

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 18, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Senator Nuxoll

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Chairman Darrington called the meeting to order at 1:30 p.m. and stated that RS 20910 is withdrawn and would not be heard today, but would be rescheduled. He then asked if there were minutes to approve.

MOTION **Senator Mortimer** moved, seconded by **Senator LeFavour**, that the minutes of **January 16, 2012** be approved as written. The motion carried by **voice vote**.

RS 20943 **Relating to Guardians of Minors. Bob Aldridge**, representing Trust Estate Professionals, Inc. (TEPI) explained this bill would amend sections of the Idaho Code to give clear guidance to courts and to persons involved in a guardianship of the grounds, standard of proof, and methods for removal or termination of a guardian or for modification of the guardianship.

MOTION **Senator Mortimer** moved, seconded by **Senator Lodge**, to print **RS 20943**. The motion carried by **voice vote**.

RS 20942 **Relating to the Uniform Prudent Investor Act. Bob Aldridge**, TEPI, explained that this legislation simply adds "conservators" as well as guardians to the Uniform Prudent Investor Act.

MOTION **Senator LeFavour** moved, seconded by **Senator Mortimer**, to print **RS 20942**. The motion carried by **voice vote**.

RULES REVIEW **Chairman Darrington** turned the meeting over to **Vice Chairman Vick** to chair the Rules Review. **Vice Chairman Vick** introduced Kathy Baird, to present Rules of the Sexual Offender Management Board.

DOCKET NO. 57-0101-1101 **Rules of the Sexual Offender Management Board - Kathy Baird**, Management Assistant, explained that last year the Sexual Offender Classification Board was eliminated and replaced by a Sexual Offender Management Board, which assumed responsibilities. She stated that additionally, procedures for the designation of violent sexual predator (VSP) status was eliminated.

MOTION **Senator Bock** moved, seconded by **Senator Mortimer**, that the Committee approve **Docket No. 57-0101-1101**. The motion carried by **voice vote**.

**DOCKET NO.
11-1003-1101**

Rules Governing the Sex Offender Registry, Idaho State Police - Dawn Peck, Idaho State Police Bureau of Criminal Identification Manager, said this pending rule change was necessitated by the substantive changes to Title 18, Chapter 83, Sexual Offender Registration Notification and Community Right-To-Know Act made during the 2011 legislative session. The changes set out the appeals process, clarifies some of the definitions, defines the processes involved in the sex offender registration process, and defines law enforcement and other jurisdiction notifications, the expungement process and the determination of substantially equivalent or similar crimes.

Senator Mortimer asked Ms. Peck to explain 012.,07,c.i. of the rule concerning expungement of a record. He questioned if "dismissal of a withheld judgment" would not be of record and yet it says it will continue as record. **Ms. Peck** replied that the Sex Offender Registration Code states that it doesn't matter what form of withheld judgment and there have been several pieces of legislative action that have held that a withheld judgment dismissal does not preclude the individual from having to register. She said the way to get off the Sexual Offender Registry is under Title 18-8310, Idaho Code. **Senator Mortimer** said that someone he had talked to indicated that our laws do not allow a judge to actually expunge or take someone off of that record. He asked if that was correct. **Ms. Peck** said that procedures were outlined in Title 18-8310 IC of how a person can be relieved of their duty to register in the State of Idaho. **Senator Mortimer** asked if a judge had the ability to do that. **Ms. Peck** said that if someone had a withheld judgment on a crime that was aggravated or was a recidivist, the Idaho Code states that they may not be removed from the Registry. **Senator Mortimer** said he felt there was some inconsistency, but he would continue to look into it. **Ms. Peck** suggested that he look in 07.d, of the rule, to answer this concern.

MOTION

Senator LeFavour moved, seconded by **Chairman Darrington**, that the Committee approve **Docket No. 11-1003-1101**. The motion carried by **voice vote**.

**DOCKET NO.
11-1002-1101**

Fees for Services - Criminal Justice Information System, Idaho State Police. **Dawn Peck** presented this pending fee rule to the Committee. She explained that the fees currently collected do not cover the costs of processing the background checks or rolling fingerprints. The fund has rapidly depleted and in order to continue doing the work mandated by statute in these units, the fees need to be raised to meet the costs.

Ms. Peck explained further that the rule change will increase the cost for a non-criminal justice fingerprint based state background check to \$25, a state name check to \$20, and the fee for rolling fingerprints to \$10 with a \$5 fee for each additional copy. The fees outlined in this rule are authorized under Idaho Code § 67-3010. Ms. Peck told the Committee that this pending fee rule was published in September and they received no formal comments. However, this week they received communication from the Department of Health & Welfare and because of how this fee would affect their collection fees, the decision was that if this was approved, implementation would be delayed until Fall.

Senator Lodge asked that the Department of Education also be included in those discussions as well as the Department of Health & Welfare. **Ms. Peck** said they would delay implementation for all their customers and have a discussion giving them the time they need.

MOTION

Senator Lodge moved, seconded by **Chairman Darrington**, that the Committee approve **Docket No. 11-1002-1101**. The motion carried by **voice vote**.

**DOCKET NO.
11-0301-1201**

Rules Governing Alcohol Testing - Idaho State Police. Matthew Gamette, ISPFS Quality Manager, explained that this temporary rule only added "at least" in the proposed language to clarify that blood samples need to only contain a minimal concentration of the preservative sodium fluoride. Regardless of the amount of blood collected in the tube, the concentration of "at least" ten (10) milligrams of sodium fluoride per cubic centimeter of blood (as is proposed) is an adequate amount to maintain the evidentiary value of the sample.

MOTION

Senator Mortimer moved, seconded by **Chairman Darrington**, that the Committee approve **Docket No. 11-0301-1201**. The motion carried by **voice vote**.

Vice Chairman Vick turned the Committee back over to the Chairman.

ADJOURNMENT

There being no further business, **Chairman Darrington** said there would not be a meeting on Friday, January 20, and adjourned the meeting at 2:02 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary