

MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
DAYLEY SUBCOMMITTEE
Subcommittee on Pending Rules

DATE: Friday, January 23, 2015

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Representatives Perry, Trujillo, Cheatham, Gannon

**ABSENT/
EXCUSED:** None

GUESTS: Cyndi Hall, ISP; Matthew Garnette, ISP; Jeremy Johnston, ISP; Matt Wetherell, Parole Commission; Jared Olson, IPAA; Clark Rollins, ISP; Kathy Baird, Sex Offender Management Board; Sandy Jones, Parole Commission; Mary Schocher, Parole Commission; Holly Koole, IPAA; Teresa Baker, ISP; Sharon Harrigfeld, IDJC; Monty Prow, IDJC; Joe Blume, IDJC; Rory Olsen, POST; Victor McCraw, POST; Jeff Lavey, Chiefs of Police; Sandee Meyer, IPAA; Mike Kane, ISP; Dennis Stevenson; Karin Magnelli, IDOC;

Chairman Dayley called the meeting to order at 1:30 PM.

DOCKET NO. 05-0101-1401: **Sharon Harrigfeld**, Director of the Idaho Department of Juvenile Corrections (IDJC), presented **Docket No. 05-0101-1401**, Rules for Contract Providers. Ms. Harrigfeld noted that the Juvenile Justice System is operated jointly between the counties and the Idaho Department of Juvenile Corrections. The counties manage the majority of the system which currently has 5,500 juveniles on probation, 283 of which are in custody. 209 of those in custody, are in state beds and 74 are in contract beds. Due to duplications in the rules she would like to repeal the current rule for the purpose of a rewrite.

MOTION: **Rep. Trujillo** made a motion to recommend the full committee approve **Docket No. 05-0101-1401. Motion carried by voice vote.**

DOCKET NO. 05-0105-1401: **Sharon Harrigfeld**, Director of the Idaho Department of Juvenile corrections, presented **Docket No. 05-0105-1401**, Rules for Reintegration Providers. Due to duplications in the rules she would like to repeal the current rule for the purpose of a rewrite.

MOTION: **Rep. Perry** made a motion to recommend the full committee approve **Docket No. 05-0105-1401. Motion carried by voice vote.**

DOCKET NO. 05-0201-1401: **Sharon Harrigfeld**, Director of the Idaho Department of Juvenile Corrections (IDJC), presented **Docket No. 05-0201-1401**, Rules for Residential Treatment Providers. Ms. Harrigfeld noted that all rules pertaining to suicide precautions and preventions were combined and rules regarding the use of polygraphs in the program were clarified. A contract provider's deadline for acceptance or denial of a referral was extended to four business days to allow for review of the observation and assessment of each juvenile before admitting them into their program. Volunteers will no longer be required to get a background check if they are always accompanied by a staff member. To increase compliance, rules regarding the Prison Rape Elimination Act were updated. Providers will be required to provide a handbook to each juvenile and their parent or guardian that outlines the expectations of the program. Finally, the incident reporting period was shortened to three business days.

In response to a question from the committee, **Ms. Harrigfeld** explained that although she would not be opposed to more stringent requirements, the new requirement for background checks every five years is more stringent than previous requirements and aligns the Department of Juvenile Correction's rules with similar department's requirements.

MOTION: **Rep. Perry** made a motion to recommend the full committee approve **Docket No. 05-0201-1401. Motion carried by voice vote.**

DOCKET NO. 05-0202-1401: **Sharon Harrigfeld**, Director of the Idaho Department of Juvenile Corrections (IDJC), presented **Docket No. 05-0202-1401**, Rules for Staff Secure Providers. Ms. Harrigfeld stated that these rules only apply to providers who house juveniles at their facilities and the majority of the rules were carried over from the repealed rules. Ms. Harrigfeld outlined specific changes which would allow medical professionals to conduct unclothed body and cavity contraband searches and make the relapse prevention plan current with IDJC practices. The changes would also streamline case management due dates, remove the provider's use of Department educational software and add a requirement that the providers provide a 30 day supply of medication or a 30 day prescription signed by the physician upon the transfer or release of a juvenile. Finally, the changes add language to allow staff secure providers to maintain juvenile funds at the program providing the conditions are met.

In response to questions from the committee, **Ms. Harrigfeld** addressed the unclothed body and cavity search and stated that a staff member of the same sex as the juvenile would be present during the search and that she believed two individuals would be present at the time of the search.

In response to a question, **Ms. Harrigfeld** explained that contract providers are responsible for the training and education of their staff. Each contract provider is regularly monitored and undergoes a rule review to assure their training plans have been completed.

In response to a question, **Monty Prow**, Idaho Department of Juvenile Corrections, explained that contract providers are given a per diem in order to purchase necessary items for the juveniles in their care and cannot request the juvenile or their family pay for items needed during their time in the program.

In response to a question, **Ms. Harrigfeld** explained that if a juvenile is placed in one of the three state facilities they are not covered by medicaid. However, if the juvenile is placed with a contract provider they are covered by medicaid.

MOTION: **Rep. Perry** made a motion to recommend the full committee approve **Docket No. 05-0202-1401. Motion carried by voice vote.**

DOCKET NO. 05-0203-1401: **Sharon Harrigfeld**, Director of the Idaho Department of Juvenile Corrections (IDJC), presented **Docket No. 05-0203-1401**, Rules for Reintegration Providers. Ms. Harrigfeld stated that these rules apply to providers who are teaching independent living skills. Specific changes in this section are the same as changes for staff secure providers.

In response to questions from the committee, **Ms. Harrigfeld** explained that Nurses from IDJC review the process used by the medical professionals conducting the unclothed body and cavity searches. These rules were fully vetted and are intended for the safety of all parties involved with the search, especially the juvenile.

In response to a question, **Monty Prow**, Idaho Department of Juvenile Corrections, explained that juvenile records are archived when the juvenile is twenty two and destroyed when they are twenty seven. Quarterly and annual reporting is done to confirm the records are destroyed.

- MOTION:** **Rep. Perry** made a motion to recommend the full committee approve **Docket No. 05-0203-1401. Motion carried by voice vote.**
- DOCKET NO. 05-0204-1401:** **Sharon Harrigfeld**, Director of the Idaho Department of Juvenile Corrections (IDJC), presented **Docket No. 05-0204-1401**, Rules for Supported Living Providers. Ms. Harrigfeld explained that IDJC's cases are becoming more complex and there is a growing need for developmentally disabled juveniles to have life long, around the clock care and support following their release from IDJC. Presently there are five juveniles in this kind of support. Specific changes in this section are the same as changes for staff secure providers.
- MOTION:** **Rep. Perry** made a motion to recommend the full committee approve **Docket No. 05-0204-1401. Motion carried by voice vote.**
- DOCKET NO. 11-0301-1401:** **Jeremy Johnston**, Idaho State Police (ISP) Forensic Services, presented **Docket No. 11-0301-1401**, Rules Governing Alcohol Testing. The standard operating procedures of the Idaho State Police and their discretionary authority was first given to ISP through Idaho Code and was later used to create their administrative rules. The purpose of this rule is to incorporate the requirements of the breath alcohol program into the administrative rules. The ISP have historically managed the Idaho breath testing program. The standard operating procedure for breath testing, outlines the procedure used to acquire and maintain an evidentiary breath sample for use in court. The breath testing standard operating procedure has proven consistently defensible in Idaho courts.
- In response to questions from the committee, **Mr. Johnston** explained that these rules only apply to labs within Idaho. Presently there are three labs that conduct alcohol analysis for ISP and no other labs have requested to do so. If a private lab or a lab outside of the state wished to conduct alcohol analysis for ISP they would be required to apply with ISP and approval would be granted or denied by ISP Forensic Services.
- ORIGINAL MOTION:** **Rep. Trujillo** made a motion to recommend the full committee approve **Docket No. 11-0301-1401.**
- SUBSTITUTE MOTION:** **Rep. Perry** made a substitute motion to recommend the full committee reject **Docket No. 11-0301-1401.**
- Michael Kane**, the hearing officer for this rule, explained that even though there was no negotiated rule making there was a hearing and written comments and testimony were submitted by defense attorneys who attended. He made recommendations for changes to the rule based on the testimony from the hearing. Those changes have been implemented into the current rule before the committee.
- In response to a question, **Mr. Johnston** explained that there is a difference in the standard of proof required for a minor in possession or minor in consumption charge compared to a driving under the influence charge.
- Jared Olson**, Traffic Safety Resource Prosecutor with the Idaho Prosecuting Attorneys Association, stated that he was a part of the review process and clarified that a defendant has the opportunity to give an independent sample to any lab they choose. That lab is not required to adhere to the standard operating procedures detailed in this rule. Courts across the state have reviewed the standard operating procedures used by ISP and have found that they do produce a scientifically valid and reliable result. If the rules are adopted they do provide for a presumption of validity, which is rebuttable.
- AMENDED SUBSTITUTE MOTION:** **Rep. Gannon** made an amended substitute motion to send **Docket No. 11-0301-1401** to the full committee without recommendation for further discussion. **Motion carried by voice vote. Rep. Trujillo** requested to be recorded as voting **NAY.**

DOCKET NO. 11-1101-1401: Division Administrator **Victor McCraw**, Idaho Peace Officer Standards and Training Council (POST), presented **Docket No. 11-1101-1401**, Rules of the Idaho Peace Officer Standards and Training Council. This rule standardizes all the disciplines certified by POST, defines waivers of authority and clarifies the character requirements regarding moral turpitude and drug use.

MOTION: **Rep. Perry** made a motion to recommend the full committee approve **Docket No. 11-1101-1401. Motion carried by voice vote.**

DOCKET NO. 11-1101-1402: Division Administrator **Victor McCraw**, Idaho Peace Officer Standards and Training Council (POST), presented **Docket No. 11-1101-1402**, Rules of Idaho Peace Officer Standards and Training Council. This rule pertains to instructor certification and renewal. The rule requires that any instructor have a current certification if they are conducting firearm training and adds a minimum continuing training requirement for instructors in critical areas, such as firearms, defensive tactics and emergency vehicle operations.

In response to a question, **Teresa Baker**, Idaho State Police, confirmed that ISP does not use MRAP vehicles for their emergency vehicle operations.

MOTION: **Rep. Trujillo** made a motion to recommend the full committee approve **Docket No. 11-1101-1402. Motion carried by voice vote.**

DOCKET NO. 11-1101-1403: Division Administrator **Victor McCraw**, Idaho Peace Officer Standards and Training Council (POST), presented **Docket No. 11-1101-1403**, Rules of the Idaho Peace Officer Standards and Training Council. This rule qualifies home schooling and foreign education to meet the educational requirements for POST applicants and clarifies what documentation is required for applicants with this educational background. This rule leaves medical standards up to the hiring agency, allowing for less regulation of local agencies and requires that the applicants have the physical ability to pass the POST training.

In response to questions from the committee, **Mr. McCraw** explained that POST is not the entity that should require the specific physical requirements. This allows the local agencies to determine if the physical limitation will allow that officer to complete the academy. POST does not want to restrict or delay local agencies and because the POST requirements are more restrictive than the local agencies, the council has seen a higher number of waiver requests from local agencies and this often delays applicants. Mr. McCraw stressed that there is a distinct difference between the entry and exit standards and the exit standards are not being relaxed. POST will not pass anyone who cannot pass the POST educational and physical standards, regardless of the local agency standards.

MOTION: **Rep. Perry** made a motion to recommend the full committee approve **Docket No. 11-1101-1403. Motion carried by voice vote. Rep. Gannon** requested to be recorded as voting **NAY**.

DOCKET NO. 11-1104-1401: Division Administrator **Victor McCraw**, Idaho Peace Officer Standards and Training Council (POST), presented **Docket No. 11-1104-1401**, Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers. This rule updates the education and medical requirements for the purpose of having the same application requirements throughout POST.

MOTION: **Rep. Trujillo** made a motion to recommend the full committee approve **Docket No. 11-1104-1401. Motion carried by voice vote. Rep. Gannon** requested to be recorded as voting **NAY**.

DOCKET NO. 50-0101-1401: Deputy Director **Matt Wetherell**, Idaho Commission of Pardons and Parole, presented **Docket No. 50-0101-1401**, Rules of the Commission of Pardons and Parole. The rules for the commission have not seen a significant update since 1998 but due to the implementation of the Justice Reinvestment Initiative, the Commission had to make some significant updates to the language in their rules so that it would reflect the language found in the Justice Reinvestment Initiative. Specific changes include updates regarding the general and special conditions of parole, added language to account for all victims regardless of the final status of the case, updated rules pertaining to technical violators and updates regarding the firearm restoration process.

MOTION: **Rep. Perry** made a motion to recommend the full committee approve **Docket No. 50-0101-1401. Motion carried by voice vote.**

DOCKET NO. 57-0101-1401: Management Assistant **Kathy Baird**, Sexual Offender Management Board, presented **Docket No. 57-0101-1401**, Rules of the Sexual Offender Management Board. This rule is based upon the Boards newly adopted standards and guidelines for practitioners, evaluations and treatment of juvenile sex offenders. As well as a new psychosexual evaluation format specifically for juveniles. These changes must be incorporated into the current rules so that the Sexual Offender Management Board can enforce them. Providers must be certified to work with either adult and/or juvenile offenders. Providers presently certified to work with adult offenders would have to reapply in order to also work with juvenile offenders.

MOTION: **Rep. Gannon** made a motion to recommend the full committee approve **Docket No. 57-0101-1401. Motion carried by voice vote.**

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

Representative Dayley
Chair

Katie Butcher
Secretary