

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 25, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy (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 1:32 and asked the Secretary to call the roll.

RS 20972

Relating to the State Victim Notification Fund. **Mike Kane**, representing the Idaho Sheriff's Association, said they were proposing a way of obtaining sustainable funding for the victim and witness notification system, known as VINE. The concept is to add a \$10 one-time fee at time of conviction for a misdemeanor or felony. It is projected that this will raise enough money to maintain the program. Any excess fees generated will be turned over to the Victim Restitution Fund. **Chairman Darrington** stated that several years ago a constitutional amendment was passed providing for victim notification. **Mr. Kane** said that was correct and this assists the state and the local entities in fulfilling the constitutional function of keeping victims notified of the status of the offenders. **Chairman Darrington** remarked that Mr. Kane seemed to be pleased with the vendor and satisfied with the operation of the program throughout the state and the fear was that it would be interrupted with the absence of funding which would make us out of compliance. **Mr. Kane** said that was correct. **Vice Chairman Vick** asked if they had approached JFAC for funding as an alternative. **Mr. Kane** said they had sent an email to JFAC and given the financial crisis at the time, they thought this was the best avenue.

MOTION

Senator Bock moved, seconded by **Senator Nuxoll** to print **RS 20972**. The motion was carried by **voice vote**.

RS 20973

Relating to the Control of Venereal Diseases. **Mike Kane** explained the purpose of this bill is to modernize the law regarding STD testing in correctional facilities by adding appropriate STDs and eliminating another, and by reducing the need to test for STDs in certain cases. Right now everyone in the state that is incarcerated must be tested for venereal diseases. You will note that we have eliminated testing for those with drug related charges in Section (4). That would mean that every juvenile arrested with a small bag of marijuana or drug paraphernalia must be tested for VD at a significant expense on the state and local correctional entities. There are lots of other ways to test for venereal diseases including those who might share bodily fluids. The second part is adding the most prevalent venereal disease in the state which is chlamydia and also hepatitis C and eliminating chancroid, which is a tropical disease.

Senator Malloy asked why "drug related" charges would be stricken from the language since the sharing of needles is a very common way for the exchange of bodily fluids, possibly causing STDs. **Mr. Kane** said that was right, however, if a young person gets arrested for having marijuana or drug paraphernalia that would have nothing to do with the exchange of bodily fluids. It's a significant burden on the state and for that reason it should be eliminated from this section.

MOTION

Senator Nuxoll moved, seconded by **Senator LeFavour** to print **RS 20973**. The motion carried by **voice vote**.

RS 21014

Relating to Execution. Brent Reinke, Director of Idaho Department of Correction (IDOC), explained that Idaho recently carried out its first execution in 17 years. During preparations to carry out this order, a few issues were discovered in Idaho's death penalty statutes that needed to be addressed. As a result, the Department and the Attorney General's office present a package of three statute changes. Director Reinke gave an overview of the key procedural issues. Deputy Attorney General Lamont Anderson will address two of these proposed amendments. **Director Reinke** requested that Mark Kubinski, the lead Deputy Attorney General for the Department of Correction, be allowed to speak to RS 21014.

Mark Kubinski explained that in 2009, there was an amendment to the Idaho Code to remove the firing squad as an alternative means of execution. In addition, language relating to an exemption from the practice of medicine and pharmacy was also removed. As a result of the execution last November and that experience, the Department is seeking to amend 19-2716 to reinsert those provisions and to provide a statutory immunity for the individuals participating in executions. Subsection (2) clarifies that carrying out an execution is not the practice of medicine and that the director and those acting under his authority are exempt from any legal departments governing the practice of medicine. Subsection (3) allows for any entity authorized to possess controlled substances may distribute to the director and also provides those entities with immunity from liability as a result of the condemned person's death. Subsection (4) authorizes the director of the department to contain, possess, and store controlled substances for purposes of carrying out an execution and exempts the director from any legal requirements governing pharmacy and controlled substances. He stated that also any individuals participating in the execution are immune from civil or criminal liability as a result of the death and would prevent a wrongful death action being brought against them. Lastly, the proposed amendment contains an emergency clause.

Senator Davis asked if the language that was inserted was the same language as before or something different. **Mr. Kubinski** said it was not identical, but it was substantially similar with respect to the practice of medicine and pharmacy. The immunity for providing chemicals to the department was not in the previous version of the statute. **Senator Davis** suggested that Subsection (2) was pretty broad about who could administer the drugs to the inmate. **Mr. Kubinski** said that was not the intent of the statute and the corresponding administrative rules and the department's standard operating procedure was more detailed in how the execution was carried out. **Senator Davis** said he recognized that it said all persons authorized by the director to participate in the execution, but he thought there should be language that tied it to some administrative process for the director in qualifying those persons to participate in the execution. **Mr. Kubinski** replied that the language in Subsection (2) was in previous law prior to 2009.

Senator Mortimer said he had some of those same concerns that Senator Davis pointed out and thought it needed further clarification. **Senator Bock** asked to bring back the Director for a question. He asked if there were limitations elsewhere in statute as to who you might appoint to participate in the process. **Director Reinke** replied there were not. He said although this is broad, it is outlined in the standard of operating procedure and is extremely detailed. **Senator Bock** commented that there was no other authority in any other statute or rule that specifically limits who can be appointed. Since statute takes precedence over any rules or procedures, you might have more authority than you want. **Director Reinke** stated that there was much scrutiny over each step and every word by many attorneys during this past execution. **Senator LeFavour** said she hated to think of someone being required to take another's life. She said that in worst case scenarios and for

future directors, perhaps a tightening of the verbiage would be helpful. **Director Reinke** stated that participation was unquestionably voluntary. There was no one that served or worked in the facility or on any facet of that execution that did not voluntarily attend. He further stated that if the language needed to be tightened, it would be done.

MOTION **Senator Bock** moved, seconded by **Senator LeFavour**, to have **RS 21014** returned to the sponsor. The motion carried by **voice vote**.

RS 21011 **Relating to Execution. Lamont Anderson**, Assistant Attorney General, explained this amendment is to clarify that upon execution, the death warrant is to be returned to the district court, making this procedure consistent with Idaho Code 19-2715.

MOTION **Senator Davis** moved, seconded by **Vice Chairman Vick**, to print **RS 21011**. The motion carried by **voice vote**.

RS 21016 **Relating to Execution. Lamont Anderson** explained this amendment seeks to clarify the process of obtaining a death warrant, including specifying a time during which the warrant must be obtained, sets forth a process for obtaining successive warrants if necessary, and clarifies responsibilities if an execution does not proceed. Some language was changed to reflect federal practices. **Senator Davis** asked about the "communication proceeding" pursuant to section 20-240, Idaho Code. **Mr. Anderson** said that was a typo and should have read "commutation proceeding."

MOTION **Senator Mortimer** moved, seconded by **Senator Lodge**, to print **RS 21016** with correction of the word, commutation. The motion carried by **voice vote**.

Rules Review of Idaho State Police (Pending Rules) with **Vice Chairman Vick**, presiding.

DOCKET NO. **11-1101-1101** **Rules of the Idaho Peace Officer Standards & Training Council. William L. Flink**, POST Division Administrator, explained the rule defines the terms "direction" and "supervision" as it relates to reserve officers. Under "direction," it allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. The second definition, "supervision," allows a Level I reserve officer to work by himself, but there must be a full-time peace officer of the agency working at the same time. Section 071 establishes that the Basic Misdemeanor Probation Academy may operate as a closed campus if POST has dorm space available and clarifies that a student must attend all basic academy classes to successfully complete the course. Mr. Flink said Sections 095 and 174 establishes criteria for obtaining credit toward higher certifications for officers who formerly served as military law enforcement officers. The requirement that communication specialists meet the minimum employment standards for age and traffic record is removed as well as references to the Advanced Dispatch Academy which is no longer offered. The rule removes confusing language in reference to canine team training and certification requirements. The list of explosive substances used for detection canine team certification is updated.

Senator Malloy asked with the difference of supervision for Level I and Level II officers, would they not be acting independent of one another. **Mr. Flink** said they were acting as a team, and since they only had 25 hours of training, POST Council believed they needed supervision.

Vice Chairman Vick told Mr. Flink that he had a letter from **Oliver Chase** that raised a question that this rule classifies all military law enforcement experience as the same and was not fair.

Mr. Flink said it was a long standing process in POST history and the POST Council felt this was proper in evaluating training. The training may have been as a security guard and not in line with performing law enforcement functions. **Vice Chairman Vick** asked if the practice had always been to give three months of law enforcement experience credit for each year of military service. **Mr. Flink** said that was the practice, but it was not in rule.

Senator Davis suggested that POST may be undervaluing the service and experience of the military. He wondered what standards could be adopted that would take advantage of the disparity of applicants. It appears to be a problem. **Mr. Flink** said that was what Council wrestled with and they were looking for consistency.

Oliver Chase came to the podium, representing himself, and reiterated the concerns that were identified in his letter. He said his concern is the discrimination against veterans. **Senator Davis** asked how would he write the rule. **Mr. Chase** said he would evaluate everyone based on their experience. **Senator Davis** asked if he was troubled by the disparity in the classification and what they were doing in reviewing or setting a standard for military police service. **Mr. Chase** said that was right. **Senator Mortimer** asked if it was true that some other officer coming in for POST certification with previous experience is being reviewed on a personal basis and qualifications before he is given a certification. **Mr. Flink** said that was correct. **Senator Mortimer** said then that is not the case with our military personnel. **Mr. Flink** said that was correct.

- MOTION** **Senator Mortimer** moved, seconded by **Senator Malloy**, to approve **Docket No. 11-1101-1101** with the exception of Subsection 095, 02 and 174, 02.
- DISCUSSION** **Senator Lodge** asked Chairman Darrington what the procedure was if those two sections were excluded. **Chairman Darrington** said it would be necessary for the Committee to draft a resolution formally rejecting that section of the rule and that resolution would have to pass this Committee and the floor of the Senate, the House Committee and the floor of the House.
- SUBSTITUTE MOTION** **Senator LeFavour** made a substitute motion, seconded by **Senator Lodge**, to approve **Docket No. 11-1101-1101** with the exception of Subsection 095, 02, c and 174, 02, c. The motion failed.
- MOTION** **Chairman Darrington** moved, seconded by **Senator Davis** to approve **Docket No. 11-1101-1101**.
- SUBSTITUTE MOTION** **Senator Mortimer** made a substitute motion, seconded by **Senator Malloy** to approve **Docket No. 11-1101-1101** with the exception of Subsections 095, 02, c. and d. and 174, 02, c. and d. **Senator Bock** requested a roll call vote. The motion carried 5 to 4 with Vice Chairman Vick, Senators Malloy, Mortimer, Nuxoll, and LeFavour voting aye, and Chairman Darrington, Senators Davis, Lodge and Bock voting nay.
- DOCKET NO. 11-1101-1102** **Rules of the Idaho Peace Officer Standards & Training Council. William L. Flink** explained that there were some technical errors in Sections 91 and 92 and POST Council would like to rewrite after subsequent review and return it at a future meeting.
- ADJOURNMENT** There being no further business, **Chairman Darrington** adjourned the meeting at 2:50 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary