

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 13, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock, and Werk

ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting to order at 1:30 p.m.

INTRODUCTION **Chairman Lodge** introduced the Committee's Page **Kaitlyn Parks** who then gave a brief bio of herself. Intern **Tyler Kelly** also addressed the Committee with his bio.

PASSING OF GAVEL: **Chairman Lodge** passed the gavel to **Vice Chairman Vick** to present the Rules Review.

DOCKET NO. 11-1002-1301 **Idaho State Police Pending Rules Rules Establishing Fees for Service - Idaho Criminal Justice Information System - Dawn Peck**, Manager Bureau of Identification, explained this rule will include terms defined in Section,67-3001, Idaho Code. This rule will also provide a procedure for the expungement of a person's criminal history record, for the transmittal of criminal history arrest fingerprints, and for a person to contest to the accuracy and completeness of a criminal history record in the database of the Bureau of Criminal Identification. Definitions have been added that are used in the criminal history court dispositions. These include acquittal, criminal summons, dismissal, and expunge to assist with the understanding the expungement statute for criminal history.

Senator Werk questioned the definition of expunge which means erasing. It would seem that a person could have their record expunged, but it is discoverable. If an individual is making out an application for a job, even if they have had their record expunged, that record is still discoverable somewhere.

Ms. Peck explained the procedure for expungement of a record in the repository and this rule outlines the procedure. In code it explains that the record can be expunged if the individual was not charged with the crime within one year or if they were acquitted of the crime.

Senator Werk clarified that the erasing of records would have to have the statute changed to indicate that the records are no longer present. **Ms. Peck** responded that a statutory change would be needed. If they expunge a record in the Idaho Criminal History Depository when the record is erased, it is gone. If someone was to do a fingerprint based background check for employment the record would not be in the database. A pardon is different and is addressed in a different part of the statute.

Senator Bock stated that an expungement should treat the individual, who was convicted, as if the crime had never been committed. If they fill out a job application they should be able to say, "yes, I have never been convicted." **Senator Bock** asked if **Ms. Peck** could explain the differences in an expungement and a withheld judgement. **Ms. Peck** explained that in the Idaho Criminal History Depository the documents are fingerprint cards and when they get the disposition from the court they will destroy the records completely. That does not mean that the record would not be available at the court or at an on-line company that does background checks on individuals. The on-line companies buy databases and they never update those files. If an individual has a withheld judgment they must go back to the court and get a dismissal. Then the ISP Information System will show it as a non-conviction; but it will show in the history that there was a withheld judgment along with the dismissal date.

MOTION:

Senator Werk moved to approve **Docket No.11-1002-1301** . The motion was seconded by **Chairman Lodge**. The motion carried by **Voice Vote**.

11-1001-1301

Idaho State Police (ISP) Fee Rules

Rules Governing Idaho Public Safety and Security Information System - Dawn Peck, stated this rule amends the fees charged to users of the Idaho Public Safety and Security Information System (ILETS). This fee increase was approved by the ILETS Board, a six-member multi-jurisdictional board that establishes policies relating to the management and operations of the ILETS System. The fee increase will fund a backup site and a viable dedicated/secure funding stream to support the system, as the funding was deemed insufficient to sustain the system. The ILETS Annual Budget (attachment 1) details the projected annual operating cost of the system, incorporating the redundant backup and communication resources, staffing and replacement resources which total \$3.1 million dollars.

Senator Hagedorn stated according to this budget your agency is tripling the charges for the usage of the ILETS. Is the basis of tripling the access fees to the counties based upon the ILETS projected budget? **Ms. Peck** replied the Board is requesting in this budget an annual additional funding of \$700,000 to be born by the users of the system. ISP would obtain the other half of the funds. **Senator Hagedorn** clarified were the counties represented before the Board in determining these usage fees. **Ms. Peck** replied that the Board has two chief of police and two sheriffs who conferred with their constituency and presented the proposed budget at their association meetings before the Board voted to proceed with these increases. Because this is such a crucial system the counties came back in support of the increased costs.

Senator Mortimer stated that in reviewing the projected annual budget there are two large items \$505,000 for communications back-up redundancy and \$300,000 for servers, etc. (three year rotation). The communication redundancy is that a hardware one-time capital expenditure? **Ms. Peck** explained the communications fees are broken out below for the various communications, such as phone line installation which would be a one time expenditure of \$348,250. There would be an annual usage fee for those communication lines of \$505,000. The servers will be placed on a three year rotation.

Senator Davis stated he can see a need to make adjustments to the system. Present day businesses are getting around this sort of capital expenditure outlay by leasing Cloud based solutions. This expenditure seems to be contrary to the best management long term of technology dollars. Could you explain what ISP's privacy limitations would be that might preclude them from using the Cloud alternatives like businesses to avoid this substantial capital expenditure? **Ms. Peck** explained that there are security limitations that ISP must adhere to in their technology upgrades. They have looked into trying to utilize some Cloud computing but have not found one with the correct security.

Michael Kane, representing the Sheriff's Association, said the ISP, sheriffs and chiefs have been working on an attempted solution for the ILETS for a couple of years. The ILETS has been operating on a shoestring and it is used not only by ISP but the local law enforcement agencies, including the Attorney General. This system must be upgraded and they are about three years behind schedule in that process. ISP must pay for a redundancy system and that is reflected in these budget numbers.

Senator Davis stated that he will not be voting in favor of this rule fee until he has a better understanding of ISP's privacy issues that would preclude them from using the Cloud as a resource. He would need to know that there are not lessor alternatives available in the marketplace so that ISP can continue to provide this critical resource to the sheriffs but not at the numbers that are presented in this budget.

Vice Chairman Vick explained that the Committee will hold **Docket No. 11-1001-1301** and place it on the Friday agenda to allow response regarding the communication costs in the ILETS proposed budget.

11-1101-1301

Idaho State Police Pending Rules

Rules of the Idaho Peace Officer Standards and Training Council - Rory Olson, POST Deputy Administrator, advised that POST is responsible for minimum employment training standards for 5,700 law enforcement personnel serving the criminal justice system in Idaho which include law enforcement, detention, state correction, state probation and parole, juvenile detention, juvenile probation, juvenile correction, and misdemeanor probation officers.

The proposed rule defines and clarifies the character qualifications and disqualifications in the area of moral turpitude, drug use, and criminal record. Allows students who are applicants to attend college training programs to appeal denial of application to the POST Council Hearing Board.

Senator Davis questioned the language of the definition under Section 02. "May Be Rejected" on page 30. Aren't we trying to objectify the standards so that POST satisfies the Supreme Court? It is the broad language "such as, sex act or sex related act" that might undo the definition of the standard. **Sheriff Raney** stated that by definition law enforcement officers have to have a level of credibility in enforcing the law and in the courts that normal individuals don't possess. How do you define this moral conduct? What is the appropriate level of community standard of a peace officer? **Sheriff Raney** answered that the language of "such as" was meant to be the guiding language. Keep in mind that there is a process when they make a decision to hire a candidate and he is turned down because of some sex act that is in the gray area, they would have the appeal opportunity to come before the Hearing Board and then the Council. **Senator Davis** responded the reason we are giving these standards is to objectify the standards so that they satisfy the supreme court. The supreme court wanted to minimize the judgment call hiring practices. Again you are falling back on we will use our judgment. If you look at the phrase a "sex act or sex related act, such as" that language can stand by itself and it is very subjective to the hiring authority. **Sheriff Raney** responded that the Council went from no definition to as accurate a definition for the those standards.

There is subjectivity to the definition which is not very different than a judge often has to administer in a court case. Finally, the Council was aiming for the best language for the appropriate level of community standard. There is a gray area in the language to leave some latitude to the sheriff, director or the administrator to make the determination to hire a prospective candidate.

Senator Hagedorn stated that there is language in 02 and 03 on page 30 stating "may be rejected", "may be accepted", there is nothing in these paragraphs that gives finality in this language. **Sheriff Raney** replied that is correct.

MOTION:

Senator Hagedorn moved to approve **Docket No.11-1101-1301** . The motion was seconded by **Senator Bock**. **Vice Chairman Vick** then called for a **Roll Call Vote** for **Senator Hagedorn's** motion. **Chairman Lodge, Vice Chairman Vick, Senator Hagedorn, and Senator Bock** voted **aye**. **Senator Davis, Senator Mortimer, Senator Nuxoll, and Senator Lakey** voted **nay**. Senator Werk had left the meeting. The motion failed.

PASSING OF GAVEL:

Vice Chairman Vick passed the gavel back to **Chairman Lodge**.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 3:04 p.m.

Senator Lodge
Chair

Carol Deis
Secretary