

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, January 14, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Introductions	
RS 19985	Relating to the Juvenile Corrections Act; immunity	Sharon Harrigfeld, Director Juvenile Corrections
RS 19986	Relating to the Juvenile Corrections Act; revise detention	Sharon Harrigfeld
RS 19987	Relating to the Juvenile Corrections Act; reimbursements	Sharon Harrigfeld
RS 20037	Relating to the Juvenile Corrections Act; amendments	Sharon Harrigfeld

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chair Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, January 14, 2011

TIME: 1:30 P.M.

PLACE: WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

ABSENT/ EXCUSED: Senator Davis

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

INTRODUCTION **Chairman Darrington** called the meeting to order at 1:30 p.m. and introduced and welcomed the new members of the Committee: Senators Vick, Nuxoll, and LeFavour. He also introduced the Page, Jacob Turner, and mentioned that we had an intern, Peter Thomas who was out ill today.

RS 19985 **Relating to the Juvenile Corrections Act: Director Sharon Harrigfeld** explained this would add a new section to the Juvenile Corrections Act giving specific immunity for released offenders and crimes they may commit post-release. This would replicate similar language in adult Corrections.

MOTION: **Senator Mortimer** made a motion to send RS 19985 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

RS 19986 **Relating to the Juvenile Corrections Act: Director Harrigfeld** explained this would amend §20–518 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.

MOTION: **Senator LeFavour** made a motion to send RS 19986 to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

RS 19987 **Relating to the Juvenile Corrections Act: Director Sharon Harrigfeld** explained this would clarify that the parents of juvenile offenders in IDJC custody are still financially responsible for those juveniles who are past age 18 and would correct §20–524.

MOTION: **Senator Lodge** made a motion to send RS 19987 to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

RS 20037 **Relating to the Juvenile Corrections Act: Director Sharon Harrigfeld** explained this would make several "housekeeping" changes that have been brought forward regarding the Juvenile Corrections Act. These changes are redefined to avoid confusion.

MOTION: **Senator LeFavour** made a motion to send RS 20037 to print. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 17, 2011

SUBJECT	DESCRIPTION	PRESENTER
RS 20067	Relating to the Administrative Director of Courts	Michael Henderson
RS 20068	Relating to the Commencement of Actions	Michael Henderson
RS 20069	Relating to the Parent Responsibility Act	Michael Henderson
RS 20070	Relating to the Rules of the Road	Michael Henderson
RS 20071	Relating to the Supreme Court Reporter	Michael Henderson
RS 20073	Relating to Rape	Holly Koole
RS 20044	Relating to Uniform Controlled Substance	Russell Westerberg

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chair Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 17, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

Chairman Darrington called the meeting to order at 1:30 p.m. and introduced Peter Thomas, a political science student at Boise State, an intern that will be working with the Committee.

RS 20067 **Relating to the Administrative Director of Courts: Michael Henderson**, legal counsel for the Idaho Supreme Court, explained this legislation would require the Administrative Director to make its annual report for each fiscal year beginning in 2011, rather than each calendar year as is currently required. This would allow the work of the courts to be more directly related to the expenditure of funds for each year.

MOTION: **Senator Mortimer** made a motion to send RS 20067 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 20068 **Relating to the Commencement of Actions: Michael Henderson** explained that this amendment to Idaho Code § 5-508 would remove confusion by providing that service on out-of-state parties subject to the jurisdiction of Idaho courts does not require a court order and may be made as provided in Idaho Code § 5-515.

MOTION: **Senator McKague** made a motion to send RS 20068 to print. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**.

RS 20069 **Relating to the Parent Responsibility Act: Michael Henderson** explained this legislation concerns persons whose income is being withheld to satisfy a child support order. The statute states that a copy of the motion and notice of hearing to modify or terminate the withholding order must be served upon the other party "at least five days before the hearing." An amendment to the statute would provide that service will take place in the manner and time provided by the Idaho Rules of Civil Procedure. This will make the statute and the rule consistent and prevent confusion.

MOTION: **Senator Davis** made a motion to send RS 20069 to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 20070 **Relating to the Rules of the Road: Michael Henderson** explained this would correct the language of Idaho Code § 49-624, which requires drivers who approach stopped emergency vehicles with flashing lights to take certain precautions. This legislation would amend the statute to make it clear that drivers must change lanes away from the stopped emergency vehicle.

MOTION: **Senator LeFavour** made a motion to send RS 20070 to print. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

RS 20071 **Relating to the Supreme Court Reporter: Michael Henderson** explained there is a requirement of the state law librarian to distribute volumes of the Idaho Reports, which contain the published opinions of the Supreme Court and Court of Appeals to various officers of state government, departments, institutions, states, territories and foreign countries. Some recipients do not wish to receive these volumes as many are now available electronically. This would relieve the state law librarian from distributing unwanted material and would save some general fund money.

MOTION: **Senator Lodge** made a motion to send RS 20071 to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

RS 20073 **Relating to Rape: Holly Koole**, Legislative Lobbyist for Idaho Prosecuting Attorney Association, explained this legislation amends the circumstances listed in Idaho's current Rape statute to add the circumstance of rape by fraud. The current law now states that rape can occur "where she (victim female) submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense, or concealment." This amendment would make it so a defendant would be guilty of rape under the circumstance of fraud, when a female submits under the belief that the person committing the act is someone other than the accused not limited to husband/wife relationship. This legislation would close a loophole and provide protection to not only married women but non-married women as well.

MOTION: **Senator Davis** made a motion to send RS 20073 to print. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

RS 20044 **Relating to Uniform Controlled Substance: Russell Westerberg**, of Westerberg & Associates, explained this proposal would add "blunt wraps" to Idaho Code § 37-2701 as drug paraphernalia. It would make it unlawful to manufacture, sell, or distribute a blunt wrap in the State of Idaho. Blunt wraps are defined as individual tobacco wrappers also known as wraps or roll your own cigar wraps, made wholly or in part from tobacco, and are used to hold any burning material or illegal substance.

MOTION: **Senator Mortimer** made a motion to send RS 20044 to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:08 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 19, 2011

SUBJECT	DESCRIPTION	PRESENTER
RS 19991	Relating to the State Board of Correction; Additional Authority	Kevin Kempf
RS 19995	Relating to the Personnel System and the Idaho Department of Correction	Brent Reinke
RS 20042	Relating to the State Board of Correction; Rehabilitation	Shane Evans
RS 20055	Relating to Public Records; New Section	Janet Gallimore, Executive Director Historical Society
RS 20056	Relating to Disclosure of Information	Janet Gallimore
RS 20058	Relating to Records Exempt from Disclosure	Janet Gallimore
RULES REVIEW		
Docket No. 06-0101-1001	Proclamation Rule Rules of the Board of Correction	Lorenzo Washington
PRESENTATION	Criminal Justice in Idaho and update of the Idaho Department of Correction	Brent Reinke, Executive Director

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

COMMITTEE MEMBERS

Chairman Darrington
Vice Chair Vick
Sen Davis
Sen Lodge
Sen McKague
Sen Mortimer
Sen Nuxoll
Sen Bock
Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds
Room: WW35
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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 19, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

Chairman Darrington called the meeting to order at 1:34 p.m. and asked for minutes to approve. **Vice Chairman Vick** made a motion to approve the minutes of January 14, 2011 as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

RS 19991 **Relating to the State Board of Correction. Director Brent Reinke introduced Kevin Kempf**, Chief of Operations to explain RS 19991, having to do with Peace Officer Status. **Chairman Darrington** interjected a comment to those new to this Committee, that on the introduction of RS's only the sponsor speaks to them and if they are assigned back to this Committee as bills, it will be a public hearing and anybody may speak to the bill. **Chief Kempf** then explained the two amendments that clarify peace officer status for probation and parole officers as outlined in Idaho Code, Sections 19-510A and 20-209C. The first proposal allows the Board of Correction to designate qualified non-classified employees peace officer status. Current law specifies "classified" staff, leaving administrators unable to perform essential oversight duties. The second proposal allows peace officer trained staff to respond to emergencies on a limited basis and as requested by law enforcement.

MOTION: **Senator Lodge** made a motion to send **RS 19991** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

RS 19995 **Relating to the Personnel System and the Idaho Department of Correction. Director Reinke** explained this housekeeping proposal simply strikes numbers from the corrections-specific section of law detailing exempt employees. The proposal mirrors the format for other agencies.

MOTION: **Senator Mortimer** made a motion to send **RS 19995** to print. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

RS 20042 **Relating to the State Board of Correction. Director Reinke introduced Shane Evans**, Director of Education and Treatment, to explain this proposal. **Director Evans** explained the new language to Idaho Code, Section 20-209 which states the Department may provide rehabilitative services to offenders. The proposed language amends code to reflect current practices. Research proves that treatment works to reduce risk and ensure community safety.

MOTION: **Senator Bock** made a motion to send **RS 20042** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

RS 20055

Relating to Public Records. Rod House, State Archivist of the Idaho State Historical Society, explained the proposed change provides the State or authorized records custodians the authority to reclaim and recover Idaho public records that may have been intentionally or unintentionally removed from their proper custodian. This legislation known as the "Idaho Replevin Act" codifies as state policy that all public records are the property of the citizens of the state of Idaho in perpetuity.

Chairman Darrington asked at what point are the records received in the Archives. **Mr. House** replied when they are transferred by the city, county or state agencies. **Chairman Darrington** clarified that the counties indicated they have no problem with this legislation and other units have also looked at it. He also mentioned that these are introduced with the permission of the Pro Tem although they may or may not be referred back to this Committee.

Senator Mortimer asked about the time frame that records are kept by cities or counties. He asked if Mr. House was saying that they don't become state property until someone gives them to you, but you have the right to request those records from a city or county and amass this large amount of public record. **Mr. House** replied that records retention schedules are fairly critical and cities have done a good job passing legislation to manage their records. **Mr. House** said he authorizes the destruction of records on a weekly basis. Most agencies follow a fairly rigid schedule of shredding. **Senator Mortimer** asked if this proposal indicates that Archives would have the right to any of those records even past an established time frame. **Mr. House** replied they would, and that was why the review and sign-off was important.

MOTION: **Senator Bock** made a motion to send **RS 20055** to print. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**. **Senator McKague** wished to be recorded as voting no.

RS 20056

Relating to Disclosure of Information. Rod House explained this proposal reduces the time for access to records pertaining to death, stillbirth, marriage or divorce from 50 to 25 years.

MOTION: **Senator Lodge** made a motion to send **RS 20056** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

RS 20058

Relating to Records Exempt from Disclosure. Rod House explained this proposal provides that records exempt from disclosure are presumed public seventy five years after their creation.

MOTION: **Senator Mortimer** made a motion to send **RS 20058** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington turned the meeting over to **Vice Chairman Vick** to lead in the Rules Review from the Department of Corrections. **Vice Chairman Vick** called on **Director Brent Reinke** who then introduced **Lorenzo Washington**, the Policy Coordinator. **Mr. Washington** will be sharing this particular administrative rule and **Mr. Paul Panther** will be assisting as to the implementation of this rule in the Department of Corrections.

**Docket No.
06-0101-1001**

Rules Review of the Board of Correction — A Proclamation Rule. **Lorenzo Washington**, Policy Coordinator, Idaho Department of Correction, briefly explained the Board of Correction's rulemaking process. In accordance with Idaho Code, Section 20-212(1), a rule would become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin by the Office of the Administrative Rules Coordinator. This Proclamation went into effect on November 5, 2010. The Board of Corrections rule changes are summarized by sections as follows:

- 000. An amendment was necessary to add the legal authority given to Idaho Department of Correction (IDOC) pursuant to Section 20-101D and titled Meritorious Reduction of Sentence.
- 114. Inmate Funds Receipt and Maintenance - renumbered from previous 410.
- 136. Sentence Administration - This new section is necessary to allow the IDOC to fully implement Section 20-101D.
- 402. Correspondence with Inmates - Amendment is necessary to make subsection 02 consistent with the definition for legal mail currently being used in IDOC standard operating procedure.

MOTION:

Senator LeFavour made a motion that the Committee adopt **Docket No. 06-0101-1001**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Vick** then turned the meeting back over to **Chairman Darrington**.

PRESENTATION

Director Brent Reinke presented a year end report to the Committee. He explained these changing times and challenges. He discussed the need to be creative in cost cutting and efficiency, which requires a "reset" button. The Department oversees almost 1,600 employees working with 21,000 offenders statewide.

The Correctional Alternative Placement Program (CAPP) opened, providing 90 days of treatment in lieu of longer prison sentences. The Therapeutic Community Retained Jurisdiction Program cuts in half the amount of time inmates must serve to receive treatment. New sentencing options that went into effect early in FY11 have reduced the inmate population.

One of the latest Corrections reset was in streamlining four divisions down to two. In addition to the new, streamlined organizational structure, IDOC is launching new initiatives to cut its cost even further. Management Services has been charged with centralizing purchasing. One focused effort to cut costs was in food service. The Department cut the food budget by \$1 million by changing menus, reducing food service staff and putting more inventory controls in place.

The Operations Division has been tasked with finding more ways to help offenders successfully transition from prison back to their communities.

Director Reinke concluded that the Department of Corrections would continue to stay focused on safety for Idaho while continuing to help balance the budget.

ADJOURNMENT

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AMENDED AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 24, 2011

SUBJECT	DESCRIPTION	PRESENTER
	<u>Minutes to Approve</u> January 17, 2011	Senator Mortimer
RS 20154	Relating to Trusts and Fiduciaries; substituted property	Robert L. Aldridge
RS 20155	Relating to the Uniform Probate Code; no contest clauses	Robert L. Aldridge
RS 20153	Relating to the Uniform Probate Code; personal representatives and conservators powers	Robert L. Aldridge
RS 20150	Relating to Domestic Relations; responsibility of relatives	Robert L. Aldridge
RS 20196	Relating to Trust	Robert L. Aldridge
RS 20147	Relating to the Office of State Appellate Public Defender	Senator Darrington
Docket No.	RULES REVIEW — Idaho State Police	
11-1101-1001 Page 88	Rules of the Idaho Peace Officer Standards and Training (POST) Council	William Flink, POST Administrator
11-1101-1002 Page 92	Rules of the Idaho Peace Officer Standards and Training Council	William Flink
11-1102-1001 Page 120	Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers	William Flink
11-1103-1001 Page 124	Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers	William Flink
11-1104-1001 Page 130	Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers	William Flink
11-1105-1001 Page 136	Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff	William Flink

11-1106-1001 Page 140	Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers	William Flink
11-0301-1001 Page 75	Rules Governing Alcohol Testing	Major Kedrick Wills
11-0501-0902 Page 82	Rules Governing Alcohol Beverage Control	Lt. Bob Clements

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 24, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

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

MINUTES **Senator Mortimer** made a motion that the minutes of **January 17, 2011** be approved as written. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

RS 20154 **Relating to Trusts and Fiduciaries.** **Robert Aldridge** explained this legislation is intended to cure a potential problem for Idaho trusts which are required to comply with Rev. Rul. 2008-22, Substitution power. A new section would be added to make a fiduciary duty to determine equivalent value of substituted property.

MOTION: **Senator Davis** made a motion to send **RS 20154** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

RS 20155 **Relating to the Uniform Probate Code.** **Robert Aldridge** explained this legislation expands the provisions applying to no contest clauses and applies them to both wills and trusts.

MOTION: **Senator Davis** made a motion to send **RS 20155** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 20153 **Relating to the Uniform Probate Code.** **Robert Aldridge** said this would make clear that the personal representative of a decedent can control the social media of the decedent, such as e-mail, blogs, instant messaging, Facebook types of accounts and so forth. He said that Section Two would give the same power to a conservator for a protected person.

MOTION: **Senator LeFavour** made a motion to send **RS 20153** to print. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

RS 20150 **Relating to Domestic Relations.** **Robert Aldridge** explained that two statutes, 32-1002 and 32-1008A, have been held to not be enforceable by the Attorney General because they violate Medicaid statutes. Those sections are repealed.

MOTION: **Senator LeFavour** made a motion to send **RS 20150** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

RS 20196 **Relating to Trust.** **Robert Aldridge** explained this legislation as purely a housekeeping situation. This will change the term "prudent man" to "prudent investor" and also add "conservator" in two statutes.

MOTION: **Senator Davis** made a motion to send **RS 20196** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington turned the meeting over to **Vice Chairman Vick** to introduce the next RS.

RS 20147 **Relating to the Office of State Appellate Public Defender. Senator Darrington** explained the stricken language in the proposed legislation was part of the Act of 1998 creating the State Appellate Public Defender (SAPD). There was purpose for the language in 1998 which no longer exists. **Senator Darrington** said the Governor needs to be able to appoint the SAPD the same as other appointees.

MOTION: **Senator Bock** made a motion to send **RS 20147** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

Rules Review chaired by **Vice Chairman Vick** who introduced **William Flink, POST Administrator** to present Rules of the Idaho State Police.

Docket No. 11-1101-1001 **Rules of the Idaho Peace Officer Standards and Training (POST) Council - Mr. Flink** explained this rule changes the title of the POST Executive Director position to POST Division Administrator and from a classified to a non-classified position. It also 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. This change provides clarity in the areas of hiring, supervision, accountability and administration.

MOTION: **Senator LeFavour** made a motion to adopt **Docket No. 11-1101-1001**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Docket No. 11-1101-1002 **Mr. Flink** explained this docket amends the makeup of the Hearing Board and entrance requirements for applicants and instructors to POST Academy. He further explained the rule directs the Chairman of the POST Council to appoint three members of the POST Council to serve on the Hearing Board rather than the previous members which were a city chief of police, a county sheriff and an attorney.

Mr. Flink enumerated schooling, age, and military discharge qualifications of an applicant to be selected for POST as outlined in the amendments. **Senator Davis** questioned Mr. Flink about the minimum age requirement of 21, stating that military personnel are acceptable at age 18. **Mr. Flink** answered that education as well as work history could not be evaluated in younger applicants and that it is required that applicants must have a productive work ethic. He further stated his opinion that younger applicants in the past had problems demanding respect of the general population as well as within a detention center.

Mr. Flink also reviewed physical qualification certificates and examinations that should be supplied with the application to POST. Hardship exemptions to the Closed Campus provisions of the POST Academy were mentioned and the minimum basic training curriculum changes to allow the POST Council to establish requirements were summarized.

Senator Mortimer questioned concern with a minimum number of hours of coursework required. **Mr. Flink** indicated that the minimum hour requirement was removed as part of the amendment allowing for flexibility for class modification or distant and internet training. Further questioning from **Senator Mortimer** and **Vice Chairman Vick** ensued concerning why the requirements are not specified, but are open to POST Council discretion. **Mr. Flink** indicated an hour requirement would be acceptable and that reciprocity between states would not be adversely affected with the amendments as written.

Mr. Flink enumerated the value of college credits converted to POST-approved credits and detailed the amendment requirement for supervisor and management certificates and listed requirements for applicants with experience and records from outside Idaho. Mr. Flink further explained the amendment as it related to the minimum training requirements for reserve peace officers, Level I reserve marine deputies and Level I certificates, which shall be at the POST Council discretion.

Documentation of Completed Training was clarified by Mr. Flink in the amendment that would be based on the core curriculum rather than a specific number of credit hours. Further changes were clarified concerning canine handlers in which the word “shall” replaced the word “must” in evaluation and certification. Mr. Flink detailed instructor certification requirements being exempt for instructors such as judges, attorneys, federal or state officials and other non-police personnel and would be approved based on expertise in the topic area. A new certification was explained by Mr. Flink for Conducted Energy Device Instructor Certification as well as the requirement to maintain Master Instructor certification.

Mr. Flink described the changes to the review and recommendation of an instructor application from the Post Council’s responsibility to the Director to expedite the process. Amendments to the Documentation section were explained with additions for the continuing training requirement and exceptions for Active Duty Military Service.

Senator Davis questioned the “exception of age” for a minimum standard for employment in Section 333-01 with the previously stated requirement of 21 years. **Mr. Flink** replied that Section 333-01 referred to vocational training at ISU and CSI. Subsequent discussion attempted to clarify age requirements for vocational law enforcement students.

MOTION: **Senator Mortimer** expressed concern and made a motion to reject **Docket No. 11-1101-1002**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Docket No. 11-0301-1001 **Rules Governing Alcohol Testing - Major Kedrick Wills** of the Idaho State Police presented this docket which refers to Breath Alcohol Testing Rules. He explained that the change will clarify the definition of the test and the instruments and analytical methods used to perform the tests. Further explanation clarified approval of the solution and not the vendor used.

MOTION: **Senator Nuxoll** made a motion to adopt **Docket No. 11-0301-1001**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Docket No. 11-0501-0902 **Rules Governing Alcohol Beverage Control - Lieutenant Bob Clements** presented the rule regarding age restriction requirements for movie theatres that are licensed to sell alcoholic beverages. Lieutenant Clements clarified the rule would prohibit minors from entering during the time alcohol is dispensed but that during the time that alcohol was not served, minors would be allowed entrance.

Discussion ensued with questions by **Senator LeFavour** concerning specific movie theatres affected by this rule and how restaurants were able to serve alcoholic beverages. **Lieutenant Clements** answered with a clarification of the difference between a restaurant and movie theatre. **Senators Bock and LeFavour** voiced their concern with the possibility for arbitrary enforcement of the rule between establishment types. **Senator Davis** recalled the reasons for adoption of the original Idaho Code.

MOTION: **Chairman Darrington** made a motion to adopt **Docket No. 11-0501-0902**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
 1:30 P.M.
 Room WW54
 Wednesday, January 26, 2011

SUBJECT	DESCRIPTION	PRESENTER
S 1002	Relating to the Juvenile Corrections Act; immunity	Sharon Harrigfeld, Director Juvenile Corrections
S 1003	Relating to the Juvenile Corrections Act; revise detention	Sharon Harrigfeld
S 1004	Relating to the Juvenile Corrections Act; reimbursement for costs for care and treatment	Sharon Harrigfeld
RULES REVIEW		
Docket No.	Office of the Attorney General	
04-1101-1001 Page 3	Idaho Rules of the Administrative Procedure of the Attorney General	Michael S. Gilmore Deputy Attorney General
Idaho Department of Juvenile Corrections		
05-01011001 Page 14	Rules for Contract Providers	Sharon Harrigfeld
05-0105-1001 Page 22	Rules for Reintegration Providers	Sharon Harrigfeld
Industrial Commission		
17-0501-1001 Page 147	Rules under the Crime Victims Compensation Act	George Gutierrez, Crime Victims Bureau Chief
Certified Shorthand Reporters Board		
49-0101-1001 Page 159	Rules of Procedure of the Idaho Certified Shorthand Reporters Board	Roger Hales, General Counsel

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

COMMITTEE MEMBERS

Chairman Darrington
 Vice Chair Vick
 Sen Davis
 Sen Lodge
 Sen McKague

COMMITTEE SECRETARY

Leigh Hinds
 Room: WW35
 Phone: (208) 332-1317
 email: lhinds@senate.idaho.gov

Sen Mortimer
Sen Nuxoll
Sen Bock
Sen LeFavour

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 26, 2011
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, and LeFavour
ABSENT/ EXCUSED: Senator Bock

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

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

S 1002 **Relating to the Juvenile Corrections.** **Sharon Harrigfeld**, Director of Juvenile Corrections, presented this bill as a new section to the Juvenile Corrections Act which would give the Department of Juvenile Corrections and Custody Review Board specific immunity for released offenders and the crimes they may commit. She further explained that it was intended to reduce risk and avoidance of issues when juveniles are either on home pass or released from custody. **Director Harrigfeld** recalled legislation passed for the Department of Corrections in 1980 allowing for similar immunity.

Senator Davis asked for the Department of Correction statute referred to previously. The Director deferred to **Nancy Bishop**, legal counsel, who answered it is Idaho Code, Section 20-231. **Senator Davis** stated concern about the Tort Act as it relates to Section 20-231 and this new legislation. Discussion ensued concerning decisions made by public employees that may have immunity and not conflict with the Tort Claims Act. **Nancy Bishop** explained the intent for immunity is only for specific conditions of release decisions from custody. **Senator Lodge** asked that her service with the Custody Review Board be noted.

Barbara Jordan, representing the Idaho Trial Lawyers Association, spoke against the legislation claiming the bill was unnecessary and cited the Idaho Tort Claims Act that protects liability as long as the person is acting within the scope of their employment. If employees are acting criminally, maliciously or inappropriately the Tort Claims Act allows for recourse.

Senator Mortimer questioned who would defend and represent a public employee or a voluntary representative of the Department if a suit is filed. **Barbara Jordan** indicated that to her knowledge of the statutes that the State of Idaho would represent the employee or representative.

MOTION: **Senator Darrington** asked for a motion. No motion was presented and S 1002 was held.

S 1003 **Director Harrigfeld** explained this bill is a request that would amend Idaho Code, Section 20-518 that allows juveniles that have been waived to adult court be placed in the general population of a juvenile detention facility.

Steve Jett clarified that the small number of juveniles being tried as an adult that are ordered back to the juvenile detention centers are sight and sound separated not allowing them to participate in beneficial programs with the general population. He expressed his support for the bill.

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

S 1004 **Relating to the Juvenile Corrections Act.** **Director Harrigfeld** explained that this bill would correct Idaho Code, Section 20-524 to clarify that the parents of juvenile offenders in IDJC custody are still financially responsible for those juveniles who are past age 18. Juveniles are allowed to remain in the system until age 21.

Senator Darrington questioned the percentage of fees collected at the present time. **Joan Baker** of the department indicated that approximately 35% of fees are collected. **Senator Mortimer** asked Ms. Baker about collection methods implemented by the Department. **Ms. Baker** explained that every parent of a juvenile is requested to make payment, but the Department does not use wage withholding, garnish tax returns or notify a credit agency unless a judgment is decreed for collection.

Chairman Darrington requested clarification whether the Juvenile Corrections Act provides for jurisdiction over and involvement of parents of juveniles that come under the purview of the Act. **Director Harrigfeld** answered in the affirmative. **Senator Mortimer** noted that jurisdiction over parents occurs only if the child turns 18 while in the Juvenile Corrections program. **Director Harrigfeld** concurred with the occasional exception of a child that turns 18 while on probation for a crime committed prior to turning 18 whereupon the child is returned to the juvenile program and the parents are assessed.

MOTION: **Senator Lodge** made a motion to send **S 1004** to the floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote** with the dissension of **Senator Davis**.

Rules Review - Vice Chairman Vick introduced Michael S. Gilmore, Deputy Attorney General, to present the first rule.

Docket No. 04-1101-1001 **Idaho Rules of the Administrative Procedure of the Attorney General - Michael S. Gilmore**, Deputy Attorney General, explained three pieces of 2010 legislation which prompted changing in procedures. One bill addressed time period for service of agency orders and Judicial Review. The second clarified that Administrative Agencies can award attorneys fees and costs in certain circumstances. The third was a bill that addressed rulemaking procedures.

Deputy Gilmore presented the amendments to Rules 5, 55 and 303 of this docket that would provide a definition of service of agency orders and by modernizing the Idaho Rules of Administrative Procedure (IRAP) to provide for electronic service by agencies and parties. Next, the Deputy said a new rule 741, was established to provide a procedural rule for agencies to use to consider requests to award costs and fees. Lastly, an amendment to Rule 830 would bring the existing rules about rulemaking procedures into conformity with this new law.

MOTION: **Senator Davis** made a motion to adopt **Docket No. 04-1101-1001**. **Chairman Darrington** seconded the motion. The motion carried by **voice vote**.

Docket No. 05-0101-1001 **Rules for Contract Providers - Sharon Harrigfeld**, Director of Juvenile Corrections, explained the rules were to provide guidelines for contract providers, the department, parents and others if a significant incident occurs with one of the Department's juveniles. The rules more clearly identify the types of incidents that require immediate notice and to whom and what types of incidents allow later notification.

MOTION: **Senator Lodge** made a motion to adopt **Docket No. 05-0101-1001**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**Docket No.
05-0105-1001**

Rules for Reintegration Providers - Director Harrigfeld explained the department is requesting approval for pending rules which would create a new chapter for the department and explained the current rules do not fit contract providers that provide services for independent living and reintegration services for juveniles. Examples were reviewed. The Director clarified that the pending rules set parameters and guidelines for providers helping juveniles move toward independent living and community reintegration.

MOTION:

Senator Mortimer made a motion to adopt **Docket No. 05-0105-1001**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**Docket No.
17-0501-1001**

Rules under the Crime Victims Compensation Act - George Gutierrez, Crime Victims Bureau Chief, explained this is an amendment to existing rules to provide policies and procedures to implement a fee schedule passed during the last legislative session. He further explained the history of the payment to various service providers by the Crime Victims Bureau for medical exams, mental health counseling, etc for victims. Originally the Bureau paid 100% but with rising medical costs, opted to pay 75% of invoices. In the past medical facilities or service providers wrote off the balance, but recently some providers have billed victims for the remaining 25%. In 2010 the Idaho Legislature amended the law which prevents victims being billed if the Bureau makes a payment on their behalf. The rules are a delineation of amounts that will be paid to providers for a specific service or treatment and are based on Idaho Workers Compensation codes. Providers were polled through public meetings held statewide. Chief Gutierrez explained the codes outlined and procedures used if a service provided has not been outlined.

MOTION:

Chairman Darrington made a motion to adopt **Docket No.17-0501-1001**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**Docket No.
49-0101-1001**

Rules of Procedure of the Idaho Certified Shorthand Reporters Board - Roger Hales, General Counsel, explained that the rule pertains to a temporary permit issued to shorthand reporters with credentials that do not have an Idaho license. The permit allows them to work within the state during the one year period prior to taking the Idaho exam for licensure. Docket No. 49-0101-1001 provides for standards allowing a one-time extension of the permit for an additional year. Standards for the one-time extension were reviewed. Subsection D had been rejected by the House Committee because of the amount of discretion allowed.

Senator Davis questioned the client's approval of rejecting Subsection D. **Mr. Hales** answered that the Chairman of the Certified Shorthand Reporters Board has acquiesced. **Susan Gandy**, Chair of the Certified Shorthand Reporters Board, addressed the committee explaining the rarity of circumstances warranting approval of Subsection D.

MOTION:

Senator Davis made a motion to adopt **Docket No. 49-0101-1001** excepting Subsection D. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

MOTION:

Senator Davis made a motion to reject Subsection D of Docket No. 49-0101-1001. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
 1:30 P.M.
 Room WW54
 Friday, January 28, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>RS20197C1</u>	Relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	Robert L. Aldridge
<u>RS20199</u>	Relating to the Control of Venereal Diseases; testing	Rep Brent Crane
<u>S 1048</u>	Relating to the office of State Appellate Public Defender	Senator Darrington
Docket No.	RULES REVIEW - Idaho State Police	
11-1102-1001 Page 120	Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers	William Flink, POST Administrator
11-1103-1001 Page 124	Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers	William Flink
11-1104-1001 Page 130	Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers	William Flink
11-1105-1001 Page 136	Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff	William Flink
11-1106-1001 Page 140	Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers	William Flink

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

COMMITTEE MEMBERS

Chairman Darrington	Sen Mortimer
Vice Chairman Vick	Sen Nuxoll
Sen Davis	Sen Bock
Sen Lodge	Sen LeFavour
Sen McKague	

COMMITTEE SECRETARY

Leigh Hinds
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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, January 28, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:** Senator Davis

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

Chairman Darrington called the meeting to order at 1:36 p.m.

RS 20197C1 **Relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Robert L. Aldridge**, representing Trust Estate Professionals, Inc., explained that this legislation will allow clear procedures that will work across state lines with any other state that has the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act or similar law. The majority of the situations in Idaho would be covered in the Act involve neighboring states who have adopted this Act. He further indicated that the Act would considerably streamline transferring cases and will save the involved parties money and time, streamline court time, and better protect the person for whom the guardianship or conservatorship was done.

MOTION: **Senator Mortimer** made a motion to send **20197C1** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 20199 **Relating to the Control of Venereal Diseases. Representative Brent Crane** explained this legislation pertains to federal grant requirements for entities that provide services to women who have been victims of domestic violence. Representative Crane explained the federal government ruling for grant recipients was changed to mandate testing of sex crime victims be within a 48 hour time limit. He clarified that even though Idaho code provided for testing, the code did not specify a time limit and that this legislation would define that time limit. Representative Crane explained the emergency clause pertaining to this legislation was due to a grant application deadline of February 22. If the legislation is in effect by that date, grant monies would be available to multiple domestic violence entities throughout the state.

MOTION: **Senator Bock** made a motion to send **RS 20199** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington asked that **Vice Chairman Vick** conduct the meeting while he presented legislation.

S 1048 **Relating to the Office of State Appellate Public Defender (SAPD).** **Senator Darrington** explained that since the origination of the position of SAPD, the position has matured and is not in need of a selection committee for recommendation to the governor, but rather a direct appointment by the governor with the advice of the Senate.

Fairy Hitchcock of Hitchcock Family Advocates expressed her support of S 1048.

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

Vice Chairman Vick continued to chair the meeting for the **Rules Review - Idaho State Police**.

Docket No. 11-1102-1001 **Docket No. 11-1102-1001** regarding certification for Juvenile Detention Officers was introduced by **William L. Flink**, Division Administrator, Idaho State Police, Peace Officer Standards & Training (POST). **Mr. Flink** explained Section 035 which enumerates procedures and requirements to re-instate a Juvenile Detention Officer certification if it has lapsed. He clarified that reviews would be conducted and requirements would differ dependent upon the length of time certification had lapsed. **Vice Chairman Vick** asked if the certification of juvenile detention officers is a new procedure. **Mr. Flink** answered no. **Vice Chairman Vick** questioned how lapsed certifications were handled in the past. **Mr. Flink** deferred to **Stephanie Altig** who explained the procedure was inadvertently omitted from prior rules concerning certification of juvenile detention officers.

MOTION: **Senator Bock** made a motion to adopt **Docket No. 11-1102-1001**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Docket No. 11-1103-1001 **Mr. Flink** explained this rule regarding certification standards for full-time and part-time Juvenile Probation Officers and the differences in length of time for officers employed before or after October 1, 2003 to complete certification or pass an examination. **Mr. Flink** then outlined similar requirements and deadlines for part-time Juvenile Probation Officers certification. He mentioned that provisions for lapsed certification were identical to those previously approved by the committee in Docket No. 11-1102-1001.

MOTION: **Senator Mortimer** made a motion to adopt **Docket No. 11-1103-1001**. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**.

Docket No. 11-1104-1001 **Mr. Flink** presented Docket No. 11-1104-1001 regarding standards for employment of Corrections Officers and Adult Probation and Parole Officers. **Mr. Flink** noted that these changes would align the Correction Officers and Adult Parole and Probation Officers rules with Patrol Officer employment rules. **Mr. Flink** enumerated proof of education and age requirements for applicants to be employed as a Correction Officer. Acceptable military records and proof of physical and medical requirements of applicants were also explained by **Mr. Flink**. A title clarification was noted changing the Physical Agility Test to the Physical Readiness Test.

MOTION: **Senator Lodge** made a motion to adopt **Docket No. 11-1104-1001**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Docket No. 11-1105-1001 Docket No. 11-1105-1001 regarding certification for Juvenile Correction Officers was presented by **Mr. Flink**. He explained that this docket addressed recertification of Juvenile Correction Officers if their certification has lapsed. Re-certification dependent upon length of lapses was explained by **Mr. Flink**.

MOTION: **Senator Nuxoll** made a motion to adopt **Docket No. 11-1105-1001**. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

**Docket No.
11-1106-1001**

Docket No. 11-1106-01 regarding rules for Misdemeanor Probation Officers (MPOs) was introduced by **Mr. Flink**. He explained that this was a new set of identical rules for Misdemeanor Probation Officers. Mr. Flink enumerated the standard definitions for Misdemeanor Probation Officers and Academy part-time Misdemeanor Probation Officer. De-certification of MPOs was explained as well as certification deadlines and criteria. It was noted that MPOs would be held to the same employment and basic training standards with the exception of fitness and physical disability, which is left to the discretion of the employing department. Mr. Flink explained subsections 08 and 09 which clarify procedures for transferring from full-time status to part-time status. The Basic and Part-time Basic Misdemeanor Probation Certificate was explained by Mr. Flink. The lapse of misdemeanor Probation Officer Certification was enumerated by Mr. Flink as a mirror of the previous designations with re-certification dependent upon the length of time. **Senator Mortimer** questioned if all positions discussed receive fire arms training. **Mr. Flink** answered that none of the juvenile officers or parole officers receive fire arms training, but do receive defensive training.

MOTION:

Chairman Darrington made a motion to adopt **Docket No. 11-1106-1001**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Vick turned the meeting back to **Chairman Darrington**. There being no further business, **Chairman Darrington** adjourned the meeting at 2:15 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AMENDED AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 31, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>RS20214</u>	Relating to the State Board of Corrections	Brent Reinke, Director Dept. of Corrections
<u>RS20225</u>	Relating to Judgment	Brent Reinke
<u>S 1029</u>	Relating to the State Board of Correction	Kevin Kempf
<u>S 1030</u>	Relating to the State Board of Correction	Shane Evans
<u>S 1031</u>	Relating to the Personnel System and the Idaho Department of Correction	Brent Reinke
<u>S 1014</u>	Relating to Rape	Holly Koole

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 31, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

Chairman Darrington called the meeting to order at 1:30 p.m. He then asked if there were minutes to approve.

MINUTES **Senator Nuxoll** made a motion to approve the minutes of **January 19, 2011** as written. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

RS 20214 **Relating to the State Board of Corrections. Brent Reinke**, Director, Department of Corrections, is requesting an increase of the allowable maximum Cost of Supervision (COS) fee to \$75.00 from the current COS allowed of \$50.00. He stated there had not been an increase in several years and they would like to set the COS fee at \$60.00. He explained the challenge in the amount of open Supervisor positions held.

MOTION: **Senator Davis** made a motion to introduce **RS 20214** to print. **Senator Noxull** seconded the motion. The motion carried by **voice vote**. **Senator McKague** wished to be recorded as voting no.

RS 20225 **Relating to Judgment. Director Reinke** explained that currently there was no fee attached to the presentence investigation reports (PSI). He stated the preparation of such reports was becoming more complicated and more costly. Under this proposal, the court would order a judgment of up to \$100.00 against a defendant in a case in which a PSI was prepared. Director Reinke said in fiscal year 2010, the department provided 4,832 presentence investigation reports to the courts.

MOTION: **Senator Davis** made a motion to introduce **RS 20225** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**. **Senator McKague** wished to be recorded as voting no.

S 1029 **Relating to the State Board of Correction. Kevin Kempf**, Chief of Operations, explained this bill would empower both classified and non-classified employees the rights and duties of peace officers in certain circumstances. Currently, the laws only allow for classified employees to be designated by the Board. Trained officers who currently hold non-classified positions sometimes assist in the field as part of their management duties. This amendment will allow the Board to designate the non-classified employees' peace officer status to effectively carry out their assigned duties. **Senator Mortimer** asked about training and was assured by **Chief Kempf** that those in this situation had the same training. **Senator Vick** asked about other states and **Chief Kempf** replied that Utah and Nevada had equal classification.

MOTION: **Senator Mortimer** made a motion to send **S 1029** to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1030 **Relating to the State Board of Correction. Shane Evans**, Director of Education and Treatment, explained this bill relates to an amendment to Idaho Code 20-209 to include a provision that the Idaho Department of Correction (IDOC) may provide rehabilitative services to support safe management of facilities and reintegration of offenders into Idaho communities. This language will assist IDOC in meeting its goal of standardized programming and represents the most economical approach to reducing inmate growth.

Fairy Hitchcock of Hitchcock Family Advocates spoke concerning those inmates who are women that have no educational training during their interment in a correctional facility.

MOTION: **Senator LeFavour** made a motion to send **S 1030** to the floor with a do pass recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

S 1031 **Relating to the Personnel System and the Idaho Department of Correction. Director Reinke** explained this technical correction updates the statute to reflect the Idaho Department of Correction current organizational structure for exempt employees by striking numeric values from this section of the code.

MOTION: **Senator Lodge** made a motion to send **S 1031** to the floor with a do pass recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

S 1014 **Relating to Rape. Holly Koole** presented this bill to amend the circumstances listed in Idaho's current Rape statute to add the circumstance of rape by fraud. Subsection 7 describes a circumstance where "she submits under the belief that the person committing the act is her husband." Ms. Koole recounted a recent case in Ada County where the victim believed the person with whom she was having sex was her boyfriend. A local judge dismissed the case in court because it wasn't covered by Idaho Statute. Subsection 8 has been added to cover relationships that are not specifically husband and wife.

Attorney Cathy Guzman, Ada County Prosecutors Office who had tried a recent case in Ada County, joined Holly Koole at the podium to answer questions. Ms. Guzman recounted the case in which a man pretending to be a person's boyfriend performed a sexual act upon the victim. **Chairman Darrington** clarified that Subsection 7 was added several years ago and at that time the word "husband" was deemed to be sufficient. **Ms. Guzman** concurred indicating that wording previously indicating "husband" was not meant to exclude other relationships.

Marty Durand of Planned Parenthood of the Great Northwest spoke in favor of the legislation.

Sarah Scott of Idaho Coalition spoke in support of the legislation.

Fairy Hitchcock, of Hitchcock Family Advocates spoke against the legislation due to the term "victim." Ms. Hitchcock was questioned by Senator Davis as to the overall intent of the legislation and why it shouldn't be passed. **Senator Davis** recounted what his understanding of the definition of rape should be based on Ms. Hitchcock's testimony. He asked Ms. Koole if rape should always include violence. **Ms. Koole** said the rape statute outlines many different situations where rape can occur which is not only with violence.

MOTION: **Senator Bock** made a motion to send **S 1014** to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 02, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Rules Review - Idaho State Police	
Docket No. 11-1001-1001	Rules Governing Idaho Public Safety and Security Information System	Dawn Peck, BCI Mgr.
<u>RS20102C2</u>	Relating to the Idaho DNA Database Act of 1996	
<u>S 1008</u>	Relating to the Administrative Director of Courts	Michael Henderson
<u>S 1009</u>	Relating to the Commencement of Actions	Michael Henderson
<u>S 1010</u>	Relating to the Parent Responsibility Act	Michael Henderson
<u>S 1011</u>	Relating to the Rules of the Road	Michael Henderson
<u>S 1012</u>	Relating to the Supreme Court Reporter	Michael Henderson

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 02, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

Chairman Darrington called the meeting to order at 1:32 p.m. and turned the meeting over to **Vice Chairman Vick**.

Rules Review - Idaho State Police

**Docket No.
11-1001-1001**

Rules Governing Idaho Public Safety and Security Information System - Dawn Peck, Idaho State Police Bureau of Criminal Identification Manager, explained that part of her job was as administrative support for the Idaho Public Safety and Security Information System Board which is commonly referred to as ILETS. This rulemaking provides for proxy appointments for the purpose of establishing a quorum at ILETS board meetings, and defines the allowable proxies. Ms. Peck further described the ILETS system as a computer-based message switch and network which provides authorized agencies access to state and federal data files. The information made available by ILETS is as near to an officer in the field as his or her radio or mobile computing device.

Ms. Peck said the ILETS system is governed by a multi-jurisdictional board. The current members of the Board are Blackfoot Police Chief R. David Moore, Chairman; Pocatello Police Chief J. R. Miller; Gooding County Sheriff Shaun Gough; Owyhee County Sheriff Daryl Crandle; ISP Lt. Colonel Kevin Johnson; and Colonel Jerry Russell, Executive Officer of the Idaho State Police. She said the Board meets biannually.

MOTION: **Senator Mortimer** made a motion to adopt **Docket No. 11-1001-1001**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Vick turned the meeting over to **Chairman Darrington**.

RS 20102C2

Relating to the Idaho DNA Database Act of 1996 - Major Kedrick Wills explained this proposal would enhance the DNA data base by including all convicted felons, effective July 1, 2013. He said Idaho is the only state in the United States that does not include all felons in the statewide or national data base. He further stated that increasing the data base to include all convicted felons enhances the ability to accurately identify repeat offenders and increases the opportunity to solve crimes not only within Idaho, but across the nation, as other states access the National DNA Index System (NDIS). Maj Wills called attention to the Fiscal note which he is asking to be funded in 2012 and implemented in 2013, giving time to get the scientists trained. He said he understood that when the funding was available is when it can be implemented.

Chairman Darrington asked how many DNA samples would that amount to in the

course of a year. **Major Wills** said there would roughly be an additional 5,000 samples. **Chairman Darrington** also reiterated that one of the reasons to ask for convictions rather than arrests was simply numbers and money. **Major Wills** concurred, adding that they have to balance fiscal impact with what we wish to do. **Senator LeFavour** asked Major Wills to give an example of those that would be pulled in under the broader umbrella. **Major Wills** replied that the biggest portion would be drug offenses. **Senator Lodge** asked regarding the fiscal note if this would be funded by ISP budget, or would this be new general fund money. **Major Wills** said they did not have the financial ability from the current budget to withstand this impact. **Senator Lodge** further clarified that the yearly cost would be, about \$418,000 after the one time cost. **Senator McKague** asked how we could pass this without knowing the budget. **Chairman Darrington** interpreted her question as one for the Chair and stated that he and Representative Wills had long discussions about this, and Major Wills has answered correctly that it won't be implemented until it is funded. He noted that the state was under tremendous pressure to catch up with the rest of the states of the Union.

MOTION: **Senator Nuxoll** made a motion to introduce **RS 20102C2** to print. **Senator McKague** seconded the motion. The motion carried by **voice vote**. A comment from **Chairman Darrington** suggested that members take the opportunity to call Major Wills and go to Meridian, Police Headquarters and visit the Forensic Unit. He said they would be impressed with the Lab that has been remodeled as they prepare for an increased DNA database. He asked Major Wills to introduce the Forensic Manager who was in the audience, Matthew Gamette M.S.

S 1008 **Relating to the Administrative Director of Courts - Michael Henderson** explained this bill would require the Administrative Director to make the reports on the business of the courts for each fiscal year rather than each calendar year. He claimed that providing a report for each fiscal year would allow the work of the courts to be more directly related to the expenditure of funds for each year.

MOTION: **Senator Bock** made a motion to send **S 1008** to the floor with a do pass recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

S 1009 **Relating to the Commencement of Actions - Michael Henderson** explained the language in Idaho Code, Section 5-508 misleads some lawyers into thinking they must obtain a court order before serving a defendant out of state. He said this amendment to that Code section would remove this confusion by directing them to a later-enacted statute, Idaho Code, Section 5-515 which allows service on out-of-state parties subject to the jurisdiction of Idaho courts without a court order.

MOTION: **Senator LeFavour** made a motion to send **S 1009** to the Senate floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

S 1010 **Relating to the Parent Responsibility Act - Michael Henderson** explained this again deals with an aspect of civil procedure having to do with a motion and notice of hearing regarding child support orders and income withheld. Mr. Henderson said the statute Idaho Code, Section 32-1215 states that a person whose income is being withheld can file a motion seeking to have that withholding order either set aside, quashed, or modified in some way and currently says that notice must be given to other parties at least 5 days before the date set for the hearing. This is in conflict with the Rules of Civil Procedure which requires that notice of motions and hearings be given at least 14 days before the hearing. This bill would make the statute and the rule consistent and prevent confusion.

MOTION: **Senator Mortimer** made a motion to send **S 1010** to the Senate Floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1011

Relating to the Rules of the Road - Michael Henderson explained this bill corrects the language of Idaho Code, Section 49-624 to make clear that drivers approaching stopped emergency vehicles with flashing lights must change lanes out of the lane adjacent to the stopped emergency vehicle. This would clarify that the driver must move into a lane away from the stopped vehicle. **Senator Davis** brought up a situation on I86 where emergency vehicles were on both sides of the road on this two lane highway. He wondered what one should do in that case. **Mr. Henderson** referred to the line in the bill "to do so in a manner that is reasonable and prudent under the existing conditions." **Major Wills** was asked to respond to Senator Davis since he had worked in that area many years. He explained that officers were trained to stay on one side of the road unless otherwise impossible. **Chairman Darrington** said he thought maybe in the situation described, paragraph (2) would kick in where one lane for each direction of travel, a driver is instructed to reduce the speed below the speed limit and maintain a safe speed until completely past the emergency vehicle.

MOTION:

Senator Davis made a motion to send **S 1011** to the Senate Floor with a **do pass** recommendation. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**.

S 1012

Relating to the Supreme Court Reporter - Michael Henderson explained this relates to Idaho Code, Section 1-505 that requires the state law librarian to distribute volumes of the Idaho Reports to various officers of state government, departments, institutions, states, territories and foreign countries. The published court opinions are available electronically and some recipients have stated they no longer wish to receive the published volumes. He said this bill would allow recipients to decline receiving the Idaho Reports, or to receive a lesser number than specified in the statute.

MOTION:

Senator Lodge made a motion to send **S 1012** to the Senate floor with a **do pass** recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington reminded the Committee there would be no meeting on Friday, February 4th, but would reconvene on Monday, February 7, with a pretty heavy schedule. There being no further business, **Chairman Darrington** adjourned the meeting at 2:15 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

**AMENDED AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 07, 2011**

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to Approve January 24, 2011 January 26, 2011 January 28, 2011 January 31, 2011	Senator Bock Senator LeFavour Senator Lodge Senator Vick
<u>S 1057</u>	Relating to the Control of Venereal Diseases; testing for HIV within 48 hours, declaring an emergency and providing retroactive application.	Representative Brent Crane
<u>S 1043</u>	Relating to Domestic Relations; responsibility of relatives to participate in the cost of Nursing Home Care	Robert L. Aldridge, Trust Estate Professionals, Inc.
<u>S 1045</u>	Relating to Trusts and Fiduciaries; to determine equivalent value of substituted property.	Robert L. Aldridge
<u>S 1044</u>	Relating to the Uniform Probate Code; revisions for Personal Representatives and Conservators	Robert L. Aldridge
<u>S 1047</u>	Relating to the Uniform Probate Code; enforcement of no-contest clauses, exceptions and conditional provisions	Robert L. Aldridge
<u>S 1056</u>	Relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	Robert L. Aldridge

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chair Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 07, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Mortimer, Nuxoll, Bock, and LeFavour

ABSENT/ EXCUSED: Senator McKague

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

In the absence of **Chairman Darrington** while he presented a bill in the House Judiciary & Rules Meeting, **Vice Chairman Vick** called the meeting to order when a quorum was present at 1:40 p.m.

MINUTES: **Vice Chairman Vick** asked if there were minutes to be approved. **Senator Bock** made a motion to approve the minutes of **January 24, 2011** as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

Senator LeFavour made a motion to approve the minutes of **January 26, 2011** as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

Senator Lodge made a motion to approve the minutes of **January 28, 2011** as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Senator Mortimer made a motion to approve the minutes of **January 31, 2011** as written. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1057

Relating to the Control of Venereal Diseases - Sarah Scott, representing Idaho Coalition against Sexual & Domestic Violence, explained the purpose of this legislation is to provide a time frame under which HIV testing may be performed on individuals charged with sex offenses. The Idaho Supreme Court, Payette County, Ada County, City of Nampa, each received a federal Grant to Encourage Arrest Policies (*now known as Community Defined Solutions Grants) awarded by the U.S. Department of Justice Office, on Violence Against Women. The grant awards are used by the entities to fund desperately needed domestic violence projects. Within the Grant is Special Condition No. 22 which provides that 5% of the award will be withheld unless the State or the respective units of local government have a law or regulation that allows the victim of a crime involving forced sexual activity to request that an HIV test be administered not later than 48 hours after the date on which the crime is charged. She further stated although Idaho Code, Section 39-604 provides for HIV testing, there is no time parameter regarding when the test has to be performed nor is there a provision allowing the victim to request that the HIV test be administered within the required 48 hours. Ms. Scott concluded that unless the statute is modified, each grant recipient will lose 5% of its grant award. Additionally, this is a statewide issue of significant importance. Any other Idaho entities that apply for and are awarded a community Defined Solutions Grant will be faced with losing 5% of their grant award.

Rebecca Lovelace of Nampa Family Justice Center and Delores Larsen of Rose Advocates, Weiser, came to the podium in support of this bill.

MOTION: **Senator Bock** made a motion to send **S 1057** to the Senate floor with a do pass recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Vick** turned the meeting over to **Chairman Darrington** on his return from the House.

S 1043 **Relating to Domestic Relations - Robert L. Aldridge**, Trust Estate Professionals, Inc. explained Attorney General Opinions 84-7 and 85-10. The office of the Attorney General directly stated that Idaho Code, Section 32-1008A was not a law of general applicability and violated the intent of Congress in establishing Medicaid and could subject Idaho to federal sanctions if implemented. He added that Footnote 2 of Opinion 84-7 stated that Idaho Code, Section 32-1002 was likewise in violation. The primary reason was that the laws were special laws directed at county indigency programs and Medicaid recipients. Since these statutes have not been enforced since such opinions were rendered, this bill repeals those sections.

MOTION: **Senator LeFavour** made a motion to send **S 1043** to the Senate floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S1045 **Relating to Trusts and Fiduciaries - Robert L. Aldridge** explained this bill is intended to cure a potential problem for Idaho trusts which are required to comply with Rev. Rul. 2008-22, Substitution power. He stated this ruling provides guidance regarding whether the corpus of an inter vivos trust is includable in the grantor's gross estate under section 2036 or 2038 of the Internal Revenue Code if the grantor retained the power, exercisable in a non-fiduciary capacity, to acquire property held in the trust by substituting other property of equivalent value. The ruling provides that, for estate tax purposes, the substitution power will not, by itself, cause the value of the trust corpus to be includable in the grantor's gross estate, if the trustee has a fiduciary obligation (under local law) to ensure the grantor's compliance with the terms of this power by satisfying itself that the properties acquired and substituted by the grantor are in fact of equivalent value and further provides that the substitution power cannot be exercised in a manner that can shift benefits among the trust beneficiaries. He concluded that this bill adds a new section 68-106A to create a fiduciary obligation.

MOTION: **Senator Mortimer** made a motion to send **S 1045** to the Senate floor with a do pass recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

S 1044 **Relating to the Uniform Probate Code - Robert L. Aldridge** explained Section One of this bill makes clear that the personal representative of a decedent can control the social media of the decedent, such as e-mail, blogs, instant messaging, Facebook types of accounts, and so forth. Section Two gives the same power to a conservator for a protected person. Mr. Aldridge added that the bill needed to be amended to change the word "decedent" in Section Two to "protected person."

MOTION: **Senator LeFavour** made a motion to send **S 1044** to the 14th Order for amendment. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

S 1047

Relating to the Uniform Probate Code - Robert L. Aldridge explained that Idaho law currently contains only one brief sentence regarding "no-contest" clauses, in Idaho Code, Section 15-3-905, and that section only refers to wills. The bill expands both the provisions applying to no-contest clauses and applies them to both wills and trusts. Section 15-3-905 is repealed since it is replaced by the language in the bill. He said the bill will give certainty and clarity to the issues surrounding no-contest clauses in wills and trusts. **Senator Davis** commented that there was not a lot of appellate guidance on no-contest clauses and asked what were the legal standards used by appellate courts in other states. **Mr. Aldridge** said they generally wanted to have open access to courts and if there was no statutory background, most appellate courts and the original court tended not to enforce the no-contest clauses in wills and trusts. **Senator Davis** said if he had a small to medium size estate, he could imagine someone might be unhappy and hire an attorney to spend a great deal of money suing the estate and that the cost of the administration of the estate would get paid first before getting to the specific requests. He asked for an explanation of how the costs of the estate does not consume the estate. **Mr. Aldridge** said that would be the problem. Often the person wants to leave money to one child who has provided care and another child who had not been around for many years, shows up, is unhappy and brings an action and the cost of that could be very large.

Senator Bock said he has concerns that we are denying the right to go to the courts to solve problems and questioned the national trend. **Mr. Aldridge** said the current law stating "in good faith" does not give nearly enough protection. The trend nationwide is to expand these no-contest clauses to give greater amounts of detail. **Senator Bock** said it appeared that under the current system the judge has quite a bit of flexibility, but he believes this would take away some of that flexibility. He added that if a no-contest clause was implemented, he would consider filing a declaratory relief action asking the court to interpret the will. **Mr. Aldridge** said they are looking at an illustration that might allow the ability to have a will interpreted in advance; however, they do not believe that is currently allowable under the Idaho code because a will is essentially a piece of paper until the death when only a will and testament is the operative one. **Senator Davis** suggested that on page 2, sub-section (3) would give the beneficiary an opportunity to ask for a court ruling to declare his or her rights. **Mr. Aldridge** said that first of all in the case of an estate, you're not a beneficiary until a death occurs; in a trust, whether it is an existing document, something created through wealth, or something that springs into existence when something happens, it is an existing entity and you could bring an action to construe if you were beneficiary because that status is already in place.

Senator Darrington asked if that no-contest clause would hold up in court if it was written that anyone that contests the will receives nothing. **Mr. Aldridge** replied that the court would look at the clause to determine what the person writing it meant and if it was brought in good faith. It might or might not be enforced. **Mr. Aldridge** concluded that they are trying to create as much certainty as possible.

MOTION:

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

S 1056

Relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act - Robert L. Aldridge explained Idaho's existing law on transfers of State conservatorships/guardianships or temporary recognition of foreign conservatorships/guardianship, contained in Title Fifteen, Chapters 9, 10, and 11, was based on a model National Probate Judge's act, which was modified by Trust Estate Professionals, Inc. (TEPI) to fit the Uniform Probate Code. The act was adopted in only a few states, and therefore the procedures have not been very useful. As a result, it is currently difficult to transfer such a case into or out of Idaho, or to temporarily recognize such a case in Idaho. Mr. Aldridge said that even absent a dispute, the Act facilitates transfers of existing guardianships or conservatorships between states in a streamlined way. It also allows temporary recognition of guardianships or conservatorships when the adult is in a different state for a limited period of time. In summary, he said the Act will allow clear procedures that will work across state lines with any other state that has the Act or similar law. He stated that the Act will considerably streamline transferring cases and will save the involved parties money and time, streamline court time, and better protect the person for whom the guardianship or conservatorship was done.

Chairman Darrington commented that the reason the court could communicate with a court in another state and they would receive the communication and respond was because they have adopted similar legislation. **Mr. Aldridge** said that was right and that is why we waited to make sure this was going to be adopted and it is in well over twenty states now, especially our surrounding states.

Senator LeFavour was curious about the definitions used in this section to which **Mr. Aldridge** replied that by and large the definitions parallel those in the existing probate code. Mr. Aldridge added that he wanted to clarify that this was for adults only. We will look to do something similar for children in the future, but that is a much more complicated procedure.

Chairman Darrington stated that our failure to adopt would continue to leave Idaho citizens at a disadvantage in proceedings that involve other states.

Senator Bock said what if we adopt and another state does not. **Mr. Aldridge** said we would be in the situation we are in now where we would attempt to work with that state, but it would be more cumbersome to do.

MOTION

Senator Bock made a motion to send **S 1056** to the Senate floor with a do pass recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 09, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Minutes - February 2, 2011	
<u>S 1026</u>	Relating to Public Records; to Prohibit the Improper or Unlawful Transfer or Removal of Public Records of the State	Carter Wilson, Deputy Coordinator Historical Society
<u>S 1028</u>	Relating to Records Exempt from Disclosure; to Provide that Records Exempt from Disclosure shall be Presumed to be Public Seventy-Five Years after their Creation	Carter Wilson
<u>H 27</u>	Relating to Assault and Battery; to Revise Provisions Upon Certain Personnel	Major Ralph Powell, Idaho State Police
	Presentation - Judicial Council <i>Judge Ron Wilper, Phil Reberger, Chief Justice Daniel Eismann, Steven Tuft</i>	Jim Carlson, Executive Director

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 09, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

Chairman Darrington called the meeting to order at 1:32 p.m. and asked if there were minutes to approve.

MINUTES **Senator Nuxoll** made a motion to approve the minutes of **February 2, 2011** as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Senator Darrington acknowledged the presence of the Chief Justice of the Supreme Court of the State of Idaho and Chairman of the Judicial Council, Daniel Eismann. He also acknowledged that Senator Davis working with Janet Gallimore from the State Historical Society is responsible for a display which will be unveiled and discussed further into the meeting.

S 1026

Relating to Public Records - Carter Wilson, Chairman of the State Historical Records Advisory Board (SHRAB), began by saying that the Board recommends the approval of this bill. He explained that one of the primary purposes of the Board is to promulgate and refute proposals concerning historical records. The membership of the Board is archivists, educators, librarians, state legislators, museum directors, researchers, state and county clerks and are chartered under federal statute and are independent, but closely affiliated with partnership of the State Historical Society. Mr. Wilson stated this bill, known as the "Idaho Replevin Act," codifies as state policy that all public records are the property of the citizens of the state of Idaho in perpetuity, and may not be improperly or unlawfully transferred or removed from their proper custodian. The bill creates an administrative remedy for all record custodians and civil enforcement provisions for violations of the policy. It allows the office of the Attorney General or county prosecutors to seek injunctive or other appropriate relief in order to recover such missing records.

Mr. Wilson explained that Idaho currently has no means of recovering records that may have been improperly transferred from the public domain. Discussions with other states indicate that 80 to 90 percent of recoveries have been accomplished simply by writing a letter, and it is rare that an issue goes before the courts. He said that thousands of documents, records, and "clipped" signatures appear for sale every year. The internet and sites such as eBay have increased the ease of their profitable disposal. EBay will not even halt an auction of Idaho records, since there is no statutory language showing that the records are the property of the State. Senate Bill 1026 will correct that.

Senator Darrington questioned Mr. Wilson concerning the length of time the proposed legislation has been developed. **Mr. Carter** indicated that the legislation has been a 3 year work in progress by the SHRAB Board. **Senator Mortimer**

questioned the definition of replevin and to the original ownership of the properties in question. **Mr. Wilson** clarified that replevin is simply a means to recover something that belongs to the recovering party that was taken improperly and further indicated that the properties were at one time in the possession of a state or county government. **Senator Mortimer** expressed his concern about personal property rights and further questioned the phrase “taken improperly” asking for a specific example of a county record that was pertinent to the situation. **Mr. Wilson** recounted an example of a record being released to the public domain and possibly purchased. He explained the state archivist would then issue an administrative letter to pursue documentation proving legal purchase of the record. Mr. Wilson indicated the legislation would provide a means to recover the record. Discussion ensued by Senators Mortimer, Bock and LeFavour concerning documents taken legally or illegally, the number of years since the document entered the public domain and possible profits to government agencies. Examples of possible records were given by Mr. Wilson explaining the need for legislation.

Janet Gallimore explained the proactive approach needed by the state as a result of valuable documents being sold and purchased through internet sites such as eBay and cited eleven states that have recently implemented replevin legislation. Ms. Gallimore further indicated that document recovery has a 99% success rate. **Senator Darrington** questioned about the challenge that records are not sold but destroyed and the small numbers of records that are sold. **Ms. Gallimore** reviewed the state’s record destruction policy and indicated a need to have a process in place to recover a record that was found to be missing. **Senator Davis** questioned creation of a NEW section 9-3-49 indicating the existence of section 9-3-49 in the Idaho Code. **Senator Darrington** asked to hear from Justice Jess Walter and then to Steve Walker. **Justice Walter** explained Senator Davis’ confusion regarding section 9-3-49 noting a renumbering of the next page.

Steve Walker, former State Archivist and member of the SHRAB Board introduced himself as Secretary of Idahoans for Openness in Government and indicated his support of the legislation which would ensure records remain in the ownership of the people of Idaho. **Senator Davis** questioned whether there were specific records that the state wishes to procure. **Mr. Wilson** answered no. **Senator Davis** then questioned further about Section 3, page 2 concerning a rebuttable presumption remaining with the state during court proceedings forcing the possessor of the record to prove that they have a lawful claim to it. Justice Walters agreed with Senator Davis’ understanding of Section 3 which will allow judgment of rightful ownership.

Senator LeFavour expressed unease about page 2, line 23 regarding the phrase “in the custody of an organization or institution.” **Mr. Carter** explained the intent was to exclude museums, historical societies, etc that obtain records from government entities as long as the records are held in the proper archival fashion and provide access in accordance with Idaho law. **Senator Bock** voiced his concern about “rebuttable presumption.” **Mr. Carter** reiterated the presumption that records belonged to the state and that possession must be proved by parties believing the record is legally theirs. Mr. Carter expressed that the legislation is to allow the state to be proactive to obtain papers they want to get back.

Senator Davis voiced a desire for the definition of the records that would be pursued such as unique historical records that are no longer in the possession of the state of Idaho. **Vice Chairman Vick** followed wondering why the presumption of ownership is not the state’s responsibility to prove. **Mr. Carter** clarified the purpose of that was specific to EBay giving the state a legal method to stop the sale. **Senator LeFavour** spoke in favor of the legislation. **Senator Mortimer** expressed

concern with the proof of ownership burden not being on the state. **Senator Davis** expressed a desire for a definition of records sought by the historical society.

MOTION:

Senator Davis made a motion to send **S 1026** to the 14th Order for amendment. **Senator Lodge** seconded the motion. Discussion ensued with comments by Senator Bock, Senator LeFavour and Senator Nuxoll concerning sending S 1026 to the 14th Order for amendment. The motion carried by **voice vote** with **Chairman Darrington** voting no.

S 1028

Chairman Darrington stated that the Chair will hold **S 1028**.

H 27

Relating to Assault and Battery - Major Ralph Powell, Operations Commander with the Idaho State Police, explained this bill amends Idaho Code 18-915, to add peace officer standards and training to employees involved in peace officer decertification activities, and emergency services dispatchers to the "certain personnel" and to allow for the expanded punishment provisions should one of these key enforcement personnel be assaulted or battered as a consequence of their employment. It also replaces outdated detailed language regarding certain emergency medical services providers with a cite to Idaho Code where those designations exist.

Vice Chairman Vick requested some history on the change and the original reason for including these people with special protection. **Major Powell** said he wasn't part of the original language or drafting, but he said he could speak to the reasons why. He continued that a violator targets a victim based on their employment or their vulnerability in that employment. For example, when a person goes through the criminal system and feels that he is wronged by the findings of the court, he might identify the judge simply because he sat at the judicial hearing. The same would go for others, such as jailers, police officers, social workers, who are doing their job and become a convenient target because of their employment. **Vice Chairman Vick** said he recently had dinner with their county commissioners and they were having hearings and were threatened by one that was forced to come in against his will. He continued that even we senators do things that irritate people, and I wonder where this ends. How can you put enough people on here and not miss someone that is subjected to public scrutiny, i.e. the Congresswoman from Arizona that was recently shot. **Major Powell** responded that it was actually up to the legislative body to make that decision.

Wayne Hammon, Administrator of Financial Management, commented that last year they brought a bill to include all state employees to this section of code. It was introduced in the House State Affairs Committee, but they thought it was overreaching. He said they directed his department to have the state agency bring these one at a time. Mr. Hammon said if an agency thought their employees merited this extra protection, they should bring forward a bill and that is what the Major has done. It was started in the House again this year for that reason. If other agencies believe their employees are of special risk, then they would be invited to bring forth that legislation. He added that the Governor is in support of this bill.

Senator Mortimer asked by adding these individuals to the list and increasing the penalties what is the specific significance to the perpetrator. **Major Powell** said though that is not part of the change request, it is contained in 18-913, a subsection stating that it shall be imprisonment for up to 25 years. **Senator Mortimer** asked if they weren't on this list would the penalty be 15 years, 10 years? He questioned the difference. **Major Powell** said the judge or jury would make that assignment based on the facts of the case.

MOTION:

Senator LeFavour made a motion to send **H 27** to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion. **Chairman Darrington** asked the Secretary to call the Roll. Senators LeFavour, Bock, Nuxoll, McKague, Lodge, Davis and Chairman Darrington voted aye. Senator Mortimer and Vice Chairman Vick voted no. The **motion carried**.

**Judicial
Council**

Jim Carlson, Executive Director, introduced the Council: Chief Justice Daniel T. Eismann, J. Philip Reberger, Steven A. Tuft, Attorney from Burley, Judge Ronald J. Wilper. Absent today were Sherry Krulitz, Anne Solomon, and Thomas H. Borresen. Mr. Carlson mentioned that the council was a dedicated group. He stated that there was a Judiciary Reforms Project, which allows people that interact with judges, the lawyers and clerks, to evaluate those judges and let them know that it is important to be treated with respect.

Chairman Darrington mentioned the complaints received, and asked if most didn't come from people that lost in court. **Mr. Carlson** said regarding the complaints there has been a gradual downward trend and generally the first thought is the quality of people and also the fact that the judicial council made good choices and selections. Mr. Carlson also noted that one out of 7,000 cases genders an ethics complaint.

Chairman Darrington asked that each Council member say a few words. **Chief Justice Eismann** said everyone on the Council took their job very seriously in recommending a candidate to the Governor. They are in the process of trying to identify how to do some outreach and get more qualified applicants. **Steve Tuft** said he had only been on the Council for a year and a half, but the thing he noticed most was the diligence of the Judiciary. He said it was a lonely job, very isolating. He also commented on the peer mentoring among the judges, not about how to decide a case, but how to behave and do things correctly. He said he has great confidence in Jim Carlson and that role is key for the judges, to have someone to call and get things resolved. **Phil Reberger** appreciated being with the committee and identified with the others, but would add briefly that he felt somewhat like the Maytag repairman regarding complaints filed by the public. It was a very impressive trend line and due to the efforts of the Judiciary, the Council and the Governor. **Judge Ron Wilper** said he took Judge Randy Smith's spot on the Judicial which were tough shoes to fill. He stated that most significant is the replacement of the Executive Director of thirty years, Bob Hamlin, who had so much institutional knowledge they thought perhaps it was an impossible task in replacing him. He said from his association with Jim Carlson so far, he believes they hit a home run. He stated that Mr. Carlson has the perfect temperament to fill Bob's shoes and he was looking forward to working with him.

Senator Bock commented on the importance of a level playing field in the court and the fairness of judges. Thanks and appreciation were expressed from the Committee members for all their efforts. **Chairman Darrington** turned to **Senator Davis** to elaborate on the display of the original signed Idaho Constitution from 1890 that he asked Janet Gallimore of the Historical Society to bring to the Committee.

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 14, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Minutes - February 7, 2011	
<u>RS20210</u>	A Senate Resolution stating findings of the Senate and Amending Rules 19 and 29 of the Rules of the Senate relating to the Printing Committee.	Jeannine Wood Secretary of the Senate
<u>RS20343</u>	Relating to the Electronic Recording Commission; to provide for location of the Commission in the Office of the Secretary of State.	Senator Mitch Toryanski
<u>RS20396</u>	Relating to Judgment; to provide that the Court shall order a Defendant to pay an amount of the Cost of Conducting and Preparing a Court ordered Presentence Investigation Report/	Brent Reinke Department of Corrections
<u>H 67</u>	Relating to Dispositions of Fines, Forfeitures, and Costs; to allow the Supreme Court to enter into Certain Contracts for Collection Services for Debts Owed to Courts.	Patti Tobias Administrative Director of the Courts
<u>H 68</u>	Relating to the Judicial Council; to provide Additional Duties of the Judicial Council and the Supreme Court	Patti Tobias
<u>H 61</u>	Relating to Motor Vehicles and Crimes and Punishments; relating to a person refusing to submit to or failing to complete certain evidentiary testing	Hal Putnam, Driver Records Program Supervisor, ITD

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 14, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

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

RS 20210 **A Senate Resolution** stating findings of the Senate and amending Rules 19 and 29 of the Rules of the Senate Relating to the Printing Committee. **Jeannine Wood**, Secretary of the Senate presented the Senate Resolution stating that Rule 19 is amended to take out the execution of contracts except for the printing contract of the session laws. Rule 29 (B) is simply to change the numbering from 9(E) to 9(F).

Senator Bock referred to line 31 to 33 and asked if the Judiciary and Rules Committee did in fact execute contracts. **Ms. Wood** said that they did. **Chairman Darrington** reminded the committee that a motion to print would automatically send it to the floor.

MOTION: **Vice Chairman Vick** made a motion to send **RS 20210** to print. **Senator Bock** seconded the motion. **Senator Mortimer** asked where it would go on the floor. **Chairman Darrington** responded that it would go from the 9th to the 10th Order. **Senator Davis** said in this case it would require a two-thirds vote, where as if it came back to the committee and the committee recommended its adoption, it would only require a majority vote. The motion carried by **voice vote**.

RS 20343 **Relating to the Electronic Recording Commission (ERC) - Senator Mitch Toryanski** explained this bill would place Idaho's ERC within the office of the Secretary of State so that it may promulgate rules and fulfill its statutory responsibility to keep the electronic recording standards and practices of recorders in this state in harmony with each other and with other jurisdictions and to stay abreast of best standards and practices. Senator Toryanski explained that the addition of paragraph 4 on the second page allowed the commissioners to appoint one (1) of their members to serve as liaison to the national association in order to stay informed of technological changes relative to electronic recordings.

MOTION: **Senator LeFavour** made a motion to send **RS 20343** to print. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

RS 20396

Relating to Judgment - Brent Reinke, Director of Department of Corrections explained this was a replacement of the previously printed bill S 1064 on the presentence investigation fees. Director Reinke explained that upon discussion with the courts and their feedback, they made some simple changes to the bill and those have been corrected as follows.

- Previous bill S 1064, line 16 "simultaneously" has been stricken
- line 20, addition of "to be determined by the department of correction,"
- line 29-30, addition of "will be placed in the probation and parole receipts account created pursuant to Idaho Code Section 20-225A"
- lines 32-33, additon of "Moneys in the probation and parole receipts account may be expended only after appropriation by the legislature."

Vice Chairman Vick asked if all presentence investigations were funded from the general fund. **Director Reinke** said they were.

MOTION:

Senator Mortimer made a motion to send **RS 20396** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 67

Relating to Dispositions of Fines, Forfeitures, and Costs - Patti Tobias, Administrative Director of the Courts, explained that Idaho Code Section 19-4708 authorizes clerks of the district court, with the approval of the administrative district judge, to enter into contracts with collection agencies for the collection of debts owed to the courts in criminal cases. Line 9 simply adds an option of the supreme court entering into a statewide contract that any and all of the counties could take advantage of. She hoped that by adding this option of statewide contract would allow programming of the ISTARs computer system to permit greater efficiency in the collection of these debts. Additionally, perhaps they would get a better rate charged that would be less than the 33% added on by the collection agencies.

Senator Davis asked if a local county wanted to have their own deal, this would not mandate that they opt in. **Ms. Tobias** said that was correct, it was simply offered as another alternative. **Senator Mortimer** asked if it was appropriate that the administrative district judge approve what the supreme court is doing in this action. **Ms. Tobias** said that the supreme court by itself as an entity or a clerk of the district clerk with the approval of the administrative district judge may enter into contracts with the collection agency for that county. **Senator Mortimer** asked if there were specific collection procedures for the courts for juvenile or corrections in rule. **Ms. Tobias** said the Department of Juvenile Corrections or the Department of Corrections may have rules; she is not privvy to them. **Senator Mortimer** asked if there were rules that said after a certain amount of time this is done and when is it turned over to a collection agency or when is the debt forgiven, or is there anything that specific. **Ms. Tobias** said there are different practices throughout the state and they are learning what seems to be working best.

MOTION:

Senator Mortimer made a motion to send **H 67** to the floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 68

Relating to the Judicial Council - Patti Tobias explained the Judicial Council is a seven member body consisting of three attorneys, one of whom is a district judge, appointed by the Board of Commissioners of the Idaho Bar with the consent of the Senate; three non-attorney members appointed by the Governor with the consent of the Senate; and the Chief Justice, who serves as chairman. The Council's duties include conducting studies for the improvement of the administration of justice; making regular reports to the Supreme Court and the Legislature; submitting the names of not less than two and not more than four qualified candidates to the Governor for appointment to vacancies on the Supreme Court, Court of Appeals and district court bench; and recommending the removal or discipline of judicial officers. The independence of the Judicial Council is essential to the performance of its functions. This bill provides the Judicial Council shall prepare its own annual budget request and that the Supreme Court shall include that request in its own budget request without any changes. This is the procedure that is currently followed. Requiring this procedure by statute will ensure the continued independence and impartiality of the Judicial Council.

Senator Davis stated that the Judicial Council has a variety of different groups and asked when it makes some ethical determination regarding a judge, do they have the power to impose that and if so to what degree. **Ms. Tobias** said she was not the expert on the ethical considerations that the Council would take up, but generally they can work directly with the judge in an informal communication or simply by providing an opinion. If they find a serious allegation, they file a complaint or petition with the supreme court. **Senator Davis** said that in the event something like that arose is it fair to say that the judicial council affectively prosecutes that case before the supreme court. **Ms. Tobias** said yes, but she has only seen one in her eighteen years with the courts.

MOTION:

Senator Nuxoll made a motion to send **H 68** to the floor with a do pass recommendation. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**.

H 61

Relating to Motor Vehicles and Crimes and Punishments - Hal Putnam, Driver Records Program Supervisor of the Division of Motor Vehicles, explained the purpose is to bring the Administrative License Suspension (ALS) program into compliance with a 2010 Idaho Court of Appeals ruling. The case involved the seizure of the license and the issuance of a temporary permit to an out-of-state driver who refused to submit to evidentiary testing for alcohol or drugs. Because there is a concern that this ruling could be applied or expanded to other scenarios, the department is proposing to strike the verbiage from Idaho Code that requires law enforcement to seize a current and valid license and to issue a temporary paper permit to all drivers, whether licensed in state and out-of-state under the ALS program.

If this legislation is approved and enacted, if a driver refuses to submit or submits and fails BAC testing, it will allow a driver whose license is otherwise valid and current to proceed with a photo ID in their possession that will remain valid and current until the starting suspension date. By removing the requirement to seize a license and issue a paper temporary permit, the ALS procedure will also be less complex and more efficient for law enforcement officers making the stop and for the department to administer. With modern technology law enforcement officers can determine driving privileges at roadside. A May 1, 2011 effective date is proposed to enact the legislation in a timely manner and on a specific date to allow for a coordinated deployment with law enforcement.

There is an approximate \$20,000 one-time cost to revise, reprint and distribute the ALS notification form statewide.

Senator Davis asked if their license is still immediately suspended subject to the evidentiary hearing. **Mr. Putnam** said that was not true; their license is not suspended until due process has occurred. If their license is seized at roadside, they are issued a temporary permit to drive on for up to 30 days. **Senator Davis** said for clarification the same process for suspension is in place, but they get to keep the license, instead of a temporary license, it's an electronic authorization. **Mr. Putnam** says that is true.

MOTION:

Senator Davis made a motion to send **H 61** to the floor with a do pass recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 16, 2011

SUBJECT	DESCRIPTION	PRESENTER
<u>RS20421</u>	Relating to the Office of State Appellate Public Defender	Senator Darrington
<u>RS20418</u>	Relating to Powers and Duties of the Board of County Commissioners	Daniel Chadwick, Executive Director, Idaho Association of Counties
<u>RS20226</u>	Relating to the Idaho Bail Act; to Provide Conditions and REquirements Relating to the Release of a Defendant Upon the Posting of a Bail Bond	Dave Kerrick
<u>RS20400</u>	Relating to the Uniform Probate Code; to Revise Provisions Regarding the Construction of Certain Formula Clauses	Robert L. Aldridge
<u>RS20407</u>	Relating to Intestate Succession and Wills; to Revise the Time Frame for Filing a Disclaimer Under Certain Circumstances	Robert L. Aldridge
<u>RS20330</u>	Relating to Grandparent Visitation	Robert L. Aldridge
<u>RS20091</u>	Relating to Motor Vehicles; to Revise the Court's Authority to Suspend Driving Privileges	Senator Corder
<u>S 1063</u>	Relating to the State Board of Correction; to Increase the Amount of a Certain Monthly Contribution	Brent Reinke, Dept. of Corrections
<u>S 1097</u>	Relating to Judgment; to Provide that the Court shall order a Defendant to pay a Certain Amount of the Cost of Conducting a Court ordered Presentence Investigation	Brent Reinke

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 16, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

Chairman Darrington called the meeting to order at 1:35 p.m. and asked if there were minutes to approve.

MINUTES: **Senator Mortimer** made a motion to accept the minutes of **February 7, 2011** as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

RS 20421 **Relating to the Office of State Appellate Public Defender - Chairman Darrington** presented this new legislation in order to add an emergency clause previously omitted from the bill that already passed in the Senate and the House.

MOTION: **Senator Davis** made a motion to send **RS 20421** to print and to the 2nd reading on the floor. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

RS 20418 **Relating to Powers and Duties of the Board of County Commissioners - Daniel Chadwick**, Executive Director of Idaho Association of Counties presented RS20418 relating to the powers and duties of the Board of Commissioners. Mr. Chadwick indicated this would remedy an oversight of HB408 as amended which did not include certification of contract employees used by counties for probation officers. Other changes including training fees, authorizing POST to train and certify and authorization of funds were enumerated by Mr. Chadwick.

Senator Mortimer questioned whether providing for training at offender's expense creates an undue advantage for one private contractor versus another when it comes to getting processed. **Mr. Chadwick** replied negatively, explaining only two providers are currently used by the counties. **Senator Davis and Bock** expressed concern about delegation of police powers to contractors. **Senator LaFavour** articulated concern about the language used in RS20418.

MOTION: **Senator Davis** made a motion to send **RS 20418** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

RS 20226 **Relating to the Idaho Bail Act - Dave Kerrick** on behalf of the Professional Bail Agents of Idaho explained the need to remedy the practice of bail agents bidding for the lowest terms for bail for a defendant. **Senator LaFavour** questioned concerning the "no money down" option used by bail agents. **Mr. Kerrick** explained that when bail agents used this method, they incorporate hidden costs and possible bounty hunting techniques to obtain funds.

Senator Mortimer wondered if another way to accomplish the same results would be by tightening up requirements on bonding issues. **Mr. Kerrick** indicated RS20226 should prohibit the traditional financing of the commission as well as visits directly to those incarcerated to negotiate financial terms of release. **Senator Mortimer** clarified that this RS does not address a set amount for bail. **Mr. Kerrick** indicated that that was correct. **Senator Davis** questioned the source of the authority to issue a bail bond. **Mr. Kerrick** indicated the governance of bail bonds is shared by the courts and the Department of Insurance. Mr. Kerrick stated that bail agents must be licensed through the Department of Insurance, but the court may choose which bail agents are used. **Senator Bock** expressed concern about bail bond wars in the past and asked for clarification. **Mr. Kerrick** indicated other members of the public besides the court system and law enforcement that are impacted by this practice.

MOTION: **Senator Davis** made a motion to send **RS 20226** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

RS 20400 **Relating to the Uniform Probate Code - Robert L. Aldridge** explained a provision in a will or trust of a decedent who dies in 2010 that refers to estate of generation-skipping transfer tax rules will be construed, in most cases, as if the decedent had died on December 31, 2009. Mr. Aldridge further explained that the new law does give personal representatives of estates of individuals dying in 2010 an election not to have the estate subject to the estate tax. **Senator Davis** commented on line 9 on page 2 where the burden of proof is defined as being clear and convincing evidence and questioned how the dead man statute applied to this provision. **Mr. Aldridge** clarified that the dead man statute provides that statements made by a deceased cannot be used to make a claim against the estate and that RS20400 was worded to make absolutely clear a method for claims against an estate.

MOTION: **Senator LeFavour** made a motion to send **RS 20400** to print. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

RS 20407 **Relating to Intestate Succession and Wills - Robert L. Aldridge** explained relating to Intestate Succession and Wills revising the time frame for filing a disclaimer under certain circumstances. Mr. Aldridge explained the usual time frame for renunciation required by the IRS and Idaho law was nine months but due to the retroactive clause of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 adjustments needed to be made as outlined in RS20407.

MOTION: **Senator Mortimer** made a motion to send **RS 20407** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 20330 **Relating to Grandparent Visitation - Robert L. Aldridge** explained this legislation would grant grandparents and great-grandparents the ability to seek visitation with grandchildren or great-grandchildren in the appropriate circumstances, while meeting the requirements of the US and Idaho Supreme Court cases. It also properly integrates with the Child Protection Act. Mr. Aldridge outlined changes contained in RS20330 which facilitate the required changes.

MOTION: **Senator Bock** made a motion to send **RS 20330** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

RS 20091 **Relating to Motor Vehicles - Senator Curt McKenzie** explained this legislation relates to latitude given to courts in sentencing those persons convicted of driving without privileges. Senator McKenzie explained the overcrowding in local jails and the frustration of judges with the mandatory penalties for the second and third offense rather than giving discretion to the judges. Senator McKenzie said this legislation gives judges discretion over license suspension for second and third offenses.

MOTION: **Senator Davis** made a motion to send **RS 20091** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

S 1063 **Relating to the State Board of Correction - Brent Reinke**, Executive Director of Department of Corrections explained this bill relating to increasing the allowable maximum Cost of Supervision fee to seventy-five dollars from fifty dollars. A slide presentation was reviewed outlining the move to dedicated funds and away from general funds. Director Reinke explained that the cost increase today would be set at sixty dollars and would cover the costs of filling the vacant probation and parole officer positions.

Chairman Darrington questioned the higher assessment dollar amount versus what would actually be assessed and the Department's intention to have flexibility to raise the rate to seventy-five dollars.

Discussion ensued with Senator Davis and Director Reinke concerning the number of individuals in the probation and parole system versus the number of officers. **Senator Davis** further questioned concerning whether the probation populations were being under-supervised or not supervised at all because of the lack of officers.

Senator Mortimer questioned Director Reinke concerning collection rates and process. **Director Reinke** responded that the fees not collected was 25%. **Kevin Kempf** of the Department of Corrections clarified that probationers or parolees are not violated for non-payment of their cost of supervision unless requested by the courts. Officers are allowed to adjust payment to a lower fee until the probationer or parolee is able to pay the required amount.

Vice Chairman Vick voiced concern about the process to raise the fee. **Director Reinke** indicated the procedure would be an appearance before both the Senate and House Committees for a rule change.

MOTION: **Senator Mortimer** made a motion to send **S 1063** to the floor with a do pass recommendation. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**.

S 1097 **Relating to Judgment - Brent Reinke** explained that currently there is no fee on the pre-sentence investigation process. Director Reinke enumerated the number of labor intensive pre-sentence investigations done by forty-four investigators of being between 10 and 13 investigations per month. He further explained the importance and use of the documents produced from the investigation. Director Reinke proposed that a fee be assessed for \$100.

Senator Davis questioned if pre-sentence investigations are done on serious misdemeanor cases. **Patty Tobias**, Administrative Director of the Court indicated that the fee assessed by this legislation would be directed to the felony cases. **Senator Davis** questioned Ms. Tobias whether the court had a position on this legislation. **Ms. Tobias** replied that the court would not want to intrude upon the policy making legislative process of Idaho and recounted her suggestion that the legislation be written urging the judge to make the assessment of the fee at an earlier stage. Further questions were raised concerning the amounts of fees and location of payment of those fees that were clarified by Ms. Tobias.

Vice Chairman Vick questioned the priority of law if someone has other payments such as child-support payments, etc., in relation to this fee. **Kevin Kempf** responded that the number and amount of fees are taken into account and assessed on an ability to pay by the defendant. He indicated that a structured process does not exist with relationship to other fees that have been assessed. **Senator Davis** indicated that the priority is set by the judges who ask for such payment. **Senator**

Bock explained the term “priority debts” pertaining to bankruptcy court.

Senator LeFavour wished to make a statement expressing her concern for the position in which the Department of Correction is placed when providing services to protect the people of the state and not having adequate funding from the state.

MOTION:

Senator LeFavour made a motion to send **S 1097** to the floor with a do pass recommendation. **Senator Mortimer** seconded the motion. **Vice Chairman Vick** expressed concerns about funding and attention paid to programs and funding if it is a special fund versus the general fund. **Senator Davis** recalled that even dedicated funds have appropriations. The motion carried by **voice vote**.

Chairman Darrington proceeded to graduate Jacob Turner from the page program expressing appreciation for his service. There being no further business, **Chairman Darrington** adjourned the meeting at 2:35 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 21, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Minutes	
<u>RS20339</u>	Relating to the Idaho Tort Claims Act; to Provide an Exception to Governmental Liability	Norm Semanko, Idaho Water Users Association
<u>RS20342</u>	Relating to the Idaho Tort Claims Act; to Provide Certain Board shall be considered a Single Governmental Unit	Norm Semanko
<u>S 1096</u>	Relating to the Electronic Recording Commission	Senator Mitch Toryanski

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 21, 2011
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour
ABSENT/ EXCUSED: Senator Davis
NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:34 p.m. He first introduced and welcomed the exchange students brought to Boise by Judy Miller and Nancy White of Paul, Idaho. The students came from several countries of the old Soviet Union Republic and attend school in various cities in Idaho.

RS 20339

Relating to the Idaho Tort Claims Act - Norm Semanko, Executive Director of the Idaho Water Users Association, explained this legislation deals with the limits of liability of irrigation and drainage districts. Because the districts provide a necessary service, one demanded by the public, and must engage in activity that can cause damage based upon circumstances often beyond the district's control, this bill will limit lawsuits against such districts to those involving willful, reckless or grossly negligent conduct. Irrigation districts and canal companies have become almost uninsurable, particularly in our urban areas.

Chairman Darrington asked that he give the committee an example. **Mr. Semanko** said an irrigation district would certainly be liable if they don't carry out their statutorily responsibilities in Title 42, by doing regular maintenance and the canal must be ready to deliver water by April 1st of every year. He said they were asking not to be responsible for something beyond their control, i.e., possibly a critter breaks a hole in the canal.

Senator Bock asked why this company should be absolved from liability and he would like to hear more about that reasoning if he returns to the Committee with the bill. **Mr. Semanko** said he would do that, and he could describe a couple of areas in law where there is already complete exemption from liability and distinguish those from this and why they think gross negligence is the appropriate standard.

Senator Mortimer asked Mr. Semanko if there was a canal break caused by an animal and water came into a residence; typically surface water is not covered in homeowners insurance. He wanted to know how that homeowner would be protected. **Mr. Semanko** said the argument could be made that maybe routine maintenance should have taken care of that. They are also recommending flood insurance for homeowners that live in a flood plain. **Senator Mortimer** said he was still struggling that the homeowner or someone living next to a canal would be at risk as an individual. **Mr. Semanko** said this would be a policy decision that this committee would have to make if this bill is printed. He said they had gone from several insurance providers down to one that will cover irrigation districts, Idaho County Risk Management (ICRM) Program, and when the limits were described to them, they asked what could be done to address the issue. This bill is the product

of the discussions with ICRM. The alternative was we would no longer be insurable. He assured Senators Mortimer and Bock that he would be prepared to address these issues at the hearing. **Senator Bock** asked how it was fair to allocate the risk to innocent homeowners or canal operators. He reiterated that he expected some answers as to who should bear the risk. **Senator LeFavour** commented that canals do create additional flood hazards in areas that are not designated as flood plains. **Mr. Semanko** said that when a home is located below a canal, that is a recognizable flood risk and if that kind of condition is known (a) development should not occur there or (b) there should be safeguards of protection. **Senator Mortimer** suggested that maybe the state could get the Department of Insurance to provide a canal endorsement for homeowners.

MOTION: **Senator McKague** made a motion to send **RS 20339** to print. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

RS 20342 **Relating to the Idaho Tort Claims Act - Norm Semanko** explained this legislation is to clarify that only the operating agency, and not the member entities, can be held liable for damage arising from irrigation district construction, operation or maintenance when such districts form an agency designed to jointly deliver water.

MOTION: **Senator Mortimer** made a motion to send **RS 20342** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1096 **Relating to the Electronic Recording Commission - Senator Mitch Toryanski** explained the purpose of this bill is to place Idaho's Electronic Recording Commission (ERC) within the office of the Secretary of State so that it may promulgate rules and fulfill its statutory responsibility to keep the electronic recording standards and practices of recorders in this state in harmony with each other and with other jurisdictions and to stay abreast of best standards and practices. He said that four years ago the legislature created the ERC which was comprised of volunteers. He explained that through an oversight they were not given rulemaking authority and were not put under an organization that had it. The bill also provides that one member of the Commission would serve as liaison to the property records industry association so that those standard and practices would be the best in the country.

Kris Ellis, on behalf of the Land Title Association stands in support of this legislation. Underwriters need the assurance that those electronic signatures are up to standards and something they can use to justify using that signature in real estate transactions.

MOTION: **Senator LeFavour** made a motion to send **S 1096** to the floor with a do pass recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 1:48 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

**AMENDED AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 23, 2011**

SUBJECT	DESCRIPTION	PRESENTER
Minutes to approve:	February 9, 2011	Senator Bock
	February 14, 2011	Senator LeFavour
<u>RS20477</u>	Relating to the Idaho Bail Act; to provide additional provisions relating to the surrender of defendant	Roy Eiguren
<u>HCR 006</u>	A Concurrent Resolution providing for printing the Session Laws	Jeannine Wood, Secretary of the Senate
<u>S 1116</u>	Relating to Motor Vehicles; to revise the court's authority to suspend driving privileges following an initial and subsequent conviction of a specified offence.	Senator Tim Corder
<u>S 1120</u>	Relating to the Uniform Probate Code; to revise provisions regarding the construction of certain formula clauses; declaring an emergency and providing retroactive application.	Robert L. Aldridge, Trust Estate Professionals, Inc.
<u>S 1121</u>	Relating to Intestate Succession and Wills; to revise the time frame for filing a disclaimer under certain circumstances, to remove outdated provisions and to make technical correction; declaring an emergency and providing retroactive application.	Robert L. Aldridge
<u>S 1122</u>	Relating to Grandparent Visitation	Robert L. Aldridge

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 23, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Nuxoll, Bock, and LeFavour

ABSENT/ EXCUSED: Senator Mortimer

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

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

MINUTES **Senator Bock** made a motion to approve the minutes of **February 9, 2011** as written. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**.

Senator LeFavour made a motion to approve the minutes of **February 14, 2011** as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

RS 20477 **Relating to the Idaho Bail Act - Roy Eiguren** representing Aladdin Bail Bond explained this legislation makes technical corrections and clarifies that a surety insurance company, or its bail agent, or a person who has posted a property bond, or cash deposit can make its own arguments for setting aside a forfeiture and exonerating a bond and is not limited to just the arguments that a defendant can make on his own behalf.

MOTION: **Senator Bock** made a motion to send **RS 20477** to print. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

S 1116 **Relating to Motor Vehicles - Senator Tim Corder** explained this bill gives the court more latitude in sentencing those convicted of Driving Without Privileges (DWP). Within the legislation, "shall" is changed to "may." Senator Corder also mentioned that the sheriffs were not in opposition of this bill.

Senator Davis asked why there wasn't a more rigid policy and what were reasons for license suspension. **Senator Corder** yielded to Senator McKenzie to answer the question. **Senator McKenzie** said that sometimes the offence is negligence, not dangerous, and by giving judges discretion, the appropriate penalty may be given. He further explained a typical suspension is due to DWP and reckless driving.

Senator LeFavour asked if the application of this technicality would have different consequences in different districts. **Senator McKenzie** said the issue is whether to give the magistrate judges the discretion and agreed that it would be applied differently due to location.

Senator Bock said if someone is driving without privileges, they already have a suspended license. He asked why a judge would give driving privileges to somebody whose license is already suspended and then had violated and aggravated even further. **Senator McKenzie** said the current period of suspension has to be over before this would come into play.

Diane Anderson, a citizen advocate, initiated discussion questioning the constitutionality of requiring permits. **Chairman Darrington** and **Vice Chairman Vick** responded indicating her arguments went beyond this legislation and goes to the basic theory of drivers license issuance by states and that relationship to the Constitution.

MOTION: **Senator McKague** made a motion to send **S 1116** to the floor with a do pass recommendation. **Senator LeFavour** seconded the motion. **Vice Chairman Vick** commented that he liked this piece of legislation because it would help construction workers that drive a long way to work and have lost work because they could not get some sort of provisional permit. **Senator Davis** exclaimed that he relies on the experience of Senator McKenzie. The motion carried by **voice vote**.

HCR 006 **A Concurrent Resolution providing for printing the Session Laws - Jeannine Wood**, Secretary of the Senate explained this resolution provided for the printing of the Session Laws for the House and Senate for the next two regular sessions. The resolution identifies the two parties who enter into the contract: the Joint Printing Committee and The Caxton Printers. The resolution also refers to the print requirements and price specified in the vendor's price quote, and the section of Idaho code that provides for the printing.

MOTION: **Vice Chairman Vick** made a motion to send **HCR 006** to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S 1120 **Relating to the Uniform Probate Code - Robert L. Aldridge** of Trust Estate Professionals, Inc. explained this bill was concerning the Uniform Probate Code revisions. Mr. Aldridge reviewed Idaho Code 9-202, the "dead man" statute, outlining who cannot testify as witnesses against an executor upon a claim or demand against the estate of a deceased person. Mr. Aldridge further clarified that S 1120 which uses statements made by the deceased to determine intent is not in conflict with the "dead man" statute. He explained S 1120 repaired legislation adopted when there was no estate tax as well as other basic rules. Mr. Aldridge explained legislation passed in late 2010 by Congress was retroactive to January 1, 2010 providing executors of estates the opportunity to opt out of current estate laws and return to the superseded estate law. Mr. Aldridge said some estate negotiations were not covered by existing Idaho Statute due to the opt-out provision and indicated that this was a nation-wide problem. Mr. Aldridge outlined modifications in each section, methods to determine the intent of the deceased, judicial and non-judicial methods to resolve trust disputes and enumerated changes made to facilitate the national legislation. Mr. Aldridge indicated that this topic may have to be revisited dependent upon federal legislative action.

Discussions ensued with questions from **Chairman Darrington** and **Senator LeFavour** concerning the intent of the legislation and were clarified by Mr. Aldridge.

MOTION: **Senator LeFavour** made a motion to send **S 1120** to the floor with a do pass recommendation. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

S 1121 **Relating to Intestate Succession and Wills - Robert L. Aldridge** of Trust Estate Professionals, Inc. explained that legislation passed in late 2010 by Congress was retroactive to January 1, 2010 and affected time lines within the law of renunciations, allowing a beneficiary of an estate to renounce or disclaim a bequest. He explained IRS code and Idaho law require that renunciations be filed within 9 months after the death or other act that created the distribution. The 2010 congressional Tax Relief Act allowed an extension of the 9 month renunciation period to facilitate those affected by the January 1, 2010 retroactive date. Mr. Aldridge delineated that Idaho law needed to be changed to mirror federal IRS code for cases falling within the retroactive time period.

MOTION: **Vice Chairman Vick** made a motion to send **S 1121** to the floor with a do pass recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

S 1122 **Relating to Grandparent Visitation - Robert L. Aldridge** explained that S 1122 creates a constitutional statute with language that complies with the needs and requirements of the family law courts, the Child Protection Act and the US and Idaho Supreme Court cases. He clarified that Section 32-719 would be repealed and replaced with new language setting forth four requirements, one of which must exist before a grandparent can petition for visitation. Mr. Aldridge enumerated the four conditions explaining the details. He reiterated that the legislation clarifies the exact requirements, procedures and methods to be used by grandparents for visitation.

MOTION: **Senator Davis** made a motion to send **S 1122** to the floor with a do pass recommendation. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**. **Senator Davis** and **Senator LeFavour** expressed their gratitude to Mr. Aldridge and Senator Mortimer in the preparation of the legislation for the work involved and the language of the legislation.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:34 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
 1:30 P.M.
 Room WW54
 Monday, February 28, 2011

SUBJECT	DESCRIPTION	PRESENTER
Minutes to Approve	February 21, 2011	Senator McKague
	February 16, 2011	Vice Chairman Vick
<u>RS20471</u>	Relating to the Chiropractic Practice Act (from the Health and Welfare Committee)	
<u>RS20472</u>	Relating to Optometrists (from the Health and Welfare Committee)	
<u>Gubernatorial Appointments</u>		
<p>Olivia Craven of Boise, Idaho was reappointed as Executive Director of the Commission on Pardons and Parole for a term commencing January 3, 2011 and expiring January 5, 2015.</p> <p>Norman "Bud" T. Langerak II of Ammon, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing February 5, 2011 and expiring January 1, 2014.</p>		
Department Update	Commission on Pardons and Parole Update	Olivia Craven, Executive Director
Presentation	Internet Crimes Against Children	Detective Tim Brady, 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 Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email:

lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 28, 2011
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, McKague, Mortimer, Nuxoll, and Bock
ABSENT/ EXCUSED: Senators Lodge and LeFavour
NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

MINUTES **Senator McKague** made a motion to approve the minutes of **February 21, 2011** as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.
Vice Chairman Vick made a motion to approve the minutes of **February 16, 2011** as written. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

RS 20471 **Relating to the Chiropractic Practice Act** (from the Health and Welfare Committee)

RS 20472 **Relating to Optometrists** (from the Health and Welfare Committee)

Chairman Darrington said he received a letter from the Health and Welfare Committee that unanimously requests that RS 20471 and RS 20472 be introduced to print.

MOTION **Senator Mortimer** made a motion to send **RS 20471** and **RS 20472** to print. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

Olivia Craven, Executive Director of the Commission on Pardons and Parole, introduced the Commissioners:
Bill Young, Mike Matthews, Mark Funaiole, and Janie Dressen

GUBERNATORIAL APPOINTMENT **Norman "Bud" T. Langerak II** was appointed to the Commission of Pardons and Parole for a term commencing February 5, 2011 and expiring January 1, 2014. **Mr. Langerak** introduced himself, recounting his work history and involvement as a reserve officer and eventually a full time peace officer. He retired after 12 years but continued to work as a financial consultant to the sheriff's department and the Bonneville County Commissioners. Mr. Langerak summarized his work on the Commission on Pardons and Parole for the last two years and said he enjoyed the group because they represented a good team.

Senator Davis posed a question concerning the impact of budget reductions on the Parole Board which were addressed by **Mr. Langerak**. He summarized his support of the Pathway Program and standards and had not seen restrictions to programs due to budget constraints. **Senator Davis** further questioned if Idaho was too tough on crime. **Mr. Langerak** answered not in a general sense, but that some laws are mandatory and inmates must be housed posing budget issues. **Senator Davis** continued with the question of what the greatest challenges are faced by the parole division. **Mr. Langerak** answered that protecting the

public versus knowing the costs of the consequence of decisions is the greatest challenge.

Vice Chairman Vick asked Mr. Langerak about the most difficult part of being a Commissioner. **Mr. Langerak** replied that the emotions involved with certain crimes, those of repetitive drunk drivers, sex offenses and violence are most difficult.

Senator Nuxoll questioned the decision making process with those inmates ready for parole to discourage their return to prison. **Mr. Langerak** enumerated the sentence portions and process of determining the prisoners' education and treatment.

**GUBERNATORIAL
APPOINTMENT
AND
DEPARTMENT
UPDATE**

Olivia Craven was reappointed as Executive Director of the Commission on Pardons and Parole for a term commencing January 3, 2011 and expiring January 5, 2015. **Ms. Craven** reviewed her history as Executive Director since 1994 and in the corrections field for 36 years. She recounted in her career how the criminal system works and was happy that Idaho did not go with the "three-strikes" program. Ms. Craven continued with an update of the Department and enumerated the comparison to parole processes in other states and countries and that Idaho's program was held in high esteem. She recounted recent statistics showing the positive results of the Idaho Probation and Parole program and cost saving techniques via video conferencing. One of the notable successes was the Unified Sentencing Act. Ms. Craven acknowledged the unpopularity of the parole program with certain people and decisions made by the officers.

Chairman Darrington questioned concerning the hearing officer program, process, and benefits. **Ms. Craven** reviewed the program and progress made since the program was started and emphasized the fact of their one on one interviews with the offenders, family, victims, etc. **Chairman Darrington** asked the commissioners to make a statement. The commissioners individually made brief statements reviewing their term length and concerns/challenges with the Parole Commission and the development of the programs.

Senator Bock asked concerning the parole rate increase from 65% to 69% and whether the increase might be due to budget restrictions as well as comparing Idaho parole statistics with surrounding states. **Ms. Craven** attributed the increase to the working relationship with treatment services that are more often used and trusted. She said comparisons with other states are difficult because sentencing structures are not similar. Ms. Craven stated that the economy has not made an impact on paroles.

Senator Davis questioned if the parole commission is independent of political pressure when making decisions. **Ms. Craven** answered there is no political pressure. Commissioners affirmed Ms. Craven's response.

Vice Chairman Vick requested clarification of how long the board meets. **Ms. Craven** responded that the commissioners meet 2 weeks every month for 8 months of the year. The remaining 4 months, when dealing with outlying institutions, the commissioners will meet only one week per month. **Chairman Darrington** clarified that the total number of days per year for meetings was 65.

Vice Chairman Vick wondered if parole rates were tracked and their effect on recidivism rates. **Ms. Craven** answered in the affirmative and reviewed the return rates. **Chairman Darrington** indicated that Idaho has one of the lowest recidivism rates in the nation despite the different methods of parole programs. He reviewed the invitation to the committee to attend parole hearings and asked if

the commissioners were prepared for the time when a parolee commits a horrible crime and the news coverage that would follow. **Ms. Craven** recounted that she has had experience with this situation. **Chairman Darrington** admonished the commissioners to do the best job possible.

PRESENTATION

Internet Crime Against Children (ICAC) - Detective Tim Brady said the purpose today is to provide some education to the committee and for some proposed legislation for the 2012 legislative session. He wanted to dispel some of the possible misconceptions and describe what is being done to combat this crime. **Detective Brady** introduced Officer Terry Phillips and Detective Jason Pietrzak, all members of the ICAC Task Force which was formed in 2008. He stated the task force was formed to combat child exploitation on-line. With modern technology, children are being exploited by pornography, websites, on-line enticement, molestation, prostitution, and sexting. He explained this was happening through social networking sites, chat rooms, bulletin boards, and peer to peer file sharing. The problem is growing in the US and many of the children are subjected to bondage, rape or torture. As the problem grows, the children are getting younger and the abuse is more violent and sadistic. He recounted a research study that showed a 272% increase of arrests from 2000 to 2006 for online child exploitation crime. He said due to the lack of resources, less than 1% of known child pornography offenses are currently investigated. Training for law enforcement, forensics and prosecutors is extremely specialized and expensive. **Detective Brady** presented the following suggestions for proposed future legislation.

- Convicted offenders of an ICAC related crime forfeit equipment used to facilitate the crime. This equipment can then be used in future ICAC related investigations; and/or
- Pay restitution for overtime costs and/or for equipment needed to investigate these crimes,
- Earmark restitution specifically for ICAC investigations to assist departments with ICAC crimes.

Detective Brady would also recommend the following changes:

- Idaho Code, Section 18-1509A to include on-line enticement via text messaging, which is becoming more problematic as more children have access to cell phones
- Idaho Code, Section 18-1507 (Sexual Exploitation of a Child) to include more specific and updated language of what constitutes distribution of child pornography

Chairman Darrington said it would appear that one myth dispelled was that it wasn't just pictures as many were actually involved with illicit sex acts with children. **Detective Brady** agreed and added that these were not bath time photos; they are pictures or videos of children being raped and forced to commit sexual acts while crying and pleading to stop.

Senator Bock questioned the profile and geographic make up of such perpetrators. **Detective Brady** said there is no profile; it runs from the bottom of society to the top echelon, and it is everywhere. **Senator Bock** asked if there was a system in place when you discover one of these horrific crimes. **Detective Brady** said yes, it sets in place an investigation and arrest and provides counseling for victims and families. **Chairman Darrington** asked if there was a problem with runaway underage girls in the sex slave trade in this

valley. **Detective Brady** said there were some cases. The senators questioned what could be done about this epidemic. **Detective Brady** said they needed more resources.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:52 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AMENDED AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 02, 2011

SUBJECT	DESCRIPTION	PRESENTER
	Minutes to Approve - February 23, 2011	Senator Nuxoll
<u>RS20140C1</u>	Relating to Security for Compensation (from the Commerce and Human Resource Committee)	
Committee Vote	Recommendation to confirm Olivia Craven's reappointment as Executive Director of the Commission on Pardons and Parole Recommendation to confirm Norman "Bud" T. Langerak II to the Commission on Pardons and Parole	
<u>H 121</u>	Relating to Exemptions from Attachment; exemption in favor of married woman; to provide that all real and personal property be exempt from execution for any separate debts incurred by spouse	Representative Grant Burgoyne
<u>H 119</u>	Relating to Uniform Controlled Substances; bath salts	Debbie Field, Idaho Office of Drug Policy
<u>H 139</u>	Relating to Uniform Controlled Substances; spice	Debbie Field, Idaho Office of Drug Policy

Gubernatorial Appointments

Sharon Harrigfeld of Boise, Idaho was reappointed as Director of the Department of Juvenile Corrections for a term commencing January 3, 2011 and expiring January 5, 2015.

PRESENTATION Department of Juvenile Corrections Update Sharon Harrigfeld, Director

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

COMMITTEE MEMBERS

Chairman Darrington
Vice Chairman Vick Sen Mortimer
Sen Davis Sen Nuxoll
Sen Lodge Sen Bock
Sen McKague Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds
Room: WW35
Phone: (208) 332-1317
email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 02, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

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

MINUTES **Senator Nuxoll** made a motion to approve the minutes of **February 23, 2011** as written. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

RS 20140C1 **Relating to Security for Compensation** (from the Commerce and Human Resource Committee)

MOTION: **Senator Davis** made a motion to send **RS 20140C1** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION **Chairman Darrington** stated the committee would vote on the recommendation to confirm the reappointment of **Olivia Craven** as Executive Director of the Commission on Pardons and Parole to serve a term commencing January 3, 2011 and expiring January 5, 2015.

MOTION: **Senator Lodge** moved to send the gubernatorial reappointment of **Olivia Craven** as Executive Director of the Commission on Pardons and Parole to the Senate floor with a **do confirm** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION **Chairman Darrington** stated the committee would vote on the recommendation to confirm the appointment of **Norman "Bud" T. Langerak II** to the Commission on Pardons and Parole to serve a term commencing February 5, 2011 and expiring January 1, 2014.

MOTION: **Senator Mortimer** moved to send the gubernatorial appointment of **Norman T. Langerak II** to the Commission on Pardons and Parole to the Senate floor with a **do confirm** recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

H 121 **Relating to Exemptions from Attachment - Representative Grant Burgoyne** explained this bill concerning Idaho Code 11-204 which relates to execution by a creditor with a judgment against a debtor. Representative Burgoyne recounted the history of I.C. 11-204, summarizing that in 2010 it was ruled unconstitutional by the Idaho Supreme Court because it was not gender neutral. He stated when it was originally written in 1888 it was to protect a wife's property from the separate debts of her husband. He explained that H 121 will correct the gender inequity of I.C. 11-204, protecting both husbands and wives from each other's separate debts.

MOTION: **Senator Bock** made a motion to send **H 121** to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

H 119 **Relating to Uniform Controlled Substances; bath salts - Debbie Field**, from the Idaho Office of Drug Policy, summarized H 119 as a bill that will place the drugs termed as “bath salts” as a Section 1 Drug. Ms. Field explained the need for legislation and further clarified that bath salts are not in any way the same product sold as aromatherapy bath salts. She pointed out that the manufacturers of this designer drug are trying to circumvent the regulations on controlled substances and are sold as bath salts or fertilizers, but not intended to be used as either. Ms. Field summarized the purpose, use, labeling, availability and common ingredients. She told of Idaho citizens that have recently died or are in critical condition due to use of this product, which attacks the central nervous system. She further indicated the ability of ISP to analyze these substances in the forensic laboratory.

Vice Chairman Vick questioned concerning the name and legitimate use of “bath salts.” **Ms. Field** responded indicating her research and education has revealed that this is an incredible marketing strategy. **Corrina Owsley**, Chemist for the Idaho State Police, via teleconference, indicated there are compounds in the ingredients that are already on Schedule 4 and 5 and unscheduled Bupropion that has a legitimate use requiring a prescription.

Chairman Darrington asked if anyone was present who would like to testify in opposition.

TESTIMONY **Ryan Holdaway**, of Pitcher & Holdaway, PLLC, representing Herb Incense and A and J Distributing, spoke in opposition to H119 citing that if any of the ingredients do have medicinal purposes that it would not be appropriate to list them as a Schedule 1, but to list them as a Schedule 3 - 5. **Senator Bock** questioned who Mr. Holdaway represented. **Mr. Holdaway** repeated those previously mentioned indicating he represents other individuals and businesses with a possible interest that he was unwilling to name. **Senator Davis** questioned what the lawful, non-life-threatening purposes of bath salts were and whether he or any businesses in the area were using these as additives to a bath. **Mr. Holdaway** referred to Ms. Field’s comments that it was a concentrated form of bath salt and that his clients try to conform with the law, by enforcing age restriction requirements. He further stated that his clients try to prevent abuse of their products and that he had never used the product nor was aware of any business that used them as additives to a bath.

Vice Chairman Vick questioned how long this product has been produced and sold in this area and more specifically how long Mr. Holdaway’s clients produced them. **Mr. Holdaway** answered he did not have an exact date but that the product has gained recent popularity and that his client, Herb Incense, has been manufacturing the products since October. **Senator LeFavour** questioned the physiological effect of the product. **Ms. Owsley** answered that research on the chemicals indicate hallucinogenic properties. **Ms. Field** enumerated further side effects. **Senator Bock** questioned Ms. Owsley concerning Mr. Holdaway’s testimony of the legitimate purpose of bath salts. She replied that the compounds in this synthetic drug are not normally found in traditional bath salts, have no odor and when placed in a large volume of water would have no aromatherapy effect.

TESTIMONY **Jan Sylvester** of Meridian, mother of two teenage girls and **Officer Darren Hurst**, Meridian Police Department and SRO for Meridian High School spoke in support of the bill.

TESTIMONY **Mike Medoza**, a concerned citizen, spoke in opposition to the bill.

Senator Davis questioned concerning Mr. Holdaway's position, client's length of time in business and other products sold by his clients. **Mr. Holdaway** answered that his client's companies had existed previously under other names and that products sold additionally were pipes and incense. **Vice Chairman Vick** questioned how long the products had been manufactured and available in Idaho. **Ms. Field** summarized the history of this product and recent appearance within the last few months. Ms. Field reiterated the purpose of the legislation was not to regulate a bath product but to regulate a drug that is hospitalizing youth and killing people who snort the product. She said that if this were to pass and be signed by the governor that it would become immediately effective and these products would be removed from the shelves.

Senator Bock questioned Ms. Field concerning FDA review of the ingredients. **Ms. Field** summarized the FDA review.

MOTION:

Senator Davis made a motion to send **H 119** to the floor with a do pass recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

H 139

Relating to Uniform Controlled Substances; spice - Debbie Field summarized this bill as the means to put into statute existing rules of the Board of Pharmacy including one addition. Ms. Field stated that H 139 covers seven different chemical structures and that language written into this legislation specifically targets the backbone structure of the chemicals used to produce variations of "spice" so that small changes made to the compound will not avoid prosecution.

Senator LeFavour questioned the adverse side effects of "Spice". **Ms. Field** enumerated those outlined in the handout. She explained how "Spice" is created. **Ms. Owsley** clarified that these are "designer" drugs that are being marketed because they circumvent the drugs that were banned by the governor last fall. **Mr. Holdaway** indicated that H 139 is a broad piece of legislation describing whole families of chemicals in an attempt to capture a variation. He indicated his client's chemist has found the chemicals listed in H 139 could be found in candles, perfumes, body lotions, pesticides and other perfectly legitimate and legal products. His concern was that the legislation could be overreaching if these chemicals were listed as a Schedule 1 controlled substance.

Further questioning by **Chairman Darrington** ensued regarding disagreement about legitimate uses of the chemicals. **Mr. Holdaway** expressed concern for uses found in the future and the possibility of forcing the chemicals into an underground market with no control. He encouraged Idaho to allow these chemicals to be in a legal environment where regulations can be in place in reference to access and potency. **Chairman Darrington** asked Ms. Owsley to respond to Mr. Holdaway remarks. **Ms. Owsley** stated that the compounds have been researched and none have been shown to have medical value without unwanted side effects. FDA approval will be required for future compounds developed for medicinal use. She summarized that many states were adopting similar legislation to prevent legislating each new compound developed.

Senator Davis questioned concerning other products produced with the chemicals, whether his client's sold or manufactured any of the products and the name of the doctor who prepared the report for Mr. Holdaway. **Mr. Holdaway** repeated his list, answered negatively to the sale or manufacture of the products and named the doctor – Dr. Richard Parent, with Consultox Limited in Maine and New Orleans. **Senator LeFavour** questioned Ms. Owsley regarding the magnitude/potency effect of "spice" compared to alcohol. **Ms. Owsley** reviewed the research comparisons were to THC in marijuana and not alcohol; further

stating potencies vary by product. Ms. Fields concluded that these structures need to be classified as outlined in the legislation and that “spice” is abuse of synthetic chemicals.

MOTION: **Vice Chairman Vick** made a motion to send **H 139** to the floor with a do pass recommendation. **Senator Nuxoll** seconded the motion. **Vice Chairman Vick** read a statement by John W. Huffman, PHD from Clemson University, who invented JWH-018 which is on the list of synthetic cannabinoids, likened the use of the drugs to “Russian Roulette”. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND DEPARTMENT UPDATE **Chairman Darrington** proceeded to the confirmation hearing of **Sharon Harrigfeld**, Department of Juvenile Corrections and requested Ms. Harrigfeld present an update of the department. **Sharon Harrigfeld** of Boise, Idaho was reappointed as Director of the Department of Juvenile Corrections for a term commencing January 3, 2011 and expiring January 5, 2015. **Ms. Harrigfeld** introduced **Scott Johnson** as the Administrative Services Administrator enumerating his responsibilities. Ms. Harrigfeld summarized her 30 year history of service in the Juvenile Justice System, her Masters in Counseling, and service as Director of the Juvenile Corrections Department. She reviewed current policy and procedure changes to a statewide system. She cited the opportunity juveniles in the system have to be rehabilitated and become productive, successful citizens. Ms. Harrigfeld continued to provide a department report summarizing the department’s workforce and hours worked, indicating pleasure with the commitment to reduce juvenile crime in communities. She noted the partnership between counties and state that allow the adoption of a balanced approach to juvenile justice which facilitate local level hearings for juveniles.

Ms. Harrigfeld summarized the work with families of juveniles to promote success as the juveniles return home and how and where juveniles are placed in the program. She outlined her knowledge of the adolescent brain and juvenile reasoning reviewing the age of juveniles in the programs of between 10 and 17 years of age. Ms. Harrigfeld reviewed community resources and specialty courts as well as additional services statewide at the local level assisting with juveniles. She enumerated the juveniles in the program as 5,500 on probation, 200 in detention facilities and 334 in custody in a given day. She stated the recidivism rate is 25% and noted the increase in mental health problems for juveniles.

Senator LeFavour complimented Ms. Harrigfeld and her Department for their work.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 3:02 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
 1:30 P.M.
 Room WW54
 Monday, March 07, 2011

SUBJECT	DESCRIPTION	PRESENTER
COMMITTEE VOTE	Recommendation to confirm Sharon Harrigfeld's reappointment as Director of the Department of Juvenile Corrections	
<u>RS20546</u>	Amends, repeals and adds to existing law relating to Sexual Offender Registration Notification and Community Right-to-Know Act.	Steve Bywater
<u>S 1132</u>	Relating to the Idaho Tort Claims Act ; member districts shall be considered a single governmental unit and certain claims may be brought and pursued only against the operating unit, to provide for the combined aggregate limit of liability for a certain operating agency, its member irrigation districts and their respective employees.	Norm Semanko
	Gubernatorial Appointment G. Jerry Russell of Meridian, Idaho was reappointed as Director of the Idaho State Police for a term commencing January 3, 2011 and expiring January 5, 2015.	
PRESENTATION	Department of Idaho State Police Update	Col. Jerry Russell

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

COMMITTEE MEMBERS

Chairman Darrington
 Vice Chairman Vick Sen Mortimer
 Sen Davis Sen Nuxoll
 Sen Lodge Sen Bock
 Sen McKague Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds
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 lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 07, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

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

CONFIRMATION **Chairman Darrington** stated the committee would vote on the recommendation to confirm the reappointment of **Sharon Harrigfeld** as Director of the Department of Juvenile Corrections to serve a term commencing January 3, 2011 and expiring January 5, 2015.

MOTION: **Senator Mortimer** made a motion to send the gubernatorial reappointment of **Sharon Harrigfeld** as Director of the Department of Juvenile Corrections to the floor with a **do confirm** recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

RS 20546 **Relating to the Sexual Offender Registration Notification and Community Right-To-Know Act - Steve Bywater** explained this to be the work of a subcommittee of the Idaho Criminal Justice Commission, chaired by Mr. Bywater and Molly Huskey, the State Appellate Public Defender. He said this legislation would accomplish three major things in the management of sex offenders in the state of Idaho.

1. The Violent Sexual Predator (VSP) designation will be repealed since the Idaho Supreme Court held that program unconstitutional two years ago.
2. The Sex Offender Classification Board which was created by statute to make the designation of VSP's will be converted into a Sex Offender Management Board and will be expanded from four to eight members. The Board has the obligation of developing sex offender management policy for the state of Idaho.
3. The proposal will bring the registration and reporting requirements of the Idaho sex offender registration in compliance with minimum national standards.

Mr. Bywater explained the financial impact of \$74,000 which would be the additional costs of increasing the members of the new board.

Senator Darrington asked why the commission and subcommittee decided to go this route of abolishing the VSP rather than allowing the judge to make that designation at sentencing. **Mr. Bywater** responded that the problem with the current VSP designation is that the procedural protections in the process are not adequate. He further explained that there are only two times that the VSP designation can be made; (1) at the beginning and time of sentencing when the defendant is in court and (2) at the end of the incarceration period and prior to

release into the community or probation. He said they looked at those options with the costs and complexities and felt there was too little information at the beginning and the need for risk evaluation by qualified professionals at the end. He stated that the decision was based on clearly established best practices nationwide.

Senator LeFavour and **Chairman Darrington** asked if this was a step toward compliance with the Federal law. **Mr. Bywater** said yes, the Federal regulatory environment which is basically section one of the Adam Walsh Act has some problems, and it is not recommended that the state come into compliance with the Act at this time; however, some portions of it will be implemented.

Senator Davis asked if this provides for a stronger environment for the monitoring of VSP's within a slightly different framework. **Mr. Bywater** hesitated with the word "stronger" because by eliminating the VSP designation, some additional reporting and registration requirements are also eliminated. He explained of the 4,100 registered sex offenders in the state, somewhere between 50 and 70 had been designated as VSP. They were required to appear every 3 months, rather than annually and also received a letter from the state police every 30 days to verify their address. Those requirements will not be in effect with this proposal.

Senator Davis asked if this legislation will provide appropriate protection for the public. **Mr. Bywater** said the purpose is to let the public and police know where sex offenders are.

MOTION:

Senator Davis made a motion to send **RS 20546** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1132

Relating to the Idaho Tort Claims Act - Norm Semanko, Executive Director for the Idaho Water Users Association, explained the purpose of this bill is to clarify that only the operating agency, and not the member entities, can 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 continued to explain how irrigation districts had banded together for the operation of certain works and cited the New York Canal as the best example. **Mr. Semanko** said there were five different irrigation districts that derive water from the Boise Project Board of Controls; the New York Canal. He further stated that this entity was formed some fifty years ago to operate the facilities. He recounted some background stating Idaho Code, Section 6-903 which deals with governmental entities and Section 6-902 which defines governmental entities to include state and political subdivisions. And in turn in political subdivisions, are found counties, cities, municipal corporations, health districts, school districts, irrigation districts and operating agent of irrigation districts whose board consists of directors of its member districts. He said they were asking for a clarification of the law to recognize it already is the law.

Senator LeFavour asked if intentional or gross negligence should happen would that governmental agency absorb that in any way. **Mr. Semanko** said that these are claims that arise from construction, operation or maintenance of these facilities. **Chairman Darrington** clarified that there were others within the state such as American Falls #1 that have similar arrangements. **Mr. Semanko** said there were only two boards of control in this definition of what the code calls "an operating agent of irrigation districts whose board consists of directors of its member districts." The operating agent is the Boise Project Board of Control and the South Fork. American Falls Reservoir #1 and #2 are actually irrigation districts.

Senator Bock reiterated that while this bill is consistent with court decisions, is there a history as to how the law evolved. **Mr. Semanko** recalled the case of

McKay versus Boise Project Board of Control about ten years ago. He said the McKays sued the Project Board of Control and the individual districts. He said his recollection was that at the district court level, they were dismissed and the reason was very sound.

TESTIMONY

Barbara Jordan, representing Idaho Trial Lawyers Association, said they had conferred with the sponsors of the bill and did some research and found it basically codifies what is currently used in the courts. This bill makes sense by naming the party that is responsible for the damages.

TESTIMONY

Mike Kane, representing the Idaho Counties Risk Management Program explained that they were property casualty insurer and insure the Boise Project and South Project and also the irrigation districts in question. In response to the questions from Senator LeFavour, Mr. Kane said this will not change the law of negligence at all. In response to Senator Bock, there is a case now where the plaintiff sued Boise Project Board of Control and the irrigation district. He explained the Boise Project is essentially a canal and the water irrigators are down at the far end. If the canal does something negligent then the Project should be sued, but not the irrigators who are innocent bystanders. He said this has been done in the past because of the way the contract was written. His client is in favor of the bill as it will codify the law.

MOTION:

Senator Bock made a motion to send **S 1132** to the floor with a do pass recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL
APPOINTMENT
AND
DEPARTMENT
UPDATE**

G. Jerry Russell of Meridian, Idaho was reappointed as Director of the Idaho State Police for a term commencing January 3, 2011 and expiring January 5, 2015. Colonel Russell reminded the Committee of his commitment in 2007 to be diligent in his fiduciary responsibility and to explore creative ways to effectively and efficiently use the State's limited resources in providing quality law enforcement services to Idaho's citizens. He provided the Committee with a five-page overview of notable agency accomplishments from 2008 through 2010. He stated ISP's mission: "Providing public safety across the State of Idaho through law enforcement excellence." Colonel Russell said in the last few years, the greatest challenges have been providing those services while managing a 44.3% reduction in general funds.

Colonel Russell discussed the department's programs and challenges. The first and largest program is Patrol. He stated the Patrol officers have many duties and currently, ISP is holding open 9 patrol positions, which is the single biggest challenge. He provided the committee with an overview of the current staffing levels by region and what the Personnel Allocation Model (PAM) recommends for each region. He then addressed the program of Investigations. The staff is specially trained professional detectives involved in the entire spectrum of major criminal investigations. In 2010 the program opened 443 new criminal cases in areas of homicide, assault, conspiracy, drug cases, sex crimes and fraud. Many of the investigations involved mid to high level drug trafficking organizations within and outside Idaho's borders and were prosecuted in both state and federal courts. Colonel Russell reviewed the Forensic Services program which provides direct support to Idaho's criminal justice community through crime scene evidence collection and analysis. This year there is legislation to require DNA for all convicted felons. He said a challenge for the labs is to fill two vacant forensic scientist positions. ISP also oversees the Bureau of Criminal Identification and the Criminal Justice Information Systems.

Colonel Russell explained that in addition to the programs already discussed, ISP provides services to Police Officer Standards and Training, Alcohol Beverage

Control, Executive Protection, Racing and Brands, all of which provide quality public services.

Senator Darrington stated the committee was impressed with the depth of knowledge from the forensic chemist regarding the bills on bath salts and spice drugs. **Senator Mortimer** asked about the difference in regions and how the number of officers are determined. **Colonel Russell** said many things were considered such as number of calls, amount of time for response, the population base, the miles traveled, etc. **Senator Davis** asked if local law enforcement was a factor; whether city or county officers were an influence on the number of highway patrol personnel? **Colonel Russell** said they did not want to duplicate services, and it is the responsibility of the state patrol to service state and interstate highways. **Senator Darrington** mentioned that there had been a decline in fatalities in the last three years and asked what was attributed to the decline. **Colonel Russell** replied that: (1) there were aggressive DUI laws, (2) economic times means less travel, and (3) strategic enforcement plan to reduce and enforce laws. **Senator Darrington** and **Colonel Russell** both said there was also better engineering in cars, better restraints, airbags, and the design of highways.

Senator Nuxoll asked about the retirement percentage. **Colonel Russell** said the retirement numbers were reduced substantially, down to 3% from 7%; the normal retirement is after twenty-five years. **Senator Darrington** said the CHOICE Program has helped with retention. **Colonel Russell** agreed. **Senator Davis** asked how he felt about the issue of texting while driving. **Colonel Russell** stated that it was inattentive driving and his personal opinion is the current law already deals with that. **Senator Lodge** asked how many women were on the force. **Colonel Russell** said there were not enough. It was agreed that it would be a good career path for women.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:32 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
 1:30 P.M.
 Room WW54
 Wednesday, March 09, 2011

SUBJECT	DESCRIPTION	PRESENTER
MINUTES TO APPROVE	February 28, 2011 March 2, 2011	Senator Mortimer Senator Lodge
COMMITTEE VOTE	Recommendation to confirm the reappointment of G. Jerry Russell as Director of the Idaho State Police	
<u>S 1067</u>	Relating to the Idaho DNA Database Act of 1996 ; to revise requirements and responsibilities relating to offenders subject to DNA sample collection and right thumbprint impression	Major Ked Wills
<u>H 140</u>	Relating to the Juvenile Corrections Act ; to provide for a certain examination to determine competency to proceed, to provide for the appointment of psychiatrists, psychologists and evaluation committees, to provide for hospitalization and to require certain reports, to provide for a hearing to determine whether a juvenile is competent to proceed, to provide for the suspension of proceedings, to provide for certain court orders and to provide a process to restore competency to proceed, to require that certain reports be filed within specified time frames and to require a certain review hearing be held within a specified time frame.	The Honorable Judge John Varin, Senior Judge 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 Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 09, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

Chairman Darrington called the meeting to order at 1:30 p.m. and asked if there were minutes to approve.

MOTION: **Senator Mortimer** made a motion to approve the minutes of **February 28, 2011** as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Lodge** made a motion to approve the minutes of **March 2, 2011** as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION **Chairman Darrington** stated the committee would vote on the recommendation to confirm the reappointment of **G. Jerry Russell** as Director of the Idaho State Police for a term commencing January 3, 2011 and expiring January 5, 2015.

MOTION: **Senator Mortimer** made a motion to send the gubernatorial reappointment of **Colonel G. Jerry Russell** to the Senate floor with a **do confirm** recommendation. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

S 1067 **Relating to the Idaho DNA Database Act of 1996 - Major Kedrick Wills**, Police Services Division Commander of Idaho State Police, said he was accompanied by two members of the Idaho State Police Forensics Services, Matthew Gamette, Quality Services Manager and Cindy Cunnington, Biology Discipline Leader in the Gaming Section. He explained this legislation would amend Idaho Code, Section 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 bill strikes qualifying sex and other violent crimes and inserts felony to encompass all felony convictions. He stated that Idaho was the only state that didn't require all convicted felons to provide a DNA profile. This will assist in solving previously unsolved crimes. Major Wills said that security measures were in place to ensure that the data collected for this database is only used for approved law enforcement investigations. There is a fiscal impact attached to this legislation, but it is a worthwhile tool to keep Idaho citizens safe.

Senator LeFavour asked what entities have access to the database. **Major Wills** replied that the FBI would have access as well as the Idaho State Police. **Senator Davis** asked if individuals that are currently convicted of crimes might be exonerated as a result of DNA testing and does this legislation have any impact on those records. **Major Wills** said there may well be an impact of exoneration of some crimes although that was not the reasoning for going forward with this bill. **Senator Davis** asked if there would be, as part of this capture and potential program, some form of active comparison of currently saved DNA from past crimes. **Major Wills**

said yes, if there is a crime that is unsolved with a profile, it will be uploaded and compared to both the state and national database. **Senator Davis** asked if in the event of someone that has been unjustly convicted of a crime, will the newly obtained information due to this bill be available to individuals in past proceedings. **Major Wills** said that **Cindy Cunnington** could better answer that when she testifies.

TESTIMONY

Cindy Cunnington, Idaho State Police Forensics Services, explained that a DNA sample is collected from a qualifying offender by law enforcement by collecting cells from inside the cheek of the individual's mouth. The sample is reviewed and assigned a unique lab number and entered into the lab's administrative database. The sample is then processed to obtain a DNA profile and is simply a series of numbers. She said that DNA testing is a comparative process; the profile alone does not yield any information other than gender. In comparing DNA profiles, it is a matter of determining that the numbers are all the same. **Ms. Cunnington** said that samples collected from convicted offenders are brought or mailed in from the Department of Corrections or the collecting entity and those samples are given a unique barcode number. The individual's personal information is not associated with their DNA profile. The profile is entered into the Combined DNA Index System (CODIS) database and subsequently searched against all eligible casework profiles. She explained that a "hit" occurs when an offender profile matches a forensic profile, providing important leads to the submitting agency and "hits" can occur at the state level of CODIS or at the national level. **Chairman Darrington** asked how many samples could be run in a day, a week, or a month and what the capacity would be for one person. **Ms Cunnington** replied that the current rate is 300 samples processed per month and that is one individual working full time in the laboratory plus a second qualified individual that has to perform extensive reviews on the data before it can be entered into the database.

Vice Chairman Vick asked who retains the information that matches the barcode. **Ms. Cunnington** replied that the personal identifying information when the sample comes into the lab is entered into a database that is separate from the CODIS which houses the DNA profile and the only individuals that have access to that personal information is herself and the other members of the biology section within the lab. **Senator Mortimer** asked how in simple terms you determine a DNA unique qualifier to a set of numbers. **Ms. Cunnington** said the unique qualifier or barcode is produced by an instrument that graphs peaks that are connected to certain locations on the DNA strand. **Chairman Darrington** commented that DNA was accurate almost to 100%. **Ms. Cunnington** said that was correct. **Senator LeFavour** asked if someone had a great knowledge of what the number indicators represented could they reconstruct things about a person. **Ms. Cunnington** said no, because the particular regions they are looking for do not code for anything that is known within the entire genetic code.

TESTIMONY

Mike Kane, representing the Idaho Sheriffs Association, said they support the bill. He said that in cases where there is a forced taking of the DNA sample, one might wonder if they have been reviewed by the courts and they have. In the 9th Circuit this year, they ruled on the California DNA Act which also requires blood and a thumbprint, and determined that it was constitutional.

MOTION:

Senator Davis made a motion to send **S 1067** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. **Vice Chairman Vick** said that according to the fiscal impact, appropriations were to be started next year and the bill is not implemented until a year after that. He wanted to know if that was correct. **Major Wills** said it would take a year to get the two scientist positions trained and they would need funding to get started. The motion carried by **voice vote**.

RS 20583 **Relating to Fish and Game** (from the Resources and Environment Committee) Chairman Darrington said Senator Pearce, with unanimous consent from his committee, has requested that RS 20583 be sent to print.

MOTION: **Senator Davis** made a motion to send **RS 20583** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Chairman Darrington welcomed Judge Varin to the committee and said it was his understanding that the bill was recommended to go to the 14th order for amendments.

H 140 **Relating to the Juvenile Corrections Act - the Honorable Judge Jack Varin** conferred with Chairman Darrington regarding an amendment which would be discussed later in the presentation. Judge Varin explained that he was the Chair of the Juvenile Justice Advisory Team of Magistrate Judges whose purpose was to advise the Idaho Supreme Court on the administration of juvenile justice in Idaho. Judge Varin said this bill will create a juvenile justice competency statute that will set process and factors for the evaluation of a juvenile charged with a crime to determine their competency to proceed under the Juvenile Corrections Act if competency is raised as an issue. He said competency or fitness to proceed is constitutionally required and although this is not an issue in most juvenile justice cases, when the issue arises, it must be addressed by the court. He further explained that Idaho's current competency statute, Idaho Code, Sections 18-210 - 215 was designed for adult offenders.

Judge Varin said the two key points of this bill are: (1) the statute does not change the legal standard for competency to proceed to trial as well as restoration, and (2) the statute addresses the issue of developmental disabilities and an evaluation committee with specialized expertise to make sure of an accurate assessment and recommendation. The portion of the bill to be amended deals with what happens when a juvenile is found to be incompetent and not restorable. In that case the matter may be stayed or dismissed at the discretion of the court. Prior to the amendment the court would have only the authority to dismiss. Under either a stay or a dismissal, a screening team may be appointed to develop a plan of treatment for the juvenile.

Senator Davis asked how are these standards different from an adult. **Judge Varin** said standards were added that the specialists said would be more comprehensive and focused on the child's brain development.

TESTIMONY **Holly Koole** said the Idaho Prosecuting Attorney's Association is in favor and supports this bill with the amendment. She explained their concerns of the mandatory dismissal language involved if the juvenile was found to be incompetent and not able to proceed. Working on their concerns with Judge Varin, the amendment states the court "may" look at all relevant factors to determine whether to stay or dismiss the matter.

Senator LeFavour asked how it would be conveyed to judges across the state, and if some of these individuals may face sentences or consequences that are not fitting. **Ms. Koole** said it was a collaborative effort with many parties in drafting the language so a judge would consider all of the factors in determining whether the person can be rehabilitated and if not the discretionary language gives the judge the ability to dismiss the matter. **Judge Varin** said the judges would be made aware of the legal basis and receive conference training. **Senator LeFavour** asked if a "stay" meant that everything came to a standstill and then what. **Judge Varin** said the "stay" keeps the case at the current level where as if dismissed, the case is filed.

