

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 17, 2012

TIME: 1:30 P.M.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** Representative Smith(24)

GUESTS: Dawn Peck, Idaho State Police; Lorenzo Washington, Idaho Department of Corrections; Kathy Baird, Sex Offender Management Board (SOMB); Sharon Harrigfeld, Idaho Department of Juvenile Corrections; Karen Skow, Idaho Department of Juvenile Corrections; Steven Jett, Southwest Idaho Juvenile Detention Center (SWIJDC); Fairy Hitchcock, Hitchcock Family Advocate; Mark Kubinski, Idaho Department of Corrections/Attorney General; Holly Kole, Idaho Prosecuting Attorneys Association (IPAA)

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

MOTION: **Chairman Wills** made a motion to approve the minutes of the January 11, 2012, meeting. **Motion carried by voice vote.**

Chairman Wills turned the gavel over to **Vice Chairman Luker** to conduct the rules review.

**DOCKET NO.
05-0102-1101:** **Sharon Harrigfeld**, Idaho Department of Juvenile Corrections, presented **Docket No. 05-0102-1101**, the Rules and Standards For Secure Juvenile Detention Centers. She introduced **Steven Jett**, Director of the Southwest Idaho Juvenile Detention Center (SWIJDC).

In response to Committee questions, **Mr. Jett** explained that in most cases, the health authority is a contracted medical provider and will vary depending on the detention center. He said the legal representative of a juvenile should be the party with access to the juvenile's records, not the juvenile him/herself.

Mr. Jett then explained that the use of the electroshock device would be initiated by detention staff, but the purpose of the rule is to limit the use of the devices as much as possible.

Mr. Jett next addressed the change in timing for compliance reviews and explained that department representatives must complete the compliance monitor review by going to all 12 Detention Facilities over the course of 2-3 months. The 30-day window, in the previous rule, was almost never met. This new time frame allows the department representatives from the relevant county to formulate the final report while meeting the needs of the commissioner and complying with the standards.

In response to questions regarding the definition of "unusual incidents," (found in subsection h), **Mr. Jett** explained these are things like incident reports and other documentation they want to include in the shift log.

In response to questions regarding replacement of "juvenile" with "legal representative," **Mr. Jett** explained that this mostly deals with any records with other juvenile names. Regarding the juvenile's right of review and committee concerns that the juvenile had been written out of the rule, Mr. Jett explained that in the old standard, the juvenile had access and this created a concern for the legal representatives. Mr. Jett then affirmed the assertion that the juvenile would still have access to their record in conjunction with their legal representative.

Responding to a question regarding the potential for juveniles being in juvenile detention centers past the age of 18, **Mr. Jett** stated that this scenario almost never happens and agreed it would be easy to include a section in the rule that clarifies juveniles can access the records alongside the representative. Mr. Jett deferred to **Sharon Harrigfeld** to answer questions regarding changes necessary under the Prison Rape Elimination Act (PREA). Ms. Harrigfeld explained the department wanted to be proactive in setting standards of the definition of sexual abuse of residents and changes to the rule distilled the two sections into one comprehensive section.

MOTION: **Rep. Jaquet** made a motion to approve **Docket No. 05-0102-1101**, except for **subsection 215.03**. Rep. Jaquet emphasized the need to have the stricken language remain because it is important to have clarification on the following point: access by the juvenile is allowed unless it is unsafe. **Voice vote was taken on the motion, Vice Chairman Luker** was in doubt so a roll call vote was called.

ROLL CALL VOTE: **Vice Chairman Luker** requested a roll call vote to approve **Docket No. 05-0102-1101** except for **subsection 215.03**. **Motion failed by a vote of 7 AYE, 7 NAY, and 1 Absent/Excused**. Voting in favor of the motion: **Reps. Ellsworth, McMillan, Perry, Sims, Burgoyne, Jaquet, and Killen**. Voting in opposition to the motion: **Reps. Luker, Nielsen, Shirley, Hart, Bolz, Bateman, and Chairman Wills**. **Rep. Smith (24) was absent/excused**.

MOTION: **Rep. Shirley** made a motion to approve **Docket No. 05-0102-1101** with a recommendation to the Department of Juvenile Corrections to make appropriate corrections to restore original access by the juvenile through a temporary rule.

ROLL CALL VOTE: **Vice Chairman Luker** requested a roll call vote to approve **Docket No. 05-0102-1101**. **Motion passed by a vote of 8 AYE, 6 NAY, and 1 Absent/Excused**. Voting in favor of the motion: **Reps. Luker, Nielsen, Shirley, Hart, Bolz, Bateman, McMillan and Chairman Wills**. Voting in opposition to motion: **Reps. Ellsworth, Perry, Sims, Burgoyne, Jaquet, and Killen**. **Rep. Smith (24) was absent/excused**.

DOCKET NO. 11-1003-1101: **Dawn Peck**, manager of the Idaho State Police Bureau of Criminal Identification presented **Docket No. 11-1003-1101**. She began by explaining the changes to Title 18, Chapter 83, the Sexual Offender Registration Notification and Community Right-to-Know Act, made in the 2011 Legislative Session. The changes put the appeals process in place, clarify some of the definitions, define the processes involved in the sex offender registration process, and define law enforcement and other jurisdiction notifications, the expungement process and the determination of substantially equivalent or similar crimes. She also explained that the suggested changes received from Legislative Services and **Vice Chairman Luker** have been incorporated into the text of the rule. The agency has received no further comments on the rule.

MOTION: **Rep. Bolz** made a motion to approve **Docket No. 11-1003-1101**. **Motion carried by voice vote**.

DOCKET NO. 57-0101-1101: **Kathy Baird**, Management Assistant for the Sexual Offender Management Board (SOMB) presented **Docket No. 57-0101-1101**. She stated that negotiated rulemaking was not conducted on these rules. She also said the Legislative Services Office (LSO) did not have any concerns with the rules. The SOMB, having gone into effect 7/1/2011, assumed all the responsibilities of the old board. All of the name references to the board have been changed. Certain parts have been eliminated such as the violent sexual offender classification and other various nomenclature throughout the rule.

MOTION: **Rep. Ellsworth** made a motion to approve **Docket No. 57-0101-1101**. **Motion carried by voice vote.**

DOCKET NO. 06-0101-1101: **Lorenzo Washington**, Policy Coordinator for the Idaho Board of Corrections, presented **Docket No. 06-0101-1101**. He explained that the rule went into effect 11/4/2011, and the emergency proclamation, to be addressed next, went into effect 1/11/2012. He reminded the committee that the rulemaking process for the Board of Corrections differs from other agencies; the Board doesn't have to hold public meetings and the rule goes into effect 30 days after proposed rulemaking.

Mr. Washington explained that Section 005, subsection 06 is a change to the words that were previously omitted due to an administrative error. For subsection 06 he explained the rules were revised so as to not place their staff in harm's way because they support Idaho's execution laws.

Mr. Washington pointed to subsection 07 which was written in reaction to the department's procedure during the Rhodes execution. He explained the facility was not appropriate and the change reflects numbers in the execution unit and what the process looks like. **Mr. Washington** then explained the revision of this section eliminates who can serve on advisory boards, how they are selected and that the department does not have to follow advice of the advisory boards.

Vice Chairman Luker recognized **Mark Kubinski**, the Attorney General for the Idaho Department of Corrections, who responded to a question regarding subsection 06, nondisclosure, with respect to public records. He stated the need for confidentiality would outweigh the need for disclosure and creates the presumption that execution documents would fall within the exception to the rule.

When questioned regarding the number of family members allowed, **Mr. Kubinski** replied that in considering limited space and knowing how many staff members are needed, the department needed to be realistic regarding the numbers. The total allowed in the execution room has actually increased.

MOTION: **Rep. Jaquet** made a motion to approve **Docket No. 06-0101-1101**. **Motion carried by voice vote.**

DOCKET NO. 06-0101-1201: **Lorenzo Washington**, Policy Coordinator for the Idaho Board of Corrections turned to Rule 135 of the emergency proclamation. He explained that this entire section was revised due to lessons learned from the recent Rhodes execution. He said the department recognized the Warden had too many pre- and post- execution responsibilities. For example, the department learned it would be better to select media witnesses a week prior to execution rather than the day before. He said the department also learned the Warden needed authority to adjust the number of media personnel in the execution room. He further explained there could be instances where multiple death warrants needed to be carried out at one time and there may be a need for more than one sheriff, family members, etc. The committee questioned **Mr. Washington** regarding the phrase "most instances." **Mr. Washington** stated that the department can comply with the rule, but may need to make adjustments. **Mr. Washington** added that the intent was not to add more media.

After being recognized by the committee, **Brent Reinke**, Director of the Department of Corrections, explained that in the Rhodes case, the sentencing judge was not available in November when the execution took place and according to the rules, the department did not have the ability to add another judge to sit in the witness area (a requirement for executions). This resulted in no member of the judiciary being present. Mr. Reinke stated the additional person could be anyone and this privilege would not be abused in any way. Mr. Reinke added that the department doesn't want to force anyone to participate in the execution who doesn't want to participate. He proposed the example: "if we have someone who doesn't agree with executions, we will have someone designated to fill that opening."

MOTION: **Rep. Jaquet** made a motion to approve **Docket No. 06-0101-1201**. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:30 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary