

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, January 11, 2012

**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 welcomed the members of the Committee. He also introduced the Page, Chase Bower.

**RS 20902** **Relating to Proceedings in the Magistrate's Division of District Court. Michael Henderson**, legal counsel for the Idaho Supreme Court, explained that this legislation concerns defects or omissions in the laws as required under article V, section 25 of the Idaho Constitution. This would amend Idaho Code § 19-3945, which concerns juror and witness fees, by updating it and making it consistent with other statutes. It would have no impact on the general fund.

**MOTION** **Senator Davis** moved, seconded by **Senator Mortimer**, to print **RS 20902**. The motion carried by **voice vote**.

**RS 20903** **Relating to the Board of Commissioners of the Idaho State Bar. Mr. Henderson** explained that this is another legislation concerning defect or omissions in the laws and amends the statute setting license fees for Idaho attorneys to reflect amendments to the Idaho Bar Commission Rules. These amendments were approved by a vote of Idaho lawyers in November 2011, and have been approved by the Idaho Supreme Court.

**MOTION** **Senator Davis** moved, seconded by **Senator LeFavour**, to print **RS 20903**. The motion carried by **voice vote**.

**RS 20850** **Relating to Escape or Rescue of Prisoners, and contraband introduced into a correctional facility. Kevin Kempf, Idaho Department of Corrections (IDOC)** explained this legislation repeals but consolidates 18-2503, 18-2510, and 18-2511, Idaho Code, which each details the introduction of some form of contraband into correctional facilities. Contraband which is defined, based on current contraband threats, in juvenile, county and adult state correctional facilities presents a serious security risk. **Mr. Kempf** asked permission to have **Tim Higgins**, Deputy Warden of the Virtual Prison Program and an expert in this subject matter, to continue the explanation.

**Tim Higgins** stated the main focus of the legislation is to create safer facilities by making it harder for inmates to continue their criminal behavior while incarcerated. Cell phones are the most sought after contraband in prisons, and are being used to participate in drug trafficking, and even targeting hits on citizens on the streets of Idaho. The intent of this legislation is to make it a felony to smuggle cell phones into the prisons. The current statute is outdated and doesn't address the latest contraband trends.

**Senator Darrington** asked Mr. Higgins to explain to the committee the problem with inmates having cell phones. **Mr. Higgins** stated that inmates have discovered with mobile phones, they may coordinate escapes, intimidate witnesses, arrange for drug drops, and order a retaliation against other prisoners. He continued to say the inmates were able to bypass the security system and continue to conduct criminal activity within prison walls.

**Senator Davis** questioned Mr. Higgins about the wording on page 2 of contraband being "...prohibited by statute, rule or policy..." and if they were making a violation of policy, a felony. **Mr. Higgins** replied that the wording was gleaned from other states that have similar legislation. With permission, **Mark Kubinski**, Attorney General/IDOC, who drafted the legislation approached the podium. **Mr. Kubinski** stated that further in that definition of contraband, it is not only a violation of statute, rule or policy, but it must also include "and the use of which could endanger the safety or security of the correctional facility."

**MOTION** **Senator Lodge** moved, seconded by **Senator Davis**, to print **RS 20850**. The motion carried by **voice vote**.

**RS 20882** **Proposing an Amendment to Section 5, Article X, of the Constitution of the State of Idaho, Relating to the Control over State Prisons.** **Brent Reinke, Director of IDOC**, stated that the Idaho Criminal Justice Commission was established in 2005 with 25 members with all three branches of government represented and he was privileged to chair the Commission. Last year a question was raised by then State Appellate Public Defender (SAPD), Molly Huskey, about the constitutionality of misdemeanor probation. With permission, **Mr. Paul Panther, Attorney General of IDOC**, came to the podium to explain the legal elements involved. **Mr. Panther** explained that misdemeanor probation is handled at the county level where felony probation is handled by the Department of Corrections. This Joint Resolution will insert the word "felony" before the word "probation" in Article X, Section 5 to clarify that the Board of Correction's duty to supervise adult probation extends only to felony probation. The amendment would not invalidate statutes authorizing county supervision of misdemeanor probation.

**MOTION** **Senator Mortimer** moved, seconded by **Senator Vick**, to print **RS 20882**. The motion carried by **voice vote**.

**Chairman Darrington** addressed the Committee with some information of interest. He stated that Steve Bywater retired, and Paul Panther was appointed Chief of Criminal Division in the Attorney General's Office; Mark Kubinski is now the Attorney General of IDOC; Molly Huskey, former SAPD, has been appointed District Judge in Canyon County and will be formally sworn in on February 10, 2012. In addition, this morning the Governor appointed Sara Thomas as the State Appellate Public Defender and she will be before the Committee in due time for confirmation.

**ADJOURNMENT** **Chairman Darrington** reminded the Committee there would be no meeting on Friday, January 13th, and adjourned the meeting at 2:05 p.m.

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Senator Darrington  
Chairman

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Leigh Hinds  
Secretary