

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 20, 2015

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

**PLACE:** Room WW54

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

**ABSENT/EXCUSED:** Senator Souza, with a vacancy in District 17.

**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.

**MINUTES APPROVAL:** **Senator Tippetts** moved to approve the Minutes of January 26, 2015. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** Vote on the gubernatorial appointment of Lisa Growette Bostaph to the Idaho Commission on Pardons and Parole.

**MOTION:** **Senator Davis** moved to send the gubernatorial appointment of Lisa Growette Bostaph to the Idaho Commission on Pardons and Parole with a recommendation that she be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT HEARING:** William Wellman of Nampa, Idaho, was appointed to the State Public Defense Commission (Commission) for a term commencing July 1, 2014, and expiring on July 1, 2017. **Mr. Wellman** spoke about his professional responsibilities as an attorney; the majority of his law practice is in criminal defense. He said the Commission interested him before his appointment, and he was glad to serve when asked. He stated the Commission is still a puzzlement to the public and attorneys and he hopes to change that perception.

**Senator Davis** asked about the relationship between the Interim Committee and the Commission. **Mr. Wellman** replied it was in a formative stage. They are working to understand their respective parts and how the system works together.

**Vice Chairman Hagedorn** asked him what is the largest hurdle he sees in the next year. **Mr. Wellman** answered a need for the State to support funds for indigent offenders. He said there is an apparent need for parity between the State's prosecution and defense. The defense needs funding to defend correctly. **Vice Chairman Hagedorn** further asked if the public defenders are meeting minimum standard of defense, or are they below the standard. **Mr. Wellman** replied overall, the needs of indigent defendants are not being met.

**Senator Davis** asked if there are areas throughout the State that are meeting the minimum standards, especially where there is an on staff public defender. **Mr. Wellman** said he could not answer yes, as he knew there are issues everywhere.

**Senator Burgoyne** asked if those counties with a permanent public defender have access and resources for expert testimony. **Mr. Wellman** implied there is not access to quality experts, and the resources are not there. Cost is the biggest issue.

**Senator Davis** asked if pro bono was applied in today's world as in years past. **Mr. Wellman** answered no, some counties' dockets are so full of felony arraignments the method to assign a defense is needed.

**Senator Johnson**(11) asked for the number of appealed cases **Mr. Wellman** has had. **Mr. Wellman** answered less than 15.

**Vice Chairman Hagedorn** set the vote on **Mr. Wellman's** confirmation for Monday, February 23, 2015.

**S 1034** **Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections, took the podium to answer questions from **Senator Davis** about the language of **S 1034**, specifically the statutory omission covered by the bill.

**MOTION:** **Senator Davis** moved to send **S 1034** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

**S 1035** **Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC), explained **S 1035** relates to blended sentences for a juvenile offender. This bill would allow the court to retain jurisdiction, issue an adult sentence and suspend its execution, and commit the juvenile to the dual custody of the State Board of Correction and IDJC. It would also allow adult probation officers to participate in the juvenile's case from the date of sentencing.

**Senator Davis** asked for clarification of the financial responsibilities of a juvenile with a blended sentence. **Ms. Harrigfeld** replied the IDJC holds all financial responsibility for education, programs and treatment during a blended sentence. **Senator Davis** questioned the probation officers' involvement in the treatment team while the juvenile is held in a juvenile detention center. **Ms. Harrigfeld** explained within a blended sentence the probation officer is a member of the treatment team from the beginning of sentencing. He is then able to participate in the decisions made for treatment.

**MOTION:** **Senator Burgoyne** moved to send **S 1035** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried with a **voice vote**

**S 1033** **Senator Burgoyne** explained that **S 1033** will provide Idaho State Police (ISP) the authority to participate in and carry out the new FBI program called Rap Back. This new program automatically updates criminal record histories thereby eliminating a limitation in the current program. Currently, when one has a background check the ISP and FBI remove the fingerprints from the system after the check. Should a person have a subsequent criminal problem, the entity requesting the background check will not know about the new criminal activity unless a check is requested again. The Rap Back program uses technology allowing the FBI to match new activities with a criminal background history. The new information goes back to the entity that requested the original check.

**Senator Burgoyne** stated **S 1033** is simple in that Section 1 is a definition of Rap Back, and Section 2 is the authorization for ISP to participate in Rap Back and to release the information garnished to the supervising entity. There is no fiscal note as it will be paid for by a federal grant.

**Vice Chairman Hagedorn** asked if there is a way for people to expunge their records after a set number of years have passed, and is there a way to remind a person to do so at the end of the time period. This was for those who had no criminal record but the information gathered from the check was kept on record until one left that entity.

**Dawn Peck**, Manager Bureau Criminal Investigation, ISP, replied it could be added into the procedure rules for next year's legislative review.

**Senator Johnson**(6) questioned the authorization in the bill. **Ms. Peck** answered that it is to authorize the ISP to participate in Rap Back. **Senator Johnson**(6) asked if someone could expunge their record within a few months after having the background check. **Ms. Peck** stated if an entity asked for fingerprinting, the fingerprints stay until the person leaves the entity. **Senator Johnson**(11) asked about the list of entities that are allowed to participate in the program and how they were chosen. **Ms. Peck** answered the entity has to have statutory authorization to participate.

**Senator Davis** questioned the difference of what is being used now versus what this bill would do for ISP. **Ms. Peck** answered it would give ISP the ability to keep fingerprint records, which ISP does not do now. It would also update any further criminal activity, something ISP cannot do now unless ISP receives a request for a follow-up background check by an entity.

**DISCUSSION:**

A discussion ensued on background checks and what happens to the fingerprints or details that are provided to the entity. Questions by **Senators Davis, Johnson**(6), and **Vice Chairman Hagedorn** on rules of expungement along with how long an entity keeps the data or how new data is sent to an entity were answered by **Ms. Peck**.

**Senator Bayer** asked for information about the federal grant and finances implied in the fiscal note. **Ms. Peck** answered ISP already has the federal grant and the web service is already in place. To add Rap Back is a matter of adding a few more data buttons into the database program. **Senator Bayer** asked about the State fee or other later fees. **Ms. Peck** replied there would not be a State fee for use of the program.

**Senator Davis** asked if wording could be changed to say who receives the information and expungement wording for exceptions, to make it clear and more precise. **Senator Burgoyne** replied that wording can be changed. If there is a Rap Back notice it must go to the entity and not the person. Senator Burgoyne yielded to Ms. Peck.

**Ms. Peck** clarified under federal law ISP cannot give information to the person. It must be given to the entity. **Senator Davis** asked if words could be added in the bill to include a mandate to the entity to advise the person of their fingerprint results. **Senator Burgoyne** answered yes, that could be included.

**MOTION:**

**Senator Davis** moved that **S 1033** be referred to the 14th Order for amendment. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

**PAGE PRESENTATION:**

**Vice Chairman Hagedorn** asked Page Jamison Lake to the podium and presented him with a letter of recommendation and appreciation along with a gift from the Committee. He thanked Jamison for his service to the Committee. **Mr. Lake** thanked the Committee for the opportunity to work alongside them and learn from them.

**PAGE INTRODUCTION:**

**Vice Chairman Hagedorn** invited the Committee's new Page, Savannah Martin, to the podium to introduce herself to the Committee. **Ms. Martin** from Boise, Idaho, thanked Senator Bayer for being her sponsor and stated she enjoyed participating in Capstone for the past few years. She plans to attend Northwest Nazarene University (NNU) next year going into history and political science.

**ADJOURNMENT:**

There being no further business at this time, **Vice Chairman Hagedorn** adjourned the meeting at 2:50.

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Senator Hagedorn  
Vice Chairman

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Carol Cornwall  
Committee Secretary

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Barbara Lewis  
Assistant Secretary