

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 21, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

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

**ABSENT/ EXCUSED:** Senators Mortimer and Werk

**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 1:31 p.m.

**IDAHO JUDICIAL COUNCIL APPOINTMENT:** **Thomas J. Ryan** of Caldwell, Idaho was appointed to the Idaho Judicial Council to serve a term commencing July 1, 2013 and expiring June 30, 2019. **Judge Ryan** stated that he was a district judge of in the Third District and has been a judge for 18 years. He served as magistrate judge in Owyhee County for 12 years before becoming the district judge in Caldwell. He is an Idaho native, born in Caldwell, graduated Nampa High School and University of Idaho Law School and a member of the Idaho Bar for the past 30 years. In his capacity on the Council he has selected candidates to be referred to the Governor for positions in district courts along with some disciplinary complaints made against judges. He is excited that the State is on the cusp of becoming a state where 100 percent of the judges will go through an evaluation process.

**Senator Hagedorn** asked what do you see as the State's greatest challenge in the judiciary branch over the next four years. **Judge Ryan** answered that he believes it will be judges going from a paper system to a paperless system. **Senator Davis** asked about **Judge Ryan's** philosophy concerning the confidentiality process. **Judge Ryan** replied the issue of confidentiality is very important because you are dealing with personnel matters when you address complaints and disciplinary action that might be taken against judges. **Senator Davis** asked what types of complaints come before the Judicial Council. **Judge Ryan** explained most of the complaints seem to deal with demeanor issues in the courtroom. Complainants feel they are not being listened to by the judges when they appear before them. He has witnessed this behavior from the judges and believes it is needless. Because of this behavior he counsels young judges that there will be many times that they will personally feel angry about what is taking place in the courtroom. When they leave the bench, at the end of the day they should search their minds to figure out what they could have done differently to curb the anger and avoid future outbursts in the courtroom. **Senator Davis** asked what are some of the challenges he sees in the selection process and how can the Legislature help with the process. **Judge Ryan** responded it would be the challenge of recruiting sufficient candidates for the open positions of district judges. There are recruitment issues that must be worked on. **Senator Davis** asked what about the recruitment of women as judges in the State. **Judge Ryan** stated he believed that they needed to attract more women into the judiciary. In the Third District three out of the seven district judges are women and they are very competent colleagues whom he likes to bounce ideas off of as they go about their business day in the judiciary. **Senator Lakey** asked could you comment on the effectiveness of the speciality courts. **Judge Ryan** said he presided over the

drug court in Canyon County for a five year period. He believes in these speciality courts and the work they do even though these courts don't have 100 percent results. One of the successful cases out of this court is an individual that he sees every morning whose case was processed through his drug court and it is a pleasure to see him employed and a good citizen at this point in his life. These courts deal primarily with offenders who generally only have substance abuse issues and have committed crimes in the process of supporting their habit. The court sentences them to intensive treatment and probation which keeps them out of the jails and prisons, spending only \$4,000 per person over 18 month period.

**GUBERNATORIAL APPOINTMENT:** **Kathy Simpson** of Boise, Idaho was appointed to the Idaho Judicial Council to serve a term commencing July 1, 2013 and expiring June 30, 2019. **Kathy Simpson** stated she grew up in Blackfoot, Idaho on a small family farm and that is where she learned the value of hard work and responsibility. Her early years were filled with many chores and participation in 4H, along with working long hours during harvest. She graduated from Utah State University and her professional career began in business in the banking industry. For fifteen years she held positions of consumer real estate, commercial loan officer, marketing director and branch manager. Memorable experiences in this field were mentoring young women and men who came into the workforce. She retired after 20 years with the Idaho National Laboratory where she managed public affairs and communication. **Senator Davis** asked if she has been a part of the selection process of judges and is there any room for improvement. **Kathy Simpson** stated she has been in the interview process for five different judicial appointments. She was impressed with the many facets to the Council's process and evaluation of these candidates. The candidates fill out a 17 page application, bar survey, and evaluation of their character. It is the composite of all of these elements that make a very viable process and she is very impressed with its thoroughness.

**GUBERNATORIAL APPOINTMENT:** **Dolly Ouita Bedal** of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017. **Ms. Bedal** said in 1993 she was on a Boise County steering committee which implemented a program call "I Can"; which was an Idaho City accountability diversion program, along with implementing a pilot program for a drug court and was a certified substance abuse counselor. She owned a corporation that provided substance abuse services to court ordered and privately referred adolescent and adult clientele. Assisting these clients to develop the best practices to become productive and gainful members of society. From 1993 to 2011 she held positions working with adolescent, adult families; juvenile and adult probation and parole; local, county and state law enforcement agencies; Idaho Department of Corrections Victims; Offenders of Domestic Violence; and Sexual Addictions. She is a native of Idaho who is concerned about the safety of the public and the accountability of sex offenders. This is a reappointment, and she would be honored to be reappointed to the Board. **Senator Davis** voiced that Ms. Bedal has been on the Board through a significant transition, and asked what is her impression of the new rules and policies that have just been adopted, are they an improvement? **Ms. Bedal** answered the Board has worked diligently to look at various sex offender management programs from other states along with what has worked and not worked. The public has more information than in the past and she believes that the Board has done an incredible job updating their program. **Senator Davis** asked are there other things that the Legislature should be doing that they have left undone. **Ms. Bedal** stated that the Board has addressed every certain concern at this particular time.

**GUBERNATORIAL APPOINTMENT:** **Paula K. Garay** of Meridian, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017. **Ms. Garay** stated she was raised in Nissa, Oregon on a farm. She graduated from Boise State University in Psychology and acquired her master's degree in Counseling Psychology. Currently she holds the position of Executive Director for a adolescent sexual behavior problem residential program. She represents the cultural diversity portion of the Board and is heavily tied to this arena. Since 2004 she has been a clinical member of the Association for the Treatment of Sexual Abusers.

**Senator Davis** asked is there anything lacking in the changes that have been made to the sex management program and how can the Legislature help the Board be more effective. **Ms. Garay** answered she is proud and confident of the progress the Board has made in their efforts to update their rules and policies. The Board sought collaboration with other states language and practices in making these changes and now Idaho is seen as being in the forefront of sex offender management. At present she does not see an area of the program that is lacking. Any gaps in the rules and regulations have been answered and she believes there are no matters to be addressed. **Senator Davis** asked have there been any professional conflicts arising in their work and if so, how are they being managed. **Ms. Garay** has not seen any conflicts. The next endeavor to be accomplished is an evaluation of treatment provider standards. **Senator Hagedorn** asked what are the greatest challenges the Board might face in the next few years and how might they approach those challenges. **Ms. Garay** explained that the Board was formed to adopt procedures and put checks and balances in place. Idaho has rural pockets where individual treatment providers have been allowed to hang out their shingle and profess to be experts in the treatment of sexual abuse and that is not always the case. The standards and the regulations to those standards will allow the Board to regulate some of these treatment providers.

**GUBERNATORIAL APPOINTMENT:** **Kimberly Simmons** of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017. **Ms. Simmons** stated that currently she serves as a Deputy Ada County Public Defender, handling all stages of felony cases after they are bound over to district court, including probation violations. She has a bachelor's from Truman State University in Psychology, and a law degree from Tulane Law School and passed both the Texas and Idaho bar examinations. As a member of the Board she has actively participated in the creation of standards related to sex offender management. In the performance of her duties as a defender she has the relevant experience defending clients charged with sex offenses. She makes an extra effort to stay apprised of the research relating to evaluation and treatment of sex offenders. Her role as a member of the Board has been to provide the defense perspective on the policies and procedures that the Board is considering. **Senator Davis** noted that Ms. Simmons has had absences at Board meetings. She has sent a proxy to represent her at these meetings, but that person would not be subject to Senate confirmation for casting the votes. **Ms. Simmons** explained that the colleague she has sent from her office as a proxy for the Board meeting has never participated in a vote and her colleague would not participate in the vote. **Kathy Baird**, Sex Offender Management Board, stated that under the Boards by-laws if a member of the Board is unable to attend they may send a proxy. Voting would be done on a certification of a provider and a proxy would be prohibited from voting. **Senator Hagedorn** asked what is the effectiveness of the Sex Offender Registry and is there is anything that should be changed. **Ms. Simmons** said the Board is currently working on the Registry because it is not as effective as it should be. Many other states employ a tiered system of registration where convicted sex offenders are not necessarily required to register for their entire lives. Collaborating with other states they noticed that

where sex offenders complete treatment and have no other offenses they allow that individual to be taken off the Registry. Her opinion is taking these individuals off the Registry is more effective, especially if they are low risk. Evidence shows that low risk offenders given harsher punishments are more likely to recidivate than ones given their lives back.

**RS 22959**            **Relating to Genetic Testing**, with a letter of unanimous consent request from the Health and Welfare Committee to print **RS 22959**.

**RS 22900**            **Relating to Physicians** , with a letter of unanimous consent request from the Health and Welfare Committee to print **RS 22900**.

**MOTION:**            **Senator Davis** moved to print **RS 22959** and **RS 22900**. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**PASSING OF THE GAVEL:**      Chairman Lodge passed the gavel to Vice Chairman Vick.

**RS 22956**            **Relating to Inmate Agricultural Labor - Senator Lodge** stated the idea for this legislation was brought to her last fall. There was not enough labor to pick the fruit in the Sunny Slope area. In the past they have had individuals from the Canyon County Jail come out and pick the fruit, but there were not enough prisoners in the jail last fall to meet this need. **Chairman Lodge** called the Idaho Department of Corrections (IDOC) and they responded that they had some inmates that would like to come out and work, but there was no legislation in place that would allow the inmates to do the work. It would have taken four to six months to get a federal waiver to allow the inmates to work. This bill will allow inmate labor the opportunity to work for a private employer in the production, harvesting and processing of perishable Idaho agricultural food products. The IDOC will establish a fund where the wages will be placed and a process to take out deductions. In the Criminal Justice Reinvestment legislation there is a provision that 20 percent of the wages earned must go toward paying off the inmates restitution, a portion will offset their transportation and security, a portion placed into a fund for when they reenter the community and a portion placed in their commissary fund.

**Senator Hagedorn** asked for clarification on line 15, which states use of inmate labor will not result in the displacement of employed workers within the local region in which the agricultural work is being performed. How would this be determined? **Senator Lodge** explained that a fruit ranch already has people that they hire and they will not be able to discharge these people in order to employ the inmates. This legislation deals with perishable food that must be picked within a certain amount of time. The fruit ranches already have crews, but they did not have enough labor to pick the fruit last season.

**MOTION:**            **Senator Bock** moved to print **RS 22956**. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**PASSING OF GAVEL:**      Vice Chairman Vick passed the gavel back to Chairman Lodge.

**S 1351**                **Battery of Healthcare Workers - Emily McClure**, representing the Idaho Medical Association, stated that battery against healthcare workers has become a major problem in Idaho, particularly in emergency rooms and by those who are seeking drugs. Healthcare workers are in need of added protection for three reasons: 1) they have a higher rate of violent incidence than other professionals.

A healthcare worker is three times more likely to be victim of a violent crime in the workplace than any other private sector professional. 2) They are required by federal law to treat individuals. Often individuals come in violent to an emergency room and treating them requires that they be in close physical proximity; 3) They are the keepers of narcotics and other drugs. Doctors, nurse practitioners and others are often targeted outside a medical environment by those who are seeking drugs. In rural communities individuals looking for drugs recognize the healthcare provider who can write prescriptions stopping them on the street and demanding drugs. This legislation will make it a felony to batter healthcare workers on the job or because of their profession. Approximately 50 percent of all non-fatal injuries to workers from violent acts occur in a healthcare setting. Patient violence is the greatest threat to emergency department personnel and costs associated with these incidents.

The goal of this legislation is not to fill prisons but to provide healthcare workers, courts and prosecutors with a tool to deter this violence. This will be particularly meaningful in the case of repeat offenders who are simply not being held accountable by existing law.

**Senator Bock** asked Ms. McClure if they were aware of any opposition to the bill. **Ms. McClure** answered no, we are not aware of any opposition. **Senator Nuxoll** said this legislation will make it a felony to batter healthcare workers; was this formerly a misdemeanor? **Ms. McClure** replied the only law on the books at this point to charge a battery against a healthcare worker would be under §18-903. Battery against an EMT or other protected classes of people is handled in varying degrees felonies or misdemeanors charged under §18-915. **Senator Lakey** said there is another section of Idaho Code that says there are options available to the judges, that the prison term shall not exceed three years. The judges still have the opportunity to do a combination of a fine and prison. **Ms. McClure** explained that under Idaho Code §19-2601 a court is given many options for sentencing such as commuting a sentence, suspending a sentence, withhold judgement, probation, etc. Similarly under Idaho Code §18-112 (a), the court may choose to also impose a fine up to \$50,000. **Senator Bock** asked since a battery is already a criminal offense, why is there a need for a separate statute which would apply to healthcare workers. **Ms. McClure** responded that the statute that is in place has not deterred these actions. There continue to be major incidents of violence against healthcare workers at an increased rate over the incidence of other private sector professionals, and this bill will be a stronger deterrent for these crimes.

