

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
12:45 P.M.
Room EW42
Wednesday, January 09, 2013

SUBJECT	DESCRIPTION	PRESENTER
	Organizational Meeting; Yearly Agenda	Chairman Wills

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Stephanie Nemore
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Phone: 332-1127
email: hjud@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, January 09, 2013

TIME: 12:45 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** Representative(s) Sims, Ringo

GUESTS: None.

Chairman Wills called the meeting to order at 12:46 p.m.

Chairman Wills welcomed all new committee members and explained that the committee would take time next meeting to conduct introductions of all committee members. He next appointed two proofreaders; **Rep. Bolz** and **Rep. Ringo** were tentatively selected to proofread committee minutes.

Chairman Wills next informed the committee that there will be a tour to both the state-owned and private prisons that will take place in the next couple of weeks, in conjunction with the Senate Jud/Rules Committee as well. A date for that tour will be chosen in the near future.

He set out the direction for the committee and outlined a few expectations that he and **Vice Chairman Luker** have for the committee this year. Vice Chairman Luker echoed the Chairman's sentiments. He also said he will pass out and assign subcommittees for the Administrative Rules that are before the committee this year at the next meeting, Tuesday, January 15th.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 12:55 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, January 15, 2013

SUBJECT	DESCRIPTION	PRESENTER
	Introduction of Committee Members	Chairman Wills
	Administrative Rules	Vice Chairman Luker Dennis Stevenson, Administrative Rules Coordinator

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, January 15, 2013
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** Rep. Malek

GUESTS: Dennis Stevenson, Administrative Rules Coordinator; Holly Koole, Idaho Prosecuting Attorneys Association; Terry McCullough, SECF

Chairman Wills called the meeting to order at 1:30 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the January 9, 2013 meeting. **Motion carried by voice vote.**

Chairman Wills introduced our **Intern Colt Catlin** who is a junior at Boise State University studying Political Science. Colt told the committee a bit about himself and talked about his future plans. Chairman Wills next introduced our **Page Tasi Lloyd** who is a senior at Caldwell High School. Tasi told the committee about himself and his post high school plans.

Chairman Wills then asked the committee members to introduce themselves and explain why they wanted to become a representative. Committee members spoke about themselves and their past experience on this committee and that, overall, they are excited about the work the Jud/Rules Committee is going to complete this legislative session. Chairman Wills concluded by explaining that each member of the committee will have something unique to bring to the committee. Committee members should not hesitate to ask questions as the committee as a whole has a similar vision for what we wish to accomplish.

Chairman Wills turned the gavel over to **Vice Chairman Luker** at 2:09 p.m.

Vice Chairman Luker introduced **Dennis Stevenson**, Administrative Rules Coordinator for the Department of Administration. Mr. Stevenson explained the different types of rules and the differences between them procedurally. He also explained the meaning of the colors of each of the rule book covers. He stated the committees in both the House and Senate must act by Concurrent Resolution to take action on Pending Rules and rejecting the rules in whole or in part is done in lieu of amending the rules which is not permitted. He said a pending rule will go into effect unless the rule is rejected by Concurrent Resolution. As for Pending Fee rules, Mr. Stevenson said that one house may reject the rule(s) over the objection of the other house and there needs to be one resolution stating which rules are to be approved or rejected. He then referenced the handout that explains the Administrative Rules procedure in greater detail.

Mr. Stevenson next spoke about the Proclamation Rules, which are unique to the Department of Corrections and said the Proclamation Rules comply with Idaho Administrative Procedure Act (IDAPA) to the extent that they are published in the Administrative Bulletin. However, a Proclamation Rule will become final 30 days after publication so the Proclamation Rule presently in front of the committee is already in effect. He explained further that rules from the Department of Corrections come in the form of a Proclamation but are really just like any of the Pending Rules, there needs to be a Concurrent Resolution to pass or reject. **Rep. Nielsen** then referenced any rule in the Administrative Code currently and commented about legislative intent. Mr. Stevenson provided an example of an older rule and how legislative intent is bound to change over time.

Vice Chairman Luker then began dividing the Rule Subcommittees and listed subcommittee chairs, members and assigned rules. **Reps. Bolz, Sims and Nielsen** will chair the three rules subcommittees. Vice Chairman Luker explained that once the subcommittees meet they will report their recommendations back to the full committee. He said the target date to have the rules reported back to the full committee is January 28, 2013. He concluded by outlining the assignments for each subcommittee: Rep. Bolz will have the Proclamation and the two Pending Fee rules, the Nielsen Subcommittee has the first four rules in the Pending Rules booklet and the Sims Subcommittee has the last four rules in the Pending Rule booklet.

Vice Chairman Luker returned the gavel to **Chairman Wills** at 2:27 p.m.

Rep. Nielsen stated that he would like to meet with his subcommittee members upon adjournment of the full committee meeting.

ADJOURN: There being no further business to come before the committee the meeting was adjourned at 2:28 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, January 17, 2013

SUBJECT	DESCRIPTION	PRESENTER
	Presentation: Internet Crimes Against Children (ICAC)	Joel Teuber & Paul Jagosh, Fraternal Order of Police
	Presentation: Recruitment of Judges	Patti Tobias, Administrative Director of the Courts Sr. Judge Barry Wood

Note: Sims Rules Subcommittee will meet upon adjournment of full committee meeting in EW42

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills
Vice Chairman Luker
Rep Nielsen
Rep Bolz
Rep Bateman
Rep McMillan

Rep Perry
Rep Sims
Rep Dayley
Rep Horman
Rep Malek
Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, January 17, 2013
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
**ABSENT/
EXCUSED:** Representative(s) Malek
GUESTS: Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Tim Brady, Fraternal Order of Police; Fairy Hitchcock, Hitchcock Family Advocates; Sr. Judge Barry Wood, Idaho Supreme Court

Chairman Wills called the meeting to order at 1:30 p.m.

Chairman Wills explained the RS process and clarified that the intent of the print hearing was to get the RS printed and debate over the bill can take place during the hearing on the bill. He next welcomed all of the guests in the audience, with special recognition and appreciation for **Fairy Hitchcock** of Hitchcock Family Advocates for her continued presence and involvement in the committee hearing process.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the January 15, 2013 committee meeting. **Motion carried by voice vote.**

Chairman Wills introduced and welcomed **Paul Jagosh**, Fraternal Order of Police (FOP), the largest police organization in Idaho. Mr. Jagosh said the substance of his presentation is the most important issue that he has ever been involved in and next introduced **Detective Brady**, FOP. Chairman Wills echoed the seriousness of the issue in Idaho.

Det. Brady said he has investigated internet crimes for about six years. He said this is a subject that has increased in prevalence in recent years in Idaho. He also said the reality is that there are many cases of child pornography which includes videos and photography of children being sexually abused. He offered more statistics and said that there are approximately 5,000 leads for these types of crimes in Idaho and most offenders have 23-25 victims before they are caught. Det. Brady then reviewed information on the types of internet searches that are done for child pornography and the various databases that are used. In response to a question from the committee, Det. Brady said that there is a greater prevalence of these crimes in urban areas because of the misconception about what is happening in rural areas.

Det. Brady explained what a person searching for child pornography looks for on the internet and the leads that officers are receiving are obtained through publicly available information of those who are trafficking and searching. Police are able to see files downloaded, dates and times, and tracking information. There are clues that lead police to know whether they are dealing with a hands-on offender. Det. Brady provided additional examples of specific offender cases and methods that offenders use to lure child victims and that often an investigation into child pornography results in discovery of child sex abuse as well.

In response to committee questions, **Det. Brady** said the FOP's impediments to catching offenders has been lack of resources, training and investigators. In regards to a question about penalties for these offenses he said a typical sentence for possession of child pornography is 8-10 years. He also mentioned there are some instances where the offender completes a 6 month treatment program and is then released. As for federal cases he said the mandatory minimum sentence is 8-10 years. **Mr. Jagosh** indicated that perpetrators know the police don't have the funding to adequately address this issue and that FOP is asking for \$2 Million as there are only 1.5 full-time investigators total in the entire state presently.

In response to committee questions, **Mr. Jagosh** stated that the federal funding received needs to be used for both sex trafficking investigations as well as child pornography possession investigations. In regards to setting spending priorities, the Attorney General's office will likely take the funding and put together a task force to address this issue, similar to what they have done for Medicare fraud. Mr. Jagosh said the one investigator for the state is only able to follow up on 25-30 of the 5,000 leads, and the leads obtained through internet searches are only one source. He said that the leads are found publicly, and only after a lead is found and followed, would a home of a possible offender be searched. Mr. Jagosh explained that it would be difficult to coordinate with local agencies because these are elaborate investigations and require a lot of follow-up and it would be hard to use local law enforcement due to the changing case load.

Chairman Wills introduced **Patti Tobias** and **Sr. Judge Barry Wood** to speak about the issue of finding qualified judges and judge recruitment.

Patti Tobias reiterated the need for the increased judge recruitment because of the high use of senior retired judges. She explained that in her experience, when all three branches of government work together to solve a problem they together can find a workable solution. She provided several examples: Dedicated court fund for court technology, increasing prison populations/specialized courts and the emergency surcharge put in place for Idaho Courts to keep courts funded and open.

Judge Wood said legislators should have an interest in this problem because judges provide Idahoans with sense of justice, within constitutional and procedural limits, they determine crime victims rights and set restitution. He said they provide a forum, in civil court, and provide justice by adjudicating property claims fairly and provide relief to those who have been wronged. He referenced several very time consuming cases for District Judges. He said it is very important to resolve the cases in a fair and just trial, and not save that for an appeal. He framed the urgency of the situation for the committee and said that between now and the next 5 years a majority of judges are eligible to retire which will mean less experienced trial judges. He said trials will take longer, and this will affect people throughout the state in different ways. He emphasized there are a very small number of qualified applicants for judgeships in Idaho.

Patti Tobias next explained a committee researched this problem in 2009; the State Bar was surveyed and results showed the primary barriers for applicants were: inadequate compensation, initial selection fairness, and potential of a contested judicial election. Ms. Tobias said that compensation is an issue that can be effectively addressed by the Legislature.

Rep. Nielsen commented on the evolution of law and questioned the need to be more heavy handed with penalties for violent crimes as a means of saving time in court and burdens on judges. **Ms. Tobias** said there are sentencing challenges for judges within the bounds of the law and she and **Judge Wood** could arrange a separate presentation about sentencing guidelines, results, and include the Department of Corrections. In response to further questions, Ms. Tobias outlined the non-partisan judicial election process in Idaho. On an election year, judge candidates will place themselves on the ballot for election. If a judge vacancy occurs during a four year term, judicial counsel is called and they will screen applicants for recommendation, the counsel will submit 2-4 names to the Governor for recommendation and the Governor appoints the judge based on those recommendations. Finally, that candidate must run on next ballot.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:42 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
SIMS SUBCOMMITTEE
Administrative Rules Review
Upon Adjournment of the Full Committee
Room EW42
Thursday, January 17, 2013

DOCKET NO.	DESCRIPTION	PRESENTER
11-1102-1201	Juvenile Detention Officer Certification	William Flink, Division Administrator for Peace Officer Standards & Training (POST), Idaho State Police (ISP)
11-1103-1201	Juvenile Detention Officer Certification	
11-1104-1201	Adult Probation & Parole Officers Certification: Physical/Medical Requirements	
11-1106-1201	Misdemeanor Probation Officer Certification	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Sims
Rep. Bateman
Rep. Packer
Rep. Trujillo
Rep. Meline

COMMITTEE SECRETARY

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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
SIMS SUBCOMMITTEE
Administrative Rules Review

DATE: Thursday, January 17, 2013

TIME: Upon Adjournment of the Full Committee

PLACE: Room EW42

MEMBERS: Chairman Sims, Representatives Bateman, Packer, Trujillo, Meline

**ABSENT/
EXCUSED:** Rep. Trujillo

GUESTS: William Flink, Peace Officer Standards & Training; Fairy Hitchcock, Hitchcock Family Advocates; Brad Hunt, Office of Autism Research Coordination (OARC)

Chairman Sims called the meeting to order at 2:47 p.m.

William Flink, Division Administrator for Peace Officer Standards & Training (POST) at Idaho State Police (ISP) introduced himself to the Subcommittee.

DOCKET NO. 11-1102-1201 **Mr. Flink** stated the key issue in **Docket No. 11-1102-1201** is additional certification for juvenile corrections officers. He said the Department of Juvenile Corrections asked for the same certification provisions that POST gives to any other police officers. The conditions for that certification are identical to other categories and allow a juvenile officer to work towards the higher certification. In response to questions, Mr. Flink said that changed certification standards could possibly create an increased pay rate.

DOCKET NO. 11-1103-1201 **Mr. Flink** next explained that **Docket No. 11-1103-1201** is the same provision on higher certification and contains the same conditions as the preceding rule. **Chairman Sims** confirmed with Mr. Flink that additional training would be required for additional certification.

DOCKET NO. 11-1104-1201 **Mr. Flink** stated **Docket No. 11-1104-1201** is a rule for the Department of Corrections and it pertains to both the Corrections Officers and the Adult Probation Officers. The rule states "if a Corrections Officer takes an administrative position within the Department and doesn't leave the Department to do so, they will not lose their certification as long as they get 20 hours of training per year for that certification." Mr. Flink provided some examples of when this rule would be used and said an officer may want to leave for a certain amount of time to gain some more managerial experience, and then may want to come back as a manager inside the prison. Mr. Flink confirmed that this change could promote retention of the "best trained" officers and noted the addition condition regarding the required medical exam; the certification for the exam would be valid for one year.

DOCKET NO. 11-1106-1201 **Mr. Flink** explained that **Docket No. 11-1106-1201** pertains to misdemeanor probation and the rule used to contain language for minimum standards, with the exception of fitness, and the department deleted the "physical disability" language because it was previously an error. He explained further that it is the agency's prerogative to determine whether or not an agent is fit for duty. In response to questions from the committee Mr. Flink explained he has experience with the ADA and explained the process typically is to go through a job task analysis to make sure it is statistically valid. He then said that there are some misdemeanor and juvenile probation officers that are not making arrests and thus agencies have been permitted to choose their own standards. He concluded by explaining the change in the rules, removing "physical disability" is a means of becoming consistent with the POST council statutes.

- MOTION:** **Rep. Bateman** made a motion to recommend approval of **Docket No. 11-1102-1201** to the full committee. **Motion carried by voice vote.**
- MOTION:** **Rep. Meline** made a motion to recommend approval of **Docket No. 11-1103-1201** to the full committee. **Motion carried by voice vote.**
- MOTION:** **Rep. Packer** made a motion to recommend approval of **Docket No. 11-1104-1201** to the full committee. **Motion carried by voice vote.**
- MOTION:** **Rep. Bateman** made a motion to recommend approval of **Docket No. 11-1106-1201** to the full committee. **Motion carried by voice vote.**
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:58 p.m.

Representative Sims
Chair

Stephanie Nemore
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, January 21, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>RS21752</u>	House Rule 76, amended	Rep. Luker
<u>RS21737</u>	Judicial Districts/Increase Judges	Patti Tobias, Administrative Director of the Courts
<u>RS21742</u>	Oaths/Affirmation, Administration	
<u>RS21695</u>	Police, forensic lab resources	Matthew Gamette, ISP Forensics Lab Improvement Manager

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, January 21, 2013
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
**ABSENT/
EXCUSED:** Rep. Nielsen
GUESTS: Patti Tobias, Michael Henderson & Judge Barry Wood, Idaho Supreme Court; LeRoy Fiscus, ACLU of Idaho; Jan Sylvester

Chairman Wills called the meeting to order at 1:30 p.m.

RS 21752: **Rep. Luker** explained **RS 21752** would amend House Rule 76 and provides for new procedures for the House standing ethics committee. He said currently there is an ad hoc committee and this change to the rule would establish a standing ethics committee for a two year term of the legislature. He explained the process: there will be a confidential election process by each caucus and then members of the ethics committee would meet when a complaint to the committee was received. He said the Chairman of the ethics committee would be designated by the Speaker and the committee would have a 3-2 majority/minority configuration. He said the change in the rule would create more specific categories for ethical misconduct and change the procedure for complaints received. Generally, there will be the initial complaint, confidential review of the complaint by the committee, a probable cause finding, and then a public hearing. The change to the rule would also clarify sanctions, which could be censure with or without conditions. He said this would make the censure/reprimand process a more powerful and flexible tool.

In regard to committee questions, **Rep. Luker** said the reason for reducing the committee size from seven to five was because having fewer members would be less burdensome and would make the committee more manageable.

MOTION: **Rep. Bateman** made a motion to introduce **RS 21752. Motion carried by voice vote.**

RS 21737: **Patti Tobias**, Idaho Supreme Court, explained **RS 21737** is a simple change that will have an enormous positive influence on the state. She said this legislation will create three new judge positions, one each in Canyon, Ada and Jefferson counties. She outlined the specific changes in the legislation. She explained counties are responsible for funding facilities and other court support personnel and operating expenses so it makes sense to coincide the effective date of October 1, 2013 with the county fiscal year. She also indicated that county commissioners have pledged their support in writing for these positions.

In response to committee concerns, **Ms. Tobias** said she would return to the committee with information on judge work load increases from 2000 to the present. She added that population in these counties with the added judgeships has increased dramatically and emphasized these are important positions for commerce.

MOTION: **Rep. Burgoyne** made a motion to introduce **RS 21737. Motion carried by voice vote.**

RS 21742: **Matthew Henderson**, Idaho Supreme Court, said **RS 21742** is meant to fill a hole in the Idaho Code. He explained much of the Idaho Code contains the language "under penalty of perjury" and when this statement is signed it may not have in fact been true, because there is no associated penalty. He then referenced Idaho Code Title 18, Chapter 54, "perjury" defined. (see attached handout) He said Section 2 would attempt to address the issue that the signor didn't actually take an oath. The additional language on lines 29-31 would make it so your signature "under penalty of perjury" would actually constitute an oath and you would be liable for perjury. In conclusion, Mr. Henderson stated that this addition would make preparation and filing of legal documents more practical and comprehensive.

MOTION: **Rep. Meline** made a motion to introduce **RS 21742**. **Motion carried by voice vote.**

RS 21695: **Matthew Gamette**, Idaho State Police (ISP) Forensic Labs Quality Control Manager explained that **RS 21695** concerns forensic case work done by the ISP lab for the public. He said the lab provides support for court testimony that supports for private testimony when ISP has investigated. He indicated that all this support is provided at no cost to any of the entities involved. He also said that ISP provides support for public defenders, requested through the courts. To date, courts have required ISP to provide court testimony on private defense experts when ISP was not a party to the case. He emphasized that ISP pays to maintain and calibrate their materials and expenses and it is very costly and time consuming to have private entities use the ISP lab at no cost to them. Allowing private entities use the lab leads to contamination issues and prevents ISP lab technicians from being able to complete their work while the private consultants are using the lab. Mr. Gamette provided additional examples of how this court mandate is a burden to ISP and ISP should not have to support a private business. He concluded by stating that ISP doesn't have a statutory obligation or the resources to provide expert consulting services.

In response to committee questions, **Mr. Gamette** said that the ISP Lab policy is clear and has been overruled by court order to allow defense experts to come into the laboratory. He said he wasn't certain which courts within Ada County specifically have ordered this and will provide that info at the next hearing. There were committee concerns over whether the language in the RS adequately addresses this problem. Mr. Gamette stated that the intent is not to avoid subpoenas when ISP is a party to the case. He said the word "personnel" used in the RS is intended to give police authority to not send that employee if ISP had not been involved in the case in any way. There was additional discussion over the ISP law enforcement purpose, whether it is to support the prosecutor and officers charging crimes, and it seems the purpose might be to support the judicial system in general. There was concern over the definition of "ISP law enforcement purposes." **Chairman Wills** suggested to Mr. Gamette to have two committee members assist in drafting a change 1 for wordsmithing so it might be more acceptable to the committee. Mr. Gamette agreed and emphasized that this legislation is in no way intended to inhibit the judicial process and rather the intent is to prevent citizens from using public resources for solely private use at the exclusion of their regular prescribed mission.

In response to committee questions, **Mr. Gamette** said the number of privately owned forensic labs available depends on the discipline of the lab, and he will try and find more numbers on this to present to the committee.

MOTION: **Rep. Bolz** made a motion to hold **RS 21695** in committee for a time certain until next Tuesday, January 29th. **Motion carried by voice vote.**

Vice Chairman Luker will serve as chair of the Nielsen Subcommittee upon adjournment of this meeting.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:14 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
NIELSEN SUBCOMMITTEE
Administrative Rules Review
Upon Adjournment of the Full Committee
Room EW42
Monday, January 21, 2013

DOCKET NO.	DESCRIPTION	PRESENTER
<u>11-0301-1201</u>	Rules Governing Alcohol Testing, Laboratory Alcohol Analysis	Matthew Gamette, ISP Forensics Lab Improvement Manager
<u>11-0501-1101</u>	Alcohol Beverage Control, Multipurpose Arena	Lt. Bob Clements, Idaho State Police
<u>11-1101-1201</u>	Peace Officer Standards & Training (POST) Council Decertification Standards	William Flink, Division Administrator for POST, Idaho State Police (ISP)
<u>11-1101-1202</u>	POST definition changes; Law Enforcement Profession, Agency Investigations	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Nielsen
Rep.Perry
Rep.Dayley
Rep.Malek
Rep.Burgoyne

COMMITTEE SECRETARY

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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
NIELSEN SUBCOMMITTEE
Administrative Rules Review

DATE: Monday, January 21, 2013
TIME: Upon Adjournment of the Full Committee
PLACE: Room EW42
MEMBERS: Chairman Luker, Representatives Nielsen, Perry, Dayley, Malek, Burgoyne
**ABSENT/
EXCUSED:** Rep. Nielsen
GUESTS: Lt. Bob Clements, Alcohol Beverage Control (ABC)/Idaho State Police (ISP); Kimra & Patrick Burger; Jeremy Pisca, Risch Pisca

Rep. Luker served as the committee chairman because **Rep. Nielsen** had a family emergency.

Chairman Luker called the subcommittee meeting to order at 2:27 p.m.

DOCKET NO. 11-0301-1201: **Matthew Gamette**, Lab Manager for Idaho State Police (ISP) Forensic Services, presented **Docket No. 11-0301-1201**. He said this is a rule that came before the committee last year and there have been no changes. He explained this is a codification of a former rule and then clarified the wording. He said the words "at least" clarifies the blood concentration level in a Blood Alcohol Concentration (BAC). He said ISP uses kits to take BAC which are purchased from manufacturers and the tubes within the kits contain a certain amount of sodium fluoride in them. If the tubes are not full, the concentration of the sodium fluoride is greater, but this higher concentration has no effect on BAC. He added that the purpose of the sodium fluoride is to provide an additional means of preservation.

MOTION: **Rep. Malek** made a motion to recommend approval of **Docket No. 11-0301-1201** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 11-0501-1101: **Lt. Bob Clements**, Alcohol Beverage Control (ABC) within Idaho State Police (ISP), presented **Docket No. 11-0501-1101** and said it is a temporary rule that has been in effect for over one year. He explained the purpose of the rule was to allow certain establishments to host all-ages events that may serve alcohol and still allow minors to be present. The previous rule contained no definition of "multipurpose arena." Lt. Clements said this has been problematic for the places that host all-ages events because they have endured fights and gang activity, due to the lack of a definition. He said an example of a multipurpose arena would be the Knitting Factory and ABC has worked with them to determine the needs of the facility and what would be required to maintain the over/under status. He discussed the rules in greater detail and outlined some of its requirements: service of burgers and other snack food, the venue must provide a list of events to ABC, and an explanation of how the venue plans to keep under 21 occupants from gaining access to alcohol. He explained further that this rule and its associated provisions allows a facility to do something they were not previously permitted to do. He added, ISP received no negative formal comments on this law. He provided some examples of facilities in the area that would fall under the multipurpose definition and how these facilities have made adjustments to security to accomplish the overall goal of the rule.

In response to committee questions, **Lt. Clements** said the rule was held last year to allow more time for public comment. He also said stakeholders worked extensively with ABC over the last year to obtain additional comments and the rule before the committee now is a final rule, identical to the temporary rule that came before the committee last year. Lt. Clements explained that a business would want to get an endorsement on a liquor license in order to be permitted to admit minors. He said this new definition of "multipurpose arena" is completed through rulemaking rather than statute because the statutory definition of restaurant is very vague. The rules can be used to define the restrictions on the statutory definition as they change with business needs over time.

Lt. Clements confirmed that this rule regards a multipurpose arena and provides a chance for minors to have access to community events, shows, and concerts when a business applies for and receives an endorsement on their liquor license. He reiterated that increased security, as is required by the rule, makes it so minors can attend. In response to a question on restriction of events and public feedback, he said there was no feedback in response to the "events." In regards to "multipurpose arena," he said those events would generally serve alcohol and the plans in place could be no-alcohol or all alcohol, depending on the type of event. If the event was endorsed as "MUA," the event must be planned one month in advance and the applicant may amend that plan by notifying an ABC officer at least 24 hours in advance.

MOTION: **Rep. Burgoyne** made a motion to recommend approval of **Docket No. 11-0501-1101** to the full committee. **Motion carried by voice vote.** **Rep. Perry** requested to be recorded as having voted **NAY**.

DOCKET NO. 11-1101-1201: **William Flink**, POST/ISP, presented **Docket No. 11-1101-1201**. He offered handouts to the committee that contained information in support of the rules. (See attached handout) He explained there was a technical error in the rules, based on the need of law enforcement profession to be able to expedite cases they are involved with. He provided a synopsis of the cases POST Council has had over 2011. He also said that these rules will allow officers to have their issues heard more quickly and provide more protections than they have under current procedures. They will also mean a decrease in hearing costs.

Mr. Flink referenced the second document and explained the prior rules were broad and this rule is modeled after the professional code of ethics; the rule differs from the national code because the word "police" was replaced with "law enforcement." Additionally, the rule includes full discovery and an additional piece of due process, allowing the administrator to sit down with the person being complained against and listen to their views of the allegations before them. He emphasized that the process saves money and is more efficient. Mr. Flink indicated most actions will come under the non-summary decertification process. He next outlined some of the concerns from the committee on these rules which were heard last legislative session: Hearings were only going to be held in Meridian and POST Council has now been to Meridian, Jerome and Moscow in order to address these concerns. He further explained the main goal of the process is to provide fairness to the officer and to the profession and also to expedite the process for the individuals involved. He added that currently, it takes over a year to get a hearing. He explained that the Senate Jud/Rules Committee had moved to strike out **§ 91-09** and we will do the same here.

In response to committee questions, **Mr. Flink** explained the summary decertification process means the agency would bring the hearing to the individual. Mr. Flink said this is a review process, based on a cause of action found by POST Administrator who will provide a written decision. He said the hearing board has already been established by POST Council and contains 3 POST Council members. If the decision were to be appealed by the individual, these 3 members would not participate again in a review/appeals process. In regards to standard of review, POST council will review the record and have the opportunity to disagree with the hearing officer's conclusions. There was committee concern that there are still no intermediate sanctions within the rule, rather the options are to certify or decertify. Mr. Flink said the agency had included intermediate sanctions, with an option for a letter of reprimand, and this option was removed and it was not put back into the rules in error.

Mr. Flink emphasized that timing is a central issue in these hearings and though he thinks the hearings will be rare, it is important to have timely hearings, especially if it's a serious case that could potentially result in law enforcement capabilities being taken away immediately. He then referenced the handout that contained the 2011 decertification cases. He said immediate action may be appropriate where substantial evidence exists that a violation has occurred. There was continued committee concern over the exclusion of the intermediate sanction provision in this rule and Mr. Flink emphasized the need for passage of this rule based on the current difficulty of getting these cases heard, as some are almost two years old. Mr. Flink confirmed that the 2011 Decertification Rules would continue to be used if these rules were denied by the committee and stated that the additional piece of due process contained in these rules is intended to make the process more fair.

MOTION:

Rep. Burgoyne made a motion to recommend rejection of **Docket 11-1101-1201** to the full committee.

Rep. Burgoyne cited lack of an intermediate sanction, lack of specified summary proceeding location and practices referred to during the rule presentation that are not codified in the rules as reasons for not being able to support the rule. Furthermore, he said the non-summary adjudication hearing still requires the officer to travel to Ada County, which will be very expensive.

In response to committee questions, **Mr. Flink** promised to address the committee's concerns over the missing provisions in the rules and indicated that technology can help the hearing process reach those that are outside the Meridian area and POST Council recently voted to add additional POST Council meetings, in Coeur d' Alene and Eastern Idaho. Mr. Flink also indicated that POST would pay for witnesses in Meridian.

SUBSTITUTE MOTION:

Rep. Perry made a substitute motion to recommend approval of **Docket 11-1101-1201** to the full committee with the exception of **Subsection 91.01**.

Chairman Luker explained the ramifications and procedure of rejecting the rule to the committee. In response to committee questions, **Mr. Flink** said the practical effect would be continued delays with their cases. The stress on the individual is great and he finds this is the quickest way for the employer to meet the needs of the process. In regards to committee concern about the best way to approach the missing language in the rule, Mr. Flink said that with the exception of the intermediate sanctions, most of the procedures are attainable with POST Council vote, which can be used until POST gets a rule addressing it specifically. POST Council wants reasonableness and fairness, and when shown to be strong cause that officer shouldn't be in law enforcement any more in this state, that is provided for.

**VOTE ON
SUBSTITUTE
MOTION:**

Motion carried by voice vote.

**DOCKET NO.
11-1101-1202:**

William Flink, POST/ISP, presented **Docket No. 11-1101-1202**. He said the first change was the definition of "law enforcement professional," where "emergency services provider" was added. Next, under procedures, the change makes it so medical exams shall remain valid for one year, unless extended by the POST Administrator for good cause. Mr. Flink explained the purpose is to not require another examination before officers become certified. The final change, says that an applicant is not eligible for POST certification of any kind while under investigation.

MOTION:

Rep. Malek made a motion to recommend approval of **Docket No. 11-1101-1202** to the full committee. **Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:00 p.m.

Representative Luker
Chair

Stephanie Nemore
Secretary

JOINT
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
AND
SENATE JUDICIARY & RULES COMMITTEE**
1:30 P.M.
EW42
Wednesday, January 23, 2013

SUBJECT	DESCRIPTION	PRESENTER
	OVERVIEW OF CRIMINAL JUSTICE SYSTEM	
	Local Law Enforcement	Sheriff Gary Raney, Ada County Sheriff
	Ada County Prosecutors Office	Jan Bennetts, Chief of Staff
	Ada County Public Defenders Office	Tony Geddes, Public Defender
	Courts	Patti Tobias, Administrative Director of the Courts
	Department of Corrections	Brent Reinke, Director

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills Rep Perry
Vice Chairman Luker Rep Sims
Rep Nielsen Rep Dayley
Rep Bolz Rep Horman
Rep Bateman Rep Malek
Rep McMillan Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Stephanie Nemore
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov

MINUTES
JOINT MEETING

**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
SENATE JUDICIARY & RULES COMMITTEE**

DATE: Wednesday, January 23, 2013

TIME: 1:30 P.M.

PLACE: EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock, Werk

ABSENT/
EXCUSED: Sen. Davis

GUESTS: Sr. Judge Barry Wood & Patti Tobias, Idaho Supreme Court (ISC); Fairy Hitchcock, Hitchcock Family Advocates; Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Mike Kane, Idaho Sheriff's Association; Jan Sylvester

Chairman Wills called the meeting to order at 1:33 p.m.

Chairman Wills introduced the judicial system panel to the House and Senate Judiciary/Rules committees. He explained the purpose for this joint meeting was to provide background on the legislation these committees will see and said these panel members are also members of the Idaho Criminal Justice Commission, which acts as a sounding board for the issues surrounding law enforcement, corrections and the courts.

Patti Tobias, Idaho Supreme Court (ISC), welcomed both committees and thanked **Holly Koole**, Idaho Prosecuting Attorneys Association (IPAA), for putting this presentation together. She indicated that the purpose of the panel is to acquaint the committees with court processes and procedures in order to provide a big picture view of how all the pieces of the criminal justice system in Idaho operate. She concluded by saying that panel members were going to briefly explain their role in the system.

Sheriff Gary Raney, Ada County Sheriff, explained that each of the 42 counties in Idaho has an elected sheriff and when cities incorporate they have the option to form their own police services. **Jan Bennetts**, Chief of Staff for Ada County Prosecutors Office, said there are 44 county prosecutors for the state of Idaho, and there are 65 prosecutors in the Ada County Prosecuting Attorneys Office. **Tony Geddes**, Ada County Deputy Public Defender, indicated that there are approximately 8 county public defenders offices in Idaho, all other counties provide public defenders via contract with private attorneys. **Judge Barry Wood**, ISC, said there are 87 magistrate and 32 district judges in Idaho. He explained that a magistrate judge hears the initial matters in a case including the finding of probable cause. A district judge presides over the arraignment, trial and sentencing. **Brent Reinke**, Director of the Idaho Department of Corrections (IDOC), said there are 11 prisons in Idaho and IDOC manages 1 out of every 34 adult men and 1 out of every 156 adult women in the state. **Olivia Craven**, Director of the Parole Commission, said her agency's role was to conduct parole hearings; there is a staff of 31, eighteen hearing officers, who conduct investigations for a part-time commission and they meet monthly.

Ms. Koole said she planned to illustrate the process by taking a fictional felony criminal case from beginning to end. She then went through the facts of the "case." **Sheriff Raney** said law enforcement's first job is to preserve lives and then focus on 1) testimonial evidence, 2) physical evidence and 3) statements from the suspect interview. The sheriff will then submit everything to the prosecutor. **Ms. Bennetts** said the prosecutor's office sifts through the police reports to determine probable cause, and decide on the appropriate charges to file. She then would submit these documents to the magistrate judge, swear to the court and read enough of the compiled information to establish probable cause and keep the offender in custody. The offender is then read the charges and scheduled for a preliminary hearing. The court will then make a decision regarding bond, and whether to keep the accused in custody until the preliminary hearing. If the accused is in custody, preliminary hearing must occur within 14 days, and if not in custody, must occur within 21 days. The accused would then be bound over to District Court.

Mr. Geddes next explained that the public defender's (PD) office is assigned an accused person, he/she begins to develop a relationship with that person, advise him/her of his/her rights and begin to develop viable defenses. The main goal is to educate clients about the system and what they can expect. He indicated it is important to express to the client the seriousness of the situation. **Judge Wood** provided the point of view from the magistrate judge's perspective, the judge has to entertain a probable cause finding within 2 days. If probable cause is found, bond is issued, and defendants are scheduled for their initial appearance, which must happen within 24 hours. The defendant is read his/her rights which are explained at the preliminary hearing. If the magistrate does find there is probable cause, the defendant is bound over to district court. The public defender and prosecutor will then have the arraignment in district court. **Ms. Bennetts** explained that the defendant next decides whether or not to enter a plea or ask for more time. The public defender will usually ask for more time to talk with the client. Mr. Geddes emphasized that he advises his clients on the situation, the discovery that he has received from the state and the defendant must then decide to plead guilty or not guilty. If a plea of guilty is entered, then a presentence investigation is held and those findings are then submitted to the state to be used in sentencing.

In response to committee questions, **Judge Wood** explained that when the public defender and the prosecutor come up with a plea agreement, the judge is not required to follow it, but it is a good idea to create it in such a way that the judge will be bound by it. He next provided some details on the presentence investigation. The prosecutor, public defender, the judge and any affected victims are permitted to review it, but the document always remains confidential. Based on that report, the prosecutor and public defender will make a sentencing recommendation.

Judge Wood then referenced 3 Idaho statutes that govern sentencing in Idaho: **I.C. § 19-2521** (default sentence guidelines), **I.C. § 19-2601** (sentencing options) and **I.C. § 19-2513** (unified sentencing statute). He added that every felony sentence must have 2 parts: 1) fixed and 2) indeterminate portion, the combination of which must total the unified sentence.

Dir. Reinke outlined the flowchart he provided to the committee (see handout) that explains the process from the corrections point of view. He emphasized an addition made this year; the "Gain Core Presentence Investigation" which will provide IDOC with the opportunity to make a mental health evaluation much earlier in the process. In regards to specific sentences, there are 3 options: 1) community alternative placement program, 2) Rider or the 3) TC Rider.

Ms. Craven elaborated on the parole process and said the parole review is set 6 months before the inmate's parole eligibility day. At this meeting the hearing officer will meet with inmates and the Commission determines whether or not parole will be granted. If inmates do well on parole then they can eventually be discharged. She also said that if parolees violate their parole agreement, the problems can be treated or parole may be revoked, depending on the particular violation. She stated that 37% of parole violators have committed new felony crimes and emphasized that the parole board's central goal is to keep people in the least degree of incarceration possible.

Ms. Koole next briefly explained the process for appealing a conviction and reiterated that all of the factions represented by the panel remain involved throughout the criminal felony case, even when an offender is incarcerated.

Chairman Wills thanked the panel and explained a relaxed question and answer process for the remainder of the meeting.

In response to committee questions, **Mr. Reinke** explained that "TC" is "Therapeutic Community" and that is the longest retained jurisdiction option. **Ms. Bennetts** explained that a Grand Jury is used when there are vulnerable victims involved, such as in a child abuse case. **Judge Wood** added that Grand Jury usage varies across the state. The purpose of the Grand Jury proceeding is to determine if there is probable cause to charge the crime, but the Grand Jury does also have subpoena power for witnesses, if they feel that is necessary to make a determination of probable cause. In regards to a committee member question regarding the guilty plea agreement, it operates like this: state makes an offer to the defense based on their assessment of the seriousness of the offense and they communicate until they can reach an acceptable agreement. He said that generally, a judge is not obligated to accept a plea agreement with the exception of Rule 11, which allows the defendant to withdraw his/her guilty plea if the agreement is not accepted by the judge.

In regards to recidivism, **Ms. Tobias** said the system is getting better at communicating among agencies about recidivism. She said in recent years agencies have come together through the Idaho Criminal Justice Commission (ICJC), which has appointed a subcommittee to employ the "results first" model. The subcommittee is working with an economist to begin to understand the Idaho specific data and measure specific outcomes. **Dir. Reinke** added that the subcommittee is working the Pew Charitable Trust and other satellite states to study this. **Sheriff Raney** said there needs to be tools for agencies to use and emphasized there is a serious lack of mental health services in the corrections system.

Sen. Lodge thanked the panel and spoke about outlook for the future.

Chairman Wills said he feels it is very critical that we had the opportunity to learn about the CJC players and it is important to make decision in the committee that are based on knowledge of that system.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:43 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
BOLZ SUBCOMMITTEE
 Administrative Rules Review
 Upon Adjournment of the Full Committee
 Room EW42
 Wednesday, January 23, 2013

DOCKET NO.	DESCRIPTION	PRESENTER
	<u>Pending Fee Rules:</u>	
11-0201-1201	Idaho State Brand Board; Transfer, Renewal & Ownership/Transportation Fees	Larry Hayhurst, Idaho State Police Brand Inspector
11-0202-1201	Idaho State Brand Board, Livestock Dealer Fees	
	<u>Proclamation Rules:</u>	
06-0101-1202	Dept. of Correction, Department Fee Structure	Lorenzo Washington, Policy Coordinator, ID Dept. of Correction (IDOC) Director Brent Reinke, IDOC Mark Kubinski, Deputy Attorney General, IDOC

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Bolz
 Rep.McMillan
 Rep.Horman
 Rep.Patterson
 Rep.Ringo

COMMITTEE SECRETARY

Stephanie Nemore
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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
BOLZ SUBCOMMITTEE
Administrative Rules Review

DATE: Wednesday, January 23, 2013

TIME: Upon Adjournment of the Full Committee

PLACE: Room EW42

MEMBERS: Chairman Bolz, Representatives McMillan, Horman, Patterson, Ringo

**ABSENT/
EXCUSED:** None.

GUESTS: Henry Atencio & Lorenzo Washington, Idaho Department of Corrections (IDOC)

Chairman Bolz called the meeting to order at 2:53 p.m.

DOCKET NO. 11-0201-1201: **Larry Hayhurst**, Idaho State Brand Board, presented **Docket No. 11-0201-1201**. He explained that because the Brand Board has had to eliminate eight positions in recent years they decided there was a need for fee changes, he outlined fee changes. He said the staggered system for renewal is less burdensome to permittees and saves the Brand Board money as well. More specifically he said the brand renewal fee was changed from \$75.00 to \$100.00 which is comparable to what other state brand boards require.

In response to committee questions, **Mr. Hayhurst** said no negotiated rulemaking is required to change these fees because the Idaho Brand Board works for the industry and the Brand Board receives industry support before it goes forward with a change in fees.

MOTION: **Rep. Ringo** made a motion to recommend approval of **Docket No. 11-0201-1201** to the full committee. **Motion carried by voice vote.**

DOCKET NO. 11-1202-1201: **Mr. Hayhurst** presented **Docket No. 11-1202-1201**. He said this is not a brand law and rather he was placed in charge of administering the Idaho Livestock Dealers Licensing. He explained that the license fee increased from \$40.00 to \$100.00 because that amount is more in sync with what the licensing inspections cost and with what other states are charging.

In regards to committee questions, **Mr. Hayhurst** explained he thinks he already has the authority to promulgate rules. In regards to the burdens of maintaining inspection service, he said there are instances where an inspector will have a large area to inspect regardless of how many head of cattle/horses are there; inspectors are still required to go to all owners. He concluded that he believes the industry supports this rule.

MOTION: **Rep. McMillan** made a motion to recommend approval of **Docket No 11-1202-1201** to the full committee. **Motion was carried by voice vote.**

DOCKET NO. 06-0101-1202 **Lorenzo Washington & Director Brent Reinke** , Idaho Department of Corrections (IDOC), presented **Docket No. 06-0101-1202**. Dir. Reinke explained the IDOC rulemaking process and said this rule has been in effect since November 2012. He also introduced **Mark Kubinski**, Attorney General for IDOC. Dir. Reinke noted the purpose for these fees is to promote community safety.

Mr. Washington outlined the main changes to the rules this year. He said some of them are changes to fees used to assess services that are provided to offenders and the rules also establish restrictive areas in the district and clarify management of these areas. A department fee structure was added that more clearly describes service fees charged to offenders. He explained further that these are fees that have always been charged, but have never previously been codified. Another change provides a procedure for more effective identification for department visitors and defines restricted visitation areas. He pointed to Section 312, which is a change to a rule regarding disposition of property of offenders who have died. He next spoke about Section 511 which makes bringing contraband into correctional facilities a crime. He then explained the IDOC rulemaking process which is done via proclamation because I.C. § 20-212, exempts IDOC from the Idaho Administrative Procedure Act (IDAPA) in two ways: no public meetings and no negotiated rulemaking is required. He further explained the purpose to allow IDOC to meet day to day safety and security changes.

In response to committee questions, **Dir. Reinke** explained the fee charged to offenders who are in a work-release program has always existed and this rule is a codification of that fee. He also said the same fee structure is used for misdemeanor probation. In regards to the change to the notification date to persons receiving a deceased inmate's belongings, **Mr. Washington** said that in cases where the IDOC has difficulty locating these people, the change in the rule allows IDOC to hold that inmates belongings for up to 180 days, rather than the previous 30. **Mr. Washington** also clarified that if an inmate is indigent they would not be required to pay the fees contained in this rule. If the offender has money in their Offender Trust Account then money would be deducted from that account. **Henry Atensio**, IDOC, said the PSI supervision fees is a one-time fee that probably has about a 15% collection rate. He said the maintenance fees will impact inmates housed at the community work centers and there is a 100% collection rate for these fees. He then referenced the handout and said the remaining fees have community support and in regards to the percentage the inmate would have taken out, about 35% of the offenders hourly wage is going into the maintenance account.

In regards to question about IDOC rulemaking, **Mr. Washington** said the exemption from saves IDOC 60 days in the rulemaking process when compared to the more standard IDAPA rules.

MOTION: **Rep. Horman** made a motion to recommend approval of **Docket No. 06-0101-1202** to the full committee. **Motion was carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:34 p.m.

Representative Bolz
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, January 29, 2013

Subject	DESCRIPTION	PRESENTER
<u>RS21759C1</u>	Emergency Communications Grant Fees	Eddie Goldsmith, Emergency Communications Commission (ECC)
<u>RS21747</u>	Motor vehicles, fee, deposited fund	Chief R. David Moore, Blackfoot Police Department, ILETS Board Chairman
<u>RS21757</u>	Emergency Cell Phone	Skip Smyser, AT&T
<u>RS21585</u>	Dedicated funding source for drug enforcement	Capt. Charlie Spencer, ISP

Presentation:

Idaho Prosecuting Attorneys Association: Update to the Committee	Holly Koole, IPAA
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If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Stephanie Nemore
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Tuesday, January 29, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** None.
- GUESTS:** Dawn Peck, Idaho State Police (ISP); Rex Green, Idaho Independent Dealers; Holly Koole, Sandee Meyer, Kristin Friend & Bryan Taylor, Idaho Prosecuting Attorneys Association (IPAA); R. David Moore, Blackfoot Police Dept./ILETS; Gregory E. Moon, Weiser Police Dept./ILETS; Chris Allgood, Caldwell Police Dept./ILETS; Mark McBride, Idaho Falls Police/ILETS; Scott Marchaud & Jim Peterson, Pocatello Police Dept./ILETS; Michael F. Masterson, Boise Police; Steven Orr, Lewiston Police; Shane Turman, Rexburg Police Dept.; Craig Kingsbury & Brad Daniels, Nampa Police; R. Scot Haug & Pat Knight, Post Falls Police; Eddie Goldsmith, Emergency Communications Commission; Mike Chakarun, State May Commission; Amy Smith, Idaho Transportation Dept.; Charlie Spencer, Ralph Powell, Keith Hudgens & Sheldon Kelley, ISP; Skip Smyser, AT&T; Jason Kreizenbeck, Lobby Idaho, LLC; Mike Kane, Idaho Sheriffs Association (ISA)
- Chairman Wills** called the meeting to order at 1:30 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 17, 2013, meeting. **Motion carried by voice vote.**
- MOTION:** **Rep. Ringo** made a motion to approve the minutes of the January 21, 2013, meeting. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 23, 2013, meeting. **Motion carried by voice vote.**
- MOTION:** **Rep. Packer** made a motion to approve the minutes of the Sims Subcommittee meeting of January 17, 2013. **Motion carried by voice vote.**
- MOTION:** **Rep. Burgoyne** made a motion to approve the minutes of the Luker Subcommittee meeting of January 21, 2013. **Motion carried by voice vote.**
- RS 21759C1:** **Chairman Wills** invoked Rule 38 stating a possible conflict of interest but that he would be voting on the legislation.
- Eddie Goldsmith**, presented **RS 21759C1**. He said the New and Emerging Technologies Act propelled states to address funding needs for an enhanced emergency system. In 2008, a 25 cent grant fund was passed and counties could participate voluntarily. These fees currently provide funding needed to have an enhanced emergency system and the Emergency Communications Commission (ECC) is now starting the phase of next generation technology. He also said that 37 counties are currently participating and outlined the upgrade needs and said the additional 25 cents would provide 6.6 million dollars to get every county "Phase 2" compliant. He said the purpose of sunset clause is to remove all of old networks they have been using since 1969 and creates an IP network that gives them greater possibilities. He said there is now a need to receive text messages, video streaming and pictures and that currently, the system only handles voice and location information. He outlined some of the benefits of the upgraded system and

concluded by stating that without the removal of the sunset clause in Idaho Code Section 31-4819, the ECC won't reach next generation technology.

MOTION: **Rep. Bateman** made a motion to introduce **RS 21759C1**.

In response to committee questions, **Mr. Goldsmith** said most the counties that are participating are very concerned they are going to lose these grant fees, and if they do, they will be unable to pay monthly recurring fees and maintenance of system. He added that there is currently no money for upgrades and no money for a next generation IP network. **Chairman Wills** clarified that this legislation, when first enacted, gave the ECC grants to the counties and gave the authority to the commission to spend the grant fees. This new legislation is asking for continuation of that ECC fee and is not new fee legislation.

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

RS 21747: **Chief R. David Moore** presented **RS 21747**. He explained ILETS is the Idaho Public Safety Security System and the information contained in ILETS is tied to the Idaho Criminal Information System. He outlined the history and evolution of ILETS in Idaho and explained that cities and states pay user fees to keep it operating. He next said that current fees can't keep up with the upgrades and demands required of the system. He emphasized that the data contained in the system is a necessary part of police work and an increase in user fees may result in asking the officers to use the system less, which is a hazard to public safety. He said the request is for a \$5.00 transaction fee on all vehicle title transfers in Idaho.

In response to committee questions, **Chief Moore** explained the nexus between title fees and ILETS is that ILETS holds vehicle information, criminal history and drivers license information. He said there are 2.7 million vehicle checks done per year using ILETS and the majority of the use of ILETS would be for motor vehicles. He also said he met with the Vehicle Advisory Board who were opposed to these fees. In regards to committee concerns about changes to the bill from last year, he said the fee was reduced from \$8.00 to \$5.00. He next clarified that the 911 fee proposed legislation is unrelated to the ILETS system. He said ILETS is a computerized database and when it was created in 1971, it was a teletype system. Today the fee structure doesn't support the gains in technology and there is a need to integrate this funding into the system to make the necessary updates.

Dawn Peck, ISP, said there were 491,000 title transfers last year and the proposed budget would augment the title fees already charged. She indicated funds are currently being diverted from other programs within ISP in order to fund this system because it is so important. She explained the fee is a one time fee assessed when the title is transferred. The nexus to vehicles is found in I.C. § 19-2052, the statute that established ILETS. Additionally, Ms. Peck said federal funding used to support ILETS was \$180,000 annually, which paid for a lot of maintenance, but ILETS has not received this funding since 2012. She said there is a little money in the current budget dedicated to capital big improvements and the purpose of this legislation is to support ILETS maintenance which includes staff development pertaining to that system. She concluded by stating that the current required ILETS budget is \$1.75 million annually and current revenue is \$940,000 so ISP has been filling the gap. Additionally, there was a small reserve which will be depleted in three years.

In regards to the language, committee members clarified the term "title transfer" is in reference to used vehicles and "title application" refers to new vehicles.

MOTION: **Rep. Bolz** made a motion to introduce **RS 21747**. **Motion carried by voice vote.** **Reps. Sims** and **McMillan** requested to be recorded as voting **NAY**.

RS 21757: **Skip Smyser** presented **RS 21757**. He said he has been involved with 911 legislation since its inception in Idaho and over the years, the legislation has been tweaked in response to changes in technology. He said prepaid phones are not currently required to pay to use the 911 service, which is charged to those who use a cell phone with a monthly plan. He said the fee would be assessed at the point of sale and the purpose is to spread the fee across all users of the 911 system. He added that this type of legislation has already been passed in 26 states. He said there has been a lawsuit involving the Idaho Attorney General's office to address this, and the idea is to resolve the pending issue, though the legislation would not be retroactive.

MOTION: **Rep. Packer** made a motion to introduce **RS 21757**. **Motion carried by voice vote.**

RS 21585: **Capt. Charlie Spencer**, ISP, presented **RS 21585**. He explained this is a proposed addition of \$20 to all drug crime defendants. He said there is a need to ensure that ISP can enforce the state's drug statutes. He said typically local law enforcement agencies develop information about certain drug operations and then the agency runs out of money and looks to ISP for help. A dedicated funding source is needed to ensure continued enforcement an apprehension of these drug trafficking organizations. He added that the Idaho Sheriffs and Idaho Chiefs Association support this legislation.

In response to committee questions, **Capt. Spencer** recognized fine collection is below 100% and ISP would be at the bottom of the hierarchy established by the Idaho Supreme Court (ISC) for those agencies who receive violators' fees. He said the estimated funds gained as a result of this legislation would be \$180,000-\$200,000 per year. **Capt. Spencer** agreed to address committee concern over this legislation creating officer incentives to make arrests. In regards to the last sentence of the Statement of Purpose, **Capt. Spencer** said current general funds received have been insufficient in funding the personnel and estimated the amounts needed in the future. He indicated he would provide more information on repayment of fines thus far at the bill hearing if the RS was printed.

MOTION: **Rep. Burgoyne** made a motion to introduce **RS 21585**. **Motion carried by voice vote.**

Holly Koole, Idaho Prosecuting Attorneys Association (IPAA) explained that the purpose of the IPAA presentation is to provide a snapshot of what IPAA does. (see handouts) **Sandee Meyer**, Executive Director of IPAA, said IPAA is a private, nonprofit, nonpartisan organization, with 34 members, and elaborated on the IPAA membership composition. She outlined all topics addressed by IPAA over the previous year and in addition to technical support and training, their purpose is to develop a research manual, which is provided to law enforcement and to every judge in the state. She said their central goal is safety and to monitor all effects of criminal laws coming out of the legislature.

Greg Bower, Ada County Prosecutor, explained his desire to better the system and outlined the importance of serving victims. He also listed some examples of various capital cases he has worked on over the decades. **Brian Taylor**, Canyon County Prosecutor, spoke about the Nampa Family Justice Center which is a co-location of services; a place where a victim can seek refuge, divorce and family services, shelter, law enforcement, and meet with Health and Welfare. He told a story about a victim who used the Family Justice Center which allowed this victim to meet with everyone at one time, rather than having to rehash their story multiple times with each faction.

Mr. Bower spoke about specialty courts and said the Drug Court in Ada County is used to keep drug users out of penitentiaries and has been very successful. He next explained the drug court process. Ada County has the following specialty courts: Drug, Domestic Violence, Veteran's and Mental Health Courts. He outlined how the justice center works and how its use transforms the prosecutors ability to get cooperation of victims. **Mr. Taylor** spoke about gang activity in Canyon County, the creation of a SAUSA position has made it so gang members can be charged federally, saving Idaho money. This position has been effective in eliminating entire gangs and in significantly reducing gang activity since 2004.

Mr. Bower introduced **Kristin Friend**, Victim Coordinator, and explained her idea to use a facilities dog, **Sunday**, with victims to ease a victim through the criminal justice process. He provided some examples of uses for the dog and the dog has proved to be very calming for victims and is no cost to taxpayers.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:01 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, January 31, 2013

SUBJECT	DESCRIPTION	PRESENTER
	Report from Sims Subcommittee on Rules <u>Rules from the Idaho State Police</u>	Rep. Sims
Docket Nos.	11-1102-1201 , 11-1103-1201 , 11-1104-1201 , 11-1106-1201	
	Report from the Luker Subcommittee on Rules <u>Rules from the Idaho State Police</u>	Rep. Luker
Docket Nos.	11-0301-1201 , 11-0501-1101 , 11-1101-1201 , 11-1101-1202	
	Report from the Bolz Subcommittee on Rules <u>Rules from the Idaho State Police & The Idaho Department of Corrections</u>	Rep. Bolz
Docket Nos.	11-0201-1201 , 11-0202-1201 , 06-0101-1202	
RS21663	Liquor by the Drink	Lt. Bob Clements, Idaho State Police
HR 2	Change to House Rule 76	Rep. Luker
	<u>Presentation:</u> Idaho Criminal Justice Commission (ICJC): Update to Committee	Director Brent Reinke, Idaho Dept. of Corrections

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Stephanie Nemore
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, January 31, 2013

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** Rep. Burgoyne

GUESTS: (Temporarily missing sign-in sheet)

Chairman Wills called the meeting to order at 1:33 p.m.

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

MOTION: **Rep. Ringo** made a motion to approve the minutes of the Bolz Subcommittee meeting of January 23, 2013. **Motion carried by voice vote.**

MOTION: **Rep. Meline** made a motion to accept the report of the Rep. Sims Subcommittee on Rules containing **Docket Nos. 11-1102-1201, 11-1103-1201, 11-1104-1201 and 11-1106-1201.** **Motion carried by voice vote.**

MOTION: **Rep. Luker** made a motion to approve **Docket No. 11-1301-1201** and **11-1101-1201** with the exception of Subsection 91.01. **Motion carried by voice vote.**

MOTION: **Rep. Perry** made a motion to hold **Docket Nos. 11-0501-1101** and **11-1101-1202** in subcommittee at the call of the subcommittee chair. **Motion carried by voice vote.**

MOTION: **Rep. Bolz** made a motion to approve **Docket No. 11-0201-1201.** **Motion carried by voice vote.**

MOTION: **Rep. Bolz** made a motion to approve **Docket No. 11-0202-1201.** **Motion carried by voice vote.**

Rep. Bolz explained that the Idaho Department of Corrections does rulemaking differently and the rules come in the form of a proclamation. The motions must be made separately.

MOTION: **Rep. Bolz** made a motion to approve **Docket No. 06-0101-1202.** **Motion carried by voice vote.**

Vice Chairman Luker handed the gavel back to **Chairman Wills**.

RS 21663: **Lt. Bob Clements**, Idaho State Police (ISP), presented **RS 21663**. He said the proposed legislation cleans up the Idaho Code in order to address exceptions to the rules relating to specialty alcohol beverage licenses. In short, he said the changes enumerate the subsections in the statute.

In response to committee questions, **Lt. Clements** said there are several types of liquor licenses that are nontransferable and it is not necessary to list them as nontransferable because by definition, the license applies only to specific premises. He clarified that ISP is doing this because he believes it is their responsibility. Lt. Clements said he would provide the history of amendments to this statute in the future and then reviewed the license transfer process. If the licensee wants to transfer, the transferor would have to sign their privilege of that license to the transferee. If the license is nontransferable, it will clog the system because only one person would ever be able to use the license. Lt. Clements confirmed that these changes will not affect the administrative rules already heard in this committee.

MOTION: **Rep. Bolz** made a motion to introduce **RS 21663**. **Motion carried by voice vote.**

HR 2: **Vice Chairman Luker** presented **HR 2** and said this resolution amends House Ethics Rule 76. He explained that the current rule provides for an ad hoc ethics committee when the Speaker receives a complaint. Under the amended rule, the committee would have a 3-2 majority-minority composition elected by the majority and minority caucuses respectively. The Speaker would appoint a Chairman from the five person committee. He said the committee would then be called to session in confidence when a complaint is received. The rule outlines that the complaint would need to contain the particular charge alleged and the facts to support it. The committee makes a probable cause determination and then will have a public hearing on the issue if probable cause is found. The changes to the rule would also expand sanction options; previously the only options were reprimand or censure. Under the proposed changes, sanctions would include placing conditions on the censure options and expulsion as additional options.

In response to committee concerns over potential perception of partisanship in regards to the 2/3 split, **Rep. Luker** replied that the 2/3 split will represent a greater proportion of the minority party. He next explained that member election happens in a two phase process: In phase one, each caucus chooses a list of members, putting together a list of five from each. In phase two, from that list, the highest scoring people are chosen for the committee and the remainder are alternates.

MOTION: **Rep. Bateman** made a motion to send **HR 2** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Meline** and **Ringo** wished to be recorded as voting **NAY**.

Director Brent Reinke began a presentation on the Idaho Criminal Justice Commission (ICJC). (See handout) He explained the importance of the issues handled by the ICJC and introduced commission members. He next spoke about the subcommittees within ICJC. **Mr. Dan Chadwick**, Executive Director, Idaho Association of Counties, introduced **Sara Thomas**, State Appellate Public Defender. She explained that the Legislature created her position as a means of addressing the cost of the death penalty. Various presenters discussed the following issues: 1) upcoming proposed legislation, including bills addressing a uniform appointment of counsel, the juvenile's right to counsel and appointment of counsel-Guardian ad litem, and 2) creation of an interim committee through a proposed concurrent resolution. Ms. Thomas provided some examples of human trafficking in Idaho and said there is a gap in Idaho law that results in a failure to protect teenage girls because human trafficking doesn't provide for felony penalties. The upcoming 3-part legislation would make it a felony to use an underage person for prostitution, would require violators of that law to register as sex offenders and the money earned in the commission of that felony would be forfeited.

Ross Mason, chairman of the subcommittee on Children of Incarcerated Parents, said there is a new pilot program dedicated to improving lives of children with parents in prison and outlined three projects that would address this. Additionally, the children of incarcerated parents program is a tool that has been successful thus far.

Dir. Reinke outlined the duties of the Sexual Offender Management Board and said the Board has prepared a legislation package for next year. He outlined the enclosed documents.

Dir. Reinke concluded the presentation and said the Sexual Offender Management Board allows juvenile sex offenders to continue attending public school. **Ms. Harrigfeld** indicated she would provide the committee with additional information on treatment of juvenile sex offenders and recidivism rates for juvenile sex offenders versus adult sex offenders. She did indicate that the juvenile rate was around 30%.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:42 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, February 05, 2013

SUBJECT	DESCRIPTION	PRESENTER
RS21776C1	Eminent domain, damage assessment	Rep. Morse
RS21588	Criminal history checks, prints	Dawn Peck, Manager of Bureau of Criminal Identification, Idaho State Police (ISP)
RS21838	Sex Offender Registration Fee	Mike Kane, Idaho Sheriffs Association (ISA)
RS21739	Removal of date on emergency surcharge fee	Patti Tobias, Administrative Director of the Courts, Idaho Supreme Court (ISC)
RS21695C1	Police, forensic lab resources	Matthew Gamette, ISP Forensics Lab Improvement Manager
H 29	Additional District Judgeship positions	Patti Tobias, ISC
H 76	Trust deeds, invalid trustee's sale	Kris Ellis, Idaho Land Title Association
H 77	Controlled substances, fine, fund	Capt. Spencer, ISP

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Tuesday, February 05, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Rep. Perry
- GUESTS:** Dawn Peck, Leila McNeill, Matthew Gamette, Clark Rollins & Charlie Spencer, Idaho State Police; Judge Barry Wood & Patti Tobias, Idaho Supreme Court; Mike Kane, Idaho Sheriffs Association; Roger Seiber, Capitol West; Russell Westerberg, Rocky Mountain Power; Matt Wetherell, Parole Commission; Tony Smith, Idaho Land Title Association; Jim Lowe & Benjamin Kelly, Food Producers of Idaho; Jim Clark, JC & Associates; Dennis Takikuni, Idaho Farm Bureau; Miguel Legarreta, Realtors
- Chairman Wills** called the committee to order at 1:30 p.m.
- RS 21776C1:** **Rep. Morse** presented **RS 21776C1**. He explained the proposed legislation will amend I. C. § 7-711 and allow a landowner to recover actual costs when the condemning agency changes project plans after the initial offer in a condemnation proceeding.
- In response to committee questions, **Rep. Morse** provided an example of a situation this legislation is meant to remedy: it involves the issue of access where there is a landowner with property. He said the amendment will level the playing field and won't allow the condemning agency to shift those costs. Additionally, he confirmed the SOP should read Idaho Code section "7-711" rather than "7-712."
- As a means of clarification, **Rep. Morse** explained that the effect of the amendment would be to indemnify the landowner for the portion of legal costs that are undercut by plan changes.
- MOTION:** **Rep. Nielsen** made a motion to introduce **RS 21776C1** with the following changes to the Statement of Purpose: 1) line one, I.C. § "7-712", should read "7-711"; and, 2) "damage" should read "damages" in the last sentence before the fiscal note.
Motion carried by voice vote.
- RS 21588:** **Dawn Peck**, Manager, Criminal Bureau of Investigation, Idaho State Police (ISP), presented **RS 21588**. She said the Bureau is responsible for the criminal history repository which is based upon arrest fingerprints submitted to the Bureau from law enforcement agencies throughout the state. Next, she said the proposal has three purposes: 1) it will add the definition of Rap Back to clarify what the system does. 2) It will provide clear authorization for the retention of these prints to take advantage of the Rap Back Program and for humanitarian or latent matching purposes. 3) It will remove the word "serious" from the definition of misdemeanor in I.C. § 67-3001, which will remove confusion as Idaho does not have multiple levels of misdemeanor offenses.
- In response to committee questions, **Ms. Peck** explained "serious" should be struck because the reference to this rule has not been put into an agency rule yet, and this refers to the FBI definition of misdemeanor and is not the Idaho Code definition. She confirmed that a misdemeanor charge, and the associated fingerprints, would remain in an individual's record unless that person has been acquitted.

- MOTION:** **Rep. Burgoyne** made a motion to introduce **RS 21588**. **Motion carried by voice vote.**
- RS 21838:** **Mike Kane**, Idaho Sheriffs Association (ISA), presented **RS 21838**. He explained that this is not a court fee and will only be paid by sex offenders. He said this proposed legislation would change the current paper system to an electronic system, which is beneficial; because, the system would auto-update when an offender moves. He said federal funding for this service is running out, and with the desire to switch to an electronic system, offenders' registration fees would increase from \$40 to \$80. He said the electronic program is called "Offender Watch" and has the ability to transfer sex offender information between states. He indicated the counties and the ISA are in support of this legislation and ISP is not in opposition.
- In response to committee questions, **Mr. Kane** said this is not a court fee and there is an option to waive the fee for indigent offenders. He confirmed that this is a stand alone system, and in regards to where the fees go, Mr. Kane said currently the money is retained by each county for the cost of doing business. He indicated that this change is projected to raise approximately \$150,000 per year. He also confirmed that juvenile sex offender will also be required to pay these fees.
- MOTION:** **Rep. Nielsen** made a motion to introduce **RS 21838**. **Motion carried by voice vote.**
- RS 21739:** **Patti Tobias**, Administrative Director of the Courts, presented **RS 21739**. She said the proposed legislation would remove the sunset provision of the emergency source funding for problem solving courts. She elaborated by stating that these funds are needed to keep the current court programs in operation.
- In response to committee questions, **Ms. Tobias** said she elected to propose a removal of the sunset clause as a means of keeping the legislation simple.
- MOTION:** **Rep. Bolz** made a motion to introduce **RS 21739**. **Motion carried by voice vote.** **Rep. Sims** requested to be recorded as voting **NAY**.
- RS 21695C1:** **Matthew Gamette**, Idaho State Police (ISP) Forensics Lab Manager, presented **RS 21695C1**. He said ISP provides forensic testing at the request of law enforcement, prosecutors, and public defenders. He said the purpose of this legislation is to prevent a private expert, hired by a private attorney, the ability to perform research at the state lab because it is a misuse of state resources, increases the cost of lab accreditation and certification, and raises contamination concerns. He said ISP doesn't have resources, nor the statutory obligation to provide resources, for private use of the lab under court order.
- MOTION:** **Rep. Packer** made a motion to introduce **RS 21695C1**. **Motion carried by voice vote.**
- H 29** **Patti Tobias** and **Judge Barry Wood**, Idaho Supreme Court, presented **H 29**. Ms. Tobias said this bill adds three district judgeships, one each in Jefferson, Ada and Canyon County. She indicated that the effective date would be set on or after October 1, 2013, to correspond with the Idaho counties' fiscal year. She explained the counties play a role in the funding of the courts in Idaho. She said some judicial districts have experienced lots of population growth, and stresses on the courts have increased. Taxpayer money will be saved in reducing jail time for those awaiting trial because waiting times would decrease.
- Judge Wood** said district judges hear all felony trial, and all civil cases where the amount in controversy exceeds \$10,000. He said district judges are important because they ensure trials are fair, determine crime victim's rights, set restitution amounts, and determine sentencing. He provided some case examples of how certain cases are delayed because the courts are overburdened. He emphasized

that the district judges' role is important to all citizens. Ms. Tobias spoke about the fiscal note and that \$168,000 would go into the general fund next year.

MOTION: **Rep. Bateman** made a motion to send **H 29** to the floor with a **DO PASS** recommendation.

Ms. Tobias clarified that the request for the 3 district judge positions and the budget for those positions has already been submitted to The Joint Finance-Appropriations Committee (JFAC). Ms. Tobias confirmed that the fiscal impact of the legislation includes the cost of three new judges, court reporters, and the associated benefits for each.

VOTE ON THE MOTION: **Motion carried by voice vote. Representatives Bolz and Trujillo** will sponsor the bill on the floor.

H 76: **Kris Ellis**, Idaho Land Title Association, said this legislation will clarify when a rescission of the trustee's deed is recorded. It puts all affected parties in a status quo position as of the time the trustee's sale was held and not when the trustee's deed is recorded, which can be several days later.

In response to committee questions, **Mr. Jesse Hamilton**, Pioneer Title, said that in the situation when bankruptcy is filed shortly before a sale is to take place, there needs to be a mechanism to put everyone back in the position they had been in prior. He indicated that by the time the bank executes the trustee's deed, this could be up to three weeks after the time of the trustee's sale, and the legislation would now mandate that the title would be returned at the time of the trustee's sale.

MOTION: **Rep. Packer** made a motion to send **H 76** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Anderst** will sponsor the bill on the floor.

H 77: **Capt. Charlie Spencer**, Idaho State Police (ISP), presented **H 77**. He said a dedicated funding source is needed to ensure that ISP Detectives have a reliable funding source to conduct controlled buys of narcotics, surveillance tools and other investigative equipment to ensure continued success in criminal prosecution of drug trafficking organizations in Idaho.

In response to committee questions, **Capt. Spencer** confirmed that 85% of crimes committed in Idaho are drug related. He said that the anticipated revenue received from this change would be \$140,000, even though the amount stated in the bill is \$293,000. **Mr. Kane** said that the Idaho Sheriff's Association (ISA) supports this bill. He noted that local law agencies rely on ISP to help with drug investigations because of the need for sophisticated equipment.

In regards to the amount and dispersion of the fines, **Mr. Kane** said that fines are not levied and the money goes into the general fund, rather than to the agencies individually.

Michael Henderson, Idaho Supreme Court counsel, said that 14% of the monies gathered go to Physician Orders for 48 Scope of Treatment (POST) and 84% will go to the general fund. There was committee concern that this method of funding for Idaho State Police (ISP) is not the proper route and is rather a general fund issue.

Mr. Henderson said there is an annual review of changes and Idaho State Police (ISP) would receive this money only after it was disbursed to five other fee designations. In regards to the ability of offenders to pay their fines, he said it would be the probation officer's discretion to file a probation violation over nonpayment. **Capt. Spencer** said the dedicated funding source is needed to conduct criminal drug investigations and funding for this will determine the level of service that can be provided to Idaho's citizens. He said the amounts owed are per conviction, and should be viewed as a fee or assessment rather than a fine. He also said the court would have this discretion to suspend the fine which would not affect the ability of the fine to be included within a payment plan for the offender.

MOTION: **Rep. Meline** made a motion to send **H 77** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION : **Rep. Sims** made a motion to send **H 77** to the floor with **NO** recommendation.

Chairman Wills spoke about the effect of sending with no recommendation and spoke to the merits of the bill. Committee members commented that there is a cost of doing government, the prioritization of the collection, and that there is no assurance that the collection will be at the bottom of the priority scale. Additionally, there was concern over the effect of parole and probation violations and those that are trying to comply but are without money will be found to be in violation of their probation/parole agreement. There was additional comment that this should be a general fund/JFAC issue.

AMENDED SUBSTITUTE MOTION: **Rep. Packer** made an amended substitute motion to send **H 77** to **General Orders** to add a two-year sunset clause.

UNANIMOUS CONSENT REQUEST: **Rep. Sims** made a unanimous consent request to withdraw the substitute motion. **There being no objection, the request was granted.**

AMENDED SUBSTITUTE MOTION: **Rep. Packer** made a motion to **HOLD H 77** in committee.

Rep. Packer withdrew the amended substitute motion to hold H77 in committee. **Rep. Packer** will sponsor the bill on the floor.

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

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:03 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, February 07, 2013

SUBJECT	DESCRIPTION	PRESENTER
RS21692C1	Guardianship/conservatorship	Rep. Burgoyne
RS21686	Corrections board, pardon/bond return	Matt Wetherell, Hearing Officer, Idaho Parole Board
RS21748C1	Assault/battery, additional provisions	Rep. Malek
	<u>Presentation:</u> Idaho Department of Corrections	Director Brent Reinke, IDOC

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 07, 2013
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** None.

GUESTS: Dawn Peck, Idaho State Police; Matt Wetherell, Parole Commission; Emily McClure, IMA; Fernando Castro & Darcy Naser, Dept. Health & Welfare; Cathy Hart, ID Commission on Aging; Mark Kubinski, ID Dept. of Corrections/Attorney General's Office; Holly Koole, Idaho Prosecuting Attorneys Association; Christine Pesan, Criminal; Joe Rain, Self Advocate

Vice Chairman Luker called the meeting to order at 1:39 p.m.

RS 21692C1: **Rep. Burgoyne** presented **RS 21692C1** and said this proposed legislation changes to 6 code sections and 3 titles. He said the purpose of the legislation is to enhance protections for vulnerable adults by obtaining background information on guardians and conservators as per the court's discretion. Additionally, he said the purpose of a criminal background check is not to automatically disqualify an applicant from serving as a guardian or conservator but is rather a safety measure to protect vulnerable adults. He said there would be no fiscal impact to the state because the person seeking appointment will pay the \$40 background check cost.

Rep. Burgoyne next outlined the various section changes. He said the first change would allow, but not require, the court to order background checks on anyone who will live in the residence with an incapacitated adult. Next, he said the changes in section 2, mandates that anyone who wishes to be a guardian or conservator must undergo a criminal history and background check prior to appointment. He noted that section 3 changes would allow a guardian ad litem to request a background check, the court would review the request and would have discretion to order one. He said the changes to section 4, which applies to both incapacitated and developmentally disabled adults, authorizes the Department of Health and Welfare to conduct background checks, make the findings of the those checks available and creates the authority to promulgate necessary rules. He said the changes in sections 5 & 6 have the same effect as in sections 1-3, but pertain to developmentally disabled adults rather than incapacitated adults. Additionally, the term "developmentally disabled person" is changed to "person with a disability" to phase out terminology that defines stakeholders by their disability.

In response to committee questions, **Rep. Burgoyne** said a guardian or conservator may not be appointed unless there is a background check completed, but the check is discretionary for those residing in the home with the developmentally disabled adult. He confirmed that a guardian/conservator is a position of trust and there has been abuses in the past, so even in the case there is a family relationship, the court still needs to know that person will pass the background check. In regards to a situation where a guardianship has already been entered, and there is a material change to information that affects the background check, the guardian has a duty to update their information with the court. Additionally, each guardianship proceeding stands on its own, requiring a separate background check for each.

MOTION: **Rep. Nielsen** made a motion to introduce **RS 21692C1**. **Motion carried by voice vote.**

RS 21686: **Matt Wetherell**, Hearing Officer for the Idaho Commission of Pardons and Parole presented **RS 21686** and said the purpose of the proposed legislation is to clean up the bond process. He said that originally, bond was set up to fund the extradition of parole violators if they fled out-of-state, especially in light of the fact that approximately 25% of parolees are released out-of-state. He next indicated that currently, there is no time frame for requesting a refund of the bond, which makes it difficult to manage. He said this legislation would allow a person who has been discharged from parole 12 months to request a refund of bond monies and after that, the monies would be forfeited.

MOTION: **Rep. Bolz** made a motion to introduce **RS 21686**. **Motion carried by voice vote.**

RS 21748C1: **Rep. Malek** presented **RS 21748C1**. He said this legislation proposes an addition of "medical care providers" to a list of personnel who may be also battered while working in a hospital. He outlined the problem that spawned this legislation: In emergency rooms in Idaho, persons can become violent, and hospital employees are not protected while they are providing health services. He next provided many examples of this occurring in hospitals in Kootenai County, and throughout Idaho. He said the effect of legislation would "raise the bar" for battery offenses in the medical setting against professionals who provide health care and are battered in the course of their work.

In response to committee questions, **Rep. Malek** said each of the protected individuals in the statute will receive the same standard of protection. He also noted that the purpose of the proposed change is not to create a protected class, but rather that it will protect those persons in a public service role. In regards to committee concern over those with a mental illness potentially being charged as a felon due to this addition, he answered that the same argument can be made for all felonies. The committee commented that those that are mentally ill are likely to be found incompetent and the criminal rules in Idaho would prevent prosecution of those individuals.

MOTION: **Rep. Trujillo** made a motion to introduce **RS 21748C1**.

In response to committee questions regarding the possibility of those suffering from severe mental illness could act in ways that would result in being charged with this offense, **Rep. Malek** responded that intent would need to be proven in most crimes, except per se crimes, and the individual would need to be mentally competent to be prosecuted. He also said there would be no fiscal impact to the general fund, and agreed to provide information on possible fiscal impact of the legislation if printed.

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

Director Brent Reinke, Idaho Department of Corrections (IDOC), said the purpose of his presentation was to provide a yearly IDOC update to the committee. He said IDOC's priorities this year are staff, population and balla/mental health. Walter Balla was an inmate who filed a suit which, after 31 years, is finally wrapping up due to an agreement that IDOC is making changes at ISCI that will be monitored until November 2014. If all goes well, then the case will be closed. He indicated that IDOC wants to invest in their programs in a way that will minimize lawsuits and ultimately save the department money. He said the IDOC employs 1550 employees and there is a great need to care for those employees which will involve strategies that will encourage greater employee retention. He next provided some figures on cost of inmates, probationers and parolees. He said there are 11 prisons and 4 community work centers, with a total of 8,000 offenders. Additionally, there are 34 county jails.

Dir. Reinke next outlined some Department of Corrections terminology, and explained that an inmate is someone with a fixed prison sentence, retained jurisdiction means that a judge retains oversight over the individual (commonly termed "rider") for 90-365 days and if the individual is successful, they will stay on probation rather than serve an extended prison sentence. Also, a parole violator is a parolee who violates the terms of his/her parole agreement and returns to prison. In regards to prison population, he said the goals are to stabilize, in order to reinvest in employees. As a means of driving down population, IDOC has used a violator survey to determine what went wrong. He concluded by saying that 27% of the current prison population has some sort of mental health need which is risky and the department is making strides at addressing mental health issues.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:32 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED AGENDA #4
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, February 11, 2013

SUBJECT	DESCRIPTION	PRESENTER
RS21688C1	Examination of case and discharge	Dan Chadwick, Idaho Criminal Justice Commission (ICJC)
RS21689	Guardian ad litem, counsel	
RS21690C1	Juvenile corrections/counsel rights	
RS21936	Judicial Review, board decisions	Mike Kane, Idaho Association of Counties
RS21920C1	Motor vehicles	Chief R. David Moore, Blackfoot Police Dept./ILETS Board
RS21970	Judgment, terms of confinement	Rep. Trujillo Rep. Malek
RS21903C1	Jurors, mileage and per diem	Rep. Gannon Rep. Sims
RS21979	Judgment, sentence extension	Rep. Kauffman
RS21971	Driver's licenses, permittees	Mike Kane, AAA

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Stephanie Nemore
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Monday, February 11, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** None.
- GUESTS:** Dawn Peck, ISB; Sara Thomas, SAPD/CJC; Jeff Lavey, ICOPA; Jared Hoskins, ICJC; Clark Rollins, ISP; R. David Moon, Blackfoot PD/ILETs; Megan Moore, Blackfoot High School; Sharon Harrigfeld, IDJC; Nancy Bishop, DAG/IDJC; Scott Merchand, Pocatello Police; Russ Roper, Monxpelier Police; Raeleen Weiton, Rex Green, Idaho Independent Auto Dealers; Mike Kane, ISA/IAC/AAA, Chris Allgood, Caldwell Police/ILETs; Charles Spencer, ISP; Holly Koole, IPAA; Jan Sylvester; Tony Smith, Benton Ellis; Dain Johnson; Andrea Urie, State Dept of Ed; Lyn Darrington, State Farm Insurance Co.; Paul Jackson, Farmer's Insurance Group.
- Chairman Wills** called the meeting to order at 1:30 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 29, 2013 meeting. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 31, 2013 meeting. **Motion carried by voice vote.**
- RS 21688C1:** **Dan Chadwick**, chair of subcommittee on the Public Defender (PD) System, under Idaho Criminal Justice Commission (ICJC), presented **RS 21688C1** stating this proposed legislation relates to the public defense system. He said Idaho counties put \$18 to \$20 million per year into the system. He said, in Section 1, there are three significant changes. 1) creates a new definition of PD, it removes PD and inserts "defending attorney"; 2) this deletes "needy" and inserts "indigent" persons terminology; and 3) gives a definition of "serious crimes". Mr. Chadwick reviewed other technical changes in the proposed legislation.
- MOTION:** **Rep. Packer** made a motion to introduce **RS 21688C1**.
- In regards to a question about indigency, **Mr. Chadwick** said the hardship would be determined by the judge, whether it is the individual or the family.
- VOTE ON THE MOTION:** **Motion carried by voice vote.**
- RS 21689:** **Dan Chadwick**, presented **RS 21689** which relates to appointment of a Guardian ad litem (GAL) in the Child Protection Act, and when a Public Defender (PD) is to be appointed. In any proceeding for a child under 12, at the court's discretion, counsel may be appointed to represent the child as well. If the child is older than 12, counsel may be appointed, and may appoint counsel for the GAL.
- MOTION:** **Rep. Meline** made a motion to introduce **RS 21689**. **Motion carried by voice vote.**

RS 21690C1: **Dan Chadwick** presented **RS 21690C1**. He said there are several substantive changes. Section 1: diversions used for juveniles, whatever juveniles say in context of diversion will not be used against them in any further proceeding. Section 2: when juveniles are entitled to be represented by an attorney, they will be detained or confined throughout the course of the proceeding and entitled to the same representation as an adult, including investigators. He said juveniles can waive the right to counsel; however, it requires waiver to be in writing on the record. There are also circumstances where a waiver is not allowed.

In response to committee questions, **Mr. Chadwick** explained that these are juvenile, criminal acts.

MOTION: **Rep. Bolz** made a motion to introduce **RS 21690C1**. **Motion carried by voice vote.**

RS 21936: **Mike Kane**, Idaho Associations of Counties, presented **RS 21936**. He reviewed the background on county commissions which serve two functions in the state: 1) executive function; and 2) quasi-judicial function. He said this statute was passed in 1993, because it was unclear what could be appealed.

MOTION: **Rep. Meline** made a motion to introduce **RS 21936**. **Motion carried by voice vote.**

RS 21920C1: **Chief David Moore**, Blackfoot Police Department and Chairman of ILETs Board presented **RS 21920C1**. He explained that this system provides data to officers, which is necessary to do their jobs effectively and safely. This system was first established in 1971, and ILETs handles millions of transactions per year. He said it is currently funded by the agency that uses it. The request is for an increase of \$4 to be added to the vehicle title transfer fees for all motorized vehicles. He explained the nexus between ILETs and title transfers. He indicated he is supported by several agencies and associations, and this is important for the safety of the citizens of Idaho.

MOTION: **Rep. Bateman** made a motion to introduce **RS 21920C1**.

In regards to the \$1 million figure listed on the Fiscal Note, **Chief Moore** said this amount would be adequate to sustain the fund.

VOTE ON THE MOTION: **Motion carried by voice vote. Reps. Sims and McMillan** requested to be recorded as voting **NAY**.

RS 21970: **Rep. Trujillo** presented **RS 21970**. She said this proposed legislation would increase the mandatory minimum sentence to 25 years for crimes against children under 12 years of age.

In response to committee questions, **Rep. Trujillo** said 47 other states use the 25 year minimum, and the recidivism rate on sex offender cases is about 69% which would be reduced by adding a higher minimum sentence.

MOTION: **Rep. Bateman** made a motion to introduce **RS 21970**. **Motion carried by voice vote. Reps Meline and Ringo** wished to be recorded as voting **NAY**.

RS 21903C1: **Rep. Gannon** presented **RS 21903C1**. He said the purpose of this proposed legislation is to raise the pay for jurors in Idaho, which has not be raised since 1968. He said county commissioners will have the discretion to pay up to \$50 per day.

MOTION: **Rep. Sims** made a motion to introduce **RS 21903C1**. **Motion carried by voice vote.**

RS 21979: **Rep. Kauffman** presented **RS 21979**. He said the purpose of the proposed legislation is to enable judges to render harsher sentences for persons convicted of offenses against older persons, aged 65 and over. He said the new section would cover 16 different crimes added to the statute. He said the State Prosecutors Association, FOP, and State Sheriffs Association are in support.

MOTION: **Rep. Nielsen** made a motion to introduce **RS 21979**. **Motion carried by voice vote.**

RS 21971: **Mike Kane**, AAA Idaho, presented **RS 21971** regarding Class D (learner's permit) drivers. He said the proposed legislation would not allow Class D drivers to operate a cell phone to call or text. Class D drivers have more crashes per mile of any other age group, and the fatality rate is 2.5 times higher than that of other age groups. He said 50% of Class D drivers admitted to reading text messages while driving within the last 30 days. In regards to penalty, Class D drivers would have to start the learner's permit process over from the beginning. This is supported by law enforcement and insurance agencies.

MOTION: **Rep. Ringo** made a motion to introduce **RS 21971**. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:45 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, February 19, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>H153</u>	Jury Selection	Rep. John Gannon Rep. Kathy Sims
<u>H101</u>	Criminal History Records	Dawn Peck, ISP
<u>S1016</u>	Producer Licensing/Bail Agent	Michael Henderson, Idaho Supreme Court
<u>S1017</u>	Magistrate Division Proceedings IDJC Presentation	Michael Henderson Sharon Harringfeld, IDJC

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

Danelle Heath
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Tuesday, February 19, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** None.
- GUESTS:** Dawn Peck, Idaho State Police; Michael Henderson, Legal Counsel, Idaho Supreme Courts; Kevin Werre, Big Twin BMW; Sharon Harringfeld, IDJC; and Clark Rollins, ISP.
- Chairman Wills** called the meeting to order at 1:30 p.m. He announced the substitute page, **Jenevieve Mingas**.
- MOTION:** **Rep. Ringo** made a motion to approve the minutes of the February 7, 2013 meeting, with the following correction suggested by Rep. Packer: on Page 2, Paragraph 4, Line 2, "...list of personnel who may be 'too' battered...", should read "...list of personnel who may be 'also' battered..." **Motion carried by voice vote.**
- H 153:** **Rep. John Gannon** presented **H 153** stating that jury pay has not been raised since 1969, while the salaries of others in public service have increased substantially since that time. He said that while this legislation does not mandate that the counties pay more, it allows the counties, at their discretion, to pay \$50/day.
- Rep. Sims** stated that it is difficult to get people to serve on a jury currently, which she believes may be caused by the travel expense to service pay ratio of those in rural communities.
- MOTION:** **Rep. Packer** made a motion to send **H 153** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Gannon and Sims** will sponsor the bill on the floor.
- H 101:** **Dawn Peck**, Manager, Bureau of Criminal Identification, Idaho State Police, presented **H 101**. She stated that this legislation has three purposes: 1) it adds the definition of RAP Back; 2) in the definition of retainable offenses, removes the word "serious" from the definition of misdemeanor; and 3) changes in I.C. 67-3008 provide clear authorization for the retention of prints to take advantage of the RAP Back program, utilized for both humanitarian and criminal justice purposes.
- In response to several committee questions, **Ms. Peck** explained that although there isn't currently a rule identifying the word "serious", Idaho State Police is working on a comprehensive re-write of the rules which will define a serious misdemeanor. Responding to committee concern that removing the word "serious" would include a host of small infractions, Ms. Peck stated they are only interested in incorporated Misdemeanors reported on a finger print card and Felonies, not infractions, and reiterated how important having a complete criminal history record is to the users of the data. She further explained that anyone who is ever finger printed, for any reason, including those finger printed for a position of trust, would be included in the system.
- In response to a question regarding "humanitarian purposes", **Ms. Peck** explained that humanitarian purposes includes identifying an unidentified body/missing person.

Responding to questions regarding removing prints from the system, **Ms. Peck** stated that it is possible to have your fingerprints expunged from the system through written request. She also said that the comprehensive re-write of the rules would lay out the process for doing so and ISP plans to model their data base after the FBI.

ORIGINAL MOTION:

Rep Burgoyne made a motion to send **H 101** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION:

Rep. Perry made a substitute motion to **HOLD H 101** in committee.

VOTE ON SUBSTITUTE MOTION:

Chairman Wills requested a **roll call vote** on **H 101**. **Substitute Motion carried by a vote of 11 AYE and 6 NAY. Voting in favor** of the substitute motion: **Reps. Luker, Nielsen, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Patterson and Trujillo. Voting in opposition** to the substitute motion: **Reps. Bolz, Packer, Burgoyne, Meline, Ringo and Wills.**

S 1016:

Michael Henderson, legal counsel for Idaho Supreme Court, presented **S 1016** stating that this is one of a series of bills that the Supreme Court has recommended in its annual report concerning defects in the law. He said this legislation would repeal the now obsolete provision that states "A bail agent's license filed with the clerk of the district court is deemed proof that such bail agent is licensed pursuant to this chapter." I.C. § 41-1039(3). Clerks can now verify license status of a bail agent but viewing the Department of Insurance web site, which gives the most current information.

MOTION:

Rep. Bateman made a motion to send **S 1016** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Horman** will sponsor the bill on the floor.

S 1017:

Michael Henderson, legal counsel for Idaho Supreme Court, presented **S 1017** stating that this is a short bill that repeals Idaho Code Sections 19-3939 through 19-3944. These statutes outline the procedure of appealing a misdemeanor conviction from magistrate to the district court. He stated that long ago if you appealed a conviction to district court, you had a Trial De Novo and that is not the way the courts currently proceed. These sections are now obsolete, out dated and conflict with Idaho Criminal Rules. He said this legislation would repeal the outdated statutes and set forth the proper procedure to be followed in these appeals.

In response to committee questions from, **Mr. Henderson** explained that unless a person waives their right to a jury trial, they always get one, and it is a jury of your peers who make a decision on the facts, not the judge. He further explained that when appeals are made, they are usually a question of rule or procedure.

MOTION:

Rep Bolz made a motion to send **S 1017** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Patterson** will sponsor the bill on the floor.

Sharon Harringfeld, Director, Idaho Department of Juvenile Corrections (IDJC), reviewed the progress of IDJC. She stated that IDJC currently has 315 juveniles in its custody. She stated that the goals of the Behavioral Health Resources System are to serve juveniles at the community level; intervene early to address mental health and substance abuse disorder issues; maximize positive outcomes and evaluate their results. They are meeting those goals. With funding help, IDJC has been able to meet the needs of 50% of the juveniles in their custody at a local level. She said that the JJ Substance Use Disorder Services program has served 900 juveniles and of those discharged, 60% of those have not committed a new crime a year later, demonstrating that the program is a success. She spoke about the many programs available for juveniles now, thanks to state funding. She stated that there have been 5,000 less arrests than in the past ten years, a clear indication

that the system is working. She said the best investment you can make in crime prevention is to fund juvenile corrections.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:30 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Thursday, February 21, 2013

SUBJECT	DESCRIPTION	PRESENTER
H125	Guardianship/Conservator	Rep. Burgoyne
H102	ISP- Forensic Services	Matthew Gamette, Lab Improvement Manager, Idaho State Police
H105	Sex Offenders	Mike Kane, Idaho Sheriff's Association
H103	Emergency Surcharge Fee	Patti Tobias, Idaho Supreme Court Judge Wood, Idaho Supreme Court
H104	Eminent Domain/Damage Assessment	Rep. Ed Morse

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 21, 2013

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry (Smith), Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** Rep. Malek

GUESTS: Mike Kane, ISA; Dawn Peck, ISP; Ferando Castro, DHW; Bob Aldridge, TEPI; Noll Garcia, Idaho Self Advocate Leadership Network; Christine Picaui, Idaho Council on Developmental Disabilities (ICDD); Roger Seiber, Capitol West; Dorothy Snowball; Tom Ball, SAIN; Matthew Gamette, ISP; Amanda Holley, ICDD; Mark Snowball; Dina Flores, Disability Rights Idaho; Rich Hahn, Idaho Power; Steve Prill, ACHD; Kim Gourley, Idaho Power Company; Rep. Ed Morse; Ed Guerricabetia, Davison Copple, Copple & Copple; and Monica Hopkins, ACLU.

Chairman Wills called the meeting to order at 1:30 p.m. He welcomed the audience and announced new member, **Rep. Chris Smith**, (substitute for **Rep. Perry**). **Chairman Wills** turned the gavel over to **Vice Chair Rep. Luker**.

MOTION: **Rep. Bolz** made a motion to approve the minutes of the February 5, 2013 and February 11, 2013 meetings. **Motion carried by voice vote.**

H 125: **Rep. Burgoyne** presented **H125**. He said the primary focus of the legislation is to require new guardians/conservators of vulnerable adults to disclose civil judgments, bankruptcy filings and to submit to a criminal background check when being considered for appointment. He said the Idaho Department of Health and Welfare (IDHW) would conduct the background checks, at the expense of the individual seeking appointment and would submit the reports to the courts. He stated that a person seeking appointment does not automatically pass or fail, the court will take the circumstances into consideration and appointment will be at the court's discretion. He said institutions and commercial entities would be exempt from disclosing civil judgments and bankruptcies and are exempt from the background check requirement as well. He said this bill is the result of two years of effort and is supported by several state agencies, including Trust and Estate Planning Professionals of Idaho (TEPI).

Fernando Castro, IDHW, in response to questions, assured the committee that there is not currently a backlog of background checks, and this legislation will not create a backlog at IDHW.

In response to questions, **Bob Aldridge** said this statute covers both guardians and conservators. He said part of the structure for conservatorship will make sure that there are no Trusts or Powers of Attorney on file that would suffice in lieu of a conservatorship/guardianship.

Noll Garcia, The Idaho Self-Advocate Leadership Network, testified **in support** of **H 125**. He said this legislation, if passed, will prevent people with certain criminal backgrounds from becoming guardians to people who may not be able to protect themselves. He said people with disabilities have the right to be free from harm and he believes this legislation will, in a small way, help to alleviate some harm caused to people with disabilities.

Christine Pisani, Program Specialist, Idaho Council on Developmental Disabilities (ICDD) testified **in support** of **H 125**. She said in guardianship, the government strips a person of all of their rights and places them under the authority of another person. When this becomes necessary, the government should take some basic steps to insure that the vulnerable adult is not being placed under the authority of a guardian who is unfit or even a threat. She said when a person asks the court to give them complete control over another human being, they should be willing to give the court access to the information it needs to make that determination. She said people with disabilities and elders are more vulnerable to victimization and abuse and gave supporting statistics. She said ICDD supports **H 125** as it further protects vulnerable adults.

Dina Flores-Brewer, Disability Rights Idaho (DRI), testified **in support** of **H 125**. She said that background checks won't stop all the abuse of vulnerable adults but it is a good tool to help determine appropriate appointment and DRI supports this basic step of protecting disabled people.

Thomas Ball, an individual, testified **in support** of **H 125**. He said there are many misuses of guardianship and he talked about how having mandatory background checks is really a moral issue, not a financial one. He said most employers require you to undergo a background check when you apply for a job and guardianship is a very important job.

MOTION: **Rep. Packer** made a motion to send **H 125** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

H 102: **Matthew Gamette**, Lab Improvement Manager, Idaho State Police (ISP), presented **H 102**. He said ISP exists to provide support to all state and local law enforcement. He said that currently private experts are allowed to use state facilities to reanalyze evidence and this creates lab accreditation and productivity issues. Labs, in essence, shut down with a private consultant is utilizing the facilities which is a drain on the system. He said that ISP does not have the statutory obligation nor the resources to allow private parties to use the labs. He said this bill would protect the integrity of laboratories, prevent contamination of evidence and would specifically prohibit private forensic consultants from using state owned forensic laboratory facilities, with the exception of ISP approved subcontractors.

MOTION: **Rep. Trujillo** made a motion to send **H 102** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** will sponsor the bill on the floor.

H 105: **Mike Kane**, Idaho Sheriff's Association, presented **H 105**. He said this bill proposes an electronic monitoring of sex offenders which would be funded by increasing the \$40. registration charge for sex offenders to \$80.. Currently, all registration is handled in paper and sent to a central registry at ISP. When a sex offender moves, he/she must notify the state police and then they will get back to the Sheriff of the county where the offender is relocating—this paper process takes time. The new system would make all the information available immediately, with no wait time. The registration process is currently funded by federal grants that are falling off. When the grants expire, the expense will fall on the property tax payers' shoulders. The intent of this bill is to make the sex offenders pay for themselves instead of the financial burden of their monitoring being placed on the tax payers. The new system would also allow electronic information sharing from other states. It will also help the offenders as they will be notified when it is time to reregister, saving them from a felony charge for failure to register.

In response to questions, **Mike Kane** said there are currently 3,900 offenders in the state. \$40 x 3,900 is a bit over \$150,000 which they believe is adequate to run the system. Watch Systems is the vendor they are looking at. He said that "offender" refers to sex offenders only. He said the information in the new system will contain much more than just names and addresses, it will include prior criminal history, tattoos, etc. This information would also feed into ILETs.

Mark Snowball, a registered sex offender, testified **in opposition** to **H 105** stating that deputies have refused to waive his registration fee for indigency, even though he was without a job or money and was residing in a halfway house. He said he is concerned that offenders already have difficulty paying the current registration fee and is afraid they will incur new criminal charges for failure to register simply due to lack of funds to pay the registration fee.

Monica Hopkins, executive director of ACLU of Idaho, testified **in opposition** to **H 105**, stating the new criminal charges which will be made against offender who are financially unable to reregister at the higher registration fee will place a burden on the criminal justice system.

MOTION: **Rep. Bateman** made a motion to send **H 105** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bateman** will sponsor the bill on the floor.

H 103: **Patti Tobias**, Idaho Supreme Court, presented **H 103**. She said **H 103** repeals the sunset clause. She said the courts were kept open through the emergency surcharge during the fiscal fail and the general fund has not recovered and the needs remain. The court services cannot remain at the current levels without the surcharge. She said she supports repealing the sunset clause in lieu of extending the surcharge because she trusts the Legislature, the judicial branch and the budgeting process.

In response to questions **Ms. Tobias** said there was a lot of discussion on how much to put on each charge in the conception of this bill but in the end all they were concerned about was the bottom line and they needed the money. Three years ago legislators determined that the best allocation of the funds and the best approach to generate \$3.4 million were those amounts. She said collection rate of fees on infractions are about 95%, misdemeanors are about 81-82% and felony collections are much lower as a lot of them are incarcerated.

MOTION: **Rep. Trujillo** made a motion to send **H 103** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION:

Rep. Nielson made a substitute motion to send **H 103** to General Orders, with a committee amendment attached of two years.

AMENDED SUBSTITUTE MOTION:

Rep. Wills made an amended substitute motion to send **H 103** to General Orders with a committee amendment of a 5 year sunset clause.

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

ROLL CALL VOTE ON THE AMENDED SUBSTITUTE MOTION:

Chairman Wills requested a roll call vote on **H 103**. **Amended Substitute Motion failed by a vote of 6 AYE and 10 NAY. Voting in favor of the motion: Reps. Nielsen, Bateman, McMillan, Sims, Dayley and Wills. Voting in opposition to the motion: Reps. Luker, Bolz, Perry, Horman, Packer, Patterson, Trujillo, Burgoyne, Meline, and Ringo.**

VOTE ON THE SUBSTITUTE MOTION:

Substitute Motion failed by voice vote.

VOTE ON THE ORIGINAL MOTION:

Motion carried by voice vote. Reps. Nielson, Sims and Dayley requested that they be recorded as voting **NAY. Rep. Perry** will sponsor the bill on the floor.

H 104:

Rep. Ed Morse presented **H 104**. He said this legislation is an addition to a condemnation statute. It as a provision, in Paragraph 7, which outlines the costs of condemnation. He is a surveyor and has seen plan changes used as a weapon and a tool to mitigate damage. He said landowners are entitled to just compensation after condemnation, they must be made whole, the cost of which is substantial. Some states have enacted laws/provisions to pay for some portion of the costs involved in this process but Idaho does not currently have a cost statute. He says he has seen many plan changes by condemning agencies, and sometimes these plans are incomplete when they are provided to the landowner, sometimes this is in good faith, sometimes it is done for bartering leverage. The landowner does not initiate this process, they are somewhat the victim and the cost burden settles on them. He said this legislation includes a landowner requested exception prior to filing litigation, and minor plan changes that do not affect a property or damage to the property.

MOTION:

Rep Nielsen made a motion to send **H 104** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION:

Rep. Luker made a substitute motion to **HOLD H 104** in committee for time certain until Monday, March 25th. **Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:39 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, February 25, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>H126</u>	Assault/Battery, Additional Provisions	Rep. Luke Maleck Emily McClure
<u>H147</u>	Examination of Case and Discharge	Dan Chadwick, ICJC
<u>H148</u>	Guardian ad litem, Counsel	Dan Chadwick, ICJC
<u>H149</u>	Juvenile Corrections/Counsel's Rights	Dan Chadwick, ICJC

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry(Smith)	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

Danelle Heath
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, February 25, 2013
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry (Smith), Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** None

GUESTS: Raeleen Welton, Idaho Licensed Beverage Association; Charlie Spencer, Idaho State Police; Russ Wheatley, Idaho State Police; Tyler Mallard, Risch Pisca; Jeremy Pisca, Saint Alphonsus Regional Medical Center; Mark Dunham, Risch Pisca; Corey Surber, Saint Alphonsus Health System; Emily McClure, Idaho Medical Association; Daniel Chadwick, Idaho Criminal Justice Commission and Idaho Association of Counties; Steve Millard, Idaho Hospital Association; Monica Hopkins, American Civil Liberties Union; David Lehman, Kootenai Medical Center; Jared Hoskins, Idaho Criminal Justice Commission; Margaret Henbest, Nurse Leaders of Idaho

Chairman Wills called the meeting to order at 1:33 p.m.

H 126: **Rep. Malek** explained this legislation adds a new class of employees, under the assault and battery upon certain personnel statute. He said that new class would be any personnel that provides health care, making any assault on this class a felony. He explained the reason for adding this class of people to the statute was due to the fact that health care employees are mandated to perform care and it has become more dangerous to do so. He said it would not be limited to emergency room doctors and nurses, that it would also include medical centers, mental health specialists, etc.

Rep. Malek responded to questions as to why this covers health care employees if an assault occurs at any time rather than just during the performance of their duties by stating that in some cases they are targeted outside their duty hours. He explained that a person would only need to have knowledge of a health care employees' status to be covered under this legislation. In regards to the possible fiscal impact with the increase of penalty from misdemeanor to felony and up to twenty-five years imprisonment; he said he anticipates this legislation as having a deterrent effect rather than having actual punitive actions. He explained the umbrella of health care employee would include any employee at these medical facilities, to include secretaries, clerks, security, etc. due to the danger that all employees in health care facilities face. He said the umbrella for facilities would also fall under nursing homes and senior living facilities. When asked if any criminal justice organizations have weighed in on this legislation, he said the Idaho Prosecuting Attorneys Association has been informed of it and are not opposing. He explained without this legislation an assault on a health care employee would possibly fall under the penalties of battery or aggravated battery, depending on the circumstances. He gave some examples of actual assaults on health care employees.

Members of the committee expressed support for this legislation, as some have family members in the health care field. Others expressed concern for patients with mental illness and others who could possibly assault a health care employee, without intent to harm, being charged under this legislation. Some noted there is no statistical data available to show the occurrence and tracking of assaults on health care employees.

Emily McClure, lobbyist for the Idaho Medical Association, testified and gave examples of how medical personnel have been attacked to include those outside of hospitals and clinics. She explained the goal is not to put people in jail undesirably and under current law there is inconsistency. She said this legislation specifies that the felony offense would be charged if there was intent on creating bodily harm. She explained the problem faced with amending the statute as a whole would be the amount of stakeholders that would want a say.

In regards to questions concerning the change to a possible twenty-five year sentence, **Ms. McClure** explained it fits within the statute as a protected class, the health care employee class adds to those already covered.

Steve Millard, president of the Idaho Hospital Association, testified **in favor** of this legislation. He said assaults are happening so often they are no longer recorded. He gave examples of attacks and explained there is no hard data as hospitals do not collect this on medical records.

Mr. Millard responded to questions regarding how to make the public aware of these charges by stating they would place signs on the walls of health care facilities. He explained some assaults are not reported because the victim may be afraid to do so. He answered questions regarding injuries that are treated as a result of an assault becoming a worker's compensation claim by stating there could be some, but no data has been collected from these claims.

David Lehman, lobbyist for the Kootenai Medical Center, testified that half of all nonfatal violent acts occur in a health care setting. He said when health care employees are injured, they have the most days away from work as a result. He explained this forces hospitals to increase staffing as a result, to include on-call staff as well, which increases costs. He said one of the biggest factors in assaults in an emergency room are drugs and alcohol. He explained the Kootenai Medical Center has put staff in place to address the repeat violent offenders when they come in.

Mr. Lehman responded to questions regarding frequency in assaults from ten years ago, compared with the present, by stating records were not kept as well in the past. He said the increase in those looking for illegal drugs and the poor economy can be reasons of the increase in assaults.

Margaret Henbest, Executive Director, Nurse Leaders of Idaho, testified **in favor** of **H 126** because it will provide a deterrent to possible future assaults on health care employees. She said that nurses are the frontline health care employees as they are in continuous contact with patients. She said assaults on health care employees is trending up, possibly due to drug use and drug seeking behavior.

MOTION:

Rep. Burgoyne made a motion to send **H 126** to the floor with a **DO PASS** recommendation.

The committee expressed concern regarding the broad brush encompassing all employees in the medical field and the penalty of up to twenty-five years. They expressed concern for possible court costs that would come from this and the lack of information and data regarding assaults. Others stressed to the committee that the statute is not changing, that this would only add another class of protected individuals.

ROLL CALL VOTE: Roll call vote was requested on **H 126**. **Motion carried by a vote of 9 AYE, 7 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Nielsen, Perry(Smith), Dayley, Horman, Malek, Packer, Trujillo, Burgoyne** and **Wills**. **Voting in opposition** to the motion: **Reps. Luker, Bolz, McMillan, Sims, Patterson, Meline** and **Ringo**. **Rep. Bateman was absent/excused**. **Rep. Malek** will sponsor the bill on the floor.

Chairman Wills called for a five minute break.

MOTION: **Rep. Nielsen** made a motion to change his vote on **H 126**. **Motion carried by voice vote**.

AMENDED ROLL CALL VOTE: Amended roll call vote on **H 126**. **Motion tied by a vote of 8 AYE, 8 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Perry(Smith), Dayley, Horman, Malek, Packer, Trujillo, Burgoyne** and **Wills**. **Voting in opposition** to the motion: **Reps. Nielsen, Luker, Bolz, McMillan, Sims, Patterson, Meline** and **Ringo**. **Rep. Bateman was absent/excused**. **H 126** will be **HELD** in committee.

H 147: **Daniel Chadwick**, Idaho Criminal Justice Commission, presented **H 147**. He explained it provides a change to the general public defense statute. He said the definition changes to include defending attorney and a word replacement from needy to indigent person. He explained it will define what a serious crime is and when someone would have the right to council for any serious crime. He outlined examples of determining when an attorney will be appointed and explained the court can say those presumptions are not covered in a certain case. He said it allows for the use of any information given by a person to be used for impeachment processes but not against themselves, in testimony, except in cases perjury. He said if there is particular hardship, the court could hold a reimbursement fee against a person if there is a finding of guilt. He said this legislation repeals the term substitute council.

Mr. Chadwick responded to questions clarifying the manifest hardships on an indigent person by explaining how the reimbursement will apply to the individual and their financial situation. He said that there is a statute of limitations in regards to the reimbursement fee, if assigned, that takes into consideration the length of probation and parole.

Monica Hopkins, American Civil Liberties Union, testified **in favor** of **H 147**. She expressed concern that some definitions in this legislation could be strengthened further but is in favor of the move to ensure consistency and accountability.

MOTION: **Rep. Burgoyne** made a motion to send **H 147** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote**. **Rep. Burgoyne** will sponsor the bill on the floor.

H 148: **Daniel Chadwick**, Idaho Criminal Justice Commission, explained this legislation relates to the Child Protective Act. He said it provides that a guardian will be appointed to the child and an attorney will be appointed for the guardian of that child. He clarified that an attorney may be appointed as an attorney for a child or for their appointed guardian but may not serve in both roles in the same case. He said this legislation requires the appointment of a guardian for all children under twelve.

Mr. Chadwick responded to questions as to how the age twelve was determined by stating it was currently in the law.

MOTION: **Rep. Trujillo** made a motion to send **H 148** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote**. **Rep. Dayley** will sponsor the bill on the floor.

- H 149:** **Daniel Chadwick**, Idaho Criminal Justice Commission, explained this legislation clarifies the circumstances when a juvenile has a right to council. He explained that statements made by juveniles, while in diversion proceedings, may not be used in a court of law.
- RECESS:** **Rep. Malek** called for a recess at 3:31 p.m. Upon reconvening the committee at 3:34 p.m., **Chairman Wills** explained the voting procedures the committee has undertaken during this meeting have been in accordance with the rules.
- Mr. Chadwick**, explained in **H 149** when a juvenile waives the right to council, he must do so on the record and in writing. He said the court will investigate the juvenile's situation and competency in these cases, before granting their appeal. He explained the circumstances in which they are not allow to waive council, to include cases involving felonies and sex crimes.
- Jared Hoskin**, Idaho Criminal Justice Commission, provided research from a question that was brought up during the print hearing of this legislation regarding a juvenile's right to council if incident happens at a school. He explained this would not impact their right. In terms of delaying any action of an SRO or Principal, he said the juvenile has the right to remain silent and request an attorney and this legislation would not affect that.
- MOTION:** **Rep. Sims** made a motion to send **H 149** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** will sponsor the bill on the floor.
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:49 p.m.

Representative Wills
Chair

Jackie Wright
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
LUKER SUBCOMMITTEE
Administrative Rules Review
Upon Adjournment of the Full Committee
Room EW42
Monday, February 25, 2013

DOCKET NO.	DESCRIPTION	PRESENTER
<u>11-0501-1101</u>	Alcohol Beverage Control, Multipurpose Arena	ISP
<u>11-1101-1202</u>	POST definition changes; Law Enforcement Profession, Agency investigations	ISP

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Luker
Rep.Nielsen
Rep.Perry(Smith)
Rep.Dayley
Rep.Malek
Rep.Burgoyne

COMMITTEE SECRETARY

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MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
LUKER SUBCOMMITTEE
Administrative Rules Review

DATE: Monday, February 25, 2013

TIME: Upon Adjournment of the Full Committee

PLACE: Room EW42

MEMBERS: Chairman Luker, Representatives Nielsen, Perry(Smith), Dayley, Malek, Burgoyne

**ABSENT/
EXCUSED:** Representative Nielsen

GUESTS: Charlie Spencer, Idaho State Police; Russ Wheatley, Idaho State Police

Chairman Luker called the meeting to order at 3:52 p.m.

**DOCKET NO.
11-0501-1101:** **Lt. Russ Wheatley**, Idaho State Police, explained this rule defines a multipurpose arena. He answered questions regarding time specificity to allow minors on the premises of a business that changes to predominantly selling alcohol later in the day by stating that the intent was not for restaurants. He said the intent was to not have minors in bars. He explained the provision will be enforced after an investigation into a business shows that after a long period of time that business has changed their predominate activity to drinking alcohol.

MOTION: **Rep. Smith (Perry)** made a motion to recommend rejection of **Docket No. 11-0501-1101** to the full committee. He explained there is possible legislation being written that would override this rule.

Lt. Russ Wheatley explained they have already made endorsements on two businesses' liquor licenses, and have two others in the process of receiving this endorsement. He said not approving this rule would void those multipurpose endorsements and negatively affect those businesses.

**SUBSTITUTE
MOTION:** **Rep. Burgoyne** made a substitute motion to recommend approval of **Docket No. 11-0501-1101** to the full committee.

The subcommittee expressed concern over possibly impacting businesses that have already been issued endorsements. They also considered the rule deadline approaching on February 28th, 2013.

**VOTE ON
SUBSTITUTE
MOTION:** **Chairman Luker** called for a vote on the substitute motion to recommend approval of **Docket No. 11-0501-1101** to the full committee. **Motion carried by voice vote.** **Rep. Smith (Perry)** requested to be recorded as voting **NAY**.

**DOCKET NO.
11-1101-1202:** **William Flink**, Division Administrator, Idaho Peace Officer Standards & Training, explained this rule adds defining terms for law enforcement profession, it excludes those who were subject to an investigation by an agency with competent authority and jurisdiction from receiving certificates or awards and extends the time a medical examination will remain valid by the POST Division Administrator for cases under extraordinary conditions. He explained the Senate had previously reviewed this docket and rejected Subsection 010.27 and Subsection 197.01. He said there was concern that amending the definition of law enforcement profession would have unintended consequences to dispatchers.

MOTION: **Rep. Dayley** made a motion to recommend approval of **Docket No. 11-1101-1202** to the full committee with the exception of **Subsection 010.27 and Subsection 197.01**. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the subcommittee, it was adjourned at 4:14 p.m.

Representative Luker
Chair

Jackie Wright
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, February 27, 2013

SUBJECT	DESCRIPTION	PRESENTER
H 30	Administrative Rules Subcommittee Report Oaths/affirmations, administration	Rep. Luker Michael Henderson, Legal Council, Idaho Supreme Court
H 124	Corrections brd, pardon/bond return	Olivia Craven, Pardons and Parole Commission
H 214	Putative fathers	Robert B. Luce, Administrator, Family and Community Services, Department of Health and Welfare

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills Rep Perry(Smith)
Vice Chairman Luker Rep Sims
Rep Nielsen Rep Dayley
Rep Bolz Rep Horman
Rep Bateman Rep Malek
Rep McMillan Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 27, 2013
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** Rep. Nielsen

GUESTS: Michael Henderson, Idaho Supreme Court; Olivia Craven, Pardons & Parole; Michelle Day, Pardons & Parole; Holly Koole, IPAA; Rob Luce, Department of Health and Welfare; Cameron Gilliland, Department of Health and Welfare; and Dawn Justice, Idaho Banker.

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

Rep. Luker gave the administrative rules Luker subcommittee report. He said the Luker Subcommittee met two days ago and reviewed **Docket No. 11-0501-1101** and **Docket No. 11-1101-1202**. He made the recommendation to the full committee to approve **Docket No. 11-0501-1101** as is and to approve **Docket No. 11-1101-1202** with the exception of **subsection 010.27** and **subsection 197.01**. He said ISP, after further reflection and based upon the action in the senate, requested that **subsections 010.27** and **197.01** not be approved.

MOTION: **Rep. Dayley** made a motion to accept the recommendation of the subcommittee and to approve the rules as submitted. **Motion carried by voice vote.**

H 30: **Michael Henderson**, legal counsel, Idaho Supreme Court, presented **H 30**. He said in Idaho Code there are more than two dozen statements that must be made under oath, but in fact these statements are not subject the penalty of perjury. He said an oath is something administered by another, and only specific persons can administer an oath. Currently, when you sign a statement you are not being administered an oath. Even if you signed a false statement, the element of perjury would be missing and you could not be prosecuted. Section two of the legislation would include the term "oath" as an affirmation. This legislation will also facilitate the electronic filing of documents in the future which will lower costs and make the process easier for court and counsel. He said this bill only deals with oaths and verifications, which doesn't have anything to do with acknowledgments.

In response to questions and comments, **Mr. Henderson** said Wills and Powers of Attorney would not be affected by this bill. He said this bill only applies to the law and some rules which requires an oath or verification and then it only enlarges the ways in which that can be satisfied.

MOTION: **Rep. Burgoyne** made a motion to send **H 30** to General Orders with committee amendments as follows: Amendment to Section 1 (2) should read "(2) This section shall not apply to acknowledgments." **Motion carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

H 124: **Olivia Craven**, Pardons and Parole Commission, presented **H 124**. She says this bill gives certain time frames to request remission of bond monies; within one year from the date of discharge of the offense for which the offender was serving parole and would additionally allow such money to be used for the extradition of parole violators. She said it can cost from \$0-7,000.00 to bring a violator back to the state. The \$500.00 bond does not pay all costs of extradition. She said offenders should go to the place where the where they have the most support and a lot of times that is in another state with their family. She said if we don't allow them to go and post the bond they will probably just abscond and go anyway.

In response to questions, she said waiving a bond is a judgment call and that the financial situation of the families is taken into consideration and will be waived if they do not have the funds to pay. She said the offenders will be given written notice that they only have one year to request a refund of their bond and will be required to sign for receipt. She said if the money is not claimed it will go through the unclaimed property process and try to locate them but the unclaimed money will not be going into the general budget. She said they will be giving the refund to the parole officer to disburse to the offender at the time of discharge. The unclaimed money would go into an account that is used only for extraditing expenses.

MOTION: **Rep. Meline** made a motion to send **H 124** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Meline** will sponsor the bill on the floor.

H 214: **Robert B. Luce**, Administrator, Family and Community Services, Department of Health and Welfare (IDHW), presented **H 214**. He said this legislation aimed at strengthening adoptions laws in Idaho. He said two adoptions have recently been unwound by the Utah Supreme Court after the children had been with the adoptive parents for 2-4 years and this bill is intended to prevent that from happening in Idaho. He said there are three major changes: 1) it establishes one date certain for putative fathers to act; 2) creates one exception to that date certain; and 3) directs the DHW to publish in print and host on the Web a public service announcement that describes the process and procedure for putative fathers to protect their rights. He said this bill also adds a reference to the factors set forth in IC § 32-717 through 32-717(e) to reflect the current practice and added a specific exemption to those factors listed to hopefully promote more adoptions in Idaho and fewer abortions. This legislation also adds a reference to the Indian Child Welfare Act of 1978, 25 USC 1902, et seq. ICWA. Under this bill, if a putative father can prove certain things he will be granted a ten day extension. He said the putative father must protect his rights by filing and registering on the putative father registry unless he can prove fraud.

In response to questions, **Senator Davis** said the current policy of Idaho has been developed while he has been in service. He said the sex lives of people in the early 1960s versus 2013 are substantially different. In the 1960s, a woman could and would identify the father but today we have a different standard. He said when a woman is deciding between adoption or abortion today, they want to know the answer to "what is the process of adoption and terminating the rights of the putative father." He said if the biological mother has uncertainty as to the putative father's involvement or the certainty of the adoption process, they have the legal alternative of abortion. He said it's a very hard decision but on balance he feels the better policy is to encourage the birth and adoption of the child rather than providing enhanced protections to the putative fathers.

Rep. Luker made a motion to send **H 214** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.**

H 152: **Rep. Trujillo** read a letter from her constituent, a forensics nurse, supporting **H 152** and commented that although the bill has been tabled, she wanted to read the letter out of respect for her constituent. (See attached letter.)

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at: 3:06 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 p.m. or Upon Adjournment
Room EW42
Tuesday, March 05, 2013

SUBJECT	DESCRIPTION	PRESENTER
S1032	Public Assistance / Property Transfer	Robert L. Aldridge , TEPI
S1033	Conservators / Powers of Attorney	Robert L. Aldridge , TEPI

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry(Smith)	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Tuesday, March 05, 2013
- TIME:** 1:30 PM or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Rep. Burgoyne
- GUESTS:** Robert L. Aldridge, TEPI; and Wesley Seideman, Tresco of Idaho
Chairman Wills called the meeting to order at 2:43 p.m.
- S 1032:** **Robert L. Aldridge**, Trust and Estate Planning Professionals of Idaho (TEPI), presented **S 1032**. He said Medicaid has long had various penalties for certain transfers of property within the "look back" five year time period. He said the Health Insurance Portability and Accountability Act of 1996 included new provisions regarding the transfer of assets in the Medicaid program making such transfers a federal crime, even if the transfer was fully legal under Medicaid law. These provisions became known as the "granny goes to jail" and "granny's attorney goes to jail" provisions, which were later removed. He said Idaho Code Section 56-227 still contains these provisions. He said this legislation would remove that language, while keeping all the language needed to prosecute actual fraud.
- MOTION:** **Rep. Nielsen** made a motion to send **S 1032** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Dayley** will sponsor the bill on the floor.
- S 1033:** **Robert L. Aldridge**, Trust and Estate Planning Professionals of Idaho (TEPI), presented **S 1033**. He said the Uniform Power of Attorney Act provides that the existing powers of attorney would remain in effect upon appointment of a conservator unless otherwise ordered by the Court. He said this is a major problem, especially when a temporary conservator is appointed to preserve the assets of the protected person. He said in many cases the existing power of attorney would make financial decisions in direct opposition to the appointed conservator, and in many cases the conservator did not even know the power of attorney existed until the financial power of attorney had already acted thus creating problems for the conservator and the protected person. He said this bill solves those problems by providing that appointment of a temporary or permanent conservator automatically terminates the existing power of attorney. He said there is no fiscal impact.
- Wesley Seideman**, Tresco of Idaho, testified in support of **S 1033**. He gave an example of a case where an elderly lady assigned her son to look after her and he decided to pay her grandson \$5k a month to care for her, plus other fringe benefits, depleting her assets. He said the judge assigned a temporary appointment of a conservator but that appointment did not automatically terminate the power of attorney so the appointment did nothing to protect the assets of the elderly lady.
- In response to questions, **Mr. Seideman** said after 90 days, the power of attorney would go back into effect. He said typically after 90 days enough information has been gathered by the Guardian ad litem and the Court, etc. to determine an appropriate appointment. He said if the conservatorship is quashed or set aside, the protected person would have the authority to reinstate the power of attorney.

In response to questions, **Mr. Aldridge** said in his cases he has never seen a temporary appointment run out and, when it is granted, it is done on the grounds of threat of immediate damage. He said it is very difficult to get a temporary conservatorship and, in order to obtain one, you would have to prove imminent damage. He said the applicant is liable civilly and criminally for misuse of the power of attorney; however, the estate funds are rarely recoverable. He said Medicaid can try to recover assets but it is rarely successful.

MOTION: **Rep. Trujillo** made a motion to send **S 1033** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Luker and Nielsen** requested to be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:21 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Adjournment
Room EW42
Thursday, March 07, 2013

SUBJECT	DESCRIPTION	PRESENTER
S 1034	County Jails/Prisoners	Mike Kane, Idaho Sheriff's Association
S 1035	County Jails/Detention Officers	Mike Kane, Idaho Sheriff's Association
H 213	Judgment/Sentence Extension	Rep. Kauffman

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

Danelle Heath
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Thursday, March 07, 2013
- TIME:** 1:30 pm or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** None.
- GUESTS:** Brent Reinke, IDOC; Holly Koole, IPAA; and Mike Kane, ISA.
Chairman Wills called the meeting to order at 2:20 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of February 19, 2013. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of February 21, 2013. **Motion carried by voice vote.**
- S 1034:** **Mike Kane**, Idaho Sheriff's Association (ISA), presented **S 1034**. He said Idaho Code Section 20-625 has been on the books since the civil war and is now an obsolete statute that requires the Sheriff to get written permission from the Governor before moving a prisoner to another facility. He said this legislation repeals Idaho Code Section 20-625 and allows the Sheriff to transfer prisoners without the need for the Governor's approval.
- MOTION:** **Rep. Nielsen** made a motion to send **S 1034** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.
- S 1035:** **Mike Kane**, Idaho Sheriff's Association (ISA), presented **S 1035**. He said 15 years ago legislation determined that detention officers may be appointed as peace officers with the same powers as regular line peace officers to make arrests for violation of probation or pursuant to a court order. He said detention deputies have to be certified by the POST. He said when a person commits a crime within the confines of the jail, you have to bring in a road officer to make the arrest. This legislation allows the Sheriff's detention deputies to act with full power of peace officers. They will have the authority to arrest a person when there is probable cause and believe that a crime has been committed in the jail without the need for a warrant. He said the detention deputies are trained and constantly recorded.
- In response to questions, he said detention officers would be able to arrest citizens while they are in the facility. He said typically the citizen arrest would be a visitor bringing contraband into the jail or a newly released inmate who defaces jail property on his/her way out. He said to file a false police report or to make a false arrest would cost the officers their career and subject them to criminal charges and civil suits. He said many other states allow detention officers to be empowered with some arrest powers and, in many states, they are treated as road deputies. He said currently if someone brings contraband into the facility, detention officers are making a pseudo citizen's arrest. He said this legislation is designed for crimes that occur in the presence of the officer in the confines of the jail.
- MOTION:** **Rep. Trujillo** made a motion to send **S 1035** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McMillan** will sponsor the bill on the floor.

H 213: **Rep. Kauffman** presented **H 213**. He said this legislation adds a ten year enhancement penalty for felony violations against persons 65 years of age or older. He said this legislation will heighten public awareness of elderly abuse, will be a deterrent for crimes against the elderly, and will send a message to the communities that elder abuse will not be tolerated. He said the exact measure of fiscal impact cannot be calculated due to a number of factors.

In response to questions, he said the judge will have latitude in the sentencing. He said line 15 of the bill covers fraud. He said 65 is commonly accepted as the definition of elderly adults and said there is a gap between vulnerable adults and elderly adults.

Holly Koole, Idaho Prosecuting Attorney Association, testified in support of **H 213**. She said it is difficult to prosecute under the vulnerable adult statute and that the enhancement provided in this legislation is another tool for the prosecutor to use at their discretion. She said the mandatory minimum doesn't need to be on the fixed time, it could be tacked on to the indeterminate time. She said the definition of a felony requires a prison time sentence but the judge would not need to impose prison time—that time could be suspended and the judge could impose 10 years of probation or parole. She said Sub Section 2 says this enhancement can only be charged once. She said this bill still gives the judge and the prosecuting attorney discretion and the enhancement could be used if the crime is egregious.

Guy Joslin, Twin Falls County Sheriff's Department testified in support of **H 213**. He gave details of two cases of egregious crimes against the elderly and the subsequent light sentencing of the offenders.

MOTION: **Rep. Burgoyne** made a motion to **HOLDH 213** in the committee.

SUBSTITUTE MOTION: **Rep. Perry** made a substitute motion to send **H 213** to General Orders.

ROLL CALL VOTE: **Rep. Sims** requested a **roll call vote**. **Substitute Motion failed by a vote of 2 AYE and 15 NAY. Voting in favor of the substitute motion: Reps. Perry and Patterson. Voting in opposition to the substitute motion: Reps. Luker, Nielsen, Bolz, Bateman, McMillan, Sims, Dayley, Horman, Malek, Packer, Trujillo, Burgoyne, Meline, Ringo and Wills.**

VOTE ON ORIGINAL MOTION: **Original motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:47 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AMENDED AGENDA #1
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Adjournment
Room EW42
Monday, March 11, 2013

SUBJECT	DESCRIPTION	PRESENTER
H 256	Child Protective Act	Senior Judge John Varin, Idaho Supreme Court
S 1033aa	Conservators/Powers of Attorney	Rep. Trujillo/ Robert L. Aldridge

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills Rep Perry
Vice Chairman Luker Rep Sims
Rep Nielsen Rep Dayley
Rep Bolz Rep Horman
Rep Bateman Rep Malek
Rep McMillan Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Monday, March 11, 2013
- TIME:** 1:30 pm or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Rep. Malek
- GUESTS:** Robert L. Aldridge, TEPI; and Judge John "Jack" Varin.
Chairman Wills called the meeting to order at 3:00 p.m.
- MOTION:** **Rep. Ringo** made a motion to approve the minutes of February 27, 2013. **Motion carried by voice vote.**
- MOTION:** **Rep. Ringo** made a motion to approve the minutes of March 5, 2013. **Motion carried by voice vote.**
- H 256:** **Senior Judge John Varin**, Idaho Supreme Court, presented **H 256**. He said the State of Idaho has made a promise to its children; to keep them safe. He said the goal of the Child Protective Act is to keep children safe, protect parents' rights, and assure due process is provided to both children and parents.
- Judge Varin** said this bill amends I.C. 16-1602; moving "aggravating circumstances" from the adjudicatory statute and providing clearer definitions that refer to criminal statutes. "Aggravating circumstances" is a term used to describe those cases in which a child has been removed from a parent's home in the most egregious cases, such as sex offenses or murder.
- Judge Varin** said this bill amends I.C. 16-1619; confirming if aggravated circumstances are found, a Permanency Hearing must occur within 30 days of that determination. He said most of the amendments generally merge juvenile rule and statute so the overview of the process is all in one location.
- Judge Varin** said this bill amends I.C. 16-1622; affirming that a review hearing must be held no later than 6 months from the court order taking jurisdiction and every 6 months thereafter, defines the purpose of hearing, describes the annual Permanency Planning Hearing, termination and adoption, and guardianship or another planned permanent living arrangement.
- Judge Varin** said this bill amends I.C. 16-1624; providing the petition to terminate must be filed within 30 days from the order approving goal of termination, and states that the court may authorize the Idaho Department of Health and Welfare (IDHW) to suspend efforts to reunify.
- This bill also amends I.C. 16-2002. The amendment clarifies that neglect means a parent has failed to comply with the case plan or court's order, the child has been in the legal/temporary custody of IDHW for 15 of the last 22 months and reunification has not occurred by the last day of the 15th month. **Judge Varin** said that very few child protection cases in Idaho have aggravated circumstances.

In response to questions, **Judge Varin** said there is no time standard in regards to the parental rights of a parent to another child being terminated. He said this provision has been in the statute for some time and this portion is not being amended by this bill. He said the consensus of the judges is children should not be taken from their home unless the circumstances are quite egregious. He said prior parental termination puts them into the aggravated circumstances category. He said the standard of aggravated circumstances does not default to a decision of termination. He said in order for the federal government to give funding to support juveniles, they require that the states ensure that all reunification efforts with the parents have been made before putting juveniles into the system. He said there is no new terminology regarding a protective order, these amendments were largely an effort to bring all the information into one place. He said the amendments do not enlarge the scope of the Child Protective Act.

In response to further questions, **Judge Varin** said the provision in I.C. 16-1602(3)(5)(c) would include all other jurisdictions, and the court can consider voluntary and involuntary removals, but such circumstances do not render a default decision. He said the Court can determine aggravated circumstances based on a charge without a conviction. He said this bill balances the interests of the parent with the best interests of the child. He said because IDHW is not required to engage in reunification efforts, that does not mean that they cannot choose to do so if the situation warrants it. He said that the goal of the bill is to speed up the permanency plan in the best interests of the child.

In response to questions, **Michael Henderson**, Idaho Supreme Court, said the sentence on Page 9, Line 1 is setting forth alternatives. It does not say the permanency plan is going to terminate, simply that termination is an option.

MOTION:

Rep. Trujillo made a motion to send **H 256** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** requested to be recorded as voting **NAY.** **Reps. Trujillo** and **Burgoyne** will sponsor the bill on the floor.

S 1033aa

Robert L. Aldridge presented **S 1033aa**. He said this bill provides that an appointment of a temporary or permanent conservator terminates the Power of Attorney. It also allows the court to limit or continue the Power of Attorney instead of terminating it at the court's discretion. He said this bill also clarifies that the amendment only applies to appointments made after July 1, 2013. He said if there is a temporary appointment it is usually because there is a problem with the existing Power of Attorney, who is usually a family member. He said this bill covers situations where that conflict is already in place. He said the termination of the Power of Attorney is the exception to the rule. Conservatorship is considered a last step and the courts try to avoid it if possible. He said this bill has been reviewed extensively by multiple agencies and all agree that the problems of the protected persons losing their assets and ending up on state assistance must be addressed. This bill protects tax payers and vulnerable persons.

In response to questions, **Mr. Aldridge** said the current law states that the funds of the protected person are used to pay for the process of appointment. He said if the funds are not there, the petitioner may pay the costs or hire a pro bono attorney. He said this is the general rule throughout the entire United States.

MOTION:

Rep. Nielsen made a motion to send **S 1033aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Trujillo** and **Nielsen** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:34 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
Upon Adjournment
Room EW42
Friday, March 15, 2013

SUBJECT	DESCRIPTION	PRESENTER
H 241	Scrap Dealers	Rep. Malek
H 274	Traffic Safety Education Program	Rep. Luker
H 292	Assault and Battery; Punishment	Rep. Malek
SCR 114	State Police, Rules Rejected	Sen. Vick
SCR 115	State Police, Rules Rejected	Sen. Vick

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Friday, March 15, 2013
- TIME:** Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Rep. Wills; Rep. Nielsen; Rep. Bateman; Rep. Patterson.
- GUESTS:** Neil Colwell, Avista; Dennis Tanikuni, Idaho Farm Bureau; Russell Westerberg, Rocky Mountain Power; Rich Hahn, Idaho Power; Michael Henderson, Idaho Supreme Court; Emily McClure, Idaho Medical Association; Alison Shoop; Ann Senseny; Naomi Vulgamore; Greg Baron; and Amy Kearns, ITD
- Vice Chairman Luker** called the meeting to order at 1:20 p.m.
- MOTION:** **Rep Bolz** made a motion to approve the minutes of February 25, 2013. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 7, 2013. **Motion carried by voice vote.**
- H 241:** **Rep. Malek** presented **H 241**. He said this bill creates a deterrent for metal theft which is a large problem nationally and in the State of Idaho.
- Neil Colwell**, Avista Corporation, testified **in support** of **H 241**. He said this bill is brought due to the growing problem of metal theft in the State of Idaho. He said despite what was adopted in 2009, metal theft is growing and this bill will strengthen some of the earlier provisions. He said metal theft is a one billion dollar problem in this nation. He gave several examples of metal theft in Idaho and across the nation. He said on Page 1 of the bill, it clarifies that the public can recycle bottle caps but not beer kegs. He said on Page 3 of the bill, it states that members of the general public coming in to make casual sales of metal must be photographed with the materials. He explained on Page 4 of the bill, it states if an individual goes into an electrical sub station with the intent to steal or if they cause damages or outages, such actions are a felony. Finally, this bill states that homeowners are not liable for injuries a metal thief may sustain while on their property. He said this also applies for third party injuries.
- In response to questions, **Mr. Colwell** said it is up to the prosecuting attorney to authenticate the evidence photos. He said the scrap dealers would also attest to the photos.
- In response to questions, **Rep. Malek** said the photos would have to be authenticated through a trial preparation process, the photographer would have attest to the photos, and they would have follow the rule of evidence to be submitted in trial as evidence. He said the bill makes it incumbent upon the dealers to provide photographic evidence.
- In response to questions, **Mr. Colwell** said the payments must be made to the business owners by check. He said this bill makes the first offense a felony. He said that the scrap dealers worked on this legislation through **Senator Vick**, who is a metal dealer. He said under the terms of the original bill, recording keeping for the scrap metal dealers is recognized as indeterminate. He said that a time line on the paperwork for the scrap dealers might be necessary.

Rich Hahn , Idaho Power, testified in support of **H 241**. He said the metal theft has been reduced since the legislation in 2009, but it has not be eliminated. He said this legislation does require some additional record keeping. He said there is no reason for the general public to come in with certain types of metals, i.e. grounding wire, etc. He said when theft happens at a substation and a system is left ungrounded, it is a huge safety issue and poses serious danger to the employees and to the general public. He said one of the reasons this bill makes metal theft a felony is because when these systems are left ungrounded, it could very easily result in death by electrocution.

MOTION: **Rep. Trujillo** made a motion to send **H 241** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.

Vice Chairman Luker turned the gavel over to **Rep. Bolz**.

H 274: **Vice Chairman Luker** presented **H 274**. He said this bill allows cities to adopt an ordinance to conduct driver safety school. If an officer is issuing a citation, they will still issue the citation under the Uniform Citation Code but they can offer a voluntary attendance at a driver safety school. If the cited individual attends driver safety school for a maximum \$25 cost, points will not be assessed for that violation. He said the citation will still show up on your record, but you will not get the points that go along with the citation. He said this only applies to moving violations and it cannot involve commercial drivers or anyone who has had a point violation in the last three years.

Michael Henderson, Idaho Supreme Court, testified in support of **H 274** saying that the Idaho Supreme Court believe this is a workable system.

MOTION: **Rep. Meline** made a motion to send **H 274** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Luker** will sponsor the bill on the floor.

Rep. Bolz turned the gavel back over to **Vice Chairman Luker**.

H 292: **Rep. Malek** presented **H 292**. Current Idaho law protects social workers, EMS personnel, police officers and this bill extends a similar protection to health care professionals who are assaulted because of their profession. He said the twenty five year jail sentence has been removed and **H 292** now states that the sentence shall not exceed five years. He said the bill states the battery has to be in the course of ones duties as a medical professional. He said the last sentence of the bill essentially creates an affirmative defense for the mentally ill.

MOTION: **Rep. Meline** made a motion to send **H 292** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Luker** and **Neilsen** will sponsor the bill on the floor.

SCR 114: **Sen. Vick** presented **SCR 114**, which rejects Section 010, Subsection 27 and Section 197, Subsection 01, only, adopted as pending rules under **Docket Number 11-1101-1202**. He said this rule contained definitions that were not in statute and that is a reason the Senate rejected it. He said the language changed to clarify if an officer was aware of an ongoing investigation, he/she cannot receive a POST certification.

Director Bill Flink, POST administrator, said Idaho State Police are favorable with these changes as they stand.

MOTION: **Rep. Sims** made a motion to send **SCR 114** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** will sponsor the concurrent resolution on the floor.

SCR 115: **Sen. Vick** presented **SCR 115**. He said this Senate Concurrent Resolution rejects Section 091, Subsection 01, only, relating to the rules of the Idaho Peace Officer Standards and Training Council.

MOTION: **Rep. Trujillo** made a motion to send **SCR 115** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bolz** will sponsor the concurrent resolution on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:09 p.m.

Representative Luker
Vice Chair

Danelle Heath
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Adjournment
Room EW42
Tuesday, March 19, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1059</u>	Venereal Diseases Control, Prisons	Shane Evans, Department of Corrections
<u>S 1122</u>	Child Custody	Robert L. Aldridge
<u>S 1018</u>	Juror Contempt	Patti Tobias, Id. Sup. Court
<u>S 1119</u>	Child Support/Income Withholding	Kandace Yearsley, IDHW

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

Danelle Heath
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 19, 2013

TIME: 1:30 pm or Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:**

GUESTS: Bob Aldridge, TEPI; Michael Henderson, Idaho Supreme Court; Shane Evans, IDOC; Kandace Yearsley, Idaho Department of Health and Welfare; and Russ Barron, Idaho Department of Health and Welfare

Chairman Wills called the meeting to order at 1:30 p.m.

MOTION: **Rep. Burgoyne** made a motion to approve the minutes of March 11, 2013. **Motion carried by voice vote.**

S 1059: **Shane Evans**, Department of Corrections, presented **S 1059**. He said this legislation will update the testing process from mandatory to opt-in testing upon release. He said this will bring the testing process in line with Idaho Code Section 39-604.

In response to questions, he said about 5% of the inmate population will request testing but that cost is already absorbed in the contract. He said that the Department of Correction (DOC) tests the incarcerated individuals upon entry and identify any issues. If any issues are identified then or during their incarceration, all medical needs are addressed and they will receive the full battery of appropriate treatment. He said that the DOC is not currently in compliance with mandatory testing and this legislation would bring them into compliance. He said DOC cannot force inmates to be tested against their will due to the protections in place. He said this legislation clarifies that the state prison facilities have no obligation to treat any person who tested positive for any disease, or be financially responsible for that treatment, once they are released from the prison facility. He does not think this legislation poses a risk to public health or safety.

MOTION: **Rep. Ringo** made a motion to send **S 1059** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.

S 1122: **Robert L. Aldridge**, presented **S 1122**. He said the Department of Defense (DOD) has requested that states adopt legislation to consider the unique situation of military service members who are deployed during custody/family law cases. He said DOD has given a list of Best Practices, which many states have already adopted. The main intent of this legislation is to make any custody orders modified during the deployment of a service member to be a temporary modification with an expiration date. He said the court has to determine that the modification requested is in the best interest of the child. He said this legislation incorporates existing standards of best interests of the child. This legislation allows service members with visitation rights to petition the court to allow those rights to be delegated to a third party. He said this legislation allows for expedited hearings and testimony by electronic means. He said this legislation balances the needs of the parents with the best interests of the child.

In response to questions, he said this legislation only applies to modifications of orders.

MOTION: **Rep. Perry** made a motion to send **S 1122** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.**

S 1018: **Michael Henderson**, Idaho Supreme Court, presented **S 1018**. He said this is one of the defect bills dealing with Idaho Code Section 2-208 and corrects conflicts between Idaho Code Section 2-208(5) and Idaho Code Sections 7-601 and 7-610. He said this legislation states that prospective jurors who fail to appear may be subject to contempt proceedings and shall be subject to a fine of \$500, or may be imprisoned up to 5 days.

In response to questions, he said this legislation would increase the jail time from 3 days to 5 and the fine from \$300 to \$500. He said this legislation clarifies that the \$5000 fine applies to all areas of contempt except jury contempt and gives the court discretion to bring contempt proceedings against a juror in contempt.

MOTION: **Rep. Bateman** made a motion to send **S 1018** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** requested to be recorded as voting **NAY**.

S 1119: **Kandace Yearsley**, Idaho Department of Health and Welfare (IDHW), presented **S 1119**. She said this bill deals with the use of a standardized income withholding system. She said employer payments are the most effective child support collection method. She said this legislation standardizes the forms and gives one address to which to send support payments.

In response to questions, she said the form is not new, this legislation is just requiring all wage withholding agencies to use the same form.

MOTION: **Rep. Trujillo** made a motion to send **S 1119** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Trujillo** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:22 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AMENDED AGENDA #6
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
2:00 p.m. through 2:30 p.m. and will reconvene upon adjournment
Room EW42
Thursday, March 21, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1079</u>	Internet Crimes against Child Unit	Paul Jagosh, Fraternal Order of Police
<u>S 1060</u>	Prostitution/Penalties	Sara Thomas, State Appellant Public Defender/Idaho Crim. Justice Commission
<u>S 1123</u>	Prostitution/Property Forfeiture	Sara Thomas, State Appellant Public Defender/Idaho Crim. Justice Commission
<u>S 1136</u>	Synthetic Drug Listing	Elisha Figueroa, Idaho Office of Drug Policy
<u>S 1151</u>	Relating to Criminal Procedures	Sen. Bart Davis

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills Rep Perry
Vice Chairman Luker Rep Sims
Rep Nielsen Rep Dayley
Rep Bolz Rep Horman
Rep Bateman Rep Malek
Rep McMillan Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Danelle Heath
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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Thursday, March 21, 2013
- TIME:** 2:00 p.m. through 2:30 p.m., reconvene upon adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Chairman Wills
- GUESTS:** Sara Thomas, SAPD/ICJC; Paul Jagosh, Fraternal Order of Police; Jim Kouril, Idaho ICAC; John Watts, Voices for Children; Christine Tiddens, Catholic Charities; Jacob Raoil, Catholic Charities.
- Rep. Nielsen** called the meeting to order at 2:00 p.m.
- S 1079:** **Paul Jagosh**, Fraternal Order of Police, presented **S 1079**. He talked about the functions and importance of the Idaho Internet Crimes Against Children Task Force (IICACTF) which has been operating out of the Attorney General's office for the past five years on federal funding. The intent of this legislation is to allow funding for additional staff and resources needed to aid in the investigation and prosecution of those who solicit children using internet or mobile technology or use such devices to sexually exploit children. He gave examples of child porn, solicitation, exploitation and sexual abuse cases in Idaho. He said that these investigations are technical and complex and require a dedicated task force. He said this bill does not appropriate funds but the anticipated cost is \$2,014,900 in fiscal year 2014.
- In response to questions, **Mr. Jagosh** said this task force has already been operating under the umbrella of the Attorney General's office and this legislation legitimizes them. He said the \$200,000 they receive from the federal government will remain but will be held in a separate account. Discussion brought forward that the funding for the fiscal year 2014, would be from the General Fund and then the funds from the Consumer Protection Fund would replace the \$2,014,900 transferred from the General Fund so there is no impact to the General Fund for fiscal year 2014.
- MOTION:** **Rep. Horman** made a motion to send **S 1079** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.
- S 1151:** **Sen. Davis** presented **S 1151**. He said one of the objectives of this legislation is to provide a method for defendants convicted of a felony who have committed no new crimes for a period of time to petition the court for judicial relief from the felony charge. He talked about how people make mistakes at a young age that can handicap them for the remainder of their lives. He said that some judges feel that the current statutes already allow them the discretion to dismiss felony charges if the defendant meets certain qualifications, while others do not feel they have this authority. This legislation will give clear authority to the court to do this. This legislation states that if the application for relief is made less than five years from the date of conviction, the prosecuting attorney must stipulate to the relief. If the petition is made more than five years from the date of conviction, no stipulation is necessary. This legislation lays out 15 crimes for which relief from a felony charge cannot be granted and he said this legislation provides no relief for sex offenders.

In response to questions, he said the defendants are required to obtain a stipulation from the prosecuting attorney who is currently in office. He said this legislation does require that the petition for relief be made to the original sentencing judge, but if that judge has retired or died, the court will handle the petition appropriately.

There was discussion about relief for sex offenders and how such relief may be considered at a later date.

MOTION: **Rep. Bateman** made a motion to send **S 1151** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.

The meeting was recessed at 2:36 p.m.

Vice Chairman Luker called the meeting to order at 5:00 p.m.

S 1060: **Sara Thomas**, State Appellant Public Defender/Idaho Criminal Justice Commission, presented **S 1060**. She spoke about the human trafficking problem in Idaho. She said this legislation will make it a felony offense to exchange anything of value for sexual conduct with a minor and will require those convicted of doing so or attempting to do so to be registered as a sex offender. She said it clarifies that the exchange of anything of value (food, clothing, drugs or gang membership, etc.) for sexual conduct with a minor is considered prostitution and will carry a felony charge. She said proposed **Idaho Code Section 18-5612** would provide for forfeiture of property gained as a result of facilitating prostitution.

MOTION: **Rep. Nielson** made a motion to send **S 1060** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Meline** will sponsor the bill on the floor.

S 1123: **Sara Thomas**, State Appellant Public Defender/Idaho Criminal Justice Commission, presented **S 1123**. She said this legislation lays out the process by which the forfeiture referenced in **S 1060** would occur. She said this legislation lays out the protections for innocent third parties with interests in the forfeited property and directs how the forfeited property or proceeds are distributed. She said this process will be the same as the process used in criminal drug forfeitures.

In response to questions, she said the provisions in proposed **Idaho Code Section 18-5612** are identical to the controlled substances forfeiture but the money obtained would go to a different place. She said this legislation provides a very narrow forfeiture and only applies to people profiting from inducing another person to engage in prostitution. She said this forfeiture process would only go after property of pimps, not the property of johns or prostitutes. She said only the property interests of the person who committed the crime would be forfeited and a seizure might not ever occur. She said this legislation allows the court to pursue property of equal or lessor value if the defendant devalues, hides or transfers the forfeited property. She said the forfeited property would have to be identified by the prosecuting attorney to be the property of the defendant and they would have to meet the burden of proof. She said this legislation does not give spouses any greater protection than it does to other third parties. She said the intent of the legislation is to limit the third party rights so there is not a civil case going on at the same time as the criminal case. She said it may be appropriate to add innocent spouse protection at a later date. She spoke about the State's burden to locate third parties who may have interest in the forfeited property by title searches, Uniform Commercial Code (U.C.C.) searches, etc. She said that the State cannot be expected to find property owners who have not met their burden of registering their ownership. She said the forfeiture usually only happens in large cases such as a drug trafficking ring, etc. She said the current drug forfeiture statutes have been in place for about ten years and this process is being modeled after those.

MOTION: **Rep. Perry** made a motion to send **S 1123** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Packer** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 5:36 p.m.

Representative Luker
Vice Chair

Danelle Heath
Secretary

AGENDA
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 p.m. or Upon Adjournment
Room EW42
Monday, March 25, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1136</u>	Synthetic Drug Listing	Elisha Figueroa, Idaho Office of Drug Policy
<u>S 1165</u>	Attorney's Fees	Lyn Darrington, State Farm
<u>S 1119</u>	Child Support/Income Withholding	Kandace Yearsley, IDHW
<u>S 1109</u>	Annuity Contracts/Exmtn of Proceeds	Sen. Bart Davis

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Patterson
Vice Chairman Luker	Rep Sims	Rep Trujillo
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

Danelle Heath
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email: hjud@house.idaho.gov

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Monday, March 25, 2013
- TIME:** 1:30 pm or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Rep. Luker; Rep. Sims; Rep. Malek
- GUESTS:** Kandace Yearsley, IDHW; Elisha Figueroa, Office of Drug Policy; Corinna Owsley, Idaho Sate Police; Matthew Gamette, Idaho State Police; Paul Jackson, Farmers Group Insurance; Phil Barber, American Insurance Association; Angela Richards, American Family, Allstate, Farm Bureau Insurance Co.; Mike Kane, PCI; Barbara Jorden, ITLA; Woody Richards, American Family
- Chairman Wills** called the meeting to order at 1:35 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 15, 2013. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 19, 2013. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 21, 2013. **Motion carried by voice vote.**
- S 1165:** **Lyn Darrington**, Farmer's Insurance, presented **S 1165**. She said this bill makes a change in Section 1 that only affects uninsured and under-insured motor claims which are essentially personal injury claims. She talked about *Hill vs. American Family Insurance* and how that case changed out exhaustion of underlying liability claims. She explained how since there is no longer exhaustion of the underlying liability, the process takes longer. She explained this bills gives insurers up to 60 days to complete the investigation and make a settlement offer before attorney's fees may become part of the claim.
- MOTION:** **Rep. Packer** made a motion to send **S 1165** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Packer** will sponsor the bill on the floor.
- S 1136:** **Elisha Figueroa**, Idaho Office of Drug Policy, presented **S 1136**. She said this bill concerns the scheduling of "spice" as an illegal drug. She explained that it is necessary to update Idaho's controlled substances statutes in order to cover the ever changing chemical compounds.
- In response to questions, **Corinna Owsley**, forensic chemist with Idaho State Police (ISP), said this change broadens the general classes. She said the chemical components of the drugs are changing constantly and this legislation specifically lists the families of drugs seen thus far. She said these chemical compounds are being developed for medical research, and most are sold online to the average citizens as "research chemicals". She said she couldn't speak to the toxic effects of these drugs but said they are being used for recreational purposes, not medicinal.
- In response to questions, **Elisha Figueroa** said the officers are saying that this drug seems to be addictive and the people they have observed under the influence are very agitated and are a danger to themselves and others.

MOTION: **Rep. Nielsen** made a motion to send **S 1136** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Patterson** will sponsor the bill on the floor.

S 1119: **Kandace Yearsley**, IDHW, presented **S 1119**. She said she was here to answer the questions of the committee that arose during the hearing on the house floor.

In response to questions, **Ms. Yearsley** said this legislation was brought to satisfy a federal requirement that all wage withholding be processed using this standardized federal form. She said this form makes it very clear to employers what to do with the money and alleviates the need to process the wage withholding through an attorney. She explained that the changes to the Social Security Act made by the federal government made it made this wording a state plan requirement. Idaho did not have a state plan so this bill is essentially a pass through by the federal government. She said the wording of the support order is key but this bill relates specifically to wage withholding and it requires wage withholding to be on the federally standardized form and go through the Department of Health and Welfare. She said this bill would not affect those paying child support directly.

MOTION: **Rep. Perry** made a motion to send **S 1119** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Trujillo** will sponsor the bill on the floor.

S 1109: **Jim Rice** presented **S 1109**. He said this bill deals with what the bankruptcy trustee can recover for creditors. He explained how this bill makes funds put into a deferred annuity account within six months of a bankruptcy filing recoverable by the trustee. He said currently you could make a deposit into a deferred annuity account within a day of bankruptcy filing and those funds would be exempt which defeats the purpose of the bankruptcy protections. He said this loophole was brought to the attention of the legislatures by one of the bankruptcy judges.

In response to questions, he said the bankruptcy code gives debtors a choice between federal or state exemptions. He said if debtors meet certain residential criteria, they may opt to use Idaho exemptions and that time frame is six months of residence. He said that six months is the typical "look back" period in bankruptcy cases. He explained how it must be proven that debtors intended to hide money or assets from creditors in order to be charged with defrauding creditors and this deferred annuity does not hide anything, creating a loophole in the bankruptcy protections.

MOTION: **Rep. Ringo** made a motion to send **S 1109** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:08 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AMENDED AGENDA #2
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Adjournment
Room EW42
Wednesday, March 27, 2013

SUBJECT	DESCRIPTION	PRESENTER
<u>SCR 129</u>	Joint Rule/Statement of Purpose	Sen. Davis
<u>SCR 131</u>	Joint Rule/Live Streaming	Sen. Davis
<u>S 1189</u>	Idaho Code/Statutory Construction	Sen. Davis
<u>SCR 128</u>	Idaho Criminal Justice System/Study Comm.	Rep. Wills
<u>H 331</u>	Board of Corrections/Contracting	Rep. Pence

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills Rep Perry
Vice Chairman Luker Rep Sims
Rep Nielsen Rep Dayley
Rep Bolz Rep Horman
Rep Bateman Rep Malek
Rep McMillan Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Wednesday, March 27, 2013
- TIME:** 1:30 pm or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Rep. Perry; Rep. Patterson
- GUESTS:** Monica Hopkins, ACLU; Brent Reinke, IDOC; Claudia Harris, Saturn Printing
- Chairman Wills** called the meeting to order at 1:35 p.m.
- SCR 129:** **Sen. Davis** presented **SCR 129**. He said **SCR 129** amends **Joint Rule 18** clarifying that a Statement of Purpose (SOP) and Fiscal Note are not necessarily the intent of the legislation. He talked about how the SOP and Fiscal Notes should be utilized as an internal tools only. He encouraged the committee members to challenge the SOPs and Fiscal Notes and to look to the literal language of the bill to interpret legislative intent. He explained how the House and Senate votes on bills, corrects titles, but only attaches the SOP as an internal document. He suggested that if the SOP is incorrect, the Representatives should use that in their debates on the floor. He talked about the difference between legislative history and legislative intent.
- There was committee discussion as to the process of drafting and amending both Statements of Propose and Fiscal Notes.
- MOTION:** **Rep. Bateman** made a motion to send **SCR 129** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Moyle and Rep. Rusche** will sponsor the bill on the floor.
- SCR 131:** **Sen. Davis** presented **SCR 131**. He talked about the differences between **SCR 130** and **SCR 131**. He talked about the importance of archiving the work of the House and the Senate and concern that archiving could create an opportunity for some to try to collaterally attack the journal of the House and the Senate. He discussed the value and danger of archiving. He said the Courts has said it is not their job to look past the journal. He explained that the live streaming and recording could be suspended with a 2/3 vote of the individual body. He talked about how the statements of individual speakers do not reflect legislative intent and said the recordings are not a substitute for the journal. He said the Attorney General supports this Senate Concurrent Resolution.
- In response to questions, he said this bill was trimmed back to the single most important thing; to protect the institution but allow archiving. He discussed the importance of keeping the Senate and House practices separate and explained the process of suspending any rule by a 2/3 vote of the body. He said the Idaho constitution does not allow the body of the House or the Senate to ever go into executive session. He said this bill does not disadvantage the legislature or the public and gives each body the discretion where circumstance may arise to suspend the rule.
- MOTION:** **Rep. Bolz** made a motion to send **SCR 131** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Moyle and Rep. Rusche** will sponsor the bill on the floor.

- S 1189:** **Sen. Davis** presented **S 1189**. He said this bill is intended only to codify current legislation on statutory construction. He talked about the importance of actual words in statute as the best guide for determining legislative intent.
- MOTION:** **Rep. Packer** made a motion to send **S 1189** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Moyle and Rep. Rusche** will sponsor the bill on the floor.
- Chairman Wills** turned the meeting over to **Vice Chairman Luker** .
- SCR 128:** **Rep. Wills** presented **SCR 128**. He said the purpose of this legislation is to appoint an interim committee to study the criminal justice system in Idaho. He explained that this is not a witch hunt to find what is not working but rather an effort to enhance what is currently in place. He said Council of State Governments West (CSG West) has offered to undertake this study for free and give the committee a data driven report with facts so the Idaho criminal justice system can have the best fiscal policies and practice. He said the primary goal of the criminal justice system is to reduce the recidivism rate in Idaho.
- In response to questions, he said the Council of State Governments West (CSG West) study would be conducted prior to the meeting of the interim committee. He said that CSG West has been involved with the Idaho legislature for many years and have been involved with other studies. He explained CSG West will be deeply involved with Idaho judiciary branches in their study and with every agency that it affects. He said their study will include only information from Idaho. He talked about the Idaho Department of Health and Welfare being a key component of the study. He said the intent of the study is to improve the system and reduce the millions of dollars the criminal justice system is costing the state.
- Monica Hopkins**, ACLU (American Civil Liberties Union of Idaho), testified in support of an amendment to **SCR 128**. She suggested amendments to the purpose of the study, the role of Council of State Governments West (CSG West), the definition of the "justice reinvestment" concept and the focus of the study.
- In closing, **Rep. Wills** said we are not trying to tear apart the Uniform Sentencing Code but simply trying to build upon the foundation currently in place. He said some of what the ACLU suggests is beyond the scope of the study but some of the information gleaned may allow the interim committee to look at some sentencing practices.
- MOTION:** **Rep. Trujillo** made a motion to send **SCR 128** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Moyle and Rep. Rusche** will sponsor the bill on the floor.
- Vice Chairman Luker** turned the meeting back over to **Chairman Wills**.
- H 331:** **Rep. Pence** presented **H 331**. She explained this legislation establishes additional provisions to the Correctional Industries Act to ensure the Board of Corrections' contracting authority will sell their printing products to public agencies of the state or any political subdivisions only in order to avoid direct competition with the private printing businesses in Idaho. She said the spirit of the law is to provide training to inmates but not at the expense of private contractors.
- In response to questions, she said she did contact the Department of Corrections (DOC), and was told that the statute gives them the ability to contract and they are going to continue to do so. She explained that she feels the DOC is abusing the intent of the statute. She explained how printing is not a finished product at the time of the bid in comparison to furniture building, etc.

Claudia Harris, Saturn Printing, testified in support of **H 331**. She talked about the inability of private printing companies to compete against the State of Idaho. She explained that private businesses have the overhead of renting space, employee salaries and benefits that the state doesn't have. She expressed frustration that tax payers are paying for the housing of the inmates and then having to compete against those inmates in business.

Director Brent Reinke testified in opposition to **H 331**. He said one of the areas of the Department of Corrections' vocational training is printing. He said that he needs more jobs for inmates, not less. He offered to set up a meeting with the Board of Corrections and Rep. Pence to attempt to solve this issue. He noted that Correctional Industries is a self-sustaining business that receives no general funds.

MOTION: **Rep. Sims** made a motion to send **H 331** to the floor with a **DO PASS** recommendation. **Rep. Sims** withdrew her motion.

MOTION: **Rep. Perry** made a motion to hold **H 331** in committee. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:19 p.m.

Representative Wills
Chair

Danelle Heath
Secretary

AMENDED AGENDA #3
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
1:30 pm or Upon Adjournment
Room EW42
Wednesday, April 03, 2013

SUBJECT	DESCRIPTION	PRESENTER
	General Business of the Committee	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Patterson
Rep Trujillo
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Wednesday, April 03, 2013
- TIME:** 1:30 pm or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Reps. Bolz, Perry, Horman, Malek, Patterson, Trujillo and Ringo.
- GUESTS:**
- Chairman Wills** called the meeting to order at 1:31 p.m.
- MOTION:** **Rep. Burgoyne** made a motion to approve the minutes of March 25, 2013. **Motion carried by voice vote.**
- MOTION:** **Rep. Luker** made a motion to approve the minutes of March 27, 2013. **Motion carried by voice vote.**
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 1:42 p.m.

Representative Wills
Chair

Danelle Heath
Secretary