

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 23, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy, 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. and the secretary called the roll.

RS 20750 **Relating to Service by Publication.** **Senator Bart Davis** explained that sometimes a summons and complaint is unable to be personally served. When this happens, that service can be done by publication. To do service by publication the Court must authorize it with an order. Some judges grant that order after it receives an appropriate affidavit; others technically read Idaho Code 5-508 to require a verified complaint. This bill allows the Court to enter an order after it considers either a supporting affidavit or verified complaint.

MOTION **Vice Chairman Vick** moved, seconded by **Senator Mortimer**, to print **RS 20750**. The motion carried by **voice vote**.

RS 20910C2 **Relating to Injury to Children.** **Holly Koole**, Idaho Prosecuting Attorneys Association, explained the purpose of this legislation was to amend and move Idaho Code 16-1605 to increase the penalty in circumstances where the unreported act of abuse, abandonment, or neglect constitutes a felony. Under the current law in Title 16, Chapter 16 under the Child Protection Act, any person having reason to believe or observes that a child under the age of 18 years has been abused, abandoned or neglected and fails to report it as required in this section is currently a misdemeanor. The type of conduct that you would have to fail to report would have to be a current crime under Title 18, a felony; situations such as failure to report a murder, rape, or aggravated battery. **Ms. Koole** stressed that the underlying act was a very serious crime and could be charged as a felony. The remainder of these statutes that are being moved are not being changed. The other change that is proposed under this amendment deals with the statute of limitations for certain felonies. In Idaho there are currently four crimes that have no statute of limitations: (1) murder, (2) voluntary manslaughter, (3) rape, and (4) sexual abuse of a child or lewd conduct with a child.

Ms. Koole mentioned the publicized Casey Anthony case in Florida and the Penn State issue as perfect examples of someone knowing or seeing something happen and not reporting the incident. Currently, there are many times prosecutors are limited from filing the failure to report of rape or sexual abuse of a child or lewd conduct because of the statute of limitations.

Vice Chairman Vick asked Ms. Koole why they wanted to make this failure to report a felony. **Ms. Koole** responded that a felony would be charged if the underlying act was egregious.

MOTION **Senator Davis** moved, seconded by **Senator Bock**, to print **RS 20910C2**. The motion carried by **voice vote**.

Chairman Darrington turned the meeting over to **Vice Chairman Vick** to present the Rules Review.

**DOCKET NO.
06-0101-1101**

Rules of the Board of Correction (Proclamation) - Lorenzo Washington, Policy Coordinator for Idaho Department of Corrections (IDOC), reminded the Committee that the rulemaking process for the Board of Correction was a little different from most other Idaho agencies and that the Idaho Code exempts the Board of Correction from holding public meetings and participating in negotiated rulemaking. Pursuant to Idaho Code, the Board of Correction rules go into effect 30 days after publishing in the Administrative Bulletin. The Board added a subsection that serves notice that the Department will not disclose the names of the injection team members, escorts, or any information that could jeopardize the Department's ability to carry out an execution. The rule also clarifies execution unit configuration and occupants and allows one additional member of the offender's family and one additional member of the victim's family to witness the execution if they so choose. The Section on Advisory Boards is renumbered and revised to reflect current IDOC standard operating procedures.

MOTION

Chairman Darrington moved, seconded by **Senator Nuxoll**, to approve **Docket No. 06-0101-1101**. The motion carried by **voice vote**.

**DOCKET NO.
06-0101-1201**

Rules of the Board of Correction (Emergency Proclamation) - Lorenzo Washington explained this emergency rulemaking is necessary to reflect current IDOC practices and to confer a benefit upon the families of victims and other official witnesses to witness the execution. Because of the many execution responsibilities of the Idaho Maximum Security Warden, the Department created an administrative team to carry out the execution, selected a media team prior to the execution, and gave the director of IDOC flexibility in determining the number of persons allowed in the execution unit. There may be times when a condemned offender received the death penalty for crimes committed in multiple jurisdictions or multiple cases, requiring adjustments to be made to accommodate persons who were victim to the crime the offender was condemned for.

Vice Chairman Vick asked why the distinction between family members of the victim and two friends or family members of the offender allowed in the execution unit. **Mr. Washington** asked for the director to reply. **Director Reinke** explained that in the past there was concern that because of the length of time served, an attorney or spiritual advisor might be requested to attend. This gives that flexibility.

Senator Davis asked a question of Chairman Darrington. How do we get a Proclamation two days after the beginning of the Legislative Session that has already been adopted. **Chairman Darrington** said there had been very few changes to Administrative Rules, but would like for Mr. Kubinski to further address the issue. **Mr. Kubinski**, lead Deputy Attorney General, IDOC, said that following the Rhoades execution prior to Thanksgiving, the Department undertook a review of the standard operating procedures and as a result of that review process, modifications were made to policy and some changes necessitated changes to Administrative Rules and required an Emergency Proclamation due to the likelihood of another execution this spring. **Senator Davis** said he understood the need, but did they have jurisdiction to consider this rule at this time. **Mr. Kubinski** said the Department thought this was the correct approach. **Senator Davis** suggested the Committee get direction from the Administrative Rules Coordinator at the next meeting.

Vice Chairman Vick said without objection, they would delay action on this docket until further information.

- DOCKET NO. 21-0107-1101** **Rules for Education and Training Programs for Veterans (Pending) - Phil Wyckliff**, Division of Veterans Services, explained that the Veterans Education Program was transferred to Veterans Services in 2009. The rules governing the program remained, however, in the State Board of Education. This rule change corrects the oversight.
- MOTION** **Senator Lodge** moved, seconded by **Senator Mortimer**, to approve **Docket No. 21-0107-1101**. The motion carried by **voice vote**.
- DOCKET NO. 11-0501-1101** **Rules Governing Alcohol Beverage Control (Temporary) - Lt. Bob Clements** explained this temporary rule provides a definition of "Multipurpose Arena" currently listed in Section 23-943, Idaho Code, and clarifies existing rules providing additional information for licensees to ensure compliance with regulations and allow more consistent enforcement of alcohol beverage laws. He stated that the rule provides specific circumstances when minors are permitted or prohibited, considering modern business concepts and the specific types of establishments. This rule also protects public safety by restricting minors from primarily drinking establishments, regulating "over/under" clubs.
- Lt. Clements said there were also requirements to get a Multipurpose endorsement which includes serving various types of foods so it's not primarily a drinking establishment. The Licensee must also submit a security plan to the director and the local law enforcement agency for review and approval. Lt. Clements said the Licensee should provide a schedule of events for the upcoming month, showing date and time of each event during which alcohol service is planned.
- Senator LeFavour** stated that she did not understand the authority and restriction of content for events. **Lt. Clements** responded that they needed to assess situations regarding gang participation and keep limits on certain types of activities that would affect public safety.
- MOTION** **Senator Mortimer** moved, **Chairman Darrington** seconded, to approve **Docket No. 11-0501-1101**. Discussion: Senator LeFavour and Senator Davis still had concerns with the authority issue. The motion carried by **voice vote**.
- DOCKET NO. 06-0101-1201** **Vice Chairman Vick** called Dennis Stevenson, Administrative Rules Coordinator, to the podium to discuss the previous proclamation Docket No. 06-0101-1201. **Senator Davis** asked Mr. Stevenson if it was appropriate for the Committee to consider it today and act on it today. **Mr. Stevenson** said that it was. **Senator Davis** then asked if this emergency proclamation was akin to a Temporary Rule that requires a rejection of one of the bodies, or does it require both bodies to reject which is more akin to a Pending Rule. **Mr. Stevenson** said it was more akin to a Pending Rule. **Vice Chairman Vick** said a motion was in order for Docket No. 06-0101-1201.
- MOTION** **Senator Davis** moved, seconded by **Senator LeFavour**, to approve **Docket No. 06-0101-1201**. The motion carried by **voice vote**.
- PRESENTATION** **Idaho Department of Corrections Update**
Brent Reinke, Director, presented an update of the department and told how the incarcerated population had grown since 2004. If current FY12 trends continue, Idaho will have a 4.5% prison growth rate. He talked of the issues with contraband, a major problem in the prison system. He stated that 32,000 phone messages were made from within the prison to the outside. Director Reinke outlined the Department's strategic initiatives for FY12 as follows:
- Reduce staff turnover
 - Population management through the Manage All Populations (MAP) group
 - Substance use disorder services (SUDS) implementation

- Sex Offender Management Board implementation
- Secure mental health facility development
- Management and leadership development
- Commitment to Quality, quality assurance initiative

MOTION

Senator LeFavour moved, seconded by **Vice Chairman Vick**, to approve the minutes of **January 18, 2012** as written.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:46 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary