has a maintenance plan and the defibrillator doesn't work, that is primarily a maintenance issue.

MOTION: **Representative Jaquet** moved to send **S 1390** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** Representative Jaquet will carry the bill on the floor. Representative Burgoyne asked to be recorded as voting "no" on the motion.

S 1385: Chairman Clark resumed the Chair and recognized **Senator Brent Hill** to explain the legislation. The Senator said during the years that he has been on the Senate Judiciary and Rules Committee, his focus kept coming back to the current rape statute. He said he doesn't condone pre-marital sex, but he doesn't believe an 18 year old boy's indiscretion with a 17 year old girl should be considered rape. The Senator said that 48% of the seniors in high school in Idaho have had sexual intercourse. He had to ask himself if he could feel good about a law that declares every one of these 18 year old boys that had sex with their 16 or 17 year old girlfriend as a felon.

Under current statute, a boy doesn't even have to be 18 and he can become a criminal under Idaho law. There are 35 states that have age sixteen as the age of consent.

This legislation changes the definition of what is commonly known as "statutory rape" as defined in 18-6101. The bill amends the definition of statutory rape to include sexual relations when the offender is age 18 or older and the victim is under age 16, rather than 18, or the victim is 16 or 17 and the offender is 3 or more years older than the victim. Changes are also made to the male rape statute in 18-6108, to bring it into conformity with the provisions of the female rape statute in 18-6101. None of the other rape statutes are changed.

The Senator expressed his concern that under current law, boys' lives are ruined. Once these boys are branded as felons, they can't choose where to live and they have a hard time getting a decent job. Laws that have the potential to destroy the lives of innocent people need to be changed.

In answer to a question regarding young girls having sex in order to join gangs, the Senator said there are other tools in the law to handle such situations. In answer to a question regarding a person who is 17 years of age having sex with someone who is 12 years of age, the Senator said

there is a statute that covers lewd conduct.

Renee Mckenzie was recognized to speak in support of the bill. When a young man is accused of felony rape, the possible consequences are that he will have to register as a sex offender and be sent to prison with older hardened criminals. Sexual acts between teens should not be condoned, but sending teenage boys to prison is not the answer. Often these cases are brought about when the girl says she is older than she is, or when she gets pregnant and the parents become aware of the sexual acts.

Fairy Hitchcock was recognized. Ms. Hitchcock said she is against this bill and cited a situation involving her daughter. She said other language should be drafted so that it would be a misdemeanor offense for some of these things that happen.

Grant Loebs, Twin Falls County Prosecutor, was recognized to speak against the bill. Mr. Loeb said it is not the practice in Idaho to prosecute consensual boyfriend-girlfriend relationships which technically violate the current rape laws. Prosecutors have asked for examples of miscarriages of justice and, to-date, no examples have been brought forward.

Idaho's current rape law discourages sexual activity by children and it discourages teen pregnancies and the spread of sexually transmitted diseases to children. It also gives important tools to law enforcement to protect Idaho's children.

This bill prevents law enforcement from discouraging sexual activity which is forced by peer pressure, it prevents law enforcement from protecting Idaho's young girls from being "jumped" into gangs. It also prevents law enforcement from using Idaho's rape laws to stop drug dealers from trading drugs for sex and it will require a great many young girls who are victims of violent rape to go through the humiliating ordeal of public testimony in every case.

Current Idaho law offers our children more protection and it should not be changed.

In response to a question regarding if a young lady 19 years of age has sex with a young male 17 years of age, is that woman committing statutory rape, the answer was if the male is under the age of 15, the female would be guilty. Mr. Loeb said he didn't know why females were treated differently than males. When asked if there is some place in the code where males would receive the same protection as females, the answer was there is none. It is the prosecutor's job to use discretion appropriately in these cases.

When asked if the rape statutes are the way they are needed, Mr. Loeb said he believed there are ways to make them better, but this law would make them worse. In response to a question as to whether if two people have consensual sex, would the male be guilty and the female not guilty, Mr. Loeb said if they are 16 years, he would hope that neither would be prosecuted. If one were, it would be the male and not the female.

Robin Sandy, chairman of the Department of Correction, was recognized

to testify in support of the bill. She said that while the prosecutors had some good points, the points are only as good as the prosecutors. There are prosecutors in the state that plea bargain and do things that would not be appreciated by legislators. She has seen cases in prison multiple times of young men who have been incarcerated. These young men are not sex offenders. Prison ruins their lives. Boys are held more liable than girls for sexual activity. She said she believes this is a good bill.

Jean Fisher, Ada County Deputy Prosecutor, was recognized to testify in opposition to the bill. Her concern is for the 16 or 17 year old girl who gets pregnant and is in legal limbo with no rights. These girls may have supportive parents, or they may have been abused and are wayward. Another concern is that juvenile sex offense is on the rise. Current law provides the most protection.

This proposed law is designed to protect young men. A campaign is currently being designed called "what's the rush." Society looks at these cases differently. Women sex offenders don't get punished like male sex offenders do. This is a huge issue. A better law can be created, but this isn't it. Ms. Fisher said there is a value in the tiered system used by some states. However, it is much more complicated in Idaho because the state uses so many federal funds.

Representative Andrus said the law needs to be changed so that a young man is not charged with statutory rape and sent to prison. He asked that the statute be fixed so that if there is consensual sex between two young people, the man is not prosecuted.

Kristina Rowen was recognized to speak in support of the bill. She said she was in a consensual relationship when she was young. She is now 34 and the mother of two children. She has witnessed where a young man has been prosecuted. This young man's life is ruined. Also, there is no punishment for the female who is involved in the relationship.

Representative Lake was recognized. He said this is the first time he has appeared before this committee in his 14 years as a legislator. He has been interested in the comments made today. He said he would like to propose an amendment to the bill. He said the legislation needs to be written so that there is always two years difference in age. Also, the way the bill is written, if the female is one day before her sixteenth birthday and the perpetrator is one day over his eighteenth birthday, he is guilty of rape, but if the female is one day over her sixteenth birthday, there must be three years between their ages before he is guilty. Pushing this disparity out to the age of seventeen allows the female another year to mature before becoming the target of older men.

Scott Axline, attorney, was recognized to testify in support of the bill. Mr. Axline said he represented a young man who had been prosecuted for rape. He said there is gender bias in various areas of the law. Gender neutrality should be in the law. A sexual offense is a terrible thing. He cited a case where a young man was unfairly prosecuted. A young lady at a party flirted with the young man until they finally had intercourse. She then claimed that it was forceful and it happened because she had been drinking alcohol. She was a month shy of her 17th birthday and he was

two months past his 19th birthday. A jury found him guilty of statutory rape. Mr. Axline asked to submit copies of some of the juror's comments stating they did not want the young man labeled as a sex offender and punished for the rest of his life while the girl involved is free (attachments.) Mr. Axline said this bill needs to go to the floor with a do pass recommendation.

Diane Anderson with the Citizen Advocacy Group was recognized to speak in favor of the bill. Young people who are 16 or 17 don't understand what the consequences are when they have consensual sex. This bill is a good step in the right direction.

Carl Joslin was recognized to speak in support of the bill. Mr. Joslin said his son was prosecuted for statutory rape and has to register as a sex offender. He was an inexperienced young man, a student at the University of Idaho. The girl was sexually active. She forced herself on him. He admitted to consensual sex. The case went to trial and they offered a plea bargain. This bill may be able to help other adolescents. Mr. Joslin's son is on probation and he is living at home. He is a good person. During the 3 years that the case lasted, they asked that the boy not become a registered sex offender for the rest of his life. His son is and will be a law abiding citizen of the state of Idaho.

Senator Hill was recognized to give closing remarks. The Senator said regarding Representative Lake's proposed amendments, it doesn't seem appropriate to make the age difference smaller. A lot of time is spent debating words in committee and what they mean and what effect they will have. There are people here who seem to be willing to come up with better language for this bill. The Senator would like to work on language to make the bill gender neutral. It is a legislator's responsibility to draft good laws. This bill just protects 18, 19 and 20 year old kids that made a mistake.

MOTION: **Representative Burgoyne** moved to send **S 1385** to the floor with a **DO PASS** recommendation. In support of his motion, Representative Burgoyne said the statute on the book is antiquated law. This legislation is a step in the right direction.

SUBSTITUTE MOTION: **Representative Smith** moved to send **S 1385 to General Orders** with language to make the bill gender neutral and make exceptions for 17 and 18 year olds where the sex is consensual and there is no coercion. Representative Nielsen spoke in support of the substitute motion. Representative Killen spoke in favor of the original motion saying there would not be enough time in this session to make the changes recommended in the substitute motion. Representative Burgoyne said he would like to see further amendments drafted to the bill, but he would want to consult closely with other germane parties. Representative Labrador spoke in favor of the original motion. Representative Nielsen said the language needs more work, but he would support the original motion. Representative Kren said the crime should be a misdemeanor rather than a felony and the defendant shouldn't have to register as a sex offender, so he supports the substitute motion.

ROLL CALL VOTE: On the **Substitute Motion**, voting AYE: Representatives Smith, Bolz, Kren and Clark. Voting NAY: Representatives Nielsen, Shirley, Wills, Hart, Labrador, Luker, Boe, Burgoyne, Jaquet and Killen. **Motion failed 4-10-1.**

ORIGINAL MOTION: The **Original Motion passed by voice vote**. Representatives Shirley and Jaquet will carry the bill on the floor. Representatives Kren and Bolz asked to be recorded as voting “no” on the motion.

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

Representative Jim Clark
Chairman

Betty Baker
Secretary

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: March 25, 2010

TIME: 1:30 p.m.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** Representatives Clark, Nielsen, Shirley, Hart, Jaquet

Vice Chairman Smith assumed the Chair and called the meeting to order at 4:00 p.m.

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on March 23, 2010, as written. Motion carried by voice vote.

Chairman Smith thanked the secretary and the page for their work during the session.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:10 p.m.

Representative Leon Smith(24)
Chairman

Betty Baker
Secretary