

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, February 13, 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:** Rep. Nielsen

GUESTS: Robert L. Aldridge, Trust Estate Professionals, Inc.; Tyler Mallard, Governor's Office; Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Paul Panther, AG's Office; Greg Bower, Ada County Prosecutor; Dan Chadwick, Idaho Association of Counties (IAC); Matthew Gamette, Lab Improvement Manager, Sharon Lamm, Cyndi Cunningham, Maj. Clark Rollins, Bill Flink, & Lt. Bob Clements; Idaho State Police (ISP)

Chairman Wills called the meeting to order at 1:31 p.m.

S 1253: **Senator Davis** presented **S 1253**. He stated that this bill relates to the filing of a lawsuit. He explained that when a lawsuit is filed, it is signed by the lawyer at the bottom of the petition which is called a "verified complaint." The plaintiff then serves the complaint to the defendant in accordance with the service of process rules in order for service to be valid. Typically, the summons and complaint are personally served, but if the defendant is difficult to find, the plaintiff may make service by publication. To do service by publication the Court must authorize it with an order. Idaho Code § 5-508 sets out the process to get that order. Some judges grant that order after it receives an appropriate affidavit. Others read Idaho Code § 5-508 to require a verified complaint. This bill allows a lawyer to enter an order after it considers either a supporting affidavit or verified complaint.

MOTION: **Rep. Burgoyne** made a motion to send **S 1253** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

Chairman Wills turned the gavel over to **Vice Chairman Luker**.

DOCKET NO. 11-0501-1101: **Vice Chairman Luker** stated that the subcommittee on **Docket No. 11-0501-1101** felt the rule could be improved, but needed it to be in place.

MOTION: **Vice Chairman Luker** made a motion to approve **Docket No. 11-0501-1101**. He clarified that, if the rule is rejected, the rule would disappear at the end of the Legislative term and, if it were approved it would come before the committee next year as a pending rule. Also, several industry members stated that having this rule would be better than not having one.

VOTE ON THE MOTION: **Motion was carried by voice vote. Reps. Sims(Ingram), Hart and Ellsworth** requested to be recorded as having voted **NAY**.

Vice Chairman Luker turned the gavel over to **Chairman Wills**.

H 497: **Matthew Gamette**, Lab Improvement Manager at ISP, presented **H 497**. He stated the purpose of this bill is to ensure the ISP lab would not be required to pay to outsource DNA testing not currently offered by the ISP lab. The current test method allows ISP to enter data into the DNA database and he believes that all DNA tests offered by ISP answer the probative questions.

Mr. Gamette next explained the procedure for DNA test orders: Before the trial, if tests not offered by the state lab are requested, it is the responsibility of the petitioner (the prosecution or defense) to send (and pay for) specialty tests at a private lab. The state lab does not pay for or outsource these tests. The defense, prosecutor, or other court officer performs this private lab testing at their own expense. The amendment to Idaho Code § 19-4902 sets up the post-conviction tests to be performed in the same manner as the "pre-trial" tests. He stated that ISP is not trying to amend legislation to save money it currently spends. He believes the legislative intent was not for ISP to cover the cost of outsourced DNA tests. ISP does not have the funding to attain accreditation to perform additional DNA test methods, especially because an immediate need for additional methods is not present at this time.

In response to committee questions, **Mr. Gamette** said the bill contains an emergency clause because the ISP lab felt this to be an emerging issue, that ISP will be asked to perform this type of testing in the near future and assumes this is the beginning of a trend. In regards to the baseline of tests offered, he said that ISP is accredited to international DNA test standards and stays current with FBI quality assurance standards. Also, he said that the ISP lab is not currently exploring any partnerships with higher education institutions.

Mr. Gamette clarified that all tests should be performed in an accredited and quality assured laboratory, which is also what any judge would require. In regards to the types of tests that are not offered by the ISP lab, he deferred to **Cindy Cunningham**, ISP. She said that the ISP lab offers "STR" testing, which is the primary type used in the forensic community. The STR test identifies all persons except for identical twins. Non-offered testing includes: "YSTR" testing, which is specific only to males because this DNA is found only on the Y chromosome, but it is not unique to a single male and rather follows only familial lines. In 2011 the ISP lab had 5 cases submit a request for YSTR testing and ISP is gathering statistics to determine the caseload.

MOTION:

Rep. Bateman made a motion to send **H 497** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Hart** will sponsor the bill on the floor.

H 448:

William Flink, Division Administrator for Peace Officer Standards & Training (POST), ISP, presented **H 448**. He explained that POST is responsible for minimum training standards for peace officers in Idaho. ISP needs to provide training that will produce properly educated and trained personnel that will enable ISP to effectively protect public safety. The POST revenue increase does not impact the general fund and will place a burden only on those who have committed a crime. Further, he stated that there exists a need to replace training equipment and maintain POST's office of professional responsibility. This funding should satisfy POST's funding needs until 2017.

In regards to the declining trend in collected fees, **Mr. Flink** stated that in 2009 there were 294,000 citations, in 2011 227,000 fines, and this year, 211,000 fines are expected. He posited the decrease could be because people are violating the law less due to the economic downturn. Other possible reasons for a decrease in revenue are: departments are using fewer traffic officers due to budget cuts, methods of fee collection, plea bargains and traffic safety education programs offered in lieu of fine payment. **Mr. Flink** clarified that the 83,000 reduction in fine generated revenue is a decrease in the number of fines issued from 2009 until this year (anticipated fines at the current rate of decreasing revenue). Also, the breakdown of fee collection rates in 2011 is: felonies were 48%, 72% misdemeanors and 95% infractions. **Mr. Flink** then explained POST has 3 sources of funding and the current \$10.00 fee is the largest. The goal is to bring revenue back to the 2009 level. The \$500,000 reserve is what POST needs to have in its

budget as directed by the Governor's Office to ensure there is enough money to begin the next fiscal year. In the past 2 years, POST has only had \$50,000 reserve in the budget and ISP had to assist.

In regards to training costs/methods, **Mr. Flink** said the \$10.00 fee pays for the basic and foundational training. It does not pay for continuing education of any police officer. He explained that POST pays the entire cost of the 10 week training program. POST has decided not to require those in training to pay because these are often smaller agencies who cannot afford the \$10,000.00/person training cost.

The original proposal of \$1.50 increase was thought to be enough to place POST near the 2009 funding level, but POST later realized that an increase to \$5.00 was needed because they did not anticipate the decline in revenues to happen as quickly as it did. He explained that \$5.00 increase would help POST stabilize for a few years and doesn't believe it would be wise to accept a lesser amount.

MOTION: **Rep. Burgoyne** made a motion to send **H 448** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Ellsworth** requested to be recorded as having voted **NAY.** **Reps. McMillan** and **Bolz** will sponsor the bill on the floor.

S 1232: **Robert Aldridge**, an attorney with Trust Estate Professionals of Idaho (TEPI), presented **S 1232**. He said this a "clean up" bill and the purpose is to clarify a portion of the conservatorship statute. This bill amends 68-514, part of the Uniform Prudent Investor Act, to properly refer to conservators. The original enactment of this section used the general term "guardian", which in some states, but not in Idaho, refers to both guardians and conservators. In almost all cases, conservators, not guardians, are the fiduciaries handling the financial affairs of the protected person. The term "guardian" is kept because in some cases guardians will actually handle funds for the ward, for example as a representative payee for social security payments. He also stated that this change will give clear guidance to courts, conservators, and guardian ad litem.

MOTION: **Rep. Killen** made a motion to send **S 1232** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** will sponsor the bill on the floor.

S 1233: **Robert Aldridge**, TEPI, presented **S 1233**. He explained that the purpose of this bill was to create a provision in guardianship law that defines the requirements for termination of guardianship of a minor. Currently, under the probate code, there is nothing that addresses this issue. However, under the Child Protective Act (CPA), there are clear guidelines and the bill contains the standards set out in section 2, subparagraphs 4 and 5 of the CPA. The standard of review is "clear and convincing." Mr. Aldridge believes this will be a clear guideline, and there is support from the courts and family law attorneys for this bill.

In response to committee questions about setting up a guardianship, **Mr. Aldridge** said that a party adverse to the parents, the standard of review is heightened to "preponderance of the evidence." This is a higher standard because self-assessment is poor, and to make a major change there should be a higher standard in place. Also, this is the standard that is currently being applied, so essentially the law is just catching up to what is already being done in court. Mr. Aldridge clarified that the Idaho Supreme Court held in the Hernandez case that once you get out of the fit-parent situation, parental deference is no longer due.

MOTION: **Rep. Jaquet** made a motion to send **S 1233** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Perry** requested to be recorded as having voted **NAY**. **Rep. Luker** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:39 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary