

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 05, 2015

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow

**ABSENT/
EXCUSED:** Rep. McMillan

GUESTS: Rory Olsen, POST; Victor McCraw, POST; Kathy Baird, SOMB; Alan Trimming; Clark Rollins, ISP; Mark Kubinski, IDOC; Holly Koole Rebholtz, IPAA; Matthew Gamette, ISP; Jeremy Johnston, ISP; Jeff Lavey, COPA; Teresa Baker, ISP; Andrea Sprengel, Correctional Industries; Shirley Audens, IDOC; Alan Henderson, Correctional Industries; Sandy Jones, Parole Commission; Mary Schoeler, Parole Commission; Sharon Harrigfeld, IDJC; Dennis Stevenson.

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

MOTION: **Rep. Gannon** made a motion to approve the minutes of the January 29, 2015, meeting. **Motion carried by voice vote.**

MOTION: **Rep. McDonald** made a motion to accept the report of the McDonald Subcommittee. **Motion carried by voice vote.**

MOTION: **Rep. Dayley** made a motion to approve **Docket Nos: 05-0101-1401** Rules for Contract Providers; **05-0105-1401** Rules for Reintegration Providers; **05-0201-1401** Rules for Residential Treatment Providers; **05-0202-1401** Rules for Staff Secure Providers; **05-0203-1401** Rules for Reintegration Providers; **05-0204-1401** Rules for Supported Living Providers; **11-1101-1401** Rules of the Idaho Peace Officer Standards and Training Council; **11-1101-1402** Rules of the Idaho Peace Officer Standards and Training Council; **11-1101-1403** Rules of the Idaho Peace Officer Standards and Training Council; **50-0101-1401** Rules of the Commission of Pardons and Parole; and **57-0101-1401** Rules of the Sexual Offender Management Board. **Motion carried by voice vote.**

MOTION: **Rep. Trujillo** made a motion to approve **Docket No. 11-1101-1403, with the exception of section 52 subsection 02.**

Director **Victor McCraw**, Police Officer Standard Training Council (POST), confirmed that he is working with leaders in the home school community to develop rules pertaining to their applications and that POST has no objection to removing section 52, subsection 02.

In response to questions from the committee, **Mr. McCraw** explained that removing section 02 would not give home school students an advantage over any other applicant. Mr. McCraw also noted that the rule contains a list of acceptable documentation in section 01. Mr. McCraw cited 11.11.01.062 Aptitude, which provides that each POST applicant takes a standardized test, regardless of their education, prior to their acceptance to POST.

**VOTE ON
MOTION:** **Motion carried by voice vote.**

**DOCKET NO.
11-0301-1401:**

Matthew Gamette, Idaho State Police, Forensic Services presented **Docket No. 11-0301-1401**. He explained the docket contains rules governing a alcohol laboratory as well as rules governing breath alcohol testing procedures. The original intent of the rule was for a expedient method to admit a blood alcohol test into evidence without the need of expert testimony from the State. Expert testimony had been deemed a unnecessary burden on the State and it was decided that testimony was unnecessary if there was a test result the legislature believed could produced a extremely reliable result. Per the original intent of the rule, ISP Forensic Services implemented a Standard Operating Procedure (SOP), which are common place for most laboratories. The breath testing SOP is used today and has been upheld in every judicial district in Idaho. In 2011 a clarification was made to IDAPA stating that ISP uses analytical methods and standard operating procedures to manage the breath alcohol program. The breath testing SOP is available to the public, is scientifically sound, well researched and is a living document. Mr. Gamette stated the original intent of the rule has not changed, and by adding the breath alcohol SOP to this rule it would expedite the judicial process, avoid unnecessary delays in the court calendar, save money, and allow the lab to be more efficient.

Rep. Nye invoked Rule 38 stating a possible conflict of interest.

In response to questions from the committee, **Mr. Gamette** stated the ISP laboratory system is accredited for blood alcohol, urine alcohol and vitreous humor. However, it is not in accredited for blood alcohol instrument calibration. ISP laboratories have the highest level of accreditation possible.

In response to questions from the committee, **Jeremy Johnston**, ISP Forensic Services, explained that there are three components: the instrument, the standard or solution, and the temperature of the simulator, all of which contribute to the uncertainty of the measurement for the performance verification, which is allowed to be within + or - 10%. The courts have not challenged the + or - 10%. Mr. Johnston explained that this rule applies a minimum criteria to provide the courts with the assurance that if the lab has ISP Forensic Services' stamp of approval, their work is good and can be taken at face value, which removes the requirement for the State to provide scientific testimony. If the lab does not meet the criteria the court may choose to not accept the results. Mr. Johnston explained that the validity of a single breath test is predicated on the full compliance of the subject. Duplicate sampling is to insure consistent sampling. However, a single breath test may be considered valid as long as the fault for not having two samples falls on the subject rather than on the operator.

Alan Trimming, Ada County Public Defender, stated that there is language throughout the rules that concerns him. Mr. Trimming expressed his concern regarding the allowance for the operator administering the breath alcohol test to quit testing at any time. Mr. Trimming stated that he believed the ISP lab was requesting the legislature adopt, validate and vindicate all the changes they had made and give them the force of law.

In response to questions from the committee, **Mr. Trimming** stated that the rule allows the ISP lab to provide criteria to labs outside of their purview and the authentication could prevent a defender from being allowed to cross examine. Mr. Trimming stated that these rules would not apply to labs outside of the jurisdiction, it is his belief that these rules are flawed.

Meridian Chief of Police, **Jeff Lavey**, expressed his support for including the standard operating procedures into the rules, on behalf of the Meridian Police Department and the Chiefs of Police Association. He believes that having the standard operating procedures incorporated into the rules would prevent frequent changes.

For the record, no one else indicated their desire to testify.

- MOTION:** **Rep. Trujillo** made a motion to approve **Docket No. 11-0301-1401**.
- SUBSTITUTE MOTION:** **Rep. Perry** made a substitute motion to approve **Docket No. 11-0301-1401**, with the exception of section 14.
- AMENDED SUBSTITUTE MOTION:** **Rep. Luker** made an amended substitute motion to reject **Docket No. 11-0301-1401**. Roll call vote was requested on the amended substitute motion. **Amended substitute motion failed, 6 AYE, 10 NAY, 1 Absent/Excused. Voting in favor** of the amended substitute motion: **Reps. Luker, Perry, Sims, Nate, Gannon and Wintrow. Voting in opposition** to the amended substitute motion: **Reps. Dayley, Malek, Trujillo, McDonald, Cheatham, Kerby, Scott, McCrostie, Nye and Chairman Wills. Rep. McMillan was absent/excused.**
- VOTE ON SUBSTITUTE MOTION:** Roll call vote was requested on the substitute motion to approve **Docket No. 11-0301-1401** with the exception of section 14. **Substitute motion failed, 8 AYE, 8 NAY, 1 Absent/Excused. Voting in favor** of the substitute motion: **Reps. Luker, Perry, Sims, Kerby, Nate, Gannon, Nye and Wintrow. Voting in opposition** to the substitute motion: **Reps. Dayley, Malek, Trujillo, McDonald, Cheatham, Scott, McCrostie and Chairman Wills. Rep. McMillan was absent/excused.**
- VOTE ON ORIGINAL MOTION:** Roll call vote was requested on the original motion to approve **Docket No. 11-0301-1401. Original motion carried, 9 AYE, 7 NAY, 1 Absent/Excused. Voting in favor** of the original motion: **Reps. Dayley, Malek, Trujillo, McDonald, Cheatham, Kerby, Scott, McCrostie and Chairman Wills. Voting in opposition** to the original motion: **Reps. Luker, Perry, Sims, Nate, Gannon, Nye and Wintrow. Rep. McMillan was absent/excused.**
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:19 PM.

Representative Wills
Chair

Katie Butcher
Secretary