TESTIMONY

Chuck Halligan, Program Manager for the Children's Mental Health Program for the Department of Health and Welfare, explained that their role would begin when a juvenile is found incompetent but restorable by the court. The Department will be responsible for filing a plan of restoration with the court to restore the juvenile's competency. The intent is to have a standardized restoration program that will address the competency components in the statute and to keep the children in the community and at home if possible. **Vice Chairman Vick** asked for details of the program. **Mr. Halligan** said it was about an hour long curriculum with the juvenile by professional staff and a review about the court process; i.e. what's a judge? where does the judge sit? what is the role of the judge? of your attorney? They would educate them as to the three competency components listed in the statute. **Vice Chairman Vick** asked if this was done in only one hour. **Mr Halligan** replied that it was about an hour for each of the eight to twelve segments. **Senator Mortimer** asked how many in Health and Welfare were educated and responsible to do this task. **Mr. Halligan** said 60 clinicians were within the department and distributed throughout the state.

TESTIMONY

Rob Luce, Administrator for the division of Family and Community Service within the Department of Health and Welfare, gave testimony in support of the bill. He said there would now be clear direction when a juvenile is in this situation and clearly incompetent.

MOTION:

Senator LeFavour made a motion to send **H 140** to the floor and to the **14th Order** for amendment. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Senator LeFavour commented that there had been three different pieces of legislation heard in this committee that seemed connected, and she asked if there was an underlying relationship between them and if this was connected to some of the difficulties that the Director of Juvenile Corrections has expressed in relation to the severity of some of the issues of juveniles. **Chairman Darrington** said it was not by his design and was just the way things have come about, some having evolved from the Health and Welfare Committee. They have come about through the natural attrition of legislation.

ADJOURNMENT

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 14, 2011

SUBJECT	DESCRIPTION	PRESENTER
Approval of Minutes	Minutes of March 7, 2011	Senator Bock
S 1154	Relating to the Sexual Offender Registration Notification and Community Right-To-Know Act	Stephen Bywater, Representative Idaho Criminal Justice Commission
PRESENTATION	Status of State Prisoners in County Jails	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 Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 14, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

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

S 1154

Relating to the Sexual Offender Registration Notification and Community Right-To-Know Act - Stephen Bywater explained this proposed legislation will amend Idaho Code, Sections 18-8301 to 18-8324 to update and clarify sex offender registration requirements and procedures. He said it will also remove the violent sexual predator (VSP) designation, the process for which was held to be unconstitutional in *Smith v. State*. It will also create a sexual offender management board to advance and oversee sound sexual offender management policies and practices statewide. This proposed legislation will also amend Idaho Code Sections 19-2520G, 20-219, 67-2345, and 9-340B to eliminate references to the violent sexual predator designation, the sexual offender classification board, and to the repealed Idaho Code, Section 18-8315.

Mr. Bywater said the subcommittee of the Idaho Criminal Justice Commission looked at other possibilities of providing due process for the VSP's, both at the time of sentencing and by an enhanced process after the period of incarceration. They looked at a system that would retain the designation for the approximate 53 offenders currently designated VSP's, but with the lack of research evidence that recidivism is reduced or deterrent is enhanced, it seemed impractical to continue this tracking method. He said Idaho State Police (ISP) mails out an address verification letter to regular sex offenders every four months with annual registrations; VSPs receive the letter every month. Another substantial difference is the ability to get off the registry; according to Idaho Code, Section 18-8310, a sex offender can petition after 10 years to be removed from the registry, a VSP cannot petition and registration is for life. He further stated that most of the sex offenders that qualify for VSP status also qualify under the aggravated offense statutes and they cannot petition to get off the registry either. This new enhanced section will effectively preclude any of those offenders that would have met the VSP designation from getting off the registry. **Senator Davis** asked if that would create due process concerns with the Idaho Supreme court since they had a problem with the previous standards. **Mr. Bywater** said this status is based upon the offenses that the person was convicted of and they did receive due process in that conviction.

Mr. Bywater further stated that the replacement of the four member Sex Offender Classification Board with an eight member Sex Offender Management Board will result in expenses in addition to those presently funded for the current board. Those additional costs will have a total financial impact of \$74,000. This includes \$3,600 in personnel costs to cover statutory member stipends and \$70,400 in

additional operating expense to cover increased travel costs/per diem, more extensive administrative rule publication costs, and operating costs.

Chairman Darrington asked Mr. Bywater to explain what happens to those already designated as VSPs. **Mr. Bywater** stated that through this proposal the 53 individuals that have already been designated as VSPs and since we were not able to file a petition to have that status removed, if this becomes law, their status will be removed and they will be subjected to the same reporting registration requirements as all other sex offenders. **Senator Bock** asked, if in terms of highly probably, reasonably certain, what factors would need to be determined. **Mr. Bywater** said that it would be a case by case analysis and would go back to the offence itself and if it was predatory and the court would be looking at all the treatment and evaluations that were performed and basically look at the entire file on that sex offender.

Senator Mortimer asked if there was a reason there was not a member-at-large to represent the general public on the new Sex Offender Management Board. **Mr. Bywater** explained that they initially considered an expanded board of twelve members and because of budgetary concerns they reduced the number. Since this board is charged with establishing sex offender management policies for the state of Idaho, people were chosen who were directly related in a statewide systematic way.

Senator Nuxoll asked what other criteria is being looked at for the future. **Mr. Bywater** said best practices indicates an individualized risk-based tiering system in the sex offender registration law. At some point in time we will address the implementation of the federal compliance which is an offense-based tiering system. He said our treatment programs and sex offender polygraph program must also come into compliance with best practices and evidence-based standards so there is a uniform approach to evaluating, treating, and monitoring our sex offenders.

Senator Davis questioned the effect of the language in the proposal regarding the reporting of "prior" names on the name change statute in Title 7, Chapter 8 which says if convicted of a sexual offense, you can't change your name. That statute, he said, also requires that if a sexual offender does change their name, the court has to make a report of the name change to the registry. How would a judge apply that provision in light of the language in this proposal? **Mr. Bywater** said that Idaho sex offenders come from all over the nation and there are different laws regarding name changes. The purpose of having the requirement to report prior names in this proposal is to adopt the national standard which says any prior names or name changes of a sex offender must be reported to the registry by the offender. **Senator Davis** said would it be correct then for the minutes to reflect that you are not intending to grant or expressly provide legislative consent for modifying the name change statute or somehow imply that sex offenders are otherwise authorized to change their name in Idaho. **Mr. Bywater** agreed with that statement.

TESTIMONY

Thomas Hearn, member of the Sex Offender Classification Board (SOCB), explained his concern of this legislation and spoke on behalf of the SOCB. Mr. Hearn suggests that if this proposed law is adopted that at least the definition of violent sexual predator be maintained in the law even if the legislature decides to abolish the process of identifying dangerous offenders. It will take several years for the new Board to develop new sex offender risk assessment and classification systems. Meanwhile he would hope for purposes of community safety that the definition and public identification of violent sexual offenders remain in the law.

TESTIMONY

Gabriel McCarthy, Attorney at Law, explained this bill proposes amending Idaho Code, Section 18-8304 to designate an existing crime, Idaho Code, Section 18-1515 - disseminating materials harmful to minors, as an offense that would now require a defendant to register as a sex offender. It would become the only misdemeanor, whereas the rest of the listed offenses are felonies. Mr. McCarthy also mentioned that the requirements of registering were retroactive in this bill and anyone that plead guilty or was convicted since 1993 would have to now register as a sex offender. He stated that someone that plead guilty to a misdemeanor some years ago should not have the playing field so dramatically changed after the fact. He reiterated that to be classified as a registered sex offender (RSO) is a big thing and affects where you can live, where and if you can work.

Steve Bywater closed his comments on S1154 by adding that he appreciated the comments of Mr. Hearn and Mr. McCarthy. Both issues were discussed and debated at length in our subcommittee meeting. It was concluded that regarding 1815, materials sold or given to minors, even though it is a misdemeanor was harmful and as a matter of policy should be included in our registration statutes. He said he could understand Mr. McCarthy's objections. **Senator LeFavour** said that also in 1815 was giving a young person a sculpture that includes nudity would seem a bit reaching for that consequence. **Mr. Bywater** said regarding Mr. Hearn's concerns, starting from the basis and the recognition that registration requirements have not been shown to reduce recidivism and in our judgment outweigh by the statutory complexities of such a hybrid system would require and the legal issues it would raise. He pointed out that law enforcement is made aware of these high risk offenders prior to their release. **Chairman Darrington** recommended a continuation on Wednesday with no more testimony, only questions for Mr. Bywater. The bill will be held and at the top of the agenda on Wednesday, March 16, 2011.

PRESENTATION

Paul Wilde, Sheriff of Bonneville County and Chairman of Idaho Jail Standards Committee introduced the members of the Idaho Sheriffs Association (ISA) that would present the "Status of State Prisoners in County Jails" to the Committee.

Dave Johnson - Sheriff of Bingham County and President of Idaho Sheriffs Association

Vaughn Killeen - Executive Director of Idaho Sheriffs Association

Cindy Malm - Jail Standards Inspector

Mike Kane - Lobbyist for Idaho Sheriffs Association

Paul Wilde reported that under Idaho Code, Section 2237A which states that we would report to the Legislature every three years and give you an update on the cost per inmates in a county jail. ISA was organized in 1962 and has since developed jail standards and inspection programs. He said that every jail is inspected annually and thirty-six counties of the forty-four counties in Idaho have jails. One jail is operating on a four hour basis and is just a holding cell to be transported to a main facility later. There are 4,578 total jail beds in the state. He said that as of today, there were 292 state minimum and medium security inmates in county jails; 117 males and 175 females. There has been an increase in the female population, but the total number has been higher in the past. Sheriff Wilde said the average daily inmate cost is \$72.50. These costs are based on several different things such as salaries, benefits, direct jail operating costs, such as maintenance, supplies, medical, training and education, utilities, administration as well as insurance and risk management. A sample of programs that are offered in some of the jails are:

- Life Skills Programs
- Substance Abuse Programs
- General Educational Development (GED)
- Parenting Classes

- Re-entry Programs
- Mental Health Programs
- Religious Services

Sheriff Wilde explained that a \$40 daily rate was established in 2000, but with inflation that rate is equal to \$51.20. He stated that county jails serve as a buffer for the Idaho Department of Corrections and also in keeping Idaho inmates in Idaho. He said they are in partnership with IDOC in serving the communities, keeping the safety and security of all facilities as a priority. **Chairman Darrington** noted that the U.S. Marshall was in the audience and asked how many federal prisoners were being held in jails today. **Sheriff Johnson** said there were 27 federal prisoners in county jails. **Senator Nuxoll** asked why the disproportionate number between male and female and was there a difference in cost. **Sheriff Wilde** said the management cost was the same for male and female.

Chairman Darrington asked the sheriffs the greatest problem faced in the state of Idaho today. **Sheriff Johnson** responded that drug related problems were a concern and the biggest increase among females in the last year. **Vice Chairman Vick** asked how they dealt with separation issues concerning the female population. **Sheriff Wilde** said that how a jail is built makes it difficult to house a variety of inmates; having site separation create an issue between males and females. He said in 1977, there was a maximum of 8 female beds and now there is a maximum of 85 in just the two pods that house females. **Vice Chairman Vick** asked what percentage of the females were a buffer for IDOC. **Sheriff Wilde** said the 175 females are all IDOC and we are buffering their beds or population for them. **Cindy Malm** stepped to the podium. **Chairman Darrington** asked if ACA standards were used to inspect. **Ms. Malm** said they had their own set of standards in Idaho, many of those are based on the ACA standards.

MINUTES

Senator Bock made a motion to approve the minutes of **March 7, 2011** as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT

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

Senator Darrington
Chairman

Leigh Hinds
Secretary

**AMENDED AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 16, 2011**

SUBJECT	DESCRIPTION	PRESENTER
<u>RS20567</u>	Relating to Motor Vehicle Registration and License Plates (for the Transportation Committee)	
<u>S 1154</u>	Relating to the Sexual Offender Registration Notification and Community Right-To-Know Act NO TESTIMONY, Questions from the Committee only	Stephen Bywater, Representative Idaho Criminal Justice Commission
<u>H 225</u>	Drug Court - Amends existing law relating to the Idaho Drug Court and Mental Health Court Act to provide additional provisions relating to the eligibility of a person to be admitted into drug court.	Patti Tobias, Administrative Director of the Courts
<u>H 226</u>	Judgments, Sentences - Amends existing law relating to suspension of judgment and sentence to revise provisions relating to the discharge of defendant and the amendment of judgment.	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 Darrington

Vice Chairman Vick Sen Mortimer

Sen Davis Sen Nuxoll

Sen Lodge Sen Bock

Sen McKague Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 16, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

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

RS 20567 Relating to Motor Vehicle Registration and License Plates (for the Transportation Committee)

MOTION: **Senator Lodge** made a motion to send **RS 20567** to print. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

H 225 **Relating to the Idaho Drug Court and Mental Health Court Act - Patti Tobias**, Administrative Director of the Courts, explained this bill amends the provision of the original act that prohibits participation in drug court by any person who is charged with or found guilty of a felony crime of violence or a felony in which the person used a firearm or deadly weapon. In 2001, this provision was necessary to maintain eligibility for federal drug court funds, but today our drug courts do not receive these federal funds. She explained there was a very limited exception added to this bill to allow an offender who is charged with or convicted of a crime of violence to participate in a drug court. She further explained that a person could only be admitted to drug court if; 1) after consultation with the drug court team, and 2) with the specific consent of the prosecuting attorney. Specifically, Ms. Tobias continued, the purpose of H 225 today is to meet the special needs of returning veterans and permit the establishment of veteran's courts, veteran's treatment courts, or veteran's treatment calendar. The Idaho Criminal Justice system is seeing an increasing number of returning veterans with Post Traumatic Stress Disorder (PTSD) and they are being booked into the jail and often charged with crimes of violence. This will permit Idaho judges to provide some limited exceptions to meet the special needs of Idaho's veterans by permitting them to participate in Idaho's drug courts.

Vice Chairman Vick asked if the court was given too much jurisdiction. **Ms. Tobias** said no, because the drug court team and the prosecuting attorney must consent before the judge would consider the participation.

MOTION: **Senator Mortimer** made a motion to send **H 225** to the Senate floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Relating to Suspension of Judgment and Sentence - Michael Henderson, Legal Counsel for the Courts, explained this bill would provide that a defendant can ask to have his conviction set aside, or to have his felony conviction reduced to a misdemeanor, if there was no finding or admission of a violation of the terms of probation during a probation violation proceeding. This would ensure that defendants who committed minor violations of the terms of probation, that did not even merit a probation violation proceeding, would continue to be eligible for relief. He further stated this will give defendants an added incentive to continue to make an effort to adhere to the terms of probation and will increase the chances for rehabilitated defendants to obtain employment and take advantage of educational opportunities. Sex offenders would continue to be ineligible for any relief under the statute, and the defendant would always have the burden of showing that setting aside his conviction or reducing it to a misdemeanor is compatible with the public interest.

Senator Davis expressed concern with the language of the bill if the probation violation was nominal. He wondered if there would be a chance for the conviction to be set aside, even if the violation was a minor act, because a defendant had admitted the violation or if the court had discovered the violation. **Mr. Henderson** explained the language about admission or discovery of a violation was to duplicate existing statutes with language containing the phrase "plea of guilty or a finding of guilt" and implying that an admission is formerly placed on the record. **Senator LeFavour** asked what the consequence would be for these individuals to stay on the roll of IDOC and add to their case load even after a judge was comfortable to be done with the process. **Mr. Henderson** said sometimes probation officers will initiate the process of releasing the offender from probation if they are complying and have satisfied the requirements of probation. **Senator LeFavour** asked if it was possible for the parole officers to end the probation time, or under 19-2604 can the offender also do that. **Mr. Henderson** said the request could be initiated either by the offender or the probation officer.

TESTIMONY

Fairy Hitchcock said she found this bill interesting, but is not in favor of passing it because of her experiences in the Ada County Courthouse this past summer. She referred to a five day probation violation hearing with three probation officers sitting in the courtroom. The judge held the case in chambers for six weeks before she decided to commute the defendant's sentence.

Michael Henderson said that the decision to grant a withheld judgment would take place initially at the sentencing hearing. At a later time the court would decide whether to set aside the finding of guilt so that the defendant would not have a conviction on the record. **Senator Davis** said that the way the language is written now the prosecuting attorney could argue that the defendant is not entitled to have the conviction set aside because the defendant did not comply with the conditions of probation at all times, even though the prosecuting attorney did not ask the court to find that the defendant violated his probation. The language of the bill seems to be a substantial improvement in enforcing the rights of defendants who have received a suspended sentence or withheld judgment. **Mr. Henderson** said that was correct. Under the current language the prosecuting attorney could come back even after five years and argue that during the period of probation the defendant violated a condition of probation and therefore is ineligible for relief.

MOTION:

Senator LeFavour made a motion to send **H 226** to the Senate floor with a do pass recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

S 1154

Relating to the Sexual Offender Registration Notification and Community Right-To-Know Act - Stephen Bywater, Representative of the Idaho Criminal Justice Commission, continued his presentation from Monday's meeting. **Chairman Darrington** told the committee that the package before them was the proposed amendments to the bill and changes were in red. **Mr. Bywater** went through the amendments to address the committee's concerns and comments. He said eight sections in S 1154 are affected as follows:

1. 18-9303 (17), "Violent sexual predator" is redefined as a person designated as such by the sex offender classification board where such designation has not been removed by judicial action or otherwise.
2. 18-8304 eliminates the misdemeanor from statute per Mr. McCarthy's suggestion.
3. 18-8307 brings back the existing language regarding the violent sexual predator quarterly registration obligation and the address verification.
4. 18-8308 brings back the language of mail notification of address and electronic monitoring of violent sexual predators.
5. 18-8310 brings back "an offender designated as a violent sexual predator" is not eligible for release from registration requirements.
6. 83-8312 changes the board from 8 to 9 members; one member of the board shall be a representative of the public.
7. 18-8323 changes "includes" to "limited to" to make clear what appears on the public web site.
8. 20-219: the proposed amendments are no longer needed, and this section should be removed in its entirety. Wording of the statute as it stands is appropriate.

Questions from the senators regarding the fiscal note, future VSP designation, and meeting times of the board members were clarified by Mr. Bywater.

MOTION: **Senator Bock** made a motion to send **S 1154** to the 14th Order for amendment. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:28 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

**AMENDED AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 21, 2011**

SUBJECT	DESCRIPTION	PRESENTER
Minutes to Approve	Minutes of March 9, 2011	Vice Chairman Vick
<u>RS20653</u>	Relating to the Idaho Bail Act; to provide additional provisions relating to the surrender of defendant, to provide an additional circumstance when the court is required to order the bail exonerated.	Roy Eiguren, Representative for Aladdin Bail Bonds
<u>H 235</u>	Relating to the Idaho Criminal Gang Enforcement Act	Ellie Somoza, Deputy Prosecutor, Canyon County Jim Tibbs, Chairman ICJC Gang Member Subcommittee Tim Higgins, Intelligence Coordinator IDOC

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick	Sen Mortimer
Sen Davis	Sen Nuxoll
Sen Lodge	Sen Bock
Sen McKague	Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 21, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

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

MINUTES **Vice Chairman Vick** made a motion to approve the minutes of **March 9, 2011** as written. The motion was seconded by **Senator McKague**. The motion carried by **voice vote**.

RS 20653 **Relating to the Idaho Bail Act - presented by Roy Eiguren**, representative for Aladdin Bail Bonds. **Mr. Eiguren** explained legislation introduced previously was found in need of revisions resulting in RS 20653. He explained this RS related to the Idaho Bail Act and would provide additional provisions involving the surrender of a defendant and additional circumstance when the court is required to order the bail exonerated. **Mr. Eiguren** explained the delay in completing the RS citing the need for the Bail Committee to meet and approve of changes made to legislation previously presented.

MOTION: **Senator Bock** made a motion to send **RS 20653** to print. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

H 235 **Relating to the Idaho Criminal Gang Enforcement Act - presented by Director Brent Reinke**, Department of Corrections. **Mr. Reinke** introduced **Mr. Jim Tibbs**, the Chairman of the ICJC Gang Member Subcommittee, **Ms. Ellie Somoza**, Deputy Prosecutor from Canyon County and Detective **Kieran Donahue**, Metro Task force of Canyon County and **Tim Higgins**, Intelligence Coordinator, IDOC. The Director asked **Mr. Tibbs** to explain the recommended changes to H 235 specifically relating to Idaho Code 18-8502 and 8503, relating to the Gang Enforcement Act. **Mr. Tibbs** explained crimes not previously covered which made changes to the aforementioned code necessary. **Mr. Tibbs** also reviewed the recommendation from the subcommittee and the Criminal Justice Commission to increase time served from two to five years.

Ms. Ellie Somoza introduced herself and work experience and addressed penalties associated with two misdemeanors and the increase in penalty for felonies proposed by H 235. She further explained the reasoning of the subcommittee in recommending the enhancement of time served from two to five years. She detailed that the main two parts of the legislation were to deal with gang recruitment and the enhancement of penalties associated with gang activities. She further clarified the definition of gang activities as relating to criminal activity.

Discussion ensued with questions by **Senator Nuxoll** and **Senator Bock** concerning the enhancement, gang recruitment, and graffiti. **Ms. Somoza** clarified where the enhancement was contained in H 235 and how it applied to documented

criminal gang members who commit crimes to further gang activities. Concerns by **Senator Bock** were expressed about an over zealous police officer and if the enhancement could be misused. **Ms. Somoza** enumerated items needed to be proved in court. **Senator Davis** had further questions about enhancements and associated costs which were clarified by Ms. Somoza and Director Reinke. **Vice Chairman Vick** questioned why the minimum sentence was increased and not just the maximum sentence. **Mr. Tibbs** responded that this was proposed to give judges flexibility. **Ms. Somoza** indicated her involvement in discussions by the committee and the decision of making the minimum incarceration two years would send a message to gang members. **Senator Davis** had further questions concerning the language and intent. **Ms. Somoza** responded that there was different language dependent on the types of crimes and that minimums could not be rescinded by the court some being determinate and some being indeterminate. **Senator Davis** further clarified determinate and indeterminate sentences. **Ms. Somoza** agreed with his clarification.

Ken Jorgenson from the Appellate Division of the Attorney General's office spoke concerning the sentencing process. He explained that a judge imposes a prison sentence that is not necessarily served entirely in prison but can be suspended with probation.

Detective Kieran Donahue explained his position with the Metro Task force in Canyon County and for the past five years with the FBI. Detective Donahue explained that as pressure is placed upon gangs in the metropolitan areas, gang members spread to more rural areas. Detective Donahue summarized the recent operation called Black Magic. He explained that original information came from prison inmates concerning a gang's intention to commit violent acts, including murder, on the streets. Detective Donahue recounted the three year history of the operation which included a confidential informant in the gang and the purchase of illegal firearms and methamphetamines. He revealed how criminal gang enterprise methods were discovered including taxes associated with selling drugs dependent upon time spent in the gang. He summarized the operation and the resulting murder and attempted murder charges. He revealed the filming of gang recruitment sessions showing beatings of new members. He also indicated graffiti was used by gangs to increase the territory and enhance the gang's presence in the county and within correctional facilities. Detective Donahue recounted an increase of sexual acts upon 12-15 year old girls by gang members as initiation into the gang. He explained the desire to have the tools in place to access severe penalties for acts committed.

Questions by **Senator Nuxoll** to Detective Donahue concerning the methods used to obtain gang information and the Detective's official position were clarified.

MOTION: **Senator Bock** made a motion to send **H 235** to the Senate floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Director Reinke spoke concerning **Mr. Tim Higgins** assistance to a man found unconscious in the parking complex on Friday morning, March 18, 2011. Mr. Higgins applied CPR and called 911. The Director honored Mr. Higgins by presenting him with a coin to honor his heroism. Mr. Higgins accepted.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:34 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 23, 2011

SUBJECT	DESCRIPTION	PRESENTER
Approval of Minutes	Minutes of March 14, 2011	Senator LeFavour
H 163	Relating to Restraint of Pregnant Prisoners; Extraordinary Circumstances, Emergency	Representative Janice McGeachin

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

COMMITTEE MEMBERS

Chairman Darrington

Vice Chair Vick Sen Mortimer
Sen Davis Sen Nuxoll
Sen Lodge Sen Bock
Sen McKague Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 23, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

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

H 163

Relating to Restraint of Pregnant Prisoners - Representative Janice

McGeachin explained this legislation would prohibit the use of restraints on pregnant female prisoners during labor except under certain conditions. The intent of the legislation would be to protect the State of Idaho by implementing a policy which conforms to recent decisions from the 8th Circuit Court of Appeals and a federal district court in Washington State. Ms. McGeachin cited cases in Arkansas and Washington where restraints were used and the state was sued. **Chairman Darrington** asked how many cases were filed in Idaho and **Ms. McGeachin** said there were none. **Senator Mortimer** asked what kind of restraints are used. **Ms. McGeachin** referred to the definitions of restraints on the first page, lines 29 and 30, and would defer to Hannah Brass for a more descriptive answer.

Hannah Brass, policy director of the ACLU, explained that this work has been in progress since 2009. She worked with Ms. McGeachin, Director Reinke and the Idaho Sheriffs Association to arrive at the agreed language. Ms. Brass said that ten other states have this policy and while there have been none in Idaho, there have been complaints. She reiterated that this bill is limited to labor and delivery. In response to Senator Mortimer's question, 20-902 (2)(b) says no leg or waist restraints are to be used, but in emergency situations a wrist restraint may be used. **Chairman Darrington** asked why a suit was not filed on behalf of those complaints received. **Ms. Brass** said she was not directly involved in the legal area, and the complaints they did receive were not verifiable. **Senator LeFavour** asked how many women are in correction facilities. **Director Reinke** stated about 800. **Senator LeFavour** asked how many of those in the system are pregnant. **Director Reinke** stated they would range anywhere from 20 to 35 live births per year.

TESTIMONY

Mike Kane, representing the Idaho Sheriffs Association, supports this bill and said it will be useful to have a policy in place. He stated that in civil rights litigation, when a county official is sued, he is sued as an individual; a jailer is denied immunity. **Senator Nuxoll** asked what is happening in the jails right now. **Mr. Kane** replied that they have approximately 10 or 11 pregnancies throughout the state in the county jails. These individuals would be transported to the nearest hospital for delivery. He said there would be a detention officer nearby, usually outside the door. If there was a case of a convicted murderer giving birth and there was a possibility of an attempted rescue, this bill would give the ability to use soft restraints to the wrist. **Senator Nuxoll** questioned what is happening right now without this bill. **Mr. Kane** said an officer would remain outside the door, and he was not aware of a specific

situation where shackles were used. **Senator LeFavour** asked if there were as many county jails as counties in Idaho. **Mr. Kane** replied there were nearly as many.

TESTIMONY **Marty Durand**, representing Planned Parenthood of the great Northwest, said they stand in support of this bill. She said they support the health of women regardless of lifestyle, race, sex, ethnicity or personal circumstances.

TESTIMONY **Melanie Roper**, legislative advocate for the Roman Catholic Diocese, explained that human life is sacred including the life of an incarcerated mother and her unborn child. She said every pregnant woman must be allowed to bring her infant child into the world in a humane and dignified manner. This bill creates consistency among policies and provides clear guidance to state and local agencies.

TESTIMONY **Jason Herring**, President of Right to Life in Idaho, explained they stand in support of this bill. Mr. Herring said they were not only pro-baby, but also pro-mom. He said given the provisions in this bill and the support of the respective law enforcement agencies, they believe this is a good bill for Idaho's mothers behind bars.

MOTION: **Senator Lodge** made a motion to send **H 163** to the Senate floor with a do pass recommendation. **Senator LeFavour** seconded the motion. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 1:58 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

**AMENDED AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 28, 2011**

SUBJECT	DESCRIPTION	PRESENTER
Minutes to Approve	Minutes of March 14, 2011 Minutes of March 16, 2011 Minutes of March 21, 2011	Senator LeFavour Senator Mortimer Senator Lodge
	<u>Gubernatorial Appointments</u> Molly J. Huskey of Middleton, Idaho was appointed to the State Appellate Public Defender to serve a term commencing August 1, 2010 and expiring August 1, 2014. Robin Jane Sandy of Boise, Idaho was appointed to the State Board of Correction to serve a term commencing January 1, 2011 and expiring January 1, 2017.	
<u>S 1188</u>	Relating to the Idaho Bail Act; relating to the surrender of defendant; to provide an additional circumstance when the court is required to order the bail exonerated.	Roy Eiguren, representing Aladdin Bail Bonds
<u>H 227</u>	Relating to crimes and punishments and motor vehicles; to provide that certain persons enrolled and in good standing in certain courts shall be eligible for restricted noncommercial driving privileges for certain purposes and under certain conditions; and providing an effective date.	Patricia Tobias, Administrative Director of the Courts
<u>H 234</u>	Relating to the Sexual Offender Registration Act; to revise provisions relating to registered sexual offenders and access to schools.	Representative Erik Simpson

ALL BILLS TO BE HEARD AS TIME ALLOWS

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

COMMITTEE MEMBERS

Chairman Darrington
Vice Chairman Vick Sen Mortimer
Sen Davis Sen Nuxoll
Sen Lodge Sen Bock
Sen McKague Sen LeFavour

COMMITTEE SECRETARY

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 28, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

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

Chairman Darrington called the meeting to order at 1:35 p.m. and asked if there were minutes to approve.

MOTION: **Senator Mortimer** made a motion to approve the minutes of **March 16, 2011** as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Lodge** made a motion to approve the minutes of **March 21, 2011** as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator McKague** made a motion to approve the minutes of **March 23, 2011** as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT **Molly J. Huskey** was appointed to the State Appellate Public Defender to serve a term commencing August 1, 2011 and expiring August 1, 2014. **Ms. Huskey** said the office of the State Appellate Public Defender handles primarily two different kinds of cases, capital cases and felony appeals. She said she was a graduate from the University of Idaho and an undergraduate from the University of Idaho College of Law. She has been a trial attorney, both as a prosecutor and a public defender and has worked in all levels of the office of the State Appellate Public Defender. **Chairman Darrington** asked if she worked as a prosecutor in Bonneville County prior to becoming a public defender. **Ms. Huskey** said she was a public defender first and then a prosecutor immediately preceding her time in the State Appellate Public Defenders office. **Chairman Darrington** asked Ms. Huskey to explain to the committee the capital cases and the appellate cases which makes her role equal to that of the Attorney General's office which does all the felony appeals on the prosecution side. He asked her to explain her role in defending those cases. **Ms. Huskey** said the office of the State Appellate Public Defender was created in 1998 in large part due to the Chairman and primarily because of the discrepancy in the way the death penalty was sought throughout the state. A small county doesn't have much money to try to defend either from the defense perspective or the state's perspective in a capital case. She stated that to prevent claims of protection violation the services were consolidated into the office of the State Appellate Public Defender.

**GUBERNATORIAL
APPOINTMENT**

Robin Jane Sandy was appointed to the State Board of Correction to serve a term commencing January 1, 2011 and expiring January 1, 2017. **Ms Sandy** said prior to being on the Board of Corrections, she was on the Board of Pardons and Parole for about 9 years. She began by giving highlights of the last four years. She stated that soon after her appointment, they worked on moving from a bed-driven prison to a program-driven prison. She said she recommended to the Governor that Brent Reinke be moved from Juvenile Corrections to the Department of Corrections and knew he would do a good job. She said they had also saved the state about 19 million dollars by renovating a warehouse into 305 beds and that enabled them to bring all prisoners outside of Idaho back into the state. She further stated the judges needed another sentencing option for the many drug and alcohol cases to get the offenders into treatment and back to their families which was done last session. **Chairman Darrington** asked if she visualized the role of the Board of Corrections as one of directing policy for the Department of Corrections or one of management of the prisons. **Ms. Sandy** said that daily management issues would be handled by Brent Reinke, the Director. She said some management issues do fall to the Board to make a decision on, but they try to stay out of the daily decisions.

Chairman Darrington said he would ask the committee at the end of the meeting if they wanted to act on these two confirmations or hold them for a short meeting which will be held on Wednesday, March 30.

S 1188

Relating to the Idaho Bail Act - Roy Eiguren, a lawyer and a lobbyist, was here today on behalf of his client, Aladdin Bail Bonds. Mr. Eiguren said the Supreme Court has a committee on bail matters and have been meeting for the last number of years to deal with specific issues involving the application of bail and in particular the judicial process. In 2009, there was a comprehensive rewrite of the Idaho bail statute that has worked well. From the perspective of Aladdin, which is the largest provider of commercial bail in the state, the act brings the statute into the twenty-first century. He said it had become apparent that there were a number of technical issues that needed to be changed that relate to the bail act of 2009. Mr. Eiguren introduced the associate general counsel of Aladdin, Susan Campbell, to go over the bill with the committee.

Susan Campbell explained this bill would amend Idaho Code, Section 19-2913, providing additional provisions relating to the surrender of a defendant by clarifying whether it was a pre-forfeiture or post forfeiture of bail. She said it would further amend Idaho Code, Section 19-2922, to provide an additional circumstance when the court is required to order the bail exonerated. The new provision clarifies that a surety insurance company, or its bail agent, or a person who has posted a property bond or cash deposit, can make its own arguments for setting aside a forfeiture and exonerating a bond and is not limited to just the arguments that a defendant can make on his own behalf.

Chairman Darrington said he would suppose that this was a proposal that Aladdin took to the bail bond committee of the Supreme Court rather than one that originated within the bail bond committee and asked if that was correct. **Ms. Campbell** replied that the issue overall was presented to the committee and thoroughly discussed. **Chairman Darrington** asked if she could certify to this committee that it gives none of the bail bond companies an advantage over the others because many of them have different procedures and processes. **Ms. Campbell** said no company has an advantage. **Senator LeFavour** asked why they wanted this change. **Ms. Campbell** said that some judges don't feel that the surrender of a defendant with sub-section (3) of Section 19-2913 apply to a post forfeiture surrender. **Senator LeFavour** asked for a clearer explanation. **Ms. Campbell** said when the court enters an order of forfeiture the person feels

they have 180 days to... **Senator LeFavour** queried forfeiture - is it if the court determines that someone hasn't paid their bill, or if they haven't appeared. **Ms. Campbell** said an order of forfeiture is when a defendant fails to appear for a court hearing and the court enters an order of forfeiture; it is mailed to the person posting bail, be it a surety company or individual and that triggers the 180 day window in which to get the defendant back into the court. That's referred to as the "post forfeiture" of bail. **Senator LeFavour** asked if there was anything different that happened with the money. **Ms. Campbell** said if the defendant isn't back within the system within that 180 days, or there is not a motion filed that is required under 19-2917, then the forfeited bond is paid to the court. **Senator LeFavour** questioned who pays, the bonding agency, the defendant or who. **Ms. Campbell** said in the case of her client, the bond is paid within 5 days. **Senator LeFavour** asked who paid the bond. **Ms. Campbell** said a check is written to the court by my client and claims department on behalf of the surety insurance company. **Senator LeFavour** said she was not sure where the problem was. **Ms. Campbell** said the problem was in the old law, there was automatic exoneration when the defendant surrendered back into law enforcement within that 180 days after the order of forfeiture. **Senator LeFavour** said she thinks the difference is who might pay that forfeiture after that 180 day mark and whether the surety is involved or not.

Michael Henderson, rose to speak and said on behalf of the court, they have no opposition to this bill. He clarified that when a defendant is released on bail, say \$10,000 (someone posts a bail bond, perhaps Aladdin), and that individual has an obligation to make court appearances and if they don't, the court issues a bench warrant so that individual can be arrested by law enforcement if they are located. Additionally, the court has ordered a forfeiture, and that doesn't mean they have to pay up right away; Aladdin would have 180 days to get that person back and if that happens, the forfeiture is set aside and they are not on the hook for the \$10,000. Even before the defendant has made any failure to appear in court, they can surrender the defendant, if for instance they feel he is risky, they can turn him in and bail is exonerated; that is called a pre-forfeiture surrender. If the individual fails to appear, they may also get the individual, turn him in to the sheriff and make a post forfeiture surrender. What the amendment to 19-2913 does is to clarify the law and makes clear what is already in practice. **Senator LeFavour** thanked Mr. Henderson for his explanation and asked if this was necessary because Aladdin is probably more aggressive than other agents. **Mr. Henderson** said he didn't think that was the case. It appears there is general support for this provision within the industry.

MOTION: **Senator Davis** made a motion to send **S 1188** to the Senate floor with a do pass recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 227aa **Relating to Crimes and Punishments and Motor Vehicles - Michael Henderson**, Legal Counsel for the Courts, explained this bill would follow up on a measure adopted by the Legislature two years ago and would increase the chances for success of participants in problem solving courts. In 2009, SB 1153 permitted courts to grant repeat offenders who were participating in a drug court or DUI court program a limited permit to drive to commute to work, school, or alcohol treatment. This relief could be granted only if: (1) the defendant had served a 45 day period of license suspension with no driving privileges whatever; (2) the defendant had an ignition interlock device on any vehicles he owned or used; and (3) the defendant had shown that he had the required liability insurance. This was intended to allow defendants to have a better chance of successfully completing the program by giving them improved access to work, school, and treatment. It also provided an added incentive for participants to

comply with the conditions of the program so that they could obtain and retain driving privileges. Thus far, this added tool has worked well in our drug courts and DUI courts.

Mr. Henderson said this bill would simply extend this provision to our mental health courts and other similar problem-solving courts using community-based treatment and sentencing alternatives. This will allow judges to use this tool in our ten mental health courts, as well as in the Wood Pilot Project Court in Bonneville County. As in drug courts and DUI courts, judges would have discretion in deciding whether to grant these privileges, and they could revoke the privileges for failure to comply with the terms and conditions of probation or of the program. This will increase the chances for success of the program participants and thereby reduce incarceration costs as well. Mr. Henderson explained the two amendments to the bill from the House were to simplify the language in Section 1 and 2 and to change the effective date to January 1, 2012 in Section 5 to give the Transportation Department time to change their forms. **Senator Davis** questioned the timeliness of changing the forms multiple times.

TESTIMONY

Charles Campbell, a concerned citizen, spoke about allowing these offenders to use other motorized vehicles, for example, a moped.

MOTION:

Senator LeFavour made a motion to send **H 227aa** to the Senate floor with a do pass recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

H 234

Relating to the Sexual Offender Registration Act - Representative Erik Simpson explained current Idaho Law required an adult Idaho sex offender to access school property under certain conditions, such as attending an extra-curricular activity in which his/her child is a participant. He further explained that also under Idaho Law, schools can adopt stricter security measures for sex offenders that can not be shared with the offender unless he/she informs the district of his/her sex offender status. Representative Simpson mentioned a computer program designed to match the offender with his/her children which is oftentimes difficult. He explained that H 234 requires that adult sex offenders notify the school district where his/her children attend, receive permission to be on school grounds and receive a copy of the policy if the school district has a more stringent policy than the state. **Chairman Darrington** questioned if there had been any negative incidents as a result of not having provisions such as those proposed in H 234. **Representative Simpson** indicated that incidents occur several times a year in District 93, Idaho Falls.

Senator Davis questioned Representative Simpson concerning language on page 2 concerning notification requirements of any district adopting more stringent standards and wondered if the requirement would be a burden on the districts. **Senator Davis** continued questioning how the districts would protect themselves and the children attending. **Representative Simpson** indicated that if the offender self-identified, the districts would be required to provide those offenders with a copy of their more stringent policy further indicating that currently there is no requirement.

Representative Simpson yielded questions about the district's current responsibilities to **Guy Bliesner**, the Health, Safety and Security Coordinator for the Bonneville Joint School District No. 93. **Mr. Bliesner** explained that based on current Idaho Code 18-8329(3), districts must notify the individual of more stringent policy and indicated that the district makes an effort to comply with that using the computer program mentioned by Representative Simpson. He stated that the computer program is only if a sex offender cohabitates with one of the students. He explained that through that process a legal right to be on campus

can not be determined because that applies to a legal guardian of a student. He enumerated the number of sex offenders in Bonneville County versus the students enrolled in the district and the difficulty of matching the offender with the student. **Senator Davis** questioned that if districts have not adopted more stringent rules, under current law, would the district have a responsibility to notify the individual as to the law. **Mr. Bliesner** indicated that a district would not have to notify if the district had adopted a more stringent standard. **Senator LeFavour** expressed her interpretation of the language concerning notification was that it referred to only self-identified offenders and asked if that was correct. **Mr. Bliesner** indicated that Senator LeFavour's interpretation was correct but that his district went beyond that.

Chairman Darrington questioned whether there were others desiring to testify.

TESTIMONY

Brian Armes, a school principal, expressed his opinion that offenders need to be informed of what needs to happen when they visit their children on the school campus.

TESTIMONY

Janet Orndoff, a Boise School District Trustee and past president of the Idaho School Boards Association, spoke as a representative of the Boise School District in support of H 234. She stated that trustees in school districts across the state take the security of our students as one of a highest priority. She expressed that H 234 would help them fulfill that duty. **Senator Davis** wondered if there are things done by District 93 and District 1 that should be required by Idaho Law to be done by all districts. **Ms. Orndoff** asked for clarification of the question. **Senator Davis** said he believed by hearing testimony from Representative Simpson and Principal Armes that District 93 is using the language in current Section 3 to adopt more stringent guidelines. He asked if there were any practices or procedures that have been adopted by District 93 and District 1 that should be adopted statewide. **Janet Orndoff** explained she liked the way H 234 is written. She indicated her district has tried to adopt stricter policies that are not explicitly written and that H 234 gives administrators leeway to adopt restrictions to the offender as different circumstances arise. **Senator Davis** stated his opinion that different standards would apply to different sex offenders. **Janet Orndoff** indicated that was her understanding of the bill.

Representative Simpson was asked to make closing remarks. He emphasized the change on page one concerning signage, explaining the change allowed districts not to post every 660 feet but just at the entrances of the school. **Senator Bock** questioned Representative Simpson about changing the signage requirement. **Representative Simpson** indicated his understanding was that many of the School Districts were not presently able to fulfill the signage requirement of every 660 feet and that if H 234 were in effect requiring all registered sex offenders to notify districts and receive permission to be on school property the need for signage except at the entrance would be alleviated. **Senator Bock** further questioned if someone didn't know the rules, and signage was not posted that individual could be cited for violating the rules and the constitutional rights of a defendant being violated leading to a dismissal of charges. **Representative Simpson** reiterated the district's options of adopting more stringent policies which would require signage more than at entrances.

Mr. Bliesner indicated that based on 18-8329 the signage requirement applies to facilities that are not normally used, but occasionally rented, for student activities and is difficult to comply with. **Senator Bock** questioned further about the signage language that was stricken and wondered if the changes were eliminating a required notice, regardless of where these rules apply. **Senator LeFavour** said that if the legislation requires that a sex offender notify the schools that he/she intends to be on school property, the burden of compliance

is on the offender and their rights would not be violated if there wasn't signage. **Chairman Darrington** questioned who, in a school district, would review and give permission to a sex offender to enter the premises. **Mr. Bliesner** indicated in his district that would be a function of each individual building administrator.

Senator Bock reiterated concern for the signage requirement to not be reduced indicating that the requirement is there for exceptions not for normal operation. **Senator Davis** questioned about existing signage and Mr. Bliesner indicated he was not aware of any district in the state that complied with the signage requirement and thought the notice requirement of 18-8329 was only for facilities occasionally used. **Senator Mortimer** pointed out that in lines 13 and 14 contains language concerning signage posted at property "used by the school" and references back to section one and wondered if those sections were where the districts were getting authorization to post signage in the manner they have posted in the past. **Mr. Bliesner** agreed stating that all school property currently is not posted and that his understanding was that the requirement was only for the areas not normally occupied by the district.

MOTION:

Senator Mortimer made a motion to send **H 234** to the Senate floor with a do pass recommendation. **Senator LeFavour** seconded the motion. **Senator Davis** expressed his support of the legislation and specifically the signage requirement changes. **Senator Bock** conceded that if his concern for this issue was not shared by others on the committee, he would be fine with changes. The motion carried by **voice vote**.

**COMMITTEE
VOTE**

Senator Lodge made a motion to send the confirmation of the Gubernatorial Appointments of **Molly J. Husky** to State Appellate Public Defender and **Robin Jane Sandy** to State Board of Corrections to the floor with a **do confirm** recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 2:52 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 30, 2011

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Minutes of March 14, 2011	Senator LeFavour
	Minutes of March 28, 2011	Senator Nuxoll
	Page Graduation: Drew Bailey	

COMMITTEE MEMBERS

Chairman Darrington

Vice Chairman Vick

Sen Davis

Sen Lodge

Sen McKague

Sen Mortimer

Sen Nuxoll

Sen Bock

Sen LeFavour

COMMITTEE SECRETARY

Leigh Hinds

Room: WW35

Phone: (208) 332-1317

email: lhinds@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 30, 2011
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators McKague, Mortimer, Nuxoll, and LeFavour

ABSENT/ EXCUSED: Senators Davis, Lodge, and Bock

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

Chairman Darrington called the meeting to order at 1:30 p.m. and asked for approval of the minutes of March 14, 2011.

MOTION: **Senator LeFavour** made a motion to approve the minutes of **March 14, 2011** as written. **Senator Mortimer** seconded the minutes. The motion carried by **voice vote**.

Chairman Darrington referred to the minutes of March 28, 2011 which he said would be approved at the next meeting, or if no meeting, they would be buck slipped. Future meetings will be at the call of the Chair.

PAGE GRADUATION **Chairman Darrington** called the Page, Drew Bailey, up to the front and said the committee appreciated his service during this second half of the legislative session. He presented Drew with a letter of thanks and recommendation and a gift for his services. Drew is a student at Burley High School. Chairman Darrington asked what his plans were for the summer. Drew said he was moving to Austin, Texas to sell home security systems to raise money for his LDS mission in the Fall. He said he would probably go to BYU Idaho after his mission, but he wasn't sure.

There being no further business, **Chairman Darrington** adjourned the meeting at 1:35 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary