

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Tuesday, February 07, 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(Ingram), Burgoyne, Jaquet, Killen

**ABSENT/  
EXCUSED:**

**GUESTS:** Fairy Hitchcock, Hitchcock Family Advocates; Michael Henderson, Idaho Supreme Court; Dave Goins, Idaho News Service; Dennis Stevenson, Dept. of Administration; Mike Kane, Idaho Sheriffs Association (ISA); Terri Wedding, ADDRISS; Greg Marchant, Knitting Factory; Sharon Harrigfeld, Idaho Dept. of Juvenile Corrections (IDJC); Ronaldo A. Coulter, Hispanic Cultural Commission Col. Jerry Russell, Sharon Lamm, Business Operations Manager for Peace Officer Standards & Training (POST), Maj. Clark Rollins, & Jenny Grunke, Attorney General; Idaho State Police (ISP)

**Vice Chairman Luker** called the meeting to order at 1:31 p.m.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of the February 1, 2012 committee meeting. **Motion was carried by voice vote.**

**UNANIMOUS  
CONSENT  
REQUEST TO  
RECONSIDER  
DOCKET NO.  
11-0501-1101:** **Rep. Killen** requested unanimous consent to **reconsider Docket No. 11-0501-1101**. In support of the motion, he explained that since January 25, 2012, the last time the rule was revisited, some of the representatives obtained information that may change the vote. There being no objection, the request was granted.

**MOTION ON  
DOCKET NO.  
11-0501-1101:** **Rep. Killen** made a motion to approve **Docket No. 11-0501-1101**. **Rep. Perry** voiced concerns about statements she has heard from affected businesses who feel as though they are being bullied into complying with this rule. She stated that she felt this to be a very heavy handed rule and doesn't think the threatening nature of the rule to local businesses is appropriate.

**SUBSTITUTE  
MOTION:** **Rep. Ellsworth** made a substitute motion to create a subcommittee for those who are involved in the rule. **Rep. Hart** stated that he has not been provided with any more information since the last time the rule was discussed.

**ROLL CALL  
VOTE ON THE  
SUBSTITUTE  
MOTION:** **Vice Chairman Luker** requested a roll call vote to approve the substitute motion to create a subcommittee for **Docket No. 11-0501-1101**. **Motion passed by a vote of 10 AYE and 5 NAY. Voting in favor** of the motion: **Vice Chairman Luker, Reps. Smith(24), Nielsen, Hart, Ellsworth, Bateman, McMillan, Perry, Sims (Ingram), and Burgoyne. Voting in opposition** to the motion: **Chairman Wills, Reps. Shirley, Bolz, Jaquet, and Killen.**

The hearing was set for Thursday, February 9, upon adjournment of the regular committee meeting. **Vice Chairman Luker** appointed **Reps. Shirley, Ellsworth, Killen, Nielsen, Jaquet** and himself as subcommittee chairman.

Upon completion of the rules review, **Vice Chairman Luker** turned the gavel over to **Chairman Wills**.

**RS 20827C1:** **Sharon Lamm**, Business Operations Manager for POST/ISP, presented **RS 20827C1**. She explained that the proposed legislation adds language to the Idaho Code that will allow POST to collect fees for dormitory room usage. The language in the first version of this RS failed to state that POST has the authority to spend the collected fees for the stated purpose. Subsection 2 has been added to ensure POST counsel has the authority to spend and deposit fees collected for POST dormitory usage.

In response to committee questions about the amount of monies collected, **Ms. Lamm** indicated that the amount of monies collected is expected to be similar to the amounts collected in the past. In FY2011, nearly \$80,000 was collected for basic training fees, making for a total of around \$100,000. Additionally, the legislation would allow POST to recoup some of the costs associated with use of POST emergency vehicles for training, but not to make any additional money.

**UNANIMOUS CONSENT REQUEST:** **Rep. Bateman** requested unanimous consent to change the word "may" to "shall," on line 21, ensuring the funds are so used and to introduce the RS with changes. In support of the motion, **Rep. Nielsen** stated he wants to ensure the reason we are introducing this is for no other purpose than to codify the law, which **Ms. Lamm** confirmed. **Rep. Jaquet** stated she is concerned with the POST dormitory competition with private entities and the exemptions for the bed tax. Ms. Lamm stated that the occupants are generally state employees. She also agreed to change the fiscal note portion of the SOP to match the changes made to the RS.

**MOTION:** **Rep. Smith** made a motion to change the clerical errors and changes (as outlined in the above unanimous consent request) to the fiscal note and to introduce **RS 20827C1** with these changes. **Motion was carried by voice vote.**

**RS 21160:** **Matthew Gamette**, Lab Improvement Manager for ISP Forensic Services, presented **RS 21160**. He explained that the proposed legislation will amend Idaho Code § 1902. He stated that all testing that can be handled by the Idaho State Police Forensic Services (ISPFS) lab will be, but that Idaho should not be required to pay for tests outside its capabilities if requested by one or more of the parties involved. The ISPFS lab offers the most common DNA testing, using supplies from the federal grant funds and state funding. However, the lab does not provide all types of DNA testing available. The ISP evaluates the speciality DNA tests that do not qualify for Combined DNA Index System (CODIS). If the necessary type of testing is not available in Idaho, the petitioner would pay for these "advanced" tests conducted at non-ISP labs. He explained this often relates specifically to post-conviction case testing; if the lab offers the petitioner-requested testing, the Idaho lab would do it, if not, the petitioner could pay for this type of DNA test. He explained further that currently ISP forensics does not outsource any testing because it is very burdensome and costly to do so.

In response to committee questions, **Mr. Gamette** stated that upgraded technologies are continually evaluated for the benefit the technologies would bring to the customers they serve. Several committee members stated their concerns and suspicions about the possibility of this proposed legislation de incentivizing ISP from looking at new testing methods. Mr. Gamette stated that he doesn't believe this will happen, and in normal test-procedure, if the test is offered in their lab, the ISP lab will offer and conduct the test at no cost to the petitioner. In regards to who the petitioner might be, Mr. Gamette stated that the petitioner could be the prosecution, court, or the defense. To date, all requests for outside lab work have been made by the defense, where the defense had requested the prosecution pay for the tests and the prosecution then went to the state requesting payment.

In regards to a possible special test rule requested by a judge as part of a due process concern, **Mr. Gamette** stated that the requesting party would still have to pay, so in this case, the cost would likely be borne by the state if the requesting party was indigent. He next clarified that subsection g on page 2 stated that the petitioner would pay the cost of the forensic analysis. The committee wished to make a clarification as to what the proposed legislation ultimately does: the exception is to have the public pay for the outsourcing DNA testing if the petitioner qualifies for such but there is an exception to the exception, that the public will only pay with respect to those testing procedures that are within the capabilities of the ISP lab. The proposed legislation defines the circumstances of who will pay between the public and petitioner. Mr. Gamette explained that the ISP lab is not attempting to quash testing nor to prevent the expansion of lab capabilities. Furthermore, ISP will increase the size and scope of their testing capabilities based on need. The lab has every intention to evaluate the types of DNA testing needed in the future, and this rule will only apply when the requested test is not offered at the ISP lab. In regards to a concern about a "specific type of testing" being "requested" versus "required," Mr. Gamette stated that either word would be appropriate in this instance.

**MOTION:** **Rep. Luker** made a motion to introduce **RS 21160**. **Motion carried by voice vote.**

**RS 21133:** **Rep. Nonini** presented **RS 21133**. He explained that the purpose is to add the following words to the Idaho Code § 18-6409: "or by conduct that seriously alarms or harasses a person such as would cause a reasonable person substantial emotional distress." He stated that he proposed a similar piece of legislation last year and tried to nestle it within the stalking statutes and this is a new approach, the intent is to address problems with stalking neighbors.

**MOTION:** **Rep. Smith** made a motion to introduce **RS 21133** with the insertion after the word "that," on line 9, add the phrase "is intended to." **Rep. Nielsen** is concerned about the vagueness of the language and wishes to be more pointed in regards to what the language really alludes to. **Rep. Burgoyne** pointed out that the motion to insert those words would require changing "alarms" to "alarm" and "harasses" to "harass," also on line 9.

**UNANIMOUS CONSENT REQUEST:** **Rep. Smith** requested unanimous consent to introduce **RS 21133** with the changes outlined by **Rep. Burgoyne**. There being no objection, consent was granted.

**H 449:** **Maj. Clark Rollins**, ISP, presented **H 449**. He explained that this bill would add a \$20.00 fee to establish a dedicated funding source for ISP. This places the burden on the violators and eases the burden to taxpayers. This will provide a direct benefit to city and county jurisdictions as the money would be used to target drug traffickers in these districts and will help ensure training of narcotics officers. He stated that ISP is directed by statute to control abuse of substances and because of this, racketeering and money laundering are included offenses. Essentially, there is an additional paragraph in each section stating that for all included offenses, an additional \$20.00 fee will be assessed. Distribution of the funds are outlined in the statute.

In regards to the fees currently charged, such as the drug hotline fee, **Maj. Rollins** stated that the fee is currently being used for cell-bright, a technology used to download information from cell phones. The new fees are for drug-related misdemeanor and felony drug convictions only. Also, the distribution of funds will be done in a pecking order fashion rather than a pro-rata distribution. He explained the term "donation fund" is a carryover and doesn't indicate the funds are actually procured through donation. The monies collected will be used to support ISP operations and purchases of drugs during investigations/drug busts. In regards to the SOP, the plans for future dedicated funding sources could be a prescription drug tax or an alcohol/beer tax. Lastly, he explained that racketeering is an included offense because it is often implicated in larger drug busts.

**Maj. Rollins** deferred to **Mike Henderson**, of the Idaho Supreme Court, to answer committee questions in regards to the likelihood that ISP will actually be able to collect these fees. Mr. Henderson agreed to supply numbers to the committee indicating the fees actually assessed and collected and further explained that the idea behind the proposed legislation is to establish a system to fairly assess fees and address priorities. **Rep. Nielsen** voiced a concern over whether the fees specified would be "double-dipped" in JFAC by the ISP.

**MOTION:** **Rep. Killen** made a motion to send **H 449** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Killen** will sponsor the bill on the floor.

**S 1219:** **Sharon Harrigfeld**, Idaho Dept. of Juvenile Corrections (IDJC), presented **S 1219**. Ms. Harrigfeld introduced **Nancy Bishop** the Juvenile Corrections Attorney General. Ms. Harrigfeld explained that **S 1219** is a housekeeping bill and will define "juvenile" as "a person who has not been adjudicated" and a "juvenile offender" is "an individual, under the age of 18, who has already been adjudicated." Additionally, the transfer from Health and Welfare to IDJC are necessary to allow IDJC to fulfill its duties to provide substance abuse treatment in juvenile county systems. This will also remove all references to the Department of Health and Welfare.

In response to committee questions, on page 5, line 41, § 18, **Ms. Harrigfeld** explained "non-architecturally secure facility" is something like the Idaho Youth Ranch, where the staff keeps the children secure and the doors are not locked.

**MOTION:** **Rep. Nielsen** made a motion to send **S 1219** to the floor with a **DO PASS** recommendation. **Rep. Smith** questioned whether the funding for this would come from the IDJC budget. In regards to questions about the definition of juvenile offender, **Ms. Harrigfeld** explained that the juvenile offender would be anyone who is convicted of an offense under the age of 18 and can be in juvenile detention until age 21. She clarified, prior to the changes, "juveniles in custody" was the only definition of juvenile offender, so the statute clarifies that a juvenile who has been charged and convicted would be considered a "juvenile offender."

**VOTE ON THE MOTION:** **Motion was carried by voice vote.** **Reps. Nielsen and Smith (24)** will sponsor the bill on the floor.

**S 1213:** **Mike Henderson**, legal counsel for the Idaho Supreme Court, presented **S 1213**. He explained this bill corrects certain effects and omissions in the law. The court structure, before 1971, was composed of district courts plus local courts. Title 19, criminal procedure, and Title 39, dealt with probate and justice courts, which are now magistrate division courts. In regards to the statute handout (Title 19, Chapter 30), there is reference to \$4/day compensation plus mileage costs creating a conflict between the two statutes. The bill takes out the language regarding witness fees and mileage as provided in Title 19 Chapter 30.08. He emphasized that there would be no additional fiscal cost. If there is a request for a "special inquiry judge" investigation for crime/corruption, the prosecutor may want to call witnesses. The prosecutor can petition the district judge to appoint a magistrate judge for special inquiry proceedings. An example of this is when the coroner is suspicious of a death in their county, the coroner may act as a judge, organize a 6 person jury, take witnesses, and resolve issues relating to death and provide information for possible future criminal proceedings. Under Idaho Code § 2-215, jurors get \$10/day (generally), and this provides an update to this fee, meaning the jurors will receive the same mileage as § 2-215 allows for witness and juror fees.

**MOTION:** **Rep. Ellsworth** made a motion to send **S 1213** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.

**S 1222:** **Michael Henderson**, Idaho Supreme Court, presented **S 1222**. He explained that the purpose of the legislation is to try and update references to probate and justice courts by cleaning up the language in the statute. The probate, police and justice of the peace courts mentioned in Idaho Code § 1-103, should now be "magistrate courts." § 10 of the bill repeals the outdated procedure and § 24, Certification of Documents, should read "have acknowledgement before justice of peace, need certificate of the recorder." This is an outdated provision as there are no justices of the peace any longer.

**MOTION:** **Rep. Bateman** made a motion to send **S 1222** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bateman** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:04 p.m.

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Representative Wills  
Chair

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Stephanie Nemore  
Secretary