**Vice Chairman Vick** asked what has happened under the current statute when a healthcare worker has reported the assault to law enforcement. **Ms. McClure** replied that they are told by some that healthcare workers are not reporting these incidents because it happens so frequently and that during circumstances when they did report the assault they are not being responded to or taken seriously. **Senator Davis** said all his questions are on language such as policy, need, importance, the ability to give to the healthcare worker something that might otherwise settle things down and will provide some abrupt calmness. The bill seems to adopt by reference the definition of batteries, refers to the code section, and whom it impacts shall be subject to imprisonment. Section 18-915 (c) states that it is a crime, it speaks in terms of the punishment. **Ms. McClure** explained they could have written the language in the bill stating that the crime shall be a felony subject to imprisonment not to exceed three years. Instead they chose to refer to the code number, which infers by definition that the offense would be a felony. Much discussion ensued between **Senator Davis** and **Ms. McClure** concerning the construction of the language in the bill until **Senator Davis** was satisfied with its intent.

**Julie Hoerner**, Director of Emergency and Trauma Services at Kootenai Health in Coeur d Alene, representing Kootenai Health Nurse Leaders of Idaho and the Emergency Nurses Association, stated that she has been a nurse for 28 years, most of the time has been spent working in the emergency nursing area in several capacities. She has worked in both urban and community hospitals and possesses a bachelor of science in nursing and a master's in leadership and management. She has personally been a victim of workplace violence but is testifying today for her staff. Her staff come to work everyday to care for people and are putting themselves at risk physically and emotionally. They have had an emergency department physician punched in the kidney by a patient who was unhappy with the course of his treatment. A visitor entered their special care nursery and interfered with medical care being provided for his baby. He lifted an employee and threw her to the ground. A patient threatened to kill one of their emergency department physicians, if he did not prescribe narcotics. An emergency department nurse and respiratory therapist were both kicked by a man who was high on methamphetamine and as a result the nurse had to have shoulder surgery and missed nine months of work; the therapist had to have knee surgery and missed over eight months of work. There are costs associated with these actions in lost work time, absenteeism, and moral, and healthcare workers are leaving the profession. There are economic impacts to the hospitals because of the injuries to their workers, plus they need to hire more staff to fill in the vacant positions while workers heal from their injuries. Enacting this legislation is one part of a larger movement to reduce violence against healthcare workers.

The incident of the nurse and respiratory therapist who were assaulted by the patient high on methamphetamine, this was not this patient's first offense. The patient was charged with a misdemeanor and 180 days in jail, but 170 days of his jail sentence were suspended and he only served 10 days in jail. The two caregivers each served over 270 days of pain, surgery, rehabilitation, and loss of time with families and work. **Senator Hagedorn** questioned if this law were to pass how would it be implemented in a practical manner to work for the safety of the healthcare workers. **Ms. Hoerner** stated at the moment of the battery incident this legislation will not make much difference, but it will be a deterrent as the law is applied. **Senator Vick** stated that these offenses might not be a law problem but an enforcement problem. **Ms. Hoerner** responded that many of her staff are suffering from the trauma of being harmed emotionally and physically. **Senator Bock** stated that you have the ability to charge an offense as a felony and then the negotiation of the sentencing proceeds from that point. There is not much negotiation from misdemeanor down so there are very good reasons to have these actions sentenced as felonies.

**Ellen Bencken**, representing the Idaho Nursing Associations; **Clement Abbondandolo**, Director of Security for St. Luke's Hospital; **Margaret Henbest**, Nurse Leaders of Idaho; and **Toni Lawson**, Idaho Hospital Association, support the bill and testified that they believe it will add safety and change the culture of tolerance of these offenses for healthcare providers. It sends a clear message across our state and communities that this behavior will not be tolerated, especially in rural communities.

**Vice Chairman Vick** stated he would not be supporting this legislation because he believes that many of the patients are coming into the healthcare facility under distress and great stress. He believes these batteries are a law enforcement issue and these authorities are not taking these incidents seriously. **Senator Vick** said he will not support this legislation.

**Senator Hagedorn** stated he will support the legislation because he believes in deterrents for people who batter healthcare providers. **Senator Nuxoll** stated she will not support this legislation because she believes it will not be a deterrent. A patient under duress will not be thinking whether their actions might be a felony. Some of the testimony presented explained that this legislation will only be part of the solution and other factors of stricter reporting and safer environment would also be part of the solution. She believes these measures should be tried before legislation.

**MOTION:** **Senator Davis** moved to send **S 1351** to the floor with a do pass recommendation. Seconded by **Senator Bock**. The motion carried by **voice vote**. **Vice Chairman Vick and Senator Nuxoll** requested that they be recorded as voting **nay**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:25 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary