

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 04, 2015

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

**PLACE:** Room WW54

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

**ABSENT/ EXCUSED:** Senator Davis

**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 1:31 p.m.

**RS 23235** **Sara Thomas**, State Appellate Public Defender (SAPD), explained that the current law states that a written appeal on a successive post conviction is due within 42 days. **RS 23235** would change the time in filing an appeal claiming inadequate defense in a capital case to 42 days from completion of the conviction. By doing so, costs in mandatory conflict counseling would be saved and attorneys would not be put in a position of representing a defendant at the same time the defendant is claiming SAPD is ineffective.

**Senator Burgoyne** noted there was no emergency clause. **Ms. Thomas** stated an emergency clause would be helpful and SAPD would look into it.

**Senator Werk** was concerned about the time limitation. **Ms. Thomas** stated that the bill would create a more concrete timeline and the defendant would have knowledge of when he has to file without losing his claims.

Discussion ensued about the accommodation of the emergency clause and amendments.

**MOTION:** **Senator Burgoyne** moved to print **RS 23235**. **Senator Bayer** seconded the motion.

**Senator Tippets** requested a time-line of the process as it is now and how that would change with the bill. **Ms. Thomas** stated there was a time-line created and she would get it to the Committee.

The motion carried by **voice vote**.

**RS 23206** **Shane Evans**, Department of Correction, explained the need for a sex offender polygraph examiner on the Sex Offender Management Board (SOMB) to enable SOMB to fulfil it's responsibilities.

**Vice Chairman Hagedorn** asked if the fiscal note was included in SOMB's budget. **Mr. Evans** stated he did not know.

**Senator Burgoyne** questioned the potential problem with having ten people for a vote. **Mr. Evans** stated the court member was ad hoc and will vote if needed. **Senator Burgoyne** declared that the court member is a nonvoting member; so how could he vote? **Mr. Evans** answered that the discussion had taken place with the Idaho Supreme Court, and the Court said an ad hoc member would be able to vote when needed.

**Senator Souza** asked for a brief explanation of SOMB. **Mr. Evans** explained it was a board established to look at violent sexual offenders. Their charge was to provide and develop standards for psychosexual reports, provide standards for evaluations, provide standards for delivery treatment, certify those who provide that treatment and set standards for post conviction polygraphs, develop supervision guidelines for probation and parole and establish tier base registration.

**Senator Johnson** (6) questioned whether it was possible to eliminate another SOMB position and move that person into this one? **Mr. Evans** answered it was looked at but as the SOMB currently stands they have broad based expertise and want keep the current makeup. **Senator Johnson** (6) asked if the SOMB could accomplish the same goal by having a subcommittee instead of another board member. **Mr. Evans** responded potentially that could work but there was a need for ongoing expertise and adding a member would be for the best.

**Senator Johnson** (6) asked who was bringing the bill. **Mr. Evans** answered the SOMB itself, in conjunction with the Idaho Criminal Justice Commission (ICJC). **Senator Johnson** (6) questioned the change in the quorum numbers and asked if it was a concern moving forward. **Mr. Evans** doesn't believe it will pose any problems.

**Vice Chairman Hagedorn** questioned the rules of SOMB and asked if in a tie vote, would it pass or fail, due to lack of majority vote. **Mr. Evans** yielded to Kathy Baird

**Kathy Baird**, Management Assistant for SOMB, explained SOMB bylaws do not address a split vote. **Mr. Evans** stated they would have to take this into consideration in their rule making.

**Senator Burgoyne** commented that a vote was usually by consensus. SOMB needs to look internally at what constitutes a majority. **Mr. Evans** explained that they work with consensus and that SOMB will look at their rules to provide a clearer statement of this process.

**MOTION:**

**Senator Tippets** moved to print **RS 23206**. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO.  
11.1101.1401**

**Rules of the Idaho Peace Officer Standards and Training Council (POST)** were presented by Victor McCraw, POST Division Administrator, who corrected the misspelling of his name on the agenda. **Mr. McCraw** explained that this is a temporary rule put in place effective June 5, 2014. It addresses minimum standards and all disciplines that are certified by POST. It defines waiver authority and clarifies character requirements regarding moral turpitude and drug use. Changes under employment was clarified to include a list of all the disciplines that are certified by POST. (see attachment 1)

**Senator Tippets** questioned if the Idaho Department of Juvenile Correction direct care staff were also required to be POST certified. **Mr. McCraw** stated yes, they are required to have certification. **Senator Tippets** asked if certification was the same for misdemeanor correction officers being POST certified and where documentation is found. **Mr. McCraw** yielded to the Deputy Administrator.

Deputy Administrator **Roy Olsen** stated the rules for the requirements asked about are contained in other sets of rules. POST was currently working to consolidate five and six sets of rules into one.

**Senator Tippets** questioned why there is a change of language on prescription drug use. **Mr. McCraw** explained applicants who have used illegal prescription drugs may have extenuating circumstances. The hiring agency and the council would like discretion for decision making.

**Senator Burgoyne** expressed a problem with the marijuana rules. Neighboring states have liberalized marijuana laws and there has been notice to POST of this problem, but there has been no change or limitations on the rules. **Mr. McCraw** explained the language was left as is from a decision made in June, 2014. He pointed out that although POST lacks control over other states, it can control what happens in Idaho through the rules.

**Vice Chairman Hagedorn** questioned the backlog of applications for POST. He asked if the numbers would change if the marijuana rule was changed. **Mr. McCraw** yielded to Deputy Administrator Olsen.

**Mr. Olsen** answered there was no backlog. Hiring practices by agencies have different restrictions than POST, but most are going by the rules of POST.

**Senator Burgoyne** questioned if use of the FDA approved Marinol (marijuana and THC) would keep someone from being hired. **Mr. McCraw** replied that the concerns are valid but the rules do not allow the use of THC.

**Vice Chairman Hagedorn** asked if granting a waiver by the director could be used in these instances. **Mr. McCraw** explained the rules stated "must be rejected" and it gives the director no leeway to grant a waiver.

**Senator Souza** asked for the distinction between "shall" and "must" in rulemaking. **Mr. McCraw** explained it was in essence written to be easy to read for all citizens, and "shall" is not as understandable as "must" or "may".

**MOTION:** **Senator Burgoyne** moved to approve **Docket No. 11.1101.1401** [with the exception of 055.01 A thru D]. **Senator Werk** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Tippets** moved to approve **Docket No 11.1101.1401**. **Senator Bayer** seconded the motion.

A discussion ensued on the merits of accepting the entire docket.

**Vice Chairman Hagedorn** called for a vote on the substitute motion to approve **Docket No. 11.1101.1401**. The motion carried by **voice vote**. **Senator Burgoyne** requested that he be recorded as voting nay.

**DOCKET NO. 11.1101.1402** **Rules of the Idaho Peace Officer Standards and Training Council (POST)** were presented by Vic McCraw, POST Division Administrator. **Mr. McCraw** stated these rules address requirements for POST certified instructors in high liability subject areas involving crucial public safety skills. The word "shall" is changed to "must" or "will" throughout for easier reading. The word "current" is added to make sure that it is a current instructor certifying others and not a past instructor. It also adds a minimum training requirement of eight hours every two years (see attachment 1).

**MOTION:** **Senator Werk** moved to approve **Docket No. 11.1101.1402**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 11.1101.1403** **Rules of Idaho Peace Officer Standards and Training Council (POST)** were presented by Vic McCraw, Post Division Administrator. **Mr. McCraw** explained this rule allows homeschooling and foreign education as qualifying education for POST certification. It clarifies the requirements for documentation for education, leaves medical standards up to the hiring agencies and requires the physical ability necessary to complete the academy. This rule also changes "equivalent" to "POST accepted US regional" for educational accrediting agencies and eliminates the limitation of only high school or GED (see attachment 1). It eliminates the definition of "high school" and renumbers the sections as needed throughout. The changing of "shall" to "must" is throughout the docket and is for all disciplines.

**Senator Tippets** questioned the home schooling requirement of completing a GED and that the requirements for foreign education are confusing and need clarification. **Mr. McCraw** addressed those concerns and explained acceptable education and documentation and how it is used in the rule.

**Vice Chairman Hagedorn** stated that in Idaho there is no certificate for completion of school for home schoolers and asked if POST is aware of that. **Mr. McCraw** replied he is aware and a discussion would need to happen about the applicants from Idaho, but POST needs a standard by which to judge schooling.

**Senator Tippets** asked that the rule be clarified. He also questioned the medical requirements asking what happens when one fails the physical test. **Mr. McCraw** clarified if applicants do not perform to standard then it is assumed they cannot pass the other tests. If applicants are found to be a liability to the class they may be asked to leave the program. When they fail skill tests then training takes place. **Senator Tippets** questioned if there were many required physical tests. **Mr. McCraw** answered yes, there were many tests that must be passed.

**Senator Burgoyne** questioned if the US regionally accredited college and six schools listed take in the entire US and it's territories. **Mr. McCraw** said they are the ones accepted by the Department of Education. **Mr. McCraw** yielded the floor to Deputy Division Administrator Olsen to complete the answer to the question.

**Mr. Olsen** answered yes it covers all of the US and its regions.

**Senator Burgoyne** questioned if physical capability requirements for POST come under the ADA and Idaho Human Rights Act. He also asked does the concept of reasonable accommodation is used? **Mr. McCraw** explained that it was taken into consideration, but the end goal is to be certified to carry out the duties of the job. If the accommodations are available at all times on duty then those are afforded at the academy, if they are not then POST cannot certify that the individual would be able to carry out the law enforcement duties to which they are assigned.

**Senator Johnson** (11) stated that under the home school requirements, a GED is required for application to POST. Idaho no longer requires a GED for college and university entrance nor is it required for military service. She asked that the requirement be changed to be under the complete control by the Director for acceptance. **Mr. McCraw** stated he has no control over this. It would be something that would go to the POST council. The council could then defer back to Mr. McCraw as Director and he would defer to the hiring agencies to determine application. (see attachment 2).

**Mr. McCraw** recognized that there is a stigma to taking the GED by home schooler's. The GED was picked to have a standard that exists; otherwise there is no standard. Allowing the agencies to vet their applicants is a reasonable temporary solution to the issue. If the .02 rule is stricken he will work with home schooler's to set up a standard.

**MOTION:** **Senator Johnson** (11) moved to accept **Docket No. 11.1101.1403** [with the exceptions of subsections 052.02]. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** **Senator Burgoyne** moved to send the gubernatorial appointment of Cassandra Jones as Executive Director of the Commission on Pardons and Parole with a recommendation that she be confirmed by the Senate. **Senator Bayer** seconded the motion.

**Senator Werk** stated he hoped we will see better tracking and expediency in getting people out of prison.

The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** **Senator Souza** asked that the Committee hold the appointment of Sharon Harrigfeld to the next meeting in order to review all the information given to the Committee in the past day. **Senator Johnson** (6) supported the request. **Vice Chairman Hagedorn** stated that the vote for this appointment will be scheduled for next meeting.

**ADJOURNED:** There being no further business , **Vice Chairman Hagedorn** adjourned the meeting at 3:02 p.m.

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Senator Marv Hagedorn  
Vice Chairman

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Carol Cornwall  
Secretary

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Barbara Lewis  
Assistant Secretary