

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, January 11, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Organizational Meeting	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Richard Wills
Vice Chair Lynn Luker
Rep Leon Smith
Rep Pete Nielsen
Rep Mack Shirley
Rep Phil Hart
Rep Darrell Bolz
Rep Linden Bateman
Rep Julie Ellsworth
Rep Shannon McMillan(Harwood)
Rep Christy Perry
Rep Kathleen Sims
Rep Grant Burgoyne
Rep Wendy Jaquet
Rep William Killen

COMMITTEE SECRETARY

Jean Vance
Room: EW56
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email:jvance@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 11, 2011

TIME: 1:30 P.M.

PLACE: EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Bateman, Ellsworth, McMillan (Harwood), Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:**

GUESTS:

Meeting was called to order at 1:33 p.m. by **Chairman Wills**.

Members briefly introduced themselves, also Intern **Justin Jeppesen** and Page **Saige Benjamin**.

Chairman Wills spoke of his expectations for the committee. He also expressed appreciation for those serving and directed all to use the legislative protocol in committee. In addition, punctuality was emphasized as well as being respectful of others' time.

Chairman Wills appointed the following subcommittees.

Idaho State Police: **Chairman Bolz, Vice Chairman Bateman, Rep. Burgoyne**

Industrial Commission, Certified Shorthand, Office of the Attorney General:
Chairman Jaquet, Vice Chairman Ellsworth, Rep. Shirley

Proclamation, Juvenile Corrections: **Chairman Killen, Vice Chairman Perry, Rep. Nielsen**

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

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, January 13, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Department of Juvenile Corrections Update, Power Point	Sharon Harrigfeld, Juvenile Corrections
	Department of Corrections Update	Brent D. Reinke, Department of Correction

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Bateman
Rep Ellsworth
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, January 13, 2011
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan (Harwood), Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:**

GUESTS: Mark Kubinski, Idaho Department of Corrections / Attorney General; Kevin Kempf, Idaho Department of Corrections; Fairy Hitchcock, Hitchcock Family Advocates; Jim Tibbs, Rural Law Enforcement Meth Initiative; Paul Prather, Idaho Department of Corrections / Attorney General; Brent Reinke, Director of Corrections; Josh Tewalt, Division of Financial Management; Benjamin Davenport, Risch Pisca; Jared Tatro, Office of Performance Evaluation; Hannah Crumrine; Office of Performance Evaluation; Sharon Harrigfeld, Director of Juvenile Corrections

Meeting was called to order at 1:32 p.m. by **Chairman Wills**. He welcomed the members of the agencies and the visitors.

Rep. Bolz moved to approve the minutes of the January 11 meeting as written; motion carried on a voice vote.

Chairman Wills invited **Sharon Harrigfeld**, Director of Juvenile Corrections, to present her Power Point update. **Rep. Burgoyne** inquired as to the percentage of juvenile sexual offenses which are classified as predatory. Director Harrigfeld said few were predatory; most were lewd and lascivious conduct.

Victims analysis, patient diagnosis, mental health and drugs were also discussed. In a response to a question by **Rep. Shirley** on the distribution of patients per facility, Director Harrigfeld stated: Lewiston, 36; Nampa, 84; St Anthony, 120. Family presence and seriousness of offense are also considerations for placement.

Chairman Wills then invited **Director Brent Reinke**, Dept. of Corrections, to give his presentation. Director Reinke spoke of successes within the Idaho prison system in the past year as well as needs for the present fiscal year.

Updates were given on treatment pathways, violation matrix, inmate supervision, education and treatment. In addition, Director Reinke compared Idaho to other Western States expressing a deep concern over California's non-revocable parole which is causing problems for those paroles crossing into Idaho and committing crimes.

In response to the inquiry by **Rep. Jaquet**, Director Reinke explained the Virtual Prison Monitors.

Rep. Luker asked if the 25% turnover in prison personnel was in the private prison or the public prison. The Director stated that the 25% was a projected ratio, not necessarily the exact percentage, but that the turnover was in the public prisons. Rep. Luker asked for an analysis of the turnover. Director Reinke stated he may have been too conservative keeping some job positions open rather than filling them. He then cited burned out staff from additional overtime, concerns for the FY 2010 hold backs, furloughs; and, better job opportunities elsewhere as reason for exits within the department.

Chairman Wills expressed a deep appreciation to all of Idaho Corrections personnel and programs.

There being no further business to come before the Committee, the meeting adjourned at 2:36 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
KILLEN SUBCOMMITTEE
Proclamation, Juvenile Corrections
2:30 P.M.
Room EG07
Thursday, January 13, 2011

DOCKET NO.	DESCRIPTION	PRESENTER
Docket No. 05-0101-1001	Immediate Notice to Parent or Guardian	Sharon Herrigfeld,
Docket No. 06-0101-1001	Reintegration Providers	Sharon Herrigfeld

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman William Killen
Vice Chair Christy Perry
Rep Pete Nielsen

COMMITTEE SECRETARY

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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
KILLEN SUBCOMMITTEE
Proclamation, Juvenile Corrections

DATE: Thursday, January 13, 2011

TIME: 2:30 P.M.

PLACE: Room EG07

MEMBERS: Chairman Killen, Vice Chairman Perry, Representative Nielsen

**ABSENT/
EXCUSED:**

GUESTS: Sharon Harrigfeld, Director of the Department of Juvenile Corrections; Shelly McCoshum-Hitt, DJC; and Nancy Bishop, Deputy Attorney General for DJC.

Chairman Killen called the meeting to order at 2:40 p.m.

DOCKET NO. 05-0101-1001 **Sharon Harrigfeld**, Director of the Department of Juvenile Corrections, explained that the only proposed change for **Docket No. 05-0101-1001** was regarding incidents requiring immediate notice to parent or guardian and Department. The Department felt that this issue needed further clarification on what necessitated an immediate notification and what instances did not justify an immediate response. She cited that for an immediate threat, parents would be immediately notified, including in the middle of the night, if their child was at risk. However, for a non-immediate situation, such as lost keys, there was no need for immediate notification to parents or Department. Director Harrigfeld also said that the maximum time frame for the non-immediate type of notification would be 10 days. She clarified that many facilities are under contract with the Department of Juvenile Corrections, and these facilities are liable to report these immediate or non-immediate threats and risks to the parents, guardians and the Department which presides over them.

MOTION **Rep. Nielsen** made a motion to accept **Docket No. 05-0101-1001** and recommend it to the full committee. The **motion carried on a voice vote**.

DOCKET NO. 06-0101-1001 **Chairman Killen** asked Director Harrigfeld & her colleagues to explain the reasons for **Docket No. 06-0101-1001**. **Director Harrigfeld** commented that these were new rules drafted for the Board of Correction, covering reintegration providers. The discussion on this topic centered mainly around the transition of kids coming out of the correctional facilities and integrating them into the work force. The purpose of the outside contractors is to help these kids learn to live independently, manage a checkbook, get into an apartment on their own, and be able to hold a job. Most of these services are based in the Boise area. Director Harrigfeld explained that the Department of Correction works very closely with Health and Welfare to transition these kids and hand over the baton, so to speak, as they venture out on their own or turn 21. The Department of Juvenile Corrections has no jurisdiction after the offender reaches the age of 21.

MOTION **Rep. Nielsen** made a motion to accept **Docket No. 06-0101-1001** and recommended that it be adopted by the full committee. **Motion carried on a voice vote**.

ADJOURN There being no further business to come before the committee, the meeting was adjourned at 3:03 p.m.

Representative William Killen
Chair

Kimberly Jensen-Porter
Substitute Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
JAQUET SUBCOMMITTEE
3:00 P.M.
Room EW42
Monday, January 17, 2011

DOCKET NO.	DESCRIPTION	PRESENTER
17-0501-1001	Rules governing the Crime Victims Compensation Act	George Gutierrez, Manager of Crime Victims, Industrial Commission
49-0101-1001	Rules governing the procedure of the Idaho Certified Shorthand Reporters Board	Roger Hales, Board Counsel, Certified Shorthand Reporters
04-1101-1001	Rules governing the Administrative Procedure of the Idaho Attorney General	Brian Kane, Asst. Chief Deputy and Legislative Liaison, Office of Attorney General

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wendy Jaquet
Vice Chair Julie Ellsworth
Rep Mack Shirley

COMMITTEE SECRETARY

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MINUTES

**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
JAQUET SUBCOMMITTEE**

DATE: Monday, January 17, 2011

TIME: 3:00 P.M.

PLACE: Room EW42

MEMBERS: Chairman Jaquet, Vice Chairman Ellsworth, Representative Shirley

**ABSENT/
EXCUSED:**

GUESTS: Roger Hales, Idaho Board of Corrections; Brian Kane, Office of the Attorney General; George Gutierrez, Industrial Commission; Susan G. Gambee, Board of Certified Shorthand Reporters; Dianne Cromwell, Board of Certified Shorthand Reporters

Chairman Jaquet called the meeting to order at 3:05 p.m.

Docket No. 17-0501-1001: **George Gutierrez**, Industrial Commission, explained that **Docket No. 17-0501-1001**, focused on how to handle crimes victim compensation payments for eligible victims. He further explained that in the past the agency was required to payout bills at 100% and were not able to pay less than 100% for victim's compensation. In 2006-2007 over 2 years of payments cost more than 1.2 million dollars. The agency ran out of money in April, 2007, and had no authority to make an adjustment or to make payments proportionary.

By April, 2008, the Commission reduced all payments by 25% to providers. However, providers went after victims to pay that remaining 25%. Some providers were withholding care. If victims went to the emergency room and the treatment cost was \$250; the victim was billed for \$250. Mr. Gutierrez cited that when being treated in a victim compensation case, there was no way for victims to be protected. Advocates maintained victims were not treated because of inability to pay.

Prior to July 1, 2010, the agency met with the medical community. Together, they settled on a fair payment for providers regarding individual treatments. According to Mr. Gutierrez, the medical community seemed happy because they knew 100% was not possible. On July 1, 2010, the agency created an emergency rule. So now providers are paid approximately 80% and the victim is winning because the money is coming up front. However, this is not a set percentage. The joint meeting members created a formula which specifies an allowable amount for them to pay. Services CPT code determines the allowable amount.

Chairman Jaquet asked if there had been any objections to the rates. Mr. Gutierrez stated that the agency had published them but no one requested a hearing. In response to the question about CPT codes, Mr. Gutierrez replied that CPT Codes are national codes. When asked how the payments compared to Medicare or Medicaid payments, he said the agency's rates were probably a little higher but that it varied. **Rep. Shirley** asked for clarification as to public impact to which he was assured that no one had raised any objection.

Chairman Jaquet commended Mr. Gutierrez and the agency for a well substantiated report and a good job

MOTION: **Rep. Ellsworth** moved to recommend approval of **Docket No. 17-0501-1001**, by the full committee. **Motion carried by voice vote.**

Docket No. 49-0101-1001: Chairman Jaquet recognized Roger Hales, Idaho Bureau of Occupational Licenses, to explain the pending rule **Docket No. 49-0101-1001**. Mr. Hales introduced Susan Gambee, Board of Certified Shorthand Reporters, who was available for technical questions.

Mr. Hales then explained that the rule would standardize and bring into consistency the process of obtaining and keeping certification as a Certified Shorthand Reporter. This change would shore up the conditions for acquiring a temporary permit and the length of time the permit would allow reporters to legally practice. Currently the Idaho State Examination for Certified Shorthand Reporters requires a reporter to be competent in both a skills and a written component. According to Mr. Hales, the language in the existing rule is unclear as to what standard all court reporters must adhere and how long the permit is valid.

When asked by Rep. Shirley if the temporary permit could be for two years, Mr. Hales replied that it could. In response to follow-up questions, Mr. Hales said the fee for a temporary permit is \$75.00 and that the Board consisted of a judge, an attorney and three court reporters.

Rep. Ellsworth expressed concern about paragraph "d" saying the Board is setting up an arbitrary situation.

Ms. Gambee stated that the language was to encourage those reporters who are either incompetent or who insist on hurried board meetings because licenses have lapsed. Ensuring that the profession supports professional and board certified reporters while allowing the Board some discretion was the aim of the paragraph. Rep. Ellsworth replied that paragraph "d" left open a window for the Board to be attacked. Chairman Jaquet recognized the importance of clarification of item "d."

MOTION: Rep. Ellsworth moved to reconvene the subcommittee at the adjournment of the full committee on Wednesday, January 19, 2011. **Motion carried on voice vote.**

Docket No. 04-1101-1001: Brian Kane from the Office of the Attorney General explained pending rule **Docket 04-1101-1001**. Kane stated that government is working as it should. Rules have not changed in a long time. He stated that **HB 555** provides a definition of service of agency orders and provides for electronic service by agencies and parties. **HB 421** provides a procedural rule for agencies to use to consider requests to award costs and fees, and **HB 614** amends the existing rules about rule making procedures to bring them into conformity with use of electronic service.

MOTION: Rep. Shirley moved to recommend approval of **Docket 04-1101-1001** by the full committee; **motion carried by voice vote.**

ADJOURN: There being no further business to come before the subcommittee, the meeting was adjourned at 3:42 p.m.

Representative Wendy Jaquet
Chair

Jean Vance
Secretary

AMENDED AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
BOLZ SUBCOMMITTEE
 Idaho State Police Bolz Subcommittee
3:00 P.M.
Room EW05
Tuesday, January 18, 2011

DOCKET NO.	DESCRIPTION	PRESENTER
11-0301-1001	Rules Governing Alcohol Testing	Maj. Kedrick Wills, Idaho State Police
11-0501-0902	Rules Governing Alcohol Beverage Control	Lt. Bob Clements, Idaho State Police
11-1001-1001	Rules Governing Idaho Public Safety and Security Information System	Dawn Peck, Manager, Bureau of Criminal Identification
11-1101-1002	Rules of the Idaho Peace Officer Standards and Training Council	William Flink, POST Administrator
11-1102-1001	Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers	William Flink, POST Administrator
11-1103-1001	Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers	William Flink, POST Administrator
11-1104-1001	Rules for the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers	William Flink, POST Administrator
11-1105-1001	Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff	William Flink, POST Administrator
11-1106-1001	Rules for the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers	William Flink, POST Administrator

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Darrell Bolz
 Vice Chair Linden Bateman
 Rep Grant Burgoyne

COMMITTEE SECRETARY

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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
BOLZ SUBCOMMITTEE
Idaho State Police Bolz Subcommittee

DATE: Tuesday, January 18, 2011
TIME: 3:00 P.M.
PLACE: Room EW05
MEMBERS: Chairman Bolz, Vice Chairman Bateman, Representative Burgoyne
**ABSENT/
EXCUSED:** Representative(s) Bateman
GUESTS: Dawn Peck, Idaho State Police; Maj. Kedrick Wills, Idaho State Police; Trish Christy, Idaho State Police POST Academy; William Flink, Division Administrator, POST Academy; Matthew Gamette, Idaho State Police, Forensics Quality Control; Lt. Col. Kevin Johnson, Deputy Director, Idaho State Police; Ann Cronin, Idaho State Police; Lt. Bob Clements, Idaho State Police, Alcohol Beverage Control; Brian Donesley
Chairman Bolz called the meeting to order at 3:03 p.m.

Docket No. 11-0301-1001: **Maj. Kedrick Wills**, Police Services Division Commander, Idaho State Police, explained **Docket No. 11-0301-1001**, Rules Governing Alcohol Testing. He stated that the proposed additions to this rule were necessary to conform to the current required Department of Administration format for changes to administrative rules. Those sections for establishing legal authority, title and scope, written interpretation, abbreviations, and public records act compliance information, need to be added to this rule. In addition renumbering must occur throughout the section. In section 10.05, because the alcohol breath testing was being conducted in the field and not in a laboratory, the agency is proposing a change in the definition of laboratory to strike the word "breath."

In section 14, subsection 01, Mr. Wills proposed to change the rules by changing the word "or" to "and" when speaking to the type of instrument for levels of alcohol allowed to be utilized. Mr. Wills stated that as the rule is written it would be possible to utilize an instrument that is on the Federal Register by the United States Department of Transportation (USDOT), which is not supported by Idaho State Police (ISP) forensic services. ISP feels it is important to close this loophole and require the instrument be approved by both the USDOT and ISP forensic services.

Mr. Wills pointed to section 14, subsection 03, which speaks about how the breath alcohol standards are developed and where they are located. He stated that training manuals no longer contain the standards established by the department and that ISP was proposing to update the rule by striking "training manuals" and inserting "analytical methods" to demonstrate where the instrument standards are currently located. In section 14, subsection 05, the working of the alcohol solution utilized to ensure instruments is stated. ISP is proposing to change the language to reflect that their agency approve the solution rather than the vendor. Mr. Wills felt that simple approval of the vendor of the solution would not provide the necessary assurance that the solution was of sufficient quality for use. Instead, the use of the ISP forensic services.

MOTION: **Rep. Burgoyne** moved to recommend approval of **Docket No. 11-0301-1001** to the full committee. **Motion carried by voice vote.**

Docket No. 11-0501-0902: **Lt. Bob Clements**, Idaho State Police, explained the pending rule which establishes and clarifies differentiating hours of operation for movie theaters that are licensed alcohol beverage premises.

- MOTION:** **Rep. Burgoyne** moved to recommend approval of **Docket No. 11-0501-0902** to the full committee. **Motion carried by voice vote.**
- Docket No. 11-1001-1001:** **Dawn Peck**, Manager, Bureau of Criminal Identification, explained that the pending rule provided for the Idaho Law Enforcement Terminal System (ILETS) Board proxy appointments for the purpose of establishing a quorum at their meetings and defines the allowable proxies. Ms. Peck stated that the system was a computer-based message network which provided authorized agencies access to state and federal data files and that the board is a multi-jurisdictional board composed of city, county, and state officials who meet biannually.
- MOTION:** **Rep. Burgoyne** moved to recommend approval of **Docket No. 11-1001-1001** to the full committee. **Motion carried by voice vote.**
- Docket No. 11-1101-1001:** **William Flink**, Division Administrator, POST Academy, explained that the rules changing the title of the POST Executive Director position from a classified to a non classified position; and changes the hiring process for the POST Division Administrator to one of selection by the Idaho State Police Director with the advice and consent of the POST Council.
- MOTION:** **Rep. Burgoyne** moved to recommend approval of **Docket No. 11-1101-1001** to the full committee. **Motion carried by voice vote.**
- Docket No. 11-1101-1002:** **William Flink**, Division Administrator, POST Academy, explained the pending rule eliminating restriction on Hearing Board appointments; clarifying minimum standards and documentation requirements; changing hardship requirement for closed campus exemption; removing specific curricula; providing POST graduates same challenge opportunities as vo-tech graduates; removing grace period for canine team certification; clarifying and updating instructor certification requirements and streamlining the process; establishing suspension of certification for non compliance with continuing training requirements.
- MOTION:** **Rep. Burgoyne** moved to recommend approval of **Docket No. 11-1101-1002** to the full committee. **Motion carried by voice vote.**
- Docket No. 11-1102-1001:** **William Flink**, Division Administrator, POST Academy, explained the pending rule establishing time lines for the lapse of Juvenile Detention officer certification and the requirements for reactivating certification.
- MOTION:** **Rep. Burgoyne** moved to recommended approval of **Docket No. 11-1102-1001** to the full committee. **Motion carried by voice vote.**
- Docket No. 11-1103-1001:** **William Flink**, Division Administrator, POST Academy, explained the pending rule establishing minimum standards for training and certification of part-time Juvenile Probation Officers.
- MOTION:** **Rep. Burgoyne** moved to recommend approval of **Docket No. 11-1103-1001** to the full committee. **Motion carried by voice vote.**
- Docket No. 11-1104-1001:** **William Flink**, Division Administrator, POST Academy, explained the rules clarifying minimum standards and documentation requirements; giving the POST Division Administrator additional authority to consider requests for hearing and the vision waivers.
- MOTION:** **Rep. Burgoyne** moved to recommend approval of **Docket No. 11-1104-1001** to the full committee. **Motion carried by voice vote.**
- Docket No. 11-1105-1001:** **William Flink**, Division Administrator, POST Academy, explained the pending rule revising time lines for the lapse of Juvenile Corrections Direct Care Staff certification so they are in line with all of the other disciplines POST certifies.

MOTION: **Rep. Burgoyne** moved to recommend approval of **Docket No. 11–1105-1001** to the full committee. **Motion carried by voice vote.**

Docket No. 11-1106-1001 **William Flink**, Division Administrator, POST Academy, explained the new rule chapter establishing the minimum standards for employment, training, and certification for Misdemeanor Probation Officers.

MOTION: **Rep. Burgoyne** moved to recommend approval of **Docket No. 11–1106-1001** to the full committee. **Motion carried by voice vote.**

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

Representative Darrell Bolz
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, January 19, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>RS19966C1</u>	Relating to Assault and Battery	Ann Cronin, Idaho State Police, Maj. Ralph Powell
<u>RS19967</u>	Fees; Amending Section 31–3201B	Ann Cronin, Idaho State Police William Flink, POST Administrator
<u>RS20048</u>	Relating to Freedom of Conscience for Health Care Professionals.	Rep. Leon Smith

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COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, January 19, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan (Harwood), Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:**

GUESTS: Dustin Hurst, Idaho Reporters.com; Ann Cronin, Idaho State Police; Marty Durand, Planned Parenthood; Maj. Ralph Powell, Idaho State Police; William Flink, Division Administrator, POST Academy; Sharon Lamm, Peace Officer Standards and Training; Gayle Wilde, American Association of University Women; Barbara Jorden, Idaho Trial Lawyers; Michael Henderson, Supreme Court; Ben Batkin, Times News; Clark Corbin, Post Register; Hannah Brass, American Civil Liberties Union of Idaho; Sylvia Charitou, American Association of University Women ; Tony Smith, Sullivan Reberger & Eiguren

Meeting was called to order at 1:30 p.m. by **Chairman Wills**.

MOTION: **Rep. Bolz** moved to approve the minutes of the January 13 meeting as written; **motion carried on a voice vote.**

RS 19966C1: **Maj. Ralph Powell** stated **RS 19966C1** proposes an amendment to Idaho Code §18–915, Assault or Battery Upon Certain Personnel. The personnel are enumerated in the code and range from judges, jailers, and police officers to social workers and teachers and provides enhanced penalties or expanded punishment for violators who target a victim based on their employment. Maj. Powell explained that in 2007, a shooting of a dispatcher in Moscow, Idaho, prompted this proposed amendment to add “emergency service dispatchers” to the list of lines 11 through 12. In addition, in lines 21 through 26, rather than list all the current emergency medical services personnel, he proposed to simply reference Idaho Code, Chapter 10, of Title 56. The affected personnel are identified in Idaho Code §56–1012 subsections 1,11,14, 5, and 19. The change would be in definitions or licensing requirements for personnel and would only require modification of one code. In addition, Maj. Powell stated that as a matter of grammar, he wanted to add the word “of” to line 39 so the phrase reads “or of a county jail.”

MOTION: **Rep. Luker** moved to introduce **RS 19966C1**. **Motion carried on voice vote.**

RS 19967: **William Flink**, Division Administrator, Police Officer Standards and Training (POST), proposed to increase the POST fee from \$10.00 to \$11.50. POST receives dedicated funding pursuant to Idaho Code §3-3201 A and §31–3201 B. Funding under §31–3201 A is based on a percentage of various fees charged by the courts. Funding under §31–3201 B is based on a set \$10.00 fee charged to any individual found guilty of a felony, misdemeanor, or traffic, conservation or ordinance violation. Since these revenues have been on the decline, Mr. Flink cited the need for the increased fee.

In response to **Chairman Wills** question as to the date of the last fee increase, Mr. Flink answered, 2005. **Rep Killen** inquired if data was available on decline in convictions, decline in number of law enforcement officers, or decline in unpaid fines. Speculation by Mr. Flink as to possible reasons, prompted members of the Committee to ask for specific information to be gathered prior to the next discussion on the fee increase.

Rep. Jaquet asked if the agency was looking for a different way to deliver training. Mr. Flink replied that several Internet training programs and educational funding programs were being studied.

MOTION: **Rep. Nielson** moved to introduce **RS 19967. Motion carried on voice vote.**

RS 20048: Rep Leon Smith presented the **RS 20048** Relating to Freedom of Conscience for Health Care Professionals to the Committee. Living wills and the patient's expressed desire to "not resuscitate" is a concern. This legislation reinstates the primacy of the "Medical Consent and Natural Death Act" in Idaho Code, Chapter 45, Title 39.

MOTION: **Rep. Killen** moved to introduce **RS 20048. Motion carried on voice vote.**

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

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
JAQUET SUBCOMMITTEE
Upon adjournment of the Full Committee
Room EW42
Wednesday, January 19, 2011

DOCKET NO.	DESCRIPTION	PRESENTER
49-0101-1001	02. Certificate: d. <u>The renewal of the permit may be upon such conditions as the Board may require.</u>	Roger Hales, Board Counsel, Certified Shorthand Reporters

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wendy Jaquet

Vice Chair Julie Ellsworth

Rep Mack Shirley

COMMITTEE SECRETARY

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MINUTES
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
JAQUET SUBCOMMITTEE**

DATE: Wednesday, January 19, 2011
TIME: 2:03 P.M.
PLACE: Room EW42
MEMBERS: Chairman Jaquet, Vice Chairman Ellsworth, Representative Shirley
**ABSENT/
EXCUSED:**
GUESTS: Roger Hales, Idaho Bureau of Occupational Licenses; Cherie Simpson, Certified Shorthand Reporters; Carrie Gilstrap, Certified Shorthand Reporters

Chairman Jaquet called the meeting to order at 2:00 p.m.

Docket No. 49-0101-1001: **Roger Hales**, Idaho Bureau of Occupational Licenses, was before the subcommittee for a follow-up to the question on paragraph "d" of **Docket No. 49-0101-1001, 400.02.d** (See minutes of January 17, 2011)

Chairman Jaquet informed the Subcommittee and those in attendance that she had spoken with **Dennis Stevenson**, Administrative Rules Coordinator, who stated that if the legislators removed part of paragraph "d", the entire paragraph would have to be deleted from the RS. However, the rest of the proposed changes could remain intact.

After collaboration, Subcommittee members, Mr. Hales and the attending court reporters, decided that removal of paragraph "d" would not harm the proposal.

MOTION: **Rep. Ellsworth** moved to recommend approval, with the exception of paragraph "d", of **Docket 49-0101-1001** by the full committee; **motion carried by voice vote.**

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

Representative Wendy Jaquet
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
KILLEN SUBCOMMITTEE
Upon Adjournment of the Full Committee
Room EG49 via EG07
Wednesday, January 19, 2011

DOCKET NO.	DESCRIPTION	PRESENTER
	Approval of minutes from January 13, 2011	
06-0101-1001	Rules of the Board of Correction Proclamation Rule	Lorenzo Washington, Policy Coordinator Department of Corrections

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman William Killen
Vice Chair Christy Perry
Rep Pete Nielsen

COMMITTEE SECRETARY

Jean Vance
Room: EW56
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MINUTES
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
KILLEN SUBCOMMITTEE**

DATE: Wednesday, January 19, 2011

TIME: 2:30 P.M.

PLACE: Room EG49 via EG07

MEMBERS: Chairman Killen, Representatives Nielsen, Perry

**ABSENT/
EXCUSED:**

GUESTS: Lorenzo Washington, Policy Coordinator, Idaho Department of Corrections; Paul Panther, Deputy Attorney General, Idaho Department of Corrections

Meeting was called to order at 2:33 p.m. by **Chairman Killen**.

MOTION: **Rep. Nielsen** moved to approve the minutes of the January 13, 2011, meeting as written. **Motion carried on voice vote.**

Docket No. 06-0101-1001: **Mr. Washington** explained the unique rule making process which applies to the Idaho Department of Corrections, and explained how that process differs from that of other agencies.

Mr. Washington reviewed the proposed rules changes with the committee. In response to some recent applications, Idaho Department of Corrections (DOC) Board wants the Director to have the authority to grant a Meritorious Reduction of Sentence in narrowly defined instances.

In response to committee questions, **Mr. Panther** explained that Idaho Code §2101-D has the same verbiage as the rule. He noted that the Idaho Uniform Sentencing Act of 1986 did away with time off for good behavior. Instead, the courts were able to give offenders and undeterminate sentence on top of a "fixed" sentence. This rule would allow the Director the option of granting a reduction in sentence to an offender who "has completed an extraordinary act of heroism at risk to his or her own life; or for outstanding service to the State of Idaho which results in the saving of lives, prevention of destruction of major property loss during a riot; or the prevention of an escape from a correctional facility".

Rep. Perry noted the rule does not address who is able to refer an offender for the reduction of sentence. **Mr. Washington** stated the DOC is in the process of developing Standard Operating Procedures to outline the process. Because of the unique rule making process enjoyed by the DOC, once the procedures are finished, the rules can be updated and published.

MOTION: **Rep. Perry** moved to recommend approval of **Docket No. 06-0101-1001** to the full committee. **Motion carried on voice vote.**

There being no further business to come before the committee, the meeting was adjourned at 2:58 p.m.

Representative William Killen
Chair

Jana Filer
Secretary

AMENDED AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, January 25, 2011

Docket No.	DESCRIPTION	PRESENTER
	Report from the Bolz Subcommittee on Rules	Rep. Bolz
	<u>Rules from the Idaho State Police</u> (approved by subcommittee)	
11-0301-1001	Pending rule governing alcohol testing	
11-0501-0902	Pending rule governing licensed alcohol beverage premise	
11-1001-1001	Pending rule governing public safety and security information system	
11-1101-1002	Pending rule governing Idaho Peace Officer Standards and Training (POST)	
11-1102-1001	Pending rule Idaho POST for juvenile detention officers	
11-1103-1001	Pending rule governing Idaho POST for juvenile probation officers	
11-1104-1001	Pending rule governing Idaho POST for correction officers and adult probation and parole officers	
11-1105-1001	Pending rule governing Idaho POST for Idaho Department of Juvenile Corrections direct care staff	
11-1106-1001	Pending rule governing Idaho POST for misdemeanor probation officers	
	Report from Jaquet Subcommittee on Rules	Rep. Jaquet
	<u>Rules from the Idaho AG, Industrial Commission and Certified Shorthand Reporters</u> (approved by subcommittee)	
04-1101-1001	Pending rule governing the administrative procedure of the AG	
17-0501-1001	Pending rule governing Crime Victims Compensation Act	
49-0101-1001	Pending rule governing Idaho Certified Shorthand Reporters Board	
	Report from Killen Subcommittee on Rules	Rep. Killen
	<u>Rules from the Idaho Board of Corrections and the Idaho Board of Juvenile Corrections</u> (approved by subcommittee)	

- 05-0101-1001** Pending rule governing immediate notice to parent or guardian
- 05-0105-1001** Pending rule governing reintegration providers
- 06-0101-1001** Board of Correction Proclamation Rule
- [H26](#) To Increase a Certain Fee to be Deposited in POST Fund William Flink, POST
- [H27](#) Assault or Battery Upon Certain Personnel Maj. Wills

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Ellsworth
Vice Chair Luker	Rep Bateman
Rep Smith(24)	Rep McMillan
Rep Nielsen	Rep Perry
Rep Shirley	Rep Sims
Rep Hart	Rep Burgoyne
Rep Bolz	Rep Jaquet
	Rep Killen

COMMITTEE SECRETARY

Jean Vance
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 25, 2011
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne (Herzfeld), Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: William Flink, Division Administrator, POST Academy; Sharon Lamm, POST; Ann Cronin, Idaho State Police; George Gutierrez, Industrial Commission; Fairy Hitchcock, Hitchcock Family Advocates; Roger Hales, Counsel for Occupational Licensing for the State of Idaho; Paul Panther, Office of AG; David Hahn, Division of Financial Management; Maj. Kedrick Wills, Idaho State Police; Matthew Gauette, Idaho State Police Forensic Services; Tyler Mallard, Governor's Office; Max Pond, Risch Pisca; Wayne Denny, Emergency Medical Services Bureau; Lorenzo Washington, Idaho Department of Corrections; Cindy Schiller; Lt. Bob Clements, Idaho State Police, Alcohol Beverage Control

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

Chairman Wills explained that recommendations from subcommittees on rules was before the full-committee, therefore, **Vice Chairman Luker** would conduct that portion of the meeting.

Vice Chairman Luker recognized **Rep. Bolz** for a report from his subcommittee on Rules from the Idaho State Police.

MOTION: **Rep. Killen** moved to approve **Docket No. 11-0301-1001**, rule governing alcohol testing; **motion carried on voice vote.**

MOTION: **Rep. Shirley** moved to approve **Docket No. 11-0501-0902**, rule governing licensed alcohol beverage premise; **motion carried on voice vote.**

MOTION: **Rep. Bolz** moved to approve **Docket No. 11-1001-1001**, rule governing public safety and security information system; **motion carried on voice vote.**

MOTION: **Rep. Killen** moved to approve **Docket No. 11-1101-1002**, rule governing POST; **motion carried on voice vote.**

MOTION: **Rep. Bolz** moved to approve **Docket No. 11-1102-1001**, rule governing Idaho POST for juvenile detention officers; **motion carried on voice vote.**

MOTION: **Rep. Shirley** moved to approve **Docket No. 11-1103-1001**, rule governing Idaho POST for juvenile probation officers; **motion carried on voice vote.**

MOTION: **Rep. Shirley** moved to approve **Docket No. 11-1104-1001**, rule governing Idaho POST for correction officers and adult probation and parole officers; **motion carried on voice vote.**

MOTION: **Rep. Bolz** moved to approve **Docket No. 11-1105-1001**, rule governing Idaho POST direct care staff **motion carried on voice vote.**

MOTION: **Rep. Bolz** moved to approve **Docket No. 11-1106-1001**, rule governing Idaho POST misdemeanor protection officers; **motion carried on voice vote.**

Vice Chairman Luker recognized **Rep. Jaquet** for a report from her subcommittee on Rules from the Idaho Office of the Attorney General, Industrial Commission, and Certified Shorthand Reporters.

MOTION: **Rep. Shirley** moved to approve the minutes of the Jaquet subcommittee of January 17 and January 19; **motion carried on voice vote.**

MOTION: **Rep. Killen** moved to approve **Docket No. 04-1101-1001**, rule governing administration procedure of Idaho Attorney General; **motion carried on voice vote.**

MOTION: **Rep. Shirley** moved to approve **Docket No. 17-0501-1001**, rule governing Crime victims Compensation Act; **motion carried on voice vote.**

MOTION: **Rep. Jaquet** moved to approve **Docket No. 49-0101-1001**, with the exception of subsection 400.02 d, rule governing Idaho Certified Shorthand Reporters; **motion carried on voice vote.**

Vice Chairman Luker recognized **Rep. Killen** for a report from his subcommittee on Rules from the Idaho Board of Corrections and the Idaho Board of Juvenile Corrections.

MOTION: **Rep. Perry** moved to approve the minutes of January 11; **motion carried on voice vote**

MOTION: **Rep. Perry** moved to approve **Docket No. 05-0101-1001**, rule governing immediate notice to parent or guardian; **motion carried on voice vote.**

MOTION: **Rep. Perry** moved to approve **Docket No. 05-0105-1001**, rule governing reintegration providers; **motion carried on voice vote.**

MOTION: **Rep. Perry** moved to approve **Docket No. 06-0101-1001**, rule governing Board of Correction; **motion carried on voice vote.**

Vice Chairman Luker turned the meeting back to **Chairman Wills**.

Chairman Wills thanked the vice chairman and the subcommittees for their performance in the legislative process.

H 26: **William Flink**, Division Administrator, POST Academy; appeared before the committee to present **H 26**. In response to questions posed by the committee during previous testimony, Mr. Flink stated that revenues from fines and convictions in fiscal year 2009-2010 was down nearly 14 percent and that the Idaho State Police revenue projections for 2011 were down by 20 percent. The agency would like the revenues to be at 2009 levels but will, instead be \$120,000 short. POST will be cutting funding for instruction, investigators and materials. The decline in revenues is due to a decline in convictions. Although 96 percent of infraction fines are collected; the felony infractions are 40 percent of collections. In answer to follow-up questions from the committee about inability to collect fines from those convicted of crimes, Mr. Flink stated that legislation could bring about mechanisms to improve those issues.

Patricia Tobias, Administrative Director of Courts, stated that the Idaho Code sets all the fees and how they are to be collected. In tracking the payments and the judicial order, it shows that defendants may have five years to pay the fine. Also, the Chief Justice my order that the Idaho State Tax commission take the monies.

In response to further questions from the committee inquiring about future fee related requests coming from the courts for the 2011 session. Ms. Tobias said there could be a request for raising the pre sentence fee. At present the standard for a court cost is \$130.50.

Chairman Wills encouraged the committee to return to the purpose of the fee increase prior to making a decision on the bill which is to provide safety for and to educate police officers.

MOTION: **Rep. Smith** moved to send **H 26** to the floor with a **DO PASS** recommendation.

ROLL CALL VOTE: **Chairman Wills** requested a roll call vote. **Motion passed, 9 aye and 6 nay.** **Voting in favor** of the motion: Reps. Smith, Shirley, Bolz, McMillan, Perry, Burgoyne, Jaquet, Killen, Wills. **Voting in opposition** of the motion: Reps. Luker, Nielsen, Hart, Bateman, Ellsworth, Sims. **Chairman Wills** will appoint a sponsor in the near future.

H 27: **Maj. Kedrick Wills**, Idaho State Police, appeared before the committee to present **H 27**. In response to committee questions, **Maj. Wills** stated that to include the two classes of employees to the existing law would not make them eligible for additional benefits nor would it grandfather in past employees.

MOTION: **Rep. Smith** moved to send **H 27** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Bateman** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 2:38 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AMENDED #2 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, January 27, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>RS20182</u>	Relating to the judicial council; to provide additional duties of the judicial council and the supreme court and to make technical corrections	Michael Henderson, Idaho Supreme Court, Legal Counsel
<u>RS20183</u>	Relating to dispositions of fines	Michael Henderson, Idaho Supreme Court, Legal Counsel

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Jean Vance
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email: jvance@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, January 27, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne (Herzfeld), Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: Michael Henderson, Idaho Supreme Court Legal Counsel; Lance Clow, City of Twin Falls

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

MOTION: **Rep. Herzfeld** moved to approve the Bolz subcommittee minutes of January 18, and to approve the January 19, minutes of the full committee. **Motion carried on voice vote.**

RS 20182: **Michael Henderson**, Idaho Supreme Court Legal Counsel, stated that the legislation was a formality. The procedure for the courts had been followed for some time. Legislation would make it a matter of law. He proposed amending Idaho Code, Section 1-2101, to provide additional duties of the Judicial Council and the Supreme Court to make technical corrections. In Idaho Code, Section 67-3502, the change would require the Judicial Department to include in its filing the budget request of the Judicial Council as submitted by the Judicial Council.

In response to questions from the committee, Mr. Henderson stated, that to his knowledge, the court budgets have been set and have remained the same for several years.

MOTION: **Rep. Killen** moved to introduce **RS 20182**. **Motion carried on voice vote.**

RS 20183: **Michael Henderson**, Idaho Supreme Court Legal Counsel, stated that the legislation was to amend Section 19-4708, Idaho Code, to allow the Supreme Court to enter into certain contracts for collection services for debts owed to courts.

In response to questions from the committee regarding a statewide collection for all courts, Mr. Henderson, replied that he would research that question with the Administrative Director of Courts.

MOTION: **Rep. Ellsworth** moved to introduce **RS 20183** with the following change to the SOP, Fiscal Note, line 2: change the words "in creased" to "in increased". **Motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:47 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AMENDED #3 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, February 01, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>RS20157C1</u>	Relating to uniform controlled substances; uses of Tetrahydrocannabinols	Representative Richard Wills, Chairman House Judiciary, Rules and Administration

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 01, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: Maj.Kedrick Wills, Idaho State Police; Matthew Gaumette, Idaho State Police Forensics Services; Debbie Field, Administrator, Office of Drug Policy; Max Pond, Risch Pisca; Dustin Aukez, IdahoReporter.com; Mark Johnston, Board of Pharmacy; Gayle Harris, Office of Drug Policy; Catlin Zak, Office of Drug Policy; David Sincerbeaux, Idaho State Police Chemist; Cpt.Clark Rollins, Idaho State Police; Ty Brennan KTVB -TV; Holly Koole, Idaho Prosecuting Attorneys Association

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

MOTION: **Rep. Bolz** moved to approve the minutes of the January 25, 2011. **Motion carried on voice vote.**

RS 20157C1 **Chairman Wills** turned the meeting over to **Vice Chairman Luker** who called on Chairman Wills to present **RS 20157C1**.

Chairman Wills stated that the Idaho State Board of Pharmacy recognized the dangers of "Spice" and passed a rule declaring the chemical combination illegal. Chairman Wills explained that the resolution would make permanent the temporarily outlawed chemicals, which can be used to make a synthetic marijuana. For that purpose the proposed legislation should go into effect immediately.

Chairman Wills assured the committee that pain medications which mimic medical marijuana are not illegal. Responding to a question regarding lab testing, he stated that the law enforcement laboratory has the capability to handle the testing of these chemical compounds.

MOTION: **Rep. Nielson** moved to introduce **RS 20157C1**. **Motion carried on voice vote.**

Vice Chairman Luker turned back the meeting to **Chairman Wills**.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:41 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, February 03, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>RS20273</u>	Relating to peace officer	Bill Roden, attorney, Coeur d' Alene Tribe
<u>H 67</u>	Relating to Disposition of Fines	Michael Henderson, Supreme Court Legal Counsel
<u>H 68</u>	Relating to Judicial Council	Michael Henderson, Supreme Court Legal Counsel

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 03, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: Michael Henderson, Idaho Supreme Court Legal Counsel; Bill Roden, Coeur d' Alene Tribe Legal Counsel; Helo Hancock, Legislative Director Coeur d' Alene Tribe; Dustin Hurst, IdahoReporter.com; Dave Goins, Idaho News Service; Zack Hange, Capital West; Sarah Fuhrihan, Roden Law Firm; Mike Kane, Kane and Associates; McKinsey Miller, Gallatin Public Affairs

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

MOTION: **Rep. Bolz** moved to approve the minutes of January 27; **motion carried on voice vote.**

MOTION: **Rep. Bolz** moved to approve the minutes of February 1; **motion carried on voice vote.**

RS 20273: **Bill Roden**, Coeur d' Alene Tribe Legal Counsel, explained the history of the legislation in **RS 20273**. In the 2010 Legislative Session, the content was similar but opposition by other State Agencies caused the sponsors to withdraw the bill. In reconstructing the bill for 2011 the purpose remained the same: to provide an opportunity for the members of the Coeur d' Alene Tribe and all people within the exterior boundaries to be under the authority of the tribal peace officers. In January 2011 the legislation came to be known as **H 33**. When the Idaho Sheriffs Association opposed Section 1 of **H 33**, which described the definition of a peace officer as found in the Idaho Code, the sponsors asked that bill be held in committee. That definition being deleted, the legislation is before the committee as **RS 20273**.

Mr. Roden reported that the present legislation included a requirement for tribal peace officers to be educated by POST. A provision for cross-deputizing was not included. In addition, there would be no liability to a county or city if a violation was committed by a tribal peace officer. Those arrested could only be processed before Idaho state magistrates in the county where the offense occurred, the tribal law enforcement officer must work with and assist the county sheriff and the prosecuting attorney in the investigative and judicial requirements concerning the arrested person, and the Indian tribe appointing such officers must maintain insurance to cover liability.

In response to questions, **Mr. Roden** assured the committee that \$2,000,000.00 liability insurance had been carefully crafted and was currently in place, with notification going directly to the Idaho Attorney General if a tribal violation occurred and that the authority of that officer was to be immediately annulled.

MOTION: **Rep. Burgoyne** moved to introduce **RS 20273**; **motion carried on voice vote.**

H 67: **Patricia Tobias**, Administrative Director of the Courts, said the proposed legislation authorized clerks of the district court, with the approval of the administrative district judge, to enter into contracts with collection services for the collection of debts owed to the courts in criminal cases including fines, court costs, fees and restitution to victims of crimes.

In response to questions from the committee, **Ms. Tobias**, stated that some 16 counties were using collection agencies with varying degrees of efficiency and were paid by all manner of payment.

MOTION: **Rep. Smith (24)** moved to send **H 67** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Sims** will sponsor the bill on the floor.

H 68: **Patricia Tobias**, Administrative Director of the Courts, stated that the bill provided the Judicial Council to prepare its own annual budget request without any changes, the procedure which is currently followed. Ms. Tobias assured the committee that requiring this procedure by statute would ensure the continued independence and impartiality of the Judicial Council.

MOTION; **Rep. Ellsworth** moved to send **H 68** to the floor with **DO PASS** recommendation. **Motion carried on voice vote. Rep. McMillan** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:25 p.m.

Representative Wills
Chair

Jean Vance
Secretary

**AMENDED #3 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, February 07, 2011**

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1048</u>	Relating to the office of State Appellate Public Defender	Senator Denton Darrington
<u>S 1003</u>	Relating to the Juvenile Corrections Act; to revise the standards for the detention of juveniles	Sharon Herrigfeld, Director of Juvenile Corrections
<u>S 1004</u>	Relating to the Juvenile Corrections Act; to revise provisions relating to reimbursement	Sharon Herrigfeld, Director of Juvenile Corrections
<u>H 33</u>	Relating to peace officers	Chairman Wills
<u>H 86</u>	Relating to uniform controlled substances; uses of Tetrahydrocannabinols	Chairman Wills
<u>RS20305</u>	Relating to uniform controlled substances; uses of Tetrahydrocannabinols	Debbie Field, Director, Office of Drug Policy
<u>RS20232C2</u>	Relating to uniform controlled substances; uses of synthetic stimulants known as (Bath Salts)	Debbie Field, Director, Office of Drug Policy
<u>RS20292</u>	Relating to qualifications for County Sheriffs	Mike Kane, Idaho Sheriffs Association
<u>RS20078C2</u>	Relating to exemptions for married women	Rep. Grant Burgoyne

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Killen
Rep Killen
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne

Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Monday, February 07, 2011
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** NONE
- GUESTS:** Dustin Hurst, IdahoReporter.com; Fairy Hitchcock, Hitchcock Family Advocates; Jan Sylvester; Roger Seiber, Capitol West; Debbie Field, Office of Drug Policy; Gayle Hines, Office of Drug Policy; Caitlin Zak, Office of Drug Policy; Mike Kane, Idaho Sheriffs Association; Helen Huff, Idaho Society of Addiction Medicine; Zack Hauge, Capitol West; Jerry Deckard, Capitol West; Cap. Rollins, Idaho State Police; Kevin Hodges, Idaho State Police; Marc Johnston, Board of Pharmacy; Kara Veit, Idaho Public Television; Corinna Owsley, Idaho State Police; Director Steve Jett, Canyon County Detention Center
- Chairman Wills** called the meeting to order at 1:35 p.m.
- S 1048:** **Sen. Denton Darrington** presented **S 1048**, which would change the language that created the State Appellate Public Defender (SAPD). He stated that the purpose for the language no longer existed and that the Governor needed to be able to appoint the SAPD the same as other appointees.
- MOTION:** **Rep. Jaquet** moved to send **S 1048** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Nielsen** will sponsor the bill on the floor.
- S 1003:** **Sharon Herrigfeld**, Director of Juvenile Corrections, explained that the bill would amend Section 20-518 of the Idaho Code to allow juveniles, who have been waived to adult court, to be placed in the general population of juvenile detention centers rather than be sight and sound separated from other juveniles or from adults in county jail facilities. The bill was prompted by concerns of recently incarcerated juveniles, ages 12 through 14 years old.
- In response to a question, **Director Herrigfeld** stated that if the district court judge does not order a juvenile, charged as a adult, into a juvenile detention center, the default of the court is to place the juvenile in the adult jail.
- Steve Jett**, Director of Canyon County Detention Center, appeared before the committee to speak in favor of **S 1003**. He related the effect of separation on the mental health of early teens in the adult facilities. Education concerns are also present when only one instructor is responsible for all juvenile learning.
- MOTION:** **Rep. Bateman** moved to send **S 1003** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Hart** will sponsor the bill on the floor.
- S 1004:** **Sharon Herrigfeld**, Director of Juvenile Correction, presented **S 1004** which states that the parents should be financially responsible for juveniles, who are in the custody of the Idaho Department of Criminal Justice, past the age of 18. Since the Juvenile Criminal Administration allows juvenile offenders to remain in the custody of the department until age 21, Section 20-524, of the Idaho Code, should clarify that parents are still responsible for ongoing costs.

Members of the committee raised questions about the legality of legislating financial burden on parents when 18 year-olds are considered legal adults in today's society. Concern was also stated that there were "innocent" parents as well as those parents who may have contributed to the problems of their juvenile.

Nancy Bishop, Deputy Attorney General for Juvenile Correction, appeared before the committee in favor of **S 1004** and answered committee questions concerning the juvenile right to due process and legal counsel.

MOTION: **Rep. Luker** moved to **HOLD S 1004** in committee. **Motion carried on voice vote.**

H 33; H 86: **Chairman Wills** presented **H 33** and **H 86** for the committee's official disposal.

MOTION: **Rep. Luker** moved to **HOLD H 33** in committee. **Motion carried on voice vote.**

MOTION: **Rep. Nielsen** moved to **HOLD H 86** in committee. **Motion carried on voice vote.**

RS 20305: **Chairman Wills** explained that **RS 20305** had been withdrawn by the sponsor and would appear before the committee later in the week.

RS 20232C2: **Debbie Field**, Director of the Office of Drug Policy, explained that the proposed legislation deal with a new recreational, synthetic, hallucinogenic drug which is marketed as "bath salts." The drug produces similar "highs" as those found in methamphetamine, ecstasy and cocaine but avoids prosecution under the Federal Analogue Act. This drug compound is sold in 500 mg to 1 gram packages for around \$35 in local smoke shops or in bulk on the Internet. Side effects include extreme hallucinations, paranoia, suicidal thoughts, rapid heart rate, insomnia, and has been described as highly addictive. Deaths have occurred nationally as a result of injecting these compounds. Ms. Field stated that an emergency exists and legislation banning the substances known as "bath salts" was urgent.

Corrina Owsley, Idaho State Police Forensic Chemist, stated that the "designer drug" began appearing in Idaho 3 to 4 months ago. Methodrone and MDPV are commonly the backbone of this compound but different atoms are substituted and attached in an attempt to evade the Controlled Substance Act. She assured the committee that all of the substances listed in the legislation were necessary because of the rapidity with which individuals change the mixtures to produce similar hallucinogenic effects.

MOTION: **Rep. Nielsen** moved to introduce **RS 20232C2**; **motion carried on voice vote.**

RS 20292: **Mike Kane**, Idaho Sheriffs Association, stated that the bill was created to set standards for persons who desired to run for county sheriff. According to Mr. Kane, Idaho's law states that the county sheriff and the prosecuting attorney are the chief law enforcement officers in each county with primary authority to enforce the criminal laws. He explained that county sheriffs are the only law enforcement officers in the state that do not have to be POST certified. Mr Kane pointed out that present day specialized crimes and diverse populations in the state of Idaho call for a change in the present law. The change would include: the candidate for sheriff to hold a current basic POST certificate or the equivalent from another state, or be a retired peace officer with experience. If the candidate did not meet the prior qualifications, that person could qualify with ten years experience and an intermediate POST certificate. All current sheriffs would be exempt from the new requirements and would be "grandfathered in."

In response to questions from the committee, **Mr. Kane** explained that any sheriff could be "grandfathered in " as long as he or she wished to run for office. He also explained, that military police experience would qualify, that a person could self-sponsor to enter POST, and that law enforcement education could be acquired in a variety of ways. There were also concerns from the committee that at the county level the nomination committee have more freedom to choose a candidate.

MOTION: Rep. Smith (24) moved to introduce **RS 20292; motion carried on voice vote.**

RS 20078C2: Rep. Burgoyne presented **RS 20078C2** which changes an Idaho law that has existed since 1882. It provides that the separate property of a wife is exempt from seizure to satisfy the debts of her husband, but the statute does not have similar protections for the separate property of a husband. On June 18, 2010, the Idaho Supreme Court declared the statute unconstitutional because "it treats husbands and wives unequally." Rep. Bougoyne stated that the bill would provide for equal treatment of both husbands and wives by providing that their separate property may not be seized to satisfy the separate debts of their spouses. The bill also narrows the definition of separate property in order to be consistent with current law defining what is community and separate property.

MOTION: Rep. Smith moved to introduce **RS 20078C2; motion carried on voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:52 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AMENDED #2 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, February 09, 2011

<u>SUBJECT</u>	<u>DESCRIPTION</u>	<u>PRESENTER</u>
<u>RS20305C1</u>	Relating to uniform controlled substances; uses of Tetrahydrocannabinols	Debbie Field, Director, Office of Drug Policy
<u>RS20312</u>	Relating to the Juvenile Corrections Act	Judge John Varin, Idaho Supreme Court
<u>RS20267</u>	Relating to motor vehicles and rules of the road	Rep. Marv Hagedorn
<u>RS20346</u>	Providing for printing the session laws	Rep. Richard Wills
<u>H 111</u>	Relating to peace officers	Bill Roden, Coeur d' Alene Legal Counsel

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Jean Vance
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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 09, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: SEE ATTACHED

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

RS 20312C1 **Debbie Field**, Director of the Office of Drug Policy, explained that to create safe regulations for the public concerning Tetrahydrocannabinols, the synthetic drugs needed to be classified in Schedule 1. **RS 20312C1**, continues what began six months ago when the Board of Pharmacy declared a ban on the compounds called Spice, the synthetic drug that mimics the effects of Cannabis.

Corrina Owsley, Idaho State Police Forensic Chemist, stated there were seven specific compounds that were the backbone structure of the synthetic cannabinoids, but there were 83 different compounds that could be created by substitution of a mere atom of another ingredient.

Rep. Shirley moved to introduce **RS 20312C1**; **motion carried on voice vote.**

RS 20312: **Judge John Varin**, Chairman of the Juvenile Justice Advisory Team of Magistrate Judges, stated that **RS 20312** seeks to establish standards for the evaluation of juvenile competency and restoration to competency. Present law does not change the legal standard for the juvenile when it is alleged within the jurisdiction of the Juvenile Competency Act that he or she may not be able to assist in his or her own defense. It is the same under the adult statute, which fails to take into consideration unique issues which are common in juvenile cases. The adult statute also mandates the defendant be committed, and restoration services be provided in an inpatient facility. These services are often unnecessary in juvenile cases. The legislation provides for greater flexibility in evaluations of juveniles and for substantial savings when a juvenile's needs can be met within community based programs.

MOTION: **Rep. Ellsworth** moved to introduce **RS 20312**; **motion carried on voice vote.**

RS 20346C1: **Bonnie Alexander**, Chief Clerk for the Idaho House of Representatives, presented a concurrent resolution which would provide for the printing of the Session Laws for the House and Senate for the next two regular sessions. She stated that the resolution provides for a contract with the Joint Printing Committee and Caxton Printers. The estimated costs for printing the Session Laws for 2011 and 2012 would be \$30,000 per year from the Legislative Fund.

MOTION: **Rep. Burgoyne** moved to send **RS 20346C1** directly to the 2nd Reading Calendar. **Motion carried on voice vote.** **Chairman Wills** will sponsor the bill on the floor.

RS 20267: **Rep. Hagedorn** explained that **RS 20267** provides for a \$75 fine if a motorist is stopped by a law enforcement officer for distracted driving while using an electronic handheld device.

Concerns from the committee were related to subjectivity on the part of law enforcement officers, filling up the courts with minor infractions, and the possibility of adding the legislation to the existing inattentive driving statute. Concern also centered around the definition and breadth of electronic devices contained in the proposed legislation.

In response to committee questions, **Rep. Hagedorn** stated that 90% of the "pull overs" for distracted driving were typically an educational session. The proposed legislation would merely be a fine and would have different penalties than inattentive driving. He also explained that the available data is for driver distraction with handheld devices and not with hands-free electronic devices.

MOTION:

Rep. Smith (24) moved to introduce **RS 20267**; **motion carried on voice vote.**

HB 111:

Helo Hancock, Legislative Director of the Coeur d' Alene Tribe, appeared before the committee to present **HB 111** relating to tribal peace officers. After giving a statistical overview of law enforcement on the Coeur d' Alene reservation, Mr. Hancock explained several problems that brought the issue of tribal law enforcement to the Legislature. In Idaho, tribal police only have criminal jurisdiction over Indian offenders, which causes difficulties in enforcing laws on non-tribal offenders. Eighty five percent of the reservation population is non-Indian which causes tribal police to have increased interaction with non-tribal residents, and also causes tribal police to wait extended periods of time for county or state deputies to issue the citations for non-tribal offenders.

Mr. Hancock stated that solutions to these problems are found in cross deputization agreements, laws that authorize enforcement of state law by qualified tribal peace officers, and in the federal remedy as set forth in the Tribal Law and Order Act of 2010. The proposed legislation was necessary because of failed negotiations into cross deputization, because of interpersonal and intrapersonal problems between 14 counties and 5 reservations; and because the legislation would be less demanding logistically and economically than the federal alternative.

In response to questions from the committee, **Mr. Hancock** stated that the length of time for holding an offender is called "a reasonable time." Also, that if tribal peace officers were made federal marshals, then any violation by non-tribal persons would be a federal offense.

Bill Roden, Coeur d' Alene Tribe Legal Counsel, referred to the handout before the committee members and explained the changes between **H33** and **H111**. He stated objections against **H 33** from the Idaho Sheriffs Association initiated some of the changes and that need for clarification initiated other changes. The sponsors of **H 33** requested that it be held in committee. Therefore, **H 111** was before the committee.

Mr. Roden responded to questions by the committee stating that concerns of constitutionality of the proposed legislation were unfounded. **Chairman Wills** assured the committee that the Idaho Attorney General held **H 111** constitutional.

Responding to committee concerns, prompted **Mr. Roden** stated that if any act constitutes a violation, the tribal peace officer must cite only into state court. In response to the question regarding the differences between an offense in tribal law and in state law, Mr. Roden answered that the bill will make the differences a mute point, and that infractions which are punishable, even in tribal law, will be overridden by state law.

In response to questions regarding the jurisdiction over Lake Coeur d' Alene, **Mr. Roden** stated the lake belonged to the Tribe and the hunting, fishing, use of docks and other uses of the lake fall under tribal law. To the committee's questions about proper insurance coverage involving multiple liability claims, Mr. Roden said the Idaho Tort Claims Act requires that counties carry a maximum of \$500,000 in liability insurance. The Tribe is insured for \$2,000,000. He also stated there were limits on what a plaintiff could collect if the accused was a state agency.

Robert L. Kirts, Benewah County Sheriff, testified in opposition to **H 111**. He stated that tribal persons were exempt from the statutes of the Idaho Code and that Idaho citizens rights were at stake. Sheriff Kirts said that to make the legislation equitable, it should be reciprocal. He explained that the county deputies should be able to arrest Indians if tribal peace officers could arrest non-Indians.

