

# Senate Judiciary & Rules Committee

Minutes  
2010



## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** January 15, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, McKague, Mortimer, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senator Hill and Bock
- GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:33 p.m.
- RS 19239** **Relating to an Appeal.** **Michael Henderson**, Legal Counsel for the Supreme Court, explained that 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.
- MOTION:** **Senator Davis** made a motion to send RS 19239 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.
- RS 19247** **Relating to the Idaho State Bar.** **Mr. Henderson** explained that Idaho Code § 3-405 provides that all judges of the district court and Idaho Supreme Court justices are members of the Idaho State Bar. This statute was enacted several decades before the creation of the magistrate division of district court and the Court of Appeals. This bill would clarify and update the statute by correcting terminology and providing that attorney magistrates and judges of the Court of Appeals are members of the State Bar.
- MOTION:** **Senator Davis** made a motion to send RS 19247 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- RS 19249** **Relating to the Escape of Prisoners.** **Mr. Henderson** explained the words "and detention" make it appear that there is another undefined element of detention, possibly home detention, that must be proved to establish the commission of this crime. This could lead to confusion and an ability to hold persons to account who left the area of restriction in

violation of a court order. RS 19249 would remove the superfluous words from these statutes.

**MOTION:** **Senator Davis** made a motion to send RS 19249 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**RS 19250** **Relating to Executions.** **Mr. Henderson** explained RS 19250 would remove the obsolete second paragraph of the statute. The first paragraph would be amended to state that the issuance of writs of execution is subject to the right of the court to stay execution as provided by rules adopted by the Supreme Court.

**MOTION:** **Senator Lodge** made a motion to send RS 19250 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**RS 19265** **Relating to Justice Court and Police Court.** **Mr. Henderson** stated that RS 19265 would avoid confusion by repealing obsolete provisions.

**MOTION:** **Senator Davis** made a motion to send RS 19265 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

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

**DOCKET NO.**  
**11-0701-0901**

**Pending Rules**

**Rules Governing Motor Vehicles-General Rules**

**Vice Chairman Jorgenson** introduced **Sgt. Jim Eavenson**. **Sgt. Eavenson** explained in 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.

**Vice Chairman Jorgenson** questioned if they had received any comments or correspondence on any of the rules? **Sgt. Eavenson** stated they did not.

**Senator Davis** asked if this was something that "we" picked up or if this was something that was normally administered through the Transportation Committee? **Senator Darrington** clarified that Judiciary and Rules has dealt with all rules dealing with the Idaho State Police.

**Senator Davis** stated that there was not a meaningful definition in the Idaho Code or in the Administrative Code that defined a motor vehicle for purposes of acquiring a title. He suggested that the informal policy should actually be a part of Idaho Code so that they would know 'what collection of parts' are necessary in order for a vehicle to be titled, which is a concern with some lenders. **Senator Davis** requested for this issue to be reviewed to decide if there are some rules that should be adopted that will help in working through this issue. **Sgt. Eavenson** stated he would work on this issue.

11-1101-0901

**Rules of the Idaho Peace Officer Standards and Training Council (POST).** **Vice Chairman Jorgenson** introduced **Steve Raschke**, Interim Executive Director, and he explained the proposed 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 proceedings against them and the results thereof. If an officer's certification lapses, the POST Council no longer has authority over them, and cannot decertify them even though the decertification investigation confirms conduct that warrants decertification. This rulemaking is necessary to protect public health, safety and welfare.

**Senator Davis** asked if the statute allowed them to have jurisdiction to do this for non-officers that are going through the decertification process.

**Mr. Raschke** stated "yes." **Senator Davis** questioned if the enabling language was broad enough to pick up everything included in the decertification process. **Mr. Raschke** replied it was.

**Chairman Darrington** noted that decertification is not a rare occurrence with the POST academy, but an ongoing thing that happens several times a year and they need the jurisdictional authority granted in the proposed rule in order to deal with some of the strange and unusual cases they are faced with.

11-1101-0902

**Rules of the Idaho Peace Officer Standards and Training Council (POST).** **Mr. Raschke** explained this rule updates contact information; establishes the requirements for Conducted Energy Device certification; updates the property language to encompass all disciplines POST Council certifies; adds 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; that an officer under decertification investigation is not eligible for certification while under investigation; and requires applicants to disclose any decertification proceedings against them and the results thereof.

**Senator Davis** questioned why it would be discretionary? Shouldn't it be mandatory? Shouldn't they be eligible? Why would we change the wording from "shall" to "may"? **Mr. Raschke** responded that the process was fairly detailed and with the different nuances the word "may" fits better. **Senator Davis** stated that he felt they were setting a discretionary standard and did not want to subjectify to those standards and if there are other factors that should be part of it, then it should be said in the rule.

**Mr. Raschke** responded that in the section in question they are referring to eligibility.

**Vice Chairman Jorgenson** asked what the impact would be if this rule were to be accepted with the exception of the "shall" and "may" changes.

**Mr. Raschke** replied that he did not believe there would be any material impact other than some of the nuances of eligibility

11-1104-0901

**Rules of the Idaho Peace Officer Standards and Training Council for Correctional Officers and Adult Probation and Parole Officers.** Mr. **Raschke** explained this 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 thereof.

#### **Temporary Rule**

11-0501-0902

**Rules Governing Alcohol Beverage Control.** Vice Chairman **Jorgenson** introduced Lt. **Bob Clements**. Lt. **Clements** explained 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. Temporary 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 legal boundaries regarding the serving of alcoholic beverages.

**Senator Davis** questioned if they would need to strike the grandfathering language? Lt. **Clements** replied there is a date specific time as to when they received their licensing as to whether that business is grandfathered.

#### **Presentation**

##### **Idaho State Police Update**

**Colonel Jerry Russell**, Director of the Idaho State Police, discussed the agency's goals for the fiscal year 2010:

**-Effective and Efficient Agency Operation:** Enhance agency unity and structure.

**-Patrol:** Aggressive enforcement of hazardous violations; aggressive criminal investigation and apprehension.

**- Investigations:** Continue the level of self initiated investigations at 60% or greater.

**-Forensics:** Satisfy time lines for all disciplines. Enhance customer satisfaction.

**-Agency Operations:** Identify and address institutional inconsistencies that may exist.

**-Workforce Development:** Ensure seamless transition and advancement of employees.

Colonel Russell also reviewed Performance Measures and Revenue & Expenditures for the previous year. See attached Exhibit A.

#### **ADJOURNMENT**

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

MINUTES

**SENATE JUDICIARY AND RULES COMMITTEE**

**DATE:** January 18, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**Chairman Darrington** recognized Erin Griffard, our Page, for receiving an award from the Human Rights Commission today.

**Chairman Darrington** explained that the rules from January 15 would be voted on in committee. **Chairman Darrington** turned the meeting over to **Vice Chairman Jorgenson**.

**DOCKET NO. 11-0701-0901** **Rules Governing Motor Vehicles-General Rules**

**MOTION:** **Senator Davis** made a motion to accept Docket No. 11-0701-0901. **Senator Jorgenson** seconded the motion. The motion carried by **voice** vote.

**DOCKET NO. 11-1101-0901** **Rules of Idaho Peace Officer Standards and Training Council (POST)**

**DOCKET NO. 11-1101-0902** **Rules of the Idaho Peace Officer Standards and Training Council (POST)**

**DOCKET NO. 11-1104-0901** **Rules of the Idaho Peace Officer Standards and Training Council for Correctional Officers and Adult Probation and Parole Officers**

**Discussion:** **Senator Davis** believes the changes in Docket No. 11-1101-0902 changes the mandatory into a subjective standard and does not feel comfortable with these changes.

**MOTION:** **Senator Davis** made a motion to accept Docket No. 11-1101-0901, Docket No. 11-1104-0901, and Docket No. 11-1101-0902 with exception to the wording changes from "shall" to "may" in sections 136.02, 150.02, 176.05, and 177 ("will" to "may"). **Senator Hill** seconded the motion.

The motion carried by a **majority voice vote**. Senators requesting to be documented as **voting no** are: **Chairman Darrington, Vice Chairman Jorgenson, Senators Kelly and Bock**.

**DOCKET NO.**  
**11-0501-0902**

**Rules Governing Alcohol Beverage Control**

**Vice Chairman Jorgenson** requested a motion from the committee.

**MOTION:**

**Senator Kelly** made a motion to accept Docket No. 11-0501-0902. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**Gubernatorial Appointment**

**Sharon Harrigfeld** was appointed as Director of the Department of Juvenile Corrections to serve a term commencing August 3, 2009 and serving at the pleasure of the Governor.

**Chairman Darrington** requested each Senator to ask Ms. Harrigfeld a question they felt was pertinent to the Appointment. **Chairman Darrington** stated the committee would vote on Ms. Harrigfeld's appointment at the next committee meeting.

**RULES:**

**Rules Review-Department of Juvenile Corrections**

**DOCKET NO.**  
**05-0101-0901**

**Pending Rules**

**Rules for Contract Providers**

**Nancy Bishop**, Attorney General for the Idaho Department of Juvenile Corrections, explained the proposed rule changes are needed to clarify current practices, update current practices, and update definitions. She said minor changes were made to answer a question from the rules committee by adding a prohibition against volunteers or interns participating in strip searches or visual inspections. **Ms. Bishop** requested that the docket be approved except for section 262.04 because it conflicts with section 262.02.

Following discussion it was decided that the Department of Juvenile Corrections would come back with a temporary rule to repair the problem.

**PRESENTATION:**

**Update on Department of Juvenile Corrections**

**Sharon Harrigfeld**, Idaho Department of Juvenile Corrections, gave a Department overview to the Committee. Ms. Harrigfeld stated that there are 44 counties along with the State that are working together in an active partnership which has strengthened the juvenile system. There are a total of 12 detention centers and 72% of juvenile offenders never commit another crime.

**PRESENTATION:**

**Interstate Commission for Adult Offender Supervision**

**Kevin Kempf**, Idaho Department of Corrections, reviewed the 2009 annual report. **Mr. Kempf** stated that the Adult Offender Supervision program has positive results and is inexpensive.

**Senator Kelly** questioned if budget cuts would affect the work of this commission. **Mr. Kempf** stated that it could potentially affect the program if prisoners from other states are released.



**ADJOURNED:** There being no further business, **Chairman Darrington** adjourned the meeting at 2:46 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** January 20, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, McKague, Mortimer, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senators Hill and Bock
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:40 p.m.
- APPOINTMENT:** **Chairman Darrington** stated the committee would now vote on the confirmation of **Sharon Harrigfeld** as Director of the Department of Juvenile Corrections to serve a term commencing August 3, 2009 and serving at the pleasure of the Governor.
- MOTION:** **Senator Lodge** made the motion to send the appointment of **Sharon Harrigfeld** as Director of the Department of Juvenile Corrections to the floor with a recommendation to confirm. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- Senator Lodge** commented that she had the opportunity to work with Sharon because of her position in the CRB. Sharon works hard to keep up the pace as Director with statewide coverage and to improve the opportunities for our kids in Juvenile Corrections.
- RULES:** **Department of Juvenile Corrections -Docket No. 05-0101-0901**  
**Senator Darrington** stated that the Department had one section that they wanted the Committee to disapprove and it was agreed that we would approve the rule and they would come back with an emergency rule to correct the one section.
- MOTION:** **Senator Jorgenson** moved to accept **Docket No.05-0101-0901**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.
- RS 19282** **Relating to License Fees for Lawyers. Diane Minnich, Executive Director of the Idaho State Bar** stated that this legislation would allow the Idaho State Bar to continue to administer its regulatory functions. This matter was presented to Idaho lawyers for a vote in November 2009, and was approved by a 64% majority. The last general attorney

license fee increase was in 2000. The proposed increase is phased in over a two year period, 2011 and 2012. The Idaho attorney license fees are representative of those in the Western United States even with the increase.

**Senator Jorgenson** asked how many licensed lawyers are in Idaho. **Ms. Minnich** said there are 5,362. **Senator Jorgenson** then clarified that these fees were for administrative purposes.

**Senator Mortimer** asked for an approximate balance of the fund and **Ms. Minnich** replied that the balance was in the range of \$900,000. **Senator Mortimer** asked what are the annual operating costs? **Ms. Minnich** replied that they are about two million dollars.

**MOTION:** **Senator Davis** made a motion to send RS 19282 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

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

**Docket No.**  
**21-0101-0901**

**Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure.** **Vice Chairman Jorgenson** continued the meeting with the introduction of **Jim Adams, Administrative Support Manager of the Division of Veterans Services.** **Mr. Adams** stated that the U.S. Department of Veterans Affairs established revised requirements concerning payment to state veterans nursing homes during the hospitalization of a resident. These rules were effective May 29, 2009, and conflict with the Idaho State Veterans Homes' established rules. The rule revisions remove references to specific time periods and payment rates for residents admitted to a hospital and desiring to retain their residence at a state veterans home. As required by the rules of the Idaho Department of Health and Welfare, IDAPA the state veterans homes will fully inform residents upon admission of its bed hold policies and charges, and upon any change to the policies.

**Docket No.**  
**21-0103-0901**

**Rules Governing Veterans Support Fund Grant Program.** **Mr. Adams** explained that the Veterans Support Fund was established by Section 65-209, Idaho Code, and began receiving funds through a check box on Idaho tax returns for 2008. The 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 in such fund through grants to projects and programs supporting veterans. Grants will not exceed the monies received by the Veterans Support Fund. **Mr. Adams** said that last year the support fund was in excess of 40k and these funds help veterans organizations, programs and anything for veterans in the state that is not otherwise funded.

**Senator Davis** asked if some of the eligible programs included memorials, specifically the Vietnam Veterans Memorial in Idaho Falls which is in serious need of repairs. Would that be the type of activity that an application could be submitted and receive money from this fund? **Mr. Adams** replied that this was not the intent of this fund.

**Docket No.**  
**21-0104-0901**

**Rules of the Idaho State Veterans Cemetery.** **Mr. Adams** explained that 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. The rule change is necessary to enforce the requirement on applicants for interment in the veterans cemetery.

**Vice Chairman Jorgenson** thanked Mr. Adams for his services and said that the Committee would act on these rules at the next committee meeting.

**Chairman Darrington** reminded the Committee that there will not be a meeting on Friday, January 22, but there will be gubernatorial hearings in the meetings next week. He also reminded the senators of a meeting on fraud at the Department of Insurance at 3:00 p.m today. The Commerce and Human Resource committee members are also invited.

**ADJOURNMENT:** There being no other business, **Chairman Darrington** adjourned the meeting at 2:15 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

MINUTES

**SENATE JUDICIARY AND RULES COMMITTEE**

**DATE:** January 25, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Lodge

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

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

**MINUTES:** **Senator Mortimer** made a motion to approve the minutes of January 15, 2010 as written. **Senator Hill** seconded the motion and the motion carried by **voice vote**.

**Senator Jorgenson** made a motion to approve the minutes of January 20, 2010. **Senator Mortimer** seconded the motion and the motion carried by voice vote.

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

**DOCKET NO. 21-0101-0901** **Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure.**

**DOCKET NO. 21-0103-0901** **Rules Governing Veterans Support Fund Grant Program**

**DOCKET NO. 21-0104-0901** **Rules governing the Idaho State Veterans Cemetery**

**MOTION:** **Senator Jorgenson** made a motion to accept Docket No. 21-0101-0901, 21-0103-0901, 21-0104-0901. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**RS 19313** **Relating to Homeowner's Association Liens.** **Senator Corder** explained 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.

**MOTION:** **Senator Hill** made a motion to send RS 19313 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**RS 19335**

**Relating to Child Custody.** **Senator Corder** stated RS 19335 protects active duty military servicemen from changes made to child custody orders while serving on active duty service. Orders may be amended regarding childhood custody or visitation only after notice is served upon the return from active duty deployment. Notice may be served after sixty days for full time active duty personnel and thirty days for activated national guardsmen.

**Senator Jorgenson** asked if the intent of this legislation was to cover all national guardsmen? **Senator Corder** replied that it was his intent to cover entire body of those on active duty.

**Senator Davis** questioned if this had been reviewed by the Idaho State Bar? **Senator Corder** responded he would have it reviewed.

**MOTION:**

**Senator Davis** made a motion to send RS 19335 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**RS 19356**

**Relating to Alcohol and Motor Vehicles.** **Senator Bock** stated this legislation would reduce the blood alcohol concentration from 0.20 to 0.15 with respect to the enhanced penalties.

**MOTION:**

**Senator Hill** made a motion to send RS 19356 to print. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**RS 19304**

**Relating to Injury to Children.** **Senator Broadsword** explained this RS would change Idaho State Code section 18-1501 by giving our Judges the flexibility to impose a longer sentence for felony injury to a child if the situation warrants such action. By changing the maximum sentence from 10 to 20 years, it brings this section of code into line with the penalties for similar crimes.

**MOTION:**

**Senator Jorgenson** made a motion to send RS 19304 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT:**

There being no further business, **Chairman Darrington** adjourned the meeting at 1:49 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** January 27, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**MINUTES:** **Senator Bock** made a motion to approve the minutes of January 18, 2010 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.

**Senator Hill** made a motion to approve the minutes of January 25, 2010. **Senator Jorgenson** seconded the motion and the motion carried by voice vote.

**S 1271** **Relating to Employment.**

**MOTION:** **Chairman Darrington** requested a motion be made to refer S 1271 to the floor without recommendation. At that time, another Chairman will request S 1271. Senator Jorgenson moved, seconded by Senator Lodge, that S 1271 be returned to the floor to be sent to the floor to be sent to the appropriate committee. The motion carried by **voice vote**.

**Gubernatorial Appointment** **J. Philip Reberger** was appointed to the Judicial Council to serve a term commencing July 1, 2009 and expiring July 1, 2015. Mr. Reberger explained that his initial appointment was in 2003 and gave a brief overview of the Council. **Chairman Darrington** then requested the committee members to direct questions pertinent to the appointment.

**Senator Lodge** stated that they were school friends, then questioned what skills he was able to bring to the Council? **Mr. Reberger** replied that he served in a non-attorney position and that gave him a different level of understanding the public climate.

**Senator Mortimer** asked Mr. Reberger to tell the committee more about his life. **Mr. Reberger** stated he was born and raised in Caldwell and used to fly planes for the Navy. He also worked with Bob Dole and

moved back to Idaho to help Senator Jim McClure run for office.

- S 1253**                    **Relating to an Appeal.** **Michael Henderson**, Legal Counsel for the Supreme Court, explained that 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.
- MOTION:**                **Senator Jorgenson** made a motion to send S 1253 to the floor with a do pass recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**.
- S 1254**                    **Relating to the Idaho State Bar.** **Mr. Henderson** explained that Idaho Code § 3-405 provides that all judges of the district court and Idaho Supreme Court justices are members of the Idaho State Bar. This statute was enacted several decades before the creation of the magistrate division of district court and the Court of Appeals. This bill would clarify and update the statute by correcting terminology and providing that attorney magistrates and judges of the Court of Appeals are members of the State Bar.
- MOTION:**                **Senator Lodge** made a motion to send S 1254 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.
- S 1255**                    **Relating to the Escape of Prisoners.** **Mr. Henderson** explained the words “and detention” make it appear that there is another undefined element of detention, possibly home detention, that must be proved to establish the commission of this crime. This could lead to confusion and an ability to hold persons to account who left the area of restriction in violation of a court order.
- MOTION:**                **Senator Jorgenson** made a motion to send S 1255 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.
- S 1256**                    **Relating to Executions.** **Mr. Henderson** explained RS 19250 would remove the obsolete second paragraph of the statute. The first paragraph would be amended to state that the issuance of writs of execution is subject to the right of the court to stay execution as provided by rules adopted by the Supreme Court.
- MOTION:**                **Senator Hill** made a motion to send S 1256 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
- S 1257**                    **Relating to Justice Court and Police Court.** **Mr. Henderson** stated that S 1257 would avoid confusion by repealing obsolete provisions.
- MOTION:**                **Senator Mortimer** made a motion to send S 1257 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.



**RULES REVIEW Department of Corrections**

**DOCKET NO.  
06-0101-0901**

**Notice of Proclamation of Rulemaking**

**Rules of the Board of Corrections.** **Lorenzo Washington**, Department of Correction, explained the proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. The Board of Correction rule changes are summarized by sections as follows: -

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

-Section 116, Custody of Evidence - An amendment is necessary to make the entire section comprehensively reflect operational procedures currently being used in IDOC office of Professional Standards, Division of Prisons, and Division of Community Corrections SOPs. -

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

**ADJOURNMENT**

There being no further business, **Chairman Darrington** adjourned the meeting at 2:46 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** January 29, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**RULES:** **Department of Corrections**

**DOCKET NO. 06-0101-0901** **Notice of Proclamation of Rulemaking**

**MOTION:** **Senator Jorgenson** made a motion to accept Docket No. 06-0101-0901. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**CONFIRMATION** **Committee Vote**  
**Chairman Darrington** stated the committee would vote on the confirmation of **J. Philip Reberger** to the Judicial Council to serve a term commencing July 9, 2009 and expiring July 1, 2015.

**MOTION:** **Senator Hill** moved to send the gubernatorial appointment of **J. Philip Reberger** to the Judicial Council to the floor with the recommendation that it be confirmed by the Senate. **Senator Lodge** seconded the motion. The motion passed by **voice vote**. **Senator Davis** will be the sponsor of the candidate.

**Idaho State Bar Appointment**

The Board of Commissioners of the Idaho State Bar appointed **Steven A. Tuft** of Burley to replace William A. Parsons as a member of the Idaho Judicial Council to serve a term commencing on July 1, 2009 and expiring on June 30, 2015. Mr. Tuft stated that he moved to Burley, Idaho after receiving his law degree.

**Senator Lodge** asked what qualities make an excellent judge? **Mr. Tuft** replied one of the assumed qualities is that the judge would know the law. Most importantly it is paramount that they are parents of justice.

**Senator Hill** questioned if he had ever filed a complaint or represented someone who had filed against the Idaho State Bar? **Mr. Tuft** responded, "no".

## **Gubernatorial Appointments**

**Gary Horton** of Blackfoot, Idaho was appointed to the Sexual Offender Classification Board to serve a term commencing January 1, 2010 and expiring January 1, 2016. Mr. Horton stated that he attended Oregon State University and received his Bachelors's, Masters, and Doctorate before moving to Idaho where he has resided for the last 37 years.

**Senator Bock** requested a description of how difficult it is to process their decisions? **Dr. Horton** replied the whole process is very serious as they are looking for a history of violence and consider personality inventories.

**Senator Kelly** asked at which stage should the level of Sexual Offender designation be made. **Dr. Horton** stated his preference was after sentencing in order for the criminal to have due process.

**Senator Mortimer** inquired if a treatment plan for the offenders was helping in curing the problem? **Dr. Horton** responded that they do not cure them, but rather teach them how to manage their problems.

**Thomas J. Hearn** of Couer d'Alene, Idaho was appointed to the Sexual Offender Classification Board to serve a term commencing October 1, 2009 and expiring January 1, 2014. Mr. Hearn has lived in Idaho since 1976 and owns a private practice in Couer d'Alene.

**Senator Kelly** questioned what Mr. Hearn's opinion of when the designation on the offender should be made, at the sentencing or at the release? **Mr. Hearn** felt as though the statutes need to be re-written to have a designation before sentencing and after release; accompanied with a proper evaluation of the offender.

## **S 1267**

**Relating to License Fees for Lawyers.** **Diane Minnich** explained RS 19282 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 matter was presented to Idaho lawyers for a vote in November 2009, and was approved by a 64% majority. The last general 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.

## **MOTION:**

**Senator Davis** made a motion to send S 1267 to the floor with a do pass recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

## **ADJOURNMENT**

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** February 1, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Kelly

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

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

**MINUTES:** **Senator Lodge** made a motion to approve the minutes of January 27, 2010 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.

**RULES:** **Rules Review**

**DOCKET NO. 11-1101-0902** **Idaho State Police Up for reconsideration of the Committee. Rules of the Idaho Peace Officer Standards and Training Council (POST). Senator Davis** explained that the POST academy wanted to soften the language by a pending rule that changed "shall" and "will" to "may" in regards to the certification and decertification, thus subjectifying those standards. Senator Davis proposed that the committee approve the rules as written and upon Sine Die, POST will adopt a temporary rule that will re-insert the "shall" and "will." They will then add a new subpart to the rule and it will take the component that they want to pick up and objectify the standard; for example, if there is someone who is POST certified and is decertified in another jurisdiction. That would be a basis for decertification in this jurisdiction. Senator Davis believes that this is the type of objective standard that should be in the rule and has received the reassurance from the POST academy that they will do that, and as a result of that the committee should reconsider adopting this docket.

**MOTION:** **Senator Davis** made a motion to accept Docket 11-1101-0902. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**CONFIRMATION** **Committee Vote**

**Chairman Darrington** stated the committee would vote on the confirmation of **Steven A. Tuft** to the Judicial Council to serve a term

commencing July 1, 2009 and expiring June 30, 2015.

**MOTION:** **Senator Mortimer** moved to send the gubernatorial appointment of **Steven A. Tuft** to the Judicial Council to the floor with the recommendation that it be confirmed by the Senate. **Senator Hill** seconded the motion. The motion passed by **voice vote**. **Chairman Darrington** will be the sponsor of the candidate.

**Chairman Darrington** stated the committee would vote on the confirmation of **Dr. Gary Horton** to the Sexual Offender Classification Board to serve a term commencing January 1, 2010 and expiring January 1, 2016.

**MOTION:** **Senator McKague** moved to send the gubernatorial appointment of **Dr. Gary Horton** to the Sexual Offender Classification Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Mortimer** seconded the motion. The motion passed by **voice vote**. **Senator Mortimer** will be the sponsor of the candidate.

**Chairman Darrington** stated the committee would vote on the confirmation of **Thomas J. Hearn** to the Sexual Offender Classification Board to serve a term commencing October 1, 2009 and expiring January 1, 2014.

**MOTION:** **Senator Bock** moved to send the gubernatorial appointment of **Thomas J. Hearn** to the Sexual Offender Classification Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Jorgenson** seconded the motion. The motion passed by **voice vote**. **Senator Jorgenson** will be the sponsor of the candidate.

**RS 19434** **Relating to Disposition of Remains.** **Chairman Darrington** explained the purpose of this legislation is to amend Idaho Statute 54-1139 to accommodate the expressed written wishes of service members through 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 some state laws do not currently recognize the federal form as an acceptable one for service members, there have been several instances 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 the DD Form 93 will be recognized as the legitimate document with precedence in these circumstances.

**MOTION:** **Senator Hill** made a motion to send RS 19434 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**RS 19461C1**

**Relating to De Facto Custodians.** **John Watts**, representing Idaho Voices for Children, explained this legislation creates new provisions for family law addressing the reality that there are limited custodial remedies for grandparents or other relative care givers that allow them to make legal decisions on behalf of grandchildren or other related children for whom they are the primary financial supporter and primary care giver in the child's life. The legislation sets out requirements for filing court petitions and establishes specific standards to determine the defacto status of grandparents or other relatives. It provides for hearing notification of all parties with an interest in the grandchild or a related child and establishes a clear and high burden of proof for the court to determine the best interests of the child when considering granting defacto custodianship rights to grandparents or other relatives. It amends certain probate sections of code so family and probate defacto custodianship provisions are aligned.

**Senator Jorgenson** stated that if there are approximately 16,000 children living with a relative, how many children would be affected by this legislation? **Mr. Watts** responded that Health and Welfare is unsure how many of these individuals are in a formal arrangement and what impact this would have on the court system.

**Senator Davis** questioned in reference to Page 1, 32-1703 where it states, "the primary caretaker and primary financial supporter" in reference to the definition of de facto custodian, what if the parent is the primary financial supporter, yet the child is living with the caretaker? Would the caretaker still be able to receive de facto custodianship? **Mr. Watts** stated "no."

**MOTION:**

**Senator Jorgenson** made a motion to send RS 19461C1 to print. **Senator Hill** seconded the motion. **Senator Davis** stated that he has concerns with this legislation, but will vote in favor of printing. The motion carried by **voice vote**.

**S 1287**

**Relating To Homeowner Association's Liens.** **Senator Corder** explained 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.

**MOTION:**

**Senator Jorgenson** made a motion to send S 1287 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**. **Senator McKague** wanted to be recorded as voting "No."

**PRESENTATION** **Child Sexual Abuse Statistics.** **Steve Bywater**, Division Chief-Criminal Law Enforcement, gave an overview of the annual report. Mr. Bywater stated 385 incidents of child sex abuse were reported to the Department of Health and Welfare, which has gone down from a 5 year trend. He explained that the information in the report is gathered by using the Idaho Supreme Court's ISTARs statewide case management database and then presented to each county prosecutor's office for review and verification. The 55% of adult cases that were filed were categorized under lewd and lascivious conduct, while 98% of juvenile cases, were charged with lewd and lascivious conduct.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary



## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** February 3, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Davis

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

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

**MINUTES:** **Senator Mortimer** made a motion to approve the minutes of January 29, 2010 as written. **Senator Hill** seconded the motion and the motion carried by **voice vote**.

**Senator Jorgenson** made a motion to approve the minutes of February 1, 2010 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.

**RS 19498** **Relating to the Child Protective Act.** **Senator Broadsword** explained RS 19498 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.

**Senator Hill** questioned if the terms "serious" and "great" complied with the Health and Welfare statutes? **Senator Broadsword** stated she would locate that answer.

**Senator Kelly** asked if RS 19498 and S 1290 were contingent upon each other? **Senator Broadsword** replied, "no."

**MOTION:** **Senator Hill** made a motion to send RS 19498 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**S 1290** **Relating to Injury to Children.** **Senator Broadsword** explained this legislation would change Idaho State Code, section 18-1501, by giving our judges the flexibility to impose a longer sentence for felony injury to a

child if the situation warrants such action. By changing the maximum sentence from 10 to 20 years, it brings this section of code in line with the penalties for similar crimes.

**Senator Broadsword** then introduced Douglas Payne, Benewah County Prosecutor. He explained the trauma a young child experienced from the lack of care from the adult supervision in the home. Since there was no direct assault on the child other than negligence the individual was only serving ten years for the extreme physical torment this caused the child.

**Chairman Darrington** asked if he fully supported prosecutorial discretion, and if he supported the concept of the judge having the discretion to use the law to impose the penalty within those limits according to the severity of the crime? **Mr. Payne** stated, "Yes." **Chairman Darrington** questioned if the sentencing would be based on the judge's discretion? **Mr. Payne** replied, "It would."

**Senator Bock** stated he was perplexed that there could be a wide variable of how a judge views the case and in determining the offender's sentencing for the crime committed. He also noted that he does not feel comfortable with one incident driving the need for legislative measure. **Mr. Payne** replied that due to the nature of the case they were unable to charge assault, and he was only sentenced to the maximum of ten years in prison. **Senator Bock** inquired if it could have been possible that the witnesses were not properly prepared for the proceeding? **Mr. Payne** stated that it would be unethical to prosecute the case when the elements failed to prove certainty.

**Senator Jorgenson** questioned if the loss of parental rights is a factor in this case? **Mr. Payne** responded it occurred later on in the case. **Senator Jorgenson** inquired how many similar cases have occurred in Idaho and how many sentences like this have termed out? **Mr. Payne** stated that answer would be in the presentation by the Department of Corrections.

**Senator Kelly** asked if there was no possibility of federal charges in the case? **Mr. Payne** stated he did not know of a basis for federal jurisdiction.

**Senator Mortimer** questioned how they determined the sentencing at 20 years up from 10 years? **Mr. Payne** replied there was no particular reason.

**Diane Anderson**, Citizen Advocate for Human Rights, spoke against the legislation because she felt there were loopholes in other areas of the existing law that could cause problems for individuals later on.

**Brent Reinke**, Director of the Department of Corrections, presented research done by Gary Sali, that stated there could be a fiscal impact to the state.

**Greg Sali**, Research Analyst Supervisor, Research and Analysis, explained in FY 2016, five years after implementation, we could possibly expect the fiscal impact of the bill to be between \$441,000 and

\$1,522,000.

**Senator Broadsword** stated that she did not realize that this legislation would impose a fiscal impact and normally she would not propose anything that would increase the State budget. In response to Senator Mortimer's question of a 20-year sentence, Senator Broadsword replied that the Prosecutor's Association proposed some similar legislation last year with a 25-year sentence.

**MOTION:**

**Senator Hill** made a motion to send S 1290 to the floor with a do pass recommendation. **Senator Lodge** stated she was concerned with the fiscal impact. She suggested that we hold the bill in committee until Senator Broadsword is able to correct the legislation with the proper fiscal impact. Until then the legislation will be held at the call of the chair. **Senator Jorgenson** seconded the motion, that S 1290 be held in committee at the call of the chair, at which time the Chairman will place it back before the committee with the trailer bill when it is printed and has the proper fiscal note. **Senator Bock** stated that the crimes were horrific and the fiscal impact should not be the number one consideration, but rather public safety should be. **Senator Mortimer** agreed with Senator Bock's observation and questioned the increase time of sentencing for the offender. The motion carried by **voice vote**.

**PRESENTATION**

**Recidivism Among Child Abusers.** **Mr. Sali** stated that of the 604 court filings for child sexual abuse, 447 resulted in a felony commitment to Idaho Department of Corrections (IDOC), and that only 362 resulted in a sex crime conviction. Idaho has, so far, resisted the national trend and has not enacted long mandatory minimum sentence for sex offenses although the Legislature has yielded somewhat to pressure to make more offenses registerable.

**Chairman Darrington** stated the bottom line is that sex offenders have a relatively low rate of recidivism particularly in regard to convictions for new crimes, but those that are highly sensational within the community and the community cares.

**Mr. Sali** then provided a brief overview of the IDOC annual statistical report for fiscal year 2009.

**PRESENTATION**

**Idaho Criminal Justice Commission Update.** **Brent Reinke**, Director of the Department of Corrections, stated that it takes the teamwork of all areas of corrections to come together for prevention, intervention and suppression of offenders.

**Director Rienke** then introduced **Landis Rossi**, program manager for Health and Welfare. **Ms. Rossi** informed the committee that children of incarcerated parents are five times more likely to go to prison. There are 6,178 children in Idaho that have one incarcerated parent.

**Director Reinke** stated one of the most significant projects the Criminal Justice Commission has undertaken is the creation of a sub-committee to look at the Idaho Criminal Public Defense System. This will help close the gaps, reduce deficiencies and draft support that the system requires. This sub-committee is chaired by Dan Chadwick.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** February 5, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Davis and Bock

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

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

**Gubernatorial Appointment** **Howard Glen (J.R.) Van Tassel, Jr.** of Lewiston, Idaho was appointed to the State Board of Correction to serve a term commencing January 12, 2010 and expiring January 1, 2015. Mr. Van Tassel, Jr. moved to Lewiston, Idaho, at the age of 6 and after he completed one year at Lewis and Clark College he enlisted in the Air Force for four years. Afterwards he moved back to Lewiston and finished college. He was involved in the Lewiston city Council from 1988-1996, he was a Nez Pearce County Commissioner from 1997-2009, and involved with Idaho Association of Cities among many other Boards and Commissions.

**Senator Lodge** asked what skills he possessed that would be beneficial to the Board of Corrections? **Mr. Van Tassel, Jr.** replied his experience with contracts, bids, and motor vehiculation. **Senator Lodge** asked if he had any experience with the gang problems? **Mr. Van Tassel, Jr.** stated he did not have a lot of first hand experience as a county commissioner as there was not a lot of gang violence in that county.

**Senator Hill** inquired what areas would he most likely be able to help? **Mr. Van Tassel, Jr.** replied as a county commissioner he was involved in juvenile detention and oversaw the probation department.

Chairman Darrington stated the committee would vote on the appointment on February 8, 2010.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 8, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:30 p.m.
- MINUTES:** **Senator McKague** made a motion to approve the minutes of February 5, 2010 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.
- CONFIRMATION Committee Vote**
- Chairman Darrington** stated the committee would vote on the recommendation to confirm **Howard Glen (J.R.) Van Tassel, Jr.** to the State Board of Correction to serve a term commencing January 12, 2010 and expiring January 1, 2015.
- MOTION:** **Senator Kelly** moved to send the gubernatorial appointment of **Howard Glen (J.R.) Van Tassel, Jr.** to the State Board of Correction to the floor with the recommendation that it be confirmed by the Senate. **Senator Jorgenson** seconded the motion. The motion passed by **voice vote**. **Senator Kelly** will be the sponsor of the candidate.
- RS 19471** **Relating to Archaic Statutory Language.** **Senator Bock** explained the purpose of this legislation 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."
- MOTION:** **Senator Davis** made a motion to send RS 19471 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**RS 19463**            **Relating to Idaho Safe Boating Act.** **Michael Kane** explained the purpose of this bill is to change the trigger for the mandatory investigation of boat accidents from \$500 damage to \$1,500. This is in line with current law regarding motor vehicles.

**MOTION:**            **Senator Jorgenson** made a motion to send RS 19463 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**S 1308**                **Relating to Disposition of Remains.** **Brigadier General Alan C. Gayhart**, explained the purpose of this legislation is to amend Idaho Statute 54-1139 to accommodate the expressed written wishes of service members through 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. Some state laws do not currently recognize the federal form as an acceptable one for service members, there have been several instances of civil actions between family members over the ultimate disposition of a fallen service member. There have been several instances 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 the DD Form 93 will be recognized as the legitimate document with precedence in these circumstances.

**MOTION:**            **Senator Jorgenson** made a motion to send S 1308 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT**    There being no further business, **Chairman Darrington** adjourned the meeting at 1:45 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary



## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** February 10, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Davis

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

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

**MINUTES:** **Senator Kelly** made a motion to approve the minutes of February 3, 2010 as written. **Senator Hill** seconded the motion and the motion carried by **voice vote**.

**Senator Bock** made a motion to approve the minutes of February 8, 2010 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.

**RS 19442C1** **Relating to Civil Actions.** **Barbara Jordan**, explained this fixes a problem in the law. Under current law if an unmarried person suffers an injury caused by another person and thereby 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 expense that were incurred because of the carelessness of another person.

**MOTION:** **Senator Jorgenson** made a motion to send RS 19442C1 to print. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

**RS 19537C1** **Relating to Injury to Children.** **Senator Broadsword** explained this legislation would change section 18-501, Idaho Code, relating to felony injury to a child. By adding an aggravated circumstance and increasing the maximum penalty to 20 years in cases where there is great bodily harm, permanent disability or permanent disfigurement to the child, the judges will have the flexibility to award stiffer penalties when the situation

warrants such action. There would likely be no increase to the general fund in the first few years, but if longer sentences are handed down it could in future years add additional costs to the Department of Corrections. 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. There is no way we can know a definite number of increased costs. The department estimates those increased costs two years after implementation could be as low as \$68,000 per year and as high as \$236,000 depending upon how many convictions and how many of those convicted receive the maximum penalty.

**MOTION:** **Senator Mortimer** made a motion to send RS 19537C1 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**S 1289** **Relating to Alcohol and Motor Vehicles.** **Senator Bock** stated this legislation would reduce the blood alcohol concentration from 0.20 to 0.15 with respect to the enhanced penalties.

**Senator Bock** stated that we need to think about the costs to the kind of policies that are put into place. However, some of the statistics from the Transportation Department justify the enhanced penalty economically. If we have more people wind up in the state penitentiary or county jails for longer terms the increased costs doesn't really directly relate to some of the economic costs that society bears as a result of drunken drivers or account for the cost of our indigent medical funds incurred because of injuries.

**Senator Jorgenson** asked how many more drinks one would have to go from 0.08 to 0.15 or the difference in the physical impairments? **Senator Bock** said that was difficult to determine due to body weight, metabolism, etc. The Department of Transportation may be able to shed some light on this with their testimony. **Senator Jorgenson** asked if he had considered a graduated treatment process as opposed to a felony. He stated he was concerned about lowering this threshold, and that it would create a greater fiscal impact with a felony prosecution. **Senator Bock** said that his goal was to make a simple change with the reduction of the current 0.20 to 0.15. Also, he believes that perhaps the way we handle DUIs under the current law is not successful in keeping drunk drivers off the roads.

**Testimony** **Mary Hunter**, Highway Safety Manager, Idaho Transportation Department, provided some historical perspective on Idaho Code 18-8004C which pertains to excessive DUI and how this piece of legislation might be of benefit to programs that deter DUI. She said there is no accurate way to say a certain number of drinks per hour would give you a .08, .15, or .20. There are many factors that affect how different people can clear the alcohol from their system.

She gave the following Idaho statistics:

- There were 512 impaired driving fatalities from 2004 - 2008. About 100 people are killed by impaired drivers each year.
- The economic cost for impaired driving in Idaho in 2008 was \$725

million (basis: fatality=\$6 mil, serious injury=\$300,000).

- In reviewing crash data for 2004-2008 for impaired driving FATAL crashes, the average BAC was 0.17.

This legislation may help Idaho continue to qualify for impaired driving incentive grant funds. These funds support many programs to reduce DUI deaths and serious injuries. If Idaho was no longer eligible for Section 410 funding, these programs would either end or be funded at a lower level.

**Chairman Darrington** questioned if there would be an impact on receiving the grant money they currently receive to run the program, if they go from .16 down to .15? **Ms. Hunter** replied by going to .15 that is another one of the current criteria in order to be eligible to receive the money.

**Senator Jorgenson** asked if the state has noticed if they were potentially deficient in meeting requirements now that may disqualify them from receiving grants? **Ms. Hunter** stated the application process for the DUI incentive money is a small book that they write and submit as application and then they are notified if they meet the qualifications. If they do not, then they are informed of what they need to do in order to meet the requirements to be able to receive the grant monies. **Senator Jorgenson** questioned if four states were disqualified because they did not reduce enhanced drunk driving to .15? **Ms. Hunter** stated those four states, South Dakota, Wyoming, Maine, and Hawaii, failed to meet five out of eight criteria required in order to receive federal funding and the .15 is just one of the required criteria.

**Senator Kelly** inquired if S 1289 could allow for additional federal funding? **Chairman Darrington** then questioned if that would be one out of the five criteria the state was required to meet and if this legislation would assist the state in qualifying for one of the criteria? **Ms. Hunter** responded there are eight criteria and Idaho has been unable to qualify for criteria number six which is the .15. If this legislation passes it does not equal more money but it does secure the ability to receive this money. As of right now they are in jeopardy of losing these funds. **Senator Kelly** questioned why there was not legislation to clarify five of the criteria so that the state could lock in those funds? **Ms. Hunter** replied the Department of Transportation has not developed any legislation in regards to that issue.

**Kat Carrott**, Volunteer, Mothers Against Drunk Driving (MADD), stated that they support the attempt to lower the aggravated blood alcohol concentration level from .20 to .15. Ms. Carrott informed the committee that MADD of Idaho offered an amendment to SB 1289 for this committee to consider which is to require ignition interlocks for all first time convicted drunk drivers with a BAC of .15 or greater.

**Chairman Darrington** questioned if they believe there would be less enhanced DUIs if the change was made from .20 to .15? **Ms. Carrott** stated "no" the amount of DUIs will not change, if people are going to drive drunk, they will drive drunk regardless of the penalties.

**Michael Kane**, Sheriffs Association, spoke in opposition to SB 1289,

stating this will capture more individuals into a felony status since the average BAC for DUIs is .17. This will place a significant burden on the counties of Idaho to jail these individuals.

**Holly Koole**, Idaho Prosecuting Attorney's Association, stated they were in support of this legislation.

**Fairy Hitchcock**, Hitchcock Family Advocates, spoke in opposition to the legislation, stating that there are already too many people in prison and these individuals need to be reached with education.

In closing, **Senator Bock** emphasized that .15 is very intoxicated and if the individual is a multiple offender, then they have a serious problem and the state needs to come down even harder on those re-offenders.

**MOTION:**

**Senator Jorgenson** made a motion to hold S 1289 in committee. **Senator Jorgenson** explained imprisonment is not always the best solution, but by providing more resources into treatment they would receive more value for the treatment rather than imprisonment. **Senator Mortimer** seconded the motion. The Chairman was in doubt of the voice vote and requested a roll call vote. Senators Jorgenson, Lodge, Mortimer, and McKague voted aye; Senators Darrington, Hill, Kelly and Bock vote nay. Being a tie vote the motion failed and SB 1289 will be held in committee.

**H 443**

**Relating to Criminal History Records and Crime Information.** **Dawn Peck**, Chief, Bureau of Criminal Identification, explained this proposal amends, Idaho Code Section 67-3004(1)(c). It correctly defines the Idaho State Police Bureau of Criminal Identification responsibilities in reference to latent fingerprints generated from crime scenes, evidence, and law enforcement agencies. In 1999, when the Department of Law Enforcement was reorganized and renamed the Idaho State Police, one section of Idaho Code was overlooked. Title 67, Chapter 30, governs the Bureau of Criminal Identification, and section 67-3004(1)(c) is specific to 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 no part of the Forensics program. The Bureau does have other responsibilities relating to latent fingerprints, which need to be expressed in this section.

**MOTION:**

**Senator Lodge** made a motion to send H 443 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by voice vote.

**PRESENTATION**

**Department of Corrections Update.** **Brent Reinke**, Director, stated that the Prisons Division manages eight state correctional institutions and one community work center. Correctional officers make up the largest portion of the workforce in this division. The inmate population dropped by 55 in Fiscal Year 2009 and is the second consecutive year with a reduction in the prison population. Education and treatment has been successful with 499 inmates receiving their GEDs. The department also researches various ways to save money. Currently they have been taking into

account ways to change how much food is wasted in order to save costs. Director Reinke also suggested reducing the inmate population by approximately 250, from 7,400 to 7,150. This would save the department five million dollars.

**ADJOURNMENT**

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 15, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock.
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:32 p.m. He then introduced and welcomed the exchange students from the republics of Eastern Europe and Western Asia.
- RS 19594** **Relating to Assault and Battery. Bob Fick**, Department of Labor, explained this legislation adds employees of the Department of Labor to the section of code concerning assault or battery on public employees. Current law lists specific types of employees while omitting others engaged in similar work. The Department of Labor's tax representatives, claims investigators and local office consultants face challenges similar to those faced by the currently listed workers as they attempt to collect unpaid employer unemployment insurance taxes, recover benefit overpayments from workers and assist people under increasing stress because of the extended recession. The proposed legislation adds Department of Labor personnel to this list. Local prosecutors retain the discretion as to when this section of code is applied and if the enhanced penalties are merited.
- MOTION:** **Senator Mortimer** made a motion to send RS 19594 to print. **Vice Chairman Jorgenson** seconded the motion. The motion carried by **voice vote**.
- RS 19559** **Relating to Producer Licensing; Bail Agents. Roy Eiguren** explained this legislation clarifies that the Director of the Idaho Department of Insurance has the exclusive authority to license bail bond agents in Idaho. The legislation 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.
- Vice Chairman Jorgenson** asked if there was an association that might

be representative of bail bond agents here in Idaho supporting this bill. **Mr. Eiguren** said that the Professional Bail Agents of Idaho supports this and were involved in the bail committee that worked on this. **Vice Chairman Jorgenson** questioned if this bill addressed that licensed bail bond agents would be permitted to operate in various judicial districts. **Mr. Eiguren** replied that it makes clear that this uniform and exclusive regulatory regimen will apply throughout the State.

**Senator Mortimer** asked if there was specific insurance instruction in regards to bail bonds versus other forms of life insurance. **Mr. Eiguren** said it was actually surety insurance which operates very much like other insurance products and the surety insurance they sell is regulated by the Insurance Department.

**MOTION:** **Vice Chairman Jorgenson** made a motion to send RS 19559 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**RS 19514** **Relating to Exemptions from Attachment.** **Senator Davis** explained this legislation amends some of the exemptions of personal property from execution.

**MOTION:** **Vice Chairman Jorgenson** made a motion to send RS 19514 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**H 421** **Relating to Attorney's Fees and Costs.** **Representative Grant Burgoyne** explained 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 the statute, such awards are only made if the non-prevailing party has pursued or defended the case without a basis in fact or law. On June 1, 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 bill 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.

**Representative Burgoyne** stated that the standards for attorney fee awards remains very high. The party who prevails must have persuaded the hearing officer that the non-prevailing party proceeded without a factual or legal basis in order to recover costs and attorney fees. There must be a finding that the other party proceeded frivolously or without basis in fact or law.

**Chairman Darrington** inquired if this would apply to any administrative procedure where the agency acts in a quasi-judicial fashion, such as the Tax Commission, Industrial Commission, etc. **Representative Burgoyne** said that is right.

**Testimony:** **Steve Olsen, Division Chief of Civil Litigation, Attorney General's Office** explained that the question asked of him was what the fiscal

impact could be as a result if this bill were passed. He stated that there were two cases pending before the Personnel Division that would be affected by this bill. In one case, there was a decision made by the hearing officer that the state in defending the case had acted without reasonable basis in law or fact. That decision was reversed after the Rammell decision. We don't believe that the hearing officer was correct when she/he concluded that the state acted without reasonable basis in law or fact because we don't defend those cases. We currently have a case pending in my division where if this went into effect there could be an argument that the earlier decision would be reversed. Another is a decision coming out of the Department of Health and Welfare and that case has about \$20,000 liability. I would make this observation: as a rule when the state is entitled to get attorney fees ordered against one of the opposing parties, it is often difficult to collect those fees. While the statute itself is neutral in practice, it will have a disproportionate effect on the state because the state is able to pay its attorneys fees and the opposing parties are not.

**Chairman Darrington** stated that Representative Burgoyne testified that the reasonable basis in law or fact standard is a fairly stringent standard and not one that becomes routine with judges or administrative officers who hear these cases. What is your observation in regard to that point? **Mr. Olsen** said this is a higher standard. He wasn't sure if it mirrored the statute in Idaho Code Section 12-121.

**Senator Bock** said he would equate "no reasonable basis" to frivolous and **Mr. Olsen** said he would say that frivolous was a lower standard than no reasonable basis. **Senator Bock** stated that the right to recover would depend on the hearing officer. **Mr. Olsen** said the hearing officer would be making the determination based on the facts and the arguments made before him or her whether the defense was without reasonable basis in law or fact. **Senator Bock** said there seemed to be a lack of confidence in the ability of the hearing officer. Is this a question of having faith and integrity in the hearing officer? **Mr. Olsen** said he was not suggesting that the decisions made by the hearing officer are without integrity; he would suggest that there are varying views of what is a reasonable basis of law or fact. He knew of one case where he strongly disagreed with the hearing officer and they had acted without reasonable basis of law or fact. He said they were relying on the hearing officer's judgment and have the ability to appeal that decision if they disagree with it.

**Senator Davis** asked if Representative Burgoyne's characterization of twenty years of substantially settled law is an accurate reflection of this bill. **Mr. Olsen** replied that a number of cases this would affect would be relatively small. **Senator Davis** asked if since the Rammell decision, do you believe that the attorneys that are involved in the defense of the litigation are pursuing it in a different fashion? **Mr. Olsen** said that with the attorneys that he has been involved with, there has been no change.

**Vice Chairman Jorgenson** asked if Mr. Olsen had an opinion from the Supreme Court when they reversed the decision in 1989, and what was their basis? **Mr. Olsen** said the Court concluded that the language of the



statute when read correctly didn't allow for the hearing officer who was not a judge to rule or award attorney's fees. The language that is proposed makes it clear that a hearing officer does have that authority.

**Tommy Thompson**, retired from the Idaho State Police in 2004. In 1991, he stated he was called into the Superintendent's office after working for the Support Services Operations for 22 years. He had never had any disciplinary actions brought against him and received superior performance evaluations. On April 30, 1991, he was terminated with no reason given. Mr. Thompson hired an attorney, filed a grievance, had a meeting with the director and still did not get any information as to why he was terminated from the Idaho State Police. The allegations against him were that he had mismanaged, that he had lied, and that he was involved in discrimination of female employees. At that time he was the Commander of the State Police Training Academy. In 1989, a female cadet had been turned down by the Academy for various reasons and had filed a complaint with the Human Rights Commission and subsequently was awarded a monetary sum and was hired by the State Police to attend the Academy. Three months after she got out of the Academy she was terminated by her commanders for failing to meet probation. She then filed a complaint against the Police and the Human Rights Commission, which Mr. Thompson had no knowledge of and was not named in, and as a result of that was terminated by the State Police. The hearing process was started in September of 1991 and ended on February 25, 1992.

**Mr. Thompson** was unable to be hired by the State Police and he was shunned by his peers for fear of retaliation. The Findings of Fact that were filed on June 2, 1992, indicated that the Department acted without basis of fact or law and were arbitrary, capricious and committed a gross injustice. This odyssey lasted for two years. Mr. Thompson returned to work in February 1993 at his former position, but during that time had to draw out all of his retirement from PERSI and pay his attorney fees up front which were up to \$100,000. He stated that had he not had the opportunity to receive that money back for legal fees and costs, he would be bankrupt.

**Ken Harwood**, representing the Association of Idaho Cities explained the letter from Jerry Mason (see Exhibit A) with some concerns about this legislation. The Counsel had some concern and referenced the first page of the bill, lines 13 and 24 the words "political subdivision." **Senator Davis** pointed out that "city, county, or the taxing district" was struck out and replaced by "political subdivision" which was later defined as "city, county or the taxing district." He asked if the legal effect was really that different.

**Brian Donesley**, Attorney at Law, explained the handouts given to committee members from cases such as Major Thompson's decision. He claimed this issue about law had been going on a long time. He has talked to judges and hearing officers during his 30 years of practice and he has never been tagged with attorney fees nor have any of his clients. He said the problem isn't the rule or the statute, but there are some bad cases around. Blaming the hearing officer for these decisions is not a productive course and not one that I recommend to my clients nor is it one

I pursue in my practice. You will soon hear testimony from Ms. Goehring; her case cost her union \$40,000, and on June 7, 2009, the Rammell case came down. Mr. Donesley said Rammell was easily planted against the states and in some instances had been served on the governmental entities rather than create a burden. It is important to notice there are gross disproportionality with respect to resources in the state vs. the private citizen. The same standards apply to citizens and the state public entities with respect to these fees and costs. The original findings of fact with Ms. Goehring granted fees. The primary order granting fees came down a month later after the Rammell case was brought to the attention of the hearing officer. She reversed the decision and I appealed that to the Personnel Commission. That issue is not pending; I wasn't talking about any kind of legislative change. I just thought we had lost our opportunity to obtain those fees and costs. This is one of the cases Mr. Olsen was talking about and I don't see how unless I get real clever I can bring that before a judge because it is not an appeal before the Personnel Commission at this time. I think probably my opportunity is closed to seek those fees.

**Mr. Donesley** said the case that Counselor was referring to with regard to Health and Welfare and that I had no knowledge of was \$20,000 which is not much money. He stated that he has represented clients in cases in which fees and costs were granted against state agencies in which, for example, the citizen was required to mortgage his home to defend himself or be blackballed by a state agency for conduct wrongly alleged against a state employee. This legislation would reinstate the practice of providing a legal basis for awarding reasonable attorney's fees, witness fees and expenses, if a tribunal finds in favor of a citizen and that a governmental agency acted against the citizen without a reasonable basis in law or fact. The standard is high. Yet, the remedy to unreasonable and unfounded arbitrary action by government against a citizen is essential.

**Alex Neiwirth**, on behalf of Idaho Association of Government Employees, stated that he supports H 421 because it would insure all citizens can hold agencies accountable to the law. He said this was the original intent of the law prior to the Supreme Court ruling, and this legislation would restore the past practice and help to balance the scales of justice.

**Rebecca Goehring** had worked at Department of Environmental Quality (DEQ) for fourteen years until she was placed on administrative leave in February 2008. In a meeting in March she was accused of altering data obtained from a St. Luke's monitor. She was fired from her job in April for something she did not do. Rebecca said her union agreed to pay her attorney's fees for an appeal after reviewing her case. The hearing officer ruled that DEQ had no reasonable fact of law and she awarded Rebecca her job and attorney's fees. Due to the decision of Rammel, the attorney's fees were laborsome. DEQ appealed her decision to the Personnel Commission and is now waiting for their decision.

**Representative Burgoyne** summarized H 421 by stating that this is a matter of elemental fairness in justice. When someone proceeds without legal basis to harm someone else by making them incur these fees and costs, they should be responsible for that action.

**Senator Kelly** asked Representative Burgoyne to address the word “frivolous” versus the language used. **Representative Burgoyne** replied that there are various terms in various statutes at the state level that I deal with having to do with what I refer to as “frivolous” litigation. Sometime the terms vary.

**Senator Davis** asked if it was Representative Burgoyne’s intention to expand the coverage of Section 12-117, Idaho Code by the way you have structured it with inclusion of cities and counties. **Representative Burgoyne** said it is not. Cities and counties are included in the statute presently. This bill for grammatical reasons would change the reference to “political subdivision” and define that as “city, county, or taxing district.” It is not the intention to expand the scope of the statute’s application to cities and counties.

**MOTION:** **Senator Bock** made a motion to send H 421 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**H 422** **Representative Burgoyne** explained 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. Repeal will restore reasonable discretion in the enforcement of gambling laws.

**MOTION:** **Senator Kelly** made a motion to send H 422 to the floor with a do pass recommendation. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** February 17, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**RS 19669** The Commerce and Human Resources Committee unanimously requests that RS 19669, a concurrent resolution which rejects an entire docket of a pending rule of the Division of Building Safety relating to rules of Building Safety, be sent to print from the Judiciary and Rules Committee and then be returned to the Senate Commerce and Human Resource Committee for further action.

**RS 19172C2** The Senate Health and Welfare committee unanimously requests that RS 19172C2 relating to Basic Daycare, be sent to the floor to be printed and then referred back to the Senate Health and Welfare Committee for further action.

**MOTION:** **Senator Hill** made a motion to send RS 19669 and RS 19172C2 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**RS 19590** **Relating to Hospital Licenses and Inspection. Steve Millard** explained current Idaho law provides immunity from civil lawsuits for health care organizations that utilize a "peer review" process for quality assurance, credentialing, privileging and professional review actions. The success of any peer review process depends entirely upon the participation of health care professionals and their open and candid assessments. Because health care professionals are largely volunteers in the peer review process, a lack of immunity from civil suits stifle the process and the quality of the results. Despite language in the current statute providing immunity for the use of such peer review information, a recent Idaho Supreme Court ruling construed the statute very narrowly. The statute should be clarified to re-express the original intent of the legislature when the current statute was passed. The sanctity of the peer review process is crucial and must be protected.

**MOTION:** **Senator Davis** made a motion to send RS 19590 to print. **Senator Hill** seconded the motion. **Vice Chairman Jorgenson** stated that he felt this legislation deserved more discussion as the reasoning described for immunity was not fundamentally sound. The motion carried by **voice vote**. **Vice Chairman Jorgenson** voted “no.”

**S 1329** **Relating to Idaho Safe Boating Act.** **Michael Kane**, attorney, explained the purpose of this bill is to change the trigger for the mandatory investigation of boat accidents from \$500 damage to \$1,500. This is in line with current law regarding motor vehicles.

**Senator Hill** questioned how long it had been at the five hundred dollar limit? **Mr. Kane** stated for approximately fifteen years.

**MOTION:** **Vice Chairman Jorgenson** made a motion to send S 1329 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**S 1322** **Relating to the Uniform Probate Code.** **Robert Aldridge** explained that in past sessions, the provisions of Section 15-2-616, commonly known as the “Caregiver” statute have been expanded to cover evolving problems created when a caregiver, whether providing services at a person’s home or providing institutional care, was named as a taker under the estate plan of the person within a year prior to the death of the person. However, a number of problems with the statute have arisen that this legislation cures. First, many financial abuse situations involve a lifetime gift of some sort rather than a bequest or devise through the estate plan at the death of the person. Therefore, this bill amends the caregiver statute to include gifts. Second, a number of terms in the statute which were not clearly defined (for example, “relative”, “time period”), now have clear definitions. Third, there are exemptions to the statute for a gift to a “relative” and to charitable entities. This bill will make the statute more effective and much easier to enforce. It will also allow abuse situations to be corrected, while not penalizing care by immediate family which is rewarded by a gift or bequest from the person cared for. Other avenues of relief are available if immediate family members unfairly take advantage of a relative.

**Vice Chairman Jorgenson** noted a typo in the SOP that needed to change “claries” to “clarifies.”

**Senator Davis** asked Mr. Aldridge to explain to the committee the difference between testate and intestate succession, and questioned why the legislation was limiting subpart 1 to only testate succession or does it apply elsewhere to intestate succession? **Mr. Aldridge** replied testate means “by use of a will” and intestate means there was no such will or devise in place, therefore the legislature has provided within the probate code a list of the order in which individuals can take from the property. The reason why this is limited to testate is to see what will go to the defining sets of people. **Senator Davis** stated that when he read the definition of personal property in subpart 2, the testimony referenced tangible personal property. Would this have a more broad application if it referred to intangible property? **Mr. Aldridge** replied “yes,” and that is why they used the term personal property because that covers both tangible and intangible property.

**MOTION:** **Senator Davis** made a motion to send S 1322 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**S 1330** **Relating to Archaic Statutory Language.** **Senator Bock** explained the purpose of this legislation 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** also informed the committee that he would like to send this legislation to the fourteenth order for amendment, due to some concerns from the attorney general’s office and the prosecuting attorneys association, on pages 8, 9, 10, 11 and part of 12.

**LaMont Anderson** from the Attorney General’s office, explained that their main concern was tinkering with 1925-15a, because the applicants issue was addressed in 2003 by the Supreme Court which prohibited the execution of the term “mental retardation.”

**Chairman Darrington** questioned if the DSM manual was used in this decision? **Mr. Anderson** replied “yes,” the DSM-4-TR manual is the psychological community’s bible in treating mental illnesses. They actually use the phrase “mental retardation” and have two criteria for establishing that particular disability and their definition for “mental retardation” under 1925-15 derives from that specific manual. He also stated that the courts did not want to use the term “intellectual disability” because it created confusion amongst the courts and legal practitioners were going to continue using the phrase “mental retardation.” **Senator Davis** stated, so as distasteful as it is to use the term “mentally retarded,” it is actually a legal term and used especially in death penalty cases. **Mr. Anderson** stated that was correct.

**Senator Hill** questioned if deficiency and handicap were less condemning than disabled? **Senator Bock** replied the terminology chosen was accepted to that community, and the words that they are using would be revised in the new DSM manual coming out later next year.

**Jim Baugh**, Executive Officer for Disability Rights of Idaho, spoke in favor to this legislation. He explained that every part of this legislation has been reviewed for the purpose of making sure that they did nothing to change the substance of the law. In schools and on T.V. the term “retarded” has been defined as useless, broken or disgusting. There are no positive aspects when it is used in those slang terms. Currently there is legislation being reviewed by the U.S. Congress to change these terms.

**Joe Raiden**, from Moscow, Idaho, spoke in support of SB 1330 stating that this helps take the words mental retardation out of state law, which is a hurtful term and in the past he had been personally tortured with this word and had seen others treated poorly as well.

**Evelyn Martinez**, Special Olympics Athlete, stated she supported removing the term “retard” from state law and replacing it with “disabled”.

**Holly Koole**, Prosecuting Attorney’s Association, stated that it is important that this legislation follows DSM-4-TR, in order to create consistency in state law and psychological evaluation.

In closing **Senator Bock** asked if there were any additional questions and requested the legislation be sent to the amending order.

**MOTION:** **Senator Hill** made a motion to send S 1330 to the fourteenth order for amendment. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** February 19, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Vice Chairman Jorgenson and Senator Hill

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

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

**RS 19640** The Senate Transportation Committee unanimously requests that RS 19640, stating findings of the legislature rejecting a rule, be sent to print from the Judiciary and Rules Committee, and then referred back to the Senate Transportation Committee for further action.

**RS 19535** The Senate Local Government and Taxation Committee unanimously requests that the enclosed RS 19535 relating to sales tax exemptions be sent to print from the Judiciary and Rules Committee and then referred back to the Local Government and Taxation Committee for further action.

**MOTION:** **Senator Davis** made a motion to send RS 19640 and RS 19535 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**RS 19600C1** **Relating to De Facto Custodians.** **John Watts**, Idaho Voices for Children, explained this legislation establishes a new custodial remedy for grandparents or other relative caregivers 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 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. This 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 reviewed the changes requested for this new legislation compared to the previous RS heard by the committee.



**Senator Davis** questioned page three, subpart 6, line 37, that states the individual must provide clear and convincing evidence; however, in subpart 7 it states the petitioner or intervenor must prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the de facto custodian. Is this a fair statement? **Mr. Watts** responded what they have sought to do is include Idaho code section 32-717(1), which states "the wishes of the parents shall be taken into consideration prior to any custodial matter," and secondly the additional standards that must be set out to make that determination on the preponderance of evidence test. **Senator Davis** stated in subpart 7, all they need to say is that they satisfy the qualifications standards under subpart 6. **Mr. Watts** stated that was their intention. **Senator Davis** stated he would pass on some additional language for them to review.

**MOTION:**

**Senator Davis** made a motion to send RS19600C1 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**Gubernatorial Appointments**

**Mike Matthews** of Declo, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing January 17, 2010 and expiring January 1, 2013.

**Mr. Matthews** stated he had been an educator for 34 years and had served on the Cassia County school board the last six years. He has served two terms on the Parole Commission and has enjoyed this interesting experience.

**Chairman Darrington** stated that due to the State's good track record with low recidivism and high parole, would it be fair to say, when in doubt don't? **Mr. Matthews** replied he took this process very seriously and the board discusses the cases at length.

**Senator Davis** questioned the rights of the family of victims when it comes to participation? **Mr. Matthews** responded a victim coordinator is available and the families of victims are able to attend the hearings. **Senator Davis** stated if the victims or their family elects not to attend are they able to write in to express their thoughts and desires? **Mr. Matthews** stated "absolutely."

**Senator Kelly** inquired if there was an issue of an individual being released without the awareness of the community? **Mr. Matthews** replied the issue was the Stohl case, and the individuals that spoke of the issue, were not the actual victims of the crime. Also the hearings are open to the public and they try to notify everyone possible.

**Senator Bock** asked how they approach someone who has to go before them, and how do they resolve some of the tougher cases? **Mr. Matthews** stated the first thing they do is read and understand the case. Then they take a look at where the individual has been, such as their criminal history and where they are going. The board will interview the offenders support system. Every single case is discussed and each case is different.

**Anna Jane “Janie” Dressen** of Coeur d’Alene, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2010 and expiring January 1, 2013.

**Ms. Dressen** stated up until 2006 when she retired, she served on the Commission on Pardons and Parole for 9 years. She stated that she is delighted to serve on the board again.

**Chairman Darrington** stated that Ms. Dressen had served before there were hearing officers and questioned if she had seen the value in having them. **Ms. Dressen** replied the difference was night and day, and they are an integral part of the process.

**Senator Davis** inquired when an offender is released on parole, how important is the environment they are released into? **Ms. Dressen** responded it is very important as is their parole plan in the process. Letters sent in support are read and considered.

**Senator Bock** asked what important factors are used in the decision making process? **Ms. Dressen** replied the material that they have sets out the criminal history which is important when considering parole. Also what their disciplinary actions have been in the confines of prison and their case notes on file.

**Chairman Darrington** asked Director Olivia Craven to come forward to answer any questions from the committee.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:39 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 22, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:30 p.m. and introduced the new page, Elyse Woodland.
- CONFIRMATION** **Chairman Darrington** stated the committee would vote on the recommendation to confirm **Mike Matthews** to the Commission of Pardons and Parole to serve a term commencing January 17, 2010 and expiring January 1, 2013.
- MOTION:** **Senator Lodge** moved to send the gubernatorial appointment of **Mike Matthews** to the Commission of Pardons and Parole to the floor with the recommendation that it be confirmed by the Senate. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.
- CONFIRMATION** **Chairman Darrington** stated the committee would vote on the recommendation to confirm **Anna Jane "Janie" Dressen** to the Commission of Pardons and Parole to serve a term commencing January 1, 2010 and expiring January 1, 2013.
- MOTION:** **Senator Mortimer** moved to send the gubernatorial appointment of **Anna Jane "Janie" Dressen** to the Commission of Pardons and Parole to the floor with the recommendation that it be confirmed by the Senate. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- Chairman Darrington** introduced a letter of unanimous consent from the Agriculture Committee requesting that RS 19621 and RS 19619 be introduced to print.
- RS 19621** A Concurrent Resolution Relating to and Rejecting Certain Rules of the Department of Agriculture Governing Retail Raw Milk
- RS 19619** A Concurrent Resolution Relating to and Rejecting a Certain Rule of the

Veterinary Medicine Board

**MOTION:** **Senator Jorgenson** made a motion to send RS 19621 and RS 19619 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**RS 19696** **Relating to the Suspension of Judgment and Sentence.** **Paul Panther**, Deputy Attorney General representing the Department of Corrections, explained the purpose of this legislation is to 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. The proposed legislation would expand 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 statutory change makes clear that during the retained jurisdiction period, the Department of Correction is responsible for determining the defendant's placement and treatment/programming needs.

**Senator Davis** said he was troubled and wanted to know what they were going to achieve by doubling the length of time for a district court judge to retain jurisdiction. He asked if the judges had requested this or if this was the Department of Correction's budget planning strategy. **Mr. Panther** said the Department of Correction anticipates substantial cost avoidance from the proposed legislation based upon a reduction in the forecast number of incarcerated offenders. The Department thought with this programming option there would be a decrease in recidivism. **Senator Davis** asked what the additional programming is that can't be achieved in 180 days. **Mr. Panther** said it was primarily a therapeutic community program which is an intensive program designed to curtail substance abuse and alcohol abuse.

**Senator Davis** said he thought the "period of retained jurisdiction" didn't refer to the 180 days or the additional 185 days, only the programming and was written so broadly that a district court judge could apply to change jurisdiction for up to a full year. **Mr. Panther** said that prior to sentencing, the Department would be able to present the court with the kind of options that might be available at that time and leave it to the judge's discretion.

**Senator Bock** said he was interested in knowing the statutory authority that the department claims to have and asked that he come back and present that information.

**MOTION:** **Senator Davis** made a motion to send RS 19696 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**RS 19702** **Relating to the State Penitentiary.** **Paul Panther** explained 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 of Correction. This legislation proposes to amend Idaho Code §§ 20-111, 20-209B and 20-241A to make clear the Department's authority to intervene in the event of an emergency such as a riot or other serious disturbance.

**Senator Davis** asked what was driving this change. **Mr. Panther** replied that there wasn't a clear line of authority in statute to respond if there was some kind of disturbance at a private facility. **Senator Davis** queried if they were creating the potential for liability by assuming the responsibility. **Mr. Panther** answered that ultimately the department would be liable for what happened to prisoners at that facility. The department just wants to make clear that they can exercise the authority they are held to. **Senator Davis** asked if they worked with the private contract provider in preparing this legislation. **Mr. Panther** said they had some discussions with them and they are in favor overall for the department's help.

**Senator Bock** asked how they arrived at changing "convict" to "prisoner." **Mr. Panther** said another attorney in their office suggested the change to make the terminology more current.

**MOTION:**

**Senator Davis** made a motion to send RS 19702 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**RS 19438**

**Relating to Motor Vehicle Offenses; Aggravated Reckless Driving.** **Holly Koole**, representing Idaho Prosecuting Attorney Association, said this bill creates a felony if convicted of aggravated reckless driving. It would hold individuals accountable that cause great bodily harm to another by driving recklessly. This legislation creates a discretionary five year sentence and/or a \$50,000 fine. The felony penalty provisions allow for better accountability for offenders and increased protection for citizens traveling upon Idaho's roadways.

**Senator Davis** read from the first page, line 12, the definitions of driving recklessly which included carelessly, or heedlessly. So if someone is driving down the road and they are texting and in that process end up doing bodily harm, permanent disability or permanent disfigurement to another person, would this RS apply? **Ms. Koole** said that was right, but they would have to prove beyond a reasonable doubt that they drove carelessly, heedlessly, or without due caution and additionally caused the injury. **Senator Davis** asked if regarding the example given, whether or not the person was convicted, would they be charged with a felony? **Ms. Koole** said that if it was believed that the conduct was careless or heedless or without due caution and was in a manner that was likely to endanger a personal property and there was that extra injury and the prosecutor felt that he/she could prove that beyond a reasonable doubt, a felony could be charged.

**Senator Kelly** pointed out that the word "shall" is used which sounds mandatory rather than discretionary. **Ms. Koole** said it was discretionary and could be up to five years.

**Senator Jorgenson** asked if a charge is on your record, would that

charge be permanent and remain on your record whether you were found guilty or not. **Ms. Koole** said it might show up on your arrest history, but it would show that you were not guilty. Senator Jorgenson requested a definite answer if the charge would remain on your record and Ms. Koole responded that she would find out.

**Senator Bock** said that he felt the comments about “shall” and “may” were pertinent to the legislation and would like to see that corrected. **Senator Mortimer** said he also felt “shall” was very strong language. **Ms. Koole** said she would look into that issue.

**MOTION:** **Senator Bock** made a motion to return RS 19438 to the sponsor. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**S 1370** **Relating to Exemptions from Attachment.** **Senator Davis** explained this legislation amends some of the exemptions of personal property from execution. 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. He said he has visited with people in the financial services and the Idaho bankers and they expressed no concerns about this bill.

**MOTION:** **Senator Hill** made a motion to send S 1370 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**S 1372** **Relating to Assault and Battery Upon Certain Personnel.** **Dwight Johnson**, Administrator of Employment and Training, Department of Labor, explained this legislation adds employees of the Department of Labor to the section of code concerning assault or battery on public employees. Current law lists specific types of employees while omitting others engaged in similar work. The Department of Labor’s tax representatives, claims investigators and local office consultants face challenges similar to those faced by the currently listed workers as they attempt to collect unpaid employer unemployment insurance taxes, recover benefit overpayments from workers and assist people under increasing stress because of the extended recession. The proposed legislation adds Department of Labor personnel to this list. Local prosecutors retain the discretion as to when this section of code is applied and if the enhanced penalties are merited. He said enhancing the penalty for harming these state employees can serve as a deterrent for future attacks.

**Senator Hill** asked for some of the circumstances for this change and have there been any actual experiences that may have occurred. **Mr. Johnson** said this was an ongoing issue for their tax collectors that conduct audits and claims investigators attempting to collect for fraudulent overpayment of benefits. He added that with the length of the recession they are having a lot more stressful situations in all of our offices as people come to the end of their benefit period and are emotionally under duress. He said they don’t keep data specifically, but they have heard of

incidents in some of the offices.

**Senator Kelly** said that in her previous job with DEQ, they had inspectors out in the field looking at a lot of different issues and going on private property and potentially at risk for physical harm from the public that they had to deal with. Those people, as well as others, are not on this list. She said she was not hearing the justification for why the Department of Labor employees are selected for enhanced consequences from a violation of these statutes. **Mr. Johnson** said he was not aware of the history of the development of this over time, but their tax collectors are in the same circumstances as the state tax commissioners and tax collectors. He said the majority of their employees are dealing with circumstances in which they are adjudicating unemployment checks, taxes and benefits. Case managers in our office are having individuals at their desk that become emotional at times and sometime make threats to them.

**Senator Davis** asked Mr. Johnson if he would consider the legislation being amended to narrow the scope so it is limited exclusively to those who are in the collection process. **Mr. Johnson** said he thought all of their employees are on the front line and should be covered.

**Senator Kelly** asked if he stood by the 'no fiscal impact' on the statement of purpose. **Mr. Johnson** said the Department of Labor was federally funded.

**Senator Jorgenson** asked if there were any recorded cases of assault and battery on your employees. **Mr. Johnson** replied that they had many threats and actual physical cases in the past.

**MOTION:** There was no motion to the bill so **Chairman Darrington** will hold the bill in Committee.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** February 24, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:31 p.m.
- MINUTES:** **Senator Lodge** made a motion to approve the minutes of February 10, 2010 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.
- Senator Hill** made a motion to approve the minutes of February 17, 2010 as written. **Senator Kelly** seconded the motion and the motion carried by **voice vote**.
- RS 19695** **Relating to Rape; To Revise the Circumstances that Constitute Rape.** **Senator Hill** explained this legislation changes the definition of what is commonly known as "statutory rape" as defined at 18-6101. Under current law, sexual relations (as defined) with a girl who has not reached the age of 18 is considered rape, even if both parties participate willingly. This bill amends the definition of statutory rape to include such acts 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 at 18-6108 to bring it into conformity with the provisions of the female rape statute at 18-6101. This does not protect anyone over the age of 20.
- MOTION:** **Senator Mortimer** made a motion to send RS 19695 to print. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- S 1371** **Relating to Producer Licensing.** **Roy Eiguren** explained this legislation clarifies that the Director of the Idaho Department of Insurance has the exclusive authority to license bail bond agents in Idaho. The legislation 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.



**Senator Jorgenson** questioned if all seven judicial districts must accept this rule as a uniform rule? **Mr. Eiguren** replied yes, this legislation will clarify that all seven judicial districts will be subject to the uniform licensing provisions of statutory law.

**Michael Henderson**, Attorney of the Court, spoke in favor of the legislation, and reviewed the details of bail guidelines and statutory guidelines.

**Senator McKague** asked what precipitated this legislation? **Mr. Henderson** replied this makes clear the authority of when the courts take action when there is misconduct and this shows communication between the department and the courts. **Senator McKague** questioned if they are currently required to have a background check? **Mr. Henderson** stated they are, but only by their initial licensing.

**MOTION:**

**Senator Jorgenson** made a motion to send S 1371 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**S 1340**

**Relating to Civil Actions.** **Barbara Jordan** explained that this fixes a problem in the law. Under current law if an unmarried person suffers an injury caused by another person and thereby 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 expense that were incurred because of the carelessness of another person.

After reviewing the legislation, **Ms. Jordan** requested that the committee would send S 1340 to the fourteenth order for amendment because in the drafting of the legislation they neglected to make sure that the reference on page 2, line 35, actually should say "section 5-311(2) (a). Currently the (a) is missing from the legislation.

**Senator Mortimer** inquired if the language on page 2, line 33, where it states "if there be no personal representative appointed, then by those persons who would be entitled to succeed." Would this include a health and welfare claim, or an estate? **Ms. Jordan** replied, yes, if the subrogated interest currently have a rate to be reimbursed for those expenses and they can place things on the estate. This means the heirs have to pay or the estate then has to reimburse the subrogated interest for that and including the State of Idaho. This would then allow those heirs or the estate to proceed against the individual that actually caused the injury. **Senator Mortimer** stated, assuming there are no heirs, the State would then have the right to bring the action and to follow through with any claims in order to satisfy the obligation. **Ms. Jordan** responded that was correct, the state has the right to place a lien on the estate.

**David Luker**, Idaho Trial Lawyers Association, went to the podium to discuss subrogated rights. He also stated that they support sending **S 1340** to the fourteenth order for amendment. **S**

**Senator Jorgenson** questioned page 1, line 27, when it states, “those persons who would be entitled,” would that exclude an estate if there are no persons? **Mr. Luker** stated the referenced would include everyone that is in Section 15-1-201, which is in the probate section, which is defined as heirs.

**Phil Barber**, American Attorney’s Association, stated that they agreed with the Idaho Trial Lawyers Association.

**MOTION:** **Senator Bock** made a motion to send S 1340 to the fourteenth order for amendment. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**S 1341** **Relating to Injury to Children.** **Senator Broadsword** explained this legislation would change section 18-501, Idaho Code, relating to felony injury to a child. By adding an aggravated circumstance and increasing the maximum penalty to 20 years in cases where there is great bodily harm, permanent disability or permanent disfigurement to the child, the judges will have the flexibility to award stiffer penalties when the situation warrants such action. There would likely be no increase to the general fund in the first few years, but if longer sentences are handed down it could in future years add additional costs to the Department of Corrections. 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. There is no way we can know a definite number of increased costs. The department estimates those increased costs two years after implementation could be as low as \$68,000 per year and as high as \$236,000 depending upon how many convictions and how many of those convicted receive the maximum penalty.

**Holly Koole**, Idaho Prosecuting Attorney’s Association, spoke in favor of this legislation. Since it is difficult for children to protect themselves, actions against them warrants stiffer penalties for offenders.

**Senator Kelly** inquired if this legislation had been reviewed by the Supreme Court. **Patti Tobias**, Administrative Director for the Courts, stated that the district judges review team was fine with the legislation.

**MOTION:** **Senator Jorgenson** made a motion to send S 1341 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**S 1312** **Relating to the Child Protective Act.** **Senator Broadsword** explained 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.

**Diane Anderson**, Citizen Advocacy Group, believed this legislation would give too much authority to a government agency and could prevent a reunification between the offender and the injured child. She deems this as destructive and believes it would destroy the family unit as a whole.

**Senator Bock** questioned if Ms. Anderson had seen the statute, and that he did not see anything that would prohibit reunification. **Ms. Anderson** stated she was familiar with the language, but to allow a government agency not be required to permit or seek reunification with the family is destructive. Children are a class of people that do not have a voice of their own, or anyone to advocate for them.

**Senator Broadsword** in closing stated just because the department does not automatically have to take reunification, does not mean there are circumstances that warrant them doing so. They will do what is in the best interest of the child, period.

**Michelle Britton**, Administrator for Family and Community Services, stated there is an advocate for the child in court that represents the interests of the child and during the whole process. Also as a family they do not exclude other family members, in terms of visits or relationships. So if they were to have aggravated circumstances that would end the relationship between the parent committing the injury, they could continue a relationship with other family members, and even a relationship on a therapeutic basis with that parent for a period of time.

**MOTION:**

**Senator Hill** made a motion to send S 1312 to the floor with a do pass recommendation. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

**ADJOURNMENT**

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

- DATE:** March 1, 2010
- TIME:** 1:30 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Darrington, Vice Chairman Jorgenson, Senators Davis, Lodge, Hill, McKague, Mortimer, Kelly, and Bock
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Darrington** called the meeting to order at 1:31 p.m.
- MINUTES:** **Senator Kelly** made a motion to approve the minutes of February 15, 2010 as written. **Senator McKague** seconded the motion and the motion carried by **voice vote**.
- Senator McKague** made a motion to approve the minutes of February 19, 2010 as written. **Senator Kelly** seconded the motion and the motion carried by **voice vote**.
- RS 19714** Due to drafting difficulties and a delayed final agreement working with the various EMS units throughout the state, the **President Pro Tem Geddes** is requesting that RS 19714 be printed in the Judiciary and Rules Committee.
- MOTION:** **Senator Davis** made a motion to send RS 19714 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**. Senator Bock voted no.
- RS 19686** The Senate Transportation Committee unanimously requests that RS 19686, Relating to vehicles and rules of the road, be sent to print from Judiciary and Rules Committee, and then referred back to the Senate Transportation Committee
- MOTION:** **Senator Jorgenson** made a motion to send RS 19686 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.
- RS 19674** **Relating to Immunity for use of Automated External Defibrillator.** **Adrean Casper**, American Heart Association, explained that 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 hours. Survival rates are significantly increased when an automated external defibrillator (AED)

is available and deployed within 3 to 5 minutes of a sudden cardiac 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.

**Senator Kelly** questioned if an unmaintained defibrillator is better than none? **Ms. Casper** stated certainly not, what they intend is that they are able to get the same ends through different means, by using educational outreach and encouraging them to obtain maintenance packages. They do not want people to feel the strain of liability and negligence by a simple oversight on their part.

**MOTION:** **Senator Hill** made a motion to send RS 19674 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**RS 19438** **Relating to Motor Vehicle Offenses.** **Holly Koole**, Idaho Prosecuting Attorney's Association, explained the purpose of this legislation is to create a statute that appropriately addresses individuals who cause serious injury to others by driving recklessly. This legislation is aimed at "road rage" and other reckless driving situations. Under current Idaho law reckless driving is a misdemeanor offense punishable by six months in jail and /or a \$1,000.00 fine. This legislation creates a felony penalty for reckless driving that causes great bodily harm, permanent disability or permanent disfigurement to another.

This legislation creates a discretionary five year sentence and/or a \$50,000 fine. The felony penalty provisions allow for better accountability for offenders and increased protection for citizens traveling upon Idaho's roadways. With the enhanced penalty the courts may order longer supervised probation including extended time for restitution payments to be made to victims.

The fiscal impact is difficult to determine with certainty, as it will depend upon the increased number of offenders charged with and convicted of a felony under this section. The potential impact to the general fund would be equal to the cost of imprisoning the number of offenders charged, convicted and sentenced to prison as a result of this statute.

**Senator Davis** inquired why on page one, line 20 it states, "a person may be sentenced to jail," then on line 22 it states, "may be punished by a fine and imprisonment." However, on page two, subpart one, states, "shall be sentenced," and subpart two states, "May be fined," then in subparts three and four the word shall is used again. Why does the language jump from "may" to "shall?" **Ms. Koole** replied "may" is the proper term used when referring to misdemeanor and is a discretionary term used by the judges. As they 'may not' be sentenced to jail. The "shall" term is used for a felony offense, and correlates with the State Board of Correction. The court has no discretion with this term and has to impose a sentence. It is

also consistent with the restitution statute that states “shall.” Subsection four is consistent with the Idaho Department of Transportation and how they suspend drivers licenses.

**Senator Bock** stated he also felt the use of “may” and “shall” from page one and page two was contradictory.

**Chairman Darrington** asked if he was correct in stating, other felony sentences in the Idaho Code have the same language as the proposed language in this legislation. **Ms. Koole** stated that was correct.

**MOTION:** **Senator Lodge** made a motion to send RS 19438 to print. The motion was lost with the lack of a second, and the Chair will return RS 19438 to the sponsor.

**H 444(a)** **Relating to Firearms, Explosives and other Deadly Weapons.** **Dawn Peck** explained this proposal amends Idaho code section 18-3302(1)(n), to permit the use of a printable electronic form for concealed weapons license applications, and to add the applicant’s place of birth and citizenship to the application. The code currently requires that all concealed weapons license applications be completed in triplicate. The use of triplicate forms is costly to ISP’s Bureau of Criminal Identification (BCI), and sheriff’s offices find the use of these forms cumbersome. This proposal deletes the requirement that concealed weapons permit applications be in triplicate, therefore allowing for a printable electronic form. This would save approximately \$2,500 per year, a cost that continues to rise. The change also adds the requirement that the form capture place of birth and citizenship, as mandated in federal law. When the applicant is not a US citizen, federal law requires further process.

**Senator Hill** inquired where it states in the SOP that place of birth and citizenship is mandated by federal law, and questioned if that was the reasoning behind the changes, because the federal law requires it? **Ms. Peck** responded that the Idaho concealed weapons permit is looked upon to be equal to the background check that people have to have when they buy a handgun. In Idaho if you have a concealed weapons permit and an individual shows that to the gun shop they do not have to undergo the background check.

**MOTION:** **Senator Jorgenson** made a motion to send H 444(a) to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**S 1382** **Relating to De Facto Custodians.** **John Watts**, Idaho Voices for Children, introduced Professor of Law Elizabeth Brandt and Assistant Dean of Law at U of I, and Attorney Bob Aldridge, who has done extensive work in this area. **Mr. Watts** explained this legislation establishes a new custodial remedy for grandparents or other relative caregivers 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 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. This 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.

**Professor Brandt** explained the difference between custodianship vs. guardianship is finding a flexible in-between situation. She stated this legislation will provide a structure that the law does not currently have. 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, six months if the child is less than three years of age, or one year if the child is more than three years of age. During the period of time they have to have been the primary caregiver and financial supporter for the child. Shared parenting with the parent who is co-residing with the grandparent and the child, shared financial responsibility for the child while the child is in the grandparents care, for example would not be sufficient to meet this item of proof. They have tried to ensure that not every significant other or step parent would be able to become a de facto custodian, this is only about kin care. Also, if a child is living with a different parent because they have been placed under an order under the child protection court, that individual does not become a de facto custodian. Once a court finds that an individual meets that definition, the statute then envisions that there would be a best interest of the child determination made, using the factors of the existing best interests law, Idaho Code section 32-717. The factors in that code would determine what custody arrangement would be in the best interest of the child. This is where the flexibility statute comes in. Custody could be given exclusively to a de facto custodian, but 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.

**Mr. Aldridge** stated they were trying to find a way to best serve the needs of the child and the needs of the family based upon prior experience with guardianships and conservatorships. As a guardian ad-litem in guardianship cases, many of those cases would be much better served through a custody hearing. The bottom line of this situation, is they are trying to shift a number of cases from the guardianship or conservatorship arena into the custody arena where it can be dealt with more judiciously on a more temporary basis and with a great deal of flexibility in the court that does not exist in the guardianship or conservatorship arena. If they do this they will lower not just the court costs but also the cost the parent has to pay the guardian ad-litem.

**Chairman Darrington** questioned why they went with “clear and convincing” in the first standard, and “best interest of the child by a preponderance” in the second standard? **Prof. Brandt** responded the reasoning behind that was in the drafting they wanted to have a standard that would have a strong gatekeeping test to limit the number of people who would be able to go to court to question a parent’s decision and seek custody of a child. The first standard is subject to a high burden of proof and must be clear and convincing. However, they did not subject the second part “the best interest of the child” inquiry to a clear and

convincing burden of proof. The reason they have not done that is because “the best interest of the child” test is a very open ended, indeterminate standard and confers a lot of discretion upon the court.

**Senator Davis** asked if they would walk him through page four, subpart 4, “Any party to the proceeding granting custody to a de facto custodian may move for the termination of the custody order.” How is this done? **Prof. Brandt** responded that things change, and they wanted to provide the flexibility. The parent may have gone to rehab and had a positive recovery and has slowly been taking on duties as a parent to the point where they are well enough to regain custody, therefore, the need for the de facto custodianship would cease.

**Senator Kelly** referenced page 5, 15-5-213, which refers to section 32-1703. **Prof. Brandt** noted that needed to be corrected to reflect section 32-1705.

**Senator Davis** suggested that if the sponsors wanted to take this to the amending order to change 32-1703 to 32-1705, if they would also prefer to improve the language of the legislation by changing the word “appointment” to the word “qualification” on page 3. Then on page 5, section 15-5-213 maybe “appointed” is the proper term. **Prof. Brandt** replied if on page 3, there was a word change from “appointment” to “qualification,” she did not believe it would change the meaning of the statute. On page 5, section 15-5-213, the term “appointed” is the proper term used.

**Chairman Darrington** stated due to time restraints the rest of the testimony relating to the de facto custodian will be held at the end of the committee meeting on March 3, 2010.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:57 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary



## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** March 3, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**MINUTES:** **Senator Mortimer** made a motion to approve the minutes of February 22, 2010 as written. **Senator Lodge** seconded the motion and the motion carried by **voice vote**.

**Senator Jorgenson** made a motion to approve the minutes of February 24, 2010 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.

**RS 19703** **Relating to Motor Vehicles and Crimes and Punishment. Tim Fleming**, Deputy Prosecutor of Canyon County explained this RS would amend Idaho State Code section 18-8005 (9) to ensure that a person who is convicted and placed on probation or receives a withheld judgment for felony driving under the influence and has the case dismissed after successfully completing probation can be charged with another felony if, within 15 years, they receive another driving under the influence charge.

**Senator Hill** asked for an example under present law and how it would work under this proposal. **Mr. Fleming** said that currently if a person was convicted of a felony DUI charge and successfully completed probation, they can come back and ask the Court under 19-2604 to have their plea withdrawn and their case dismissed. We believe Idaho State Code Section 18-8005 (9) leaves an open question of whether or not a new DUI could be charged as a felony within 15 years of the DUI that has been dismissed.

**Senator Bock** asked the Counselor if the original DUI, fourteen years ago was a misdemeanor and the offender's recent charge is a felony DUI, what is the effect of that scenario under this statute. **Mr. Fleming** said this statute deals with someone that has a felony DUI who within 15 years

receives another DUI and that could be charged as a felony. **Senator Bock** suggested to reverse the scenario and the original DUI was a felony and currently they received a DUI that was a misdemeanor and asked what the effect would be. **Mr. Fleming** said that if that new DUI occurred within 15 years that could be charged as a felony. **Senator Bock** said he was not saying what could or could not be, but what the effect would be under this scenario. Does this change affect that scenario? **Mr. Fleming** said he did not believe so. The state or the prosecutor always has the ability to charge a felony. This language simply states that if that felony that occurred fourteen years ago was dismissed under 19-2604, the new DUI could be charged as a felony.

**MOTION:** **Senator Davis** made a motion to send RS 19703 to print. **Senator Lodge** seconded the motion. **Senator Bock** would like the question answered regarding the person who has been charged with a felony DUI and not convicted. Why is it fair or just to treat that person as if he or she has been convicted of a felony even though there has been no trial that absolutely determined that. **Senator Darrington** said we would expect that to be answered when it comes back. The motion carried by **voice vote**.

**RS 19711** **Relating to Motor Vehicle Driver's Licenses.** **Ken McClure** on behalf of the Idaho Medical Association explained that at some point driving privileges should cease as a matter of safety for the motoring public. Since this is a difficult issue for families, frequently a family member will ask a doctor to assist them in the process. Current law allows doctors to alert the Department of Transportation that a person should not be driving. Doctors are reluctant to get into what can be a very emotional and highly charged issue. If a doctor submits a report to the Department in good faith, this legislation would protect the doctor from retaliatory action.

**Senator Jorgenson** asked if there was a provision for the subject to get a second opinion. **Mr. McClure** said this only states that if a doctor does this in good faith, that he or she isn't subject to disciplinary action or liability.

**MOTION:** **Senator Jorgenson** made a motion to send RS 19711 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**RS 19712C1** **Relating to Physicians and Surgeons.** **Ken McClure**, representing the Idaho Medical Association, explained some courts have held that a doctor who is consulted by a physician treating a patient may have a doctor-patient relationship with a patient he or she has not seen and therefore may be responsible for the care provided by the treating physician to the patient. As a consequence, doctors who are consulted are reluctant to provide advice or counsel since they may become liable for care provided by another doctor to a patient they haven't examined and may not even know.

This legislation would create a safe harbor by clarifying that a doctor who does not see a patient and only provides counsel to another doctor without expectation of compensation does not have a physician-patient

relationship with that patient. Hopefully this will re-open lines of communication, make specialized knowledge more available to treating physicians and improve patient care.

**Senator Bock** said he would be interested in knowing what the accepted protocol is for doctors in this situation so at least there would be some standard of care and a level of precaution they are supposed to take professionally.

**MOTION:** **Senator Hill** made a motion to send RS 19712C1 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**H 423** **Relating to Motor Vehicles.** **Robert Romero**, Attorney from Northern Idaho, explained that Senator Jorgenson was able to set up a discussion with Mr. Campbell of the Department of Transportation and Mr. Kane from the Sheriffs Association, and Ms. Koole from the Prosecutors Association. He stated that while he did not necessarily agree with Mr. Campbell's assessment of the legislation, he did raise some very good points. He asked the committee to allow them to continue to explore and draft some changes to the proposed legislation and shelve this for now.

**REQUEST:** **Senator Jorgenson** requested unanimous consent that H 423 be held in committee and at the call of the chair. Without objection, this bill will be held at the call of the chair. And by way of explanation, the chair has agreed with Senator Jorgenson and Mr. Romero to get back to this sometime in the future when the parties are ready. It is so ordered.

**S 1382** **Relating to De Facto Custodians.** **Chairman Darrington** explained that we would continue with this bill by calling **Judge Michael Dennard** for testimony. **Judge Dennard** explained that the judiciary does not take positions on legislation, but does provide information that may be helpful in considering the legislation. This bill was circulated to various review teams of judges who work in this area on a daily basis. It was also examined by staff attorneys. Most of the comments received expressed concerns on whether this legislation contained sufficient protection to a parent's fundamental constitutional right to the care, custody, and control of his or her children.

**TESTIMONY**

The focus of these concerns is on the first of the two steps or hearings which the bill requires before a custody order can be issued. The first step is an assessment of the standing of the non-parent to proceed on to the second step where the non-parent is then allowed to compete with the natural parents for custody applying a best interest standard and a preponderance of the evidence burden, both of which are applied in custody proceedings between two natural parents.

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. This bill clearly affects a fundamental constitutional right.

**Judge Dennard** noted the case of *Troxel v. Granville* where the U.S. Supreme Court made it clear that parents have a fundamental constitutional right in the care, custody, and control of their children. The Idaho Supreme Court reaffirmed these principles in *Leavitt v. Leavitt* in considering a grandparent's request for visitation and held that a clear and convincing burden of proof is required for those actions.

Several states, Kentucky and Indiana, have been referred to as having similar types of statutes with a similar threshold requirement. South Carolina and Minnesota had additional requirements in the statute itself which go beyond the proposed bill.

The impact the bill might have on the courts is a difficult question to answer. It's impossible to say how many new cases might be filed and how much time would be required to handle each case. Judges have commented that they believe this will generate additional litigation and some believe it will increase conflict within families.

**Senator Davis** stated his concerns on the legislative intent language on page 1, 32-1702 and also on page 3, 32-1704 (8) and asked if the judge would comment on the purpose provision and to what has to be proven. Senator Davis felt that the language seemed to modify the preponderance standard in subpart (7) rather than speaking to the qualification standard in subpart (6). **Judge Dennard** referred to the comments as distinguishing what happens in stage 1 and stage 2, and putting additional consideration in the second stage where the preponderance of the evidence basically comes too late. The threshold has to be met. Typically when you have the best interest determination with the preponderance of proof standard; that is between two parents and the reason is that they stand on fundamental constitutional footing. **Senator Davis** said the judges seem to have some concern that the minimum threshold, which is espoused by both the U.S. Supreme Court and other precedents and what other states have wrestled with, has not been reached. **Judge Dennard** pointed out that the focus of these comments were purely upon the constitutional threshold.

#### TESTIMONY

**Hollis Brookover**, Idaho Voices for Children, spoke in favor of S1382. She stated their interest is to provide support for relative caregivers, stability for the children involved and a way for parents when they are able, to again assume responsibility for their own child.

**Ms. Brookover** also mentioned that Treasure Valley Grandparents as Parents were also in support of the bill.

#### TESTIMONY

**Georgia Mackley**, member of Kincare Coalition, spoke in favor of S1382. She stated that S1382 gives relative caregivers another option, other than Power of Attorney, Guardianship or Adoption, to help protect the children they love and care for.

**Robert Aldridge**, Attorney, summarized by going through a series of reactions that would best answer some of the questions. First, we are dealing with a hierarchy of different interferences and effects in family units. One side is least intrusive with parental power of attorney and the

other direction would be the termination of parental rights. We are now dealing with the custody side and the cases that have come up, *Troxel v. Granville* and *Leavitt v. Leavitt*, were both raised in the area of visitation, one of the least intrusive methods and one in which there are known parents and situations that show some interruption of care for a period of time. In the Washington statute, they did not look into any of those factors.

**Senator Davis** said if the court was reluctant to do it and granted it for visitation, wouldn't the court be more reluctant to do a de facto guardianship. **Mr. Aldridge** replied that if there were no facts whatsoever that gave any kind of protection, that might be the case. However, in that visitation situation, there was no showing that there had been a giving away by that parent of any factor. **Senator Davis** said that because of our respect for your great influence, you shouldn't have a problem with amending the bill to say there has to be some fact finding of abandonment. I read in the Indiana case that if they are proceeding to determine whether to place the child with a person other than the parent, the court may consider (1) the parent's unfitness, (2) long acquiescence in the third party's custody of the child or (3) the voluntary release of the child. He said he didn't know if that was enough to meet the minimum constitutional standards, but it seems that might be an important piece of the puzzle to put in the bill so there are no lingering constitutional questions. Would you speak to that? **Mr. Aldridge** said the concern he thinks we have is that the statute said "may" and does not mandate whether it does or doesn't meet the standards of *Troxell*. The standards of *Troxell* are actually hard to figure out; there was a plurality of opinion. If more conditions are added, the concern from the probate side is that this is turned into another form of guardianship. It becomes so difficult that you must show neglect and those types of things that you have skipped over in custody. It's easier, more streamlined, more efficient and a less expensive way of doing this.

**Senator Davis** said that if you look at the bill, it seems if you are going to provide an easier way to come in the front door, you should provide an easier way to go out the back door for the parent. The parent would have some unilateral right almost akin to the parental power of attorney. But this proposed bill states on page 4, 32-1705 (4) "Any party to the proceeding granting custody to a de facto custodian may move for the termination of the custody order." Now the parent's rights have become secondary to what the court might think is in the best interest of the child. He thought the bill should have some language that gave the parent rights. **Mr. Aldridge** replied regarding that language on termination, we felt that would almost always return custody back to the natural custodians, the parents. To meet that constitutional standard of deference should be by preponderance of the evidence which was already provided on the front end by pulling in the custody standards that include the wishes of the parent as one of the factors that has to be considered by the court.

**Senator Davis** asked if in the proposed section 32-1703, De Facto Custodian, the issue of abandonment is implied, although not expressed.

**Mr Aldridge** replied that is exactly why they felt having these requirements that show that the parent in some way had given the child away. **Senator Davis** said to imply exclusively abandonment without imposing the tradition of abandonment or whatever other standards are there, allows the court to take the plain set of facts that has a petitioner who has had the child for 6 months and the child is less than 3 years of age, and that has been established by clear and convincing evidence, the only protection available to the parent is what is in the best interest of the child. Judge Dennard's suggestion to us is that the court has concerns that this is not enough. A child might be left with another individual who is a primary caregiver, however they had no intention of abandonment and now they find themselves in a de facto guardianship fight where the fight isn't over whether they have a constitutional right as a parent, it's now a best interest of the child fight.

**Mr. Aldridge** stated that all the meaning of the initial standard does is say that person is allowed to be a part of the case. It does not grant them anything past that. They now have standing in the case. If we required them to show unfitness and so forth, grandparent or whoever is de facto custodian, has no ability to do so because they have no standing. The gatekeeping standard eliminates them completely. We think this does meet the standard.

**Senator Kelly** stated that in the initial gatekeeping to determine if they have standing, there is no requirement that they be currently residing with the de facto custodian. A 13 year old could have resided with the relative when they were three and they could qualify, is that right? **Mr. Aldridge** said that could conceivably happen.

**Sue Reents**, representing herself, spoke briefly in support of the bill. She has been trained as an advocate for children with the Junior League of Boise and did later chair the child advocacy efforts for this organization.

**John Watts** summarized by thanking Judge Dennard. He wanted to make clear that this was not about guardianship, but deliberately stay in the custody role without ignoring the deference to the parents or the constitutionality that backs up the fundamental rights of the parent. He pointed out that on page 1, line 30 we clearly say "the purpose of the act is to give constitutionally required deference to the decisions of the parents," and on line 33 we get to the best interest of the children. One of the comments of the court earlier was "in the best interest of the state."

**Senator Davis** said that it was his understanding from Professor Liz Brandt and from John Watts that (1) the code reference be corrected and (2) the word "appointment" changed to "qualification." He liked the Indiana language which said that the court may consider (1) unfitness, (2) long acquiescence in the 3<sup>rd</sup> party's custody of the child or (3) voluntary relinquishment of the child such that the affections of the child and the 3<sup>rd</sup> party may have become so interwoven that to sever them would seriously endanger the future happiness of the child.

**MOTION:**

**Senator Davis** made a motion to send S 1382 to the 14<sup>th</sup> Order for Amendment. **Senator Mortimer** seconded the motion. **Senator Hill**

commented that the corrections and verbiage be made appropriate as he did not want to see the bill die. The motion carried by **voice vote**.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:58 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** March 8, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator McKague

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

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

**MINUTES:** **Senator Lodge** made a motion to approve the minutes of March 1, 2010 as written. **Senator Mortimer** seconded the motion and the motion carried by **voice vote**.

**RS 19758** The Commerce and Human Resources Committee unanimously requests that RS 19758, relating to the fire protection board, be sent to print from the Judiciary and Rules Committee and then be returned to the Senate Commerce and Human Resource Committee for further action.

**MOTION:** **Senator Lodge** made a motion to send RS 19758 to print. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**S 1383** **Relating to the Suspension of Judgment and Sentence. Brent Reinke**, Director, Department of Correction, explained the purpose of this legislation is to 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. The proposed legislation would expand 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 statutory change makes clear that during the retained jurisdiction period, the Department of Correction is responsible for determining the defendant's placement and treatment/programming needs.

The Department of Correction anticipates substantial cost avoidance from the proposed legislation based upon a reduction in the forecasted number



of incarcerated offenders. A reduction in the forecasted bed requirement of 66 offenders in FY 11 will result in a cost avoidance of approximately \$641, 000 when implemented in combination with the Correctional Alternative Placement Program. By the second year after implementation, the reduction in forecasted bed requirements of 291 offenders will result in a \$3,466,000 cost avoidance with a 458 offender bed requirement reduction by FY 14 and an \$8,321,000 reduction in increased incarceration costs.

**Director Reinke** requested that the committee send S 1383 to the fourteenth order for amendment, in order to correct Idaho Code, section 19-2604 as it refers to a 180 day sentence and needs to reflect the 365-day sentence in SB 1383.

**Chairman Darrington** clarified so this would add Section 19-2604, Idaho Code into this piece of legislation with the same amendment that is on lines 30-33 in Section 19-2601, Idaho Code. **Director Reinke** stated that was correct.

**Senator Bock** stated currently they have the ability to do this for six months. **Director Reinke** stated that was correct. **Senator Bock** questioned what was the most likely candidate for this kind of treatment? **Director Reinke** replied it would be an individual that presents the need for that kind of treatment based on the pre-sentence investigation. He then referred to **Shane Evans**, Deputy Chief of Education and Treatment, who can provide specific treatment elements. **Mr. Evans** stated there are trio of options; Alternative 1, which will be available in May 2010, is a 90 day intensive in-placement drug and alcohol treatment program. They will be able to use this not only for probation but also for parolees that are currently in the community. The main issue specifically is the continued relapse of substance abuse. The individuals have shown that the community-based alternative has not been successful to this point, but have no other additional criminogenic concerns. The alternative 2 option that is currently in place, is not only for substance abuse but also other criminogenic factors as well as education and employment deficiencies. Alternative 3, which is the therapeutic community rider will provide for a particular offender that has a continuing elevated substance abuse problem as well as other criminogenic risk factors. One who has more criminal history, more immunity to treatment, and needs a higher level of intervention will require more time to achieve success.

**Chairman Darrington** stated the judge will take the recommendation of the Department on sending an individual to a rider, but the judge will ultimately decide where to send him and then whether or not to place him on parole or in the penitentiary. **Mr. Evans** replied that was correct.

**Senator Davis** questioned how other states are handling a retained jurisdiction? **Mr. Evans** responded it was sporadic around the country.

**Fairy Hitchcock**, Hitchcock Family Advocates, stated that she opposed this legislation.

**Patti Tobias**, Administrative Director for the Courts, stated this legislation had been reviewed by the courts and they identified the need for this kind

of substance abuse treatment in a correctional setting as the number one sentencing alternative that they would favor the most.

**Diane Anderson**, Advocate for Citizens, stated as a customer of the Department of Corrections, she opposes this legislation.

In closing, **Director Reinke** stated they anticipate by the year 2015 to have 466 fewer inmates because of the efficiencies they will be bringing forward in these trio of options.

**MOTION:**

**Senator Mortimer** made a motion to send S 1383 to the fourteenth order for amendment. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

**S 1384**

**Relating to the State Penitentiary.** **Director Reinke** explained 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 of Correction. Currently, the Department's authority to suppress a riot or other serious disturbance at a private facility is not expressly stated in statute.

**Paul Panther**, Deputy Attorney General, stated this legislation proposes to amend Idaho Code §§20-111, 20-209B and 20-141A to make clear the Department's authority to intervene in the event of an emergency. It also proposes to amend Idaho Code §20-241A, 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 expense in the event of an emergency at the private facility. It is also proposed 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.

**Senator Mortimer** inquired if the assumed liability would protect the State. **Mr. Panther** responded this is trying to prevent the IDOC from getting into a worse position of liability from not being able to act. **Senator Mortimer** stated if there was a serious riot along with serious damages to the facility, is there some liability the State would incur because they were the ones that stated how to fix and to curb the riot. Is there anything that could protect the State in the case of liability? **Mr. Panther** replied that would fall under the current indemnification provision in the contract order.

**Senator Davis** questioned if the term "serious disturbance" which is used in the legislation actually defined in the legislation? **Mr. Panther** replied it is not, and that was a drafting attempt to capture all of the particular items mentioned in Idaho Code § 20-209, which include riots, escapes, affrays and insurrections, at the prison facilities. **Senator Davis** stated the term "affray" can be a very broad term, and are they sure that they need that much notification. **Mr. Panther** referred to Director Reinke to answer the question. **Director Reinke** replied the "affrays" are currently being reported, which are any actions outside of normal practices. They are notified 24 hours a day of any "affrays."

**Senator Bock** asked why they needed subsection (d), on page 4, does

this create a statutory requirement for contracts between the Department of Corrections and the contractor? **Mr. Panther** replied that is to ensure that it is in the contract, because up to this point it has not been. It is also there to make clear that the Department has the duty to intervene if necessary.

**Senator Davis** inquired if this does or does not apply to contracts that currently exist? **Mr. Panther** replied it will not alter any currently existing contracts.

**Fairy Hitchcock** and **Diane Anderson** both stated they oppose this legislation.

**MOTION:** **Senator Lodge** made a motion to send S 1384 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**S 1399** **Relating to Physicians and Surgeons.** **Ken McClure**, attorney, explained the delivery of quality medical care depends on the free flow of information between health care professionals. In order to determine the best way to treat a patient, a doctor frequently must consult medical treatises and websites or seek the advice of another doctor with specialized knowledge. Some courts have held that a doctor who is consulted by a physician treating a patient may have a doctor-patient relationship with a patient he or she has not seen and therefore may be responsible for the care provided by the treating physician to the patient. As a consequence, doctors who are consulted are reluctant to provide advice or counsel since they may become liable for care provided by another doctor to a patient they haven't examined and may not even know. That is not good for quality health care and is not good for patients.

This legislation would create a safe harbor by clarifying that a doctor who does not see a patient and only provides counsel to another doctor without expectation of compensation does not have a physician-patient relationship with that patient. Hopefully this will re-open lines of communication, make specialized knowledge more available to treating physicians and improve patient care.

**Dr. David Smitz**, Family Physician, spoke in support of S 1399. He stated how important it is to provide care for rural citizens and how difficult it can be to care for an individual in those remote places. In those areas physicians need to work together and be able to consult other physicians in order to provide better treatment to the patients.

**Dr. David Kim**, Emergency Physician, stated he supports this legislation as it could help reduce costs by helping physicians to make better decisions on behalf of the patients. This will give doctors the freedom to give advice about a patient they have never seen, without being sued. Overall this is a winning situation for doctors, patients, and the insurance companies.

**MOTION:** **Senator Hill** made a motion to send S 1399 to the floor with a do pass recommendation. **Senator Davis** seconded the motion. **Senator Kelly**

voted, “no.” The motion carried by **voice vote**.

**H 498**

**Relating to the Uniform Post-Conviction Procedure Act.**

**Representative Phil Hart** explained 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; by adding language to provide the right to petition for testing to those inmates who made either pleas or confessions that may have been involuntary. This bill adds language to provide for DNA testing at an accredited DNA testing laboratory at the petitioner’s expense.

The purpose of this legislation is to allow for post-conviction DNA testing in appropriate cases at any time. Over the past 20 years, DNA testing has resulted in the post-conviction exoneration of more than 240 individuals in the United States. In 105 of these cases the true perpetrator was identified through the DNA evidence.

DNA technology continues to advance and improve. Since 2001, there have been at least ten major advances in forensic DNA technology. DNA has proven to be an integral and valuable tool for criminal justice in finding and convicting the perpetrator of the crime. A criminal defendant convicted prior to the development of new DNA testing or whole DNA testing was inconclusive, will now be able to utilize new DNA testing to prove actual innocence.

There is no fiscal impact if the DNA test is conducted in a private accredited DNA lab or if the petitioner is able to pay for the expense when the DNA test is performed by the Idaho state police forensic services. Idaho Code §19-5506 subsection (g) states: “The court may order such person to pay restitution for DNA analysis in an amount not to exceed \$500 per DNA sample analysis... .” The petitioner bears the expense except to the extent the petitioner cannot pay pursuant to chapter 8, title 19 Idaho Code. Based on estimates of 0 to 2 petitions per year, the fiscal impact would be \$0 to \$1000 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.

**Shawna Dunn**, Idaho Prosecuting Attorneys Association, spoke in opposition to H 498, stating that it lowers the restrictions on who qualifies to get the testing done. It removes the current limitation that those that confessed and plead guilty cannot participate in testing under Section 19-4902, Idaho Code, this change does have the opportunity to radically alter a number of participants who seek DNA testing. The taxpayers could also have to pay for unnecessary DNA testing if the offender has already plead guilty and cannot afford to pay for the test. It then becomes the responsibility of the taxpayers.

**Rick Visser** spoke in favor of this legislation stating this could help exonerate wrongfully convicted individuals and save the state money by not having to pay for prison time for these individuals.

**Chairman Darrington** stated due to time restraints the rest of the testimony relating to H 498 will be held to the beginning of the committee meeting on March 10, 2010.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:57 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** March 10, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**H 498** **Relating to the Uniform Post-Conviction Procedure Act.** Continuation of testimony from March 8, 2010, Judiciary and Rules Committee.

**TESTIMONY** **Virginia Hatch**, spoke in favor to H 498, stating that other surrounding states have not had a flood of litigation following this same legislation. This will allow for the true intent for the wrongly convicted.

**TESTIMONY** **Major Powell**, Idaho State Police, spoke in support of this legislation, stating that this would not have a significant fiscal impact on the department.

**Senator Lodge** questioned if they ever need more than one sample when they are testing the DNA? **Major Powell** replied "yes," they have to have a control sample in order to test the suspect's sample too, in order to see if it is the same profile. Typically they need three samples which would equal \$1,500.

**TESTIMONY** **Fairy Hitchcock**, Hitchcock Family Advocates, spoke in favor to the legislation stating that it offers the opportunity for wrongfully convicted individuals to be exonerated.

**TESTIMONY** **Diane Anderson**, Advocate for Families, stated it was never too late for justice for the wrongfully convicted.

In closing, **Representative Hart** stated there has been a good enough track record of this legislation in other states to know that it will work and what to expect.

**MOTION:** **Senator Bock** made a motion to send H 498 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by voice vote. **Chairman Darrington, Vice Chairman Jorgenson, Senators Lodge and Hill** voted “no.”

**S 1385** **Relating to Rape; To Revise the Circumstances. Senator Hill** explained this legislation changes the definition of what is commonly known as “statutory rape” as defined at 18-6101. Under current law, sexual relations (as defined) with a girl who has not reached the age of 18 is considered rape, even if both parties participate willingly. This bill amends the definition of statutory rape to include such acts 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 at 18-6108 to bring it into conformity with the provisions of the female rape statute at 18-6101.

**Senator Hill** said he picked up a hand-out called “Youth Risk Behavior Survey” from an Open House at the Department of Education. This hand-out dealt with sexual activity and cited 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 these boys become criminals under Idaho law. Senator Hill stated that 35 states have age sixteen as the age of consent including our neighboring states.

Senator Hill expressed his concern that with the current law, boys’ lives were ruined. He is a felon convicted of a sex crime, can’t choose where he wants to live, and has a hard time getting a decent job, probably for the rest of his life. Laws that have the potential to destroy the lives of innocent people need to be changed. Prosecutors and judges have some discretion, but this bill deals strictly with the statute.

**TESTIMONY** **Dane Watkins**, Prosecutor from Bonneville County, speaking on behalf of the Board of the Idaho Prosecutors Association (IPA), explained that the prosecutors, law enforcement, health and welfare, and child advocacy groups had all looked at this bill and IPA opposes the legislation. They believe the proposed law will move from a consent based standard and enforcement of statutory rape, turning those young adolescents into fair game without considering the nature and the meaning of consensual sexual activity for girls and whether other factors, i.e. alcohol, drugs, coercion might induce consent, to be legally permissible. He believes lowering the age of consent for sexual relations with minors will close a window for legal mechanisms found in these cases.

**Senator Jorgenson** asked if there was uniformity of enforcement of this current law. In other words, where there is consensual sex and an underage girl gets pregnant, is your prosecution of fathers as a result of a parent filing a complaint? **Mr. Watkins** said this is an issue that prosecutors face on a regular basis and we often have to have those difficult conversations with parents where ultimately you walk away from a prosecution. There is prosecutorial discretion as some of the factors are

reviewed. Mr. Watkins summed up his comments by saying that he was confident that there is no legal solution that will eliminate all of the risks inherent with sexual activity of minors, but the sociologists, psychologists, educators, and children advocates should weigh in on this. The IPA believes it will lose a tool in protecting these victims if this legislation passes.

**Senator Davis** asked Mr. Watkins where he would draw the line on age 16, 18, or where? **Mr. Watkins** would prefer the statute as it stands. He would like to think if there is one among the 48% that might get treatment because of what the expert in the field says needs to be done, then he would prosecute that case.

**TESTIMONY**

**Reneé McKenzie**, a citizen and assisting in the management of the criminal defense part of her husband's law firm, stated that they currently have several cases that involve consensual sex between teenagers where the male was charged with felony rape. The possible consequences of that is having to register as a sex offender and go to prison with older hardened criminals. She did not think we should condone sexual acts between teens, but sending teen boys to prison is not the answer. She supports this legislation

**TESTIMONY**

**Jean Fisher**, Ada County Deputy Prosecutor, stated she is against this bill. She said this law and others are not uniformly prosecuted. Her concern is for the 16 or 17 year old girl that gets pregnant and is in legal limbo with no legal rights medically or to end this situation. They may not have supportive parents; they may have been abused and are wayward girls. Another concern is that the increase in juvenile sex offense is on the rise. So what you have is an 18 or 19 year old boy that has topped out of the juvenile system, who is a registered sex offender, who has every treatment possible, and who is still having sex with teenage girls and getting them pregnant.

**TESTIMONY**

**Robin Sandy**, testified in favor of the bill because of what she has seen in the last few years. She said that while the prosecutors that spoke today 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 stated that she had seen cases in prison multiple times of young men with young girls that were girlfriend and boyfriend and were prosecuted and put in prison. They are not truly a sex offender.

**TESTIMONY**

**Fairy Hitchcock**, Hitchcock Family Advocates, stated she is against this bill and cited a situation involving her daughter. She said she would not support this bill, but thought something else should be drawn up that would be a misdemeanor offense for some of these things that happen.

**Senator Hill** summarized the bill and addressed some of the questions that came up. Are there other options or windows? He stated that we have lewd conduct, sexual battery of a minor, fornication which is a misdemeanor. We spend a lot of time debating words in committee and what they mean and what effect they will cause. We try to envision every scenario when the law could possibly harm somebody and make every effort to avoid laws that could be misinterpreted, misused, or



inappropriately applied. This bill doesn't protect anybody over the age of twenty, it doesn't protect anybody who uses force, it doesn't protect anybody who gets a girl drunk, drugged or threatens her to have sex. It only protects kids.

**MOTION:** **Senator Jorgenson** made a motion to send S 1385 to the floor with a do pass recommendation. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

**S 1390** **Relating to Immunity for use of Automated External Defibrillator.** **Adrean Casper**, American Heart Association, explained that 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. Survival rates are significantly increased when an automated external defibrillator (AED) is available and deployed within 3 to 5 minutes of a sudden cardiac 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.

**Senator Hill** questioned on page 1, in the existing law under 2 (a), it describes certain responsibilities that the individual "shall ensure". If they do not do those things, how can they be held accountable? **Ms. Casper** stated this would be considered under the "gross negligence" standard, and the "simple negligence" standard is what individuals are afraid of encountering.

**TESTIMONY** **Barbara Jorden**, Idaho Trial Lawyers Association, spoke in opposition to this legislation, due to striking the language on page 2, subsection d. Their association had requested this language be included and want it to be included. Also the cost of the machines prevent individuals from placing them in their businesses.

**Senator Bock** inquired what is the effect of removing that language? **Ms. Jorden** stated it would still provide to ensure maintenance occurs, if maintenance occurs then the immunity is afforded to the placer of the AED.

**Senator Hill** questioned if individuals could acquire AEDs for free but many individuals were turning them down due to the liability? **Ms. Casper** replied there was a federal grant given to the Idaho EMS bureau, for a free AED, and it came with a maintenance package. St. Luke's also has the highest AED placement program in the State of Idaho. Also a church in Paul, Idaho was given a grant to place AEDs. It boils down to the liability rather than the cost of AEDs.

**Senator Bock** asked how often and how expensive is it to maintain the AEDs? **Ms. Casper** responded it depends on the type of AED, but

generally the battery needs to be changed every 5-10 years and the pads 1 ½ to 2 years.

**TESTIMONY**

**Michael McDermott**, former professional firefighter, stated that if an AED does not work the individuals lose valuable time that they could have used to call 911 or perform CPR.

**MOTION:**

**Senator Bock** made a motion to hold S 1390 in committee. **Senator Jorgenson** seconded the motion.

**SUBSTITUTE MOTION:**

**Senator Hill** made a substitute motion to send S 1390 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. **Senator Bock** stated that he was concerned that if there was an AED available that individuals would rely on that as a means to save a life, and if it does not work they will have lost 5 minutes in trying to get it to work. Also if the maintenance is as easy as it has been described he could not in good conscience say that individual should be exempt. **Senator Hill** stated if someone goes into a place and hears or sees that it is beeping an individual should know that there is something wrong with the device. If it is not beeping because somebody took the battery out, they will be liable. **Senator Mortimer** stated that unit can be taken down at anytime it is not being maintained, but they are here to encourage and perhaps put more of those units into use. **Senator Kelly** spoke in opposition to the substitute motion. The substitute motion passed with a roll call vote. The votes were: Senator Bock "nay," Senator Kelly "nay," Senator Mortimer "aye," Senator McKague "aye," Senator Hill "aye," Senator Davis "aye," Vice Chairman Jorgenson "nay," Chairman Darrington "aye."

**S 1398**

**Relating to Motor Vehicles and Crimes and Punishment.** **John Bujak**, Attorney, explained this legislation would amend Idaho State Code section 18-8005(9) to ensure that a person who is convicted and placed on probation or receives a withheld judgment for felony driving under the influence and has the case dismissed after successfully completing probation can be charged with another felony if, within 15 years, they receive another driving under the influence charge.

By inclusion of the language "notwithstanding the form of the judgement or withheld judgment" in this code section 18-8005 (9), as it already exists in other areas of the DUI statues relating to enhanced charging/penalties, they believe it eliminates the possibility of a defendant avoiding significant consequences for continuing to drink and drive and endangering our communities.

It is well settled in Idaho that the statues providing for withheld judgments and the dismissal of charges were not designed to benefit repeat offenders. The leniency provided for in Idaho Code 19-2604 (1) as it relates to DUI offenders, particularly who enter a drug court, was never intended to benefit repeat offenders. If so, it would serve as a disincentive to discharge defendants to avoid repeat offenses.

**Senator Bock** stated that the prosecutor could charge these offenses with a higher charge with the expectations down the road that they could use the enhanced penalty on a second charge. **Mr. Bujak** replied the

same dynamic exists at the misdemeanor level, currently the DUI statute is structured so if an individual gets one DUI it is a first offense, then if there is a second DUI within ten years it can be charged as a second offense which doubles the penalty. If the individual gets three DUI's within ten years it can be charged as a felony. If the concern is that the prosecutors are going to overcharge when someone gets a DUI within a fifteen year period after a felony conviction, that may be a tool that the prosecutors could use to keep people accountable within that fifteen year period.

**TESTIMONY**

**Fairy Hitchcock**, Hitchcock Family Advocates, stated that she was against S 1398 because of the judicial discretion, she does not believe that the law needs to be changed. **Senator Davis** stated if the judges do not have the authority they do not have the discretion, and the language in the legislation is needed in order for them to exercise that discretion.

**MOTION:**

**Senator Davis** made a motion to send S 1398 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**Chairman Darrington** stated due to time restraints H 508 will be moved to the top of the agenda on March 15, 2010.

**ADJOURNMENT**

There being no further business, **Chairman Darrington** adjourned the meeting at 3:20 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** March 15, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:** Senator Bock

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

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

**MINUTES:** **Senator Kelly** made a motion to approve the minutes of March 8, 2010 as written. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**RS 19796** **Relating to Grandparents Visitation.** **Senator Mortimer** explained this bill had been in the works for some time and if we can get it printed so the parties can discuss it, we will bring it forward next year.

**Bob Aldridge** explained the background of this is based on the Supreme Court cases of *Troxell v. Granville* and *Leavitt v. Leavitt* which you heard in detail in the de facto case. It does require that there be presumption in favor of the parents wishes and there has to be some showing of loss to the child that might result from denial of visitation. The Attorney General has reviewed the bill and believes it to be constitutional.

This bill replaces the current section on grandparent visitation rights with a more clearly defined procedure for this process. The new section does four things: (1) it defines the circumstances under which a grandparent or great-grandparent may petition for visitation rights, (2) it sets up the rebuttable presumption that a parent's decision with regards to grandparent visitation are in the child's best interest, (3) it sets the conditions under which that presumption may be rebutted and (4) it sets up the conditions that constitute the child's best interests if the presumption is rebutted.

This bill provides a clear process to establish visitation rights that take into account both the parents' and the grandparents' rights as well as the best interests of the child.

**MOTION:** **Senator Hill** made a motion to send RS 19796 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**H 508** **Relating to Crime Victims Compensation.** **George Gutierrez**, Bureau Chief, Idaho Industrial Commission Crime Victims' Compensation Program (CVCP), explained this proposed legislation will provide statutory authority to the Industrial Commission to utilize and/or develop a fee for service schedule for benefits paid on behalf of crime victims that is consistent with fair market value and other government and private benefit programs. It also includes a provision that prohibits service providers from billing victims for any covered expense that is in excess of the charge allowable under the fee schedule and allows service providers to bill for those costs that are not covered by CVCP due to reductions in benefit eligibility related to statutory and rule requirements. This proposed legislation gives the Industrial Commission authority to adopt or develop a fee schedule to administer benefits.

**Mr. Gutierrez** stated there will be no impact to the General Fund since CVCP is a dedicated fund agency funded by fines and penalties assessed on criminal convictions. This proposed legislation will have a positive impact on the Crime Victims' Compensation Fund by providing cost containment for services paid by the program, limiting expenses to those more consistent with market value and other government and private benefit programs.

**Mr. Gutierrez** explained that the Compensation Program provides up to \$25,000 in financial assistance to eligible victims and family members for medical, mental health counseling, sexual assault forensic examinations, lost wages and dependent death payments, and funeral expenses. Since inception, they have assisted 27,500 victims of crime. The program has paid approximately \$36,000,000 in treatment and forensic examination costs on behalf of eligible victims. Each year about 2,500 new applications are received. He noted that 83% of cases filed involve criminal misconduct against women and children.

Mr. Gutierrez said the fund is examined and reassessed every year. The fund currently is \$685,000 and we are about halfway through the fiscal year. We will be accessing approximately \$1.6m in federal funds. We consulted with the Idaho Medical Association, the Idaho Hospital Association, Idaho Dental Association, Idaho Mental Health Association with no negative feedback and they felt it is a fair and equitable process.

**Chairman Darrington** asked if the fee schedule would be adopted by rule or by reference? **Mr. Gutierrez** referred to the legislation, lines 11 - 13 which showed no rules are necessary. **Senator Mortimer** asked if they had the flexibility to adopt or not adopt the fee schedule that is used by Idaho worker's compensation law. **Mr. Gutierrez** said if there are some variations in costs, we will look at other avenues.

**Senator Hill** asked how the fines are determined and if they vary according to the type of offense and what percent of the fines are received. **Mr. Gutierrez** said the fines are based on the type of

convictions for crimes committed in Idaho; for misdemeanors, \$37 fine, for felonies, \$50 fine, and for sexual related offenses, a \$300 fine. Each court collects that fine and sends it to us on an annual basis.

**TESTIMONY:** **Fairy Hitchcock** stated she opposes the bill and suggested there was no accountability. She said victims might still be denied compensation.

**Mr. Gutierrez** concluded by saying this bill received federal grants from fines and penalties and no state tax dollars are used. There are many rules relating to eligibility, but this bill deals specifically with payments made to providers for services received.

**MOTION:** **Senator Mortimer** made a motion to send H 508 to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**Presentation on Consanguinity.** **Diana Cox**, Intern for Senator Darrington, did some research to present to the Committee on relationships of families which has come up several times this year, especially in the De Facto Custody bill. Diana passed out a chart (see attached) and explained the connectedness to family members and the degree they are related.

**Senator Darrington** mentioned that in the De Facto Custodian bill, it says the consanguinity to the third degree could qualify, so using this chart who would qualify? **Diana** replied that she believed it would be anyone with a 3 next to their name. However, this chart was pulled from Texas as there is none for Idaho.

**Senator Davis** said there were some courts that interpret the degrees of consanguinity just modestly different so that it allows you to skip over from you to your siblings. **Bob Aldridge** commented that once upon a time there was a similar chart in the code book, but was since dropped. He stated that the courts generally look at it as Senator Davis described, from you to your siblings.

**ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:12 p.m.

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** March 17, 2010

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

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

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

**MINUTES:** **Senator Bock** made a motion to approve the minutes of March 3, 2010 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

**Senator Hill** made a motion to approve the minutes of March 10, 2010 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

**Senator McKague** made a motion to approve the minutes of March 15, 2010 as written. **Senator Hill** seconded the motion and the motion carried by **voice vote**.

**H 593aa** **Relating to Attorney's Fees in Suits or Arbitration with Insurers.** **Representative Luker**, explained Idaho law requires insurance companies to treat their insured fairly. To prevent insurance companies from unreasonably delaying payment on claims by their insured, they are required under section 41-1839, Idaho Code, to pay losses justly due to the insured within 30 days after proof of loss has been submitted. In the event the amount justly due is not paid and an action for payment required, the section provides that the insured shall also recover attorney fees.

Almost all insurance contracts require arbitration to resolve a dispute between the insurance company and its insured. In 1991, the Idaho Supreme Court held in *Emery v. United Pacific Insurance company*, 120 Idaho 244, 815 P.2d 442 (1991), that section 41-1839, Idaho Code applied to require attorney fees incurred in arbitration proceedings to recover amounts justly due, but not paid by the insurance company.

The Idaho Supreme Court recently changed the law in *The Greasespot, Inc. v. Hanes*, 2010 Slip Opinion No. 10 (February 1, 2010) 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 insured (direct customers) of the insurance company, and not to third party claimants who have claims against the insured.

The amendment to the legislation includes the language, "or arbitration" following "actions".

**Senator Kelly** stated this legislation does not include an emergency clause, and asked if there were any pending issues this would effect? **Representative Luker** responded they realized there was not one included but decided to go ahead with the legislation.

**MOTION:**

**Senator Bock** made a motion to send H 593aa to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

**H 543**

**Relating to Firearms, Explosives and Other Deadly Weapons.**

**Representative Hagedorn**, explained this bill amends current code descriptions that involve bomb threats and other such acts to include "Hoax Destructive Devices" as well. It defines that persons selling, giving, mailing or using such devices with the intent of causing fear of serious bodily injury or death be guilty of a felony punishable by a term of imprisonment not to exceed five years.

It further defines that persons who use a "Hoax Destructive Device" in the commission or attempted commission of a felony be guilty of a felony punishable by a term of imprisonment not to exceed 15 years and a fine of up to \$15,000.

**Paul Jagosh**, Fraternal Order of Police, stated that this legislation has been modeled after other states that have this in effect. This will protect the public and define the penalty enhancement.

**Senator Jorgenson** questioned how the penalty differed from an actual destructive device? **Mr. Jagosh** stated he was not sure.

**Senator Bock** stated he was concerned that this would instantly become a felony and suggested it be more of a gradual process. **Mr. Jagosh** replied they did not consider that, due to the fact that if someone calls in a bomb threat it is a serious crime and they did not feel that a misdemeanor would warrant what it would take to handle a "bomb threat" situation.

**Senator Bock** stated what if there was an empty cardboard box in a corner at the mall and someone calls it in and it turns out just to be an empty box. In that type of a situation they are not deserving of a felony charge. **Representative Hagedorn** answered in that instance it would



not apply to this law so they would not be charged with a felony. A person has to place something that actually looks like a bomb and intentionally place it somewhere to cause fear.

**Senator Mortimer** stated that there are a lot of realistic toys, what if a child leaves a toy-like bomb somewhere? **Representative Hagedorn** responded that the individual has to have the intent to do harm in order for the statute to be applicable.

**MOTION:** **Senator Jorgenson** made a motion to send H 543 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by voice vote. **Senator Bock** voted nay.

**H 613** **Relating to Correctional Industries.** **Don Berg**, Division Manager Legislative Audit, explained 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 Corrections and the Department of Corrections and uses the State's accounting system, controls, and processes.

**Senator Hill** inquired how much money goes through these funds on an annual basis and how much they generally have on hand at any given point of time? **Mr. Berg** responded the language was archaic, as it was developed back in 1974 when the Department had an outside banking account that was set up completely out of the State accounting system. Subsequently, 15 years ago they were included in the State accounting system.

**Fairy Hitchcock**, Hitchcock Family Advocates, stated she opposed this legislation because there needs to be some accountability to follow up on what the Department of Corrections is doing.

**Chairman Darrington** questioned what kind of accounting there was through the state funds and the state treasurer? **Mr. Berg** replied the future accountability means by removing this language they do not need one specific document on the audit of the Department of Corrections program. They do the statewide audit for all state government programs, and they also do management reviews of every state agency a minimum of once every three years.

**Senator Hill** asked how much it cost per year for an audit? **Mr. Berg** stated it costs approximately \$20,000 per year and changing the frequency of the audit could save the State \$10,000 a year.

**MOTION:** **Senator Kelly** made a motion to send H 613 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**H 550** **Relating to Trust Deeds.** **Kris Ellis**, Idaho Land title Association, explained there currently is not a grace period within which to record a Trustee's Deed after the sale date, nor is there a statutory process whereby a Trustee's Deed can be rescinded. The proposed

amendment(s) allow the trustee and beneficiary to record a Trustee's Deed within 15 days after the sale date and, if done timely, the effective date of the Trustee's Deed will relate back to the date and time of the trustee's sale. As such, an intervening bankruptcy filing or other form of intervening lien would not affect title to the subject real property. The proposed amendment also would allow the Trustee and Beneficiary a statutory process whereby a trustee's Deed could be rescinded in the event the Trustee's Sale was held in violation of a Bankruptcy Stay or otherwise in error.

**Senator Mortimer** questioned what would happen if there was a tax lien filed on the property between the time of the sale and the time of the date that was actually on a judgement? **Ms. Ellis** deferred to the legal counsel, **Richard Mollerup**. He stated most intervening liens would be subject to a notice of default and they could foreclose the asset. **Senator Mortimer** asked if it would create a hardship for the individual purchasing the property if they were unable to do anything with the property for fifteen days? **Mr. Mollerup** stated that most of these occur within a few days, and the hardship that may occur in some instances would be fairly minor. **Senator Mortimer** stated that he felt the fifteen days was a significant amount of time versus changing it to a five day time period.

**Senator Bock** stated he believes this is a dangerous bill and questioned why should they undermine the recording statutes by allowing this fifteen day period since it is contrary to the effectiveness and security that the recording statutes provide? **Ms. Ellis** replied she did not believe that it was undermining, but was protecting the new buyer of the property. It actually will protect the buyer from having a lien placed on the property without their knowledge. **Senator Bock** questioned why should there be an exemption made in this case, due to a temporary situation with the economy that has created some problems with foreclosures. After the recovery of the economy the recording statutes will be needed. Why would someone get a fifteen day pass of recorded leave? It does not seem to make any sense. **Ms. Ellis** stated there are many rural counties in Idaho and in some parts it is not logistically feasible to have a sale time on Friday at a title company and also get it to the recorder's office. The other problem is because of the financial crisis there are recorder's offices that are closed in Idaho on Fridays, so there is a three day window when they cannot record. **Senator Bock** stated that was true in any transaction, and that is what makes the system work. If an individual has fifteen days to get the deed recorded, what is going to prevent that kind of abuse? **Ms. Ellis** stated this language is in Oregon, Washington, Nevada and other surrounding states, and it does not seem to undermine the process.

**Senator Davis** stated that he agreed with Senator Bock, in Idaho they want to minimize the abuse of walking away from the standards.

**Chairman Darrington** handed the gavel to Senator Jorgenson and exited the committee.

**Senator Mortimer** stated if a buyer puts his money down and does not get the title for fifteen days, are they being insured for any complication or problem that may occur during that period of time? **Mr. Mollerup** stated

that it is a trap, there is no insurance unless it is requested.

**Senator Bock** stated he was more comfortable with five days rather than fifteen and suggested sending this legislation to the amending order to reduce the amount of time. **Mr. Mollerup** stated he was fine with that, but was concerned if there was enough legislative time to accomplish that amendment.

**Ms. Ellis** stated changing it to five business days would be acceptable as long as it can be accomplished in this legislative session.

**MOTION:** **Senator Hill** made a motion to send H 550 to the floor with a do pass recommendation. **Senator Davis** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Mortimer** made a substitute motion to send H 550 to the fourteenth order for amendment, with the intention that it will be seven working days. **Senator Bock** seconded the motion. **Senator Davis** explained to the committee that it would not be until Tuesday of next before they would be able to amend the legislation and because the sponsors would like to get this through this session it will be difficult to accomplish that with the end of session rapidly approaching. The roll call vote: Senator Bock "aye," Senator Kelly "aye," Senator Mortimer "aye," Senator McKague "nay," Senator Hill "nay," Senator Davis "nay," Senator Jorgenson "nay." The substitute motion failed.

The committee then took a roll call vote on the original motion to send H 550 to the floor with a do pass recommendation. The motion passed by 5-2 on the roll call vote.

**H 554** **Relating to Change of Names.** **Jeanne Jackson-Heim**, explained under current law, applicants for a judicial name change are required to publish a Notice of Hearing in a newspaper or post it in three (3) public places for four weeks. The contents of the notice of Hearing are established by statute and include several pieces of personal identifying information. The publication of this type of information can assist unscrupulous persons in perpetrating identity theft. Some of these items are also answers to commonly used "security questions" for online and banking purposes, such as place of birth and father's name. In addition, publishing home address information could result in an applicant experiencing unwanted attention or even bodily injury.

This bill would not change the requirement for publication of a Notice of Hearing to give notice of the contemplated name change to creditors and other interested parties. It would simply eliminate some pieces of personal identifying information from the required publication. All existing requirements for personal information to be included in court filings would also remain the same.

**MOTION:** **Senator Bock** made a motion to send H 554 to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary

## MINUTES

### SENATE JUDICIARY AND RULES COMMITTEE

**DATE:** March 24, 2010

**TIME:** 1:00 p.m.

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

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

**CONVENED:** **Chairman Darrington** called the meeting to order at 1:02 p.m.

**MINUTES:** **Senator Mortimer** made a motion to approve the minutes of March 17, 2010 as written. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

**S 1341aa** **Relating to Injury to Children.** **Senator Broadsword** explained this legislation had been amended by the House of Representatives. These changes have created a direct conflict with current aggravated circumstance law and case law.

**Chairman Darrington** stated because of the conflict it is their intention to not concur with the House amendments.

**MOTION:** **Senator Bock** made a motion to not concur with the amendments as adopted by the House and to send S 1341aa to the floor. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**H 687** **Relating to fees.** **Patti Tobias**, Administrative Director of the Courts, explained this bill creates an emergency surcharge to be paid by persons who commit crimes and infractions. The surcharge would enable the Judicial Branch, during the current financial crisis, to continue to fulfill its constitutional responsibilities and to provide services that benefit the people of the State of Idaho and help to reduce the burden on the state budget. 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 pay a fee for each offense or infraction. The fee for each felony offense would be \$100.00, the fee for each misdemeanor offense would be \$50.00, and the fee for each infraction would be \$10.00. Eighty percent (80%) of the fees collected would be deposited in the Drug Court, Mental Health Court and Family Court Services Fund, and twenty percent (20%) 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.

To prevent these consequences, the Judicial Branch proposes the adoption of court costs that will be dedicated to the needs of the courts, that will be paid by users of the courts who have committed offenses, and that will enable the courts to keep their doors open to continue to operate the programs that are more necessary than ever during these challenging times. The emergency surcharge will provide approximately an additional \$4.3 million to the dedicated funds, relieving the pressure on general fund dollars. The funds raised through the emergency surcharge will be used solely to continue court operations and to fund needed services and programs as provided by Idaho Code §§ 1-1623 and 1-1625.

This 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.

Based on figures from calendar year 2009 and expected collection rates, it is estimated that the emergency surcharge will generate approximately \$4,301,900 annually. Of this amount, \$3,441,500 will be deposited in the Drug Court, Mental Health Court and Family Court Services Fund, and \$860,400 in the ISTARS Fund.

**Chairman Darrington** stated his understanding with the ISTARS was when they were finally able to get it placed throughout Idaho in the district courts now it is all about the maintenance and up keep of these systems on a rotational basis, is that correct on how they are approaching ISTARS? **Ms. Tobias** replied that was correct, they are trying to get on a four year rotational basis so that everyone has the same equipment at the same time.

**Senator Jorgenson** asked if ISTARS was available to all tribal law enforcement? **Ms. Tobias** replied ISTARS records are available on the website to anyone who wishes to access the website.

**Senator Hill** stated this appeared to need additional dedicated funds which still need to be appropriated, has this already been taken care of in the budget? **Ms. Tobias** responded there would have to be a trailer appropriation bill; the trailer has been drafted and is ready.

**MOTION:** **Senator Jorgenson** made a motion to send H 687 to the floor with a do pass recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

**Chairman Darrington** and **Leigh Hinds** graduated the page and presented her with letters of recommendation and a gift for her service to the committee.

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

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Senator Denton Darrington  
Chairman

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Leigh Hinds  
Secretary

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Jennifer Novak  
Assistant Secretary