

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Monday, January 23, 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:** Rep. Nielsen
- GUESTS:** Oliver Chase, Self/Veterans; Kerry Hong, Idaho Supreme Court; Fairy Hitchcock, Hitchcock Family Advocates; Ed Hawley, Administrative Rules; Lt. Bob Clements, Alcohol & Beverage Control (ABC); William Flink, Trish Christy, & R. David Moore, Peace Officer Standards & Training (POST), Idaho State Police (ISP)
- Vice Chairman Luker** called the meeting to order at 1:40 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 17, 2012 meeting. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 19, 2012 meeting. **Motion carried by voice vote.**
- DOCKET NO. 11-0501-1101:** **Lt. Bob Clements**, ABC/ISP, presented **Docket No. 11-0501-1101**, which contains the Multi-Purpose Arena definition and the over-under clause. He defined an over-under establishment as one with a section designated for under-age people in a drinking establishment. He stated the rule provides specific circumstances when minors are permitted or prohibited and the rules these establishments would have to comply with. Compliance would include: an approved security plan, a comprehensive list of events sent to law enforcement, and designation of the alcohol service area. If these rules are not met, the establishment would need to have the drinking designated area posted, like in a bar.
- Lt. Clements** also explained that in these types of establishments, there have been incidents with gang shootings and sexual assault. The main goal of the rule is to keep the alcohol and minors separate from one another. In response to committee questions, Lt. Clements explained the purpose of requiring the establishment to sell certain food types is to show that it is not just a drinking environment. He also clarified that a wedding reception venue would not likely fall under this rule, as the reception usually is able to serve alcohol under a catering permit. Lt. Clements indicated that affected facilities, such as the Knitting Factory in Boise, helped draft the rule.
- MOTION:** **Rep. Shirley** made a motion to approve **Docket No. 11-0501-1101**. **Motion carried by voice vote.** **Reps. Ellsworth** and **Sims** requested that they be recorded as voting **NAY**.
- DOCKET NO. 11-1101-1101:** **William L. Flink**, Division Administrator, POST/ISP, presented **Docket No. 11-1101-1101**. Mr. Flink walked the committee through all of the various changes and stated the definitions were added to make the rules more clear. He emphasized a particular change to the definition of a "Level One Officer," who is permitted to work alone in his/her jurisdiction, as long as another full-time officer is on duty to supervise. He also spoke about changes to definitions within the POST-misdemeanor training rules and basic training academy requirements.

Mr. Flink next addressed the conversion of a military law enforcement officer to an ISP officer and credits available for advancement. He stated that "detention officers" in the military can use 2 years of law enforcement service to apply for an advanced law enforcement certificate. He also explained changes to communication dispatcher requirements and noted many other "nonsubstantial changes."

Oliver Chase, representing himself and veterans, testified in opposition to **Docket No. 11-1101-1101**. Mr. Chase distributed a handout and said he used to investigate felony crimes in the Air Force. He argued in opposition to this rule because he believes the POST Counsel should look at individual experience rather than use of this prescribed formula.

In response to committee questions, **Mr. Chase** said he received the information regarding his evaluation for POST-credit from the POST-certified chairman and reiterated the need to evaluate the experience on a year-to-year basis. The way it stands, Mr. Chase stated he felt he had to pick and choose which cases to speak about which failed to show the breadth of his experience. In regards to credit received, Mr. Chase indicated after filling out the assigned form, he received three months for each year he served as a special agent in the Air Force. He also stated he felt there is a difference between military and citizen law enforcement.

Mr. Flink responded to committee questions regarding a POST-certification final exam and stated the advanced certification reflects the number of hours trained. He added that the Council evaluated Mr. Chase's records and felt his hours were the equivalent to an intermediate certificate.

Mr. Flink next explained the formula that is outlined in these rules and stated he doesn't remember if Mr. Chase was present for his hearing. The committee commented that due process concerns are apparent here. Mr. Flink explained that these rules come from a long-standing custom in POST for granting credit to former military law enforcement. He further explained that if, in a scenario where a citizen law enforcement officer from another state were to apply for a position in Idaho, the Council would look at equivalency to determine hours credited. Also, this scenario would not fall under the equivalency rules used for military service.

Mr. Dave Moore, Police Chief for the City of Blackfoot, testified on **Docket No. 11-1101-1101**. He is a member of the POST Council and explained that the Council has done the best they can to set levels of certification based on guidelines developed over the years. He stated that the POST decision is done in an open meeting, and they don't have access to military training so it is hard to match hours for hours. In response to committee questions, Mr. Moore explained for the sake of fairness, the Council sets a minimum threshold for hours qualification and then recognizes any additional hours to contribute to credit for advanced training. Mr. Moore was unclear on whether there is an appeals process for a dissatisfied applicant.

Trish Christy, a POST employee, spoke about **Mr. Chase's** case in particular and stated he was informed about the ability to attend his determination hearing. Mr. Chase stated he was advised by Mr. Flink not to attend.

MOTION:

Rep. Burgoyne made a motion to approve **Docket No. 11-1101-1101**. **Motion carried by voice vote.**

**DOCKET NO.
11-1101-1102:**

William L. Flink, Division Administrator, POST/ISP, presented **Docket No. 11-1101-1102**. Mr. Flink outlined the changes made to this rule: § 031.03 decertification investigations, § 031.063 Code of Ethics is retitled and divided into five sections, § 031.091 took out mandatory discretionary reporting and eligibility and includes a 10-year provision which allows an officer who has been decertified to petition for re-certification. Mr. Flink explained that in the past, once an officer was decertified, he was decertified for life. He stated that the POST Council felt this change to the rule creates greater leniency. The rule references § 091.04, which contains all additional causes for decertification, beyond the Code of Ethics itself.

Mr. Flink stated that officers who are investigated shall be given Garrity warnings. A Garrity warning is when evidence is presented to POST and the officer has the opportunity to give a truthful recount of the events without it being used against him in court. The Due Process procedures, outlined in § 091, allow the division administrator to take summary action on behavior that is serious in nature and to initiate a decertification of the officer. The individual gets a hearing, a written order containing the hearing officer's decision, and a possible date for an emergency hearing within 7 days of the order. This most often happens in the case of very serious offenses.

In regard to non-summary decertification, **Mr. Flink** explained § 092.04 provides an opportunity for a hearing in case the POST Council determines that decertification is not an emergency. The hearing will be handled in Ada County unless evidence is presented showing a hearing in another area is necessary. During the final review, POST Council has the discretion to take testimony. The decision will be based on findings of fact and conclusions of law. A notice of final decision will be delivered via certified mail. Mr. Flink added that the purpose of these revisions is to speed up the process while providing adequate due process.

Rep. Burgoyne made reference to the minutes from the joint committee meeting on November 14, 2011, and urged the committee to see the comments already made on this rule at that meeting.

In response to committee questions, **Mr. Flink** confirmed that POST records are public and operate much like a license does. Private information on those records is redacted. Regarding reporting requirements, Mr. Flink explained the 5 and 14 day window, for misdemeanor and felony offenses respectively, is to try and expedite the process.

The committee voiced a concern that these processes fall outside the Idaho Administrative Procedures Act (IDAPA) rulemaking requirements, and **Mr. Flink** referenced a provision that allows POST to make their own administrative rules that govern this area.

Rep. Burgoyne emphasized the same concerns he had in the Joint Meeting from November 14, 2011, regarding the length of decertification. He believes this penalty seems inappropriately harsh, especially in light of the possible violations that could lead to decertification. He added that there is non-protected First Amendment speech, and its seems commentary is discouraged. Exercising use of commentary could result in being barred for life. Additionally, Rep. Burgoyne voiced a concern about the discretion given to POST to evaluate the decertification-worthy conduct and pointed out that an officer would only have to be charged, not convicted, for decertification to occur. Lastly, he is concerned with adequate due process, as those who do not have the means to travel to a hearing in Ada County will likely not receive due process. **Mr. Flink** stated he believes due process concerns are met and the POST Council will look to issues of fairness in setting a hearing for the officer. In regards to protected speech, the speech elucidated in the rule would be severe speech, mostly due to media concerns.

Mr. Flink responded to additional committee questions, turning again to the IDAPA application. He stated that without this rule, the POST Council has followed the IDAPA hearing procedures and the purpose of spelling out the procedure in this rule is to bring the agency in-line with current POST practices. **Brooke Murdoch**, Legislative Services Office (LSO), confirmed that the decertification process must be in accordance with the IDAPA, and there is an emergency hearing provision under the IDAPA.

Mr. Moore, Police Chief, City of Blackfoot, explained that the POST Council is composed of 15 members, one from the AGs office, and one police chief. The Council meets three times per year and has a very burdensome agenda. During a hearing day, the Council will see 30-35 people, and this number is compounded by having to move around the state. He explained further that currently POST is governed by the lifetime decertification rule, but added that when he met with a POST interim committee, they examined implementing a rule that would authorize a probationary period, rather than lifetime decertification and a chance to appeal. **Rep. Burgoyne** expressed continued concern about the heavy-handed nature of the rule and questioned why the probationary period rule was not on the table.

MOTION: **Rep. Burgoyne** made a motion to approve **Docket No. 11-1101-1102**, with the exception of portions of §091 and §092.

In support of the motion, **Rep. Burgoyne** stated that the rule goes too far and no amount of hearing procedures can correct the impact of the sanctions. Furthermore, he expressed concerns over travel costs, attorney fees, and stated that all affected officers should have the opportunity to have access to competent, professional help. In regards to committee questions about being left with the former language if we accepted these section changes, **Rep. Burgoyne** stated he would like to see the department create rules that will correct the current rules. **Vice Chairman Luker** reiterated his concern about these rules going outside the bounds of the IDAPA rulemaking procedure.

VOTE ON THE MOTION: **Motion carried by voice vote.**

MOTION TO RECONSIDER DOCKET NO. 11-0501-1101: **Rep. Killen** made a motion to reconsider **Docket No. 11-0501-1101**. He expressed concern regarding effects to a performing arts facility and would like clarification on the application of this rule. **Rep. Burgoyne** invoked Rule 38 stating a possible conflict of interest but would still be voting on **Docket No. 11-0501-1101**. He disclosed his personal financial interest to the potentially affected movie theatre "The Flicks." **A voice vote was taken. Vice Chairman Luker** was unsure of the outcome.

ROLL CALL VOTE: **Vice Chairman Luker** requested a roll call vote to reconsider **Docket No. 11-0501-1101. Motion carried by a vote of 10 AYE, 3 NAY and 2 Absent/Excused. Voting in favor of the motion: Vice Chairman Luker, Reps. Shirley, Hart, Ellsworth, McMillan, Perry, Sims, Burgoyne, Jaquet, and Killen. Voting in opposition to the motion: Chairman Wills, Reps. Bateman and Bolz. Reps. Nielsen and Smith (24) were absent/excused.**

DOCKET NO. 11-1101-1103: **William L. Flink**, Division Administrator, POST/ISP, presented **Docket No. 11-1101-1103**. Mr. Flink explained the changes seek to help synchronize the language in the rule with the statutory goal. Specifically, certain categories have been taken out of §055.03 and there have been minor deletions in §055.03(c).

MOTION: **Rep. Burgoyne** made a motion to approve **Docket No. 11-1101-1103. Motion carried by voice vote.**

DOCKET NO. 11-1102-1101: **William L. Flink**, Division Administrator, POST/ISP, presented **Docket No. 11-1102-1101**. Mr. Flink pointed to §030.02(c) and stated that this portion of the rule outlines the requirement that all officers must complete training within 12 months, however, there is opportunity to retake the test within that 12-month period. He explained §030.05(a) removes the height/weight requirement from minimum employment standards for juvenile detention officers. In closing, Mr. Flink stated §030.05(b) explains that when a jail officer changes employers and becomes a juvenile detention officer, these officers are not required to take a vision test.

MOTION: **Rep. Killen** made a motion to approve **Docket No. 11-1102-1101**. **Motion carried by voice vote.**

DOCKET NO. 11-1106-1101: **William L. Flink**, Division Administrator, POST/ISP, presented **Docket No. 11-1106-1101**. He explained that this rule allows public or private agencies to provide misdemeanor probation services. In response to committee questions, Mr. Flink confirmed that this rule will allow POST to train and certify privately contracted probation officers.

MOTION: **Chairman Wills** made a motion to approve **Docket No. 11-1106-1101**. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned 3:49 p.m.

Representative Luker
Vice Chair

Stephanie Nemore
Secretary