In response to a question from the committee regarding the breakdown of the 2010 negotiations between Benewah County and the Coeur d' Alene Tribe, **Sheriff Kirts** stated that the verbal agreement was that non-tribal persons would not be cited into federal or tribal court. Additional questions by the committee related to the immediate de-certification by POST of any officer not following the Idaho law. Sheriff Kirts responded that there was not a crime crisis on the reservation and that the underlying motive of the proposed legislation was to get non-tribal persons into the tribal courts. He also cited a petition with 1300 signatures in opposition to "the State of Idaho delegating law enforcement power to the Coeur d' Alene Tribe or any entity which does not answer to the people governed", as well as opposition to **H 111** by every elected Benewah County official.

Douglas Payne, Benewah County Prosecuting Attorney, spoke in opposition to **H 111**. He told the committee that the proposed legislation was a consideration of compromising the state powers by the federal powers. He stated the State of Idaho would no longer have exclusive police powers over our citizens if **H 111** was passed. Mr. Payne cautioned the committee not to mix civil and criminal law. He stated that the biggest problems on the reservation were felonies and the arrest authority would not address those crimes.

In responding to a question from the committee, **Mr. Payne** stated that the issue on tribal court violations being imposed on non-tribal offenders, "stands silent" in the bill and will lead to abuse of peace officer powers. Additional questions from the committee were in regard to civil citations currently being issued to non-tribal persons. Mr. Payne said his advice to those receiving the citations was to ignore them. He also cited the lack of public access to tribal court records.

Rocky Watson, Sheriff of Kootenai County, appeared before the committee in favor of **H 111**. He told the committee members that in Kootenai County the tribal peace officers and the county sheriff's deputies had a good working relationship. Tribal officers were cross-deputized and the Kootenai County housed non-tribal offenders in the county jail. Since all tribal violations went through the county traffic court, the tribal court records were open to the public. Sheriff Watson stated the county has better law enforcement service because the parties work together. He said that when a call for assistance came into the county dispatch, the closest peace officer responded to the call, regardless of their original affiliation. He assured the committee that Kootenai County also works harmoniously with the peace officers of the Coeur d' Alene Tribe.

Chris Goetz, Clearwater County Sheriff, spoke in opposition to **H 111**. He stated that in Clearwater County, county deputies and tribal peace officers have worked separately, but harmoniously, for 13 years.

McCoy Oakman, Chairman of the Nez Perce Tribal Executive Committee, expressed support for **H 111**. He stated that the proposed legislation would answer the complex jurisdictional problems that constantly arose for tribal law enforcement within reservations, especially when criminals are not tribal members but were subject to arrest. As an additional insight into what is available and workable for tribal officers where drug related crimes are present, Mr. Oakman gave the example of the Nez Perce Tribal Police Department who have entered into a Memorandum of Understanding (MOU) with the State of Idaho, the YMCA, and the Quad City Drug Task Force to address problems of drug endangered children and domestic violence.

Chief Allen, Chief of the Coeur d' Alene Tribe, **Laura Lamatia**, and **Christina Crawford** spoke in favor of **H 111**. They were concerned with safety issues. Chief Allen also believed the law would remedy minor violations keeping them out of federal court.

Mike Kane, Idaho Sheriffs Association, stated that **H 111** had global implications for the state of Idaho and for the federal government who makes the laws governing the Indian Tribes. Because of the written and unwritten complexities, he opposed the proposed legislation.

Daryl Wheeler, Sheriff of Bonner County, stated that there needed to be accountability to an elected official and that **H 111** did not provide for that accountability. He explained the need to return to MOUs as an answer for the problems that existed in Benewah County.

Brad Hampton, a POST certified Coeur d' Alene tribal peace officer, reported his frustration with limited power on a reservation of 345,000 acres with 85% of the residents being non-tribal.

F. Randy Kline, stated that the issue should be settled locally and not at the state level. He favored the use of MOUs. **Jim Jeffreys** of Power County also favored the MOU approach to civil citations.

Rep. Harwood stated his opposition to **H 111**. His concerns included county and state accountability, state sovereignty, and the creation of a new law enforcement office. He was also concerned about the distrust that presently exists between the Tribe and the county law enforcement authorities. He stated that the 1973 US Supreme Court ruled tribal police cannot arrest or cite non-tribal members. He asked that **H 111** be held in committee.

Chief Teton, Shoshone Bannock Tribe, applauded the efforts of the Coeur d' Alene Tribe and was in support of **H 111**. He stated that the Sho-Ban Tribe sent their officers for federal law enforcement training. **Lee Wan Tyler**, also a Sho-Ban stated that the present hearing gave an opportunity for the committee to show leadership and vote in favor of **H 111**.

John Cantamesa, Shoshone County Commissioner, cited the economic condition which exists in Benewah County as a motivating factor behind the proposed legislation. In addition, he was concerned about public safety.

Phil Lambert of Benewah County explained that as a non-tribal person living on the reservation, he felt that it was a safe place to live and felt uncomfortable with tribal officers having authority over the non-tribal residents.

Todd Tondee, Kootneai County Commissioner, spoke in favor of **H 111**. He said the main issue was public safety and the issue was being muddled up with allegations. He stated that any violations of State Code would go to state court.

Mr. Roden concluded that the public safety issue was of upmost importance and the fear of no accountability by tribal police officers was unfounded. He stated that the county sheriffs hold authority over all peace officers.

MOTION: **Rep. Nielsen** moved to **HOLD H 111** in committee. Arguing in favor of the motion, **Rep. Smith (24)** said he did not believe the legislation would bring the opposing parties together. **Rep. Bolz** stated that the agreement needed to come from local parties, not from the State.

SUBSTITUTE MOTION: **Rep. Burgoyne** moved to send **H 111** to the floor with a **DO PASS** recommendation. He argued that the testimonies reinforced the unlikelihood of resolve between the two parties and that POST certification would help solve complexities of the issues. He stated that the Coeur d' Alene Tribe was surrendering some of its sovereignty to the State of Idaho and that there were valid reasons for the State to reach in and deal with the problems at the county level.

AMENDED SUBSTITUTE MOTION: **Rep. Ellsworth** offered an amended substitute motion to send **H 111** to **General Orders**. She argued that the immense effort put into the legislation should be allowed to continue until the few existing problems could be solved. Arguing against the motion, **Rep. Luker** said POST, because of constitutional issues, would non-certify the tribal peace officers and that sending the bill to general orders would result in transforming the nature of the ordinance.

ROLL CALL VOTE ON AMENDED SUBSTITUTE MOTION: Role call vote was requested on the amended substitute motion. The amended substitute motion to send **H 111** to General Orders **failed, 7 aye, 8 nay**. **Voting in favor** of the amended substitute motion: Reps. Shirley, Bateman, Ellsworth, Perry, Sims, Burgoyne, and Killen. **Voting in opposition** to the amended substitute motion: Reps. Luker, Smith, Nielsen, Hart, Bolz, McMillan, Jaquet, and Chairman Wills.

ROLL CALL VOTE ON SUBSTITUTE MOTION: **Chairman Wills** called for a vote on the substitute motion, to send **H 111** to the floor with a **DO PASS** recommendation. Roll call vote was requested on the substitute motion. Substitute motion **passed, 8 aye, 6 nay**. **Voting in favor** of the substitute motion: Reps. Shirley, Bateman, Ellsworth, Perry, Sims, Burgoyne, Jaquet, and Killen. **Voting in opposition** of the substitute motion: Reps. Luker, Smith, Nielsen, Hart, Bolz, and McMillan. **Reps. Sims** and **Burgoyne** will sponsor the bill on the floor. **Rep. Shirley** is a co-sponsor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 7:24 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, February 15, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>H 119</u>	Relating to uniform controlled substances; to identify additional substances to be classified in schedule1 (bath salts)	Debbie Field, Director, Office of Drug Policy
<u>H 139</u>	Relation to uniform controlled substances; to identify additional substances to be classified in schedule1 (Spice)	Debbie Field, Director, Office of Drug Policy
<u>H 121</u>	Relating to exemptions from attachment; relating to exemption of married women	Rep. Grant Burgoyne
<u>S 1014</u>	Relating to rape	Holly Koole, Idaho Prosecuting Attorneys Association
<u>S 1029</u>	Relating to the State Board of Correction; to provide certain employees with additional authority	Kevin Kempf, Department of Correction
<u>S 1030</u>	Relating to the State Board of Correction; certain research-based rehabilitative services	Shane Evans, Department of Correction
<u>S 1031</u>	Relating to the personnel system	Director Brent Reinke, Department of Correction
<u>S 1008</u>	Relating to the administrative director of the courts	Michael Henderson, Legal Counsel, Idaho Supreme Court
<u>S 1009</u>	Relating to the commencement of actions	Michael Henderson, Legal Counsel, Idaho Supreme Court

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth

Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 15, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: SEE ATTACHED

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

MOTION: **Rep. Bolz** moved to approve the minutes of February 7; **motion carried on voice vote.**

MOTION: **Rep. Burgoyne** moved to approve the minutes of February 9; **motion carried on voice vote.**

H 119: **Debbie Field**, Office of Drug Policy Director, presented samples of aroma-therapy bath salts and the "bath salts" synthetic drug sold in smoke shops as sensuality enhancers. She explained the ingredients in each sample of the bath salts were not for human consumption. However, the small samples from the body shop were free, while the equally small container of designer drug from the smoke shop sold for \$35.

Corrina Owsley, Idaho State Police Forensic Chemist, provided the committee a chart showing the molecular structure of the compound found in the smoke shop bath salts. She explained the process used when creating the variations of the drug. Ms. Owsley stated that manufacturers simply substitute cathinones to the existing compound in order to make them hallucinogenic.

Darren Hurst, School Resource Officer for the Meridian School District, stated that he had seen the long-term and the short-term effects of the "bath salt" drug. The user exhibits a racing pulse and dilated eyes (even 24 hours after ingesting the drug). He stated the user may also show an increased aggressiveness toward others. Mr. Hurst explained that the long term effects included addiction, dropping out of high school, or becoming a ward of the state.

In response to a question on ways of using the substance, **Mr. Hurst** explained that users crush the ingredients in order to smoke it or to snort it. They also eat it. He stated that most teen users did not have the knowledge or tools to melt down the ingredients and inject with a syringe.

Diane Anderson testified before the committee in opposition to **H 119**. She stated that she preferred public education to legislating bans. She said taxpayers could not afford the costs involved with legislation and enforcement, and that instead, parents should teach their teens about personal responsibility and the consequences of personal choice.

Col. Tim Kelly, Idaho National Guard, testified before the committee in support of **H 119**. He stated that the misuse of drugs continues to be a problem within the military. He also stated that twenty five percent of applicants for the military are ineligible because of drug related problems.

Lt. Col. Don Weaver, Idaho National Guard, explained the drug related affects on members of the military and their families. He also explained that the time and the resources used by the military in helping individuals with drug-related problems had increased. He stated that stopping the wave of designer drugs by legislation assists the military in keeping those drugs out of the hands of soldiers and their families.

Helen Huff, Idaho Society of Additive Medicine, encouraged committee members to support **H 119**.

MOTION: **Rep. Nielsen** moved to send **H 119** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Chairman Wills** will sponsor the bill on the floor.

H 139: **Debbie Field**, Office of Drug Policy Director, explained that **H 139** would make permanent the ban on the designer drug "Spice."

Corrina Owsley, Idaho State Police Forensic Chemist, provided the committee a diagram which featured the molecular structure of the seven compounds which form the backbone of Spice. She stated that these combinations were originally developed by pharmaceutical companies but they never became a successful prescription drug. Ms. Owsley also explained that only one carbon made the difference in all of the substance variations.

In response to a question **Ms. Owsley** stated that the seven classes of compounds listed in **H 139** should create an umbrella covering possible chemicals that could be substituted by those wishing to make the Spice-like drug. In addition she assured the committee that future legislative action should be unnecessary.

Mark Johnston, Executive Director of the Idaho Board of Pharmacy, asked the committee to make permanent the administrative rule put into effect by the Governor on October 15, 2010. Mr. Johnston stated that the temporary rule expires in April 2011, unless the Legislature passes **H 139**.

Tammy deWeerd, Mayor of Eagle, Idaho, appeared before the committee to answer a question regarding adoption of ordinances against the sale of Spice. She stated that a handful of Idaho cities had adopted ordinances to assist their law enforcement officers who were encountering increased cases dealing with the illegal substance. She stated that other cities were waiting for this legislation.

MOTION: **Rep. Bolz** moved to send **H 139** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Luker** will sponsor the bill on the floor.

Chairman Wills turned the meeting over to **Vice Chairman Luker**.

H 121: **Rep. Burgoyne** explained to the committee that **H 121** was an effort to correct an 1881 Idaho law. He stated the bill provides for equal treatment of both husbands and wives by providing that their separate property may not be seized to satisfy the separate debts of their spouses. He stated that the proposed legislation narrows the definition of separate property in order to be consistent with current law.

MOTION: **Rep. Jaquet** moved to send **H 121** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Burgoyne** will sponsor the bill on the floor.

S 1014: **Sen. Darrington** presented **S 1014**. He explained that the legislation concerned rape by substitution.

Holly Koole, Idaho Prosecuting Attorneys Association, explained that an Ada County 4th district judge dismissed a case because of a loophole in the law regarding spousal rape. The current law states "husband", not "boyfriend" or "partner." She stated the law needed to be changed to reflect societal changes and said any rape where a partner is enticed and then deceived should be considered rape by substitution.

Sarah Scott, Attorney for the Idaho Coalition Against Sexual and Domestic Violence, and **Hannah Brass**, American Civil Liberties Union, testified in support of **S 1014**.

Diane Anderson stated that closing one loophole would open another loophole in another court case. She stated that this bill and others like it gives power to the prosecuting attorneys. She expressed concern for the huge burden on the taxpayer.

Fairy Hitchcock, Hitchcock Family Associates, also testified against the bill. She stated the bill would not help those who need it. She also stated that personal experience with the courts had given her reason to believe they do not listen to a victim of rape.

Jean Fisher, Deputy Prosecutor, testified that rape by substitution is more common than the general public might assume. She supported **S 1014**.

MOTION: **Rep. Bateman** moved to send **S 1014** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Killen** will sponsor the bill on the floor.

Vice Chairman Luker turned the meeting back to **Chairman Wills**.

S 1029: **Kevin Kempf**, Department of Correction, explained **S 1029** amends the peace officer authority statute. This change would extend peace officer status to Board-designated Idaho Department of Correction employees present during times when law enforcement needed their assistance. Mr. Kempf stated the amendment would be applicable only to those employees who have peace officer training.

MOTION: **Rep. Killen** moved to send **S 1029** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Bolz** will sponsor the bill on the floor.

S 1030: **Shane Evans**, Department of Correction, stated **S 1030** added language to existing Idaho Code, Section 20-209, to provide that the department may provide rehabilitative services to support safe management of facilities. The bill also addresses safe and effective reintegration of offenders into Idaho communities.

MOTION: **Rep. Jaquet** moved to send **S 1030** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Jaquet** will sponsor the bill on the floor.

S 1031: **Brent Reinke**, Department of Correction Director, explained that **S 1031** is a technical correction to reflect the Idaho Department of Correction's current organizational structure for exempt employees. Current law defines exempt employees in numeric detail. The amendment strikes numeric values from Idaho Code, Section 67-5303, subsection "r", Mr. Reinke stated that since the law was amended in 2002, the number of deputy administrators and administrators within the department has changed numerous times, most recently with the deletion of a deputy administrator.

MOTION: **Rep. Jaquet** moved to send **S 1031** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Perry** will sponsor the bill on the floor.

S 1008: **Michael Henderson**, Idaho Supreme Court Legal Counsel, explained that the proposed legislation would amend Idaho Code, Section 1-612. The change would make consistent the annual reports from the Administrative Director of the Courts with the reports from other state agencies by making them due at the end of the fiscal year instead of the calendar year.

MOTION: **Rep. Jaquet** moved to send **S 1008** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. McMillan** will sponsor the bill on the floor.

S 1009: **Michael Henderson**, Idaho Supreme Court Legal Counsel, explained the bill was one of a series of bills submitted by the Supreme Court to correct defects in the law. It would correct an antiquated statute which states: "When a civil case is filed, each defendant must be served with a complaint and summons." Mr. Henderson continued to explain by stating the following: Section 5-508 of the Idaho Code was enacted in 1907. One of its provisions states that if a defendant is out of state, and if his address is known, the plaintiff can get an order from the court allowing the defendant to be served out of state. But in 1961, Idaho adopted a "long arm" statute. This statute, Section 5-514, states that Idaho courts have jurisdiction over a person or a company that does business in Idaho, owns property in Idaho, or does some other act that forms the basis for a lawsuit. The next statute, Section 5-515, states that the persons or companies who are subject to the jurisdiction of the courts under Section 5-514 can be served out of state. Because of the adoption of these statutes, serving a person out of state who falls within the jurisdiction of Idaho's courts no longer requires a court order. But the language of Section 5-508 still leads some people, including some lawyers, to think that a court order is necessary to serve a defendant who is out of state. Mr. Henderson concluded that **S 1009** would remove this confusion.

MOTION: **Rep. Luker** moved to send **S 1009** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Nielsen** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:15 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, February 17, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>H 120</u>	Relating to County Sheriffs	Mike Kane, Idaho Sheriffs Association
<u>H 140</u>	Relating to Juvenile Corrections; psychiatrists, psychologists and evaluation committee	Judge John Varin, Idaho Supreme Court
<u>S 1010</u>	Relating to Parent Responsibility Act	Michael Henderson, Legal Counsel Idaho Supreme Court
<u>S 1012</u>	Relating to the Supreme Court Reporter	Michael Henderson, Legal Counsel Idaho Supreme Court
<u>S 1045</u>	Relating to trusts and fiduciaries	Robert L. Aldridge, Trust and Estate Professionals, Inc.
<u>S 1056</u>	Relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	Robert L. Aldridge, Trust and Estate Professionals, Inc.
OVERVIEW (30 minutes)	ICJC	Director Brent Reinke, Department of Corrections

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	
Vice Chair Luker	Rep Bateman
Rep Smith(24)	Rep McMillan
Rep Nielsen	Rep Perry
Rep Shirley	Rep Sims
Rep Hart	Rep Burgoyne
Rep Bolz	Rep Jaquet
Rep Ellsworth	Rep Killen

COMMITTEE SECRETARY

Jean Vance
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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 17, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: Parrish Miller; Robert L. Aldridge, Trust and Estate Professionals, Inc.; Doug Giddings, Idaho County Sheriff; Chuck Halligan, Department of Health and Welfare; Jan Sylvester, Hannah Brass, American Civil Liberties Union of Idaho; Robert Luce, Department of Health and Welfare; Judge John Varin, Idaho Supreme Court; Michael Henderson, Idaho Supreme Court Legal Counsel; McKinsey Miller; Sharon Culbreth; Dave Johnson, Bingham County Sheriff

Chairman Wills called the meeting to order at 2:02 p.m.

Chairman Wills recognized the the service of Legislative Page, **Saige Benjamin**, who served the committee for the first six weeks of the 2011 Legislative Session.

MOTION: **Rep. Luker** moved that **H 120** be **HELD FOR A TIME CERTAIN**, February 23, 2011. **Motion carried on voice vote.**

H 140: **Judge John Varin**, Idaho Supreme Court Chair of the Juvenile Justice Advisory Team of Magistrate Judges, presented **H 140**, which would create a juvenile justice competency statute that would set process. He explained **H 140** would also standardize factors for the evaluation of a juvenile charged with a crime. He stated that present law does not change the legal standard for the juvenile when it is alleged within the jurisdiction of the Juvenile Competency Act that he or she may not be able to assist in his or her own defense. It is the same under the adult statute, which fails to take into consideration unique issues which are common in juvenile cases. The adult statute also mandates the defendant be committed and restoration services be provided in an inpatient facility. These services are often unnecessary in juvenile cases. The legislation provides for greater flexibility in evaluations of juveniles and for substantial savings when a juvenile's needs can be met within community based programs.

Judge Varin explained that the three key competencies were: a sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding; a rational and factual understanding of the proceedings against him or her; and the capacity to assist in preparing his or her defense.

Responding to a question if there might be ramifications as an adult, having been judged incompetent as a juvenile, **Judge Varin** stated the juvenile cases were sealed but some of those cases could be opened in compliance with Administrative Rule 32.

Asked about the pre-education of the screening team, **Judge Varin** stated that guidelines were available.

In answer to a question about age, **Judge Varin** stated the youngest offender he had encountered was a six year old, however, the juvenile justice applies to all children under eighteen years of age.

In response to a question regarding drug and/or parental influence upon the juvenile, **Judge Varin** stated that past history was not a part of the competency evaluation.

Chuck Halligan, Department of Health and Welfare Program Manager overseeing children's mental health testified in support of **H 140**. He stated his primary role begins when a juvenile is found incompetent but restorable by the court. He also stated the intent of his department was to have a standardized restoration program that addressed the key competencies. In addition, he stated his department wanted to keep the children in the community and at home if possible.

Judge John Varin was called upon to answer a question from the committee regarding the composition of the evaluation team and the screening team. He explained that the evaluation committee must consist of the examiner, a licensed psychologist and a qualified psychiatrist. The screening team may consist of representatives from Health and Welfare, a county probation officer, local school officials, and/or other agencies or persons designated by the court to develop a treatment plan for the juvenile. He also stated that parents and guardians of the juvenile, if available, would be included in the screening team and consulted with regard to the plan of treatment.

Robert Luce, Department of Health and Welfare Administrator, testified in support of **H 140**. He explained, however, that in drafting the bill there was a funding concern. It regarded pages 1 and 2, lines 40 through 42 and lines 1-4, respectively. It states: "The county shall be responsible for the cost of such evaluation subject to any reimbursement by the parents or other legal guardian of the juvenile. The Court may order the parents or other legal guardian of the juvenile, unless indigent, to contribute to the costs of such examination in an amount to be set by the court after due notice to the parent or other legal guardian and the opportunity to be heard."

MOTION: **Rep. Nielsen** moved to **HOLD H 140** in committee. He argued that while he supported the juvenile competency premise, he could not support placing the cost upon the parents and guardians.

Judge Varin was recognized to respond to questions from the committee. He stated judges were aware of the circumstances of the parents and guardians in each case. Judge Varin also stated that the decision was at the discretion of the judges and that in his experience judges carefully follow the established law for juvenile reimbursement while taking into consideration the distinctive differences of each case.

MOTION WITHDRAWN: **Rep. Nielsen** moved to **WITHDRAW** his motion to **HOLD H 140** in committee.

MOTION: **Rep. Ellsworth** moved to send **H 140** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Killen** will sponsor the bill on the floor.

S 1010: **Michael Henderson**, Idaho Supreme Court Legal Counsel, explained that **S 1010** was one of a series of bills from the Idaho Supreme Court which solves a conflict in the law. Under the Idaho Code, Section 32-1215, a person whose income is subject to withholding to satisfy a child support order must be served notice about a hearing at least five days before the hearing. The Administrative Rule requires motions and notices of a hearing to be served at least 14 days before the hearing. **S 1010** will make the statute and the rule consistent and will prevent confusion as to the time in which service must be made.

MOTION: **Rep. Nielsen** moved to send **S 1010** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Bolz** will sponsor the bill on the floor.

S 1012: **Michael Henderson**, Idaho Supreme Court Legal Counsel, explained that the state law librarian is required by Idaho Code, Section 1-505 to distribute volumes of the Idaho Reports, containing the published opinions of the Supreme Court and Court of Appeals, to various officers, departments, institutions, states, territories and foreign countries. He stated that **S 1012** would allow designated recipients of the Idaho Report a chance to opt out. Since the published court opinions are now available electronically, entities could decline to receive distribution of the Idaho Report. The benefits of the proposed legislation would be a savings of \$74.00 per volume to the General Fund and a shortened mailing list for the law librarian.

MOTION: **Rep. Shirley** moved to send **S 1012** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Bateman** will sponsor the bill on the floor.

S 1045: **Robert L. Aldridge**, Idaho Trust and Estate Professionals of Idaho, Inc., presented **S 1045**. He stated that the Internal Revenue Service (IRS) issued a revenue ruling on substitution powers that created a potential problem for Idaho trusts. Mr. Aldridge stated the object of a trust is to keep properties out of a taxable state and the owner of those properties to retain the power to substitute properties in and out of the trust. The IRS requires that the value of the property substitution be equal. Mr. Aldridge stated that **S 1045** will create a local law giving a trustee authority to ensure the owner's compliance to the terms of the IRS rule.

Responding to a question, **Mr. Aldridge** stated the proposed legislation applied to an irrevocable trust.

MOTION: **Rep. Luker** moved to send **S 1045** to the floor with a **DO PASS** recommendation; **motion carried on voice vote.** **Rep. Luker** will sponsor the bill on the floor.

S 1056: **Robert L. Aldridge**, Idaho Trust and Estate Professionals of Idaho, Inc., explained that the proposed legislation would allow for clear procedures that would extend across state lines when working with adult guardianship. He explained that twenty states had adopted similar legislation. The organizations supporting the bill include the Alzheimer Association, the American Bar Association, the National Guardianship Association and the National Academy of Elder Law Attorneys. He also stated **S 1056** would resolve interstate jurisdiction controversies.

In response to a question, **Mr. Aldridge** stated that the guardians and families making decisions for the elderly were usually very cooperative.

MOTION: **Rep. Killen** moved to send **S 1056** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Hart** will sponsor the bill on the floor.

Director Brent Reinke was recognized to present an overview on the 2011 strategies of the Idaho Criminal Justice Commission. Mr. Reinke introduced members of his staff who would present portions of the prepared Power Point. **Patricia Tobias**, Administrative Director of the Courts, Idaho Supreme Court; **Molly Huskey**, State Appellate Public Defender, and **Sharon Harrigfeld**, Idaho Department of Juvenile Correction (IDJC) explained their plans for the 2011 strategies. The strategies were as follows: to provide the Governor with recommendations regarding the designation of violent sexual predators, to continue to work with the federal government as it relates to the Sex Offender Registration and Notification Act, to develop a statewide policy recommendation for adult and juvenile sex offender, and to finalize the gang strategies recommendation. The group also explained they would develop recommendations to improve Idaho's public defense system and to continue implementing the Children of Incarcerated Parents Strategic Plan. In addition, the group stated they would continue to build a stronger statewide foundation for misdemeanor probation, to create a subcommittee in regard to tribal issues as it relates to criminal justice, to address prison overcrowding, and to develop alternatives to incarceration for adults and juveniles.

Debbie Field, Office of Drug Policy Director, also was introduced by Director Reinke as another member of his staff who serves as a resource for the IDJC.

Chairman Wills commended the members of the Idaho Criminal Justice Commission for their performance, both past and present.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:43 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AMENDED #1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, February 21, 2011

SUBJECT	DESCRIPTION	PRESENTER
H 163	Relating to restraint of pregnant prisoners	Rep. Meachin
S 1043	Relating to domestic relations	Robert L Aldridge, Trust & Estate Professionals of Idaho, Inc.

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Jean Vance
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Monday, February 21, 2011
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** NONE
- GUESTS:** Mike Kane, Idaho Sheriffs Association; Robert L Aldridge, Trust & Estate Professionals of Idaho, Inc.; Finn Greer; Christine Tiddens, and Melanie Roper, Catholic Charities; Hannah Brass, American Civil Liberties Union of Idaho; Carol Sterling, Bonnie McKay Pfaff and Gayle Wilde of the American Association of University Women; Lori Shewmaker; Doug Germano, American Civil Liberties Union of Idaho; Jason Herring, Right to Life of Idaho; Rep. McGeachin, Jessie Bonner, Associated Press; Julie Lynde, Cornerstone Family Council
- Chairman Wills** called the meeting to order at 1:30 p.m.
- MOTION:** **Rep. Bolz** moved to approve the minutes of February 15; **motion carried on voice vote.**
- Chairman Wills** introduced **Emily Thiel**, who will serve as committee page for the remainder of the session.
- S 1043:** **Robert L. Aldridge**, Trust & Estate Professionals of Idaho, Inc, explained that **S 1043** reaffirmed an opinion by the Attorney General issued in 1984, that Section 32-100A and Section 32-1002 violated the intent of Congress and could subject Idaho to federal sanctions if implemented. The opinion further stated the statutes were not laws of general applicability, but instead were special laws directed at county indigency programs and Medicaid recipients. Mr. Aldridge stated that **S 1043** would remove the possibility that the laws could be used against citizens of the State of Idaho who were not aware of the Attorney General's opinion or were in ignorance of county indigency programs or Medicaid.
- In response to a question from the committee asking why the sections of the Code were being repealed twenty years after the opinion by the Attorney General, Mr. Aldridge stated that persons had recently attempted to use those sections of the Idaho Code as they were written in the original statute.
- MOTION:** **Rep. Burgoyne** moved to **HOLD S 1043** in committee. In defense of his motion, he argued that he was not convinced the repeal of Sections 32-100A and 32-1002 was necessary.
- Other committee members stated they wanted to read the 1984 opinion of the Attorney General prior to making a decision on **S 1043**.
- SUBSTITUTE MOTION:** **Rep. Nielsen** made a Substitute Motion to hold **S 1043** until March 1, 2011. **Motion carried on voice vote.**
- H 163:** **Rep. McGeachin** presented **H 163**. She stated that the legislation would prohibit the use of restraints on pregnant female prisoners during labor and delivery except under certain conditions. Rep. McGeachin explained that **H 163** was the result of a cooperative effort between the county sheriffs, the Department of Correction, and the American Civil Liberties Union of Idaho.

Hannah Brass, American Civil Liberties Union of Idaho, testified in support of **H 163**. She stated that shackling pregnant women is dangerous and inhumane. She also stated freedom from physical restraints is especially critical during labor, delivery and postpartum recovery. In addition, Ms. Brass said restraints on a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures. She encouraged the committee to join the 10 states who have passed similar legislation.

Responding to a question from the committee, **Ms. Brass** stated that removing restraints from a pregnant woman during transport was not included in the bill.

In response to questions, **Mike Kane**, Idaho Sheriffs Association, stated he had no sheriff report of a real-life experience involving a pregnant prisoner; however, the proposed legislation, if passed, would become part of the curriculum for Sheriffs School in order for officers to be prepared for future pregnant inmate situations.

Jason Herring, Right to Life of Idaho, testified in support of **H 163**. He stated his organization was not only pro-baby but pro-mom. He also said every mother has value and should be treated humanely and with the utmost care.

MOTION: **Rep. Bateman** moved to send **H 163** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. McGeachin** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:02 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AMENDED # 1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, February 23, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1044</u>	Relating to the uniform Probate Code	Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.
<u>H 120</u>	Relating to County Sheriffs	Mike Kane, Idaho Sheriffs Association
<u>S 1057</u>	Relating to the control of venereal diseases	Sarah Scott, Attorney for the Idaho Coalition Against Sexual and Domestic Violence

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Jean Vance
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 23, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: Robert L. Aldridge, Trust and Estate Professionals of Idaho Inc.; Michael Kane and Vaughn Killeen, Idaho Sheriffs Associates; Dave Johnson, Bingham County Sheriff; Elizabeth Allan Hodge; Lori Shewmaker; Rebecca Lovelace, Nampa Family Justice; Teresa Baker, Ada County; John Blattler, Boise County; Sarah Scott and Kellie Mitchell, Idaho Coalition Against Sexual and Domestic Violence; Gordon Cruickshank, Valley County Commissioner; Charlie Swearingen

Chairman Wills called the meeting to order at 1:33 p.m.

MOTION: **Rep. Bolz** moved to approve the minutes of February 21; **motion carried on voice vote.**

S 1044a: **Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc., presented **S 1044a**. He explained that the proposed legislation was an emerging area of law that had no clear coverage in the Idaho Probate Code. The bill broadens the scope of the personal representative of a deceased person to control the social media of the deceased. Mr. Aldridge explained that if the bill passed the representative of the deceased could "take control of, conduct, continue or terminate any accounts of the decedent on any social networking website, any microblogging or short message service website or any e-mailing service website."

In response to a question regarding a general grant of authority to representatives of a decedent, **Mr. Aldridge** stated that the issue was being studied and that a general grant of authority could be forthcoming.

MOTION: **Rep. Shirley** moved to send **S 1044a** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Smith** (24) will sponsor the bill on the floor.

H 120: **Michael Kane**, Idaho Sheriffs Association, presented **H 120**. He explained that today's sheriffs do not meet with the same crime situations as those of several years ago and that the proposed legislation would set standards for persons who desired to run for County Sheriff. He stated the bill would make it necessary for a candidate, either before or after an election, to hold a current basic POST certificate, or the equivalent from another state, or be a retired peace officer with experience. The other option would be to have ten years experience with an intermediate POST certificate before running for the Office of Sheriff. Mr. Kane also stated that the bill would exempt current sheriffs from the requirements for as many terms as they are re-elected.

Mr. Kane stated that the constitutionality of the proposed legislation had been upheld by the Idaho Attorney General. He also stated that the Chiefs of Police and that forty-three of the forty-four Sheriffs were in favor of the bill. In addition, Mr. Kane explained that he had polled many states in order to find general requirements for Sheriffs. He stated that the survey showed: California, Masters Degree in Criminology; Arizona, read and write English, Kansas; 320 hours of schooling within five years; Montana, citizen, elector of the county; Oklahoma, four year degree; Utah, certified law enforcement officer; Wyoming, elector of the county.

In response to questions from the committee, **Mr. Kane** explained that POST was a ten week course, that there were forty-two hours of physical training which were age and gender adjusted, that one could self-sponsor, and that the completion of POST could take place before or after the candidate was elected to the Office of Sheriff. He also state that the Sheriff had one year to complete POST certification.

Mr. Kane explained that other possible courses to qualify as a sheriff would include: a six-week POST Detention Officer course or a Criminal Justice course at Idaho State University or College of Southern Idaho.

Responding to questions concerning certification through the curriculum of the new Sheriffs' School, **Mr. Kane** explained that the school focuses on concealed weapons, drivers licenses, sex offenders, crime scene, and fingerprinting. He also stated the focus of the Sheriffs' School is to keep a sheriff from getting sued and to keep the counties and the State from costly liability suits, not making a sheriff POST certified.

MOTION:

Rep. Smith (24) moved to send **H 120** to General Orders with amendments.

Dave Johnson, Bingham County Sheriff and President of the Idaho Sheriffs Association explained the need for educated, qualified sheriffs. He told the committee that on his first day of work he faced a double homicide, suicide. He said that directing people in a crisis situation is a vital part of a sheriff's role.

In response to a question, **Sheriff Johnson** stated that unknowledgeable sheriffs cost the counties in Torte Claims and other situations of liability.

Lori Shewmaker testified against **H 120**. She stated that the proposed legislation sounded like a self-interest bill. She stated that the business of electing sheriffs belongs to a county, not the State.

John Blattler, Boise County, also testified against **H 120**. He explained that legislators were some of the many elected officials who do not need certification for their positions. He stated that the Sheriff of his county was not in favor of the legislation.

In response to a question, **Mr. Blattler** stated that his sheriff was opposed to the time restraints and the limited manpower of the County Sheriff Departments.

Vaughn Killeen, retired Ada County Sheriff, was called upon to answer a question posed by the committee regarding the cost of being POST-certified. He explained the certification was \$8,000, which could be reimbursed to self-sponsoring persons if they were elected to the Office of County Sheriff.

Reps. Burgoyne and **Nielsen** debated against **H 120** stating that the rights of the people to elect their sheriffs was of foremost importance.

SUBSTITUTE MOTION:

Rep. Bateman offered a substitute motion to **HOLD H 120** in committee.

Reps. Shirley and **Jaquet** argued in favor of **H 120** stating that the bill did not limit a citizen from running for County Sheriff and that the electorate still had a choice.

ROLL CALL VOTE ON SUBSTITUTE MOTION:

Chairman Wills requested a roll call vote on the substitute motion to send **H 120** to General Orders **Motion failed, 7 aye and 7 nay. Voting in favor** of the motion: Reps. Smith (24), Shirley, Bolz, Perry, Jaquet, Killen, Wills. **Voting in opposition** to the motion: Reps. Nielsen, Hart, Bateman, Ellsworth, McMillan, Sims, Burgoyne. **Rep. Luker** was absent.

**ROLL CALL
VOTE
ORIGINAL
MOTION:**

Chairman Wills requested a roll call vote on the substitute motion to hold **H 120** in committee. **Motion failed, 7 aye and 7 nay. Voting in favor** of the motion: Reps. Smith (24), Shirley, Bolz, Perry, Jaquet, Killen, Wills. **Voting in opposition** to the motion: Reps. Nielsen, Hart, Bateman, Ellsworth, McMillan, Sims, Burgoyne. **Rep. Luker** was absent.

S 1057a:

Sarah Scott, Idaho Coalition Against Sexual and Domestic Violence, presented **S 1057a**. She stated that the purpose of the proposed legislation was to provide a time frame under which human immunodeficiency virus (HIV) testing would be performed on individuals charged with sex offenses. She explained that present legislation requires testing for persons who are charged with any crime in which body fluid has likely been transmitted. However, a federal grant exists known as the Community Defined Solutions Grants that will fund domestic violence projects including HIV testing. Ms. Scott explained that the Grant mandates a 5% withholding if a state law has not been passed requesting that an HIV test be administered no later than forty-eight hours of the charged crime. She stated that although Idaho Code, Section 39-604, provided for HIV testing, there was no time parameter. She asked to have language added to Section 39-604, to include: "such test shall be administered not later than forty-eight hours after the date on which the person is charged."

In response to a question from the committee, **Chairman Wills** explained that it was not in violation of a person's constitutional rights to take bodily fluids at the time of an arrest. He stated that the test was not dependent on a conviction of a crime.

Michael Kane assured the committee that the test was unobtrusive, a matter of a cotton swab wiped along the inside of the mouth.

Responding to further questions, **Holly Koole**, Idaho Prosecuting Attorneys Association, explained that the test can be given as long as there was "probable cause."

Ms. Scott also stated she wanted the legislation to be retroactive so that Idaho would not be in violation of the special funding.

Rebecca Loveless, Nampa Family Justice Center Executive Director, testified in support of **S 1057a**. She said that the unfunded portion of the Grant to their agency would be \$19,000.

MOTION:

Rep. Killen moved to send **S 1057a** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Crane** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:14 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
 Upon Adjournment of the House
 Room EW42
 Tuesday, March 01, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1063</u>	Contribution to cost of supervision when under state probation or parole	Director Brent Reinke and Kevin Kempf, Department of Correction
<u>S 1097</u>	The Court ordering a defendant to pay an amount of the cost of conducting an investigation	Director Brent Reinke and Kevin Kempf, Department of Correction
<u>S 1117</u>	Removing language relating to the appointment of the State Appellate Public Defender and declaring an emergency	Chairman Wills
<u>HCR 15</u>	Rejecting a rule of procedure of the Certified Shorthand Reporters Board	Rep. Ellsworth

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
 Vice Chair Luker
 Rep Smith(24)
 Rep Nielsen
 Rep Shirley
 Rep Hart
 Rep Bolz
 Rep Ellsworth
 Rep Bateman
 Rep McMillan
 Rep Perry
 Rep Sims
 Rep Burgoyne
 Rep Jaquet
 Rep Killen

COMMITTEE SECRETARY

Jean Vance
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 01, 2011

TIME: Upon Adjournment of the House

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: Josh Towalt, Division of Financial Management; Mark Kubinski, Idaho Department of Correction Legal Counsel; Director Brent Reinke and Kevin Kempf, Idaho Department of Correction

Chairman Wills called the meeting to order at 3:43 p.m.

MOTION: **Rep. Bolz** moved to approve the minutes of February 17; **motion carried on voice vote.**

MOTION: **Rep. Bolz** moved to extend the time certain for **S 1043** to March 15; **motion carried on voice vote.**

Chairman Wills turned the meeting over to **Vice Chairman Luker.**

S 1117: **Chairman Wills** presented **S 1117**. He explained that this legislation would allow the Governor to appoint the State Appellate Public Defender without mandated assistance from other committees. Chairman Wills stated that the existing law was part of the Act of 1998 which took away the specific number of applicants needed by the Governor in order to choose an Idaho Appellate Public Defender. He stated the purpose for the language in the statute no longer exists. He also stated that the language from the current law is being removed in agreement with the principals listed in the stricken language and in agreement with the coauthor of the Act of 1998.

MOTION: **Rep. Nielsen** moved to send **S 1117** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Chairman Wills** will sponsor the bill on the floor.

Vice Chairman Luker turned the meeting back to **Chairman Wills.**

S 1063: **Director Reinke**, Idaho Department of Correction (IDOC), explained that the status quo would not support the programs of IDOC in the current economic climate. He stated that to ensure public safety, the Department was proposing a package of revenue options including a combination of user fees and increased fees.

Kevin Kempf, IDOC Chief of Operations, explained **S 1063** would increase the allowable minimum cost of supervision fee from fifty dollars to seventy-five dollars. He stated that the increase would assist IDOC in continuing to provide the supervision services to Idaho's felony probationers and parolees at its current levels and would help reduce the burden on the State General Fund. He stated that the projected income could be \$720,000.

In response to a question from the committee on Senate support of **S 1063** and **S 1097**, **Rep. Jaquet** reported that the Senate vote on **S 1063** was 33 ayes and 3 nays. She further reported that the vote on **S 1097** was 31 ayes and 3 nays with 1 absent.

Responding to committee concern about inmate debt, **Mr. Kempf** explained that as soon as the paroled felon begins working he/she is required to pay debts starting with child support and court ordered fines and fees. He also explained that money orders are sent out to pay the debts because paroled felons usually do not have access to checking accounts. He stated that the debt record is checked monthly by the probationary and parole officers. However, even though law requires supervision and reporting, the funds for providing those services are dwindling and the case load for the officers has increased.

MOTION: **Rep. Nielsen** moved to send **S 1063** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Bolz** will sponsor the bill on the floor.

S 1097: **Director Reinke** explained that this legislation would allow IDOC to recoup a portion of the preparation cost of pre-sentence investigation (PSI) reports. He stated that the preparation of the reports has become more complicated and more costly. He also explained that the proposal would require the court to order the payment at the time the PSI is ordered and include the order in the judgment against a defendant in a case in which a PSI was prepared. The cost would not exceed \$100 per PSI and could generate \$216,000.

In response to questions from the committee, **Kevin Kempf**, IDOC Chief of Operations, explained that the Department would reduce or exempt fees based on ability to pay. He stated that the overall collection rate is about sixty percent of fees billed. **Mr. Kempf** also directed the committee to refer to the handout for additional statistics on Correctional User Fees. In addition, he explained that other states have PSI fees. He stated California charges \$794 for a pre-sentencing investigation report.

MOTION: **Rep. Burgoyne** moved to send **S 1097** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Burgoyne** will sponsor the bill on the floor.

HCR 15: **Rep. Ellsworth** presented **HCR 15**. She explained the concurrent resolution would reject a paragraph in a pending rule of the Certified Shorthand Reporters Board. She stated that the rule was not consistent with Legislative intent.

MOTION: **Rep. Jaquet** moved to send **HCR 15** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Ellsworth** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:25 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AMENDED #1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M. or Upon Afternoon Adjournment
Room EW42
Thursday, March 03, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1122</u>	Grandparent visitation	Robert L. Aldridge, Trust and Estate Professionals of Idaho, Inc.
<u>H 211</u>	To provide for the recovery of costs, expenses and attorney's fees by an owner for operator of an agricultural operation	Rep. Lake
<u>H 209</u>	Relating to attorney's fees, witness fees and expenses	Rep. Luker, Rep. Burgoyne

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Jean Vance
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, March 03, 2011

TIME: Upon Afternoon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Reps. Bateman, Sims, Jaquet

GUESTS: Robert L. Aldridge, Trust and Estate Professionals of Idaho, Inc.; Georgia Mackley, Marsha Maynes, Dave Mackley, and Tracee Crawford, Grandparents as Parents; Barbara Jorden, Idaho Trial Lawyers Association; Hannah Brass, American Civil Liberties of Idaho; Kerry Ellen Elliott, Idaho Association of Counties

Chairman Wills called the meeting to order at 3:27 p.m.

MOTION: **Rep. Bolz** moved to approve the minutes of February 23; **motion carried on voice vote.**

S 1122: **Robert L. Aldridge** presented **S 1122**. He explained that visitation by grandparents or great-grandparents could be an extremely important stabilizing factor in a grandchild's life. He also explained that since 2000, no constitutional visitation statute has been in existence in Idaho, leaving the door closed for grandparents and great-grandparents seeking visitation. He stated that **S 1122** would create a constitutional statute. **Mr. Aldridge** also stated the language had been carefully and thoroughly reviewed to comply with the needs and requirements of the family law courts, the Child Protection Act, and other relevant statutes as well as to meet the requirements of the US and Idaho Supreme Court cases. In addition, he said that the proposed legislation had been thoroughly reviewed by all stakeholders in the process.

Responding to which cases cited were unconstitutional, **Mr. Aldridge** explained that *Troxel v. Granville*, a State of Washington case, declared a law similar but not exact to Idaho's grandparent visitation law unconstitutional. The subsequent Idaho case of *Leavitt v Leavitt* denied a claim for grandparent visitation rights based on the evidence, but did not decide the constitutionality of our Idaho law. He also stated that **S 1122** seeks to address the probable constitutional conflict created by the *Troxel* case. **Mr. Aldridge** noted that the case did not reach the constitutionality of the Idaho law, which was raised by the parent, because the parent had already won on the facts and therefore it was not necessary for the court to decide the constitutionality of the case. However, *Leavitt v Leavitt* did require that the level of proof for any case was "clear and convincing" evidence.

Georgia Mackley, Grandparents as Parents, testified in support of **S 1122**. She stated that in Idaho 25,000 children are being raised by grandparents. She explained that in many of those cases the children are given to grandparents in one court order then taken back in another. She stated that the legislation is not for the grandparents but for the children who end up being the pawns in many divorce or death situations where the parent gaining custody can shut out grandparents even though they may have been significant members of the child's family prior to the divorce or death.

Tracee Crawford, Grandparents as Parents, stated support for **S 1122**. She explained it had been sixteen years since she had seen her grandchild. She stated that the proposed legislation would give grandparents a small opening to petition for visitations when the courts agreed that a preexisting relationship had positively influenced a child and when it was judged in the best interest of a child.

Rep. Nielsen moved to send **S 1122** to the floor with a **DO PASS** recommendation. **Motion carried on a voice vote. Rep. Nielsen** will sponsor the bill on the floor.

H 211: **Rep. Lake** presented **H 211**. He explained that the proposed legislation would entitle an owner or operator of an agricultural operation or an agricultural facility who prevailed in a court action, asserting that the operation or facility is a nuisance, to recover the full costs, expenses and attorney's fees incurred as a result of the action.

MOTION: **Rep. Nielsen** moved to send **H 211** to the floor with a **DO PASS** recommendation.

Barbara Jorden, Idaho Trial Layers Association, testified in opposition to **H 211**. She explained that owners or operators of agricultural operations are covered in the Constitution of the State of Idaho, Article 1, Declarations of Rights. She further explained that Idaho Code, Sections 12-121, 12-101 and 12-123 already covered attorney's fees, costs and sanctions for frivolous conduct in a civil case. She also stated the proposed legislation may be ruled unconstitutional because the premise of **H 211** is covered in existing statutes.

Kerry Ellen Elliott, Idaho Association of Counties, stated her opposition to **H 211**. She explained that the proposed legislation would create a one-way street for reimbursement costs because only the prevailing defendant could recover them. She stated that if a county should have to file a complaint against a farming operation, as a nuisance violation, it should not be dissuaded by the inequity of the proposed reimbursement provision.

SUBSTITUTE MOTION:

Rep. Smith (24) offered a substitute motion to **HOLD H 211** in committee.

ROLL CALL VOTE SUBSTITUTE MOTION:

Rep. Smith (24) requested a **roll call vote. Motion passed, 8 aye and 4 nay. Voting in favor** of the motion: Reps. Luker, Smith (24) Hart, Ellsworth, McMillan, Perry, Burgoyne, Killen. **Voting in opposition** to the motion: Reps. Nielsen, Shirley, Bolz and Wills. **Reps. Bateman, Sims and Jaquet** were absent.

H 209:

Rep. Luker presented **H 209**. He explained that there were four changes proposed in **H 209**: First, it extends the attorney fee provisions of Idaho Code, Section 12-117 to "appeals" from "administrative proceedings", in order to change the effect of a recent Supreme Court ruling. Second, it limits awards of attorney fees against people defending themselves from state action to restrict a professional license or impose civil fines. Third, it creates a prevailing party attorney fee rule when government agencies sue each other. Finally, it includes health districts in the scope of political subdivisions for the purpose of this statute.

MOTION:

Rep. Killen moved to send **H 209** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Reps. Luker** and **Burgoyne** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:45 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, March 07, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1116</u>	Court's authority to suspend driving privileges	Sen. Corder
<u>S 1118</u>	Certification of contractors who provide adult misdemeanor services	Tony Poinelli, Idaho Association of Counties
<u>S 1096</u>	Creation of an electronic recording commission	Rep. Ellsworth

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, March 07, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith (24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: Kerry Hong, Misdemeanor Sentencing Alternates Specialist; Tony Poinelli, Deputy Director Idaho Association of Counties; Kris Ellis, Idaho Land Title Association; Senator Corder;

Chairman Wills called the meeting to order at 1:31 p.m.

MOTION: **Rep. Bolz** moved to approve the minutes of March 1; **motion carried on voice vote.**

S 1116: **Sen. Corder** presented **S 1116**. He explained that **S 1116** would give the court more latitude in sentencing those convicted of Driving Without Privileges (DWP). He stated there were times when a probationer used poor judgment and missed a ride or could not get to work, then chose to drive illegally to meet those commitments. **S 1116** would change the first offense of the existing Idaho Code, Section 18-8001, line 6, to read "May" instead of "Shall" and change "an additional six months" to "a period not to exceed one hundred eighty days." Also, Sen. Corder explained that the proposed legislation regarding the second and the third offense would change "Shall" to "May" on page 2, line 29 and on page 3, line 5; and, on those same lines would strike out "an additional" and would insert "a period not to exceed." In addition, Sen. Corder stated that those convicted of DWP needed to be able to drive in circumstances such as work and doctor appointments and that **S 1116** would allow a judge to give a permit for those types of reasons.

MOTION: **Rep. Hart** moved to send **S 1116** to the floor with a **DO PASS** recommendation.

Rep. Burgoyne argued against **S 1116**. He stated that the existing statute was already lenient on the first offense. He further stated that alcohol abusers, who often lose driving privileges, have a problem conforming to the law. He also stated that the current law does not require DWP offenders to tell their spouse or their employer of their conviction. He said that repeated law breakers should not be given leniency and need to be held accountable. He stated that **S 1116** would "enable" the offender.

SUBSTITUTE MOTION: **Rep. Luker** offered a substitute motion to send **S 1116** to **General Orders** with committee amendments attached. Those amendments would restore "Shall" on page 2, line 6; on page 2, line 29; and on page 3, line 5.

Sen. McKenzie testified in support of **S 1116**. He explained that crowded jails in Canyon County caused judges to look for ways to clear jails of those offenders who were not a menace to society.

Chairman Wills explained that second offenders in DWP cases are not necessarily before the court because of alcohol-related infractions. They can have their license suspended for failure to appear in court or failure to pay fines.

In response to a question from the committee, **Sen. McKenzie** stated that a person could lose his or her license for failure to pay child support.

Reps. Killen and Smith (24) argued in support of **S 1116**. They related that their court experience had taught them the value of giving discretion to a judge.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

Chairman Wills requested a roll call vote. **Motion failed, 5 aye and 10 nay.**
Voting in favor of the motion: Reps. Luker, Ellsworth, McMillan, Perry and Killen.
Voting in opposition to the motion: Reps. Smith (24), Nielsen, Shirley, Hart, Bolz, Bateman, Sims, Burgoyne, Jaquet, and Wills.

**VOTE ON
ORIGINAL
MOTION:**

Chairman Wills requested a vote on the motion by **Rep. Hart** to send **S 1116** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Reps. McMillan, Perry, Luker and Burgoyne** requested that they be recorded as voting **nay**. **Rep. Nielsen** will sponsor the bill on the floor.

S 1096:

Rep. Ellsworth explained that **S 1096** would set an industry standard. She further explained that the bill would place Idaho's Electronic Recording Commission within the office of the Secretary of State so that it could promulgate rules and could fulfill its statutory responsibility to keep the electronic recording standards and practices of recorders in harmony with each other.

MOTION:

Rep. Shirley moved to send **S 1096** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.

S 1118:

Tony Poinelli, Deputy Director Idaho Association of Counties, explained that **S 1118** would allow private contractors for misdemeanor probation services to gain certification from POST Academy.

Patricia Tobias, Administrative Director of the Courts, in order for the committee to more clearly understand **S 1118**, gave a brief history of **H 408** which was enacted in 2008. She also explained that **H 408** was developed and recommended by the Supreme Court's and the Idaho Association of Counties' Shared Employees Committee, and in coordination with the director of POST Academy and the Department of Correction. The 2008 legislation addressed the need for county misdemeanor probation services. It also provided for training and certification of misdemeanor probation officers at POST. Ms. Tobias stated that following the implementation of **H 408**, a federal grant was secured and on February 4, 2011, the POST Council graduated the first class of 15 misdemeanor probation officers. Ms. Tobias introduced **Kerry Hong**, Misdemeanor Services Alternates Specialist for the Courts, who was instrumental in accomplishing the vision of **H 408**, to further explain **S 1118**.

Mr. Hong explained that **S 1118** would allow private sector contract misdemeanor probation services to be granted the same recognition and certification standards afforded to county employees. He also explained that only five counties had employed the misdemeanor probation officers since the passage of **H 408**, which represented case loads of only twenty-four percent of all supervised misdemeanants in Idaho. He stated that contract misdemeanor probation officers were essential for handling the other seventy-six percent of Idaho case loads. Mr. Hong stated the Courts had returned to the 61st Idaho Legislature with **S 1118** to clarify the intent of the 2008 Legislature. In addition, Mr. Hong stated that there was a question as to whether or not the 2008 Legislature intended to grant the POST Council the authority to certify contract misdemeanor probation officers.

MOTION:

Rep. Jaquet moved to send **S 1118** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Bateman** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:28 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, March 09, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>H 225</u>	Additional provisions for admittance into drug court	Patricia Tobias, Administrative Director of the Courts
<u>H 226</u>	Provisions relating to the discharge of defendants and the amendment of judgment	Michael Henderson, Idaho Supreme Court Legal Counsel
<u>H 227</u>	Providing for certain persons in good standing in certain courts to be eligible for restricted noncommercial driving privileges	Michael Henderson, Idaho Supreme Court Legal Counsel
<u>H 235</u>	Punishable offenses by criminal gangs	Jim Tibbs, Idaho Criminal Justice Commission, Chairman of Gang Strategy Committee
<u>S 1121</u>	Relating to interstate succession and wills	Robert Aldridge, Trust and Estate Professionals of Idaho, Inc.

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
 Vice Chair Luker
 Rep Smith(24)
 Rep Nielsen
 Rep Shirley
 Rep Hart
 Rep Bolz
 Rep Ellsworth

Rep Bateman
 Rep McMillan
 Rep Perry
 Rep Sims
 Rep Burgoyne
 Rep Jaquet
 Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, March 09, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** None

GUESTS: Hal Putnam, Idaho Transportation Department, Department of Motor Vehicles; Lieutenant Sheldon Kelley, Idaho State Police; Michael Henderson, Legal Counsel, Idaho Supreme Court; Patti Tobias, Administrative Director of the Courts, Idaho Supreme Court; Fairy Hitchcock, Hitchcock Family Advocates; Diane Anderson, Citizen Advocacy Group; Eleonora Somoza, Canyon County Prosecuting Attorney's Office; Director Brent Reinke and Tim Higgins, Idaho Department of Correction; Kieran Donahue, Canyon County Sheriff's Office; Jim Tibbs, Chairman, Gang Strategy Subcommittee, Idaho Criminal Justice Commission; Gabriel McCarthy; Jacquie Winter; Hanna Niehaus; Alicia Clements, Idaho Community Action Network; Robert L. Aldridge, Trust Estate Professionals, Inc.

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

H 225: **Patti Tobias**, Idaho Supreme Court, explained that the Idaho Drug Court Act was adopted in 2001, followed by the Mental Health Court Act. The implementation of these Acts has reduced prison and jail costs, recidivism, and have changed offenders' lives. In order to maintain eligibility for federal funds, any person who was charged with, or found guilty of, certain felonies were prohibited from participating in these courts. However, these courts no longer receive, or plan to seek, any federal funds. This amendment provides a very limited exception to allow offenders to be admitted to a drug court, but only after consultation with the drug court team, and with specific consent of the prosecuting attorney. Ms. Tobias noted that the purpose of **H 225** is to meet the special needs of returning veterans who are dealing with substance abuse and special mental health challenges, such as post-traumatic stress disorder.

MOTION: **Rep. Ellsworth** moved to send **H 225** to the floor with a **DO PASS** recommendation. In response to questions, **Ms. Tobias** noted that there would not be an expansion of the courts, but rather a person receiving an exception would take one of the available vacancies. Although the word "may" is used on line 21, there are other statutory provisions that provide additional clarification and other guidelines defining what constitutes a drug court.

VOTE ON MOTION: **Chairman Wills** called for a vote on the motion to send **H 225** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. McMillan** will sponsor the bill on the floor.

H 226: **Michael Henderson**, Legal Counsel, Idaho Supreme Court, explained that this legislation would modify the class of cases in which courts may exercise their discretion to set aside convictions, or to reduce felony convictions to misdemeanors under Idaho Code § 19-2604. Certain defendants may be eligible for relief if the court did not find, and the defendant did not admit, any violation of the terms of probation.

Mr. Henderson stated that providing a chance for such defendants to have their convictions set aside would increase their employment and education opportunities, making them productive and contributing citizens. As provided under the current statute, sex offenders are not eligible for relief.

The committee discussed that the statute, as written, did not give a judge any discretion. **Mr. Henderson** noted that relief is not granted if a court finds that a defendant has violated his probation. Also, the language "court did not find, and the defendant did not admit," parallels language in other Idaho statute.

MOTION: **Rep. Smith** moved to send **H 226** to the floor with a **DO PASS** recommendation.

Fairy Hitchcock, Hitchcock Family Advocates, testified in opposition to the bill. She related her experience with law enforcement as well as her opinion that the proposed language would be ineffective.

VOTE ON MOTION: **Chairman Wills** called for a vote on the motion to send **H 226** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Killen** will sponsor the bill on the floor.

H 227: **Michael Henderson**, Legal Counsel, Idaho Supreme Court, proposed two amendments to **H 227**, and requested it be sent to **General Orders**. The amendments would change the effective date to January 1, 2012, and simplify language in Idaho Code §§ 18-8002, subsection 3 e, and 18-8002A, subsection 2 e. The extended effective date would give Idaho Transportation Department time to incorporate the changes into the Notice of Suspension for Failure of Evidentiary Testing ("Notice") and would educate the officers using them. The shortened language makes the information much easier to understand.

Hal Putnam, Driver Records Supervisor, Idaho Transportation Department, noted that changing the two sections will make it easier for those officers dealing with suspects in the field. When someone is suspected of driving under the influence, and refuses to take or complete evidentiary tests, a "Notice" is given which details the driver's rights under these sections of code.

In response to questions, **Mr. Putnam** said the new language has been discussed with the courts. He reviewed the draft "Notice" with the committee, which is being revised because of passage of **H 61**.

Lieutenant Sheldon Kelly, Idaho State Police, supports the change in the language. He agreed that the new language is much simpler to understand. However, there is difficulty when officers are questioning someone who is alcohol impaired because they don't understand the "Notice." The more complicated the form, and the more information contained in the form, the greater the likelihood that mistakes will be made by an officer if he has to explain the information to an impaired suspect. Lieutenant Kelly commented that it would be better if the administrative information could be given to defendants at a later time.

Diane Anderson, Citizen Advocacy Group, suggested that driving without privileges should not be a crime if drugs and/or alcohol are not involved and she argued that the Supreme Court has so ruled. She would like to see additional amendments to the legislation.

MOTION: **Rep. Killen** moved to send **H 227** to **General Orders** with Committee amendments attached. **Rep. Jaquet** seconded the motion. **Motion carried on voice vote.** **Rep. Hart** will sponsor the bill on the floor.

H 235: **Brent Reinke**, Director, Idaho Department of Correction, introduced four people who would present information regarding **H 235** and answer questions: **Eleonora Somoza**, Canyon County Prosecuting Attorney's Office; **Tim Higgins**, Idaho Department of Correction; **Kieran Donahue**, Canyon County Sheriff's Office; and **Jim Tibbs**, Chairman, Gang Strategy Subcommittee, Idaho Criminal Justice Commission.

Director Reinke reported that the legislation was drafted by a group of eighty-five stakeholders, and the intent of the legislation is to give judges more discretion when sentencing an offender whose crime either promoted or was a part of gang activity. He also stated that the current sentencing structure is not a deterrent to gang members.

In response to questions, **Mr. Donahue** stated that there is a set of clear criteria that officers have to adhere to, including type of clothing and documented database information, when determining whether a suspect is involved in gang activity. He also noted that gang activity is on the rise in Idaho, most notably Idaho Falls and Twin Falls. Outlying areas are putting together task forces. Females, including those underage, are often exploited by gang members, both male and female. Gang members also use juveniles for illegal activity, thinking juveniles are able to "slide" through the judicial system.

Ms. Somoza explained how the enhancement penalty may be used by judges for the indeterminate portion of an offender's sentence.

Diane Anderson, Citizen Advocacy Group, testified in opposition to the bill. She said that placing juveniles in prison is detrimental to society. While in prison, juveniles are taught how to be better criminals by other offenders. She stressed that juveniles deserve alternatives to being in jail.

MOTION: **Rep. Bateman** moved to send **H 235** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Chairman Wills** will sponsor the bill on the floor.

Chairman Wills turned the meeting over to **Vice Chairman Luker**.

S 1121: **Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc., presented **S 1121**. He stated that last year Congress passed a retroactive federal estate tax revision. He also explained what renunciation means as it pertains to bequests. The proposed legislation would apply only to decedents whose death occurred in 2010, and would not cause any changes to Idaho state taxes.

In response to questions, **Mr. Aldridge** stated that it would be difficult to place a sunset clause in the bill because it could take years before complex estates are settled. The Legislature could take a look at removing the language in the future; however, appeals can extend the administration for several more years.

MOTION: **Rep. Jaquet** moved to send **S 1121** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Jaquet** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:38 p.m.

Representative Wills
Chair

Jana Filer
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, March 15, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>H 234</u>	Registered sexual offenders and access to schools	Rep. Erik Simpson
<u>S 1043</u>	Responsibility of relatives to participate in the cost of nursing home care	Robert L. Aldridge, Idaho Trust and Estate Professionals, Inc.
<u>S 1122</u>	Grandparent visitation	Robert L. Aldridge, Idaho Trust and Estate Professionals, Inc.
PRESENTATION	Idaho Sheriffs Association regarding state prisoners held in county jail	Mike Kane, Idaho Sheriffs Association

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 15, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: Guy Bliesner, Bonneville Joint School District No.93, Mike Munger, Safety and Security Specialist, Boise Independent School District No.001, Matt McCarter, State Department of Education; Paul Wilde, Bonneville County Sheriff, Idaho Sheriffs Association; Dave Johnson, Bingham County Sheriff, Idaho Sheriffs Association; Cindy Malm; Jail Inspector, Idaho Sheriffs Association; David W. Hyde, Attorney, Mike Kane, Idaho Sheriffs Association; George Stevens and Ted Arnold, Boise Police Department; Clark Corbin, Post Register; Tony Smith, Benton and Ellis; Mark Browning, State Board of Education; Jessica Harrison, Idaho School Board Association; Robert L. Aldridge, Idaho Trust and Estate Professionals of Idaho, Inc.

Chairman Wills called the meeting to order at 1:31 p.m.

MOTION: **Rep. Bolz** moved to approve the minutes of March 3; **motion carried on voice vote.**

MOTION: **Rep. Bolz** moved to approve the minutes of March 7; **motion carried on voice vote.**

H 234: **Rep. Simpson** presented **H 234**. He explained that under current Idaho law, an adult registered sex offender cannot be on school grounds or reside within 500 feet of the school unless he is a student at the school, resides at a state licensed facility or convalescent home near the school, is voting in a public election, is collecting his mail at an office on school grounds, is staying at a homeless shelter or recovery facility approved for sex offenders, is dropping off or picking up a child at the school, is attending an extracurricular activity where his or her child is participating or is a person who makes a mail, food, or other delivery. Also under current Idaho law, school districts may adopt more stringent security measures.

Rep. Simpson noted that problems still exist. He said that unless a registered sex offender self identifies at a school, school districts cannot share their more stringent security policies with the sex offender. A further problem exists when searching the Idaho State Police sex offender list because it is difficult to match the offender to the child. The problems are compounded when the child has a different last name and/or address than the offender.

Rep. Simpson explained that **H 234** requires registered adult sex offenders to notify the school district prior to their first school visit in order to receive permission and a district permission plan for them to be on school grounds.

Guy Bliesner, Health, Safety and Security Coordinator for the Bonneville Joint School District No.93, was called upon to answer a question posed by the committee regarding the criteria, standard or mechanism by which a sex offender could appeal the district permission plan. He stated that the offender could appeal to the school board of trustees.

In response to questions from the committee, **Rep. Simpson** stated that the burden of contact would be put upon the offender and not upon the school district. He also stated that the difficulty in matching the specific child with their sex offender parent initiated the proposed legislation.

In response to being called upon by the committee to answer a question, **Guy Bliesner**, explained that having administrators respond to a concerned parent, that they were aware of the sex offender's presence in the school and that a specific plan had been created for school visitation, was far better than an alarm being sent throughout the community announcing that the school administrator was not aware of a sex offender on the school property.

Mike Munger, Safety and Security Specialist, Boise Independent School District No. 001, testified in support of **H 234**. Mr. Munger stated the Idaho law allowed parents to come to school at any time and to any event and that a sex offender could be unknown in a crowd. He also stated the bill would give school administrators the tools necessary to maintain a safe school environment.

Sgt. George Stevens and **Cpl. Ted Arnold**, Boise Police Department, stated their support for **H 234**.

Sgt. Jeff Edwards, School Resource Officer, Bonneville County Sheriff's Office, testified in support of **H 234**. He explained that in requiring a sex offender to meet with school administrators would make for a safer school environment.

Sheriff Dave Johnson, Bingham County, was called upon to answer a question posed by the committee regarding sheriffs supervision of sex offenders. He explained that the offender must come into the office of the county sheriff and register on a six month or yearly basis. At that time, the personal history is updated. He noted that sheriffs do not send an e-mail list to schools within their counties, however, the county's list of sex offenders is on each county sheriff's website. He also stated that the initial charges and the terms of the probation of each sex offender is public information.

MOTION: **Rep. Ellsworth** moved to send **H 234** to the floor with a **DO PASS** recommendation.

ROLL CALL VOTE ON MOTION: **Chairman Wills** requested a roll call vote. **Motion carried, 10 aye and 4 nay.** **Voting in favor** of the motion: Reps. Luker, Nielsen, Bateman, Ellsworth, McMillan, Perry, Sims, Burgoyne, Jaquet, and Wills. **Voting in opposition** to the motion: Reps. Smith, Hart, Bolz, and Killen. **Rep. Shirley** was absent. **Rep. Simpson** will sponsor the bill on the floor.

S 1043: **Robert L. Aldridge** explained the additional information requested on February 21, 2011, was before the committee. The letter from **Tony Poinelli** Deputy Director, Idaho Association of Counties, stated that he was not aware of any counties using Idaho Code, Section 32-1002. Also before the committee was the 1984 Opinion of the Idaho Attorney General concerning Idaho Code, Section 32-1008A, which stated the Section was inconsistent with federal law regulating the use of Medicaid funds and that a continuation of the statutory scheme may subject Idaho to federal sanctions and/or private court actions which could result in a declaration of the invalidity of the enactment. The final comment by the Attorney General stated that the Section did not, on its face, violate equal protection. However, it was conceivable that enforcement procedures could produce an inequitable application of the law which may result in its characterization as an unconstitutional deprivation of equal protection.

MOTION: **Rep. Jaquet** moved to send **S 1043** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Burgoyne** requested that he be recorded as voting **nay**. **Rep. Bolz** will sponsor the bill on the floor.

S 1122:

Chairman Wills explained that **S 1122** was brought back before the committee for comments and reconsideration. He stated that the action was warranted because over half of the committee had voiced a desire to reconsider **S 1122**.

Rep. Luker argued that after studying the court cases of *Troxel v. Granville* and *Leavitt v. Leavitt* more closely, he found doubt in the constitutionality of the proposed legislation and had additional concerns over the undue stress a grandparent visitation trial would put upon a fit parent during an already difficult time of death or divorce. Rep. Luker read from the Supreme Court opinions of Justices Sandra Day O'Connor and Clarence Thomas in *Troxel v. Granville* supporting the premise that grandparents could not impose their will upon the parent.

Other members of the committee argued that relationships should not be litigated and that the fit parent should not have court costs trying to prove their "fitness." They stated standards of "fitness" already exist and should not be tested for reason of grandparent visitation. They also stated their discomfort with the "best interest of the child" being based solely on an opinion from the judge.

Chairman Wills asked sponsors of **S 1122** if they wished to respond.

David W. Hyde, Attorney of Family Law, testified in support of **S 1122**. He explained the "burden of proof" under criminal law and in civil cases. He stated that "reasonable doubt" under criminal law is similar to the "clear and convincing" standard in civil law. However, in most civil cases the standard of proof is "more likely than not." He explained that hurdles exist where grandparents have to show they are entitled to have rights.

Chairman Wills turned the meeting over to **Vice Chairman Luker**.

Robert L. Aldridge, Idaho Trust and Estate Professionals of Idaho, Inc., stated that all 50 states have grandparent visitation rights in some form. He explained that Idaho currently needed a stable legislative framework which will not be subject to constitutional attack. He said that the new language will provide specific guidelines for which courts can grant grandparent visitation which Idaho currently does not have. Grandparents are only asking for the opportunity to petition for visitation if there has been a divorce, death, separation or the parents have never been married. Mr. Aldridge stated that **S 1122** narrowed the scope tremendously and children who had had a relationship with their grandparents and had already lost a parent should not lose their extended family as well. Mr. Aldridge further stated that grandparents suing for visitation must provide evidence that visitation is in the best interest of the child.

Vice Chairman Luker turned the meeting back to **Chairman Wills**.

MOTION:

Rep. Smith moved to **HOLD S 1122** in committee. **Motion carried on voice vote.**
Rep. Shirley requested that he be recorded as voting **nay**.

Paul Wilde, Bonneville County Sheriff, explained that Idaho Code, Section 20-237A, required a report to the House and Senate Judiciary, Rules and Administration Committee every three years on the cost of incarcerating State inmates in county jails. He noted that the Idaho Sheriffs Association provided jail inspections and maintained statistics on Idaho jails. Sheriff Wilde reported that of the forty-four counties in Idaho, thirty-six counties have jails; six jails have been closed and one can only hold arrestees for four hours; and, within Idaho's county jails there are a total of 4,578 jail beds. As of March 13, 2011, there were 292 State minimum and medium security inmates in county jails, 117 males and 175 females. The average daily inmate cost is \$72.50. In conclusion, Sheriff Wilde reported on the cost of incarceration and the programs offered to inmates. He also stated that county jails serve as a buffer for the Idaho Department of Corrections, keeping Idaho inmates in Idaho.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:56 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AMENDED #2 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, March 17, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1067</u>	The responsibility to provide DNA sample and thumbprint impression	Maj. Kedrick Wills
<u>S 1132</u>	Tort claims against irrigation districts	Norm Semanko
	Presentation on felony sentencing	District Judge Michael McLaughlin
	Presentation on criminal procedure	District Judge Patrick Owen
	Presentation on Internet crimes against children	Tim Brady, Idaho Fraternal Order of Police

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Jean Vance
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, March 17, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Reps. Nielsen, Perry, Burgoyne

GUESTS: Cyndi Cunnington and Matthew Gamette, Idaho State Police Forensic Services; Maj. Kedrick Wills, Idaho State Police Services Commander; Norm Semanko, Idaho Water Users Association; Mike Kane, Idaho Sheriffs Association and Idaho Counties Risk Management Program; Barbara Jordan, Idaho Trial Lawyers Association; District Judge Michael McLaughlin; District Judge Patrick Owen; Jan Sylvester; Tim Brady, Idaho Fraternal Order of Police, Dave Goins, Idaho News Service

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

MOTION: **Rep. Bolz** moved to approve the minutes of March 9; **motion carried on voice vote.**

Chairman Wills read a letter from **Guy Bliesner**, Health, Safety and Security Coordinator, Bonneville Joint School District No.93. Mr. Bliesner stated it was noted to him that he may have been somewhat terse with the committee on March 15, 2011, and he wanted to apologize to the committee.

S 1067: Maj. Kedrick Wills, Idaho State Police Services Commander, presented **S 1067**. He explained that the legislation would amend Idaho Code, Sections 19-5501, 5502, and 5506, to allow DNA profiles from all convicted felons in Idaho to be included in the statewide and national databases. He explained that the Idaho State Police (ISP) is allowed, by the FBI, to enter only DNA profiles into the national DNA databases which meet State statutory requirements. He also explained the changes in **S 1067** would clean up the language in the Idaho Code to conform with the major change of including all felony convictions. Maj. Wills stated that Idaho was the only state in the United States not requiring all convicted felons to be entered into the databases and that many states are now collecting DNA from all persons arrested in connection with a felony. He noted that suspects are identified but, they also could be exonerated by this process.

In response to a question regarding grant funds, **Maj. Wills** stated that there were grants available. ISP is currently using some of those grants and would be eligible for more grants if more DNA samples were uploaded.

Maj. Wills also explained that security measures are in place to ensure that the information collected for this database would be used only for approved law enforcement investigations. All attempts to use this database for purposes other than those provided by the Idaho Legislature in statute, have been, and will continue to be, rebuffed by the Idaho State Police. Maj. Wills assured the committee that the database would not be used for health insurance or other inquiries and that it was strictly a numeric database containing comparative information.

Cyndi Cunningham, Idaho State Police Forensic Specialist, explained how the DNA sample is collected. The swab is rubbed around the inside surface of the suspect's mouth to collect the cells. The swab is then rubbed across the specially prepared card which contains a preservative. The card is given a barcode and can only be identified by the barcode. Personal information never enters the database. In reference to a handout distributed by ISP, Ms. Cunningham showed the committee how DNA evidence and samples are matched.

Responding to questions from the committee, **Ms. Cunningham** explained that the card can preserve DNA for an indefinite period at room temperature and that 10,000 DNA samples can be stored within four file cabinets. The technology has improved the ability to store the DNA, however, some samples break down over time. She stated that sometimes evidence collected at a crime scene can break down if it has not been preserved correctly. She stated, however that the lab has been able to use 20-year-old evidence to solve crimes. In addition, Ms. Cunningham stated that when a request comes through the lab to match a DNA sample, and a match seems likely, they always retest before giving final verification.

In response to additional questions from the committee, **Ms. Cunningham** stated that all of the DNA testing can be done in Idaho by the Idaho State Police Forensic Laboratory and that the active casework is not backlogged. She also noted that crime scene evidence such as investigative drug analysis or blood analysis is kept current. She stated that anything brought in by the department could be responded to promptly. None-the less, there are 5,878 convicted offender database samples that have not been processed and of those samples; ISP is able to process only 300 per month.

Maj. Wills explained that the proposed legislation would increase the workload associated with DNA sample processing into the convicted offender DNA database. He also explained that the increase would be approximately 3,700 samples per year compared with the current workload of roughly 1,700 samples annually. He stated that the costs were itemized for the committee on the Statement of Purpose. The one time cost was projected to be \$330,000. The ongoing costs of the program were projected to be \$418,000 annually.

MOTION: **Rep. Shirley** moved to send **S 1067** to the floor with a **DO PASS** recommendation.

In response to concerns over the fiscal request of **S 1067** in a State budget deficit year, **Rep. Luker** argued putting Idaho in line for federal funds would save money. He also argued that DNA matching would save the State time and money from prosecuting suspects who could be quickly exonerated by a negative DNA match or suspects who could be quickly convicted by a positive DNA match.

VOTE ON MOTION: **Chairman Wills** called for a vote on the motion. **Motion carried by voice vote.** **Rep. Jaquet** requested that she be recorded as voting **nay**. **Rep. Luker** will sponsor the bill on the floor.

S 1132: **Norm Semanko**, Idaho Water Users Association, explained the purpose of **S 1132** was to clarify that only the operating agency, and not the member entities, could be held liable for damage arising from irrigation district construction, operation or maintenance when such districts form an agency designed to jointly deliver water. He stated that the bill would more clearly define when and who one could sue when a canal facility went bad.

Responding to questions from the committee, **Mr. Semanko** stated that there were only two Boards of Control in the State of Idaho: Boise Project Board of Control and South Board of Control in Owyhee County. He explained that those entities had insurance, but the individual irrigation districts did not.

MOTION: **Rep. Jaquet** moved to send **S 1132** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Sims** will sponsor the bill on the floor.

District Judge Michael McLaughlin appeared before the committee to discuss felony sentencing. He explained the profile of felony defendants, the plea and sentencing agreements by the lawyers in felony sentencing, how judges exercise discretion in felony sentencing, risks and needs, imprisonment verses probation, and options for sentencing. He explained that the primary goals of sentencing include protection of society, deterrence, rehabilitation, and punishment. Judge McLaughlin described the typical felon appearing before the district court for sentencing: seventy-six percent are male, forty-five percent have previous sentences, seventy percent have drug addictions or abuse drugs, thirty-seven percent are between eighteen and thirty years old, and sixteen percent have mental health issues requiring medication. Also, forty-four percent have less than a high school education; twelve percent have an eighth grade education or less; sixteen percent have experienced physical or sexual abuse; have poor work skills and experience, come from dysfunctional families (drugs/alcohol, physical and mental abuse), and come from the lower one-third of average income families.

In addition, **Judge McLaughlin** explained the historical patterns for felony sentencing: sixty-four percent are granted probation, twenty-two percent are incarcerated for a short term, and fourteen percent are assigned to the State Penitentiary.

District Judge Patrick Owen appeared before the committee to explain criminal procedures. He explained the path for processing a misdemeanor case from the arrest through the Magistrate Court. He stated that if there is a guilty plea, the offender is sentenced by the court. If there is not guilty plea the court/jury trial produces the verdict and the guilty receive sentencing. Judge Owen also explained how a felony flows through the judicial system: Arrest; Preliminary Hearing or Grand Jury Indictment; District Court; Guilty Plea; Sentencing. If the plea is not guilty, the offender receives a jury trial and is sentenced if found guilty.

Chairman Wills turned the meeting over to **Vice Chairman Luker**.

Tim Brady, Idaho Fraternal Order of Police, Internet Crimes Against Children (ICAC), explained the workings of the statewide task force. He stated that the ICAC Task Force is a coalition of local, state and federal law enforcement and prosecution agencies focused on apprehending and prosecuting individuals who use the Internet to criminally exploit children. Mr. Brady summarized the types of on-line sexual crimes and the percentages of Internet crimes that affect Idaho's children. He also discussed the perpetrators of such crimes. In addition, Mr. Brady addressed the issues confronting the agency and the future legislation which could assist the task force.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:25 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AMENDED #1 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, March 23, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1120</u>	Referring to estates of generation-skipping transfer tax rules	Robert L. Aldridge, Idaho Trust and Estate Professionals of Idaho, Inc.

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, March 23, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Reps. Nielsen, Shirley, Hart

GUESTS: Robert L. Aldridge, Trust and Estate Professionals of Idaho, Inc.; Max Pond, Risch Pisca; David Hahn, Division of Financial Management

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

MOTION: **Rep. Bolz** moved to approve the minutes of March 15; **motion carried on voice vote.**

S 1120: **Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc., explained that the U.S. Congress, in the Tax Relief, Unemployment Insurance Re-authorization, and Job Creation Act of 2010, on December 17, 2010, retroactively reinstated the estate and generation-skipping transfer (GST) taxes, effective back to January 1, 2010. The new law gave personal representatives of estates of individuals dying in 2010 an election not to have the estate subject to the estate tax, to "opt out" of the retroactive tax structure and instead use the "old" 2010 rules.

In 2010, the Idaho Legislature enacted Idaho Code, Section 15-1-501, when it appeared that there would be no retroactive reinstatement. **Mr. Aldridge** noted that this statute created a provision in a will or trust of a decedent who died in 2010 that would be construed, in most cases, as if the decedent had died on December 31, 2009.

Mr. Aldridge explained that in the same 2010 Act, Congress raised the estate and GST tax exemptions from \$3.5 million in 2009 to \$5 million in 2010. This rapid and retroactive increase dramatically altered the distribution of estates that relied upon formula clauses. **Mr. Aldridge** stated that in many cases, the change in the size of a particular share entirely disinherited beneficiaries who the decedent intended to share significantly in the estate.

Mr. Aldridge reported that **S 1120** would provide that a personal representative's election not to have the estate tax apply to a 2010 decedent's estate does not affect the meaning of the estate tax and GST tax-related formula clauses. The bill would also provide for the fiduciaries of an estate and its beneficiaries to go to court to determine how the decedent would have wanted the tax-related clauses in the governing instrument construed. In addition, they could consider evidence outside of the instruments and enter into non-judicial agreements reforming a will or trust in a manner they all agreed was consistent with the decedent's wishes in regard to tax-related clauses. **Mr. Aldridge** noted that the bill was an extension of the Idaho Trust and Estate Dispute Resolution Act (TEDRA), already available to trusts and estates under the Idaho Probate Code in Chapter 8 of Title 15.

In response to questions asking if TEDRA resulted from the Congressional action and if the Congressional action required that TEDRA be fixed, **Mr. Aldridge** stated that TEDRA had not been affected by the Congressional action.

Responding to questions regarding the number of estates being affected, **Mr. Aldridge** replied that he had no statistics on the affected estates. However, he assured the committee that every state is passing similar legislation in order to response to the Tax Relief, Unemployment Insurance Re-authorization, and Job Creation Act of 2010.

In response to further questions from the committee on contradicting the wishes of the decedent and on those who would benefit from this bill, **Mr. Aldridge** said that if all persons came together to negotiate the outcome and there was mutual agreement, the outcome would be beneficial or at least acceptable to all parties involved.

MOTION: **Rep. Ellsworth** moved to send **S 1120** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Killen** will sponsor the bill on the floor.

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

Representative Wills
Chair

Jean Vance
Secretary

AMENDED #2 AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Afternoon Adjournment
Room EW42
Tuesday, March 29, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>H 300</u>	Establishing access to justice fund in the State Treasury to assist Idaho Legal Aid	Rep. Bayer
<u>S 1154 as amended</u>	Update and clarification of sexual offender registration	Steve Bywater, Office of Attorney General

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 29, 2011

TIME: 1:30 p.m. or Upon Afternoon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** Rep. Hart

GUESTS: Sarah Toevs, Center for the Study of Aging; Sarah Scott, Idaho Coalition Against Sexual and Domestic Violence; Rebecca Lovelace, Nampa Family Justice Center; Ernesto Sanchez, Jim Cook, Susan Graham, Teresa Molitor, Eva Lopez, and Steven Rapp, Idaho Legal Aid Services; Brent Reinke, Idaho Department of Correction; Dan Goicoechea, Chief Deputy State Controller; Steve Bywater, Office of Attorney General; Diane Anderson; David Leroy, Attorney at Law; Linda Copple Trout, Former Chief Justice; Dan Chadwick, Idaho Association of Counties; Mahmood Sheikh, Deputy Executive Director of the Idaho State Bar; Bob Ucbelher, Connolly and Smyser

Chairman Wills called the meeting to order at 3:05 p.m.

MOTION: **Rep. Bolz** moved to approve the minutes of March 17; **motion carried on voice vote.**

MOTION: **Rep. Bolz** moved to approve the minutes of March 23, **motion carried on voice vote.**

H 300: **Rep. Bayer** presented **H 330** with proposed amendments, explaining the history of Legal Aid Services (ILAS) in the State of Idaho. He explained that ILAS is a 501 (c)(3) non-profit corporation that provides free civil legal representation to low-income Idahoans and Idaho seniors. He stated that in the past 6 years he had watched Idaho's general fund dwindle and had watched as federal funds had waned. He told of his concern for the plight of Idahoans who could not afford civil legal assistance. He reported that Idaho was the only state that did not have state appropriations or a percentage of court fees or fines to support nonprofit legal aid for the indigent. Rep. Bayer also reported that only one in five of Idaho's indigent seeking help from ILAS were able to be served because of lack of funds and a reduced staff.

Teresa Molitor, ILAS Legal Counsel, introduced **Ernesto Sanchez**, Executive Director of ILAS, who spoke in support of **H 300** with proposed amendments, and outlined the priorities of ILAS. He explained that ILAS provides a range of legal help including the filing guardianship to protect children and incapacitated adults, stopping family violence, combating homelessness, obtaining public services for children and persons with disabilities, preventing senior exploitation and serving migrant farm workers and Native Americans. Mr. Sanchez stated that other priority programs of ILAS included their attorneys making hundreds of community presentations to help Idahoans understand their legal rights and take steps to prevent future legal problems.

Mr. Sanchez reported on sources of funding for ILAS. He stated they receive sixty percent from Legal Services Corporation, with the remainder coming from a variety of grants such as the Idaho Law Foundation, United Way, Department of Justice, foundations, businesses, lawyers, and individuals. He also explained the mission of ILAS and the case distribution for ILAS attorneys. In addition, Mr. Sanchez spoke to the emerging issues of the recession, home foreclosures, and homelessness as well as his fears concerning the reduction in ILAS staff.

Mr. Sanchez explained that the 2010 Annual Report of the Idaho Courts reported that there were 100,067 magistrate and 10,285 district civil court filings. From those filings, approximately 30,000 cases would be exempted from the \$10.00 additional filing fee proposed by **H 300** with proposed amendments. He stated that if the statute had already been in place, the ILAS would have received \$803,520, enough to keep the nonprofit corporation solvent.

Jim Cook, Deputy Director of ILAS, explained that **H 300** with proposed amendments would allow ILAS to serve more clients, stabilize the firm and equalize the pay for attorneys. He indicated that the clients, of which he was most concerned were veterans, domestic violence victims, abused and neglected children, seniors who had been abused and exploited by their caregivers or children, and those affected by wrongful foreclosures. He hopes to add five to seven attorneys and bring half-time staff back to full time. He also noted that one of the organizational goals was to bring the pay structure for ILAS attorneys to the average earned by a public defender.

In response to questions from the committee, **Mr. Cook** stated that ILAS still receives donations from legal associations. He also reported that the corporation uses volunteers such as law students, retired attorneys, and volunteers from Boise State University Paralegal School.

Mr. Sanchez was recognized to respond to a question from the committee regarding the proposed \$70 million cut by the U. S. House of Representatives that would reduce federal funds for state and local ILAS offices by eighteen percent. He said that the cuts could have been prompted by past controversial class action suits or they could simply be a budget cutting proposal.

Linda Copple Trout, former Chief Justice, representing the Idaho Supreme Court, testified that it had been the policy over the last 20 years to support only fee increases which directly relate to the administration of the judicial branch and its functions. She stated that she was particularly concerned in the midst of a recession and recognizing the legislature's reticence to add new or additional fees or costs. Ms. Trout said that the courts were not opposed to some form of public funding for ILAS and had supported that concept for the last five years. In addition, she stated that the Supreme Court had long been committed to assisting low-income Idahoans who find themselves in the court system. She also stated that the courts had participated, since 1997, in Partners Against Domestic Violence in fund raising for ILAS; had been active in encouraging pro bono legal services by the Idaho legal community; had Court Assistance Offices in every Idaho county to assist low income persons and provide help with computer assisted legal forms; and had been willing to participate in an Access to Justice Commission.

Ms. Trout explained that the courts had some specific concerns regarding **H 300** with proposed amendments. First, while the courts had no problem in being the "pass through" for the funds, it was not appropriate to have the Administrator of the Court regulating money which was appropriated to a private nonprofit entity, particularly an entity that represented people in the State courts. Secondly, that before taxpayer dollars pass through the Supreme Court to a private entity, it is important to have some controls over how those dollars are used. For example, it should be limited to State court proceedings, not federal court or federal administrative proceedings. Also it was important to recognize that these charges would not be "user fees" because ILAS does not pay any filing fee in state court, thus, it would be other users who were paying ILAS clients for representation. Third, while there were limits in the bill on the types of cases which would not be funded, Ms. Trout stated that they would not be sufficient because ILAS doesn't handle criminal cases or class action suits, and a limitation on cases against the state does not include representing medical indigency cases against counties, nor cases involving prison inmates or undocumented aliens.

Ms. Trout proposed the following: to establish a fund setting permissible uses and limitations, which would provide accountability for ILAS; to ask the Supreme Court to serve as the "pass through"; to apportion 17% (about \$200,000) from the existing fees collected which go to the State General Fund then transferred to an ILAS fund; to ask the Supreme Court, working together with the Idaho Bar Association and ILAS, to conduct a study of legal needs of low income Idahoans and to make a report to the Legislature in January 2012.

Chairman Wills explained to **Ms. Trout** that the amendments to the bill would address some of her concerns. Ms. Trout stated she had not seen the amendments.

Dan Goicoechea, Chief Deputy State Controller, stated that the Office of the State Controller neither supported nor took exception to **H 300** with proposed amendments. The office was able, however, to distribute funds and had no issue with State funds going to a private entity.

Dan Chadwick, Executive Director of Idaho Association of Counties, explained that counties were interested in the legislation because they provide for the trial courts, which include facilities and personnel, and they manage the distribution of the fees. He stated that counties are always concerned when legislation is proposed to fund non-court related activities through the use of filing fees. He noted that access to the courts was an important policy issue and that their major issue with the proposed legislation was the constitutionality in the future of requiring public defense services. Mr. Chadwick suggested that the Legislature, when analyzing these types of requests, apply the five standards which came from the 1993 Supreme Court Study of the Trial Court Financing System: (1) Does the fine or fee fund a court-related function? (2) Is the fine or fee proportional to the function it serves and its relationship to other units of government receiving distributions from the courts as part of sentencing? (3) Is the function receiving the funds one which is more appropriately supported by the state through other means of taxation? (4) Does the fine or fee actually advance the courts and criminal justice system? (5) Does the fine or fee go to a fund which promotes fiscal responsibility?

Mr. Chadwick stated that there would be filing challenges. He also said that continually going to prisoners and stacking fees on top of fees could not solve all financial needs.

Responding to committee questions regarding other private entities receiving court filing funds and if counties would receive court filing funds, **Mr. Chadwick** stated that he was not aware of any private entities receiving court filing funds and that counties receive \$17.00 per filing out of each general civil filing.

Sarah Scott, Idaho Coalition Against Sexual & Domestic Violence, testified in support of the proposed amendment to Idaho Code, Section 31-3201A, which authorizes the Clerk of the District Court to assess an additional \$10.00 user fee on persons who file certain civil cases in Idaho courts. She stated for victims of domestic violence there is little financial support. However, she felt that Idaho Legal Aid Services provided the most cost efficient services and that ILAS attorneys had a broader field of expertise available to Idaho's low income citizens.

In response to questions, **Ms. Scott** stated that ILAS was able to assist victims of rape with rent negotiations when they needed safer housing and that often times victims of rape are college-aged women. She also stated that colleges do not always expel those charged in rape cases, thus the perpetrator may continue to live in close proximity to the victim.

Rebecca Lovelace, Nampa Family Justice Center, stated her support for **H 300** with proposed amendments. She stated that ILAS was grossly underfunded and that ILAS was the single most important partner to the Nampa center.

David Leroy, Attorney, testified in support of **H 300** with proposed amendments stating he had provided legal services in the State of Idaho for 40 years. He related seeing an advertisement for a new television series called "Garrow's Law." He noticed that the plot centered around an 18th Century Nobleman who was attempting to provide the kind of services to the less fortunate that the proposed legislation was presently seeking from the 61st Idaho Legislature. To give the committee an image of what would be accomplished by **H 300** with proposed amendments. Mr. Leroy explained that the U.S. Census reported 1,576,000 people living in Idaho; 187,000 are below the poverty level. Mr. Leroy stated population statistics would show that in ILAS there would be one lawyer per 7,000 clients. While for the 350 additional active lawyers in private practice the clients per lawyer would be approximately 1210 clients. Private practice clients would fit snugly inside Idaho's large Senate Auditorium. However, if the clients being served by **Mr. Sanchez** were gathered in one facility, they would fill the Taco Bell Arena. Mr. Leroy stated that attorneys at ILAS worked for a lot less than \$100 per hour, while those in private practice earn upwards to \$300 per hour. He also stated that there was a false assumption that those with means needed attorneys more than those of little means whereas, he said, the opposite was true.

Mr. Leroy stated that the courts jealously guard the court fees "cookie jar." He argued that the courts fund the district courts, the magistrate courts, Police Officers Standards and Training Academy, Senior Magistrates, some domestic battery evaluation and some counselors for the indigent; but they would not provide a lawyer for the indigent. He said it was vitally important to have easy access to legal aid for the third of the population who could not afford legal representation. He told the committee that it was a "Garrow's Law" moment and that the committee had a chance to do what was foreseen by Mr. Garrow 200 years ago.

Susan Graham, ILAS board member, spoke in support of **H 300** with proposed amendments, and explained the difficulty of finding funds to keep legal aid services available.

Eva Lopez and **Diane Anderson**, ILAS clients, also testified in support of **H 300** with proposed amendments. They told of their experience with legal aid and how they were successfully assisted when no other agency would respond to their needs.

Chairman Wills explained to the committee that there had been some very honorable scholars as well as many stakeholders testifying before the committee. He stated that the vote could potentially have a very significant impact well into the future for many people. Weighing this issue, he said, may pit that logical, common sense reasoning against the emotional, caring concerns of the people in this State who do not get the relief they need. He admonished the committee to choose wisely.

MOTION: **Rep. Smith** (24) moved to send **H 300** to General Orders with amendments; **Rep. Luker** seconded the motion.

SUBSTITUTE MOTION: **Rep. Nielsen** offered a substitute motion to further amend **H 300** with proposed amendments by repealing lines one and two on page two, subsequently renumber the lines to coincide with the deletions. He argued that there should be a filing fee charged for those petitioning for sterilization and for judicial consent to abortion.

Rep. Killen argued against the substitute motion stating that where minors were involved, he was reluctant to charge filing fees.

VOTE ON SUBSTITUTE MOTION: **Chairman Wills** called for a vote on the substitute motion to further amend **H 300** by repealing lines one and two, on page two, of **H 300**, and subsequently renumber the lines to coincide with the deletions. **Motion failed on voice vote.**

Rep. Burgoyne argued that **H 300** with proposed amendments met the five standards from the 1993 Supreme Court Study of the Trial Court Financing System presented to the committee by Dan Chadwick, Executive Director of Idaho Association of Counties.

VOTE ON ORIGINAL MOTION: **Chairman Wills** called for a vote on the motion to send **H 300** to General Orders with amendments. **Motion passed on voice vote.** **Rep. Bayer** will sponsor the bill on the floor.

S 1154a: **Steve Bywater**, Office of the Attorney General, explained that **S 1154a** would amend and update Title 18, Chapter 83, of the Idaho Code, and make three basic changes to improve the existing sexual offender registration system in Idaho. First, it would incorporate the current national standards for sex offender registries, which expand and clarify the requirements for registration by offenders and for the sharing of information on the registry among law enforcement agencies and with the public. He stated that the changes would require the offenders on the registry to provide additional information to the registry and to comply with more strict deadlines in notifying the registry of changes in their residence, employment, education and status. It would also incorporate provisions that would improve tracking of offenders when they leave incarceration and when they move to and from the state. Secondly, it would remove from the code those provisions for the designation of Violent Sexual Predators (VSP), which were held unconstitutional in February of 2009, by the Supreme Court in the case of Jason Smith v. State. The court held in the Smith case that existing Idaho law did not provide adequate due process to offenders before designating them as "Violent Sexual Predators." Third, it would eliminate the current four member Sex Offender Classification Board (which was previously charged with making the VSP determination) and would replace it with a nine member Sex Offender Management Board. This board would be charged with developing statewide sex offender assessment, treatment, evaluation and management policies in accordance with evidence-based programs and best practices. Mr. Bywater stated that the Board would also be charged with developing a new process for identifying, managing, and establishing preventative measures for those sexual offenders that are most likely to re-offend.

MOTION: **Rep. Ellsworth** moved to send **S 1154a** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 5:20 p.m.

Representative Wills
Chair

Jean Vance
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Afternoon Adjournment
Room EW42
Thursday, March 31, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Approval of Minutes: March 29	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chair Luker
Rep Smith(24)
Rep Nielsen
Rep Shirley
Rep Hart
Rep Bolz
Rep Ellsworth
Rep Bateman
Rep McMillan
Rep Perry
Rep Sims
Rep Burgoyne
Rep Jaquet
Rep Killen

COMMITTEE SECRETARY

Jean Vance
Room: EW56
Phone: (208) 332-1127
email: jvance@house.idaho.gov

MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, March 31, 2011
TIME: 1:30 pm or Upon Afternoon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
**ABSENT/
EXCUSED:** Reps. Luker, Smith (24), Hart, Ellsworth, Perry
GUESTS: Meghan Jeppesen
Chairman Wills called the meeting to order at 2:40 p.m.
MOTION: **Rep. Bolz** moved to approve the minutes of March 29; **motion carried on voice vote.**
Chairman Wills thanked members of the committee for their diligence and for their thoughtful, respectful debates during committee meetings of the 61st Legislative Session.
Chairman Wills recognized the service of Legislative Intern, **Justin Jeppesen**, and Legislative Attache, **Jean Vance**, who had served the committee for the 2011 Legislative Session.
Committee members thanked **Chairman Wills** for his leadership and noted that his fairness and decorum were especially appreciated.
ADJOURN: The meeting adjourned at 2:56 p.m.

Representative Wills
Chair

Jean Vance
Secretary

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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, March 31, 2011

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MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:**

GUESTS:

Representative Wills
Chair

Jean Vance
Secretary