

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 26, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Bayer, Souza, Johnson (Lodge, 11), Werk and Burgoyne

ABSENT/ EXCUSED: None

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: **Vice Chairman Hagedorn** called the Senate Judiciary and Rules Committee (Committee) to order at 1:29 p.m. **Vice Chairman Hagedorn** recognized Senator Johnson, substitute Senator for Senator Lodge.

RS 23294 **Senator Davis** explained **RS 23294** which applies the same principles and concepts of exceptions for deferred annuities to life insurance contracts.

MOTION: **Senator Johnson (6)** moved to print **RS 23294**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT HEARING: The gubernatorial appointment of Sara B. Thomas as the Idaho State Appellate Public Defenders (SAPD). **Vice Chairman Hagedorn** welcomed Ms. Thomas and asked her to present her biography, current job and responsibilities. **Ms. Thomas** began by giving the Committee information about herself and a synopsis of the current cases at the SAPD office. She stood for questions. **Senator Tippetts** queried her about the exemption of Jefferson County for felony appeals. **Ms. Thomas** explained that they choose not to pay in for the services. **Senator Werk** asked if she could give a preview of the upcoming year. **Ms. Thomas** gave information about the subcommittees that are looking at various crimes and stronger expungement statutes. She discussed budget issues that the SAPD will face this year. **Vice Chairman Hagedorn** set voting on Ms. Thomas' gubernatorial appointment for the next Committee meeting.

GUBERNATORIAL APPOINTMENT HEARING: The gubernatorial appointment of Gary Scheihing to the Commission on Pardons and Parole (Commission). **Vice Chairman Hagedorn** welcomed Gary Scheihing and asked that he present information about his past experiences with law enforcement and his current job. **Mr. Scheihing** gave a short biography and stood for questions.

Vice Chairman Hagedorn asked what obstacles Mr. Scheihing anticipates with the Justice and Reinvestment Initiative. **Mr. Scheihing** answered that adaptation using the new guidelines will streamline the process. The Board of Corrections and the Commission are working in alignment making it a smoother process.

Senator Burgoyne inquired about the passage of the initiative and added resources; what steps would be needed and what progress is being made in getting those done? **Mr. Scheihing** stated he would have more information tomorrow.

Mr. Scheihing stated how much he enjoys the appointment and seeing the difference in the lives of parolees.

Vice Chairman Hagedorn set voting for Mr. Scheihing's gubernatorial appointment for the next Committee meeting.

**DOCKET NO.
05-0105-1401**

Idaho Department of Juvenile Corrections Pending Rules presented by **Sharon Harrigfeld**, Director, Department of Juvenile Corrections (DJC). She gave an overview of the DJC system. The rules discussed pertained to private contract providers to the DJC for juvenile offenders who are assessed at entry into the system at levels three and two. The reason for the new rules is to provide clarity for providers and for DJC. All rules will be found under Title 02.

This rule repeals the rules that reintegration providers use. These are for private contract providers and not state facilities. In an effort to streamline and restructure the current IDAPA rules and make them cleaner, the majority of Chapter 05.01.05 was to be carried over into the new chapters, but so many changes have been made it was best to repeal and rewrite the chapter in its entirety.

**DOCKET NO.
05-0201-1401**

Idaho Department of Juvenile Corrections Pending Rules for Residential Providers. **Sharon Harrigfeld**, Director, Department of Juvenile Corrections (DJC), stated this is a new rule that DJC has been calling the Umbrella Rule. The majority of this chapter is being carried over from the current chapters with additional clarification provided. Instead of duplicating information for each different provider, all contract providers the DJC works with must comply with these rules (see attachment 1). **Ms. Harrigfeld** stood for questions.

Senator Davis asked if the required content of the handbook was reflected elsewhere in the rules. **Ms. Harrigfeld** answered that it is.

Senator Davis asked for clarification on "minimum report on assault". **Ms. Harrigfeld** explained the rules and pointed him to the definitions.

Senator Tippetts asked for a definition of "medical authority" in Section 05. **Ms. Harrigfeld** answered that it is the same as authorized medical personnel, but that the DJC would add the definition.

Senator Tippetts was concerned about the contradictions in transportation Sections 205.01 and 205.03. **Ms. Harrigfeld** noted the contradictions.

Senator Tippetts asked for clarification on what "high school equivalency" is under qualifications for employment. **Ms. Harrigfeld** stated what the DJC intended is not noted in the rules. They would add this.

Vice Chairman Hagedorn asked that a list of changes be compiled by the DJC so that all noted errors could be fixed.

Senator Tippetts questioned the ratio of staff to juveniles and asked that the numbers be clarified in the revision. **Ms. Harrigfeld** said it would be done.

Senator Tippetts inquired what kind of information could be withheld from a parent or guardian. The language as written indicates there was some information that would not be disclosed. **Ms. Harrigfeld** answered by giving an example. If an allegation of abuse is made it would be researched or investigated appropriately before giving out information.

Senator Tippetts expressed concern about the latitude given providers to withhold information from the juvenile offender, parent or guardian, or others. He recommended that there be more justification for this provision. **Ms. Harrigfeld** explained that this section was part of the old rules that has been pulled into the new rules, but she admitted it does need additional clarification.

Senator Tippetts asked the DJC to add the requirement of approval from parents or guardians when juveniles are asked to participate in a research project. As it now stands juvenile offenders do not participate in research projects without prior approval from the director or designee, and there is no mention of parents or guardians. **Ms. Harrigfeld** agreed to do so.

Ms. Harrigfeld reiterated that the purpose of **Docket No. 05-0201-1401** is to move two chapters into one, with subsections within that one chapter clarifying the language for the providers.

**DOCKET NO.
05-0202-1401**

Idaho Department of Juvenile Corrections Pending Rules for Staff Secure Providers. **Sharon Harrigfeld**, Director, Department of Juvenile Corrections (DJC), said this rule is for level three juveniles. There is clarification in this section for providers (see attachment 1). She stood for questions.

Vice Chairman Hagedorn noted that the definition section has some of the same issues as in the last rule and will need to be reviewed and corrected.

Senator Souza asked for the definition of level three. **Ms. Harrigfeld** reviewed the observation and assessments of a juvenile. Juveniles are placed in different levels based on what the initial assessment reveals. Level four and five juveniles are in a state facility. Level three offenders are less of a risk to the community and are held in a contract provider residential staff secure facility. This facility is a 24/7 operation with staff around the clock and programing throughout the day.

**DOCKET NO.
05-0203-1401**

Idaho Department of Juvenile Corrections Pending Rules for Reintegration Providers. **Sharon Harrigfeld**, Director, Department of Juvenile Corrections (DJC), said this rule makes it easier for all of the contract providers to review their requirements. It also makes it less complicated for staff when they go out to do rule reviews. The reintegration providers must follow these rules. Much of the chapter has been carried over (see attachment 1).

It also has the language Senator Tippetts has pointed out that needs reviewing. She stood for questions.

Senator Werk questioned the clothed, unclothed and body cavity searches.

Ms. Harrigfeld stated that one of those could only happen after they go through several levels of approval, and the criteria set forth must be met before authorization. If authorized, it must be done by a licensed medical professional.

Senator Werk inquired if there were delays in authorization, was there a safe environment for the juvenile to wait at. **Ms. Harrigfeld** assured him that there was a protocol in place.

For the record, **Senator Werk** declared, he was particularly troubled by Section 220.04 and 220.05. "I believe that if there is a process that you go through to provide for this activity, that it should include appropriate same-sex searchers, people that would do the search. I am concerned that the rule does not have that specification. It appears there is time to hold someone and to get a provider of the proper sex to do the search. If your rules don't contain that, which they don't, I feel extremely uncomfortable with them."

A discussion ensued over the personnel involved in these searches. **Ms. Harrigfeld** indicated she would take this up with the Deputy Attorney General and correct and resolve the issue in a way that all are comfortable with.

Vice Chairman Hagedorn asked Ms. Harrigfeld to clarify in the rules the process to enable those searches to happen.

Senator Burgoyne wondered if the process of not having to look for a same-sex medical authority or an attendant of the same sex was driven by cost. **Ms. Harrigfeld** stated that cost is not considered. It is more about respect for the juvenile and not having more people in the room during the search.

Senator Johnson (11) commented that in the rules, under juvenile offender male, she does not see it addressing electronic mail, texting, social media, etc. and wondered if there is a prohibition in the rules. **Ms. Harrigfeld** answered that there is not. **Senator Johnson (11)** asked that this be addressed by the DJC. **Ms. Harrigfeld** noted that there are strict guidelines for Facebook and internet, but they are not stated in the rules.

**DOCKET NO.
05-0204-1401**

Idaho Department of Juvenile Corrections Pending Rules for Supported Living Providers. **Sharon Harrigfeld**, Director, Department of Juvenile Corrections (DJC), stated that these were new rules. These rules apply to the young people who are developmentally disabled or will need in some way supported living for the rest of their lives. It requires 24/7 care (see attachment 1). **Ms. Harrigfeld** stated the DJC will need to clarify language in this section also. Ms. Harrigfeld stood for questions.

**DOCKET NO.
05-0101-1401**

Idaho Department of Juvenile Corrections Pending Rules for Contract Providers **Sharon Harrigfeld**, Director Department of Juvenile Corrections (DJC), stated this is a repeal. It is an effort to streamline the current structure and have them written into the new rules. She stood for questions.

MOTION:

Senator Davis moved to accept **Docket Nos. 05-0105-1401, 05-0201-1401, 05-202-1401, 05-0203-1401, 05-0204-1401, and 05-0101-1401**, with the understanding that the Director and the DJC will revisit some of the concerns that have been addressed. **Senator Tippets** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

Vice Chairman Hagedorn thanked the Committee for their work. There being no further business, he adjourned the meeting at 2:55 p.m.

Senator Marv Hagedorn
Vice Chairman

Carol Cornwall
Secretary

Barbara Lewis
Assistant Secretary