

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 21, 2015

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Executive Report of State Public Defense Commission	Ian Thomson, Executive Director
RS23284	Relating to the confidentiality of execution participants, records and information.	Josh Tewalt, Department of Correction
RS23210	Relating to outdated language from Idaho Code § 20-242A re: the penal betterment fund.	Josh Tewalt, Department of Correction

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Hagedorn

Sen Davis

Sen Tippetts

Sen Johnson

Sen Bayer

Sen Souza

Sen Werk

Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 21, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Hagedorn, Senators Tippetts, Johnson, Bayer, and Souza

ABSENT/ EXCUSED: Senators Davis, Werk, Burgoyne, and Smyser (Lodge)

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 1:30 p.m. He introduced the Committee secretary, Carol Cornwall, and the Committee page, Jamison Lake.

PRESENTATION: **Mr. Ian Thomson**, Executive Director, State Public Defense Commission (PDC), introduced the members of the PDC in attendance with him: Judge Molly Husky, Chairman, and Darrel Bolz, Vice Chairman.

Mr. Thomson explained that the PDC was created last summer and consists of seven members serving on a voluntary part-time basis and two paid members, the director and an administrative assistant. The PDC meets regularly about twice a month. **Mr. Thomson** pointed out that although a lot of interest has been expressed from various sectors of the community, several members of the PDC are new to the area and are taking time to familiarize themselves with the issues. As a result, he has set modest expectations for the next couple of months when identifying priorities.

Mr. Thomson stated that one of the priorities is providing guidance to county commissioners in the construction of contracts they sign with private attorneys. Thirty-four of Idaho's counties have private contract attorneys to provide these services. The PDC will be discussing model contracts to provide efficient and equitable policies.

The second priority he addressed was training for public defenders including some specialized training on death penalty and juvenile issues. These trainings will be paid for by the PDC using allocated funds.

Mr. Thomson said that the PDC would also address the issues of qualifications and rules for the public defenders and data reporting requirements. The PDC and the agencies throughout the State eagerly anticipate the implementation of Odyssey; it will provide consistency and organized access to information across the State.

Vice Chairman Hagedorn asked how responsive the counties have been in working with each other and if they are sharing lessons learned.

Mr. Thomson replied that each county has not been surveyed by the PDC, but they have been surveyed by LSO. Response from county clerks was high. Response was much lower from contract attorneys and prosecutors' offices. **Mr. Thomson** reported that conversations with county representatives indicate cooperation among the counties, but there is a need to know what the PDC wanted from them in advance so the data could be accumulated. He said there is some sharing but not a systematic process of sharing (see attachment 1).

RS 23284

Vice Chairman Hagedorn introduced Josh Tewalt, Deputy Chief of Prisons for the Department of Corrections (Department).

Mr. Tewalt explained that **RS 23284** provides language that clarifies the confidentiality of certain execution participants, records and information. Non-disclosure protections are currently granted to the on-site physician, staff, contractors, consultants and volunteers serving on escort or medical teams, nor will any information be disclosed that could jeopardize the Department's ability to carry out an execution. **RS 23284** codifies those protections and further includes as protected information the source of any legal substances. This confidentiality is critical for consultants and member of the medical field whose participation, if made known, could have safety and professional ramifications.

Senator Tippetts asked if the type of legal substance is public information.

Mr. Tewalt responded that the type of the substance is public information. The source of the substance is not. He pointed out that there is a public standard operations procedure document that outlines the execution process: the roles of people involved in that process, their credentials, the training, the types of legal substances and the amounts of those substances.

MOTION:

Senator Tippetts moved to print **RS 23284**. **Senator Bayer** seconded the motion.

Senator Bayer asked for clarification on the reference to legal compulsion.

Mr. Tewalt replied that sometimes something extreme may occur and the last part of the language addresses that.

Senator Bayer asked if a rare occurrence would limit subsequent proceedings.

Mr. Tewalt turned the answer over to Mark Kubinski, the Lead Deputy Attorney General with the Department of Corrections.

Mr. Kubinski explained that the language prevents the disclosure of that information to the public or to other individuals, but that it doesn't limit the ability of the courts to have access to that information.

Vice Chairman Hagedorn asked for clarification on ". . . any information for the disclosure of such information would jeopardize the Department's ability to carry out an execution." He asked if there are any other restrictions that would limit that broad term.

Mr. Tewalt responded that the intent behind that language is to prevent disclosure of identifying information.

The motion carried by **voice vote**.

RS 23210

Vice Chairman Hagedorn introduced Mr. Josh Tewalt to present **RS 23210**.

Mr. Tewalt explained the **RS 23210** is a housekeeping bill bringing outdated references in Idaho Code in line with current practices as related to the Penal Betterment Fund (PBF). The PBF resided with the Department of Corrections (DOC) until the creation of the Correctional Industries, from which it is now administered. The reference to the PBF was never removed from the DOC. The current wording implies that prisoners pay is coming from the PBF, and that has not been the practice since 1974. Now they are paid from dedicated funds. **RS 23210** will correct that inconsistency.

MOTION:

Senator Bayer moved to print **RS 23210**. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT: There being no further business, **Vice Chairman Hagedorn** adjourned the meeting at 4:57 p.m.

Senator Hagedorn
Acting Chair

Carol Cornwall
Secretary

REPORT TO THE LEGISLATURE

IAN H. THOMSON

EXECUTIVE DIRECTOR

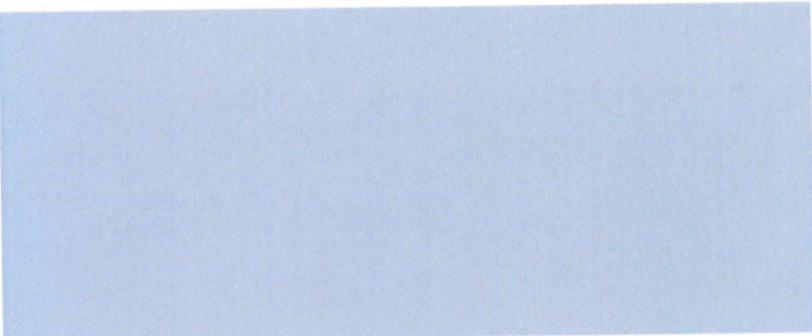


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I. SUMMARY

The State Public Defense Commission (PDC) was recently established¹ as a means to improve the delivery of indigent legal defense services throughout Idaho. The mission of the Commission is to seek and preserve freedom for all by vigorously safeguarding Constitutional rights. In the words of Thomas Jefferson, “The price of freedom is eternal vigilance.” In that effort, the Commission aims to:

- (A) serve as a **clearing house of information** for relevant stakeholders;
- (B) maintain standards to ensure that defending attorneys have adequate **training and resources** to fulfill their Sixth Amendment obligations;
- (C) **promulgate rules** for public defender training and data collection regarding indigent defense services;
- (D) **inform the legislature** of any Sixth Amendment issues.

In a very short period, the Commission has established an office, held regular meetings, begun to assess the collection of relevant data, and identified its immediate priorities for its first year of operation. Consequently, the members of the Commission are engaged in developing recommended model contract terms and constructing rules and regulations regarding public defender training and qualifications.

STATE PUBLIC DEFENSE COMMISSION

- GATHER INFORMATION
- PROVIDE TRAINING
- ISSUE RULES & STANDARDS
- INFORM LEGISLATURE

¹ For a brief discussion of the relevant background leading to the creation of the State Public Defense Commission, *see* Supplemental Material at pp.13-15, included at the end of this report.

II. APPOINTMENT OF MEMBERS

According to statute, all appointed members of the Commission are voluntary and serve part-time. The following Commissioners were appointed upon the creation of the Commission in July of 2014:

Member	Appointment Authority	Term
Sen. Chuck Winder Senate	President Pro Tempore of Senate	Elected Term ≤ 2 years
Rep. Jason A. Monks House of Representatives	Speaker of the House of Representatives	Elected Term ≤ 2 years
Hon. Molly Huskey, Chair* District Court Judge, Third District	Chief Justice of Supreme Court	2 years
Comm. Kimber Ricks Idaho Association of Counties	Governor	3 years
William H. Wellman, Esq. Owyhee County Public Defender	Governor	3 years
Sara B. Thomas, Esq. State Appellate Public Defender	Governor	3 years
Darrell G. Bolz, Vice-Chair* Idaho Juvenile Justice Commission	Governor	3 years

* Both the Chair and Vice-Chair serve terms of a single year.

III. ACCOMPLISHMENTS OF THE COMMISSION

The Commission met for the first time on August 27, 2014. Given the obvious challenges in creating a new agency and meeting its statutory obligations, the Commission has met a total of nine times in the intervening four and a half months. In that time the Commission has selected a chair and vice-chair for its first year of operation, drafted bylaws, and adopted a mission statement, vision statement and statement of values.

In accordance with statute, the Commission hired a full-time Executive Director, Ian Thomson, to handle the day-to-day operations of the Commission. He began working for the Commission in October. Prior to joining the Public Defense Commission, Mr. Thomson worked in the Capital Litigation Unit at the Idaho State Appellate Public Defender. Previously he worked as a trial-level public defender for several years. The Commission also obtained office space and hired a part-time administrative assistant. In establishing a new state agency, the Commission has contracted with other state agencies and private contractors to provide necessary services and support for the creation and maintenance of the office.

The Commission identified its statutory priorities and formed two primary **subcommittees**: one to explore **model contract terms** for use by the various counties, and the other to devise administrative rules regarding public defender **training and qualifications**. The entire membership of the Commission also agreed to work on data reporting requirements throughout the first year.



Hard at Work

- Establishing a new state agency from the ground-up
- Forming sub-committees
 - Model Contracts
 - Training & Qualifications
- Assessing public defense services in each county
- Assessing current public defender training and continuing legal education

Public Defense Delivery Assessment

The Commission has made a complete assessment of the way in which each county in Idaho provides for indigent defense services. Accompanying that information, the Commission has generated a comprehensive public defender roster, consolidating contact information for every institutional public defender, contract defending attorney, and contracted conflict public defender across Idaho.



Cassia County Courthouse

By statute there are four approved means for providing Sixth Amendment counsel to those who qualify²: (1) a county can establish and maintain an institutional **public defender office**, (2) more than one county can **jointly establish** and operate an institutional public defender office, (3) a county can **contract with the public defender office** of another county for services,

or (4) a county can choose to **contract with private practitioners** to act as the defending attorneys for those who qualify.

The following is a brief synopsis of the methods of delivery being used in the various counties throughout Idaho.

INSTITUTIONAL PUBLIC DEFENDER OFFICES

Seven (7) counties have now chosen to establish and maintain a public defender office. (Ada, Bannock, Bonner, Bonneville³, Canyon⁴, Kootenai, and Twin Falls counties.)

² Idaho Code §19-859(1)-(4).

³ Bonneville County also created a separate Office of the Conflict Public Defender in 2014, which employs two full-time attorneys to handle cases conflicted out of the primary office.

⁴ The Canyon County Public Defender was only established in 2014, and began operation on October 1st.

Those offices currently employ a combined total of 115 full-time attorneys to handle the majority of the indigent cases in their respective counties. Between those offices, the PDC has identified another forty-one (41) attorneys that are used to handle conflict cases.

JOINTLY OPERATED PUBLIC DEFENDER OFFICES

Only **two** (2) counties have opted to enter into a joint operating agreement, in order to pool resources together and establish an office of the public defender. (Cassia and Minidoka counties.) A joint management board, with members from each county, has been arranged to handle the finance and maintenance of the office.

The Mini-Cassia Public Defender currently employs five (5) full-time public defenders and operates a small office in each respective county.

COUNTIES CONTRACTING WITH OUTSIDE PUBLIC DEFENDER OFFICES

No county in Idaho is currently contracting with an outside institutional public defender office to provide Sixth Amendment representation.

COUNTIES WITH PRIVATE ATTORNEY CONTRACTS

Thirty-four (34) counties are currently under contract with one or more attorneys in private practice to provide representation for those who qualify. (Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Boundary, Butte, Camas, Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Latah, Lemhi, Lewis, Lincoln, Madison, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, and Valley counties.)

Between those thirty-four (34) counties, there are fifty-three (53) separate contracts involving sixty-seven (67) different attorneys who are engaged in providing services. The Commission has also identified an additional six (6) attorneys that have conflict-specific contracts in those counties, and another two (2) who frequently serve as a conflict attorney without the benefit of a contract.

There is **one** county (Washington) that has neither a public defender office nor an existing contract for the provision of indigent defense services. The Commission has identified seven (7) attorneys who are most frequently appointed by the sitting judge to handle those cases on an ad hoc basis.

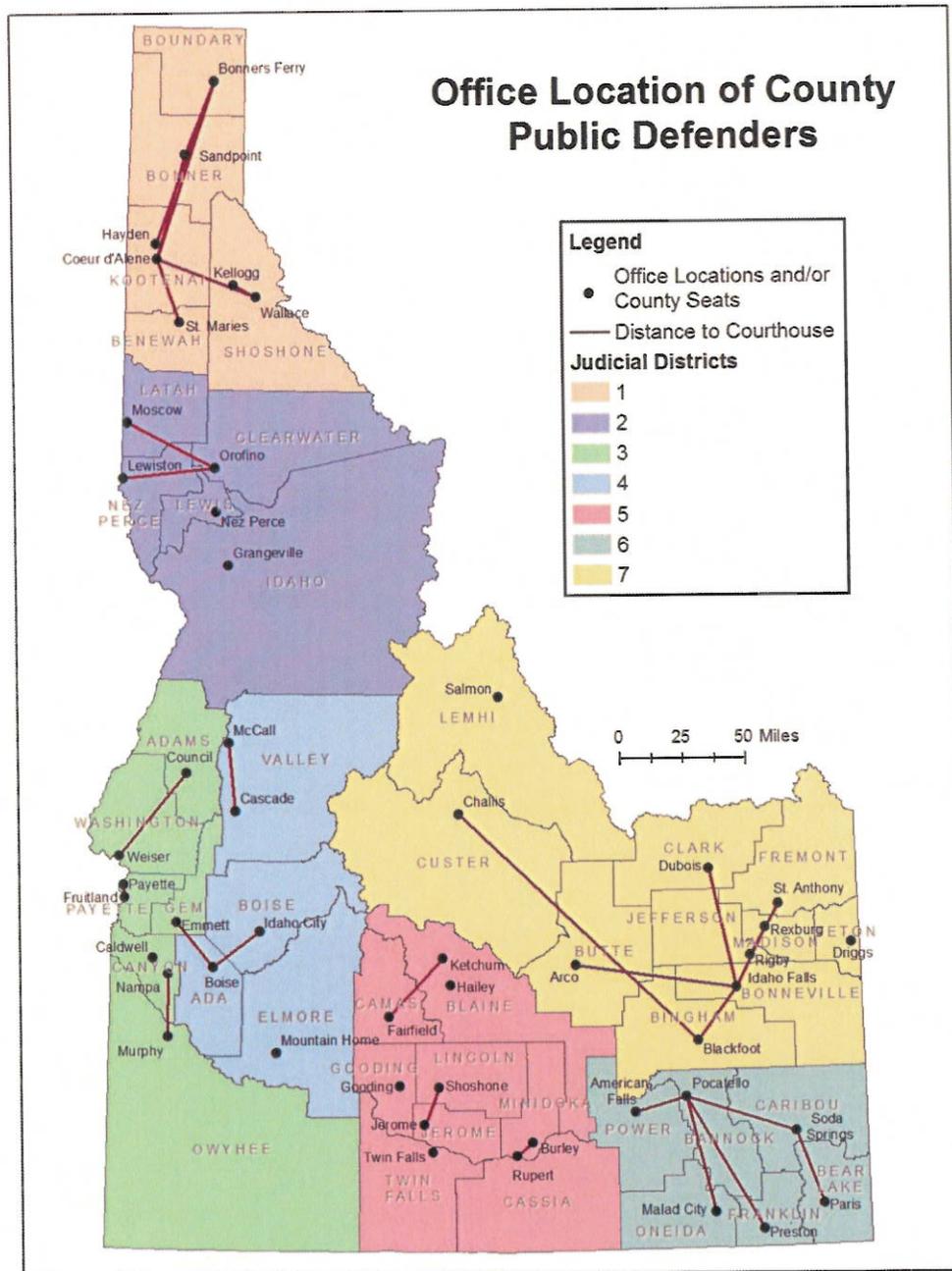
Type of Service	Number of Counties	Number of Attorneys
County Institutional Public Defender Office	7	115
Jointly Operated Public Defender Office	2	5
Contract Defending Attorney	34	67
Contract Conflict Defending Attorney ⁵	10	47

Felony and capital appeals in forty-three (43) counties are handled by the office of the State Appellate Public Defender.⁶ The State Appellate Public Defender currently employs a staff of sixteen (16) attorneys, and uses the services of three (3) private appellate lawyers to handle felony conflicts. According to the Commission’s most recent assessment, there are 136 full-time attorneys employed at institutional public defender offices at the trial and appellate level in Idaho. Another sixty-seven (67) work under a contract with one or more counties, and another fifty-nine (59) serve as either contract conflict-defense attorneys or are frequently used as appointed attorneys to handle similar matters.

The Commission has also discovered that half of Idaho’s counties (twenty-two) are being served by contract defending attorneys whose principal office is located outside of the county. (See figure below.)

⁵ Six counties with institutional public defender offices, along with four contract counties, have entered into specific contracts for conflict services.

⁶ All counties, except for Jefferson County, have chosen to participate and contribute to the state funds which qualifies them for these services.



Legal Education and Training Assessment

The Commission has undertaken a concerted effort to identify those attorneys who are in the greatest need of additional training, support, and resources. In anticipation of planning training programs for public defenders, the

Commission has completed an initial assessment of the amount and source of the mandatory continuing legal education (MCLE) credit hours obtained by each public defender in their current reporting period. That initial assessment confirms that a significant number of indigent defense attorneys in the State are not receiving adequate training hours in areas directly relevant to the representation of their indigent clients.

The Commission has joined 186 attorneys serving as public defenders in Idaho to the National Association for Public Defense (NAPD), which provides attorneys with significant online resources. Particularly for attorneys who practice alone, or are located in more remote areas, online resources can provide a substantial and cost-effective method to provide guidance and support.

IV. IDENTIFIED PRIORITIES OF THE PUBLIC DEFENSE REFORM INTERIM COMMITTEE

During its first few months of operation, the Commission was tasked with certain clear priorities by the joint Public Defense Reform Interim Committee. Those objectives included the development of model contract terms to serve as guidelines to the counties with private contracts, and the provision of relevant training to public defenders in the current fiscal year.

The Commission has adopted the priorities of the Interim Committee, and due to limited time and resources the State Public Defense Commission is not submitting any legislative recommendations for public defense reform at this time. The Commission feels strongly that significant reforms in the absence of clear and reliable data and information would be a disservice to all of those involved. The Commission will be looking toward the implementation of Odyssey (the statewide court technology software) to provide better information on caseload and workload of those attorneys representing defendants at county expense. That program represents a \$21 million investment by the State into improving effective case management throughout the criminal justice system. However, as Administrative

District Judge Richard Bevan recently reported to the House Judiciary, Rules & Administration Committee, the statewide implementation of Odyssey is not likely to be completed until 2017.

Model Contract Terms and Public Defender Standards

The Commission has undertaken a serious study of the nature and composition of contracts being used by counties throughout Idaho. They have begun their review of other model contracts, and are progressing quickly in identifying those terms that are necessary to ensure that counties can provide representation with financial or ethical conflicts, and still take into consideration the particular circumstances of the individual counties. At the same time these contract provisions should provide the attorney with adequate protections and financial compensation for the work being provided to their clients.

The Commission expects to present recommended model contract terms in the upcoming year and to have those available to the counties by the time existing contracts expire in the fall of 2015. In addition, the Commission will be submitting proposed rules for adoption and approval regarding the qualifications of contracted public defenders and training requirements for those attorneys handling indigent appointments.

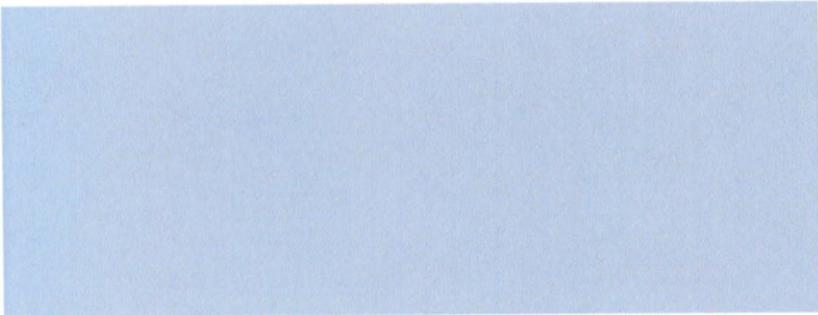
Full Utilization of Trustee and Benefit Payments

The Commission is fully aware that its trustee benefit payment allocation has been set-aside specifically for the training of indigent defense attorneys across the state. In addition to providing attorneys with online resources through the NAPD, the Commission is planning to host and sponsor three distinct training conferences before the end of the 2015 fiscal year, at little or no cost to those who attend. A primary conference for trial- and appellate-level public defenders is scheduled for June 4-5 in Caldwell, which will accommodate up to 155 attorneys. An additional capital training will be held in Coeur d'Alene on June 12th for up to

twenty-five (25) attorneys. Furthermore, a specialized training for attorneys who handle juvenile and child-protection cases is planned in Boise on May 29th for another twenty (20) attorneys. Those trainings are expected to fully exhaust the money allocated for trustee benefit payments in the current year.

Outreach and Education

Finally, the Commission is engaged in important information gathering and public education with respect to the public defense function. In accordance with those aims, representatives of the Commission have already made considerable efforts to meet with chiefs of the institutional public defender offices across the state, several contract attorneys, county commissioners, and a limited number of prosecuting attorneys. The Commission will continue to strive to inform the relevant stakeholders about the Commission's role, the guidance it can provide to county commissions, and the support it can offer to defense attorneys representing Idaho's indigent population.



V. CONCLUSION

The State Public Defense Commission is determined and committed to improving the quality and effectiveness of indigent representation in every county of Idaho. The Commission also acknowledges that there is clear room for reform and improvement. Although an assessment has begun, given the diversity of the current public defense system and the diffuse nature of its administration, the challenges faced in collecting data from each county, and the difficulty in implementing model contract terms, a more robust analysis of each county's system will take a considerable amount of time. Consequently, the Commission believes that it will require additional time and study before making legislative recommendations involving substantive and systemic reform.

SUPPLEMENTAL MATERIALS

HISTORY AND BACKGROUND OF THE IDAHO STATE PUBLIC DEFENSE COMMISSION

In 2008 the Idaho Criminal Justice Commission (CJC), along with the Juvenile Justice Commission, requested the National Legal Aid and Defender Association (NLADA) conduct a comprehensive analysis and evaluation of the provision of indigent defense across the state of Idaho at the trial-level. Over the course of a year, the NLADA sent evaluators to seven representative counties throughout the state, including Ada, Blaine, Bonneville, Canyon, Kootenai, Nez Perce, and Power.

The NLADA issued their final report in January 2010, entitled, *The Guarantee of Counsel: Advocacy & Due Process in Idaho's Trial Court (Evaluation of Trial-Level Indigent Defense Systems in Idaho)*. The report concluded

[T]he state of Idaho fails to provide the level of representation required by our Constitution for those who cannot afford counsel in its criminal and juvenile courts. By delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight, Idaho has sewn a patchwork quilt of underfunded, inconsistent systems that vary greatly in defining who qualifies for services and in the level of competency of the services rendered. While there are admirable qualities of some of the county indigent defense services, NLADA finds that none of the public defender systems in the sample counties are constitutionally adequate.

At the same time the NLADA was conducting their analysis of Idaho's system, the CJC created its own Subcommittee on Public Defense in December of 2009. The CJC's subcommittee included representatives from the Idaho Association of Counties, the state court system, the Attorney General's office, county prosecutors, judges and magistrates, legislators, attorneys, public defenders, and the Department of Corrections. That group undertook its own study of the public defense system over the course of three and a half years.

The CJC's subcommittee made several legislative recommendations, including (1) a revision of state statute addressing the definition of indigency, and clarifying when a person or child qualifies for legal representation at county expense, (2) a clarification of when a single attorney can serve as a guardian and attorney in the same matter, (3) the establishment of standards for juvenile representation, and (4) the creation of a legislative Interim Committee to explore public defense reform. Largely in response to those recommendations, the joint legislative Public Defense Reform Interim Committee was created in the 2013 session and was extended through 2014.

ESTABLISHMENT OF THE STATE PUBLIC DEFENSE COMMISSION

During the 2014 session the Legislature established the State Public Defense Commission, as a self-governing agency of the Executive branch. The Commission's charter is codified in Idaho Code §19-848 through §19-850. The Commission was established on July 1st, 2014.

The statutory mandate and authority of the PDC was clearly set forth in I.C. §19-850(a) and (b). The PDC has been charged with the following:

- (1) Promulgate rules with regards to

- a. Training and continuing legal education requirements (CLE) for indigent defense attorneys, including criminal, capital, post-conviction, juvenile, abuse and neglect, civil commitments, and civil contempt;
 - b. Uniform data reporting requirements for the annual reports that indigent defense attorneys must submit to their county commissions and administrative judge, including caseload, workload and expenditures.
- (2) Make recommendations to the Idaho legislature regarding the public defense system (by January 20 of each year), including
- a. Core contract requirements for counties to use when engaging services of private attorneys (including model contracts);
 - b. Qualifications and experience standards for indigent defense attorneys;
 - c. Enforcement mechanisms;
 - d. Funding issues, including for trainings, data collection and reporting, and handling conflict cases.

The Legislature approved an initial annual budget of \$300,000. Of that \$119,900 was appropriated for personnel costs, \$74,200 was dedicated to general operating expenses, and \$105,900 was dedicated as trustee benefit payments for public defender training costs.

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 26, 2015

SUBJECT	DESCRIPTION	PRESENTER
<u>RS23294</u>	Regarding the elimination of conflicting exemption language for life insurance policies	Senator Bart M. Davis
Gubernatorial Appointment Hearing	Sara B. Thomas was appointed to the Idaho State Appellate Public Defender	Sara B. Thomas
Gubernatorial Appointment Hearing	Gary Scheihing was appointed to the Commission on Pardons and Parole	Gary Scheihing
Docket No. <u>05-0105-1401</u>	Idaho Department of Juvenile Corrections Pending Rules Rules for Reintegration Providers (Chapter Repeal) - Page 5	Sharon Harrigfeld, Director, Department of Juvenile Corrections (DJC)
Docket No. <u>05.0201-1401</u>	Idaho Department of Juvenile Corrections Pending Rules Rules for Residential Treatment Providers (New Chapter) - Page 7	.Sharon Harrigfeld, Director, DJC
<u>05-0202-1401</u>	Idaho Department of Juvenile Corrections Pending Rules Rules for Staff Secure Providers (New Chapter) - Page 37	Sharon Harrigfeld, Director, DJC
Docket No. <u>05-0203-1401</u>	Idaho Department of Juvenile Corrections Pending Rules Rules for Reintegration Providers (New Chapter) - Page 61	Sharon Harrigfeld, Director, DJC
Docket No. <u>05-0204-1401</u>	Idaho Department of Juvenile Corrections Pending Rules Rules for Supported Living Providers - Page 79	Sharon Harrigfeld, Director, DJC
Docket No. <u>05-0101-1401</u>	Idaho Department of Juvenile Corrections Pending Rules Rules for Contract Providers (Chapter Repeal) - Page 3	Sharon Harrigfeld, Director, DJC

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Bayer
Vice Chairman Hagedorn	Sen Souza
Sen Davis	Sen Werk
Sen Tippets	Sen Burgoyne
Sen Johnson	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

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



Idaho Department Juvenile Corrections

Senate

Judiciary & Rules Committee

**Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St.
Boise, ID 83720
(208) 334-5100 ext. 404**

REPEALED RULES

05.01.01

Rules for Contract Providers

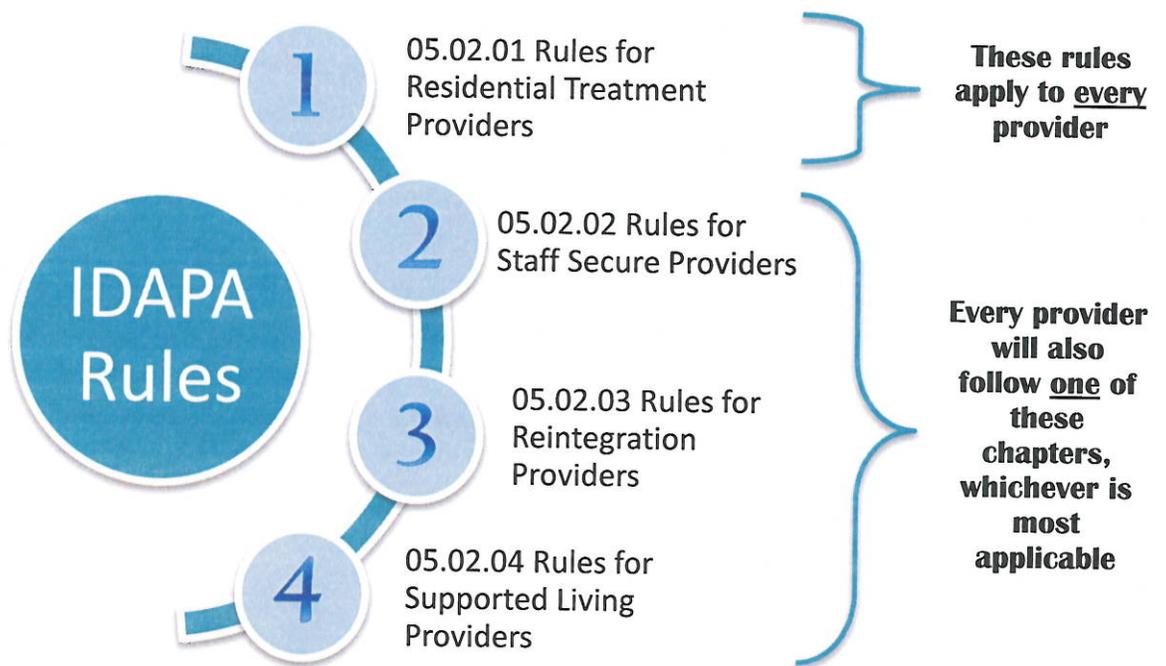
The majority of this chapter is being carried over into the new chapters, but so many changes have been made that we felt it was best to repeal and rewrite the chapter in its entirety.

05.01.05

Rules for Reintegration Providers

The majority of this chapter is being carried over into the new chapters, but so many changes have been made that we felt it was best to repeal and rewrite the chapter in its entirety.

IDAPA Rules for IDJC Contracted Providers Summary of Major Changes



05.02.01 Rules for Residential Treatment Providers

Much of this chapter has been carried over from the chapters currently being repealed, with additional clarification provided.

2. Instead of duplicating this information in each chapter for each different type of provider, all providers must follow this “umbrella” chapter, along with one of the other new chapters, as applicable.
3. Provides clarification to rules that were confusing in the chapters being repealed, such as:
 - Combines all rules related to suicide precautions and prevention into one section (section 225).
 - Clarification provided on the use of polygraphs as part of the program (subsection 240.02).
4. Lengthens the amount of time a provider has to accept or deny a referral from two business days to four business days (subsection 202.01).
5. Includes a section to address volunteers of minimal use to encourage using valuable volunteers in the community. This allows for the provider to allow volunteers who meet certain criteria without necessitating a background check or providing the required training (subsection 215.04).
6. Revises the section related to the Prison Rape Elimination Act (PREA) to increase compliance with the PREA Juvenile Facility Standards (section 224).
7. Added a section requiring the provider to supply a handbook to the juvenile and the parent or guardian. This section also includes the minimum required content of the handbook (section 234).
8. Shortens the amount of time for reporting certain incidents to the required person(s) from ten business days to three business days (subsection 241.03 and 241.04).

Negotiated Rule Making

1. We conducted a very thorough negotiated rule making process during the formation of these rules. Each contracted treatment provider of IDJC was met with or spoke with individually.
2. Many providers met with IDJC’s quality improvement staff and discussed each section and subsection in detail.

3. Feedback from providers was taken into consideration, and many changes were made based on this feedback, such as:

- Removing too prescriptive language that requires the provider to use a 12-step program for substance abuse services.
- Clarifying what constitutes “clinical notes”.
- Revising the rule to state that room restrictions do not warrant an incident report if under 15 minutes. This is in alignment with IDJC’s policy.

05.02.02

Rules for Staff Secure Providers

1. Much of this chapter has been carried over from the chapters currently being repealed, with additional clarification provided.
2. Providers who are staff or hardware secure, and do not fall in the category of reintegration or supported living providers, must follow these rules, along with 05.02.01.
3. Clarifies the section related to searches for contraband (section 220).
4. Changes rule to allow qualified medical professionals to conduct unclothed body searches and body cavity searches of juveniles at staff secure providers, provided conditions are met (section 220).
5. Adds a section on the continued development and the completion of the relapse prevention plan, as consistent with current IDJC practice (subsection 232.08).
6. Streamlines case management due dates to be more consistent with the IDJC process (section 232).
7. Removes the option for providers to utilize the department’s educational software program.
8. Adds a requirement that the provider provide a 30-day supply of medication or a 30-day prescription signed by the physician upon the juvenile’s transfer or release (subsection 237.05).
Adds language to allow staff secure providers to maintain juvenile funds at the program, provided conditions are met (section 207).

Negotiated Rule Making

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3. Feedback from providers was taken into consideration, and many changes were made based on this feedback, such as:
 - Removing language that requires the provider to use a 12-step program for substance abuse services.
 - Clarifying what constitutes “clinical notes”.
 - Revising the rule to state that room restrictions do not warrant an incident report if under 15 minutes. This is in alignment with IDJC’s policy.

05.02.03

Rules for Reintegration Providers

1. Much of this chapter has been carried over from the chapters currently being repealed, with additional clarification provided.
2. Reintegration providers must follow these rules, along with 05.02.01.
3. Clarifies the section related to searches for contraband (section 220).
4. Changes rule to allow qualified medical professionals to conduct unclothed body searches and body cavity searches of juveniles at staff secure providers, provided conditions are met (section 220).

5. Adds a section on the continued development and the completion of the relapse prevention plan, as consistent with current IDJC practice (subsection 232.07).
6. Streamlines case management due dates to be more consistent with the IDJC process (section 232). Removes the option for providers to utilize the department's educational software program. Adds language to allow providers to maintain juvenile funds at the program, provided conditions are met (section 205).

Negotiated Rule Making

1. We conducted a very thorough negotiated rule making process during the formation of these rules. Each contracted treatment provider of IDJC was met with or spoke with individually.
2. Many providers met with IDJC's quality improvement staff and discussed each section and subsection in detail.
3. Feedback from providers was taken into consideration, and many changes were made based on this feedback, such as:
 - Revising the plan for juvenile budgeting strategies to align with current practice.
 - Clarifying the language related to juvenile escapes.
 - Defining a "health professional".

05.02.04

Rules for Supported Living Providers

1. Much of this chapter has been carried over from the chapters currently being repealed, with additional clarification provided.
2. Supported living providers must follow these rules, along with 05.02.01. Clarifies the section related to searches for contraband (section 220).
4. Adds a section on the continued development and the completion of the relapse prevention plan, as consistent with current IDJC practice (subsection 232.07).
5. Streamlines case management due dates to be more consistent with the IDJC process (section 232).
6. Removes the option for providers to utilize the department's educational software program.
7. Adds language to allow providers to maintain juvenile funds at the program, provided conditions are met (section 205).

Negotiated Rule Making

1. We conducted a very thorough negotiated rule making process during the formation of these rules. Each contracted treatment provider of IDJC was met with or spoke with individually.
2. Many providers met with IDJC's quality improvement staff and discussed each section and subsection in detail.
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 - Revising the plan for juvenile budgeting strategies to align with current practice.
 - Clarifying the language related to juvenile escapes.
 - Defining a "health professional".

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 28, 2015

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Magistrate Judges Review	
	Administrative Office of the Courts – Introduction	Senior District Judge Barry Wood
	Who we are and where we come from	Judge Michael Oths, District 4
	Child Protection	Judge Debra Heise, District 1
	Family Court Services	Judge Kent Merica, District 2
	Juvenile Courts	Judge Dayo Onanubosi, District 3
	Domestic Violence	Judge Rick Bollar, District 5
	Criminal Courts	Judge Rick Carnaroli, District 6
	Problem Solving Courts	Judge Ryan Boyer, District 7
Vote on Gubernatorial Appointment	Sara B. Thomas, Idaho State Appellate Public Defender	
Vote on Gubernatorial Appointment	Gary Scheihing, Commission on Pardons and Parole	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn	Sen Werk
Sen Davis	Sen Souza
Sen Tippetts	Sen K Johnson (11)
Sen Bayer	Sen Burgoyne
Sen D Johnson (6)	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 28, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

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

**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 1:31 p.m.

GUBERNATORIAL APPOINTMENT: **Senator Tippetts** moved to send the gubernatorial appointment of Sara B. Thomas as the State Appellate Public Defender to the floor with the recommendation that she be confirmed by the Senate. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Werk** moved to send the gubernatorial appointment of Gary Scheihing to the Commission on Pardons and Parole to the floor with the recommendation that he be confirmed by the Senate. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Judge Barry Wood** introduced the magistrate judges and gave an overview of the Administrative Office of the Courts (AOC) (see attachment 1). He spoke of the importance of continuing education for judges and noted that three educational trainings will be presented by the AOC.

Judge Michael Oths, Magistrate, 4th District, Ada County and President of the Idaho Magistrates Association, presented information about what cases Idaho magistrates handle and the number of filings seen this past year (see attachment 2).

Judge Debra Heise, Magistrate, 1st District, Bonner County, spoke on the Idaho Child Protection Act. She pointed out a typographical error which transposed IV to VI (see attachments 3 and 4). She explained how child safety referrals are received sending children into the protective custody of the State. Judges are required to hold a hearing within 48 hours of a child safety referral. Depending upon the situation, other requirements must be followed by the judges. If the judges are not compliant with these requirements under Title 4E the State loses federal money. Magistrates held 7,762 hearings statewide involving children.

Judge Heise explained the Court Appointed Special Advocates (CASA) and guardian ad litem (GALS) programs (see attachment 4). These are volunteers, and funding is provided from the public, Legislature and private work for training.

Judge Kent Merica, Magistrate, District 2, Nez Perce County, instructed the Committee on family law and family court services relating to domestic relations (see attachments 5 and 6). The courts are seeing a higher number of grandparents seeking guardianship for grandchildren. The courts are also seeing a lot of refiling of existing cases. The number of self-represented litigants has risen posing a challenge for the court. Issues are complex and self representation results in many people not being legally represented, and the court could not help out. The creation of the Court Assistance Office (CAO) and the Family Court Coordinators (FCC) helped assist litigants in filling out appropriate forms and helped them prepare for court. The FCC in all districts has established some core services including parenting classes and mediation that help both the family and the courts. The CAO and FCC helped those who are self represented to produce the correct pleadings and to have the case resolved in the magistrate court. This year the Idaho Supreme Court adopted the Family Law Rules of Civil Procedure. This effort brought all the rules of procedure that involve family law cases into one format, streamlined the process and provided sample forms of assistance for self-litigants. It also established timelines for discovery. This helps efficiently move cases through the system with the goal of having cases for a short amount of time and keeping them in magistrate court if possible.

Judge Dayo Onanubosi, Magistrate, District 3, Canyon County, reviewed the Idaho Juvenile Corrections Act, which laid out the legislative intent and policy of the State. The Southwest Juvenile Justice Center is now over a year old (see attachment 7). The judges understand they are dealing with juveniles not adults. There had to be cooperation and collaboration between those involved in the juveniles' lives. The number of juveniles housed by the State is at an all time low. **Judge Onanubosi** outlined the parents' responsibility in the program. This collaboration and cooperation passes along savings to the tax payers of the State.

Judge Rick Bollar, Magistrate, District 5, Minidoka County, presented information on domestic violence courts (DVC). The program began in 2002 in Ada County and with its success, by 2009 the Legislature adopted Idaho Code § 32-1408(3) (see attachment 8). Objectives of DVC were to provide for victim safety and offender accountability.

Judge Bollar described the components of cases primarily assigned to DVC. Cases involved domestic violence and its fallout. The Statewide Domestic Violence Court Coordinator is Amber Moe. **Judge Bollar** invited the Committee to read the Legislative Review given by Ms. Moe and the Idaho Supreme Court, particularly the part which discussed the Ada County Mentor Court. DVC functions in six of the seven judicial districts in Idaho, the second district doesn't have a DVC program.

Judge Rick Carnaroli, Magistrate, District 6, Bannock County, highlighted the criminal courts of Idaho. **Judge Carnaroli** described to the Committee the on call duty that was rotated in some districts (see attachment 9). On-call duty involved reviewing warrants, arraignment courts, walk-in applications for civil protection, orders in domestic violence cases and involuntary mental health commitments. On-call outside of the work day means any time of the day. Judges are called for search warrants, arrest warrants, and involuntary mental holds. On weekends the judge reviews any arrest paperwork and sets bail. Some weeks, 7 a.m. mental commitment hearings are held daily. Rural magistrates are on-call every day of the year.

Judge Carnaroli described the particulars of arraignment courts. These are where people are seeing a judge for the first time for both felony and misdemeanor offenses. Judges advise offenders of their rights and assign public defenders. Based on applications reviewed, judges could release offenders from jail, set supervision if needed and set bail. No contact orders are also issued when needed. Misdemeanor offenders can plead guilty at arraignment, and guilty pleas are taken after a determination that the offenders understand their rights.

Judge Carnaroli explained preliminary hearings were conducted by magistrates. Prosecutors are required to show that a crime was committed and probable cause that the accused committed the crime. Judges decide whether the case goes to district court. Magistrates are the first to see felony cases. **Judge Carnaroli** explained that pre-trial conference alternatives are for easily resolved misdemeanors. These cases are held in one courtroom with a public defender, prosecutor and private counsel. This is used to get cases through as quickly as possible, some days getting through 140-160 cases.

Judge Carnaroli expounded that jury trials occur when a settlement didn't happen. Misdemeanor jury trials are done in one day. If a jury was waived then there was a court trial. The judge decides guilt, innocence and sentencing. Infraction trials for contested speeding tickets are also provided for citizens. Sentencing and probation oversight is used by a judge through re-arraignment. Most dangerous and incorrigible offenders go to jail. The probation department serves a function in the process. When a parolee violates probation the judge sentences them to a fine or suspended jail or extends the probation. The longest probation allowed is two years. Felony cases found to be misdemeanors are sent back to the preliminary hearing judge to determine sentencing.

Judge Ryan Boyer, Magistrate, District 7, Bonneville County, spoke about the differences between a problem solving court and a regular court. The vast majority of the magistrate judges are problem solving court judges. Collaboration is the key to problem solving courts (see attachment 11). The specialty courts convened a group for a treatment team. These courts are for domestic violence, child protection, truancy courts and youth courts (see attachment 10). Youth court is a panel of youth who have juvenile offenders appear before them. They sentence the offenders to classes, written essays, probation, and service. If a juvenile follows the panel's guidelines and graduates from the program, the case is dismissed.

Not everyone is eligible for the problem solving court. Judges use the Level of Service Inventory (LSI) for adults and youth factors to determine who is sent to problem solving court. Judges use the standards and guidelines adopted by the Statewide Drug Court and Mental Health Court Coordinating Committees in deciding eligibility.

Senator Johnson (6) queried the Idaho Judicial Council about the number one complaint received. **Judge Oths** answered perceived rude behavior by judges.

Senator Johnson (6) questioned the greatest need of the courts. **Judge Heise** stated the need was for expanded training and trained volunteers for children. **Judge Wood** clarified the need for volunteers. By law a child 12 and under was required to have a volunteer independent advocate. There is a great need to find and train these volunteers.

Senator Johnson (6) asked when a child payment order was charged and DNA evidence later showed the male is not the father, could the charge be made administratively to change the order of payment. **Judge Merica** explained that the process involves both administrative action from Health and Welfare and judicial reversal of the determination order.

Senator Burgoyne spoke about self representation numbers increasing. **Judge Merica** clarified that cost is a huge issue in retaining a lawyer, so more accused people are representing themselves. The court is trying to set up a volunteer lawyer program and the program has helped some people. Legal Aid has more requests than they can handle.

Senator Johnson (11) complimented the group of judges in attendance and questioned if salaries of judges are in parity with private lawyers. **Judge Wood** replied that they are not in parity in most areas.

ADJOURNED: **Vice Chairman Hagedorn** thanked the judges for their work and attendance. There being no further business at this time, **Vice Chairman Hagedorn** adjourned the meeting at 2:55 p.m.

Senator Hagedorn

Vice Chairman

Carol Cornwall

Secretary

Barbara Lewis

Assistant Secretary

Idaho Magistrate Judges Association

Senate Judiciary Committee

January 28, 2015

AOC – Judge Barry Wood (Introduction)

District 4 – Judge Michael Oths (Who we are and where we come from)

District 1 – Judge Debra Heise (Child Protection)

District 2 – Judge Kent Merica (Family Court Services)

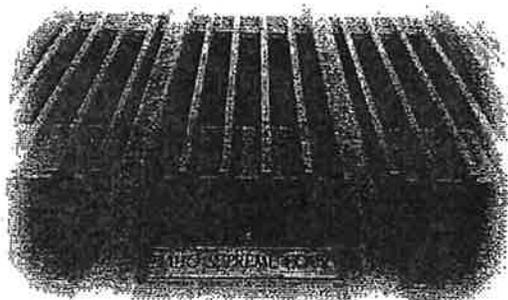
District 3 – Judge Dayo Onanubosi (Juvenile Courts)

District 5 – Judge Rick Bollar (Domestic Violence)

District 6 – Judge Rick Carnaroli (Criminal Courts)

District 7 – Judge Ryan Boyer (Problem Solving Courts)

Idaho State Judiciary



Presentation by Magistrate Judges to the
SENATE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
JANUARY 28, 2015



INTEGRITY

FAIRNESS

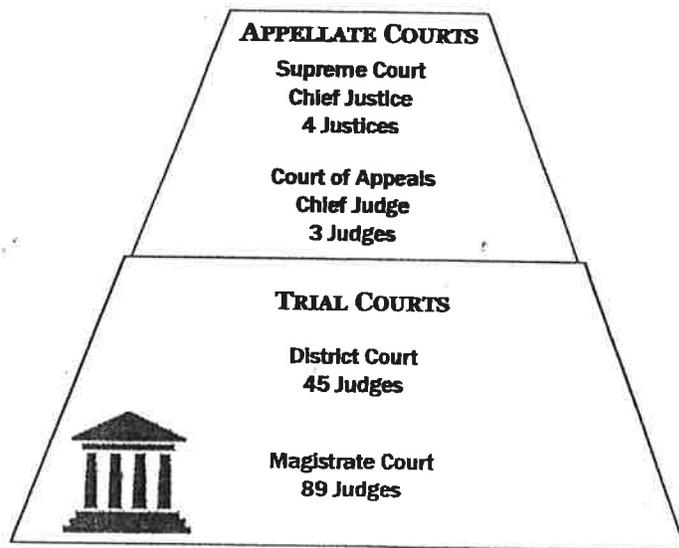
INDEPENDENCE

RESPECT

EXCELLENCE

INNOVATION

Overview of the Idaho Judiciary



District 4 – Michael Oths (Who we are and where we come from)

2014 - 378,000 total filings in Idaho, 95% in Magistrate Court

- **2014 – 193,000 filings (excluding infractions), 91% in Magistrate Court**

- **Magistrates handle:**

- **Felony initial proceedings**
- **Misdemeanors**
- **Child Protection**
- **Juvenile**
- **Divorce / Custody**
- **Guardianships / Conservatorships**
- **Probate**
- **Small Claims**
- **Civil Cases**

- **Demographics:**

- **89 Magistrates, at least one in each county**
 - ◆ **74 men; 15 women**
 - ◆ **Median age is 56 – about half are in their 50s**
 - ◆ **Median age at time of appointment is 43**
 - ◆ **Median is 8 years on bench**
- **Prior Experience**
 - ◆ **46 came from private practice**
 - ◆ **26 came from county prosecutor office**
 - ◆ **16 “other”**

- **Magistrate Commissions, *Idaho Code* § 1-2201, *et. seq.***

- **Disciplinary Complaints by Idaho Judicial Council**

IDAHO MAGISTRATES, AS OF DECEMBER 2014

Name	D	County	Name	D	County
Pat McFadden	1	Benewah	Kevin Swain	4	Ada
Deb Heise	1	Bonner	Mike Reardon	4	Ada
Lori Muelenberg	1	Bonner	William Harrigfeld	4	Ada
Justin Julian	1	Boundary	Joanne Kibodeaux	4	Ada
Barry Watson	1	Kootenai	Lynnette McHenry	4	Ada
Rob Caldwell	1	Kootenai	John Hawley	4	Ada
Scott Wayman	1	Kootenai	Roger Cockerille	4	Boise
Clark Peterson	1	Kootenai	David Epis	4	Elmore
James Stow	1	Kootenai	George Hicks	4	Elmore
Anna Eckhart	1	Kootenai	Lamont Berecz	4	Valley
Daniel McGee	1	Shoshone	Ted Israel	5	Blaine
Randy Robinson	2	Clearwater	Daniel Dolan	5	Camas
Jeff Payne	2	Idaho	Blaine Cannon	5	Cassia
John Judge	2	Latah	Mick Hodges	5	Cassia
Stephen Calhoun	2	Lewis	Casey Robinson	5	Gooding
Gregory Kalbfleisch	2	Nez Perce	Tom Borreson	5	Jerome
Kent Merica	2	Nez Perce	Mark Ingram	5	Lincoln
Michelle Evans	2	Nez Perce	Rick Bollar	5	Minidoka
John Meienhofer	3	Adams	Roger Harris	5	Twin Falls
Jayne Sullivan	3	Canyon	Calvin Campbell	5	Twin Falls
J.R. Schiller	3	Canyon	Tom Kershaw	5	Twin Falls
Gary DeMeyer	3	Canyon	Bryan Murray	6	Bannock
Debra Orr	3	Canyon	Rick Carnaroli	6	Bannock
Dayo Onanubosi	3	Canyon	Tom Clark	6	Bannock
Jerold Lee	3	Canyon	Scott Axline	6	Bannock
Frank Kotyk	3	Canyon	Steve Thomsen	6	Bannock
Randall Kline	3	Canyon	Todd Garbet	6	Bear Lake
Tyler Smith	3	Gem	David Kress	6	Caribou
Dan Grober	3	Owyhee	Eric Hunn	6	Franklin
Brian Lee	3	Payette	David Evans	6	Oneida
Robert Jackson	3	Payette	Paul Laggis	6	Power
Gregory Frates	3	Washington	Ryan Boyer	7	Bingham
Russell Comstock	4	Ada	Scott Hansen	7	Bingham
Cathleen M-Irby	4	Ada	Mark Riddoch	7	Bonneville
Tom Watkins	4	Ada	Michelle Mallard	7	Bonneville
Laurie Fortier	4	Ada	Steve Gardner	7	Bonneville
Carolyn Minder	4	Ada	Ralph Savage	7	Butte
James Cawthon	4	Ada	Penny Stanford	7	Clark
Christopher Bieter	4	Ada	Chuck Roos	7	Custer
Andrew Ellis	4	Ada	Gilman Gardner	7	Fremont
Theresa Gardunia	4	Ada	Robert Crowley	7	Jefferson
Diane Walker	4	Ada	Stephen Clark	7	Lemhi
David Manweiler	4	Ada	Mark Rammell	7	Madison
Michael Oths	4	Ada	Jason Walker	7	Teton
Dan Steckel	4	Ada			

DISTRICT 1—Debra Heise (Child Protection)

- **Idaho Child Protective Act, *Idaho Code 16-1601*** states that it is “the policy of the state of Idaho” to “establish a legal framework [for] judicial processing ...of child abuse, abandonment and neglect cases....”
- In 2012, Idaho’s child welfare system ranked No. 1 in the nation by Foundation for Government Accountability.
- The anatomy of a Child Protective Act case and Title VI-E compliance requirements.
- **In state fiscal year 2014:**
 - 8,005 child safety referrals were investigated by the Idaho Dept. of Health and Welfare, 67% of which were classified as neglect, 26% as physical abuse, and 7% as sexual abuse.
 - 15% of the 8,005 cases investigated by the Department were substantiated, and 735 Child Protective Act petitions were filed.
 - 1,181 children entered foster care in 2014 and 1,259 exited foster care.
 - 2,481—total number of children in foster care in Idaho in 2014
- **Guardian ad Litem (GAL) Programs**, also known as Court Appointed Special Advocates (CASA), exist in each of the 7 judicial districts.
- GAL volunteers contributed **91,375 hours** to children in CPA cases in SFY2014, roughly the equivalent of 46 full time positions.
- GAL programs—successful public/private partnership



Child Protection

Keeping Idaho's Children Safe, Healthy, and Home

Report to Governor
C.L. "Butch" Otter
and the 1st Regular
Session of the 63rd
Idaho Legislature

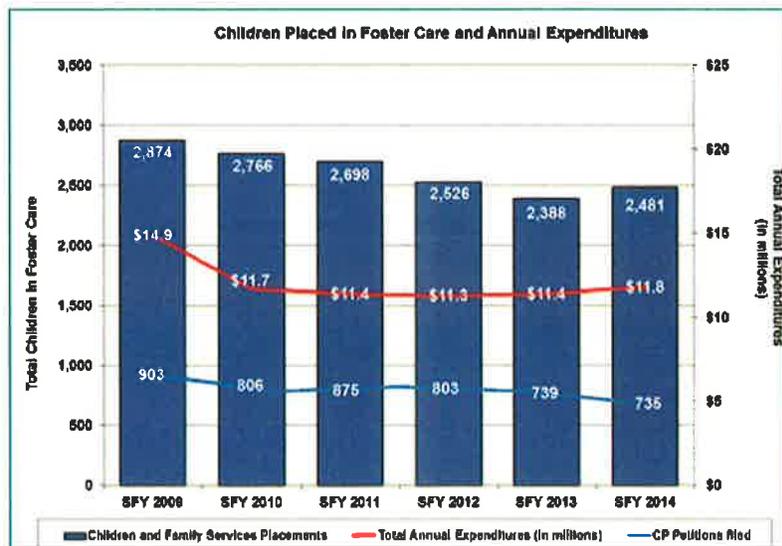
*There can be no keener revelation of a society's soul
than the way in which it treats its children.* ~ Nelson Mandela

For the past fifteen years, Idaho courts have worked diligently to strengthen and enhance the role of the courts in Idaho's child protection process and thereby improve outcomes for some of Idaho's most vulnerable children and families.

OUTCOMES FOR IDAHO'S CHILDREN & FAMILIES REMAIN STABLE

In FY2014, the courts and the Idaho Department of Health and Welfare (IDHW) continued their long and strong history of working collaboratively for the benefit of Idaho children and families. One of the results of this collaboration is that outcomes for Idaho children and families remained stable in FY2014.

- Number of Child Protection Cases.** The number of child protection petitions filed in FY2014 remained stable, with a very slight decrease in the number of cases filed when compared with FY2013 (739 petitions filed in FY2013 and 735 filed in FY2014), but a notable decline of 9% when compared to the five-year high in FY2010.
- Number of Children in Foster Care.** In FY2014, the number of Idaho children in out-of-home care increased slightly, by 3.7%, when compared to FY2013. Despite the slight increase in the number of children in care, FY2014 continues a downward trend in the number of children in care, with a decline of 11% when compared to the five-year high in FY2010.
- Cost of Out-of-Home Care.** Mirroring the slight increase in the number of Idaho children in out-of-home care, the cost of foster care in FY2014 increased by 3% when compared to FY2013, but declined by 7% when compared to the five-year high in FY2010.



The courts and the Idaho Department of Health and Welfare remain committed to keeping Idaho children safely at home and to place them in out-of-home care only when there is no way for a child to be safe at home. When placement in out-of-home care is unavoidable, efforts are made to safely reunify the family within twelve months whenever possible.

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ENHANCED SERVICES AND SUPPORT AVAILABLE TO IDAHO FAMILIES CHALLENGED BY SUBSTANCE ABUSE AND TRAUMA AND/OR MENTAL HEALTH ISSUES

Idaho families faced with both a child protection case and a substance use disorder are among Idaho's highest risk and highest need families. Child protection cases involving a substance use disorder are complex and challenging. Idaho's four child protection drug courts (CPDCs), one each in Nez Perce, Twin Falls, Bannock, and Bonneville counties, provide enhanced treatment, services, and support to families that have an open child protection case. To qualify, families must meet the drug court eligibility requirements (high risk/high need) and voluntarily agree to participate. Enhanced services and support may include assistance with transportation, housing, child care, employment, and medical/dental care not covered by other funding sources.

In FY2014, Idaho's four CPDCs:

- served a total of 77 parents and 100 children;
- graduated 13 participants;
- reunified 41 children with their families; and
- welcomed 2 substance free babies.

For those Idaho families with an open child protection case, a substance use disorder, a history of trauma and/or a co-occurring mental health diagnosis, enhanced trauma informed treatment and services are available in the Twin Falls and Bannock County child protection drug courts. The enhanced treatment and services are funded by a three-year, \$550,000 federal grant awarded to the Idaho Supreme Court in FY2014.

The courts and IDHW are exploring opportunities to provide enhanced treatment and services to families who have an open child protection case and a substance use disorder but who do not meet the eligibility requirements for, or decline participation in a CPDC. IDHW, in collaboration with the courts and other key stakeholders, applied for and was awarded one of five "Access to Recovery" grants (ATR-IV) in late FY2014. IDHW will manage the ATR-IV grant. Although the details of available funding, treatment and services offered under the ATR-IV grant are not yet finalized, it is certain that families with an open child protection case and a substance use disorder are one of three at-risk populations that will be served by the ATR-IV grant.

IDAHO'S GUARDIAN AD LITEM PROGRAMS: PROTECTING PRECIOUS RESOURCES

Idaho's seven guardian ad litem programs (GAL or CASA programs) exemplify a successful public/private partnership that greatly benefits Idaho children and families. The Idaho GAL programs are funded by an appropriation from the Idaho Legislature (approximately two-thirds of total funding) and from community donors (approximately one-third of total funding). GAL volunteers worked incredibly hard in FY2014, contributing 91,375 hours, roughly the equivalent of 46 full-time positions, to advocate for Idaho's abused, abandoned, and neglected children.

Idaho Code § 16-1614 provides that in Child Protection Act cases, the court shall appoint a guardian ad litem (GAL) for any child under 12 years old and may appoint a GAL for children 12 years or older. In FY2014, Idaho judges appointed a GAL to advocate on behalf of 292 children¹, of which 222 (76%) benefitted from the steady, positive influence, and compassionate advocacy of a GAL volunteer. The remaining 70 children (24%) were monitored by CASA staff, but did not have the long-term support and child-focused advocacy of a volunteer GAL. Despite the ongoing support of the Legislature and the citizens of Idaho, additional funding is needed to ensure that Idaho's GAL programs can meet their statutory mandate.

Much has been accomplished to improve outcomes for Idaho's most fragile families and children in the past year. Much remains to be done.

Nothing you do for children is ever wasted. ~~ Garrison Keillor

12-16-14

¹ This number represents children for whom a GAL was appointed during FY2014. It does not include children for whom a GAL was appointed in previous years that continued to be unserved by a volunteer during FY2014. Idaho's CASA programs report that a total of 427 children for whom a GAL was appointed were unserved by a GAL volunteer at some point during FY2014.

For further information, contact Senior Judge Barry Wood
Email: bwood@idcourts.net /// Phone: 208-334-2246

District 2 – Kent Merica (Family Court Services)

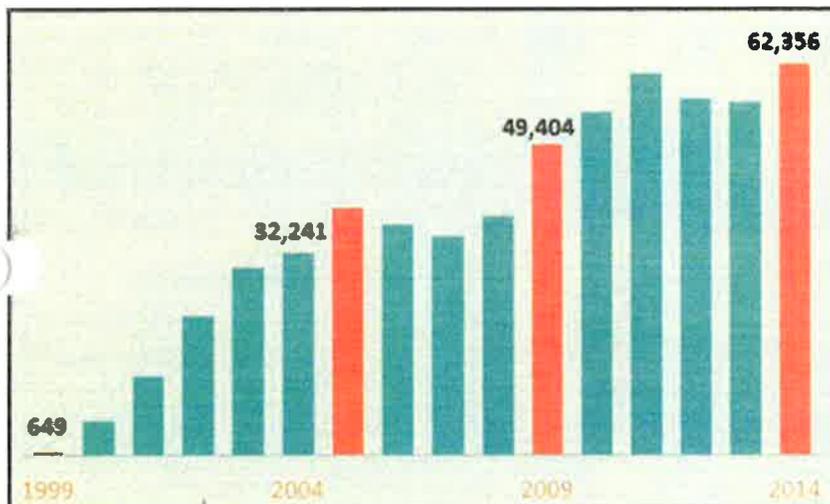
Domestic Relations Cases Include:

- Divorce
 - Child Custody
 - Custody Modification
 - Child Support
 - Paternity
 - Civil Protection Orders
 - Guardianship
 - Adoption
- Just Under 20,000 new filings in 2014
 - Over 5,000 reopenings of existing cases
 - About half the cases involve people representing themselves
 - Statewide Court Assistance Offices
 - Over 60,000 requests for civil litigation forms, about $\frac{3}{4}$ of which were family law
 - Family Court Coordinators
 - New *Family Law Rules of Procedure*

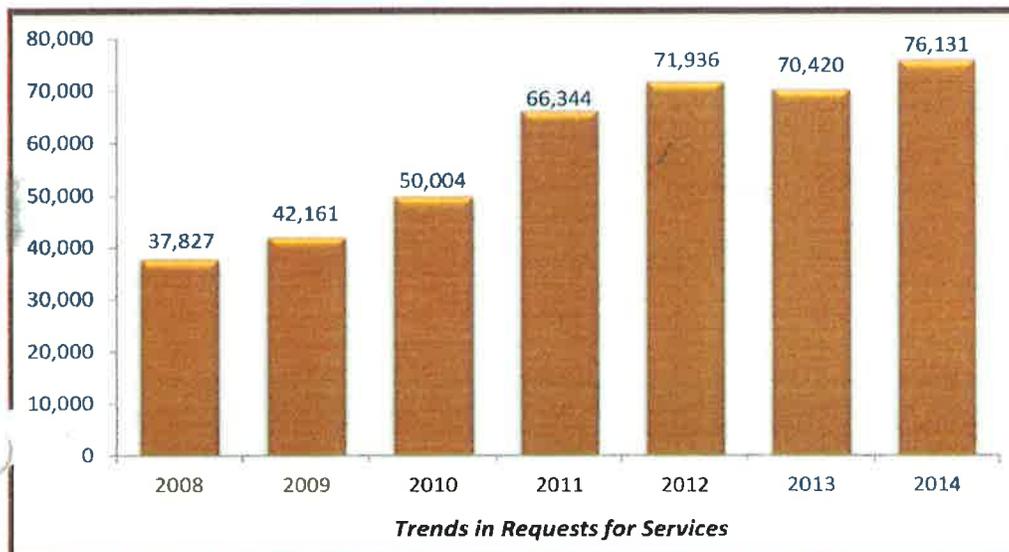
Civil Filings, Reopenings, and Totals for Family Law Cases (CYs 13 Attachment 6

Case Category	2013			2014		
	Filings	Reopenings	Total	Filings	Reopenings	Total
Domestic Relations	1,024	3,457	4,481	1,087	3,061	4,148
Divorce w/ Children	4,137	328	4,465	3,906	742	4,648
Divorce w/o Children	4,310	82	4,392	4,187	125	4,312
Child Support	4,268	855	5,123	3,970	1,023	4,993
Domestic Violence	4,160	118	4,278	4,361	110	4,471
Adoption, Termination, Both	866	21	887	994	22	1,016
Guardianship, Conservatorship, Both--Minor	642	69	711	698	80	778
Guardianship, Conservatorship, Both--Adult	642	294	936	660	245	905
Totals	20,049	5,224	25,273	19,863	5,408	25,271

Court Assistance Office Contacts



Family Court Services



District 3 – Dayo Onanubosi (Juvenile Courts)

Attachment 7

- **Southwest Juvenile Justice Center**
- **In-House Prosecutor and Public Defense delivery system**
- **Juvenile Problem-Solving Court, with emphasis on drug dependency**
- **The number of juveniles committed to IDJC is at an all-time low**
- **Cooperation amongst:**
 - **Courts**
 - **Probation Departments**
 - **School Districts**
 - **Law Enforcement**
 - **Region 3 Mental Health**

Leads to:

- ◆ **Attendance / Truancy Court**
- ◆ **Youth Court**
- ◆ **Diversion Program**
- ◆ **Restorative Justice**
- **Empowering Parents**

District 5 – Rick Bollar (Domestic Violence)

- **Domestic Violence Court**

Attachment 8

- **Pilot Program in Ada County, in 2002**

- **Key Developments:**

- ◆ **2009 passage of *Idaho Code* § 32-1408(3)**
- ◆ **Funding for Domestic Violence Court Coordinators**

- **Goals:**

- ◆ **Victim Safety**
- ◆ **Offender Accountability**
- ◆ **Effective Case Management**
- ◆ **Coordination of Information**

- **Components of Domestic Violence Court**

- ◆ **DV cases**
- ◆ **Protection Order Cases**
- ◆ **Related Divorce, Custody, Child Support Cases**
- ◆ **Misdemeanor family violence cases**

- **Statewide Domestic Violence Court Coordinator – Amber Moe**

- ◆ **DV Courts and Coordinators in 6 of 7 judicial districts**
- ◆ **Policies and Guidelines**
 - **Fast-track criminal case disposition**
 - **Ongoing judicial review**
 - **Accountability**
 - **Single judge coordination**

- **National Recognition for Ada County DV Court**

- **Bonneville County High Intensity DV Court**

District 6 – Rick Carnaroli (Criminal Courts)

Attachment 9

- **On-call: Weekends**
 - **Warrants**
 - **3:00 a.m. calls**
 - **Involuntary holds / Commitment Hearings**
- **Arraignments**
- **Preliminary Hearings**
- **Pre-trial conference alternatives / innovations – the 6th District Project**
- **Jury Trials**
- **Sentencing / Probation Oversight**

- **What is a Problem-Solving Court?**
- **Idaho's Problem-Solving Courts**
 - **27 Felony Drug Courts**
 - **11 Adult Mental Health Courts**
 - **1 Juvenile Mental Health Courts**
 - **6 Misdemeanor/DUI Courts**
 - **6 DUI Courts**
 - **7 Juvenile Drug Courts**
 - **4 Veterans Courts**
- **Specialty Courts**
 - **Child Protection Courts**
 - **Domestic Violence Courts**
 - **Truancy Courts**
 - **Youth Courts**
- **Standards and Guidelines adopted by the Statewide Drug Court and Mental Health Court Coordinating Committee**
- **Is this Defendant Right for a Problem-Solving Court? The Level of Services Inventory ("LSI")**



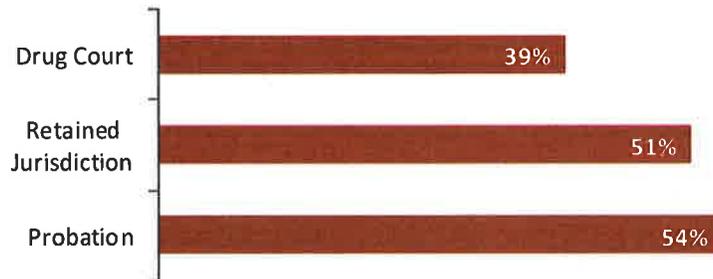
Report to Governor
C.L. "Butch" Otter
and the 1st Regular
Session of the 63rd
Idaho Legislature

Problem-Solving Courts

Drug Courts Reduce Recidivism and Save Tax Dollars

A recent statewide outcome evaluation of Idaho's felony drug courts found that the combined rate of recidivism and program failure is significantly lower for offenders in felony drug courts than for offenders who were sentenced to probation or served a term under retained jurisdiction. This finding provides added evidence that Idaho's drug courts save tax dollars which otherwise would be spent for longer periods of incarceration. The full study can be found at www.isc.idaho.gov/solve-court/rd.

Combined Rates of Recidivism and Program Failure



16 YEARS OF PROBLEM-SOLVING COURTS IN IDAHO

Since Idaho's first two drug courts were established in 1998, the drug court model has expanded to provide a variety of sentencing alternatives for offenders with alcohol, drug and mental health problems and to improve community safety, reduce recidivism, and save taxpayers' dollars. More importantly drug courts have saved lives, prevented drug-affected births, and returned individuals to lives as productive citizens. After sixteen years of operation, Idaho now has 66 drug and mental health courts, operating under Standards and Guidelines adopted by the Statewide Drug Court and Mental Health Court Coordinating Committee. As of June 30, 2014, Idaho's 66 problem-solving courts include:

- » 27 Felony Drug Courts
- » 11 Adult Mental Health Courts
- » 1 Juvenile Mental Health Court
- » 6 Misdemeanor/DUI Courts
- » 6 DUI Courts
- » 7 Juvenile Drug Courts
- » 4 Veterans Courts

AN IMPORTANT MILESTONE FOR PROBLEM-SOLVING COURTS

Not only have drug and mental health courts served over 15,642 offenders since 1998, there have now been nearly 6,000 graduates with 578 graduates in FY2014. Of those served in drug court, 58% were felony offenders. If this sentencing alternative was not available to district court judges, these offenders would likely have been sentenced to the penitentiary, incurring costs in excess of \$20,000 per year per offender just for incarceration.

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VETERANS TREATMENT COURTS GAIN MOMENTUM

Men and women who honorably serve their country may return from combat service with mental health issues, substance use disorders and/or post-traumatic stress disorder or traumatic brain injuries. These problems may in turn lead to justice system involvement. In FY2014, 87 Idaho veterans participated in a veterans treatment court for a total of 181 veterans served since the courts started in FY2012. The creative partnerships these courts have established with four regional Veterans Administration Medical Centers and the Idaho Division of Veterans Services has significantly expanded the crucial resources necessary for these veteran participants to restore their lives and regain their honor. Veterans courts are now operating in Ada, Bannock, Canyon and Nez Perce counties and planning or needs analysis is underway in Bonneville, Kootenai and Twin Falls Counties.

IDAHO COUNTED AMONG NATIONAL LEADERS

The Bonneville County, 7th Judicial District Mental Health Court began in 2002, under the leadership of Judge Brent Moss. Since 2005 the Bonneville County mental health court has served as a national mental health court learning site by the Council of State Governments Justice Center. Jurisdictions across the country wanting to start a mental health court travel to Idaho Falls to visit the court and learn from its multidisciplinary team. Similarly, the Nez Perce County Felony Drug Court was selected to be a national drug court mentor court to assist other courts who will visit Lewiston and observe best practices and evidence-based operational procedures in action.

PROTECTING PRECIOUS RESOURCES: SUCCESS WITH FAMILIES / DRUG-FREE BABIES

Child protection drug courts seek to engage families to end the cycle of intergenerational trauma and antisocial attitudes, restore families and build productive individuals. Idaho's four child protection drug courts served 77 parents last year in Lewiston, Twin Falls, Pocatello and Idaho Falls. In addition, 22 babies were born to clean and sober women in Idaho drug and mental health courts this year, bringing the total to 323 drug-free births, since the beginning of Idaho's problem-solving courts. National estimates project that a baby born drug-free will save taxpayers as much as one million dollars in lifetime costs and the child will avoid many learning and behavioral challenges throughout their life.

DRUG COURT SUCCESS STORY

Staci M. is truly an inspiration. She graduated from the Kootenai County Drug Court program in October of 2007. Approximately a year after her graduation, she joined the drug court team and attended every session to offer peer support for several years until her work schedule conflicted with the sessions. Staci's insight helped the team to shape appropriate sanctions and incentives. She has achieved over eight years of sobriety and remains active in the recovery community. To top this, Staci completed the Coeur d'Alene Ironman Triathlon in June 2014.

Staci has come a long way since the methamphetamine addiction which brought her into the drug court. Pictures are worth 1000 words. The photos show Staci in her June 2006 booking photograph and today!



12-16-1

*For further information, contact Senior Judge Barry Wood
Email: bwood@idcourts.net /// Phone: 208-334-2246*

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, January 30, 2015

SUBJECT	DESCRIPTION	PRESENTER
<u>RS23192</u>	Relating to the Harmonized Uniform Business Organizations Code created by the Uniform Law Commission.	Mike Brassey, Uniform Law Commission
<u>RS23348</u>	Relating to restricted driving privileges for work and medical purposes for certain people with suspended driving privileges	Michael Henderson, Legal Counsel, Idaho Supreme Court
<u>RS23349</u>	Relating to restrictions on senior judges	Michael Henderson, Legal Counsel, Idaho Supreme Court
<u>RS23350</u>	Relating to reasonable and safe maximum speed limits	Michael Henderson, Legal Counsel, Idaho Supreme Court
<u>RS23351</u>	Relating to crimes involving the use of a financial transaction card	Michael Henderson, Legal Counsel, Idaho Supreme Court

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Johnson(Lodge)
Vice Chairman Hagedorn
Sen Davis
Sen Tippets
Sen Johnson

Sen Bayer
Sen Souza
Sen Werk
Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

- DATE:** Friday, January 30, 2015
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Johnson (Lodge, 11), Werk, and Burgoyne
- ABSENT/ EXCUSED:** Senators Bayer and Souza
- 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 1:30 p.m.
- RS 23192** **Vice Chairman Hagedorn** introduced Mike Brassey to introduce the RS.
- Mike Brassey**, Idaho Uniform Law Commission (Commission), explained that **RS 23192** is a recodification of the existing laws relating to business organizations, not a change in substance. The recodification will make the law more usable for attorneys and others and will modernize it without changing the meaning of the statutes. **Mr. Brassey** explained the establishment and purpose of the Commission.
- Mr. Brassey** informed the Committee that this RS was a project by the Commission. The purpose of the proposal is to take all unincorporated business organization laws, and redo them so common issues are considered in one location. To assure that the law would address Idaho's needs a committee from the Business and Corporate Law section of the Bar drafted the bill. **Mr. Brassey** did not go through the details of the legislation as it has been heard twice before. He requested that the Committee introduce **RS 23192** with a correction of a typographical error on page twenty, line 43, where the fee is \$30 and should be \$20.
- MOTION:** **Senator Davis** moved to print **RS 23192** with the correction referenced by Mr. Brassey. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.
- RS 23348** **Michael Henderson**, Counsel, Idaho Supreme Court (Court), explained that the Court has a constitutional responsibility to report to the Governor annually on defects and omissions in the law and to transmit the report to the Legislature for consideration.
- The first defect deals with the penalty for felony driving under the influence of alcohol or drugs (DUI). A third DUI within ten years constitutes a felony DUI. The law addresses the period of incarceration, the fine, the surrender or the driver's license to the court, and the suspension of driving privileges. The section regarding suspension of driving privileges has confusing and possibly contradictory implications. **Mr. Henderson** asked that the Legislature give the judges some clarification on their intent for this bill. **RS 23348** expresses the language the judges think will reflect the legislative intent, that the court can set the period of absolute loss of driving privileges anywhere from one to five years. Within that five-year period the court could grant restricted driving privileges.
- MOTION:** **Senator Werk** moved to print **RS 23348**. The motion was seconded by **Senator Johnson (6)**. The motion carried by **voice vote**.

Michael Henderson, Counsel, Idaho Supreme Court (Court), indicated that this RS involves the outside activities of senior judges. Senior judges are retired judges who provide a certain number of days each year in helping deal with the case load. Currently senior judges are prohibited from accepting a position in another branch or subdivision of state government nor in the government of the United States. As written, senior judges cannot serve in military reserve nor could they teach courses at state colleges or universities. The RS removes this language from the law and requires that the senior judges comply with all applicable provision of the Idaho Code of Judicial Conduct (Code).

Senator Johnson (6) inquired if the Code prevents a senior judge from practicing law as the language being struck from statute addresses this issue.

Mr. Henderson replied that there is a section stating which provisions are applicable to senior judges. It states that senior judges shall not engage in the practice of law.

Senator Davis expressed concern regarding striking several issues already in the Code. He asked if those issues could be left in the statute and add the provisions of the Code.

Mr. Henderson explained that if this legislation passes, the Judicial Council and the Court would clarify some of the provisions in the Code. The issues of the practice of law, mediation and arbitration could be clarified in the Code rather than having them frozen in statute.

Senator Davis stated that in the practice of law, mediation and arbitration the senior judges are still receiving a fee in addition to the retirement benefits and other benefits they enjoy. He asked if this is a healthy public policy.

Mr. Henderson answered that policy in engaging in these activities should be set by the Code. If it is in the Code, the Judicial Council and the Court, with input from others, can decide what the limits should be rather than having the blanket statement now in statute.

Senator Davis expressed concern regarding senior judges, particularly senior magistrate judges who work in a county where they were not elected. He agrees with the Court and respects its position that this practice has saved the State a great deal, and Idaho cannot afford to accomplish what it has under this system.

Mr. Henderson replied that this is a matter of resources. He explained that senior judges serving outside of the district in which they were elected provide a valuable service. The budget allotment for them and their duties are considered by the Legislature from year to year.

Senator Burgoyne queried Mr. Henderson about the amount of time the senior judges work. He pointed out that these judges are part-time as opposed to sitting judges and so would be more likely to want to do outside work. He stated that he appreciates the commitment of time a senior judge makes.

Mr. Henderson answered that the time varies. He explained that some work a few weeks a year; some work two or three months a year. The cap on the amount they receive is 85 percent of a district judge's salary plus their retirement benefit. Their total compensation cannot equal the pay received by a sitting judge.

Senator Burgoyne explained that a former Chief Justice sat on the Boise Parks and Recreation Board and asked if that was within the Judicial Canon (Canon). He stated that being part of the community is important for judges. **Senator Burgoyne** expressed concern that the Canon might preclude a senior judge from participating in some policymaking governmental activities.

Mr. Henderson indicated that the Canon permits service on boards in organizations that are non-governmental.

MOTION: **Senator Davis** moved to print **RS 23349**. The motion was seconded by **Senator Bayer**. The motion carried by **voice vote**.

RS 23350 **Mr. Henderson** explained that this RS has to do with speed limits. Under Idaho Code § 49-201 the Transportation Board (Board) may determine reasonable and safe maximum speed limits on interstate highways not exceeding 75 miles per hour, with 80 miles per hour in some circumstances. The Board can also set limits not exceeding 65 miles per hour on state highways, with 70 miles per hour in some circumstances. The term "not exceeding" means a limit lower than those maximum limits can be set, but there is nothing referring to exceeding limits below those maximums as being an infraction. Idaho Code § 49-654 defines speeding infractions. This legislation would add "unless otherwise posted" to Idaho Code § 49-654 so exceeding those lower limits can be enforced as traffic infractions. A discussion ensued regarding the use of white and yellow signs.

MOTION: **Senator Davis** moved to print **RS 23350**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

RS 23351 **Mr. Henderson** stated that this RS corrects an omission regarding financial transaction cards (FTC). He pointed out that under Idaho Code § 18-3125 it is a felony to acquire or receive a FTC or FTC number without the consent of the owner. The correction would add "with the intent to use to defraud" and would add the element of intent.

MOTION: **Senator Tippets** moved to print **RS 23351**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Senator Hagedorn** adjourned the meeting at 2:10 p.m.

Senator Marv Hagedorn
Vice Chairman

Carol Cornwall
Secretary

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 02, 2015

SUBJECT	DESCRIPTION	PRESENTER
<u>RS23400</u>	Relating to a change in the fine for failure to have motor vehicle liability insurance.	Senator Grant Burgoyne
<u>RS23313</u>	Relating to criminal background checks for those employed in certain sensitive positions.	Senator Grant Burgoyne
<u>RS23204</u>	Relating to escape of juvenile prisoners convicted of, or on probation for, a felony.	Sharon Harrigfeld, Director, Department of Juvenile Corrections
<u>RS23282</u>	Relating to inconsistencies in current laws on blended sentences for juveniles convicted as adults and placed in the custody of the Idaho Department of Juvenile Corrections.	Sharon Harrigfeld, Director, Department of Juvenile Corrections
Gubernatorial Appointment Hearing	Cassandra Jones was appointed Executive Director of the Commission on Pardons and Parole to serve a term commencing August 18, 2014, serving at the pleasure of the Governor.	Cassandra Jones
Gubernatorial Appointment Hearing	Sharon Harrigfeld was appointed Director of the Department of Juvenile Corrections to serve a term commencing January 5, 2015, and expiring January 7, 2019.	Sharon Harrigfeld
Presentation	Director's Report on the Department of Juvenile Corrections	Sharon Harrigfeld, Director, Department of Juvenile Corrections

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn
 Sen Davis
 Sen Tippetts
 Sen Johnson(6)
 Sen Bayer

Sen Souza
 Sen Johnson(11)
 Sen Werk
 Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
 Room: WW48
 Phone: 332-1317
 email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 02, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Bayer, Souza, Werk, Johnson (Lodge, 11) 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 1:31 p.m.

RS 23400 **Senator Burgoyne** described **RS 23400** as a simple change in the amount of the fine for failure to carry mandatory auto insurance. The fine would move from \$75 to \$300. Idaho's car insurance averages around \$750 a year which is not high. The State's current fine scheme incentivizes not carrying insurance (see attachment 1).

Senator Tippetts noted that the Statement of Purpose (SOP) contains a number and but not a contact person; the error needs to be corrected. **Senator Burgoyne** stated it would be corrected.

A discussion ensued about the change in the amount and the last time an amount change was made by the Legislature.

Senator Werk questioned why the \$300 amount was chosen. **Senator Burgoyne** explained the Legislature had capped infractions at \$300.

MOTION: **Senator Davis** moved to print **RS 23400** with the corrections made to the SOP. **Senator Werk** seconded the motion. The motion passed by **voice vote**.

RS 23313 **Senator Burgoyne** explained this bill would allow Idaho State Police (ISP) to participate in the new FBI criminal background check program known as Rap Back. This program automatically updates the criminal history of a person. Currently the problem is that after a background check fingerprints are deleted from ISP and FBI records and new criminal issues are not picked up. Under Rap Back the fingerprints are retained by the FBI and ISP. Therefore a match will appear when new criminal activity occurs. Employers and supervising entities are not required to participate in the program.

RS 23313 provides ISP legislative authority to participate in and carry out the Rap Back program, pursuant to administrative rules being adopted by ISP. These rules would return to the Legislature as part of the rules review process next Session. ISP would not implement Rap Back until the rules have come before the Legislature.

Section 1 of **RS 23313** amends Idaho Code § 37-3001 with added definition for the Rap Back service. Section 2 of **RS 23313** amends Idaho Code § 67-3008 to authorize ISP to participate. A state fee of \$25.00 and a federal fee of \$39.75 is charged to enroll in Rap Back. There is a user fee of \$2.25 for two years, \$6.00 for 5 years and \$13.00 for a lifetime.

Senator Davis questioned whether the legislation was brought on behalf of anyone. **Senator Burgoyne** stated it was brought on behalf of ISP.

Senator Tippets asked for clarification on the process or criteria for expungement of records. **Senator Burgoyne** yielded to Dawn Peck.

Dawn Peck, Manager, Bureau of Criminal Identification, explained that ISP criminal records expungement follows a process using a written request. Rules would be created that outline the whole program.

Senator Johnson(6) observed that the SOP stated the bill would correct a problem. He asked for an explanation of the problem. **Senator Burgoyne** replied that criminal activity committed after a background check would not be available to the employer unless another background check was requested. **RS 23313** corrects that problem. **Senator Burgoyne** yielded to Ms. Peck for further clarification.

Ms. Peck explained that background checks are only as good as the day they are printed. She pointed out that crimes in other states do not show up for Idaho checks but through the Rap Back system they would.

MOTION: **Senator Davis** moved to print **RS 23313**. **Senator Bayer** seconded the motion. Motion carried by **voice vote**.

RS 23204 **Sharon Harrigfeld**, Director, Department of Juvenile Corrections (DJC) explained the revisions in **RS 23204** allow for those over 18 years of age who escape on a juvenile case to be adjudicated as adults in adult court.

MOTION: **Senator Tippets** moved to print **RS 23204**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

RS 23282 **Sharon Harrigfeld**, Director, Department of Juvenile Corrections (DJC) expounded to the Committee the process of blended sentences. In the case of a juvenile who committed a serious crime and is tried as an adult, the sentence as an adult could be blended keeping the offender at DJC for treatment and rehabilitation. Upon release from DJC the court can impose the remaining sentence, retain jurisdiction, and/or place on a rider or on felony probation. This bill offers clarification on blended sentences.

Senator Davis questioned if this was a policy shift. **Ms. Harrigfeld** stated it is not; it is just a clarification on blended sentences being dual sentences. **Senator Davis** asked for clarification on the jurisdiction of a district judge, with the understanding jurisdiction was retained only when a youth was sentenced to North Idaho Correctional Institution (Cottonwood). **Ms. Harrigfeld** yielded to Denton Derrington to answer.

Denton Derrington, Chairman of the Board of Juvenile Corrections, explained that the Juvenile Corrections Act passed by the DJC states juveniles cannot be kept in a judge's jurisdiction beyond the age of 18. Blended sentences were instituted, and judges retained some jurisdiction while they were in DJC. **RS 23282** will allow judges to retain jurisdiction of offenders while in DJC, when the offender reaches 18 years of age, judges will decide if they will be moved into Idaho Department of Correction (DOC) to finish their sentence.

MOTION: **Senator Davis** moved to print **RS 23282**. **Senator Johnson**(6) seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT HEARING: **Vice Chairman Hagedorn** welcomed Cassandra Jones, appointed as Executive Director of the Commission on Pardons and Paroles (Commission). **Ms. Jones** gave a short biography of her experience and referenced her resumé and application.

Senator Davis questioned Ms. Jones on her experience and knowledge of what was needed at the moment for the Commission. **Ms. Jones** affirmed her knowledge of the Commission and the need for streamlined technology. **Senator Davis** asked if Idaho participates in the American Probation and Parole Association (APPA) and how Idaho might compare with other states in best practices. **Ms. Jones** was familiar with APPA but did not know if Idaho participates in it. She stated there is another organization, Association of Parolees Authorities International (APAI), that applied more directly to the Commission. APAI did outline best practices which were very closely aligned with Idaho and to the changes with Justice Reinvestment (JRI).

Senator Werk asked Ms. Jones her understanding and plan for better coordination the over releases. **Ms. Jones** outlined the improved technology and said with the help of the DOC and JRI, people will be moved through the system more efficiently.

Senator Werk stated the backlog of minutes for hearings needed to be addressed. **Ms. Jones** answered the Commission was aware of the issue and was integrating a new data system that would be ready in a few months to address the backlog and move forward with new minutes. There had been legal issues about signing of the old minutes and those have been addressed by the Commission. Integration and implementation of the system would make a difference.

Vice Chairman Hagedorn set the confirmation vote on Ms. Jones for the next meeting.

**GUBERNATORIAL
APPOINTMENT
HEARING:**

Vice Chairman Hagedorn welcomed Sharon Harrigfeld, appointed as the Director of the Department of Juvenile Corrections (DJC). **Ms. Harrigfeld** spoke about her experience and tenure working with juveniles. She explained how the DJC has changed over the past years. Ms. Harrigfeld stood for questions.

Senator Tippets noted a possible conflict with her brother being a magistrate judge in Ada County and asked if juvenile cases were handled by him. **Ms. Harrigfeld** stated those cases were given over to other judges so as to alleviate conflict.

Senator Burgoyne disclosed to the Committee that a member of his family had a professional relationship with Ms. Harrigfeld when she was in private practice as a counselor.

Senator Werk asked for clarification on the lawsuits at hand. **Ms. Harrigfeld** stated she could not address the issues of the lawsuits as they are in litigation. She did clarify that DJC has increased it's prison rape audits. Those audits have shown the facilities to be in compliance.

Senator Burgoyne asked if she had given deposition in these lawsuits. **Ms. Harrigfeld** said she had in the whistleblowers lawsuit, and it is a matter of public record. **Senator Burgoyne** asked for a copy of that deposition. **Ms. Harrigfeld** indicated a copy would be provided. **Senator Burgoyne** asked if any other documents that are public record are available. **Ms. Harrigfeld** reported she would provide a packet of information.

Vice Chairman Hagedorn asked Ms. Harrigfeld to get the packet of information to the Committee Secretary. **Vice Chairman Hagedorn** set the confirmation vote on Ms. Harrigfeld for the next meeting.

PRESENTATION:

Sharon Harrigfeld, Department of Juvenile Corrections (DJC), presented a PowerPoint on the projects, programs and future of the DJC (see attachment 1). She stood for questions.

Vice Chairman Hagedorn asked if funding from the Department of Education was used to educate the juveniles in DJC. **Ms. Harrigfeld** answered in the negative. Teachers for the DJC were paid out of the DJC's general budget. **Vice Chairman Hagedorn** asked Ms. Harrigfeld if a trend chart could be made and given to the Committee to help with understanding how many youth the DJC is housing and where the numbers were headed. He recommended using 100,000 juveniles per year as a guideline.

ADJOURNED: There being no further business, **Vice Chairman Hagedorn** adjourned the meeting at 2:58 p.m.

Senator Hagedorn
Vice Chairman

Carol Cornwall
Secretary

Barbara Lewis
Assistant Secretary



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Idaho Car Insurance Rates

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Idaho drivers enjoy state car insurance rates that are among the nation's cheapest -- if they shop around. But in every ZIP code -- all of Idaho's cities and towns are mapped out below -- the lowest-priced insurance company is hundreds of dollars less than the most expensive for the same coverage.

Idaho car insurance requirements

Idaho state law requires the following minimum car insurance coverage:

Minimum bodily injury liability:	\$25,000/\$50,000
Minimum property damage liability:	\$15,000

Idaho Car Insurance Rates by ZIP Code & City

To learn more about the most and least expensive cities for car insurance, click the link below.
[Car insurance rate comparison >](#)

To ensure up-to-date information, please enter the ZIP you are interested in the box below. Clicking a ZIP within the map will display outdated data. We regret the inconvenience.

83422 [UPDATE](#) Top Cities



Priciest Neighborhoods In Idaho

- 83536: \$912 KAMIAHI
- 83539: \$910 KOOSKIA
- 83530: \$909 GRANGEVILLE
- 83546: \$901 PIERCE

Cheapest Neighborhoods In Idaho

- 83706: \$753 BOISE
- 83647: \$762 MOUNTAIN HOME
- 83712: \$765 BOISE
- 83705: \$768 BOISE

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What you need to know about car insurance in Idaho

Penny Gusner
 CarInsurance.com
 Consumer Analyst

Idaho has very middle-of-the-road liability limits of \$25,000 per person and \$50,000 per accident for bodily injury and \$15,000 for property damage. If you have a family or own a home, the industry standard for protection is 100/300/50.

Off-roading rules: Off-roading on ATVs, UTVs, motorbikes and other specialty off-roading vehicles is popular in Idaho. The requirements vary depending on where you are riding. Registration of your vehicle is almost always needed, but insurance may not be unless you are also driving on state or city roads with your vehicle. Idaho's public lands agencies put together an off-highway vehicle recreation guide that explains where to ride and how to stay safe -- see it on their website, [stayontrails.com](#)

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\$464 / year*

Actual quote delivered: 11 hours ago

Quote Range	\$1,054-\$1,518 per year
Age/Sex	30 / Male
State	Ohio
Vehicle	2013 CHEVROLET MALIBU 2LT W/EASSIST

See how much you can save...

Zip Code	Age
83720	Select

Currently insured?

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Homeowner? Married?

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Who voted for this plate:

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- 14% of women surveyed liked this plate
- 69% of Idaho residents surveyed liked this plate

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Idaho Car Insurance Rates

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Idaho drivers enjoy [state car insurance rates](#) that are among the nation's cheapest -- if they shop around. But in every ZIP code -- all of Idaho's cities and towns are mapped out below -- the lowest-priced insurance company is hundreds of dollars less than the most expensive for the same coverage.

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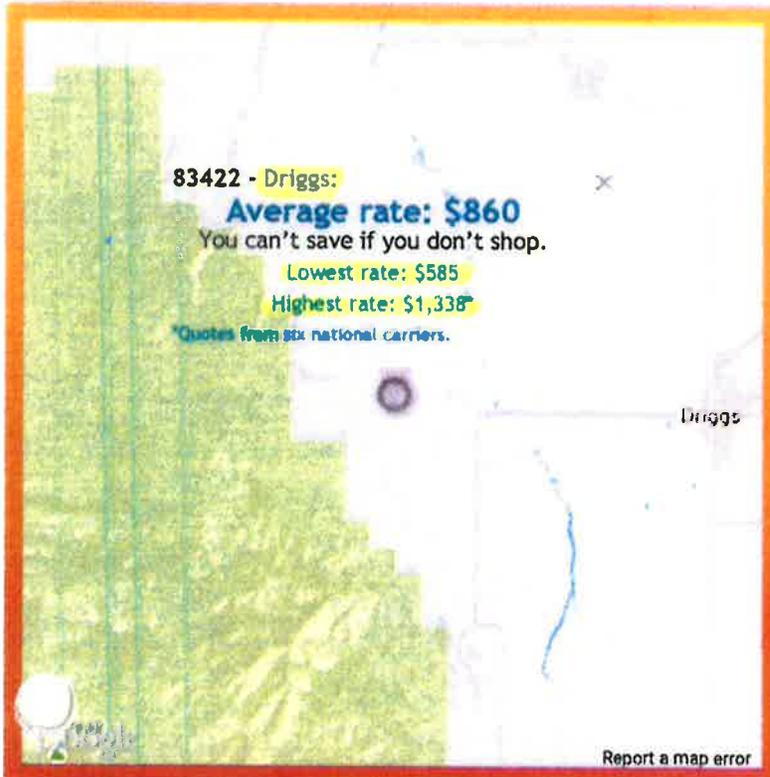
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Top Cities



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Someone may have just s

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Actual quote delivered: 11 hours

Quote Range	\$1,054-\$1,518 per ye
Age/Sex	30 / Male
State	Ohio
Vehicle	2013 CHEVROLET MAL W/EASSIST

See how much you can

Zip Code	Age
83720	Select

Currently insured?

Select

Homeowner? Married?

Yes

Yes

Idaho Department of Juvenile Corrections

Senate Judiciary and Rules Committee

Sharon Harrigfeld, Director
February 2, 2015



Developing productive citizens in partnership with communities, through juvenile crime prevention, education, rehabilitation and reintegration

IDJC Legislative Intent

Idaho Code 20-501

1. Provide humane, disciplined confinement to a juvenile offender who presents a danger to the community
2. Strengthen opportunities for the juvenile offender's development of competency and life skills
3. Hold juvenile offenders accountable for their delinquent behavior
4. Invoke the participation of the juvenile offender's parent or legal guardian
5. Develop efficient and effective juvenile correctional programs
6. Provide a diversity of innovative and effective programs
7. Assist counties in developing meaningful programs for juvenile offenders
8. Provide programs to increase public awareness of the mission of the juvenile corrections system
9. Develop and maintain a statewide juvenile offender system

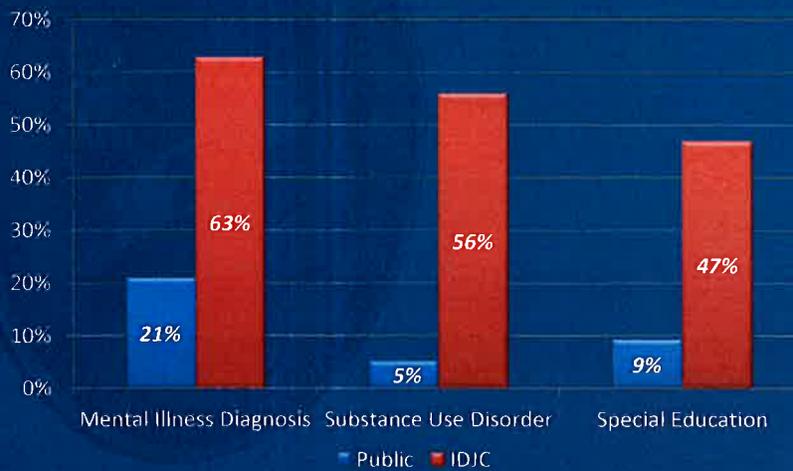


Idaho Code 20-501 Legislative Intent
(1) Provide humane, disciplined confinement to a juvenile offender who presents a danger to the community

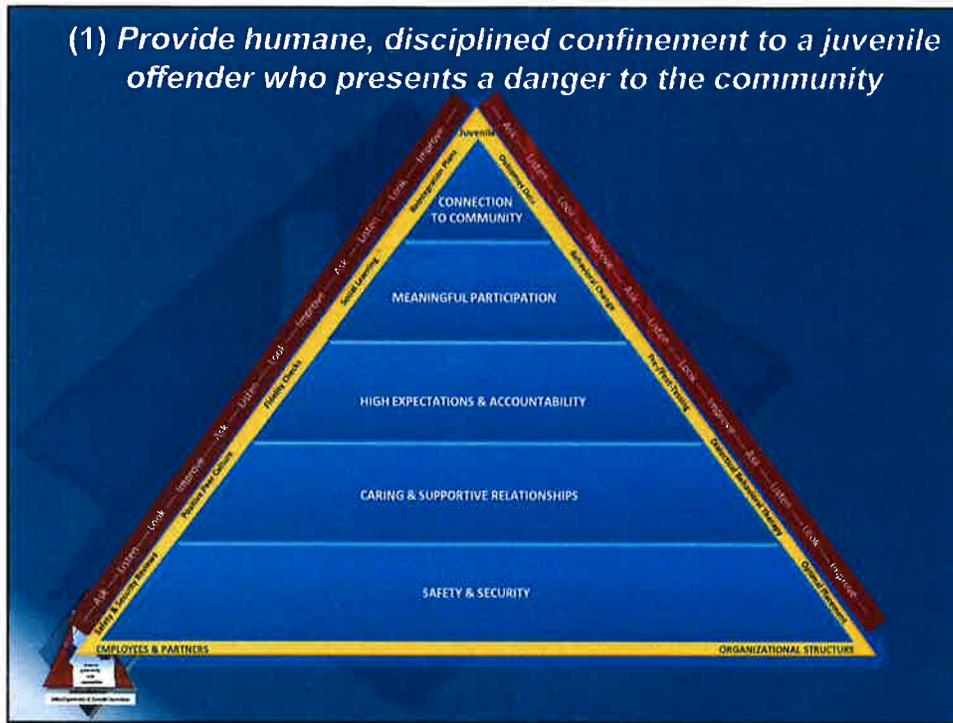


(1) Provide humane, disciplined confinement to a juvenile offender who presents a danger to the community

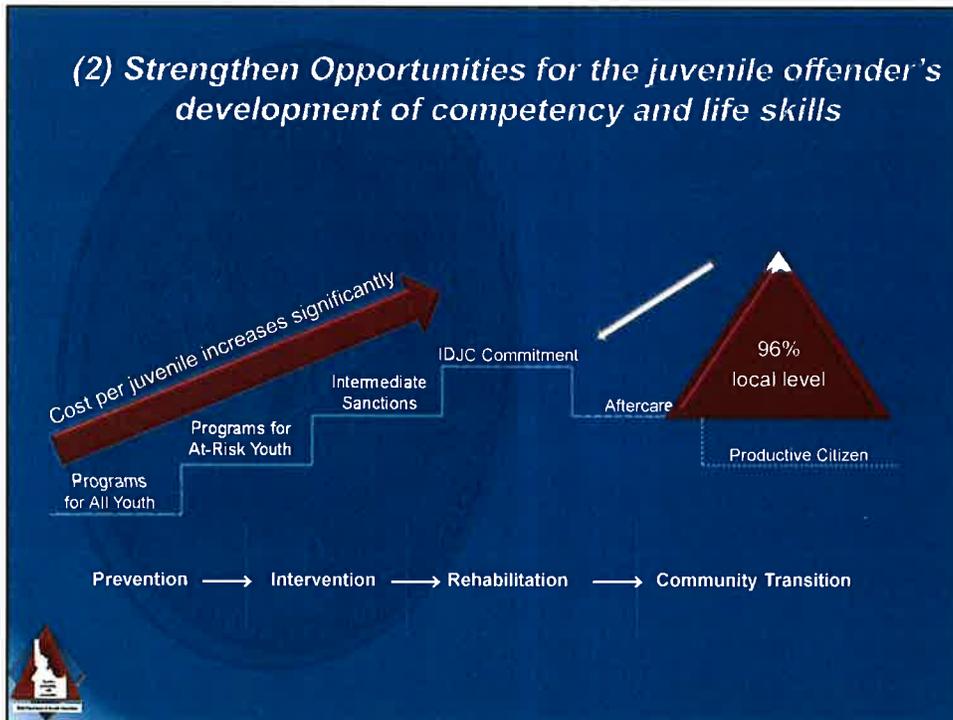
IDJC Juvenile Identified Needs



(1) Provide humane, disciplined confinement to a juvenile offender who presents a danger to the community



(2) Strengthen Opportunities for the juvenile offender's development of competency and life skills



(2) Strengthen opportunities for the juvenile offender's development of competency and life skills

Adolescent Development and Juvenile Justice



- Why is it important?
- Some things about young people are universal
- View youth through the lens of developmental processes
- Emotional versus cognitive development
- A "speeding car without brakes or steering wheel"
- Youth are inseparable from their families and communities of origin



(3) Hold juvenile offenders accountable for their delinquent behavior



(4) Invoke the participation of the juvenile offender's parent or legal guardian



(5) Develop efficient and effective juvenile correctional programs



Strengthening connections between individual performance and agency mission

(5) Develop efficient and effective juvenile correctional programs

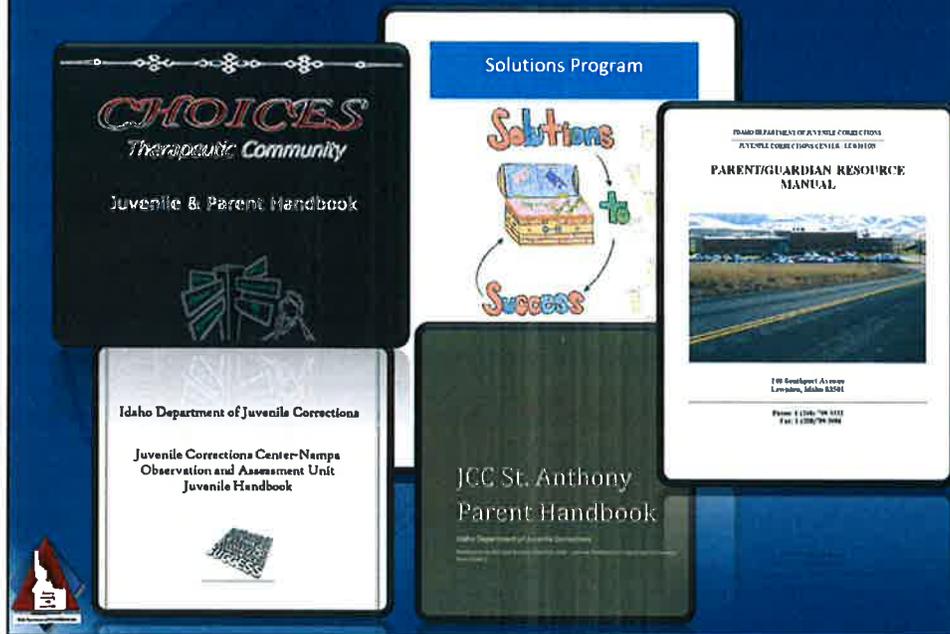


(5) Develop efficient and effective juvenile correctional programs

Time	Topic
630AM	Wake
7AM	Morning Group Meeting
8AM	Breakfast
9AM-3PM	School
12PM	Lunch
4PM	Afternoon Group Meeting
5PM	Individual/Family Therapy
6PM	Dinner
7PM	Personal Time
8PM	Evening Group Meeting
9PM	Lights Out



(6) Provide a diversity of innovative and effective programs



(7) Assist counties in developing meaningful programs for juvenile offenders

Juvenile Justice Substance Use Disorder System:
Juveniles Served Per Level of Care



Fiscal Year	Treatment	State Admin	Total Expended
FY 2012 Total	\$1,870,000	\$108,700	\$1,978,700
FY 2013 Total	\$3,306,600	\$137,600	\$3,444,200
FY 2014 Total	\$2,561,053	\$303,743	\$2,864,796

(7) Assist counties in developing meaningful programs for juvenile offenders

Training

- POST Academies
- IJJA
- Detention Clinician Training



(7) Assist counties in developing meaningful programs for juvenile offenders

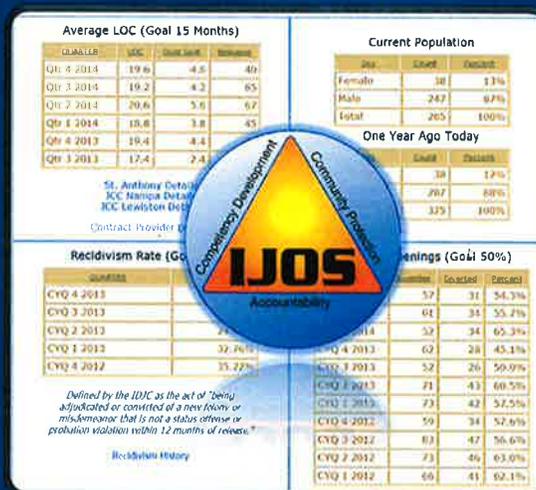
Grant Program	Juveniles Served (last three years)	Juveniles Committed to IDJC	Percent Successful Juveniles
Community Incentive Program <i>FY 2014 Dollars Spent \$100,000</i>	360	10	97%
Re-Entry Program <i>FY 2014 Dollars Spent \$130,029</i>	172	14	92%
Mental Health Program <i>FY 2014 Dollars Spent \$549,900</i>	389	14	96%



(8) Provide programs to increase public awareness of the mission of the juvenile corrections system

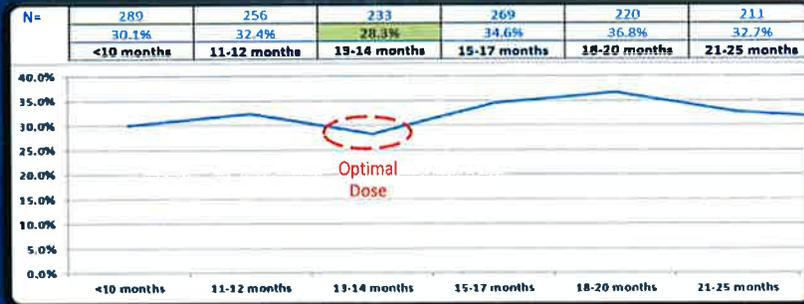


9) Develop and maintain a statewide juvenile offender system

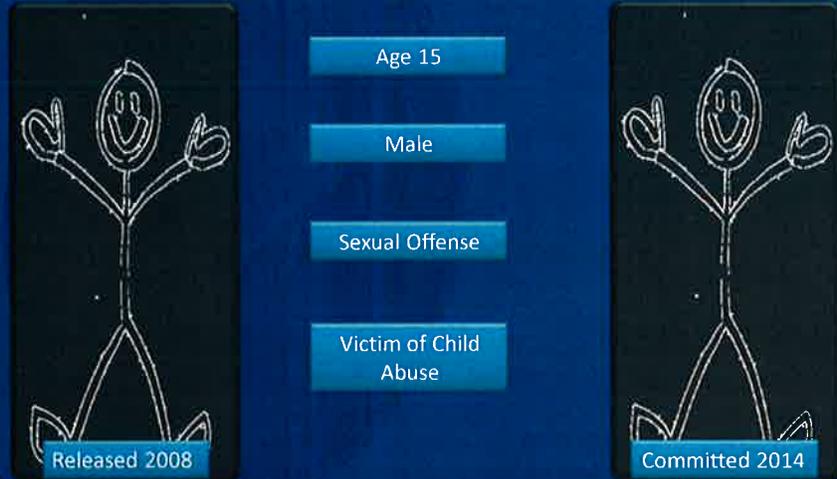


The Director's Dashboard provides IDJC staff with instant access to critical performance information

9) Develop and maintain a statewide juvenile offender system



9) Develop and maintain a statewide juvenile offender system





Idaho Juvenile Justice System

THE STRENGTH OF COLLABORATION

As we approach the 20th anniversary of the Juvenile Corrections Act (JCA) of 1995, juvenile justice in Idaho made great strides in serving at-risk juveniles. The strength of partnerships and collaborative efforts with the judiciary, counties, and local communities, has allowed for significant advancement in the Idaho juvenile justice system. This has resulted in the lowest Department census since the Department's inception, while approximately 95% of justice involved juveniles receive services at the county level. Research consistently demonstrates that serving juveniles in the community leads to the best outcomes possible.

The collaboration envisioned by the creators of the JCA is being realized through current restorative justice initiatives. These initiatives are modeled in Idaho's early intervention work with status offenders through programs such as Family Group Decision Making, Restorative Conferencing, and juvenile justice Substance Use Disorder Services. Strong collaboration in Idaho's juvenile justice system emphasizes community protection, competency development, and accountability with victim restoration.

Proposed Legislation

Juvenile Sex Offender Registration Act—The current system bases juvenile sex offender registration on the offense committed. A multi-agency task force working on this legislation believes registration for juveniles should be risk based. The proposed legislation would set registration levels for those who have been adjudicated of a sexual offense.

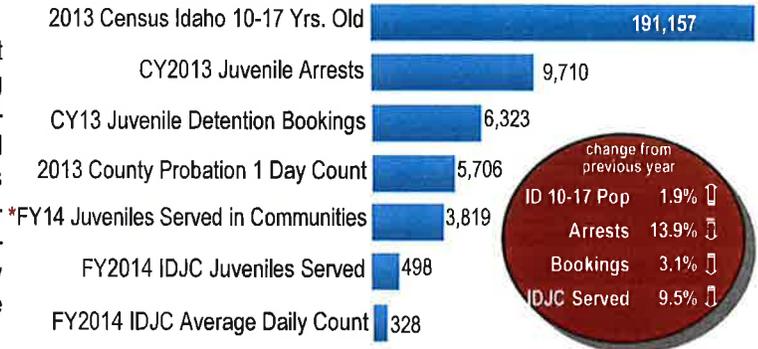
Blended Sentences—Changes are intended to avoid current inconsistencies and provide courts with clarity when issuing blended sentences for juveniles convicted in district court. This legislation would allow those juveniles to be involved with adult probation officers from the earliest stages of commitment to the Department.

Escape Statutes—Current law does not address how to charge a juvenile who is over 18 and escapes from custody. This would clarify the charging mechanism.

Zero Tolerance

While the Governor has created a zero tolerance task force to develop a set of standards for Idaho facilities, the task force has agreed that juvenile facilities and the protection of those in the facilities is best addressed by complying with standards set forth within the PREA guidelines. In accordance with PREA standards, the Department recently underwent one of the first juvenile state facility audits in the country and JCC—St. Anthony has been **certified as 100% PREA compliant**.

IDAHO JUVENILE POPULATION



*Juveniles served locally with IDJC state and federal funds.

Juvenile Correctional Center Average Costs

AMOUNT	DESCRIPTION
\$102.21	Program
\$36.39	Education Services
\$20.05	Security
\$18.12	Medical Services
\$17.36	Administration
\$13.72	Food Services
\$13.31	Maintenance
\$2.59	Laundry/Clothing
\$1.29	Janitorial/Housekeeping

Note: Based on FY14 average costs

The total average cost per day [to provide services] at a Level 4 juvenile correctional center is: **\$225.06**

The Department continually addresses ways to reduce lengths of custody while ensuring community protection.

DID YOU KNOW? IDJC Demographics 2014

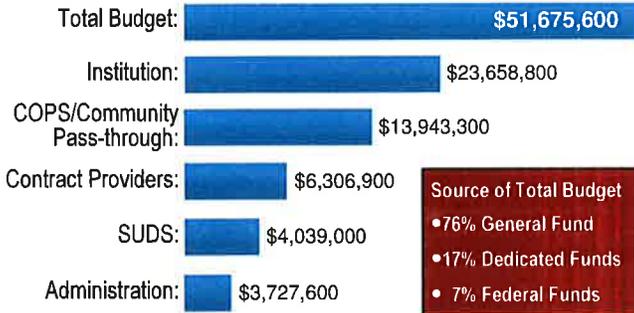
- ✓ **Gender:** Male - 88.8%, Female - 11.2%
- ✓ **Race:** W - 72.7%, H - 18.2%, B - 3.8%, AI - 3.1%, Other— 2.2%
- ✓ **Average Age:** 17.1 years old
- ✓ **Crime:** Property - 35.3%, Sex Offense - 27.6%, Person - 25.5%, Other - 11.6%
- ✓ **Crime Level:** Felony - 56.0%, Misdemeanor - 44.0%
- ✓ **Mental Health Diagnosis:** 63.0%
- ✓ **Substance Use Disorder:** 55.6% (drug and/or alcohol)
- ✓ **Co-occurring Disorders:** 33.6% (substance use and mental health diagnoses)
- ✓ **FY14 Avg. Length of Custody:** 19.3 months
- ✓ **FY14 Recidivism Rate:** 13.0%
- ✓ **FY14 Recidivism Rate:** 30.0%

Data on 09.09.2014



IDJC Community Services

FY15 ORIGINAL APPROPRIATION



Approximately 29% of the Department's budget goes directly to counties and local communities to support effective programming and reintegration initiatives which results in fewer commitments.

Positive Juvenile Outcomes

"Recidivism isn't the only measure of juvenile justice system success or failure—juvenile development outcomes such as educational attainment, skill development, behavioral health improvements, and better family functioning, are just as important, if not more so, to ensuring youth's long-term success."

Together with juveniles and families, the Department strives daily to improve outcomes during and after custody.

Education Attainment—61% of eligible juveniles received a High School Diploma or a GED prior to release and 42 college courses were completed during the fiscal year.

Skill Development & Behavioral Health Improvements—87% of juveniles completed treatment successfully prior to release. Additionally, many juveniles earned food handlers and OSHA certifications as well.

Better Family Functioning—There is a 32% improvement in family involvement while in state custody and the family satisfaction surveys report 80% of families are satisfied or extremely satisfied with the Department's services 90 days post release.

* Core Principles For Reducing Recidivism And Improving Other Outcomes For Youth In The Juvenile Justice System-Council of State Governments

P.O.S.T. Academies

State and County Juvenile Justice Professionals

The Department and P.O.S.T. Academy have continued to partner in the training and certification of juvenile justice workers. During the fiscal year, one juvenile detention academy and one juvenile probation academy were held—graduating 39 county juvenile justice officers—for a total of 849 county juvenile officers trained since 2000.

Since the introduction of P.O.S.T. Academy training and certification for Department direct care staff in 2008, a total of 234 direct care staff have been trained and certified, including 53 staff for FY14.

The Idaho Juvenile Justice Commission (IJJC) supports community-based efforts to implement best practice approaches for justice involved juveniles. The partnership between the Department and IJJC ensure participation in, and compliance with, the federal Juvenile Justice and Delinquency Prevention Act of which Idaho is in full compliance. Partnership efforts to help reduce the population in state custody through effective programming ensuring offender accountability, competency development, and community safety include:

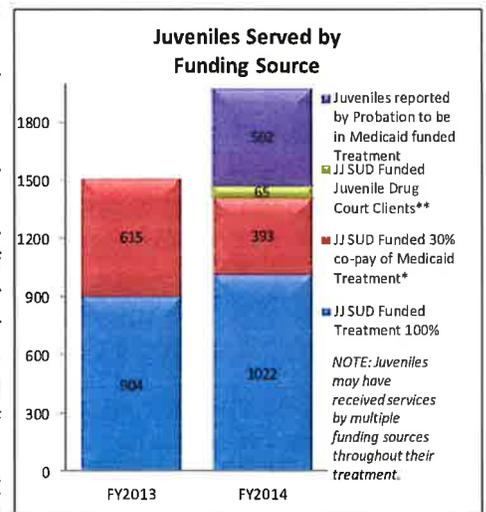
- ✓ The Millennium Fund Grant Program: Treating and diverting status offenders to include intervening and reducing alcohol and tobacco usage in the least restrictive means possible;
- ✓ Community Incentive Program & Mental Health Program: Addressing gaps in services for high-risk juveniles; and
- ✓ Reintegration: Comprehensive plan to improve reintegration services.

Additionally, the Department continues to administer state and federal funding for other community-based services. These successful programs require collaboration with local agencies, counties, and courts.

Program Funding Source	Served in FY13	Dollars spent in FY13	Served in FY14	Dollars spent in FY14	Juveniles received services and placed in IDJC/jail
Mental Health (MHP)	115	\$ 502,800	172	\$549,900	5 (3%)
Community Incentive (CIP)	131	\$ 104,615	131	\$100,000	6 (5%)
Re-entry (REP)	72	\$ 89,172	71	\$96,278	6 (8%)
Totals	318	\$ 696,587	374	\$746,178	17 (5%)

The **Substance Use Disorder System** experienced many changes this year. On July 1, 2013, all behavioral health providers were required to use **Web Infrastructure For Treatment Services (WITS)**, an electronic health record system.

Idaho Medicaid transitioned to Optum as its new Managed Services Contractor on September 1, 2013. With this change, Medicaid began paying 100% of covered services for juveniles eligible for Medicaid. To maximize efficiency, and upon full implementation of WITS on October 1, 2013, the Department began processing all treatment claims internally. This year, the juvenile justice Substance Use Disorder Services utilized \$2,864,796 for community-based treatment for justice involved juveniles.





Idaho Department of Juvenile Corrections

954 W. Jefferson St. P.O. Box 83720 Boise, ID 83720-0285 Phone: (208) 334-5100 Fax: (208) 334-5120

Telecommunications Relay Service (TRS) 1-800-377-3529

C.L. "BUTCH" OTTER
Governor

SHARON HARRIGFELD
Director

Complex Population

The Idaho Department of Juvenile Corrections population has grown in complexity and offers one of the only opportunities to provide long-term care. With the shrinking of resources and funding for care in the community, the needs of the juveniles who are committed to state custody have become more complex. It is no longer simply conduct-related and criminogenic issues that are addressed during commitment. The following is an example of our complex population.

Joni is a 15.6-year-old female who has a long-standing history of early child abuse and neglect and prenatal exposure to methamphetamines. Her diagnoses are Post-traumatic Stress Disorder, Intermittent Explosive Disorder, Conduct Disorder and a rule-out of Autism Spectrum Disorder. Her IQ is 72. Her maternal aunt assumed guardianship after both parents were incarcerated on drug related charges. Joni was exposed to meth in utero and was born meth positive. Aunt had recently expressed to the court she could no longer manage Joni in her home and relinquished her guardianship. Joni was admitted to state hospital following a physical altercation with her guardian. After three days at the state hospital, Joni was discharged after attempting to attack a peer with a chair who had played a trick on her by popping out of the bathroom and yelling, "boo." As a result of the incident, Joni was charged with Aggravated Assault. Joni had numerous previous runaway charges, a Petit Theft charge and two Beyond Control charges and, as a result of the charge from the hospital incident, was committed to the Idaho Department of Juvenile Corrections. Joni's criminogenic issues are almost secondary to her mental health issues and accompanying chronic suicidal ideation and self-harm.

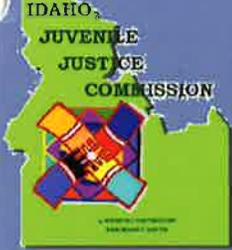
After 15 months in custody, release plans are complicated by no viable placement or custody and the fact that, although Joni's criminogenic issues have been addressed, her mental health issues will likely be life-long and her level of functional impairment related to her mental health issues will require ongoing care and support.

Efforts were made to initiate developmental disabilities services; however, the application cannot be made until Joni qualifies for social security disability and Medicaid. There is no identified guardian to apply for social security and the funding and services cannot be initiated until the juvenile is released from state custody.

An active partnership with communities

IDAHO YOUTH SPEAK

WINTER 2015



“The strongest factor for success is self-esteem: believing you can do it, believing you deserve it, believing you will get it.”

More inside:

- ◆ Self-Love
- ◆ Bullying
- ◆ Teen Pregnancy



Celebrating Diversity

by Anna Rodriguez

Having family traditions and a rich culture can be very fun and exciting. Being a part of two different cultures can be just as much fun or even more! Adriana De Giuli is a student at an Idaho university where she studies Art and Architecture. She is hoping to continue on to graduate school and apply her degree to adaptive reuse. This means taking old buildings and adding modern things to them like running water and electricity. Along with her studies and involvement on campus, she has two rich cultures she celebrates. Her mom’s ancestors are from Japan and they have passed on traditions and celebrations from that culture. Her dad’s family is from Italy which also provides a rich cultural background.

Adriana’s family still follows many of the Japanese traditions. She shared that honor and respect are very important parts of that culture and are qualities they value greatly. Children are also cherished in this culture. There used to be two celebrations for children, Boys’ Day and Girls’ Day. For Boys’ Day kites were flown in celebration and for Girls’ Day dolls used to be set out. Now the celebrations are combined and kites are flown on May 5th for Children’s Day.

In addition to celebrations, food is also a tradition that is passed down from generation to generation in many cultures and this is true for her family as well. When the New Year comes around, Adriana’s family makes mochi (rice cakes). A few mochi are left out to mold and the color of mold that forms corresponds to the type of luck the family will have for the next year. Red mold usually means a FANTASTIC year awaits. Adriana also loves eating and making sushi at family functions. Her favorite has cucumber, carrots, scumono, and sometimes crab.

While enjoying special food and celebrations keeps her busy with the Japanese side of her family, the Italian side also enjoys cooking and sharing food. Adriana’s nonna (grandmother) has a farm which provides many ingredients for what she cooks. Her nonna makes noodles from scratch. She prepares the dough, cuts and dries the noodles, and gives them away to family and friends. Cookies are also a nice treat made by her nonna.

Along with having family in Idaho, Adriana was able to visit some of her relatives in Italy this summer when she studied abroad. While in Rome she visited her father’s home town, Castro Dei Volsci, which is mostly comprised of her relatives. Although she does not speak a lot of Italian, she was able to communicate through the BIG hand gestures. Adriana’s family is Catholic and she attended the Pentecost while in Italy, which is a Christian holy day remembering the Holy Ghost descending on the disciples of Jesus Christ. On this day rose petals are dropped from the open roof of the building. Adriana had many great experiences while in Italy and enjoyed learning more about her Italian culture.

In many ways love is expressed through food and celebrations. Adriana has the amazing opportunity to be a part of two vibrant cultures and enjoy the components of both. As a student and community member, she is able to share both cultures with others. ☺



Self-Love

by Brooke Jones

The way we view our self has a huge impact on our happiness. We strive to feel loved and needed by others. We are human and it is okay to feel this way but it must be focused in a healthy way. Self-esteem is so crucial to our happiness. Self-esteem is having confidence and a sense of respect for yourself and your abilities.

To love yourself is far more important than to be loved by everyone or to feel loved by a certain person you may want attention from. Self-love is the greatest kind of love there is. How can you have anything to offer anyone else if you are not fully confident in who you are? It takes work and effort. It even takes times of struggle and loneliness. But I promise it is more than achievable. It is in times of loneliness, I believe, where you are able to discover the most about who you are. You are able to see so clearly what your weaknesses are. You are able to see that it is perfectly fine to only have yourself.

A way to start developing healthy self-esteem is to recognize the areas in your life that may allow you to lose confidence in yourself. Start by asking yourself why this particular situation may have caused you to feel this way. Once you find the root of the problem, challenge it. Don't become a victim to it. It is so easy to do this in certain situations. In every area of our lives, regardless of who may be

Make sure you don't start seeing yourself through the eyes of those who don't value you. Know your worth even if they don't.



at fault, there is always a lesson to learn from it. Talk to yourself positively. Even if you come to the conclusion that you could have handled the situation in a better way, it is a huge accomplishment to be able to recognize this. Either way, you are already winning. Thinking positively plays a huge part in loving yourself and getting to know yourself better.

There are times that I have been put down by someone. At first it may sting a little – certainly if it's something I already see as a problem within myself. Some people are going to make you feel like you are undeserving of love. Treat yourself with kindness. You do deserve it. When I get put down, the saying that goes through my head is: "It is none of my business what other people think of me." In reality it really isn't. Hurtful or not, it is irrational to obsess over something someone said. Most likely you are also telling yourself other things that they didn't say as well. For example, if someone were to tell you that you are fat, what else goes through your head? Maybe something like this: "Well, they called me fat, so I am ugly, and I am worthless, and I am probably stupid." This is irrational thinking and unhealthy to your self-esteem.

Confidence makes a person shine and makes a person beautiful. The people who truly matter in your life are going to be the ones who see who you are. The people who don't are not worth your time and effort worrying about. If you think there is nothing special about you, take time to find your strengths. Find what you are passionate about and what makes you so important! You may surprise yourself. ∞

Bullying

by Jazmin Hill

Everyone has been a bully and everyone has been bullied. Whether it was a small negative remark on your new shoes or it was someone cornering you in the locker room telling you that no one wants to be your friend. Maybe you even joined the bandwagon at school and called a kid a mean name because you wanted to fit in or you were surrounding someone in the cafeteria telling them that they are worthless. Even if it's small – it is bullying. You make the decision to bully and it affects the 77% of kids that are being bullied every year.

What is bullying? The word bullying is used to describe the action a person takes to either intimidate another person or to force that person to do something. Why does it happen? The bully may have personal issues within themselves that could make them angry or sad and find the need to make someone they see as happy feel the pain they are feeling. The bully could also want the feeling of being superior. It gives the bully something to control.

There are many dangers that come from bullying including problems with socializing, substance abuse, and being suicidal. There may be lifetime issues, requiring counseling. Bullying is not only harmful to the person being bullied but also to the bully. ∞

“It isn't big
to make
others feel
small.”

Teen Pregnancy: Choosing Your Future by Amanda Solomon

Nearly 30% of all girls in the U.S. will get pregnant before the age of 20. In Idaho, that number is even higher. However, the really scary part is that 50% of teens say they haven't even thought about how a pregnancy would affect their future. So what are the facts about teen pregnancy and what are the choices you can make?

Having a baby before you're ready is life-changing and can have huge consequences. Perhaps most obvious is education. Parenthood is the #1 reason teen girls drop out of high school. Less than 50% of teen mothers ever earn a high school diploma, and less than 2% go on to complete a college degree before reaching the age of 30.

Teen moms are not the only ones whose education is affected. Children born to teenage parents, on average, perform more poorly on standardized tests, are 50% more likely to repeat a grade, and are less likely to graduate high school.

Teen pregnancy does not usually lead to strong, traditional families. Eight out of ten teenage fathers don't end up marrying the mother of their child and they're often too poor to contribute adequate child support. Children growing up without a father are five times more likely to be poor. Sons are five times more likely to end up in prison and daughters are three times more likely to become teen mothers themselves compared to those born to older mothers.

It can be very difficult to have a baby while still a teenager. If one decides not to put their child up for adoption, the huge extra responsibility of raising a child is a burden financially and can make it harder to complete schooling or hold a job. But what can we do about it?

If you don't want to get pregnant, the only 100% sure method of birth control is abstinence. Refraining from sex eliminates any chance of becoming pregnant. If you do decide to have sex, correctly use birth control every time. There are many different options available, so do your research or talk to a trusted adult or healthcare professional to find what's right for you.

Whether you choose to wait or not, the most important thing is to have a plan *before* you have to decide. Don't let anyone pressure you into anything

you're not completely comfortable with. Talk to your partner openly so that you're both on the same page.

Be prepared and have your mind made up before you're in the moment.

If you are a teen parent, or will be soon, know that there are plenty of success stories. There are a multitude of resources to help make things easier. ∞

For more information:

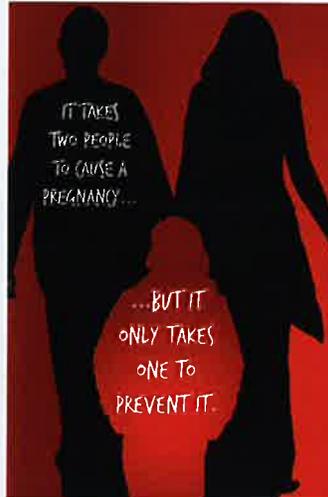
<http://www.idahoteenpregnancy.com/>

<http://stayteen.org/teen-pregnancy>

<http://sexetc.org/>

<http://www.cdc.gov/teenpregnancy/Teens.html>

<http://thenationalcampaign.org/>



WE SHALL REMAIN is a powerful new music video that recently won Best Music Video at the 2014 American Indian Film Festival. The video was created to address the effects of historical trauma in tribal communities. "Many times, these untended wounds are at the core of much of the self-inflicted pain experienced in Native America," commented LoVina Louie of the Coeur d'Alene tribe. "Much like fire, this pain can either be devastatingly destructive or wisely harnessed to become fuel that helps us to rise up and move forward in life with joy, purpose and dignity."

Louie received a grant from the Idaho Department of Juvenile Corrections and the Idaho Millennium Fund to create the video which was filmed during the 4th annual UNITY Week Youth Conference hosted by the Coeur d'Alene Tribal Youth Council in July 2014. Check it out at:

<https://www.youtube.com/watch?v=G50iwY6YjSk>

JUVENILE JUSTICE COMMISSION YOUTH COMMITTEE

Making a Difference for Idaho Youth



What is the Juvenile Justice Youth Committee?

The Idaho Juvenile Justice Commission is a board of Governor-appointed volunteers from all seven Idaho judicial districts who represent the interests of Idaho concerning its youth. The Youth Committee, made up of young adults who have faced situations similar to those youth currently encounter, is the heart and spirit of the Commission.

This newsletter was created with the idea of highlighting programs and youth who are making a difference in their communities and changing their lives for the better. We are empathetic to the trials adolescents face today and strive to bring awareness to and address these issues.

Youth Committee Members, from left to right:

Amanda Solomon, Kimberly

Jazmin Hill, Idaho Falls

Susan Delyea, Boise

Fernando Flores, Caldwell

Brooke Jones, Boise

Ismael Fernandez, Wilder

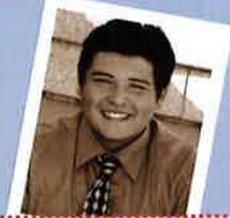
Anna Rodriguez, Nampa

Kailamai Hansen, Coeur d'Alene

Not Shown:

Ashley Kuber, Meridian

Chelsi Nygaard, Potlatch



Fernando Flores was presented with the Idaho Juvenile Justice Association 2014 District 3 Line Worker of the Year award.



Amanda Solomon participated in the Distinguished Young Women national scholarship program.



Kailamai Hansen served as Senator Mike Crapo's intern in Washington DC. Autumn 2014



Scenes from the Youth Committee Retreat at Cedar Mountain Farm October 2014



For information about becoming a youth committee member, contact

the Idaho Department of Juvenile Corrections

POB 83720

Boise ID 83720-0285

janice.berndt@idjc.idaho.gov

(208) 577-5413

Like us on [facebook.com/pages/Idaho-Juvenile-Justice-Youth-Committee/231517395680](https://www.facebook.com/pages/Idaho-Juvenile-Justice-Youth-Committee/231517395680)

Idaho Board of Juvenile Corrections

Denton Darrington, Chair

Senator Patti Anne Lodge

Representative Rich Willis

Barry Black

Shawn Hill

Judge Mark Ingram, Ex Officio

Steve Jett, Ex Officio

Director - Department of Juvenile Corrections

Sharon Harrigfeld

Interesting Facts

Number of Employees: 401.00 FY14 budgeted

Number of Employees: 404.00 FY15 budgeted

The primary factor that may cause an increase in demand for Department services is that special populations continue to be committed at higher rates than in the past. These special populations include severe mental illness, Autism Spectrum Disorder, and developmentally disabled.

Mission Statement

Developing productive citizens in partnership with communities, through juvenile crime prevention, education, rehabilitation and reintegration.

STATE OF IDAHO DEPARTMENT OF JUVENILE CORRECTIONS



Juvenile Corrections Center—Nampa



District Six Office—Pocatello



District One Office—Coeur d'Alene



Juvenile Corrections Center—Lewiston



District Five Office—Twin Falls

STATE OF IDAHO
Department of Juvenile
Corrections



Juvenile Corrections Center—St. Anthony



● Excellence and Quality ●

● Communication ●

● Diversity ●

● Effective Partnerships ●

● Teamwork ●

● Respect ●

● Restorative Justice ●

A Brief History

The 1903 Idaho Legislature passed a bill that founded the Idaho Industrial Reform School for the Commitment of Wayward Youth. Over 90 years later, the Idaho Department of Juvenile Corrections was created at the recommendation of a special legislative committee. The recommendation to create a new department was based on a series of meetings held across the state to gather input from the public and juvenile justice practitioners. In response to the input, the 1995 Idaho legislature passed the Juvenile Corrections Act. This act removed juvenile corrections responsibilities from the Idaho Department of Health and Welfare and vested them in the newly created Idaho Department of Juvenile Corrections.

The Present

The Idaho Department of Juvenile Corrections provides services to youth adjudicated delinquent and sentenced to the custody of the state, through residential placement in contract and state operated facilities and programs. While serving the citizens of Idaho, the Department is committed to the balanced and restorative justice model as a foundation. To meet this obligation, the Department has five divisions—JCC—Nampa; JCC—St. Anthony; JCC—Lewiston; Community, Operations, and Program Services; and Administrative Services—and three bureaus—Human Resources, Grants, and Quality Improvement Services.

The Future

The Department will continue its efforts to reduce juvenile crime in partnership with communities, through prevention, rehabilitation, and reintegration. This is accomplished by working closely with communities to hold juveniles accountable and provide services that are considered best practice aimed at reducing the risk level of juveniles and increasing their capability and productivity through engagement in educational, rehabilitation, and reintegration services.

Core Functions

The primary or core function of the Department (as written in *Idaho Code* Title 20, Chapter 5) is to provide services for youth adjudicated delinquent and sentenced to custody of the state, through residential placement in contract and/or state-operated facilities and programs. The Department works to involve victims, offenders, and communities as active participants in the juvenile justice process. This allows Idaho's juvenile justice system to meet the sanctioning, public safety and rehabilitative needs of communities.

Juveniles involved in the justice system are served within the community through county probation and detention departments or committed to state custody. Approximately 95% of juveniles involved in the justice system are served in the community.

The Department sets aside 29% of its yearly budget for distribution to counties and local communities for juvenile justice services to better serve juveniles in their home communities and help reduce the need for commitments to the Department.

There are nine boards and commissions that ensure community and other juvenile justice professionals are involved in the decision making process.

- Board of Juvenile Corrections
- Juvenile Justice Commission
- 8 juvenile justice councils (7 districts and one tribal)
- Idaho Juvenile Offender System (IJOS) Board
- Juvenile Training Council
- Juvenile Justice Advisory Team of Magistrate Judges
- Custody Review Board
- Idaho State Council for Interstate Juvenile Supervision
- Idaho Criminal Justice Commission
- Idaho Association of Counties through the Juvenile Justice Administrators, and Justice and Public Safety committees

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 04, 2015

SUBJECT	DESCRIPTION	PRESENTER
<u>RS23235</u>	Relating to prevention of the premature expenditure of state funds on potentially unnecessary court actions.	Sara Thomas, State Appellate Public Defender
<u>RS23206</u>	Relating to adding a member with expertise in sexual offender polygraph examinations	Shane Evans
Docket <u>No.11.1101.1401</u>	Rules of the Idaho Peace Officer Standards and Training Council (POST)	Vic Macraw, POST Division Administrator
Docket <u>No.11.1101.1402</u>	Rules of the Idaho Peace Officer Standards and Training Council	Vic Macraw, POST Division Administrator
Docket <u>No.11.1101.1403</u>	Rules of the Idaho Peace Officer Standards and Training Council	Vic Macraw, POST Division Administrator
Docket <u>No.11.1104.1401</u>	Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers	Vic Macraw, POST Division Administrator
Vote on Gubernatorial Appointment	Cassandra Jones, reappointment as Executive Director of the Commission on Pardons and Parole	
Vote on Gubernatorial Appointment	Sharon Harrigfeld, Director of the Department of Juvenile Corrections	

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn
 Sen Davis
 Sen Tippetts
 Sen Johnson (6)
 Sen Bayer

Sen Souza
 Sen Johnson (11)
 Sen Werk
 Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
 Room: WW48
 Phone: 332-1317
 email: sjud@senate.idaho.gov

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 Tippetts 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 Tippetts 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 Tippetts** 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.

Senator Marv Hagedorn
Vice Chairman

Carol Cornwall
Secretary

Barbara Lewis
Assistant Secretary

IDAPA 11 – IDAHO STATE POLICE

RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO.'s **11-1101-1401, 11-1101-1402, 11-1101-1403, 11-1104-1401**



RULE REVIEW

January 2015

Idaho Peace Officer Standards and Training
Victor R. McCraw, Division Administrator
victor.mccraw@post.idaho.gov
208-884-7251

IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

Prosecutor (TBA)
County Prosecutor's Office

Daniel Chadwick, Exec. Director
Idaho Assn. of Counties

Kevin J. Fuhr, Chief (Vice Chairman)
Rathdrum Police Department

Seth Grigg, Exec. Director
Association of Idaho Cities

Sharon Harrigfeld, Director
Idaho Dept. of Juvenile Corrections

Kevin Kempf, Director
Idaho Department of Corrections

Jeffrey A. Lavey, Chief
Meridian Police Department

Lorin Nielsen, Sheriff
Bannock County Sheriff's Office

Paul Panther, Chief
Crim Law Div, Atty General's Office

Col. Ralph Powell, Director
Idaho State Police

Gary Raney, Sheriff (Chairman)
Ada County Sheriff's Office

Wayne Rausch, Sheriff
Latah County Sheriff's Office

Shane Turman, Chief
Rexburg Police Department

Ernst H. Weyand, SSRA
Federal Bureau of Investigation

Greg Wooten, Enf. Chief
Idaho Department of Fish & Game

Mr. Chairman, Committee Members
Good afternoon and thank you for this opportunity to
address the proposed rules relating to the
Idaho Peace Officer Standards & Training Council,
referred to as Idaho POST.

My name is Victor McCraw and I am the POST Division
Administrator

The mission of the POST Council is:
To develop skilled law enforcement professionals who are
committed to serving and protecting the people of Idaho.

In order to accomplish this mission,
it is imperative to maintain standards of competence and
character for the men and women we certify to carry out the
various public safety duties necessary to protect our citizens,
and to uphold the public trust in the professions of Law
Enforcement and Corrections.

I would like to thank this Committee for its part in realizing
this mission through its diligence in this rule review process.

With your permission Mr. Chairman, I would like to briefly
summarize the proposed rules in this first Docket and then
address any questions from the committee.

DOCKET NO. 11-1104-1401

- Temporary and Proposed Pending Rule
 - Effective date of the temporary rule was June 5, 2014
 - These rules address minimum standards for employment in all disciplines certified by POST
 - Defines waiver authority
 - Clarifies character requirements regarding moral turpitude and drug use.
-

p. 107
bottom

11.11.01.050

MINIMUM STANDARDS FOR EMPLOYMENT

- Updates a list of disciplines trained & certified by POST
 - Peace Officers
 - County Detention Officers
 - Juvenile Detention Officers
 - Misdemeanor Probation Officers
 - Juvenile Probation Officers
 - Idaho Dept. of Juvenile Corrections direct care staff

 - Defines POST Div. Admin.'s options for waivers
 - Choose to grant a waiver where authorized
 - OR*
 - Must refer to the POST Council
-

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11.11.01.054

CHARACTER

- 01. Moral Turpitude
 - Removes reference to Black's Law Dictionary
 - 02. Applicant May Be Rejected
 - Adds "unlawful"
 - Removes the list of acts
 - 03. Applicant May Be Accepted
 - Adds "unlawful"
 - Removes POST Div. Admin.'s discretion to refer to Council
-

pp. 108

11.11.01.055

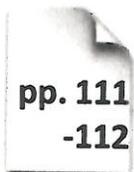
- 109

DRUG USE

- Changes "shall" to "must" or "may" throughout
 - 01.d. Adds "use of" in reference to marijuana-related drugs
 - 03. Prescription Drugs
 - Adds "unlawfully"
 - Removes POST Div. Admin.'s discretion to refer to Council
 - 04.c. Drug Trafficking, Manufacturing, and Related Offenses
 - Removes POST Div. Admin.'s discretion to refer to Council
 - 05. Juvenile Drug Offense Convictions
 - Removes POST Div. Admin.'s discretion to refer to Council
-

DOCKET NO. 11-1101-1402

- These rules address requirements for POST-certified instructors of high liability subject areas involving crucial public safety skills:
 - Lists 3 areas: Defensive Tactics, Firearms & Emergency Vehicle Operations
 - Requires evaluation by a current POST-certified instructor
 - Requires continuing education for instructors
-



11.11.01.256 RENEWAL (Instructor)

- Changes “shall” to “must” or “will” throughout
 - 02.c. Specifies “current” POST-certified firearms instructor
 - 02.e. Adds a minimum continuing training requirement for critical topic areas (8hrs every 2 years)
 - Defensive Tactics
 - Firearms
 - Emergency Vehicle Operations

 - * Use of Force
 - * Liability
-

END OF DOCKET NO. 11-1101-1402

DOCKET NO. 11-1101-1403

- Allows Home Schooling and Foreign Education as qualifying education for certification
- Clarifies the documentation requirements for education
- Leaves medical standards up to the hiring agencies
- Requires the physical ability to complete the academy

pp. 115
- 116

11.11.01.010
DEFINITIONS

- 12. Changes “equivalent” to “POST-accepted U.S. regional” for educational accrediting agencies
 - 21. Eliminates the definition of “High School”
 - Renumbering as needed throughout
-

11.11.01.052
EDUCATION

- Eliminates the limitation of only High School or GED
 - 01.a-e. Acceptable Education - Establishes a more inclusive education requirement allowing:
 - a. High School accredited by state DOE
 - b. High School accredited by a recognized regional body
 - c. Passing GED testing
 - d. High School equivalency with state-issued certificate
 - e. 15 credits from a college accredited by any of 6 agencies recognized by the U.S. DOE
 - 02. Adds Home Schooling as acceptable with:
 - Documentation of passing GED testing
 - 03. Adds Foreign Education as acceptable with:
 - Documentation of passing GED testing
 - OR*
 - An evaluation of "meet or exceed" high school equivalency from 1 of 2 U.S. DOE approved evaluation services
 - 04.a-f Adds a list of acceptable documentation for proof of education
-

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- 120

11.11.01.060
PHYSICAL - MEDICAL

- 01. Requirements
 - Eliminates POST-imposed hearing and vision requirements
 - Eliminates restrictions for diseases/conditions
 - 01.a Changes “shall” to “must” and requires an Agency Physical Readiness Test
 - 01.b Adds the Physical Capability Requirement for all academy tasks and tests
-

p. 120

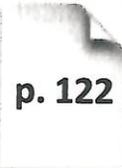
11.11.01.061
MENTAL EXAMINATION

- Changes “shall” to “must” throughout

 - 01. Includes all disciplines
-

DOCKET NO. 11-1104-1401

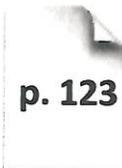
- Changes the minimum standards for Correction Officers and Detention Officers to match those of the other disciplines
-

 p. 122

11.11.01.052

EDUCATION (Correctional & Adult Probation/Parole Officers)

- Eliminates the limitation of only High School or GED
 - Eliminates related documentation requirements
 - Establishes a more inclusive education requirement by referencing 11.11.01.052
-

 p. 123

11.11.01.039

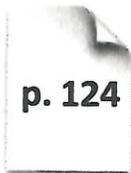
PHYSICAL - MEDICAL

- 01. Requirements: Establishes a more inclusive education requirement by referencing 11.11.01.060
 - Eliminates POST-imposed hearing and vision requirements
 - Eliminates restrictions for diseases/conditions
-



11.11.01.040
MENTAL EXAMINATION

- Establishes a more standard requirement by referencing 11.11.01.061
-



11.11.01.061
**MINIMUM STANDARDS FOR EMPLOYMENT
FOR ADULT PROBATION AND PAROLE
OFFICERS**

- Maintains the reference to 11.11.01.050-065
 - Eliminates POST-imposed restrictions for hearing, vision and diseases/conditions
-

Reference for DOCKET NO. 11-1101-1403

- Existing rule requiring hiring agencies to evaluate applicants
-

11.11.01.062

APTITUDE

The applicant shall be evaluated on the agency-approved aptitude test to determine if the applicant possesses the aptitude, capacity, and adaptability for absorbing and understanding the training and skills which are essential to the performance of the law enforcement function.

IDAPA 11.11.01.062

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, February 06, 2015

SUBJECT	DESCRIPTION	PRESENTER
MINUTES	Approve the minutes of January 21, 2015, Committee meeting	Senator Clifford Bayer and Senator Mary Souza
Vote on Gubernatorial Appointment	Sharon Harrigfeld Director of the Department of Juvenile Corrections	
<u>RS23243</u>	Relating to DNA collection for sex offenders	Matthew Gammette, ISP Forensics Lab Director and Cyndi Hall, ISP Forensics Service Quality Manager
<u>RS23355</u>	Relating to conflicting Wills and Codiciles	Robert Aldridge, Trust & Estate Professionals of Idaho, Inc. (TEPI)
<u>RS23356</u>	Relating to the correction of an incorrect word	Robert Aldridge (TEPI)
<u>RS23357</u>	Relating to conservatorship/guardianship proceeding	Robert Aldridge (TEPI)
<u>RS23367</u>	Relating to delegating substitute decision-making authority	Robert Aldridge (TEPI)
<u>RS23368</u>	Relating to access to digital assets by a fiduciary	Robert Aldridge (TEPI)
<u>RS23369</u>	Relating to authorization of community property with the right of survivorship	Robert Aldridge (TEPI)

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn
 Sen Davis
 Sen Tippets
 Sen Johnson (6)
 Sen Bayer

Sen Souza
 Sen Johnson (11)
 Sen Werk
 Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
 Room: WW48
 Phone: 332-1317
 email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, February 06, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Hagedorn, Senators Tippetts, Johnson(6), Bayer, Souza, Werk, Johnson(Logde, 11) 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 1:30 p.m.

MOTION: **Senator Bayer** moved to approve the Minutes of January 21, 2015. **Senator Souza** seconded. The motion passed by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Werk** moved to send the gubernatorial reappointment of Sharon Harrigfeld as the Director of the Department of Juvenile Corrections, to the floor with a recommendation that she be confirmed by the Senate. **Senator Tippetts** seconded the motion. The motion carried by **voice vote**.

RS 23243 **Matthew Gammette**, Idaho State Police (ISP) Forensic Lab Assistant Director, presented information Relating to the DNA collection for sex offenders. **Mr. Gammette** explained that the bill closes the loophole in the Idaho DNA Database Act, Idaho Code §19-5506. It would require a DNA collection from all felony sex offenders required to register. The bill would eliminate duplicate sample collection which adds cost. Fiscal impact is \$30,000. It is \$100 per sample and they anticipate 300 samples a year.

Senator Werk questioned if someone was convicted in any other state had DNA been collected and information stored in a common shared database. **Mr. Gammette** replied each state has different laws. He added that ISP uploads to the national database.

Vice Chairman Hagedorn questioned if the \$30,000 was in the Governor's budget. **Mr. Gammette** answered no.

Senator Tippetts queried about the 300 individuals moving into the State who need to register as sex offenders. He also asked how many leave the state. **Mr. Gammette** did not know that answer but said he would look for the numbers.

Sentaor Souza asked for clarification on the national database. **Mr. Gammette** explained that ISP collects a sample for the Idaho Database for a number of reasons. A person may or may not be in the national DNA database. **Senator Souza** questioned why the State needs an Idaho database versus a national database. **Mr. Gammette** replied there are differences in the kits and the markers that are on the DNA. There are some things that are not eligible at the national level, so they want to have that DNA on file in Idaho so that they can search.

Senator Werk inquired if DNA collected would it be from misdemeanors. **Mr. Gammette** replied they would be felony only. **Senator Werk** asked if the State already had a law requiring samples from those who committed a felony. **Mr. Gammette** deferred to Cindi Hall to answer the question.

Senator Burgoyne asked for people who are convicted in other states, would that state's criminal code match Idaho's criminal code. Is there an equivalency from state to state on misdemeanor and felonies? **Mr. Gammette** answered there was an equivalency, but in some instances a misdemeanor in another state is a felony in Idaho.

Senator Johnson(6) asked for clarification on Idaho Code § 19-5506, on line 30, of "who". **Mr. Gammette** stated he could not answer at this time but would get one to the Committee. **Senator Johnson(6)** cited individuals moving to Idaho who are not paying restitution for the DNA analysis and asked why they not required to pay this fee. **Mr. Gammette** related in most cases it is challenging to collect fees. **Senator Johnson(6)** asked that there be something added to the bill that gives the option of collecting the fee, whether or not the courts order it.

MOTION: **Senator Tippets** moved to print **RS 23243**. **Senator Bayer** seconded the motion.

SUBSTITUTE MOTION: **Senator Werk** moved that **RS 23243** be returned to the sponsor. **Senator Johnson(6)** seconded the motion. The substitute motion carried by **voice vote**.

RS 23355 **Robert Aldridge**, Trust and Estate Professionals of Idaho, Inc. (TEPI), presented **RS 23355** relating to conflicting wills and codicils explaining that you cannot submit conflicting documents to probate. This bill amends and addresses the confusing language.

Senator Burgoyne asked for clarification of testamentary instruments. **Mr. Aldridge** stated they were instruments that dispose of property at death.

A discussion ensued over what a testamentary instrument covers and the importance of dating a document to understand conflicting documents.

MOTION: **Senator Souza** moved to print **RS 23355**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

RS 23356 **Robert Aldridge**, TEPI, explained this bill corrects a typographical error, changing the word "standard" to "standing".

Senator Werk moved to print **RS 23356**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

RS 23357 **Robert Aldridge**, TEPI, explained that a Guardian Ad Litem is an attorney assigned to protect the rights of the individual. The Guardian Ad Litem looks at all aspects of a case and is assigned for the duration. It is a limited role. This bill makes clear the powers of the Guardian Ad Litem.

Senator Johnson(6) questioned if all Guardian Ad Litem are attorneys. **Mr. Aldridge** answered the conservative and guardianship rules state they are to be attorneys.

MOTION: **Senator Burgoyne** moved to print **RS 23357**. **Senator Werk** seconded. The motion carried by **voice vote**.

RS 23367 **Robert Aldridge**, TEPI, introduced **RS 23367**, a bill that would allow a person with decision-making authority in another jurisdiction, especially medical and mental health powers of attorney, to be recognized.

Senator Burgoyne questioned if this was Idaho enacting a uniform law. **Mr. Aldridge** answered yes, with small limited changes. **Senator Burgoyne** wanted to know if the Uniform Law Commissioners were involved in the change and supportive of the change. **Mr. Aldridge** answered they were fully involved and supportive.

MOTION: **Senator Tippets** moved to print **RS 23367**. Senator Johnson (6) seconded the motion. The motion carried by **voice vote**.

RS 23368 **Robert Aldridge**, TEPI, introduced **RS 23368** which is about the dealings of digital assets. The bill allows access to the digital assets by fiduciary. It is desirable to have a uniform law throughout the nation, where possible.

MOTION: **Senator Werk** moved to print **RS 23368**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

RS 23369 **Robert Aldridge**, TEPI, explained that **RS 23369** expands ownership for community property during survivorship. It eliminates capital gains due to community property.

Senator Johnson(6) asked for clarification on tenancy in common. **Mr. Aldridge** explained it is when two individuals own property and have the right to transfer ownership during life or death.

MOTION: **Senator Tippets** moved to print **RS 23369**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Hagedorn** adjourned the meeting at 2:15 p.m.

Senator Marv Hagedorn
Vice Chairman

Carol Cornwall
Secretary

Barbara Lewis
Assistant Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 09, 2015

SUBJECT	DESCRIPTION	PRESENTER
Docket No. 06-0102-1401	Rules of Correctional Industries - Proclamation (Pg. 3, back section following Pg. 170)	Andrea Sprengel, Services Manager, Correctional Industries
Docket No. 06-0102-1501	Rules of Correctional Industries - Proclamation (Pg. 7, back section following Pg. 170)	Andrea Sprengel, Services Manager, Correctional Industries
Docket No. 06-0201-1501	Rules Governing the Supervision of Offenders on Probation or Parole by the Department of Correction, Division of Probation and Parole - Proclamation (Pg. 9, back section following Pg. 170)	Henry Atencio, Deputy Director, Idaho Department of Correction
Docket No. 06-0202-1501	Rules Governing the Establishment and Operation of a Limited Supervision Unit by the Department of Correction, Division of Probation and Parole - Proclamation (Pg. 18, back section following Pg. 170)	Henry Atencio, Deputy Director, Idaho Department of Correction
Docket No. 06-0203-1501	Rules Governing Release Readiness - Proclamation (Pg. 25, back section following Pg. 170)	Henry Atencio, Deputy Director, Idaho Department of Correction.
Docket No. 50-0101-1401	IDAPA 50 - Rules of the Commission of Pardons and Parole (Pg. 125)	Matt Wetherell, Hearing Officer Supervisor, Commission of Pardons and Parole
Docket No. 57-0101-1401	IDAPA 57 - Rules of the Sexual Offender Management Board (Pg. 159)	Kathy Baird, Management Assistant, Sexual Offender Management Board

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn
 Sen Davis
 Sen Tippetts
 Sen Johnson (6)
 Sen Bayer

Sen Souza
 Sen Johnson (11)
 Sen Werk
 Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
 Room: WW48
 Phone: 332-1317
 email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 09, 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 1:30.

DOCKET NO. 06-0102-1401 **Vice Chairman Hagadorn** recognized Andrea Sprengel, Services Manager, Correctional Industries.

Ms. Sprengel stated that this is the first rulemaking ever done by Correctional Industries. The purpose was to comply with Idaho Code § 20-413A which gave Correctional Industries the ability to enter into contracts with private agricultural employers for the use of inmate labor.

Ms. Sprengel explained that this rule will ensure that displacement of non-inmate workers does not occur and that inmate safety and security needs are met by the contract agriculture employers. The contract will reflect the responsibilities and expectations to alleviate these issues (see attachment 1).

Correctional Industries will receive annually from the Department of Labor the prevailing wage for the type of work the inmates will perform. The billing rate to the employer will include the prevailing wage plus other costs the employer avoids by using inmate labor.

DOCKET NO. 06-0102-1501 **Andrea Sprengel** also presented this docket prior to discussion as the two are related. **Ms. Sprengel** explained that this section addresses inmate compensation and the disbursement of funds received from the private agricultural employer. She then outlined the process by which the money received would be dispersed (see attachment 1).

Senator Werk said he understood the funds coming in would be dispersed among program costs, Idaho Victim's Compensation Fund, the Betterment Account, Department of Corrections (IDOC), and the inmate. There is nothing outlining how the amount of disbursement for each is determined. He expressed concern that if program costs would grow, the inmates would be left with nothing.

Ms. Sprengel explained that the previous procedure paid out everything else and then the inmates received what was left over. Under this new rule the inmates will be compensated for a specific amount, so they will receive a wage on which they can depend.

Senator Werk said he interpreted the language as meaning the money would come in, everybody would get their part, and then at the very bottom would be the inmates. He commented that if the inmates are going to have a set wage, that is not apparent the way the rules are written.

Ms. Sprengel related the details of how the process works. The employers are charged a specific rate. The inmates are paid a set wage lower than the rate paid by the employer. Inmates receive their share first. Then about 30 to 35 percent is paid to the DOC, 5 percent to the Victims' Compensation Fund, and all the rest goes into the Correctional Industries Betterment Account. If the costs start to grow the rate to the private agricultural employer would be increased to ensure that everybody is covered and the inmates receive their wages.

Senator Tippetts was concerned about the use of the term "such activities" when there are no activities to which to refer. **Ms. Sprengel** explained that the activities needed to be related to harvesting and processing perishable food items.

Senator Tippetts pointed out that the language was not clear. He suggested the text should be specific and identify the activities **Ms. Sprengel** indicated. He then inquired about the term "exclusively by that individual" as opposed to someone hired or the operator of the business. **Ms. Sprengel** replied that she did not know but would follow up with an answer.

Senator Tippetts accepted that offer. A discussion ensued regarding the use of the words "shall" and "will". He inquired if they meant the same. **Ms. Sprengel** answered that they use them interchangeably.

Senator Tippetts recommended that the language be changed to the use of only one of the words. He considers the use of two different words as implying that they are different. He expressed concern regarding the grammatical structure of the section listing three requirements for contracts with the private agricultural employer. It is not clear if all requirements need to be met or if a choice can be made. He asked if all three needed to be met. **Ms. Sprengel** replied that all three needed to be met. **Senator Tippetts** recommended that it be made clear.

Senator Burgoyne inquired if the \$2.61 per hour is for all people in custody who are paid or if there are other amounts paid depending on the job or other circumstances. **Ms. Sprengel** said that is the amount inmates in eastern Idaho are making. She stated that different amounts are paid for different jobs. **Senator Burgoyne** asked if this legislation would provide a definite amount each inmate doing farm work will be paid. **Ms. Sprengel** explained that the statute does not give a specific amount to be paid. Rather the amount paid will be in accordance with a graduated schedule based on the quality and quantity of work performed and the skill required.

Senator Burgoyne stated that he will support the rule but a schedule specifying the wages should be added in future rulemaking.

Senator Johnson (11) requested clarification on the work site evaluation. **Ms. Sprengel** explained that the contract would include security and safety provisions identified during the evaluation as well as the responsibilities of each party.

Senator Johnson (11) then asked if there are variances among the employers as to who provides liability insurance. **Ms. Sprengel** pointed out that the insurance responsibilities were not put in the rules, but are included in the contract.

Senator Johnson (6) queried who requested that rules be established. **Ms. Sprengel** indicated that it was requested in statute. **Senator Johnson (6)** requested clarification of the contract requirements as they seemed very limited. In response, **Ms. Sprengel** proposed including the phrase "but not limited to" with the list of requirements.

Senator Davis addressed several other language issues and suggested revising the wording.

Vice Chairman Hagadorn requested that Ms. Sprengel have new wording and more focus next year.

Ms. Sprengel affirmed that the changes would be made.

MOTION: **Senator Tippetts** moved to approve **Docket No. 06-0102-1401**. **Senator Davis** seconded the motion. Passed by **voice vote**.

Senator Tippetts pointed out that he does not understand what is intended with "private agricultural employer" and requested that it be made clear by next year.

MOTION: **Senator Johnson (6)** moved to approve **Docket No. 06-0102-1501**. **Senator Bayer** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 06-0201-1501 **Henry Atencio**, Deputy Director, Idaho Department of Correction (IDOC) explained that **Docket No. 06-0201-1501** is a new chapter creating new rules for supervision of offenders on probation or parole by IDOC's Probation and Parole Division. These rules identify requirements and standards for supervision of offenders, and establish a standard of swift and certain justice using a graduated sanctions response matrix for positive and negative behavior of offenders. These new rules comply with and carry out requirements of the Justice Reinvestment Act of 2014.

Senator Davis questioned the 48 hour standard mentioned in the rule and how it was determined. He also asked for clarification on the graduated sanctions along with the policy of assessment. **Mr. Atencio** answered the 48 hour standard was set after talking with Idaho Supreme Court and magistrate judges for a swift response.

Senator Davis asked if the increments could be imposed more than once. **Mr. Atencio** clarified by stating that the probation officer can use 48 hours without judicial approval. If the sanctions need to extend past the 48 hour time period the judge of record will be contacted for an extension of that time. This is a standard operation for IDOC procedure on how to comply and enforce the IDAPA rule.

Senator Davis asked that the charge be easier to read as the print is very small on the second page. **Mr. Atencio** said he would get a bigger chart for the Committee.

Senator Johnson (11) asked for a copy of the matrix and wondered if parolees are getting copies of this matrix. **Mr. Atencio** affirmed that when parolees meet with a parole officer they review the chart and receive a copy.

MOTION: **Senator Johnson (6)** moved to hold **Docket No. 06-0201-1501** in Committee to a time certain. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 06-0202-1501 **Henry Atencio**, Deputy Director, Idaho Department of Correction (IDOC) explained that **Docket No. 06-0202-1501** is a new chapter to the rules. It establishes a limited supervision unit within IDOC's Probation and Parole Division. These rules include the qualifying criteria for placement on the limited supervision unit. It gives disqualifying criteria and monitoring requirements along with payment requirements.

Senator Burgoyne questioned if the groups who were consulted when making the rules understood the end results. **Mr. Atencio** replied they did.

Vice Chairman Hagedorn asked if those consulted made changes to the docket. **Mr. Atencio** commented that each group along the way helped make changes to the rules.

Senator Burgoyne asked if those groups were all comfortable with the final wording. **Mr. Atencio** answered yes. When the final version was presented they were satisfied.

Senator Davis expressed concern regarding the use of the word "policy" on page 23, Section 04, and asked if there will be a statement that accompanies it. **Mr. Atencio** stated they intend to have a standard operating procedure for the direction of the supervising and parole officers.

Senator Davis asked for clarification on the validated actuarial assessment. **Mr. Atencio** explained their office uses Level of Service Inventory Revised (LSI-R). A risk assessment tool is a changing tool and one used for best practices. If a departure from this the rule is needed, it would require presentation before the Legislature for the change. **Senator Davis** asked that a date be added to the validated actuarial assessment. **Mr. Atencio** answered that it could be added along with revisions needed as mentioned.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 06-0202-1501**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 06-0203-1501 **Henry Atencio**, Deputy Director, Idaho Department of Correction (IDOC) said this docket is a new chapter governing the rules of readiness for release from custody. These new rules regulate an inmate's reentry into the community by identifying requirements and standards for preparing inmates for release. They ensure program completion and effective reentry strategies for timely effective and safe transitions to community supervision.

MOTION: **Senator Davis** moved to approve **Docket No. 06-0203-1501**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 50-0101-1401 **Matt Wetherell**, Hearing Officer Supervisor, Commission of Pardons and Parole, explained that the purpose of the docket is to revise the rule to clarify and update outdated language and to rewrite rules that have not been updated for many years.

Senator Davis asked for clarification on the wording "as by" and wondered if it was the correct wording. **Mr. Wetherell** answered it will be looked at throughout. **Senator Davis** asked for consistency throughout the new rule. **Mr. Wetherell** said it would be done.

Senator Burgoyne addressed the concern that the rules in this docket speak to the laws and individual rights.

Senator Davis asked that the language be revised making sure the wording is clear and appropriate for understanding.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 50-0101-1401**. **Senator Davis** seconded the motion.

Senator Werk asked that minutes deadlines be added when revising the rules.

The motion carried by **voice vote**

Vice Chairman Hagedorn noted that **Docket No. 57-0101-1401** will need to be rescheduled and presented at another time.

ADJOURNED: There being no further business, **Vice Chairman Hagedorn** adjourned the meeting at 2:57 p.m.

Senator Hagedorn
Vice Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

Senate Judiciary and Rules Committee

Vice Chairman Senator Hagedorn

Mister Chairman, and members of the committee, good afternoon and thank you for the opportunity to testify before you today.

My name is Andrea Sprengel and I'm the Services Manager for Idaho Correctional Industries. I come before you today to testify to the first rulemaking ever done by Correctional Industries, docket 06-0102-1401, which went into effect on July 4th, 2014. The purpose of this rulemaking was to comply with Idaho Code Section 20-413A which became effective on July 1st, 2014 and gave Correctional Industries the ability to enter into contracts with private agricultural employers for the use of inmate labor. After the program had been in place for several months, we wanted to make some changes to the rules, and so we created the new rulemaking that is docket 06-0102-1501 to make those changes. The new docket will go into effect on February 6th, 2015 and will reflect changes made only to section 013.

Now I'd like to speak to you about the two major sections of our rules....

Beginning on page 6 of the docket, you will see that the Board added section 012, Contracts with Private Agricultural Employers.

- In this section of our rulemaking, we outline the contract provisions that are necessary in meeting the requirements of Idaho Code Section 20-413A, specifically related to preventing non-inmate worker displacement, and meeting inmate safety and security needs.
- To ensure that inmate safety and security needs are met, Correctional Industries and the Department of Correction will conduct a work site evaluation before entering into a contract. Provisions will be included in the contract to address the safety and security responsibilities of each party.
- Because we depend on the private agricultural employer to do their part to prevent non-inmate worker displacement, the contract will also include a statement certifying that they were unable to employ a sufficient amount of non-inmate employees.
- Also, in an effort to prevent non-inmate worker displacement, Correctional Industries will annually ask the Department of Labor to provide the prevailing wage for work that is similar in nature to the work that the inmate laborers will be performing.
- When entering into contracts with private agricultural employers, Correctional Industries will set a billing rate that includes the prevailing wage plus any other costs the employer avoids by using inmate labor, such as worker's compensation.

Now I'm going to talk about the amended version of our rulemaking in section 013 of docket 06-0102-1501 which is on page 8.

- This section addresses inmate compensation and the disbursement of funds received by the private agricultural employer.
- Money received from the private agricultural employer for the use of inmate labor will be deposited into the Correctional Industries Betterment Account. Funds will then be dispersed between Correctional Industries and the Department of Correction to cover the costs of the program, and contribute to the Idaho Victim's Compensation Fund.
- Funds dispersed to Correctional Industries will also be used in accordance with Idaho Code Section 20-416. Correctional Industries is self-funded and section 20-416 describes how funds in the Betterment Account can be used to defray costs such as salaries and the costs of operating Correctional Industries' programs.
- Funds dispersed to the Department of Correction shall be used to offset the costs of incarceration, to supplement education opportunities, and provide resources for re-entry into the community.
- Inmates will be compensated for their work in accordance with Idaho Code Section 20-412. Inmate earnings will be deposited into their trust account where deductions for court ordered financial obligations, such as child support and restitution, will be made by the Department of Correction.

Mister Chairman, this concludes my presentation. On behalf of the Board of Correction and Correctional Industries, I would like to ask that the committee pass a motion to leave this rulemaking in full force and effect. At this time, I am happy to stand for any questions that the committee may have.

Wait for questions and respond accordingly.

Mister Chairman and members of the committee, I'd like to thank you for the opportunity to present our rulemaking. On behalf of the Board of Correction and Correctional Industries, we wish you a wonderful legislative session.

AMENDED AGENDA #3
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 11, 2015

SUBJECT	DESCRIPTION	PRESENTER
<u>RS23370</u>	Relating to the use of revocable trusts as Will substitutions	Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.
<u>RS23418</u>	Relating to the Uniform Interstate Family Support Act	Kandee Yearsley, Child Support Bureau Chief, Department of Health and Welfare
<u>RS23407</u>	Relating to an interim committee to study the public defender system in Idaho	Senator Todd Lakey
<u>RS23479</u>	Relating to increasing from five to ten years the enforceability of judgments for the recovery of money issued on and after July 1, 2015.	Senator Bart M. Davis
<u>RS23496</u>	Relating to increasing from five to ten years the enforceability of judgments for the recovery of money issued on and after July 1, 2015.	Senator Bart M. Davis
<u>Docket No. 11.1104.1401</u>	Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers, Pg. 121	Vic Macraw, POST Division Administrator
<u>Docket No. 11-0301-1401</u>	Rules Governing Alcohol Testing, Pg. 96	Matthew Gamette, ISP Forensics Lab Director

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn
 Sen Davis
 Sen Tippetts
 Sen Johnson (6)
 Sen Bayer

Sen Souza
 Sen Johnson (11)
 Sen Werk
 Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
 Room: WW48
 Phone: 332-1317
 email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 11, 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 1:30 p.m. **Vice Chairman Hagedorn** announced a revision to the agenda to accommodate Senator Lakey's schedule.

RS 23407 **Senator Lakey** stated **RS 23407** is a resolution to reauthorize the Public Defender Reform Committee to continue for another year. The committee has made significant progress, but there is more work to do.

MOTION: **Senator Werk** moved to print **RS 23407**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

RS 23370C1 **Robert L. Aldridge**, Trust & Estate Professionals of Idaho, Inc. (TEPI), asked that this bill be withdrawn.

UNANIMOUS CONSENT REQUEST: **Senator Davis** asked for unanimous consent to return **RS 23370C1** to the sponsor. There were no objections.

RS 23418 **Kandee Yearsley**, Child Support Bureau Chief, Department of Health and Welfare, presented **RS 23418** which amends and clarifies issues relating to the Uniform Interstate Family Support Act (UIFSA). The bill will improve enforcement of American child support orders abroad (see attachment 1).

Senator Burgoyne questioned if this is a project of the Uniform Law Commission, if the bill has been before the Commission, and if it met with their approval. **Ms. Yearsley** answered yes.

MOTION: **Senator Davis** moved to print **RS 23418**. **Senator Tippetts** seconded the motion. The motion carried by **voice vote**.

RS 23479 AND RS 23496 **Senator Davis** asked if both **RS 23479** and **RS 23496** could be presented at the same time. **Vice Chairman Hagedorn** affirmed they could be done together.

Senator Davis explained that **RS 23479** amends § 11-105 to increase the period of time for claiming a money judgment from five years to ten years. **RS 23496** amends a judgment granted before June 30, 2015 to a five year time limit and after July 1, 2015 to a ten year time frame.

Senator Burgoyne said that judgment liens should only be for five years so that records searches would have a limitation. Once expired, it should be renewable.

MOTION: **Senator Burgoyne** moved to print **RS 23479** and **RS 23796**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
11-1104-1401**

Vic McCraw, POST Division Administrator, explained **Docket No. 11-1104-1401** changes the minimum standards for correction officers and detention officers to match those of the other disciplines.

Senator Davis asked for a short review of the information on the past dockets that were reviewed by Mr. McCraw. **Mr. McCraw** answered that this docket puts the training for correction officers and adult probation and parole officers on par with other sections that were already reviewed. The language on home schoolers' education was stricken as passage of the GED is not required. **Senator Davis** questioned the need for separate rules for education. **Mr. McCraw** explained that the rules have expanded to different disciplines and each has had an education rule added.

DISCUSSION:

A discussion ensued about the term GED and other tests which are now the standard for admission into colleges, universities and the military.

MOTION:

Senator Johnson(6) moved to approve **Docket No. 11-1104-1401**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

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

Matthew Gammette, Idaho State Police Forensics Services (ISPFS) Lab Assistant Director, stated that **Docket No. 11-0301-1401** has two components. **Mr. Gammette** explained that this docket takes the long-standing standard operating procedures (SOP) for labs doing blood, urine and alcohol analysis and puts it into IDAPA with legislative oversight.

It also adds additional quality control requirements for labs that want approval to do alcohol testing. Labs do not have to follow these rules, but they have to provide a foundation for testing.

Mr. Gammette explained the history and reliability of the SOP. All labs have a SOP as a way to standardize procedures. SOPs have been used in Idaho since 1980. The SOP is a scientifically set and living document. Modifications are made to be in compliance with national recommendations for breath alcohol testing.

With an adversarial legal system, prosecutors argue SOPs are good and defense attorneys argue the SOP is scientifically flawed. These arguments are played out in court. ISPFS needs SOPs to be acceptable to the courts. There is no evidence to support that they are not valid.

Courts have ruled about SOPs in many cases, and ISPFS has been following the different outcomes. ISPFS decided to embark on a rulemaking process adapting the SOP into an administrative rule (see attachments 2 and 3).

Vice Chairman Hagedorn asked if there were any changes in the SOP when the temporary rules went into effect in September 2014. **Mr. Gammette**, answered in the affirmative; changes were made again in December 2014, and changes will continue to be made.

Mr. Gammette referenced other states' procedures (see attachment 4). Idaho is unique in that scientists do the breath alcohol tests and those tests are run through the state lab. **Mr. Gammette** yielded to Jeremy Johnston to address the second component of **Docket No. 11-0301-1401**.

Jeremy Johnston, ISPFS Volatiles Analysis Discipline Leader and overseer of the alcohol testing blood and breath, explained the National Safety Council sets the minimum criteria and preserves the evidential value. Idaho follows these recommendations (see attachment 2).

Mr. Johnston further stated there is state professional testing and certification for breath alcohol test operators, as well as breath alcohol testing specialists. All instruments are approved by the appropriate agency.

ISPFS sets testing protocol along with definitions for deprivation, observation and monitoring. These words can have a different meaning in other states. ISPFS also sets a 15 minute deprivation period with optional observation during that time.

A discussion of the standard and procedures of observation ensued.

Senator Davis expressed concern regarding ambiguous wording. **Mr. Johnston** clarified the language.

Senator Tippetts asked about the laboratory and minimum requirements for those doing the testing. **Mr. Johnston** stated the laboratory is what is approved, not the people. Each laboratory has to undergo proficiency testing, and it would be up to the laboratory to make sure the workers were properly qualified. **Senator Tippetts** questioned if this could be an issue raised in a court even though the laboratory was certified but the person was not qualified. **Mr. Johnston** answered yes, even if all rules are followed and qualified people do the testing.

Senator Tippetts questioned why Idaho does not have some minimum specified standard for individuals conducting the test. **Mr. Johnston** said ISP felt it was inappropriate to dictate the training of individuals who might have a limited role in the sample. There would be difficulty in distilling the criteria for each individual in their role in a laboratory.

Senator Tippetts asked if the breath testing instruments would be approved by three different agencies, or should the word "or" be inserted between the agency names. **Mr. Johnston** yielded to Mr. Gammette

Mr. Gammette answered the intent is to follow all three agencies' recommendations.

Senator Tippetts asked about the word "should" in the 15 minute period for the breath testing. **Mr. Gammette** yielded to Mr. Johnston.

Mr. Johnston answered that there is criteria to be met for contamination and restarting the testing period. **Senator Tippetts** asked why they start over. **Mr. Johnston** answered if raw alcohol was regurgitated and contaminated the mouth, the second procedure would show those results.

ADJOURNED: **Vice Chairman Hagedorn** stated the Committee would schedule Mr. Gammette and Mr. Johnston for further questioning. There being no further business, **Vice Chairman Hagedorn** adjourned the meeting at 2:51 p.m.

Senator Hagedorn
Vice Chairman

Carol Cornwall
Secretary

Barbara Lewis
Assistant Secretary

Uniform Interstate Family Support Act

The 2008 amendments to the Uniform Interstate Family Support Act (UIFSA) represent a collaborative effort among the Uniform Law Commission (“ULC”), federal and state child support officials, and representatives of national child support organizations. They standardize rules for the enforcement and modification of family support orders -- both domestic and international. UIFSA 2008 builds upon important 2001 amendments to UIFSA.

WHY SHOULD A STATE ENACT THE 2008 UIFSA AMENDMENTS?

■ **One Controlling Order**

The cornerstone of UIFSA is that it ensures there is one order between the parties that controls the amount of current support. That critical goal only works as long as every state has the same version of UIFSA with the same limitations on modification. The 2001 and 2008 amendments to UIFSA add three bases for modification jurisdiction: (1) Parties can consent to have the issuing state modify the order, even though no party continues to reside there. This amendment will particularly benefit residents of bordering states, who may have an order from one jurisdiction but now live in another. (2) A U.S. tribunal retains jurisdiction to modify its own order -- even if no one lives in that state -- if one party resides in another U.S. state and the other party resides outside the United States. This 2008 provision means that a U.S. resident continues to have a U.S. forum to hear the modification request. (3) A U.S. tribunal can modify a foreign order from a non-Convention country if the other country cannot or will not modify its order under its laws. This provision also ensures that, if needed, there is U.S. forum for a U.S. resident.

■ **Improved Evidentiary Provisions**

The 2001 amendments provide that a tribunal cannot require the physical presence of an individual nonresident party (the petitioner or the respondent). This change increases a party's access to the court or administrative agency. The amendments require a tribunal to permit a nonresident party or witness to testify by telephone, audiovisual means, or other electronic means at a location designated by the tribunal. This change is beneficial in several ways: (1) it ensures that a nonresident can participate in a hearing without the expense of travel; (2) it will therefore likely reduce the number of default orders; and (3) it ensures that the tribunal has access to more complete and current information than can be conveyed in paper pleadings. The 2001 amendments also recognize technological advances by referring to a “record,” which includes information stored in an electronic medium.

■ **Duration of Support**

The amendments make clear that if a noncustodial parent has fulfilled the support duty under the controlling order, a tribunal in another state with a longer duration cannot impose a further support obligation through an establishment proceeding.

■ **Redirection of Payments**

One of UIFSA's goals is get support payments to a relocated custodial parent as quickly

as possible while ensuring that there is an accurate accounting record. When everyone has left the state that issued the controlling order, the 2001 amendments to UIFSA allow a support enforcement agency to request a redirection of payments to the support enforcement agency in the state in which the obligee is now receiving child support services.

▪ **Direct Income Withholding**

The 2008 amendments change direct income withholding so that a U.S. employer is no longer required to honor an income withholding order directly sent to the employer from a foreign country. This change will benefit U.S. employers because their payroll offices will no longer have to make legal decisions about the validity of a foreign order.

▪ **Funding**

The 2014 federal law requires a state to enact the 2008 UIFSA amendments by the end of its 2015 legislative session as a condition for continued receipt of federal funds supporting the state child support program.

▪ **International Cases**

The 2014 Preventing Sex Trafficking and Strengthening Families Act serves as the federal implementing legislation for the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The 2008 amendments to UIFSA implement the Convention at the state level. The United States cannot become a party to the Convention until all states have enacted UIFSA 2008. The Convention and implementing UIFSA 2008 amendments greatly improve child support services when one parent lives outside of the United States:

- Many foreign countries will not process foreign child support requests in the absence of a treaty obligation. More countries have already ratified the Convention than have entered into bi-lateral agreements with the U.S. Simply put, more U.S. families will receive child support once the U.S. becomes a party to the Convention.
- A country can only ratify the Convention upon submission of laws and procedures indicating its ability to comply with these Convention requirements.
- Enactment of the 2008 UIFSA amendments will ensure that U.S. residents receive free legal services when they seek enforcement of a child support order through the Central Authority in any Convention country.
- The current U.S. bi-lateral arrangements do not contain the important details that the U.S. helped negotiate into the Convention, such as administrative cooperation, procedures for recognition and enforcement of orders, and timeframes for taking specific actions.
- The 2008 amendments allow a state legislature to decide how it wants to handle international cases. A state can choose between two alternatives: (1) the state must, upon request, provide services to any petitioner, regardless of where the petitioner resides; or (2) the state must, upon request, provide services to a petitioner requesting services through a Central Authority [which means a Convention country or a country with which the U.S. has a bi-lateral agreement] and may, upon request, provide services to petitioners residing in other foreign nations. UIFSA 2008 gives states flexibility that does not currently exist under UIFSA.

RS 23418 – Relating to the Uniform Interstate Family Support Act

Mr. (Madame) Chairman, members of the committee

Good afternoon, my name is Kandee Yearsley I am the Child Support Bureau Chief with the Department of Health and Welfare, Division of Welfare. I am here to present RS 23418 relating to the Uniform Interstate Family Support Act.

Before I get started, I would like to acknowledge the Idaho delegation to the Uniform Law Commission, which is the organization that drafted these amendments.

On September 18, 2014, Congress passed the Preventing Sex Trafficking and Strengthening Families Act which includes the requirement for all states to enact the 2008 Amendments to the Uniform Interstate Family Support Act, also known as UIFSA, during their 2015 legislative session.

These amendments incorporate provisions of the 2007 Hague Convention on International Recovery of Child Support and Family Maintenance, and improve the enforcement of American child support orders abroad. In addition, the amendments include some minor technical corrections and changes to reflect advancements in technology that can be utilized to increase access to the courts.

UIFSA 2008 constitutes a limited, rather than comprehensive, revision of the act. It adds a definition of record to allow for electronic transmission of testimony, and allows telephonic or other electronic testimony to non-resident parties. Other changes include replacing “under oath” with “under penalty of perjury” for documents and affidavits, and allowing the child support enforcement program to redirect payment of orders when no party lives in the order issuing state.

With regard to international casework, it is designed to integrate the Convention into state law and not significantly amend UIFSA 2001, which is the current version of UIFSA in Idaho. It integrates the requirements of the Convention into current text by adding foreign country, which in prior versions of UIFSA, foreign countries were equated with states.

Finally, sections 46-59 of the amendment constitute a stand-alone procedure to direct a “tribunal of this state” on the dos and don’ts unique to the Convention support orders containing issues only applicable under the convention.

The requirement that all 50 states enact UIFSA2008 in a verbatim manner is required for the United States to participate and obtain the benefits of the Hague Convention. Currently 32 countries have ratified.

This amendment is required for continued receipt of federal funds supporting the child support program which is a required Program in order to qualify for the TANF block grant.

This amendment is designed to help children residing in Idaho to receive the financial support due from parents, wherever those parents may reside.

I ask you to send RS 23418 to print and I stand for questions.

NATIONAL SAFETY COUNCIL
COMMITTEE ON ALCOHOL AND OTHER DRUGS

RECOMMENDATIONS OF THE SUBCOMMITTEE ON ALCOHOL
TECHNOLOGY, PHARMACOLOGY, AND TOXICOLOGY

ACCEPTABLE PRACTICES FOR EVIDENTIAL BREATH ALCOHOL TESTING

- A. Forensic breath alcohol test programs differ between jurisdictions for a variety of sound and important reasons. Programs differ with regard to instrumentation, protocols, personnel training and responsibility, documentation, etc. Programs also differ because of jurisdictional variations in statutory language, case law, administrative rules, political concerns, program funding, penalties associated with convictions, etc.
- B. The significant weight assigned to breath alcohol results, along with the serious consequences arising from conviction on an impaired driving offense require evidential breath alcohol testing programs to implement appropriate quality assurance measures. ⁽¹⁻⁷⁾
- C. The purpose of this subcommittee's recommendations is to outline the basic elements necessary for establishing quality assurance and fitness-for-purpose in evidential breath alcohol measurements.
1. These recommendations apply to both fixed location and roadside evidential breath alcohol testing.
 2. Roadside evidential breath alcohol testing may require additional consideration for factors such as:
 - a. testing for radio frequency interference, ^(7, 8a, 9)
 - b. use and type of control standards, ^(1, 2, 7, 8b, 8c, 10-17)
 - c. operating environment, ^(8d)
 - d. instrument mounting,
 - e. adequate electrical power supply.
- D. The following recommendations are considered necessary for establishing reliable evidential breath alcohol test performance and enabling meaningful measurement interpretation.
1. Instruments should be operated, and tests administered by, trained and qualified breath alcohol test instrument operators. ^(1, 2, 7, 8e, 8f, 9)
 2. Instruments should be approved by an appropriate agency and, if used in the United States, also appear on the National Highway Traffic Safety Administration's Conforming Products List. ^(8f, 8g, 8h, 9)
 3. Testing protocols should employ a minimum pre-exhalation mouth alcohol deprivation period of 15 minutes. ^(1, 2, 7, 8b, 8i, 9, 10, 18, 19)

The use of the term "alcohol" in this document refers to "ethanol" unless otherwise noted.

4. Breath alcohol measurements should be conducted on at least duplicate independently exhaled end-expiratory breath samples; the breath sample results should agree within the applicable established and documented criteria. ^(1, 2, 7, 8i, 9, 18)
5. At least one control analysis should be performed as a part of each subject test sequence as an assessment of within-run accuracy and/or verification of calibration. ^(1, 2, 7, 8b, 9)
 - a. Controls should consist of either wet bath simulator ethanol vapor or dry gas ethanol standard.
 - b. Predetermined and documented acceptable control results should be established.
 - c. Control results found to be unacceptable during a test sequence should require the performance of a complete new test sequence or result in disabling the breath alcohol test instrument until it is inspected by appropriately trained personnel.
6. An ambient air blank/analysis should be performed before and after each breath and control sample analytical measurement. ^(1, 7, 8b, 8d, 9)
7. Any non-compliance or non-conformity with established and documented evidential test sequence protocol criteria should require the performance of a complete new evidential test sequence.
8. Printouts of all completed tests should show the results of all breath samples, ambient air analyses/blanks and control analyses performed during a subject test sequence. ^(2, 7, 9)
 - a. Jurisdictions may choose to report a reduced or statistically adjusted result in addition to the actual analytical results. ⁽⁷⁾
 - b. The date of analysis, instrument serial number and all measurement times should appear on the printout. ^(1, 7)
 - c. Any error messages generated during the test sequence should appear on the printout.
 - d. If a test is invalid, the reason for the invalidity should appear on the printout.
9. Periodic calibration, verification of calibration and/or certification of instruments must be performed in conformance with the documented and approved protocol recognized by the applicable jurisdiction. ^(1, 2, 9)
10. Periodic recertification of breath test instrument operators should be done in compliance with documented and established training criteria recognized by the applicable jurisdiction at least every five years. ^(2, 8j, 8k)

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WAC 448-16-070

Review, approval, and authorization of protocols or proceatures and methods by the state toxicologist.

The state toxicologist will review, approve, and authorize such protocols of procedures and methods (of the toxicologist's own promulgation or submitted by outside agencies or individuals for consideration) required in the administration of the breath test program. These protocols will be updated as necessary to maintain the quality of the breath test program.

[Statutory Authority: RCW 46.61.506. WSR 10-24-066, § 448-16-070, filed 11/30/10, effective 12/31/10; WSR 04-19-144, § 448-16-070, filed 9/22/04, effective 10/23/04.]

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November 21, 2014

Captain Clark Rollins
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642

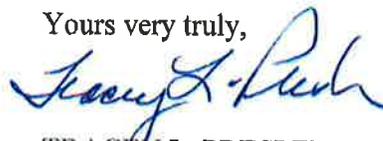
Re: Rules Governing Alcohol Testing
MKA File No. 1690.01

Dear Captain Rollins:

Enclosed please find the original *Hearing Officer's Report* prepared by Michael Kane. Also enclosed we return herewith your documents received from Mr. Elkins that we borrowed for reference.

If you should have any questions regarding the enclosed, please do not hesitate to contact this office. Thank you.

Yours very truly,



TRACY L. PRESLER
Assistant to Michael J. Kane

:tlp
Enclosures

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STATE OF IDAHO, IDAHO STATE POLICE

In Re:)
) Docket No. 11-0301-1401
) IDAPA 11.03.01
RULES GOVERNING ALCOHOL)
TESTING) **HEARING OFFICER'S**
) **REPORT**
)
)
)

I was appointed as a Hearing Officer by the Idaho State Police (ISP) to conduct a public hearing regarding the adoption of the Temporary and Proposed Rule Governing Alcohol Testing, IDAPA 11.03.01. A public hearing was noticed for 1:00 p.m. on November 13, 2014, at the Idaho State Capitol Building. The hearing was conducted beginning at 1:00 p.m.

With respect to IDAPA 11.03.01, Rules Governing Alcohol Testing, the temporary and proposed rule is to add portions of what heretofore have been described as "standard operating procedures" (SOP) pertaining to alcohol testing into rules of ISP. Specifically, the following procedures were added to ISP's administrative rules: breath alcohol instrument training requirements for operators and specialists; breath alcohol instrument performance verification and calibration requirements and rules; breath alcohol testing requirements and procedures;

alcohol laboratory approval and operational standards; minor in possession / minor in consumption (MIP/MIC) testing methods; and passive testing procedures.

The public hearing was scheduled pursuant to the Idaho statutes pertaining to the adoption of proposed rules. The hearing was recorded by the Idaho State Police.

Jeremy Johnston, a certified toxicologist employed by ISP, and Jared Olson, an impaired driving expert employed by the Idaho Prosecuting Attorney's Association, testified in support of the temporary and proposed rule. Mr. Olson prepared a written presentation and included numerous authorities pertaining to the issues before the Hearing Officer.

Thomas McCabe, an attorney in private practice, testified in opposition to those portions of the temporary and proposed rule wherein the word "should" had been substituted for the words "must" or "shall" in previous publications of the standard operating procedures.

Brian Elkins, an attorney in private practice, did not testify but submitted written comments with attached documents.

Other than the written comments provided by Mr. Olson and Mr. Elkins, no other comments were presented either in favor of, or in opposition to, the temporary and proposed rule at the public hearing or in conformance with the opportunity to present written comments as described at the hearing and in the notice of hearing.

Based upon the information reviewed by this Hearing Officer, ISP has complied with the statutory and administrative rules pertaining to the preparation, publication, notification and the opportunity for public input and participation for the temporary and proposed rule.

RECOMMENDATION

No specific opposition was had as to subsections 010 and 013, pertaining respectively to a series of definitions and requirements for laboratory alcohol analysis.

As noted above, the primary thrust of the testimony and writings in opposition to the temporary and proposed rule pertain to subsection 014, pertaining the requirements for performing breath alcohol testing. Specifically, the suggestion of the opponents was to replace the word "should" found in subsections 014.03, 014.05 and 014.09 with the word "shall."

The Idaho appellate courts have thrice expressed the opinion that the word "should" does not state a mandatory condition. See *Lawton v. City of Pocatello*, 126 Idaho 454, 886 P.2d 330 (1994); *Wheeler v. Idaho Transportation Dept.*, 148 Idaho 378, 223 P.3d 761 (2009); *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007). Of the three cases, *Wheeler* is most pertinent as it dealt with ISP's SOPs pertaining to changing an Intoxilyzer 5000's calibration solution. The SOP, like the temporary and proposed rule pertaining to performance verification (IDAPA 11.03.01014.05), stated that "[t]he 0.08 solution should be changed approximately every 100 calibration checks or every month whichever comes first." The court held that the word "should" is properly interpreted as an advisory term or strong recommendation. The court went on to review the remainder of the SOP, and determined that because the word "shall" was used elsewhere in the SOP, the court found that it was "not persuaded that the ISP meant for such a distinction to be meaningless and illusory." 148 Idaho at 386. Hence, because the word "should" was used, a calibration solution change occurring after 117 calibration checks did not render the blood alcohol content test inadmissible *per se*. Rather, the court held that this opened the door for the driver to attack the evidentiary test results through

expert testimony or other information proving that the violation rendered the result unreliable. The court noted this was best accomplished on a case by case basis.

Based upon the *Wheeler* case, it is clear that both the SOP and the current temporary and proposed rule sets an approximate range for replacement of the performance verification standard wet bath. Although the outside limit to this range is not stated, the court has made it clear that this will be determined on a case by case basis. The approximate range is set in order to avoid a *per se* suppression of a breath test when, at least in theory, such a *per se* suppression would not be scientifically reasonable.

As to the word “should” found in the temporary and proposed rule at IDAPA 11.03.01014.09, dealing with MIP/MIC, it is clear from the context and from the email discussions at ISP that the goal is to determine whether an underage individual has been ingesting alcohol in any quantity. The primary use of the Intoxilyzer 5000 in adult driving under the influence cases is to determine blood alcohol content. That goal is not relevant in determining whether or not an underage person has been drinking any alcoholic beverages at all. Hence, the requirements for driving under the influence cases are not imposed in MIP/MIC cases. Hence, the word “should” rather than “shall” found in various places within subsection 014.09, will not lead to a *per se* suppression of the test, nor should it. Obviously, if an individual wishes to present scientific information to challenge the results of the test, he may still do so. Moreover, even though the word “should” was attacked by Mr. McCabe and Mr. Elkins, they did not speak to its use in the MIP/MIC setting.

For these reasons, I recommend adoption of the temporary and proposed rule as it applies to IDAPA 11.03.01.010; .013; 014.01; 014.02; 014.04; 014.05; 014.06; 014.08; and 014.09.¹

¹ IDAPA 11.03.01.014.07 is a rule adopted in 2011 and is therefore not subject to the temporary and proposed rule.

This leaves IDAPA 11.03.01014.03, pertaining to administration of breath tests. The comments of the criminal defense attorneys who testified primarily go to this subsection.

The word "should" appears thirteen (13) times in subsection 014.03. The word in some instances is used in the purely recommendatory sense, and in others has been substituted for what heretofore had been absolutely required. Because of the differences in context, these will be discussed separately.

Subsections 014.03.b and 014.03.c deal with the fifteen (15) minute observation period prior to administration of the breath test. The fifteen minute period has long been considered an Idaho standard, and up to now there has been little question that if the fifteen minute period was not honored, the breath test result would be suppressed. In reviewing the content of subsection 014.03, it does not appear that ISP intends that the fifteen minute test be abandoned. For example, subsection 014.03.d, pertaining to mouth alcohol indicated by the testing instruments, speaks in terms of "another fifteen (15) minute observation period." Similarly, if an individual refuses to deliver a second breath sample, the first breath sample will be considered only when the fifteen minute observation period is observed. (Subsection 014.03.e). Because no operator would know in advance if an individual was going to refuse a second breath sample, it would seem axiomatic that the fifteen minute test would have to occur in every case for the BAC result to be considered legally effective.

Because it does not appear that ISP intends to abandon the fifteen minute test, and the "should" in subsection 014.03.c could be interpreted as discretionary, it is recommended that the word "should" be changed. However, there are other uses of the word "should" that appear to be intended to be recommendatory. For these reasons, it is recommended subsections 014.03.b; 014.03.c; and 014.03.d read as follows:

of measurement or linearity standards. They need not be placed in a rule. In an appropriate case, expert testimony may be used to challenge the reliability of the BAC testing on these issues. Therefore, it is not recommended that the rules contain additional requirements regarding uncertainty of measurement or linearity.

CONCLUSION

It is recommended that ISP adopt the Temporary and Proposed Rule Governing Alcohol Testing, IDAPA 11.03.01, with the addition of the changes as described above.

RESPECTFULLY SUBMITTED this 21st day of November, 2014.



MICHAEL J. KANE
Hearing Officer

July 2014—Nauert Decision (Judge John R. Stegner—First Judicial District)

- “The SOPs and manuals are not rules, they cannot be given the force and effect of law
- The SOPs are, at most, internal guidelines or standards
- Internal guidelines do not have the force and effect of law, they govern internal management
- Internal guidelines cannot affect private rights or procedures available to the public
- As a result, internal guidelines are also incapable of affecting the Rules of Evidence
- If the ISP were required to follow rule making procedures, the SOPs and manuals would at least be subject to outside scrutiny”

June 2014—Hern Decision (Judge Jeff M. Brudie—Second Judicial District)

- SOPs are valid, they are not rules, nor are they required to be rules
- They are standards or guidelines lawfully established pursuant to a validly promulgated rule
- Procedural standards for law enforcement to follow
- Insure test results are accurate and eliminate the need for expert testimony
- Do not need to be promulgated in accordance with the Administrative Procedures Act

July 8th 2014—ISPFS notified of Nauert Decision

July -August 2014—

- ISPFS reviewed Nauert Decision with DAG and Admin Rules
- ISPFS decided to embark on rule making process
- Adapting SOP into administrative rule

September 2nd 2014—Temporary rule becomes effective

October 1st 2014—Administrative Rules Bulletin published and public comment begins

October 8th 2014—25 requests for public hearing requirement met (33 received total)

- Dodd Law Firm (2)
- Amendola Doty & Brumley Law Firm
- Attorney Brian Elkins
- Attorney Paul Riggins
- Attorney Paul Vogel
- Nevin, Benjamin, McKay, and Bartlett Law Firm (10)
- Attorney Michael Kraynick
- Kootenai County Public Defender (25)

November 13th 2014—Public comment period ends

November 13th 2014—Public Hearing WW55 Idaho State Capitol (also audio broadcast)

November 26th 2014—ISPFS response to all recommendations of hearing examiner

December 15th 2014—Temporary Rule changes from public comment and hearing

Gamette, Matthew

From: Gamette, Matthew
Sent: Wednesday, November 26, 2014 12:27 PM
To: Rollins, Clark
Cc: Johnston, Jeremy; Cutler, Rachel; Baker, Teresa; Wills, Kedrick; Powell, Ralph
Subject: IDAPA Changes

Importance: High

We have reviewed through the documentation from the public hearing and also the recommendations made by Mr. Kane. We feel this was a valuable exercise and addition to our internal review process, and appreciate his comments and recommendations. We consulted with the technical and legal experts and are proposing a few changes to the proposed rule. I will get with Teresa Baker this afternoon and ensure that the edits get communicated with the Admin rules folks.

- First, we are adding two definitions and deleting one. We felt the “Waiting Period/Monitoring Period/Deprivation Period/Observation Period” should be split into several definitions. We have now defined “Monitoring period” and “Deprivation period.” The entire rule was reviewed for instances of these terms and many throughout the document were updated to be consistent with the new definitions. These definitions will be further explained below. The recommendations for change from the hearing examiner were in section 11.03.01014.03.
- 014.03a—No recommendations by the hearing examiner and no changes made.
- 014.03b— We took the recommendation of Mr. Kane to remove the second sentence. It is a statement that will stay in the SOP to help the operators understand that any objects left in the mouth during the entire monitoring period will not impact the test due to the dissipation of the alcohol content, but we felt it does not add anything to leave it in IDAPA. Some examples were moved to the first sentence and the term observation period was updated to reflect the new definition of monitoring period. We left the “should” in this sentence because these items will have no impact on the evidentiary test and the hearing officer agreed this is an appropriate use of the word in this context.
- 014.03c—With the terms “deprivation period” and “monitoring period” defined in IDAPA, this paragraph was simplified. The intent is two-fold. First, the scientific literature and undocumented experimentation at ISP shows that a 15 minute deprivation period (not allowing alcohol intake) is more than enough time to dissipate any mouth alcohol. Requiring a 15 minute minimum deprivation period has the effect of making this criteria a “shall,” but the evidence still shows that mouth alcohol will not be a contributing factor in the testing much earlier in the deprivation period. Second, the definition of monitoring period incorporates the deprivation period and also an observation period. The subject should be observed and burping-belching-vomiting-regurgitation should be documented by the observer. However, there are other ways the observation could be accomplished including asking the subject if they burped-belched-vomited-regurgitated during the monitoring period. If no new alcohol is consumed, suspected mouth alcohol can be detected through the instrumentation readings. We believe the new wording incorporates the intent of the hearing examiner.
- 014.03d—The use of “shall” in this context essentially made the additional test mandatory. We resolved the problematic wording suggested by the hearing examiner by adding the word “if” instead of “before” because that makes it so the monitoring period is required if the test is performed, but does not require that the test be performed. There were many circumstances discussed where another test would not be feasible or possible. Later in the paragraph the hearing examiner also was correct that the word “officer” should be “operator.”
- 014.03e—The hearing examiner recommends the two instances of “should” in this paragraph remain. We agree. However, the intent of this paragraph is for the operator to switch mouthpieces between test subjects, not between test sequences issued to the same individual. Alcohol attributable to moisture in a mouthpiece would dissipate quickly and is not additive to the next blow. In fact, the moisture would have the effect of absorbing alcohol from the next blow and would have the effect of lowering the test result. Therefore, this is strictly a hygienic recommendation to switch tubes between subjects and this was clarified in the paragraph wording.
- 014.03f—No recommendations by the hearing examiner and no changes made.
- 014.03g—The hearing examiner recommended “shall where possible” instead of “should.” We considered this wording and decided to implement “shall when possible.” We felt this wording gives the operator the ability to explain the circumstances behind the lack of a third test being administered.
- 014.03h—No recommendations by the hearing examiner and no changes made.
- 014.03i—No recommendations by the hearing examiner and no changes made.

Border States

Utah Administrative Code

<http://www.rules.utah.gov/publicat/code/r714/r714-500.htm>

Washington Administrative Code

<http://app.leg.wa.gov/WAC/default.aspx?cite=448-16>

Oregon Administrative Code

http://arcweb.sos.state.or.us/pages/rules/oars_200/oar_257/257_030.html

Montana Administrative Code

<http://www.mtrules.org/gateway/ruleno.asp?RN=23.4.216>

Nevada Administrative Code

<http://www.leg.state.nv.us/nac/NAC-484C.html>

Wyoming

Administrative rules & regulations: The WCTP's scientific methods for chemical analysis can be accessed through the Wyoming Secretary of State's Office. The most recent rules went into effect on December 13, 2013 and abrogated the January 2004 rules and regulations. The current version of the WCTP's rules and regulations for conducting chemical analysis can be found at the following website: <http://soswy.state.wy.us/Rules/default.aspx>

Other States

Alabama Administrative Code

<http://alabamaadministrativecode.state.al.us/docs/forsc/370-1-1.pdf>

Alaska Administrative Code

See Attached

Arizona Administrative Code

https://www.azsos.gov/public_services/Title_13/13-10.pdf

Arkansas Administrative Code (doesn't appear to be in administrative code?)

<http://www.healthy.arkansas.gov/aboutADH/RulesRegs/AlcoholTesting.pdf>

California Administrative Code

<http://www.drugdetection.net/pdf%20documents/title%2017%20california%20code%20of%20regulations%20jan%202006.pdf>

Colorado Administrative Code

See Attached

Connecticut Administrative Code

See Attached

Delaware Administrative Code

Florida Administrative Code -

<https://www.flrules.org/gateway/ruleNo.asp?id=11D-8.008>

Georgia Administrative Code

Hawaii Administrative Code

Illinois Administrative Code

Indiana Administrative Code

Iowa Administrative Code

Kansas Administrative Code

Kentucky Administrative Code

Louisiana Administrative Code

Maine Administrative Code

Maryland Administrative Code

Massachusetts Administrative Code

Michigan Administrative Code

Minnesota Administrative Rules -

https://www.revisor.leg.state.mn.us/rules/?id=7502&view=chapter&keyword_type=&keyword=in&redirect=0

Mississippi Administrative Code

Missouri Administrative Code

Nebraska Administrative Code

New Hampshire Administrative Code

New Jersey Administrative Code

New Mexico Administrative Code

New York Administrative Code

North Carolina Administrative Code

North Dakota Administrative Code

Ohio Administrative Code

<http://codes.ohio.gov/oac/3701-53>

Oklahoma Administrative Code

http://www.ok.gov/bot/Breath_Testing/

Pennsylvania Administrative Code -

<http://www.pacode.com/secure/data/067/chapter77/chap77toc.html>

Rhode Island Administrative Code

<http://sos.ri.gov/documents/archives/regdocs/released/pdf/DOH/7089.pdf>

South Carolina Administrative Code

South Dakota Administrative Code

Tennessee Administrative Code

Texas Administrative Code

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=1&ch=19&rl=1](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=1&ch=19&rl=1)

Vermont Administrative Code

Virginia Administrative Code

<http://leg1.state.va.us/000/reg/TOC06040.HTM#C0020>

West Virginia Administrative Code

Wisconsin Administrative Code

http://docs.legis.wisconsin.gov/code/admin_code/trans/311

Washington D.C. Administrative Code

See Attached

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, February 13, 2015

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment Hearing	Jean Fisher was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2015, and expiring January 1, 2018.	Jean Fisher
Gubernatorial Appointment Hearing	Debra Field was appointed to the State Board of Correction to serve a term commencing January 15, 2015, and expiring January 1, 2017.	Debra Field
Gubernatorial Appointment Hearing	Jon Burnham was reappointed to the Sexual Offender Management Board to serve a term commencing January 1, 2015, and expiring January 1, 2018.	Jon Burnham
Gubernatorial Appointment Hearing	Shane Evans was reappointed to the Sexual Offender Management Board to serve a term commencing January 1, 2015, and expiring January 1, 2018.	Shane Evans
<u>Docket No. 11-0301-1401</u>	Rules Governing Alcohol Testing, Pg. 96	Matthew Gamette, ISP Forensics Lab Director
<u>RS23270</u>	Relating to sexual offender registration procedures.	Shane Evans
<u>Docket No. 57-0101-1401</u>	IDAPA 57 - Rules of the Sexual Offender Management Board, Pg. 159	Kathy Baird, Management Assistant, Sexual Offender Management Board

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn
 Sen Davis
 Sen Tippetts
 Sen Johnson (6)
 Sen Bayer

Sen Souza
 Sen Johnson (11)
 Sen Werk
 Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
 Room: WW48
 Phone: 332-1317
 email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, February 13, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Bayer, Souza, Lodge (Johnson, 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 meeting to order at 1:40 p.m. and announced a change in the agenda.

RS 23270 **Shane Evans**, Sexual Offender Management Board (SOMB), requested that **RS 23270** establishing a proposed tiered registration for sex offenders be printed. He gave the history of sex offender registration leading up to this legislation. He addressed issues involving public safety, gave a summary of the five tiered registration categories and how the matrix compares to the current system, and he explained how the offenders' behaviors are scored. **Mr. Evans** enumerated the statutory modifications involved and the fiscal impact of the legislation.

Vice Chairman Hagedorn inquired if the amount of the budget is included in the Governor's budget. **Mr. Evans** affirmed that it is.

Vice Chairman Hagedorn asked for examples of the types of crimes related to level one and those related to level five. **Mr. Evans** requested that Kathy Baird, Management Assistant for the SOMB. address this issue.

Kathy Baird stated that level one offenses include providing pornography to a juvenile, video voyeurism, and indecent exposures. Level five offenses include murder committed in the perpetration of rape, lewd conduct, infamous crime and ritualized sexual abuse of a child.

Senator Werk inquired about the procedure for removal from the sex offender list. **Mr. Evans** explained that each level has a specific minimum and maximum period to serve using ten year increments. At half of the term the offender may petition the SOMB to be considered for removal. There is a review process including an updated psychosexual report, a polygraph, and other documentation to validate that they have completed treatment and a period of supervision. They must also exhibit attitudes and behaviors indicating that they can be crime free when released.

Senator Werk asked if the offenders could have legal counsel. **Mr. Evans** declared they would. A hearing officer who will be an advocate to ensure the offender understands the process is included in the proposed staffing. This officer will encourage the use of an attorney if required. He emphasized that the SOMB welcomes anyone to come in and present information.

Senator Werk requested that Mr. Evans address the issue of low risk offenders who have already been in the system for a long time and if they would be given consideration. **Mr. Evans** indicated that these low risk offenders would be given consideration.

Senator Werk questioned the costs of the full time employees (FTEs) associated with this legislation, asking if there is any flexibility with the \$8.00 increase in fees. **Mr. Evans** stated this increase was based on the increased notification requirements by the sheriffs, so this fee is to meet the fiscal impact on them.

Senator Souza requested clarification regarding the amount of time required for adjustment in level.

Mr. Evans responded that once the requests come in they will be triaged putting those at low risk as potential removals. Regarding the time involved, the SOMB does not have a frame of reference to determine how many requests will come in. The low risk offenders would be first to be addressed.

Senator Souza questioned if a level one offender coming into the system initially at a level four under this process would be treated as a level four rather than a level one. **Mr. Evans** related that level four has specific expectations, so initially a level one offender would be treated the same as a level four offender. The SOMB analyzes aspects other than crime type. They also consider the person's background. There would be different considerations for someone who successfully completes the assessments.

Senator Tippets observed that in this legislation authority to exempt an offender from a duty to register as a sexual offender from the courts to the SOMB. He asked if the courts have had input in that decision and if they are supportive.

Mr. Evans assured the Committee that the courts are supportive as are other interested parties. If the offender does not like the SOMB's initial determination, they may petition to have their case reviewed. If the offender still is not happy, an appeal to the court can be filed.

MOTION:

Senator Souza moved to print **RS 23270**. **Senator Werk** seconded the motion. The motion passed by **voice vote**.

Vice Chairman Hagedorn announced that the committee would hear the gubernatorial appointments and that the vote on these appointments would be held at the next committee meeting.

GUBERNATORIAL APPOINTMENT

Jean Fisher, appointed to the Sexual Offender Management Board (SOMB) to serve a term commencing January 1, 2015 and expiring January 1, 2018, introduced herself. She provided a summary of her experience as a deputy prosecutor with Ada County in the Crimes Against Children and the Sexual Assault Divisions. She is now chief deputy in charge of the child abuse, sexual assault, and domestic violence unit. **Ms. Fisher** pointed out that traditionally all sexual offenders were treated the same. After years of experience she has observed that not all are alike. She emphasized the need to classify the offenders according to their crime and their risk. She voiced her desire to continue working in this area, asserting that a lot of progress has been made, and she would like to advance improvements in Idaho's sexual offender registration system.

Senator Davis asked if there would be an unfair conflict by having a deputy prosecutor on the SOMB.

Ms. Fisher replied that there is a balance with a public defender, psychologist, and officers over parolees and probationers. She expressed a concern that the focus of the SOMB is concentrated on the sexual offender and sometimes the victim is a side issue. She sees the role of the prosecutor as being an advocate for the victims and their rights.

Senator Davis inquired if cases wherein a prosecutor has been involved would present a conflict. **Ms. Fisher** replied that such a problem is not likely to arise, but if it did she would recuse herself.

Senator Davis asked if there is a right of appeal from the hearing officer to the SOMB. **Ms. Fisher** said they have an appeal process with the court. She yielded to Shane Evans. **Mr. Evans** pointed out that the offender can petition the SOMB for reconsideration of the hearing officer's determination and present any information that was not considered. If the SOMB upholds the hearing officer's judgment, the offender can petition the court.

Senator Burgoyne asked how the makeup of the SOMB is determined. **Ms. Fisher** explained certain representatives are designated by statute, and there is a representative that is an interested party.

GUBERNATORIAL APPOINTMENT

Debra Field, appointed to the State Board of Correction (BOC) to serve a term commencing January 15, 2015 and expiring January 1, 2017, described her experience in the House of Representatives including serving as the Chairman of the House Judiciary and Rules Committee. She also served on the Board of Juvenile Corrections. She further explained that she is familiar with the issues and enjoys public service.

Senator Davis asked if her health will accommodate this position. **Ms. Field** explained that she has multiple sclerosis and that her current medication allows her to lead a relatively normal life.

Senator Burgoyne inquired about her views on contracting with private prisons. **Ms. Field** responded that she is not opposed to privatization if the organization is held accountable. She stated that she feels the State is doing well in managing the state facilities. In the case of upcoming contracts she affirmed that she would be fair and consider the details of the contract, ensuring that the organizations will meet the requirements and will be held accountable.

Senator Burgoyne expressed his viewpoint that incarceration is a state act and should be performed by the State.

GUBERNATORIAL APPOINTMENT

Jon Burnham, reappointed to the Sexual Offender Management Board (SOMB) to serve a term commencing January 1, 2015 and expiring January 1, 2018, stated he had been on the SOMB for the last three years. He advised that the SOMB is part of the Department of Juvenile Corrections, and his station is in St. Anthony.

Vice Chairman Hagedorn asked if he drove to Boise. **Mr. Burnham** replied that he drives to Boise once a month for the SOMB meetings.

Senator Werk pointed out that there may be new responsibilities for the SOMB as a result of some legislation currently being considered. He solicited Mr. Burnham's view of those responsibilities and how the SOMB might implement the new expectations. **Mr. Burnham** indicated that he is familiar with the legislation and the SOMB has been involved in its development. The process will be to send the requests to specific subcommittees to review the risk variables and make determinations for action. These subcommittees will then bring the recommendations to the SOMB for approval. They will also be involved with problem solving as concerns arise.

Senator Werk followed up by requesting the number of members on the SOMB. **Mr. Burnham** related that there are 11 appointed positions.

Senator Davis inquired if a profession is missing on the SOMB. **Mr. Burnham** explained that a position for a polygraph examiner has been requested. He asserted that the position is a viable one needed for the expertise it would provide.

Chairman Hagedorn related that this issue has been addressed in other legislation.

Senator Davis asked if there is a professional point of view that Mr. Burnham felt did not need to be represented on the SOMB. **Mr. Burnham** advised that the SOMB has good representation of the professions needed.

Senator Davis requested Mr. Burnham's ideas for addressing conflict relating to his prior work with juveniles who may now be coming before the SOMB as adults. **Mr. Burnham** replied that the SOMB bylaws required board member to recuse themselves if they have a conflict of interest.

GUBERNATORIAL APPOINTMENT

Shane Evans, reappointed to the Sexual Offender Management Board (SOMB) to serve a term commencing January 1, 2015 and expiring January 1, 2018, explained he has worked with at risk populations in various capacities including as a juvenile sex offender officer, probation officer, group home officer, and adult probation and parole officer, and other activities. **Mr. Evans** has served the last three years as chair of the SOMB and he expressed his desire to continue working in this position.

Vice Chairman Hagedorn inquired if Mr. Evans considered the SOMB to be unwieldy in size. **Mr. Evans** asserted that based on his experience, he felt there was an appropriate number and a good cross section of personalities, experiences and viewpoints to maintain an effective balance for the SOMB. He enumerated the professions involved indicating the contribution to the SOMB of each.

Docket No. 11-0301-1401

Matthew Gamette, Forensics Lab Director, Idaho State Police (ISP), announced that in continuation of the February 11 hearing of this rule, the questions of Senators Tippetts and Burgoyne have been answered to their satisfaction.

MOTION:

Senator Burgoyne moved to approve **Docket No. 11-0301-1401**. **Senator Johnson (11)** seconded the motion. The motion carried by **voice vote**.

Docket No. 57-0101-1401

Kathy Baird, Management Assistant, Sexual Offender Management Board (SOMB), recounted the rewrite of the adult sexual offender management rules heard last year. The SOMB is charged with the management of both adults and juveniles. This year the standards and qualifications of juvenile sexual offender management are being presented. With this rulemaking the standards will be adopted into IDAPA 57, including a new psychosexual format specific to juvenile sexual offenders. This rulemaking modifies the existing chapter of rules to make them applicable to both adult and juvenile offenders. **Ms. Baird** gave a summary of evaluation and treatment of offenders under the modified standards.

Senator Davis asked for clarification on the newly inserted Subpart G. **Ms. Baird** explained it is a cautionary statement for the consideration of a juvenile's mental capacity, growth, and mental age as they effect the appropriateness of polygraphing. Upon Ms. Baird's request, **Jon Burnham** addressed the differing characteristics between adults and juveniles pertinent to polygraphing. **Senator Davis** inquired about the term "when utilizing". **Mr. Burnham** explained that polygraph is not a mandatory assessment for juveniles.

Ms. Baird related that the cautionary language was the result of public hearings.

Senator Johnson (11) asked how many of the SOMB's providers have the qualifications to do polygraphs on both juveniles and adults. **Ms. Baird** explained that the SOMB has 27 adult treatment providers and she thinks several provide services for juveniles. There are also some who treat juveniles only. This situation applies to evaluators as well. **Senator Johnson (11)** inquired if the rate who do both is at 50 percent. **Ms. Baird** replied that the rate is at least 50 per cent.

MOTION: **Senator Werk** moved to approve **Docket No. 57-0101-1401**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Vice Chairman Hagedorn** adjourned the meeting at 2:33 p.m.

Senator Hagedorn
Vice Chairman

Carol Cornwall
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 16, 2015

SUBJECT	DESCRIPTION	PRESENTER
Vote on Gubernatorial Appointment	Jean Fisher, Sexual Offender Management Board	
Vote on Gubernatorial Appointment	Debra Field, State Board of Correction	
Vote on Gubernatorial Appointment	John Burnham, Sexual Offender Management Board	
Vote on Gubernatorial Appointment	Shane Evans, Reappointed to the Sexual Offender Management Board	
PRESENTATION:	Idaho Department of Correction Report to the Committee	Director Kevin Kempf, Idaho Department of Correction
<u>S 1026</u>	Relating to restricted driving privileges for work and medical purposes for certain people with suspended driving privileges.	Michael Henderson, Legal Counsel, Idaho Supreme Court
<u>S 1027</u>	Relating to restrictions on senior judges	Michael Henderson, Legal Counsel, Idaho Supreme Court
<u>S 1029</u>	Relating to crimes involving the use of a financial transaction card	Michael Henderson, Legal Counsel, Idaho Supreme Court

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn
 Sen Davis
 Sen Tippetts
 Sen Johnson (6)
 Sen Bayer

Sen Souza
 Sen Johnson (11)
 Sen Werk
 Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
 Room: WW48
 Phone: 332-1317
 email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 16, 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 1:32 p.m.

GUBERNATORIAL APPOINTMENT: **Senator Werk** moved to send the gubernatorial appointment of Jean Fisher, Sexual Offender Management Board, to the floor with a recommendation that she be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Tippetts** moved to send the gubernatorial appointment of Debra Field, State Board of Correction, to the floor with the recommendation that she be confirmed by the Senate. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Johnson(6)** moved to send the gubernatorial appointment of John Burnham, Sexual Offender Management Board, to the floor with a recommendation that he be confirmed by the Senate. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the gubernatorial appointment of Shane Evans, Sexual Offender Management Board, to the floor with a recommendation that he be confirmed by the Senate. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Kevin Kempf**, Director, Idaho Department of Corrections (DOC), presented information about the DOC and its mission. The DOC mission is to decrease recidivism, which in turn increases public safety. The DOC began assessing its structure and people and reviewing positions, duties and processes to ensure all fit the mission statement.

Director Kempf talked about the DOC's move to different facilities. The outside recreation area has been improved and the inmates are outside more. There is a clear policy on fighting; any fight would close the outside recreation area. There are plans for Correctional Industries to move into the DOC for vocational purposes, and close custody inmates are involved in the Pathway to Parole program.

Director Kempf addressed the security retention program at the DOC where they have a turnover rate of 28-38 percent per year. Fifty percent of supervisors and 64 percent of officers have less than 2 years experience.

The Justice Reinvestment Initiative (JRI) was significant to the DOC (see attachment 1). He pointed out that the DOC is seeing outcomes from the resources the JRI was putting toward high and moderate risk offenders. JRI had asked the DOC to get the case load at 50:1. Today the case load is 73:1. DOC is working to get those numbers down.

Director Kempf explained the ongoing education program at the DOC. GED testing is changing and is more difficult to pass. Fewer are graduating. Teachers are working to ensure that more students pass.

Director Kempf pointed out the ongoing change in the lighting system throughout the DOC. White lighting has proved to be more efficient and less expensive, and they are working to change all prisons to it.

Senator Tippetts questioned the turnover rate of employees and asked if it was related to pay. **Director Kempf** answered that it was a combination of things, not just pay. They need to grow roots and to celebrate each other establishing bonds. These activities will increase retention of good people and good leaders.

Senator Johnson(11) questioned when inmates housed in Colorado will be returned to Idaho. **Director Kempf** stated they are working to get those inmates back. JRI is changing the DOC system so it can happen. DOC is under contract to Colorado now, and attrition will be used to bring back Idaho inmates. As to the cost, **Director Kempf** assured the Committee he will get that information to them.

Senator Johnson(11) stated that a GED was no longer considered for entrance to colleges and universities and that the SAT and ACT were more acceptable. She inquired if the DOC has these tests available for the inmates. **Director Kempf** did not know, but would find out.

Senator Burgoyne questioned whether retention was related to the issue of a job description not matching what is expected, especially with the mental health issues faced by officers. **Director Kempf** said the job description is very descriptive and inclusive. Correctional officers do find the job stressful and there is correctional fatigue. The DOC is considering showing incoming applicants a 45 minute video giving an accurate summary of what to expect.

Vice Chairman Hagedorn asked for clarification on the bed capacity count for custody. **Director Kempf** answered currently there is an 8,300 bed capacity.

Senator Johnson(6) inquired about the health outcomes of prisoners. **Mr. Kempf** responded that tobacco was banned in all DOC facilities, and the cost of medical care has gone down since this ban.

S 1026

Michael Henderson, Legal Counsel, Idaho Supreme Court, outlined **S 1026** involving Idaho Code §18-8005 concerning driving under the influence of alcohol or drugs and the penalties imposed. The concerns of the Court are in Subsection 6(D) and (E) where there is a conflict on driving privileges.

Senator Tippetts asked if the loss of driving privileges was for two DUI convictions. **Mr. Henderson** replied yes, at least two in the past ten years. **Senator Tippetts** questioned if the language mirrors a first time DUI offender. **Mr. Henderson** answered in the affirmative. **Senator Tippetts** asked for clarification on needed driving privileges for family health. **Mr. Henderson** answered it could be given for any family health need.

Senator Johnson(11) wondered if this bill included any misdemeanors filed previously. **Mr. Henderson** answered yes, but within a ten year period.

Senator Davis asked if the court could use discretion on a felony DUI before Subsection E was established. **Mr. Henderson** answered Subsection E introduced the confusion. **Senator Davis** wondered if there was another way to solve the issue by striking Subsection E. **Mr. Henderson** explained Subsection E contains federal guidelines in using an ignition interlock, and the guidelines are needed for the courts.

Vice Chairman Hagedorn inquired if Subsection E were removed, would the courts still have discretion to return privileges. He further asked if the limitation on the time would still be confusing. **Mr. Henderson** replied in the affirmative.

Senator Davis asked for comments from Judge Wood or Holly Kolle Rebholtz, judges who have experience with these situations.

Judge Barry Wood, Senior District Judge Supreme Court, interpreted subsection D as requiring a one year suspension and up to five years total. Not everyone interprets the wording the same, so the privileges could be determined by the judge's interpretation of the Subsection.

Holly Kolle Rebholtz, Prosecutors Association, stated the term of the license suspension depends upon the seriousness of the DUI and individual circumstances.

Vice Chairman Hagedorn questioned whether different interpretations of the code occur from judge to judge. **Ms. Rebholtz** answered no, not in her experience.

Senator Tippets asked for clarification on federal law regarding the interlock systems. **Mr. Henderson** answered he does not have it with him but will get it to the Committee.

Senator Tippets restated that passage of this bill would allow more flexibility to the courts for setting restricted driving privileges. **Mr. Henderson** agreed noting that some judges may use this to allow restricted driving privileges for medical and employment purposes.

Senator Johnson(6) questioned the interlock driving period, as the language was not parallel in Idaho Code. **Mr. Henderson** stated it would be up to four years.

MOTION:

Senator Burgoyne moved to send **S 1026** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S 1027

Michael Henderson, Legal Counsel Idaho Supreme Court, explained **S 1027** is to correct provisions regarding the outside activities of Idaho senior judges. The bill states senior judges must comply with the applicable provisions of the Idaho Code of Judicial Conduct. It would also remove the provisions in statutes stating that senior judges may not engage in the practice of law.

Senator Davis questioned if there was a defect in the law. **Mr. Henderson** answered the bill fixed the overextended reach for senior judges. **Senator Davis** questioned if there is in statute a prohibition of a non-senior magistrate judge or district court judge to practice law. **Mr. Henderson** answered yes.

MOTION:

Senator Davis moved to send **S 1027** to the floor with a **do pass** recommendation. **Senator Johnson(6)** seconded the motion. The motion passed by **voice vote**.

S 1029

Michael Henderson, Legal Counsel Idaho Supreme Court, explained **S 1029** corrects an omission by adding "intent to use to defraud" to the crime of acquiring a Financial Transaction Card or Financial Transaction Card number.

MOTION: **Senator Davis** moved to send **S 1029** to the floor with at **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Vice Chairman Hagedorn** adjourned the meeting at 2:55 p.m.

Senator Hagedorn
Vice Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary



Idaho Department of Correction

Committee Presentation

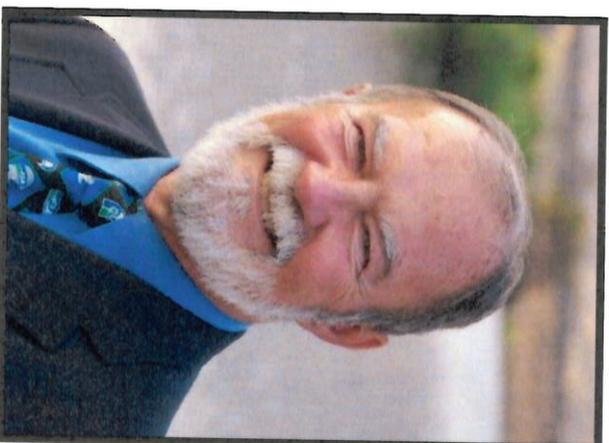
Kevin Kempf, Director



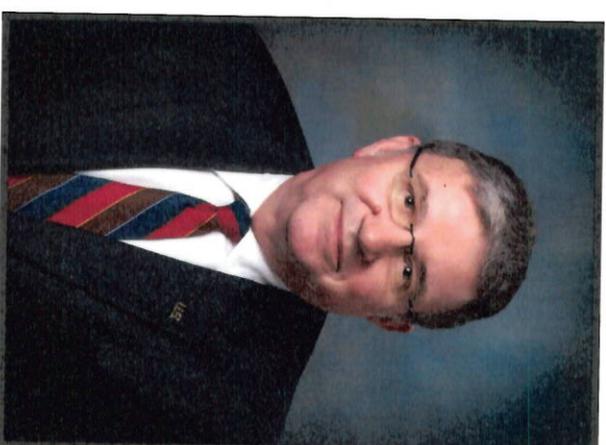
Board of Correction



Debbie Field
McClusky



Howard "J.R." Van Tassel



David



Idaho Department of Correction

Mission

To promote a safer Idaho by reducing recidivism.

Vision

Dedicated and committed staff will transform lives one person, one family, one community at a time.

Values

We value our staff.

We value a safe and professional environment that promotes dignity and respect for staff, the public and offenders.

We expect of ourselves...

Open Communication

Trust

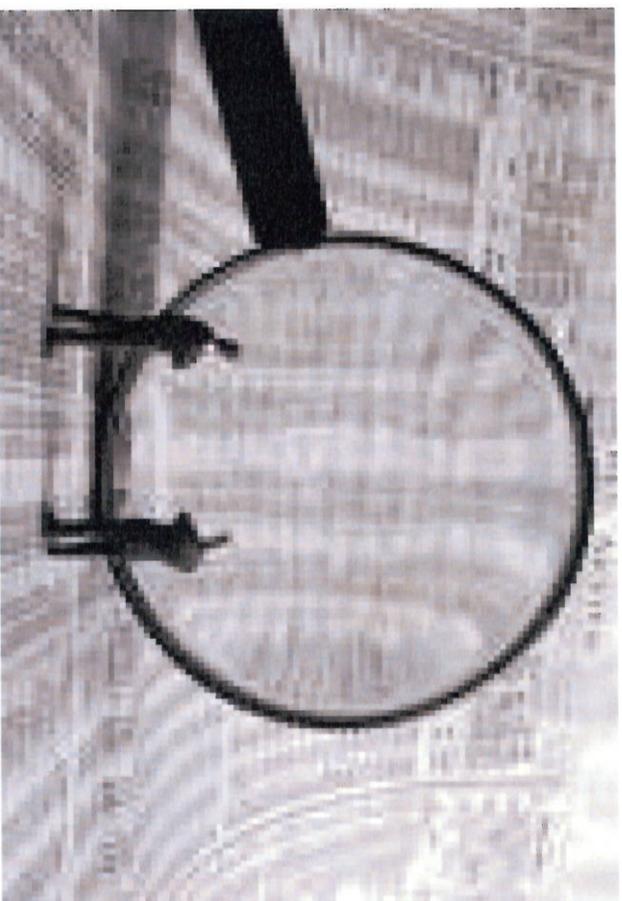
Honesty

Integrity

Teamwork



First, Look Within

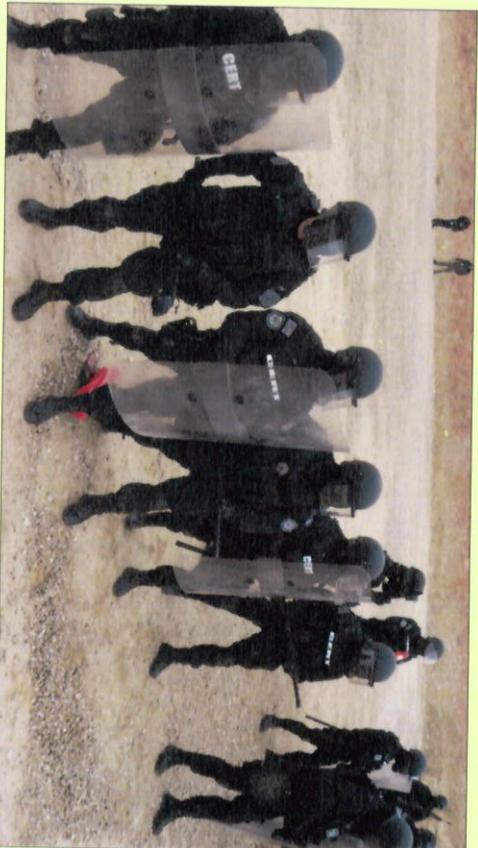


ISCC



Experience = Security

Experienced Staff

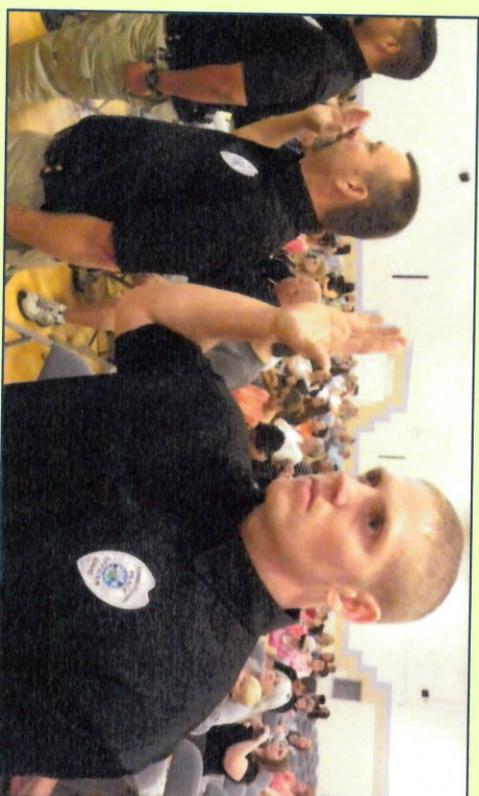


Supervisors

50%, less than

2 years experience

New Officers



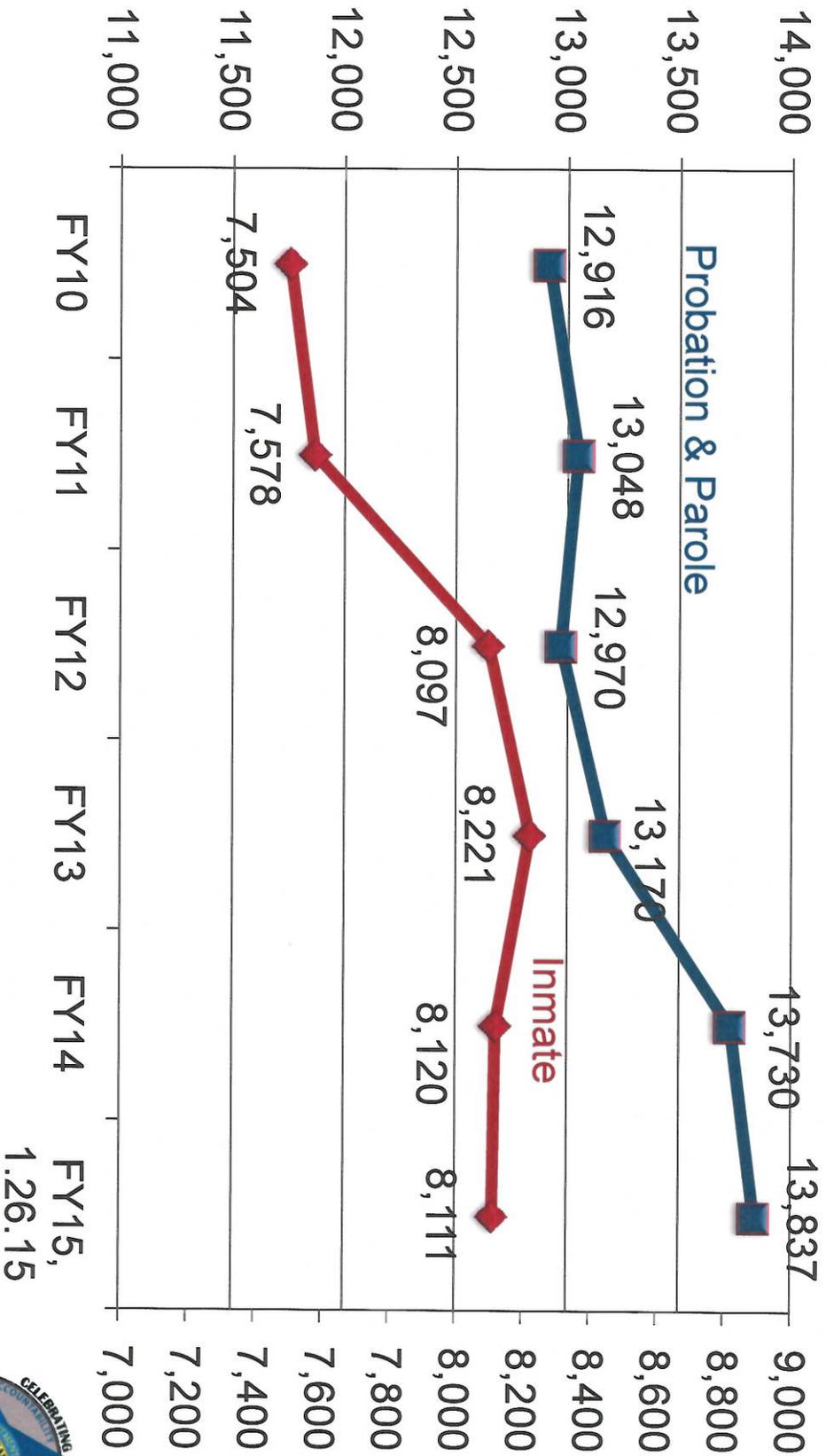
Officers

64%, less than

2 years experience



IDOC Populations Comparison FY10-Current



Idaho Justice Reinvestment



Strengthen
Supervision

Prison Beds
for High Risk

Track
Effectiveness



Education



393 GED Graduations, FY14





Idaho Department of Correction

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Dedicated and committed staff will transform lives one person, one family, one community at a time.

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We value our staff.

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We expect of ourselves...

Open Communication

Trust

Honesty

Integrity

Teamwork



AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 18, 2015

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment Hearing	Lisa Growette Bostaph was appointed to the Commission on Pardons & Parole to serve a term commencing January 1, 2015, and expiring on January 1, 2018.	Lisa Growette Bostaph
<u>RS23516</u>	Relating to human trafficking and enslavement	Senator Jim Rice
<u>S 1014</u>	Relating to the elimination of conflicting exemption language for life insurance policies	Senator Bart Davis
<u>S 1025</u>	Relating to the Idaho Uniform Business Organizations Code	Mike Brassey,
<u>S 1040</u>	Relating to criminal procedure; amending Section 19-2719, Idaho Code, to clarify language regarding filing requirements of certain appeals when punishment of death has been imposed.	Sara Thomas, State Appellate Public Defender
<u>S 1051</u>	Relating to informal probate and appointment proceedings	Robert Aldridge, TEPI
<u>S 1052</u>	Relating to spendthrift trusts	Robert Aldridge, TEPI

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn Sen Souza
 Sen Davis Sen Johnson (11)
 Sen Tippetts Sen Werk
 Sen Johnson (6) Sen Burgoyne
 Sen Bayer

COMMITTEE SECRETARY

Carol Cornwall
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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 18, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/EXCUSED: Senators Burgoyne and Johnson (6), 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 1:32 P.M.

GUBERNATORIAL APPOINTMENT HEARING: The gubernatorial reappointment of Lisa Growette Bostaph to the Commission on Pardons and Parole. **Ms. Bostaph** gave the Committee information about herself.

Vice Chairman Hagedorn scheduled the vote on Ms. Bostaph's gubernatorial reappointment for February 20, 2015.

RS 23516 **Senator Rice** explained **RS 23516** allows victims of human trafficking, who pick up arrests or offenses due to being enslaved, to have the charges vacated and the records expunged. Enslaved victims can pick up a criminal record making them ineligible for student aid after they are freed.

MOTION: **Senator Davis** moved to print **RS 23516**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

S 1014 **Senator Davis** stated this bill strikes the \$5000 standard and treats the loan value of life insurance contracts the same as deferred annuities. The bill eliminates the conflicting language for cash value life insurance and replaces it with language similar to that for deferred annuities. United States bankruptcy code allows states to opt out and set their own list of assets which may be exempted from being given to creditors. Idaho opted out and has set its own list of exemptions. **Senator Davis** recounted the history of this process.

Senator Souza questioned the \$5000 cap and asked if there is a total now. **Senator Davis** answered there is no number.

MOTION: **Senator Tippetts** moved to send **S 1014** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

S 1025 **Mike Brassey**, Idaho Uniform Law Commissioner, explained the bill is long, so he had given the Committee an outline of the proposed bill (see attachment 1). This bill takes the statutes that currently exist and restructures part of the code that is in common placing them in one place. There are also technical revisions making it simpler to use. Included is a single comprehensive state business code. This is not a bill that has been approved by the Idaho State Bar (ISB). In order to sponsor Legislation the ISB has to go before all lawyers. This bill has been introduced over the past few years and has received no comments.

David Jensen, Lawyer with Parson, Behle and Latimer, affirmed that he is representing himself. Mr. Jensen explained the bill and how an attorney committee analyzed the uniform law and made slight changes to fit Idaho. An addition was made for people starting a business in Idaho who are from out of state, including a provision for registration.

Senator Davis asked where the repeal is for Title 53, Chapter 4, on the assumed business name. **Mr. Brassey** answered LSO went through the repeals and he thinks it is correct. **Senator Davis** said to add a trailer bill if it is not there.

MOTION:

Senator Bayer moved to send **S 1025** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S 1040

Sara Thomas, State Appellate Public Defender, explained the timelines in a death penalty case and what they are trying to change in **S 1040** (see attachment 2). The bill clarifies the language regarding filing requirements of certain appeals when death penalty has been imposed. It avoids the question of conflict of interest. She has worked with the Attorney General's office in crafting the bill and provided copies to the Idaho Supreme Court and Idaho Prosecuting Office. There have been no objections.

Vice Chairman Hagedorn questioned the successive post-conviction delay. **Ms. Thomas** answered it is 42 days.

Senator Davis asked what a remitter is. **Ms. Thomas** explained it is the time between the opinion of the Idaho Supreme Court (Court) and the final decision from the Court. **Senator Davis** asked for clarification on a unified deal. **Ms. Thomas** answered it is a consolidation of what occurs in Court while hearing the post-conviction appeal and what happened outside of Court.

Senator Davis stated it could look like a way to protect the State Appellate Defender's Office and send them faster to the death penalty. **Ms. Thomas** replied the time limit already exists, the trigger for the filing is the appellate brief. The 42 day time limit is what the Court states is reasonable. It does not change the time limit, just when the count begins.

Senator Tippetts questioned if the bill is beneficial to the defendant. **Ms. Thomas** replied yes. There is more time to gather information.

MOTION:

Senator Tippetts moved to send **S 1040** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

S 1051

Robert Aldridge, TEPI, explained **S 1051** amends Uniform Probate Code § 15-3-304 to update and clarify language concerning conflicting wills or codicils filed for probate.

MOTION:

Senator Bayer moved to send **S 1051** to the floor with a **do pass** recommendation. **Senator Tippetts** seconded the motion. The motion carried by **voice vote**.

S 1052

Robert Aldridge, TEPI, explained bill **S 1052** changes the spelling of "standing" to "standard". It does not change anything else.

MOTION:

Senator Souza moved to send **S 1052** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Vice Chairman Hagedorn** adjourned the meeting at 3:43 p.m.

Senator Hagedorn
Vice Chairman

Carol Cornwall
Secretary

Barbara Lewis
Assistant Secretary

IDAHO UNIFORM BUSINESS ORGANIZATION CODE

OUTLINE OF THE PROPOSAL

TITLE 30

CHAPTER 21

IDAHO UNIFORM BUSINESS ORGANIZATION CODE

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RESERVED

CHAPTER 27

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CHAPTER 28

RESERVED

CHAPTER 29

GENERAL BUSINESS CORPORATIONS

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PART 5 RESERVED

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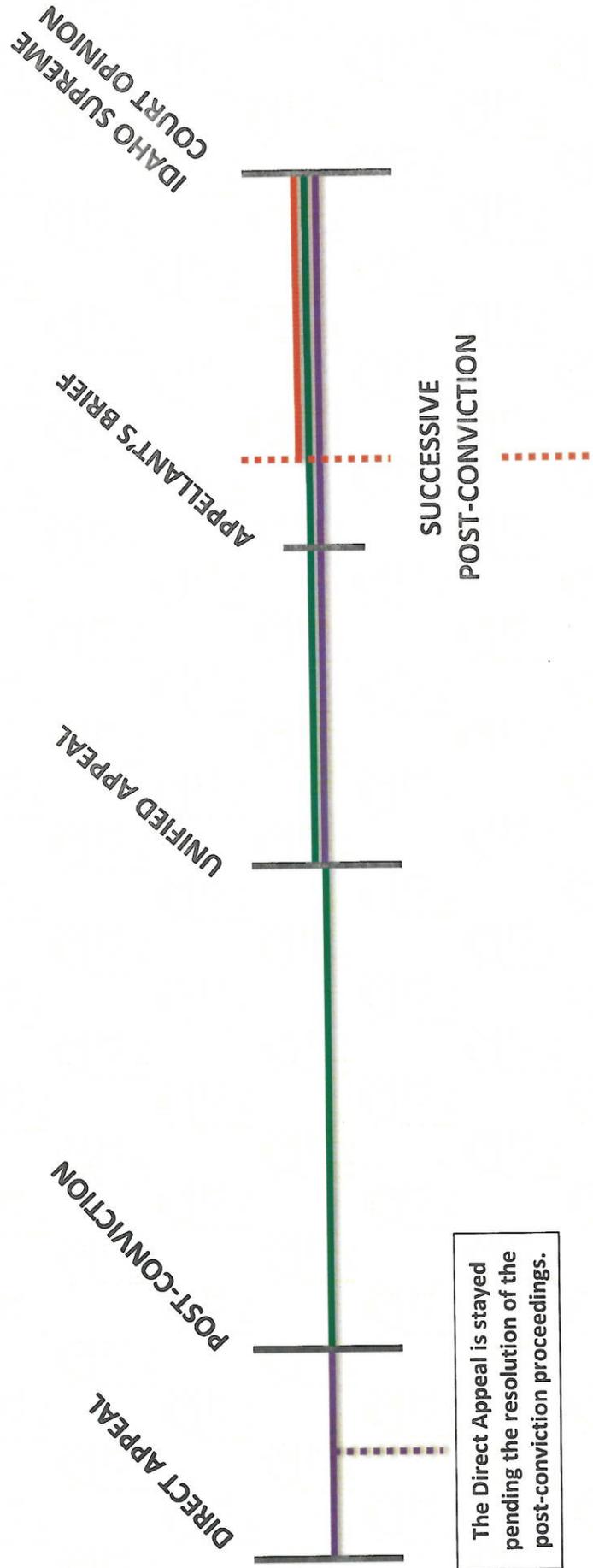
SENATE BILL 1040

Relating to Criminal Procedure; Amending Section 19-2719, Idaho Code, To Clarify Language Regarding Filing Requirements Of Certain Appeals When Punishment Of Death Has Been Imposed.

CONTACT:

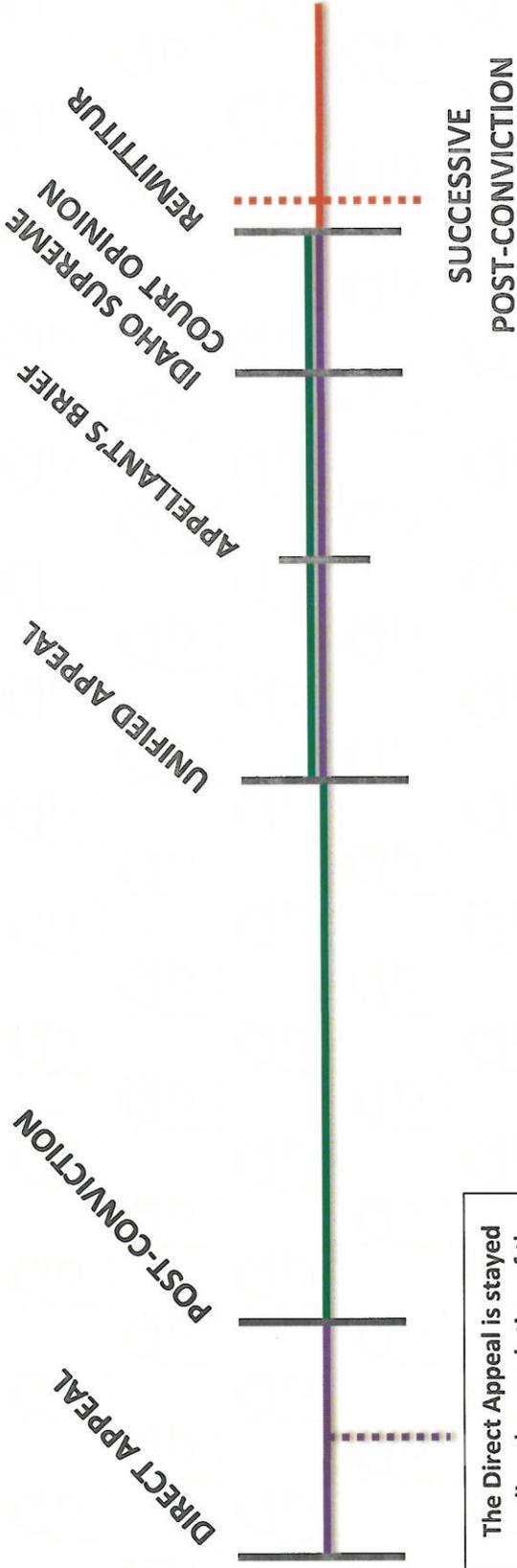
Sara B. Thomas
State Appellate Public Defender
(208) 334-2712

CAPITAL LITIGATION APPEAL TIMELINE



CURRENT PRACTICE

CAPITAL LITIGATION APPEAL TIMELINE



The Direct Appeal is stayed pending the resolution of the post-conviction proceedings.

PROPOSED PRACTICE

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, February 20, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approval of Minutes	Present January 26 minutes for approval	
Vote on Gubernatorial Appointment	Lisa Growette, Commission on Pardons & Parole	
Gubernatorial Appointment Hearing	William Wellman was appointed to the State Public Defense Commission for a term commencing July 1, 2014, and expiring on July 1, 2017.	William Wellman
<u>RS23601</u>	Relating to a drivers training fee	Senator John Tippetts
<u>S 1034</u>	Relating to escape of prisoners	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
<u>S 1035</u>	Relating to juvenile corrections	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
<u>S 1033</u>	Relating to criminal history records	Senator Grant Burgoyne

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Vice Chairman Hagedorn
 Sen Davis
 Sen Tippetts
 Sen Johnson (6)

Sen Bayer
 Sen Souza
 Sen Johnson (11)
 Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall
 Room: WW48
 Phone: 332-1317
 email: sjud@senate.idaho.gov

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.

Senator Hagedorn
Vice Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 23, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approve Minutes	Approve the minutes of January 28, 2015	Senator Johnson (6) and Senator Burgoyne
Approve Minutes	Approve the minutes of January 30, 2015	Senator Burgoyne and Senator Johnson (11)
Vote on Gubernatorial Appointment	William Wellman, State Public Defense Commission	
<u>H 55</u>	Relating to the Peace Officer & Detention Officer Disability Act	Paul Jagosh
<u>S 1041</u>	Relating to the addition of another member to the Sexual Offender Management Board	Kathy Baird, Sex Offender Management Board
<u>S 1053</u>	Relating to the rights and powers of guardian ad litem	Robert Aldridge, TEPI
<u>S 1056</u>	Relating to nonprobate transfers	Robert Aldridge, TEPI

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE

MEMBERS

Vice Chairman
Hagedorn

Sen Davis

Sen Tippetts

Sen Johnson (6)

Sen Bayer

Sen Souza

Sen Johnson (11)

Sen Werk

Sen Burgoyne

COMMITTEE

SECRETARY

Carol Cornwall

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 23, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza and Burgoyne

ABSENT/ EXCUSED: All present, 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 1:30 p.m.

Vice Chairman Hagedorn welcomed back Chairman Lodge.

GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the gubernatorial appointment of William Wellman to the State Public Defense Commission to the floor with a recommendation that he be confirmed by the Senate. **Senator Tippetts** seconded the motion. The motion carried by **voice vote**.

H 55 **Paul Jagosh**, Idaho State Fraternal Order of Police, explained **H 55** is to lift the sunset clause from the temporary disability bill passed three years ago. There was a gap determined between workman's compensation insurance and the rate of salary for officers injured in the line of duty. Not wanting taxpayers to cover the cost, it was decided to charge a \$3.00 fine on misdemeanor and felony convictions the sum to go into the disability fund.

Vice Chairman Hagedorn asked for the annual expenditures of the fund. **Mr. Jagosh** answered \$318,000 has been paid out since 2007 with total expenditures in 2013 at \$53,000, in 2012 at \$18,000, and in 2011 at \$107,000. Administrative costs for 2014 were \$5,600, and in 2013 they were \$2,100. He related it is hard to know from year to year what will be needed. **Vice Chairman Hagedorn** questioned what was done for long-term disability for officers. **Mr. Jagosh** clarified for those who cannot come back to the police force but can still be employed elsewhere, there is no fund. If they are totally and permanently disabled they would be on permanent disability.

Chairman Lodge asked if these numbers included officers from the jails and prisons. **Mr. Jagosh** replied yes.

Senator Tippetts inquired how determination of temporary or permanent disability is made. **Mr. Jagosh** answered it is determined by a doctor on a case-by-case basis.

MOTION: **Senator Johnson** moved to send **H 55** to the floor with a **do pass**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

S 1041 **Shane Evans**, Idaho Sexual Offender Management Board (SOMB), stated that **S 1041** adds a sexual offender polygraph examiner to the SOMB.

Senator Burgoyne asked for information on why having a polygraph examiner on the SOMB would bring expertise to making better decisions. **Mr. Evans** responded SOMB is lacking a person who has specific expertise in polygraph, understands certification and licensing of local and national boards and has experience. This person would provide SOMB recommendations for contract providers.

Senator Davis questioned the length of terms for the SOMB members. **Mr. Evans** referred to line 18 of the bill stating a term of three years. **Senator Davis** asked which members' terms expired in 2014. Mr. Evans answered it is not explicit. Mr. Evans yielded to Kathy Baird

Kathy Baird, SOMB Management Assistant, responded the Governor's office set the expiration dates. Three years was the typical time added as to establish continuity. **Senator Davis** suggested that it may need to go to the Amending Order and identify how it is done.

Vice Chairman Hagedorn responded that there are six members whose terms have expired, so an emphasis is on those left and their expiration. **Ms. Baird** stated the Governor's office identifies which positions expire and at what time.

Senator Tippetts questioned the language regarding the vacancy and the appointment to fill the vacancy. **Ms. Baird** explained the term would expire January 31 of the year of expiration. She reiterated that the Governor's office sets the time.

Senator Johnson asked if the expert is to have a degree in the field. **Mr. Evans** answered there are very specific certification requirements for this position. The expert will have national certification along with meeting the certification standards set by SOMB.

Senator Davis wondered if there were a lot of people who could meet these requirements. **Mr. Evans** answered there is a handful of people within the state who would qualify.

DISCUSSION:

A discussion ensued on the expiration and length of the time of a term and why rotations occur as they do.

Senator Davis questioned the primary purpose of the appointee. **Ms. Baird** answered it was for the expertise of a polygrapher.

Vice Chairman Hagedorn spoke on the funding in the fiscal note and if the SOMB had the position in their budget or if a trailer bill would be needed to create the funds. **Mr. Evans** explained the funds were not in the budget.

Senator Burgoyne suggested the bill needed some amendments. He recommended striking Subsection 2, and in Subsection 4 under each position through J, inserting "whose term shall expire on whatever date, and every three years thereafter." This would set a definite date regardless of the date of appointment. **Mr. Evans** replied they would meet the terms for the Amending Order.

MOTION:

Senator Burgoyne moved that **S 1041** be referred to the 14th Order for amendment. **Senator Davis** seconded the motion.

Senator Davis asked that there be set terms on vacancy. **Mr. Evan** said they would do a rewrite.

MOTION:

The motion carried by **voice vote**.

S 1053

Robert Aldridge, attorney, stated **S 1053** is to set forth and clarify the duties of Guardian Ad Litem. It will prevent some crossover between guardianship, conservatorship and Guardian Ad Litem that should not be done.

Senator Tippetts questioned the language and expression of the bill. **Mr. Aldridge** replied the Guardian Ad Litem has been in code but the language is implied, not expressed, causing the attorneys to feel they have all the rights and powers. **S 1053** sets forth the rights, powers and duties.

DISCUSSION:

A discussion ensued about the overall lack of clarity and having language accompany the bill to clear up the issues of guardianship and conservatorship versus Guardian Ad Litem. Some members of the Committee felt there was no structure that leads the reader to understand what the duties, rights and powers are. There were questions as to whether it was compounding the problem in the Probate Code.

Senator Davis moved that **S 1053** be referred to the 14th Order for amendment. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

S 1056

Robert Aldridge, attorney, explained **S 1056** is enabling state law so personal property passes to survivorship in community property. Financial institutions have a check off box on forms to create community property with right of survivorship but that requires a State law specifically allowing for such ownership. This bill does that.

Bill Vasconcellos, UBS Financial Services, spoke about accounts with joint survivorship and how the survivors have to pay more capitol gains. This bill will reduce the capital gains taxes and enable accounts to pass outside probate.

MOTION:

Senator Davis moved to send **S 1056** to the floor with a **do pass** recommendation. **Chairman Lodge** seconded the motion. The motion carried by **voice vote**

ADJOURNED:

There being no further business at this time, **Vice Chairman Hagedorn** stated the Minutes on the agenda for approval will be moved to Wednesday, February 25, 2015, and adjourned the meeting at 2:58 p.m.

Senator Lodge
Chairman

Carol Cornwall
Secretary

Senator Hagedorn
Vice Chairman

Barbara Lewis
Assistant Secretary

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TALKING POINTS
SB 1053

1. General Subject of Bill

A Guardian ad Litem is an attorney appointed by the Court in a conservatorship and/or guardianship proceeding to represent the person for whom the conservatorship and/or guardianship is being sought. That Guardian ad Litem has a series of duties, set forth in the Idaho Code in Sections 15-5-315 (guardianship) and 15-5-434 (conservatorship). In general, the Guardian ad Litem is to ensure that the legal rights of the person are being protected. The person is called a “ward” in a guardianship and a “protected person” in a conservatorship. The Guardian ad Litem does a written report to the Court with the findings and recommendations of the Guardian ad Litem about the proceeding. This is not binding on the Court, but can be very helpful to the Court. However, the Guardian ad Litem is not the guardian or the conservator and does not exercise any of their powers. If problems come up in the proceedings after the appointment of the guardian and/or conservator, the Guardian ad Litem can file motions or take other steps to protect the ward/protected person.

2. Existing Problem

The Guardian ad Litem, to carry out the duties under the Code, also has rights and powers, set forth in Sections 15-5-316 (guardianship) and 15-5-435 (conservatorship). It has always been the understanding that those rights and powers are to carry out the duties, for the protection of the person under guardianship and/or conservatorship. However, paragraph (2) of Section 15-5-316 and paragraph (2) of Section 15-5-435 states:

(2) The guardian ad litem shall have the right and power to file pleadings, motions, memoranda and briefs on behalf of the [ward][protected person], and to have all of the rights of the [ward][protected person], whether conferred by statute, rule of court, or otherwise.

A limited number of attorneys acting as Guardians ad Litem have taken the position that the second half of the above sentence is not limited to carrying out the duties of the Guardian ad Litem, but instead makes the Guardian ad Litem a sort of “super guardian”

and “super conservator” who can take any action that the person could have taken, including making medical or living decisions, changing investments, and so forth. Those are properly the rights and powers of the guardian or conservator, not of the Guardian ad Litem, and are limited by other sections of the Code when exercised by the guardian or conservator. In fact, in later versions of the Uniform Probate Code, not yet adopted in Idaho, there is no Guardian ad Litem, only the appointment of an attorney for the person, emphasizing the limited and specific role of the Guardian ad Litem.

This assumption of super rights by the Guardian ad Litem has created major problems for properly handling the case, both before and after appointment of a guardian and/or conservator. Often the actions taken will be in direct opposition to the actions of the guardian or conservator. Additionally, these types of actions often require knowledge and training that attorneys do not automatically have, but that guardians or conservators are trained to have. To be appointed as a guardian or conservator, there is a mandatory training class, online, that must be taken prior to appointment. Guardians ad Litem do not have any such requirement.

3. Solution in Bill

This bill clarifies and carries out the original intent of the code sections by providing that the rights and powers of the Guardian ad Litem are to fulfill their duties under the Code. This will keep the Guardian ad Litem in the proper role.

4. Possible Questions

Does this bill reduce any of the protections for the person under guardianship or conservatorship? No. In fact, it increases them, since the actions of the guardian and conservator have clear and protective restrictions in the Code. It will remove arbitrary actions by the Guardian ad Litem. It will also reduce expenses of the proceedings in cases where the Guardian ad Litem and the guardian or conservator are taking incompatible actions, requiring court intervention.

5. Fiscal Impact

There will be no fiscal impact. The bill should if anything reduce the costs of proceedings and free up court time.

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TALKING POINTS
SB 1056

1. General Subject of Bill

This bill parallels the prior enactment by the legislature of Community Property With Right of Survivorship in real property in Sections 15-6-401 and 402, Idaho Code. That enactment has greatly helped estate planning for married couples who want to pass their real property to each other at first death and want to avoid having to probate the property to get that passage. All that is needed is the recording of a death certificate to automatically transfer the property to the surviving spouse.

This bill extends that same concept to personal property (essentially any property that is not real property) by adding Sections 15-5-403 and 404, Idaho Code.

2. Existing Problem

There are no current provisions in the Idaho code for Community Property With Right of Survivorship outside of real estate. Many types of personal property, especially brokerage accounts and bank accounts, would benefit from having this type of ownership. Indeed, a number of stock broker institutions already have a check off on their forms for CPWROS, but will not let it be used in Idaho because there is no Idaho enabling legislation for that type of ownership. Joint Tenancy With Right of Survivorship does not give the same tax advantages, specifically stepped up basis on both halves of the property at first death of a husband and wife, but instead only allows the stepped up basis on one-half of the property.

3. Solution in Bill

This bill creates the ownership method of Community Property With Right of Survivorship for personal property (all property except real property). The creation of the ownership is covered in 15-5-403 and the termination of the ownership and other provisions are covered in 15-5-404. The elements of the bill are:

- The interest can be created either by a husband and wife who already own the property

jointly or by either of them who hold the property in their sole name. This gives flexibility and simplicity to creating the ownership.

- If the CPWROS interest is created, the property is guaranteed to pass to the surviving spouse, since the bill provides that the first deceased spouse does not have a right of disposition at death for the CPWROS property. This gives certainty, and protection, to each spouse in their estate planning. One spouse cannot secretly have a Will that leaves that spouse's half of the community property to some one other than the surviving spouse. Of course, this only applies to property for which the CPWROS ownership has been created, so the couple can plan for which of their assets will have the guaranteed passage to the surviving spouse and which can be left by the first to die spouse to other beneficiaries, perhaps children by a prior marriage, or to a charity. Again, the provisions emphasize flexibility and clarity.

- The interest is created and effective when the proper document is delivered to the entity which holds the personal property. This means that the ownership will then be reflected in the actual records of the entity holding the personal property. The primary use of this method will be with brokerage accounts. Many such accounts already have the CPWROS option on their forms, but require that there be local enabling law before the option can be used. There would a similar situation for bank accounts. This bill creates that enabling law and therefore allows the use of that option.

- The interest can be terminated by either spouse by a document that contains the requirements of 16-6-404(1) (a) through (c) and is delivered to the entity holding the personal property. Those requirements are that: (1) the document has to be in writing and executed by one of the spouses; (2) the document has to set forth that there is an intent to terminate the survivorship right, a description of the instrument that created the right of survivorship, including the date of that instrument, and a description of the personal property affected by the document. This again is both to create certainty and clarity in any termination, and to allow the entity holding the personal property to know exactly which property is affected by the termination. The delivery must be done prior to the death of the first to die spouse. Again, this prevents hidden or secret documents trying to pervert the intent of the creation of the CPWROS ownership.

- Upon termination of the interest, the ownership reverts to community property, but without the right of survivorship. This means that the property does remain as community property, but that normal procedures would be followed for transfer of the property upon the death of either spouse.

- Divorce or annulment of the marriage, unless the court orders otherwise, severs the interests of the parties into tenancy in common. Obviously, a divorced couple no longer has community property. Tenancy in common means that each party can deal independently with their portion of the property, whether for sale or for distribution at death. There are provisions to protect innocent third parties relying on the CPWROS interest being in effect, most commonly creditors or lenders. Again, certainty and clarity are the aim.

- Finally, if both spouses die and it is impossible to tell which survived, then the right of survivorship is terminated and the property is treated as community property. This will usually only be applicable when the spouses have different provision for heirs if their spouse predeceases them. Essentially, one-half of the property would pass through the estate of each spouse. In the great majority of cases, the spouses will have the same beneficiaries, usually the children and there would be a joint probate of the two persons. But sometimes, each will leave their assets, if their spouse does not survive them, to a different set of beneficiaries. In that case, one-half of the property would pass to the beneficiaries of one spouse and one -half to the beneficiaries of the other spouse.

4. Possible Questions

Does this bill reduce any of the protections of community property? No. In fact, it increases them by giving a method whereby a surviving spouse can be certain that he or she will receive the property after death of the other spouse. It also preserves the stepped up basis on both halves of the property at first death which is a major advantage of community property.

Will this have any effect on tax revenues? No. The only difference in simple community property ownership and CPWROS ownership is that only a death certificate is required to pass the property to the survivor. This will eliminate the need for probates or summary administrations at the first death of a husband and wife. This will lower the costs for the surviving spouse and speed up the passage of the property to the surviving spouse. The only persons losing out will be attorneys not doing as many probates and summary administrations, but probate attorneys are in agreement that probate and summary administration should only be used when necessary and that the public is best served by methods which pass assets most efficiently.

5. Fiscal Impact

There will be no fiscal impact. The bill should if anything reduce or eliminate the costs of proceedings and free up court time.

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OUTLINE OF SB 1056
COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP
IN PERSONAL PROPERTY

This bill parallels the prior enactment by the legislature of Community Property With Right of Survivorship in real property in Sections 15-6-401 and 402, Idaho Code. That enactment has greatly helped estate planning for married couples who want to pass their real property to each other at first death and want to avoid having to probate the property to get that passage. All that is needed is the recording of a death certificate to automatically transfer the property to the surviving spouse.

This bill extends that same concept to personal property (essentially any property that is not real property) by adding Sections 15-5-403 and 404, Idaho Code. It has the following elements:

- The interest can be created either by a husband and wife who already own the property jointly or by either of them who hold the property in their sole name.
- If the CPWROS interest is created, the property is guaranteed to pass to the surviving spouse, since the bill provides that the first deceased spouse does not have a right of disposition at death for the CPWROS property. This gives certainty, and protection, to each spouse in their estate planning.
- The interest is created and effective when the proper document is delivered to the entity which holds the personal property. The primary use of this method will be with brokerage accounts. Many already have the CPWROS option on their forms, but require that there be local enabling law before the option can be used. There would a similar situation for bank accounts.
- The interest can be terminated by either spouse by a document that contains the requirements of 16-6-404(1) (a) through (c) and is delivered to the entity holding the personal property. The delivery must be done prior to the death of the first to die spouse.
- Upon termination of the interest, the ownership reverts to community property, but without the right of survivorship.
- Divorce or annulment of the marriage, unless the court orders otherwise, severs the interests of the parties into tenancy in common. There are provisions to protect innocent third parties relying on the CPWROS interest being in effect, most commonly creditors or lenders.
- Finally, if both spouses die and it is impossible to tell which survived, then the right of survivorship is terminated and the property is treated as community property. This will usually only be applicable when the spouses have different provision for heirs if their spouse predeceases them. Essentially, one-half of the property would pass through the estate of each spouse.

AMENDED AGENDA #4
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 25, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approve Minutes	Approve the minutes of January 28, 2015	Senator Souza and Senator Burgoyne
Approve Minutes	Approve the minutes of January 30, 2015	Senator Burgoyne and Senator Souza
Gubernatorial Appointment Hearing	Sara Thomas, State Public Defense Commission	Sara Thomas
<u>S 1004</u>	Relating to inmate incentive pay	Josh Tewalt, Department of Correction
<u>S 1067</u>	Relating to the Uniform Interstate Family Support Act	Kandee Yearsley, Child Support Bureau Chief, Department of Health & Welfare
<u>S 1054</u>	Relating to substitute decision making	Robert Aldridge, TEPI
<u>RS23680C1</u>	Relating to business organizations	Mike Brassey, Uniform Law Commission

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Bayer
Vice Chairman Hagedorn	Sen Souza
Sen Davis	Vacancy in District 17
Sen Tippetts	Sen Burgoyne
Sen Johnson	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 25, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza and Burgoyne

ABSENT/ EXCUSED: All present, 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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:32 p.m.

MINUTES APPROVAL: **Senator Souza** moved to approve the Minutes of January 28, 2015. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Burygone** moved to approve the Minutes of January 30, 2015. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT HEARING: **The gubernatorial appointment of Sara Thomas to the Idaho State Public Defense Commission (ISPD).** **Chairman Lodge** welcomed Ms. Thomas and asked her to present information about herself and the work she does. **Ms. Thomas** presented a short biography and spoke about the positions she has had and shared a history of the public defense system.

Chairman Lodge set the vote for Ms. Thomas' confirmation for Monday, March 2, 2015.

S 1004 **Josh Tewalt**, Idaho Department of Correction (IDOC), explained **S 1004** removes outdated reference language from Idaho Code § 20-242A regarding the Correctional Industries Penal Betterment Fund. No inmates are paid from this fund; it is administered by Correctional Industries. This bill reflects the practices of the IDOC.

Senator Davis asked for whom the inmates were doing work. **Mr. Tewalt** answered under this section the inmates are doing work on behalf of the IDOC. It covers the institutional workers. It also covers the funds for inmates who provide work at the community work center. **Senator Davis** asked if inmates worked for companies independent of IDOC. **Mr. Tewalt** answered that was the case. **Senator Davis** said the language in the section is not needed and asked why it is needed. **Mr. Tewalt** explained it was inserted by the Deputy Attorney General to prevent claims that are prohibited. **Senator Davis** questioned the civil rights reference in regard to compensation. **Mr. Tewalt** said it refers to any entitlements for the inmates. He will follow up and provide information to the Committee.

Senator Johnson inquired if this language is contained in all of the contracts for inmates under the worker program. **Mr. Tewalt** replied that it is.

Senator Davis asked for clarification on **S 1004** applying to IDOC changes. **Mr. Tewalt** answered that this statute does not apply to inmates seeking employment outside of the agency.

- MOTION:** **Senator Johnson** moved that **S 1004** be sent to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
- S 1067** **Kandee Yearsley**, Child Support Bureau Chief, Department of Health and Welfare, presented **S 1067** to the Committee regarding the amendments designed to help children residing in Idaho receive the financial support due from parents, wherever those parents may reside. She also spoke about the requirement for continued receipt of federal funds supporting the child support program, which is a required program under the Temporary Assistance for Needy Families (TANF) block grant (see attachment 1).
- DISCUSSION:** A discussion ensued related to the issue of mandatory enforcement of rules of another country and the concern of being subject to a foreign government on Idaho issues. The discussion continued on concerns over other countries telling Idaho judges what to do and Idaho's enforcement of state laws in other countries as implied in the language of the **S 1067**. A concern on member states of the Hague Convention had the Committee questioning how Idaho may enforce law upon those member states. **Ms Yearsley** volunteered to provide a list of member states to Committee.
- PASSED THE GAVEL:** Chairman Lodge turned the gavel over to Vice Chairman Hagedorn.
- DISCUSSION:** The conversation continued about the language of "states" and to whom that applies. Jurisdiction was talked about, along with the threat of losing federal funds for TANF. The Committee talked about the need for further information on these issues. The Committee members asked Ms. Yearsley for more information on the federal funding of TANF and the ratification of the Hague Convention child custody rule. **Ms. Yearsley** agreed to do so.
- MOTION:** **Senator Souza** moved to hold **S 1067** to a date determined by the Chairman. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
- S 1054** **Robert Aldridge**, Trust & Estate Professionals of Idaho, Inc. (TEPI), explained **S 1054** allows a person with decision making authority, especially financial, medical and mental health authority, to be recognized in Idaho (see attachment 2). This bill allows individuals to have control over their financial and medical decisions and their choices of who can act when the individual cannot act. The bill cross references other laws and defines certain terms.
- Senator Burgoyne** asked if the document were refused, would that person be liable for financial damage. **Mr. Aldridge** answered the bill does not preclude any rights or remedies.
- MOTION:** **Senator Davis** moved that **S 1054** be sent to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.
- RS 23680C1** **Mike Brassey**, Uniform Law Commission, explained that **RS 23680C1** is a trailer bill to **S 1025** and repeals those laws that should have been repealed in **S 1025**. **RS 23680C1** also corrects items that no longer exist.
- Senator Johnson** asked about the effective date on the bill. **Mr. Brassey** answered that it does not take effect unless **S 1025** passes since this is a trailer bill.
- MOTION:** **Senator Davis** moved that **RS 23680C1** be sent to print with the discession of the Chairman to send it back to the floor with a **do pass** recommendation. **Senator Tippets** seconded the motion. The motion carried by **voice vote**.
- ADJOURNED:** There being no further business, **Vice Chairman Hagedorn** adjourned the meeting at 2:55 p.m.

Senator Lodge
Chairman

Senator Hagedorn
Vice Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

Kandee Yearsley
SB 1067
Committee 2/25

SB 1067 – Relating to the Uniform Interstate Family Support Act

Mr. (Madame) Chairman, members of the committee

Good afternoon, my name is Kandee Yearsley. I am the Child Support Bureau Chief with the Department of Health and Welfare, Division of Welfare. I am here to present Senate Bill 1067 relating to the Uniform Interstate Family Support Act.

On September 18, 2014, Congress passed the Preventing Sex Trafficking and Strengthening Families Act which includes the requirement for all states to enact the 2008 Amendments to the Uniform Interstate Family Support Act, also known as UIFSA, during their 2015 legislative session.

These amendments incorporate provisions of the 2007 Hague Convention on International Recovery of Child Support and Family Maintenance, and are intended to improve the enforcement of American child support orders abroad. In addition, the amendments include some minor technical corrections and changes to reflect advancements in technology that can be utilized to increase access to the courts.

UIFSA 2008 constitutes a limited revision of the act. It adds a definition of record to allow for electronic transmission of testimony, and allows telephonic or other electronic testimony to non-resident parties. Other changes include replacing “under oath” with “under penalty of perjury” for documents and affidavits, and allowing the child support enforcement program to redirect payment of orders when no party lives in the order issuing state.

With regard to international casework, it is designed to integrate the Convention into state law by adding the term foreign country. In prior versions of UIFSA, foreign countries were equated with states.

Finally, sections 46-59 of the amendment constitute a stand-alone procedure to direct a “tribunal of this state” on the dos and don’ts unique to Convention support orders, and are only applicable under the convention.

All 50 states must enact UIFSA 2008 in a verbatim manner for the United States to participate and obtain the benefits of the Hague Convention. Currently 32 other countries have ratified.

This amendment is required for continued receipt of federal funds supporting the child support program which is a required Program under the TANF block grant.

This amendment is designed to help children residing in Idaho receive the financial support due from parents, wherever those parents may reside.

These amendments were drafted and are endorsed by the Uniform Law Commission and I have worked closely with the Idaho members which includes Mike Brassey, Senator Davis, Rex Blackburn, and Dale Higer, to ensure Idaho is aligning with the requirements.

I ask you to send Senate Bill 1067 to the floor with a due pass recommendation and I stand for questions.

ROBERT L. ALDRIDGE, CHARTERED
Attorney at Law
1209 North Eighth Street
Boise, Idaho 83702-4297
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State Bar No. 1296

OUTLINE OF SB 1054
RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS

This bill is to help with a major existing problem in decision-making documents, most commonly financial and medical powers of attorney. Every State has its own forms, especially for medical powers of attorney and related medical documents. The Uniform Statutory Power of Attorney Act for financial powers, enacted in Idaho in 2008 in Sections 15-12-101 through 403, has been adopted in a number of other states and is continuing to be enacted in more states, which has helped recognition of financial power documents from other states, but only from those which have also enacted that Uniform Act. There is no true national Uniform Act on medical powers.

A summary of the background and the need for the Act:

- Statutes in all United States jurisdictions permit individuals to delegate substitute decision-making authority. The majority of these statutes, however, do not have portability provisions to recognize the validity of a substitute decision-making document created in another jurisdiction, nor do many have provisions to protect good faith reliance on a substitute decision-making document. Lack of recognition and acceptance of a substitute decision-making document defeats the purpose of a substitute decision-making plan. Once an individual has lost capacity, rejection of a substitute decision-making document often results in guardianship, which burdens judicial resources and undermines the individual's self-determination interests. This bill is intended to promote the portability and usefulness of substitute decision-making documents.
- The term substitute decision-making document is intended to be an broad designation for a document created by an individual to delegate authority over the individual's property, health care, or personal care to a substitute decision maker. Jurisdictions use different nomenclature for a substitute decision-making document. Common terms include power of attorney, proxy, and representation agreement. In some jurisdictions, delegated authority over property, health care, and personal care may be granted in one document. More commonly, as in Idaho, separate delegations are made with respect to property decisions and those affecting health care and personal care.
- The Act does not apply to documents that merely provide advance directions for future decisions such as living will declarations and do-not-resuscitate orders. The critical distinction for this Act is that the document must contain a delegation of authority to a specific decision maker. So in Idaho, the Act would apply to a Durable Power of Attorney For Health Care or a financial power of attorney, but would not apply to a Living Will or to a Physicians Order For Scope of Treatment (POST), Do Not Resuscitate order, or Do Not Intubate order, and so forth.

A summary of the provisions of the Act:

- The Act has a three-part approach to portability, modeled after the Uniform Power of Attorney Act, and therefore already recognized in Idaho for financial powers:
 - First, similar to Section 15-12-106, Idaho Code, Section 3 of the Act recognizes the validity of substitute decision-making documents created under the law of another jurisdiction. The term “jurisdiction” is intended to be read in its broadest sense to include any country or governmental subdivision that permits individuals to delegate substitute decision-making authority.
 - Second, like Section 15-12-107, Idaho Code, Section 4 of the Act preserves the meaning and effect of a substitute decision-making document as defined by the law under which it was created.
 - Third, Sections 5 and 6 of the Act protect good faith acceptance or rejection of a substitute decision-making document without regard to whether the document was created under the law of another jurisdiction or the law of the enacting jurisdiction. Under Section 6(c), refusals in violation of the Act are subject to a court order mandating acceptance and to liability for reasonable attorney’s fees and costs. Sections 15-12-119 and 15-12-120, Idaho Code, contain similar provisions.
- The remedies under this Act are not exclusive and do not abrogate any other right or remedy in Idaho, and the bill contains cross-references to such rights and remedies.
- The Act is designed to complement existing statutes that do not adequately address portability and recognition of substitute decision-making documents. Because Idaho has already adopted the Uniform Statutory Power of Attorney Act, most of the provisions of this bill will apply to medical powers of attorney.

Specific provisions of the Act:

- 15-15-102 contains definitions. One important one is “Good faith”, which means “honesty in fact”. This will come up in later portions of the Act. The rest of the definitions are very standard, including that “person” includes entities.
- 15-15-103 provides for when a substitute decision-making document executed outside of Idaho is valid. For financial powers, it must comply with the law of the jurisdiction which is stated in the document, or if none, in which it was created. For medical powers, it must comply with either the law of the other jurisdiction or the law of Idaho. And, copies, including electronic copies, are treated as originals.
- As mentioned above, 15-15-104 states that the meaning and effect of the document is determined by the law of the jurisdiction in which it was created or which is referenced in the document.
- 15-15-105 provides for reliance on substitute decision-making documents. Since Idaho already has the Statutory Power of Attorney Act, and has the Medical Consent and Natural Death Act, cross-reference is made to the applicable sections of those two existing statutes, so that this Act does not change those provisions. Subject to those existing sections:
 - A person that accepts a document in good faith, without actual knowledge that the document is void, invalid, or terminated, or that the authority of the decision-maker is void, invalid or terminated, can assume, without inquiry, that the document is genuine, valid, and still in effect, and that the authority of the decision-maker is genuine, valid, and still in effect. Especially in medical situations, decisions must be made quickly, without delay, and this allows medical personnel to rely on documents produced to them when there is no time, and no effective method, to inquire into the document and the decision-maker.
 - The person asked to accept the document can request, and can rely upon without further investigation:
 - The decision-maker’s assertion of a fact about the individual for whom the decision will be made, or about the decision-maker, or about the document;
 - A translation of the document if some or all is not in English; and,
 - An opinion of counsel as to any matter of law about the document if the person provides in a record the reason for the request.

These all parallel what is in the Idaho Statutory Power of Attorney Act, but add additional protections for medical powers.

- 15-15-106 sets out the obligations to accept the document.
 - The obligation is subject to other provisions of the act and other provisions of Idaho law, including 15-12-120(2)(b), in the Idaho Statutory Power of Attorney Act.

- The person has to accept within a reasonable time if the document purportedly meets the validity requirements in 15-15-103, above. The person cannot require an additional or different document.
- The person is not required to accept the document if:
 - The person would not be required to act if requested directly by the individual who executed the document;
 - The person has actual knowledge that the document, or the authority of the decision-maker, has been terminated;
 - A request for a translation or opinion has been refused;
 - The person in good faith believes that the document is not valid or the decision-maker does not have the authority to request a particular transaction or action;
 - The person makes, or has knowledge that another person has made, a report to adult protection stating a belief that the individual may be subject to abuse, neglect, exploitation, or abandonment by the decision-maker or by a person acting for or with the decision-maker;
- A person who refuses to accept a document in violation of the Act is subject to:
 - A court order mandating acceptance;
 - Liability for reasonable attorney fees and costs in an action or proceeding to mandate acceptance.
- 15-15-107 makes clear that all other remedies under Idaho law still are in place and are not negated by this Act.
- 15-15-109 has been standard in all Uniform Acts since about 1999. It simply complies this Act with various federal electronic acts.
- 15-15-110 makes the Act applicable to all substitute decision-making documents, whether created before, on, or after the effective date of the Act.

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 02, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approve Minutes	Approve the minutes of February 2	Senators Bayer and Davis
Approve Minutes	Approve the minutes of February 6	Senators Tippetts and Bayer
Vote on Gubernatorial Appointment	Sara Thomas, State Public Defense Commission	Sara Thomas
Gubernatorial Appointment Hearing	Kimber Ricks, State Public Defense Commission commencing July 1, 2014, and expiring July 1, 2017	Kimber Ricks
<u>RS23601</u>	Unanimous Request from the Senate Commerce and Human Resources Committee to print RS 23601 relating to driving schools	
<u>RS23655</u>	Unanimous Request from the Health and Welfare Committee to print RS 26355 relating to Idaho's Immunization Reminder Information System	
<u>S 1095</u>	Relating to Sexual Offender Registration	Shane Evans, Sexual Offender Management Board
<u>H 82</u>	Relating to closure or restricted use of a highway or road	Major Steve Richardson, ISP
<u>H 61</u>	Relating to authorizing probation for a juvenile offender	Michael Henderson
<u>H 64</u>	Relating to credit for time spent in custody pending trial	Michael Henderson
<u>H 62</u>	Relating to victim restitution	Judge Barry Wood, Senior District Judge

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge Sen Bayer
Vice Chairman Hagedorn Sen Souza
Sen Davis Vacancy in District 17
Sen Tippetts Sen Burgoyne
Sen Johnson

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 02, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza and Burgoyne

ABSENT/ EXCUSED: All present, 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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:33 p.m.

MINUTES APPROVAL: **Senator Bayer** moved to approve the Minutes of February 2, 2015. **Senator Tippetts** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Tippetts** moved to approve the Minutes of February 6, 2015. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: Vote on the gubernatorial appointment of Sara Thomas to the State Public Defense Commission.

Senator Davis moved to send the gubernatorial appointment of Sara Thomas to the State Public Defense Commission to the floor with recommendation that she be confirmed by the Senate. **Senator Tippetts** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: Kimber Ricks of Rexburg, Idaho was appointed to the State Public Defense Commission (Commission) to serve a term commencing July 1, 2014 and expiring July 1, 2017. **Mr. Ricks** spoke of his respect for this position and his deep concern for an offender in need of adequate defense. Mr. Ricks is currently serving as a Madison County Commissioner.

Chairman Lodge asked why he wanted to serve. **Mr. Ricks** answered that Idaho counties are not a homogeneous group yet all are subject to the same law, so the appointment is challenging and exciting.

Senator Burgoyne asked about Mr. Ricks' experience as a county commissioner dealing with public defense issues; what is lacking in the system. **Mr. Ricks** replied Madison County is smaller and has an excellent public defender. It is a dry county with a large student population at a church university that tends to police itself. There is a low crime rate and public defense is not in demand. The contracts made with the public defender is subject to questions because of the payment process. **Senator Burgoyne** followed up with a question about his impressions of what he will be facing. **Mr. Ricks** feels he is on a steep learning curve in trying to understand and help the diverse counties adjust to the same laws. There has been learning by all involved in the Commission and relationships established with the Legislature and other committees.

Chairman Lodge set the voting on Mr. Ricks' confirmation for Wednesday, March 4, 2015, and thanked Mr. Ricks for agreeing to serve on the Commission.

**UNANIMOUS
CONSENT
REQUEST:**

Senator Davis asked for unanimous consent to send **RS 23601** to the Senate Commerce and Human Resources Committee and **RS 23655** to the Senate Health and Welfare Committee for a print hearing. There were no objections.

S 1095

Shane Evans, Sexual Offender Management Board (SOMB), presented a PowerPoint explaining **S 1095**, a proposal for a five-level registration and notification system for identification of sexual offenders previously assessed as having a high risk to re-offend. He also detailed the fiscal impact of the bill (see attachments 1 through 5).

A lengthy discussion ensued over the determination of the default level four and how to petition for a change. The time limit on levels, length and cost of the petition, out of state offenders and definitions of each level were brought out in the discussion. **Senators Burgoyne, Tippets, Johnson, Lodge, Souza, Davis and Hagedorn** posed questions to Mr. Evans for clarification.

TESTIMONY:

Kathy Griesmyer, Idaho ACLU, testified in support of the bill with some concerns. She indicated those concerns as follows:

1. Default level four is too harsh for those who should be at a level one.
2. The process would be difficult to navigate.
3. The cost of evaluation would range from \$1000 to \$1300 which could be a financial barrier.

Senator Hagedorn requested that Ms. Griesmyer be involved in the rulemaking process. **Ms. Griesmyer** replied she and the Idaho ACLU stand ready to help out and be supportive of this legislation.

MOTION:

Senator Davis moved that **S 1095** be sent to the floor with a **do pass** recommendation. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

H 82

Major Steve Richardson, Idaho State Police (ISP), took the podium to answer questions from Senator Davis about the language of the bill.

MOTION:

Senator Davis moved that **H 82** be sent to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion.

Senator Bayer asked for clarification on whether this would allow ISP to set up stations for drunk driving. **Major Richardson** stated it was not for that purpose, but to provide emergency and public safety needs.

The motion carried by **voice vote**.

Chairman Lodge said **H 61**, **H 64** and **H 62** would be rescheduled at a later date.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 2:57 p.m.

Senator Lodge
Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

Risk-based Sex Offender Registration



Idaho Sexual Offender Management Board

1

Introduction



- ☞ In 1998 Idaho implemented the Violent Sexual Predator designation as a second "level" of registration
- ☞ 2009 Smith v. Idaho found procedural due process violations with VSP designation procedures
- ☞ Risk-based registration levels preferable over crime-based Sex Offender Registration and Notification Act (SORNA)

2

Public Safety



- ☞ How does this legislation serve the people of Idaho?
 - ☞ Enhances public safety by accurately assessing the risk of sexual re-offense
 - ☞ Identifies the highest risk sex offender population
 - ☞ Motivating factor - reduce level or registration period
 - ☞ 78% of Idaho's registered sex offenders are not under IDOC supervision
 - ☞ Conviction-only risk determination not accurate

3

Comparison



Level	Registration Requirements	Offender Characteristics	Registration Period
Level 1	Low risk offenders	Low risk offenders	1 year
Level 2	Low to moderate risk offenders	Low to moderate risk offenders	2 years
Level 3	Moderate to high risk offenders	Moderate to high risk offenders	3 years
Level 4	High risk offenders	High risk offenders	5 years
Level 5	Sexual recidivists	Sexual recidivists	Indefinite

4

Concept



Concept - Transition



- ☞ The default registration level for all sex offenders required to register is Level 4, excluding offenders identified as sexual recidivists or whose conviction places them in Level 5
- ☞ Default Level 4 sex offenders may *petition* the SOMB for a risk-based registration level designation within 2 years of placement in the community; or from the effective date of this Act for currently registered offenders

6

Concept



- ☞ Current (within 1 year) psychosexual evaluation required
- ☞ Offender to obtain required information for review or remain at default Level 4
- ☞ Levels 2, 3, 4 and some Level 5 registrants may petition for a one-time reduction in assigned level
- ☞ Denied reduction petition - may resubmit once per year thereafter until reduced

7

Concept



- ☞ Three types of risk-based registration level reviews:
 - ☞ Initial review - The first SOMB review of a default Level 4 registration level
 - ☞ Level designation reduction - A petition to reduce a registration designation subsequent to the initial level designation
 - ☞ Level designation modification - A request for SOMB review that is submitted by the sheriff, prosecuting attorney, Department of Correction or the Commission of Pardons and Parole

8

Level 5 Designees



- ☞ Default Level 5 registrants register for life
- ☞ Level 5 registrants designated by SOMB may petition for one-time reduction after 20 years
- ☞ Current SOCB-designated VSP's will be Level 5 until automatic review for appropriate level placement

9

How it works



10

Matrix Scoring



- œ Offense categories aid in scoring matrix
- œ Consider static, dynamic and risk reduction factors
 - œ Number of risk factors combined with offense category determines registration level
- œ Static factors = historical behaviors
- œ Dynamic factors = current behaviors
- œ Risk reduction factors = stability and pro-social behaviors

11

Reassignment and Recidivist



- œ New non-sexual criminal conviction reverts to default Level 4. Review process starts over
- œ Subsequent sex offense conviction = recidivist and default Level 5 designation
 - œ Won't be eligible for level reduction or relief from duty to register

12

Relief from Duty to Register



- Decision-making responsibility for relief from duty to register will be turned over to SOMB
- SOMB will factor same risk reduction considerations as utilized for level designation petitions
- Prosecuting attorney and ISP Central Registry may submit evidence to SOMB in relief from duty to register petitions

13

Statutory Modifications



- Please refer to your handout

14

Points for Consideration



- Supported by the ICJC and Governor's office
- Fiscal needs included in Governor's budget request
- Transparent and accessible to offenders being reviewed

15

Registration Level Requirements Comparison

Current		Proposed	
Annual in-person registration; picture/info on ISP/sheriff websites; address verification card every 4 months; law enforcement address check once a year	Lifetime registration; may petition for relief from registration after 10 years unless identified as an “aggravated offender”	Level 1 Annual in-person registration; no picture/info on ISP/sheriff websites (available to LE, schools, daycares); address verification card every 4 months; law enforcement address check if verification card is undeliverable.	10 years registration May petition for relief after 5 years minimum
“Regular” sex offenders		Level 2 Annual in-person registration; picture/info on ISP/sheriff websites; address verification card every 4 months; law enforcement address check if verification card is undeliverable.	20 years registration May petition for relief after 10 years minimum
		Level 3 Annual in-person registration; picture/info on ISP/sheriff websites; address verification card every 4 months; one law enforcement address check per year.	30 years registration May petition for relief after 15 years minimum
		Level 4 Bi-annual in-person registration; picture/info on ISP/sheriff websites; address verification card every 3 months between registrations; one law enforcement address check per year.	40 years registration May petition for relief after 20 years minimum
		Level 5/VSP/ Recidivists Quarterly in-person registration; picture/info on ISP/sheriff websites; monthly address verification cards between registrations; law enforcement address check twice per year; electronic monitoring for offenders under IDOC supervision	Lifetime registration

SOMB Tiered Sex Offender Registration Legislation
Fiscal Impact

Ongoing Purpose	Qty	Amount	Total	One-time Purpose	Amount	Total
SOMB						
Staff (1 Tech Records Spec, 2 Clinicians, 1 Hearing Officer)	4	\$242,700		Office set-up	\$12,000	
OE		\$55,000	\$297,700			\$12,000
ISP						
Staff (3 Tech Records Spec, 1 Office Specialist)	4	\$185,428		Software needs	\$500,000	
OE		\$60,000		Office set-up	\$16,000	\$516,000
Legal Services		\$30,000	\$275,428			
IDOC						
Staff (4.5 Tech Records Spec)	4.5	\$204,300		Office set-up	\$28,100	
OE & Electronic monitoring unit rental		\$135,836	\$340,136			\$28,100
Ongoing General Funds:			\$913,264	One-time General Funds:		\$556,100
Initial Implementation General Funds:			\$1,469,364			

S1095
Statutory Modifications

- 9-340B Records Exempt from Disclosure
 - Exempts SOMB's records on risk-based registration reviews from public records requests unless otherwise provided by law or court order
- 18-8303 Definitions
 - Eliminates Aggravated Offense definition – will no longer be applicable
 - Housekeeping definitions for certified polygraph examiner and certified treatment provider
 - Continuous time in the community for registration reduction petitions or removal from the registry eligibility
 - Default level 4 and level 5 registration levels
 - Eligible party – agencies authorized to request a registration level modification review
 - Recidivist definition is being modified
- New section 18-8306A Determination of Risk-Based Registration Level
 - Procedures related to determination of 5 registration levels shall be developed by rule
 - Allows for petitions for review of default level 4 placement and reduction in risk-based level determinations
 - Affords due process considerations for offenders being reviewed by the SOMB
 - Existing VSP's living in Idaho will be reviewed by the SOMB automatically for level placement
 - Offender notification procedures
- 18-8307 Registration
 - Increases annual registration fee by \$8
 - Identifies frequency of in-person registration and the term of registration for each level
- 18-8308 Verification of Address and Electronic Monitoring
 - Cooperative agreements allowed between Sheriff and other law enforcement agencies for offender address verifications
 - Frequency of by-mail and in-person address verifications by ISP and Sheriff for each level
 - Level 5 offenders under IDOC supervision may be placed on electronic monitoring for duration of supervision
- 18-8310 Release from Registration Requirements - Expungement
 - Modifies eligibility timeframe for offenders to petition for expungement to after ½ the full registration period with continuous time living in the community, except level 5 offenders
 - Requires a new psychosexual evaluation for consideration and notification of SOMB
 - Initial changes effective in July 2016, but process would be transferred from courts to SOMB in July 2017 with an appeal to district court provision
- 18-8314 Powers and Duties of the Sexual Offender Management Board
 - Establish qualifications and certification procedures for professionals conducting post-conviction sex offender polygraphs for the Department of Juvenile Corrections (housekeeping)
 - Provides for SOMB to set forth and administer risk-based registration level determinations and release from registration determinations
 - Grants authority for SOMB to obtain & review IDOC & IDJC offender records to carry out its duties

- Authorizes the transfer of SOCB records to the SOMB for retention and to carry out its duties
- 18-8318 Payment for Psychosexual Evaluation
 - Continues county payments for pre-sentence post-conviction psychosexual evaluations for indigent offenders but requires offenders or requesting party to pay costs of psychosexual evaluations conducted for risk-based registration reviews and release from registration petitions
- 18-8323 Public Access to Registry Information/18-8324 Dissemination of Registry Information
 - Level 1 offender information will not be disseminated to the public or available on ISP/Sheriffs' websites but will be made available to law enforcement, schools, and licensed day cares, group daycare facilities and family day care homes
- New section 18-8332 Authorization for Criminal History Checks by the Board
 - Provides the SOMB with authorization to obtain criminal history check information on offenders being reviewed for registration level determinations or release from registration petitions
- 20-219 Probation and Parole Supervision and Training
 - Level 5 offenders who are under supervision may be placed on electronic monitoring
 - The Board of Correction shall establish procedures to determine when such electronic monitoring is appropriate
- 16-1602 Definitions and 16-2005 Conditions Under Which Termination may be Granted
 - Pertain to the Child Protective Act. Replaces references to an "aggravated offense" with delineation of crimes that were previously included in this to-be eliminated definition

Idaho State Police Impact of S1095

The Idaho State Police (ISP) maintains the Central Sex Offender registry for the state of Idaho, as outlined in I.C. Section 18-8305. Currently the Central Registry, which is maintained by the ISP Bureau of Criminal Identification (BCI), receives funding from general fund for one position, but no general fund dollars for the OE or capital expenditures to maintain the Registry. The remaining staff and all of the OE and Capital expenses are funded from other revenues within the department. The current annual cost of the Registry is approximately \$555,000. However, this cost does not include the administration costs. Plus all major capital expenses have been funded from federal grants thus far.

The proposed changes to the "Sexual Offender Registration Notification and Community Right-to-Know Act" would impact both the BCI Registry Unit and Applicant Unit resulting in the following additional costs. The department has no way of absorbing these additional costs, therefore requests general funds in the following amounts.

- On-going (\$275,428 annually)
 - Four (4) FTE positions. (\$185,428)
 - Three (3) for Sex Offender Registry (1 technical records specialist 2 and 2 technical records specialist 1) The positions are responsible for maintaining accurate and complete records on all registered sex offenders in the state.
 - They process all registrations, doing the appropriate amount of research to ensure the accuracy and completeness of the database used in the tracking of offenders.
 - They track non-compliant sex offenders using various search techniques.
 - They work with other local, state and federal law enforcement agencies to compile the research needed to equate out of state offenses to Idaho offenses. In doing so, they maintain and monitor a tracking system of offenses from other states.
 - They do the research needed for administration to do affidavits regarding removal of offenders from the system.
 - They maintain a public website of all Idaho sex offenders including photos, list of non-compliant and violent sexual predators.
 - One (1) for the Applicant Unit (office specialist 2) The position in the Applicant Unit will be responsible for processing the background checks that will be required in the new review process in the law.
 - Operating Expenses. (\$90,000)
 - Additional overhead costs regarding the new positions, mailing costs, training and maintenance for the enhanced Repository. The legal expenses are for the services provided by the Attorney General's office to the Registry.
- Capital Expenses. (\$516,000 annually)
 - Desks, chairs, computers, and other equipment for the new positions. (\$16,000)
 - Programming for changes to the client software to accommodate the new registry changes, changes to the state switch, database changes, workflow changes for the new reporting requirements of the different tiers, and web-site changes. (\$500,000)

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 04, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approve Minutes	Approve the minutes of February 4, 2015	Senators Johnson and Hagedorn
Vote on Gubernatorial Appointment	Kimber Ricks, State Public Defense Commission	
Gubernatorial Appointment Hearing	Darrel Bolz, State Public Defense Commission, commencing July 1, 2014, and expiring July 1, 2017.	Darrell Bolz
<u>RS23704C1</u>	Relating to facilitate payment for health care for the indigent sick	Senator Dan Schmidt
<u>RS23676</u>	Relating to changing the term "expungement" to "sealing"	Roy Eiguren and Judge John F. Varin
<u>S 1103</u>	Relating to human trafficking and expungement of records	Senator Jim Rice
<u>S 1068</u>	Relating to renewal of judgments	Senator Bart Davis
<u>S 1069</u>	Relating to renewal of judgments	Senator Bart Davis

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Bayer
Vice Chairman Hagedorn	Sen Souza
Sen Davis	Vacancy in District 17
Sen Tippetts	Sen Burgoyne
Sen Johnson	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 04, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza and Burgoyne

ABSENT/ EXCUSED: All present, 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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:32 p.m. She announced that the approval of minutes would occur later in the meeting.

GUBERNATORIAL APPOINTMENT: **Senator Tippetts** moved to send the gubernatorial appointment of Kimber Ricks State Public Defense Commission to the floor with a recommendation that he be confirmed by the Senate. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT HEARING: Darrel Bolz has been appointed to the State Public Defense Commission (Commission) commencing July 1, 2014 and expiring July 1, 2017. **Mr. Bolz** recounted his background in agriculture. While serving as a State Representative he served on the Joint Finance-Appropriations Committee (JFAC) and also on the House Judiciary and Rules Committee giving him an opportunity to work with criminal justice in the State. He filled in for the Chairman on the Criminal Justice Commission and served on the Committee of Public Defense. The Commission was formed in July 2014 and has met twelve times since the formation date. **Mr. Bolz** finds the work of the Commission interesting. Several issues have become apparent. There is a need for funding for public defense. The Commission faces questions of the expectations and on not having much authority. They may promulgate rules and present legislation. The Commission is a part of the executive agency, and what the Commission needs has to come through the Governor's office.

Chairman Lodge set the vote for Mr. Bolz's appointment to the State Public Defense Commission for Friday, March 6, 2015.

MINUTES APPROVAL: **Senator Johnson** moved to approve the Minutes of February 4, 2015. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

RS 23704C1 **Senator Schmidt** explained **RS 23704C1** relates to payment for health care for the indigent sick both at the county level and the State CAT Fund.

MOTION: **Vice Chairman Hagedorn** moved to print **RS 23704C1**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

RS 23676

Roy Eiguren, EigurenFisherEllis, spoke about the Youth Justice Funding Collaborative which is a foundation formed to accelerate policy reform for state juvenile justice systems. Both he and Judge Jack Varin are involved with the national foundation. **Mr. Eiguren** stated the first handout given to the Committee explained the expungement of juvenile records and the second handout explained **RS 23676** (see attachments 1 and 2).

MOTION:

Senator Davis moved to print **RS 23676**. **Vice Chairman Hagedorn** seconded the motion.

Senator Tippetts stated he has a conflict of interest pursuant to Senate Rule 39 (H), but intended to vote.

The motion carried by **voice vote**.

S 1103

Senator Rice expounded on **S 1103** regarding victims of human trafficking. **Senator Rice** cited the National Human Trafficking Resource Center (NHTRC) Annual Report (see attachment 3) and pointed out that Idaho is involved with human trafficking. **Senator Rice** pointed out on page 4 of the report that Idaho received 56 calls in 2014. **S 1103** provides a method for victims to vacate convictions and expunge records received while a victim of human trafficking. Those criminal convictions and arrests can prevent victims from getting jobs, housing and student aid. **Senator Rice** noted the bill needs some language changed and/or added to keep the records sealed with the order of expungement being kept for possible future needs of the victim.

Senator Tippetts inquired about the wording of "from local, state or national" and asked if the phrase was necessary. **Senator Rice** answered if there is a finding in court from another state it can be used to help identify and show they were a victim of human trafficking. One can use a report from another agency but it must be from a state or federal agency. **Senator Tippetts** asked for clarification on vacating or expungement on conviction. **Senator Rice** said vacating a record and expungement are two different parts. If there is an arrest but no conviction, it is to vacate. Expungement is for a conviction. **Senator Tippetts** asked if these records would be used for prosecution against another person. **Senator Rice** responded these records can only be used with a court order, but the victim could get them for themselves only.

Senator Burgoyne asked if human trafficking would be a defense for an initial criminal charge. **Senator Rice** replied it is a defense that could be used, but the person may be too afraid or has had threats made against them so they do not use it. This bill provides an opportunity for them to come forward. **Senator Burgoyne** wondered if a case goes to trial and results in a not guilty verdict, would the person have the opportunity to have the case sealed. **Senator Rice** stated he would add this provision. It was not something brought up before.

TESTIMONY:

Merikay Jost, Boise, Idaho, expressed concern about line 24, on page 1, of the bill and the compromising of an ongoing prosecution. **Ms. Jost** gave the Committee written testimony (see attachment 4). **Chairman Lodge** asked Ms. Jost to visit with Senator Rice about her concerns. **Ms. Jost** responded she would.

Debra LaFond shared her experience being a sex slave. She stated a person can be restored, but during the time of enslavement one is coerced and drug-induced to have a victim do things against their will. She lost her children because of activities of enslavement. She explained on the way to reforming you lose hope, there is shame involved and her life and her families' lives were threatened. After seven years she was able to get out. She had been arrested and was sent to a state hospital as a result of the treatment she had received while a trafficking victim. Treatment, good mentors and classes have helped her to become who she is today. **Ms. LaFond** explained her way of giving back was to help others who have been in her situation. **Chairman Lodge** expressed thanks to Ms. LaFond for sharing her story before the Committee, knowing it was hard to talk about.

Holly Koule Rebholtz, Idaho Prosecuting Attorney (IPA), set forth concerns IPA over expunging all non-violent crimes that were committed during the time while enslaved. She said this could be abused in court, given the broad language. **Ms. Rebholtz** expounded on other states' language for different types of expungement. No other states address arrests as they consider convictions only. She also questioned the no time restriction for victims to bring an action. Most states have a reasonable time limit for bringing action. **Ms. Rebholtz** spoke of the experience of other states and asked that Idaho look at the wording and experience of these states in adding the language needed to make this bill stronger.

Senator Burgoyne questioned if there is a burden of proof, and if so, what would she recommend the standard to be. **Ms. Rebholtz** does not have a recommendation, just a concern of how it will work in court. The bill would be better if "force", "inducement" or "coercion" were included. **Senator Burgoyne** questioned in a criminal case if coercion is raised, what would be the burden of proof. **Ms. Rebholtz** replied there are jury instructions given.

Senator Hagedorn asked if the records of a victim were expunged, what would one do if the records were needed to convict the trafficker. **Ms. Rebholtz** stated if there is no victim, there is no case. There are many nuances to what this bill brings.

Mike Miraglia, Fraternal Order of Police (FOP), stated he was a police officer and that the FOP has a neutral stance on **S 1103**. **Mr. Miraglia** spoke to the scope of the crimes included as being overly broad and recommends the language be tighter for other illegal activities that happen in addition to prostitution. **Mr. Miraglia** stated the criminal activity must have happened during the time period the victims were trafficked or as a result of it.

Senator Davis emphasized the sponsor acknowledges there are needed changes and this is what the Committee is hearing in testimony. He asked if Senator Rice would be willing to work with those people testifying to revise the bill. **Senator Rice** stated he would be willing to work with them to revise some of the bill.

MOTION:

Senator Davis moved that **S 1103** be held in Committee. **Senator Burgoyne** seconded the motion.

Chairman Lodge requested that those present and wanting to testify or who have testified to get with Senator Rice to work on the bill.

Senator Davis asked for unanimous consent to hold **S 1103** in Committee to allow Senator Rice time to work on a new RS.

S 1068 AND S 1069

Senator Davis explained that **S 1069** increases the period of time for claiming a money judgment from five years to ten years. **S 1068** amends a judgment granted before June 30, 2015 to a five year time limit and after July 1, 2015, to a ten year time frame.

Senator Burgoyne stated he would like the judgement to last forever, but the life of the lien should have a limitation.

Vice Chairman Hagedorn stated **S 1069** would be easier to understand as all judgements after July 1, 2015 would be ten years.

Senator Bayer asked if there is a precedent for changing the timelines for existing judgements. **Senator Davis** answered there is going to be some judicial questions over the timeline but that **S 1069** lets one understand that a judgement stands at five years if made before July 1, 2015. After July 1, 2015 all will be at ten. **Senator Bayer** inquired if there was an average time for judgement. **Senator Davis** replied he did not know.

MOTION:

Vice Chairman Hagedorn moved to send **S 1069** to the 14th Order for possible amendment. **Senator Bayer** seconded the motion.

Senator Burgoyne asked if Senator Davis has talked to some practitioners. **Senator Davis** answered no.

The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 3:05 p.m.

Senator Lodge
Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

FAILED POLICIES, FORFEITED FUTURES

A Nationwide Scorecard
on Juvenile Records



Juvenile
Law Center advancing the rights and
well-being of children in jeopardy

Overview of Research and Results

Children, especially teenagers, make mistakes. They engage in reckless and unwise behavior that, as adults, they would never even consider. Sometimes, their actions violate the law and lead to contact with the justice system, creating juvenile court and law enforcement records. These records can erect lifelong barriers to success for youth and young adults who have outgrown their behaviors or have been rehabilitated and are working to better themselves. Juvenile records can limit opportunities long after youth have exited the juvenile justice system while maintaining records does very little to further public safety.

Notably, 95% of youth in the juvenile justice system have committed non-violent offenses, and because adolescence is a transient and volatile stage of life, the vast majority of young people naturally mature into adulthood without any additional contact with the law. Despite this reality, juvenile records will follow them into adulthood. **Juvenile records can have devastating effects.** They can limit youths' ability to secure housing, obtain jobs, join the military, pursue higher education, or receive public benefits.

Juvenile Law Center published this Scorecard to address the negative consequences that flow from the retention and dissemination of juvenile records, and to illustrate how states differ in their treatment of those records. Laws pertaining to the retention of records should reflect the recognized differences between youth and adults. Psychological and neurological research confirms what every parent already knows – teenage brains are not mature. Youth can be impulsive, make poor decisions

95% of youth in the juvenile justice system have committed non-violent offenses.

and fail to see long-term consequences. Teenagers are not adults; they lack the capacity to consistently think like adults and should not be treated like adults. But the period of adolescence is also an opportunity because youth have a distinct capacity for change and rehabilitation. Policies inconsistent with this research should be reassessed in favor of policies that promote more, not fewer, positive opportunities for youth.

States must do more to ensure protection of juvenile records. When records block a person's ability to become a productive member of society, those records reduce community protection, undermine important societal goals, and ultimately reduce the tax base by limiting employment and educational opportunities.

Laws that limit accessibility of juvenile record information during and after court proceedings ensure that neither court involvement nor an adjudication of delinquency permanently stigmatizes youth. Moreover, laws that seal (close records to public view) or expunge (physically destroy records so they are no longer accessible) juvenile records after a case has been closed allow teens to truly put their pasts behind them.

States must do more to protect juvenile records in a manner that does not negatively affect a young person's future.



This Scorecard is the first comprehensive evaluation of how juvenile records¹ are handled across the 50 states and the District of Columbia. To see how individual states fared and to better understand how each policy area was scored, visit www.jlc.org/juvenilerecords. In measuring each state's overall treatment of records, we rated performance in two key policy areas:

- **Confidentiality of records** during and after juvenile court proceedings, and;
- **The availability of and process for sealing or expungement.**

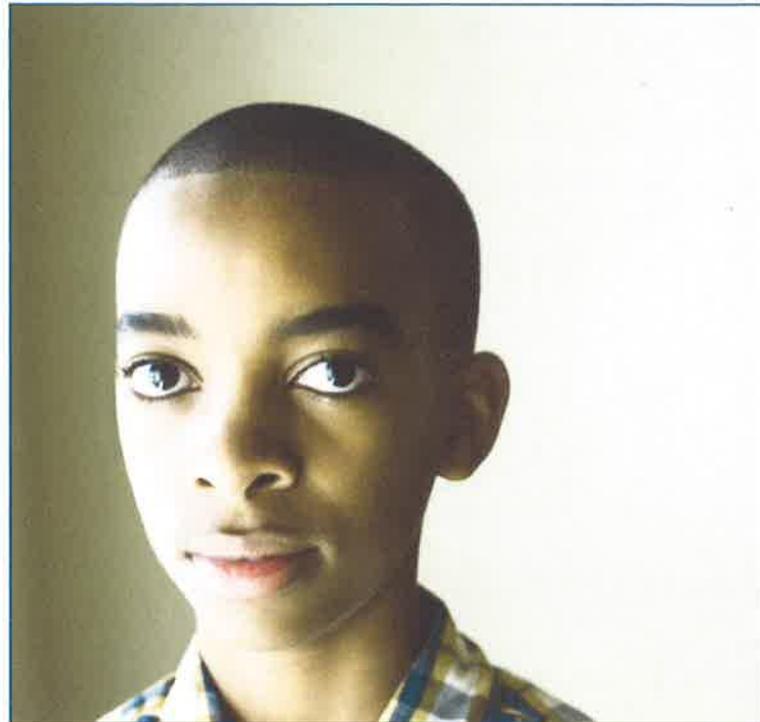
For each of the two policy areas, we identified core principles to ensure the protection of juvenile records. We then compared each state's performance with our core principles for juvenile record protection to obtain the state's overall score.²

THE RESULTS

- **No state earned an overall rating of 5 stars**
- Fewer than 16% of the states received 4 stars
- 55% of the states received 3 stars
- 25% of the states received only 2 stars

States scored lowest in responses to questions about the protection of the confidentiality of juvenile records, but slightly better in response to questions regarding their sealing and expungement policies.

Protection of juvenile records and information must be given a higher priority. Policymakers should strengthen their states' juvenile record protections to eliminate barriers and improve success.



**Children are different from adults.
Laws should reflect these differences.**

LEARN MORE

To see how individual states fared and better understand how each policy area was scored, visit www.jlc.org/juvenilerecords.

¹ This Scorecard measures treatment of records for youth adjudicated delinquent in juvenile court. It does not measure the treatment of juvenile arrest records when no adjudication of delinquency occurred. Moreover, it does not evaluate records of youth who are charged in the adult criminal system.

² For more information on how states were rated refer to the Appendix.

Overall Scores

By measuring both the degree to which records are kept confidential prior to expungement eligibility and the availability of sealing or expungement in each state, we established a list of core principles. These principles ensure protections for youth both while they are in the juvenile justice system and also after the court's supervision has ended.

For youth, a juvenile record can have devastating effects: it can impede the ability to secure housing, obtain employment, join the military, pursue higher education, or receive public benefits.



0 STATES received 5 stars

8 STATES received 4 stars

28 STATES received 3 stars

14 STATES received 2 stars

1 STATE received 1 star

CORE PRINCIPLES FOR RECORD PROTECTION

Ideal systems will ensure that:

- Youths' law enforcement and court records are not widely available and are never available online
- Sealed records are completely closed to the general public
- Expungement means that records are electronically deleted and physically destroyed
- At least one designated entity or individual is responsible for informing youth about the availability of sealing or expungement, eligibility criteria, and how the process works
- Records of any offense may be eligible for expungement
- Youth are eligible for expungement at the time their cases are closed
- There are no costs or fees associated with the expungement process
- The sealing and expunging of records are automatic—i.e., youth need not do anything to initiate the process and youth are notified when the process is completed
- If sealing or expungement is not automatic, the process for obtaining expungement includes youth-friendly forms and is simple enough for youth to complete without the assistance of an attorney
- Sanctions are imposed on individuals and agencies that unlawfully share confidential or expunged juvenile record information or fail to comply with expungement orders

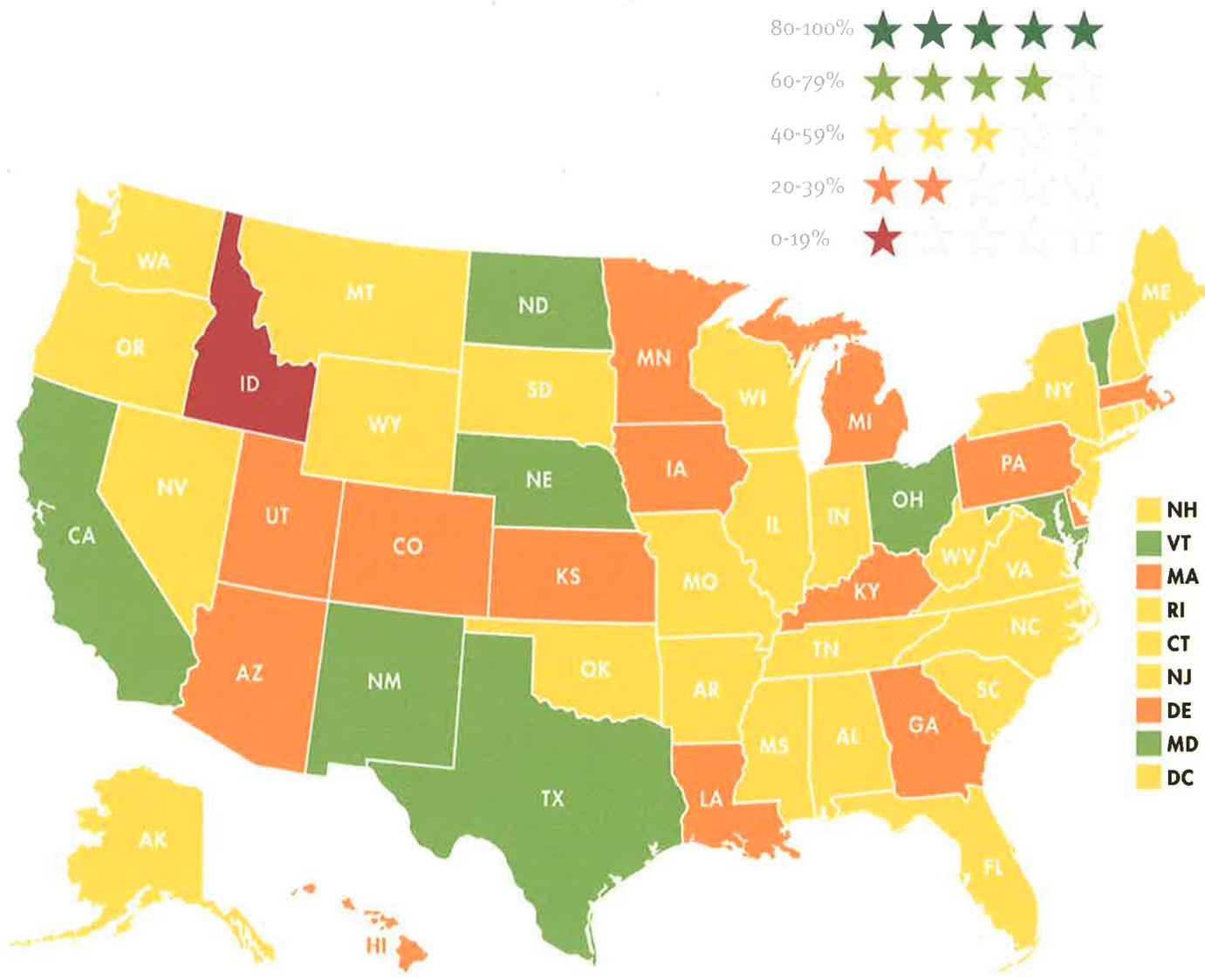
Few states come close to meeting these standards. The average rating across all 50 states and the District of Columbia was only 3 stars. ★★★

No state received 5 stars overall. Only eight states received 4 stars. 28 states received 3 stars; 14 states received 2 stars; and Idaho was the only state to receive 1 star.

Overall Scores

STATES BY RANK

New Mexico	Missouri	Illinois	Kentucky
Ohio	Rhode Island	Wisconsin	Massachusetts
North Dakota	West Virginia	New Jersey	Louisiana
Texas	North Carolina	Oregon	Colorado
Vermont	New Hampshire	Florida	Hawaii
California	Montana	Connecticut	Kansas
Maryland	Washington	Maine	Michigan
Nebraska	South Dakota	Nevada	Delaware
Wyoming	Alaska	South Carolina	Utah
New York	Arkansas	Tennessee	Minnesota
Oklahoma	Mississippi	Pennsylvania	Arizona
Indiana	District of Columbia	Georgia	Idaho
Alabama	Virginia	Iowa	



Expungement and Sealing of Juvenile Records

Once youth have had contact with the justice system, they are anxious to put the experience behind them. Unfortunately, most youth don't realize the negative consequences of their juvenile justice involvement until it interferes with their ability to obtain housing, employment, education or to pursue other interests. Most individuals who seek expungement or sealing do so after they have passed the age of majority, primarily because the law does not permit them to do so earlier. But often they do not realize the negative effect their record is having until they encounter a barrier to success.

To rate states' sealing and expungement policies, we asked eight questions:

1. IS SEALING OR EXPUNGEMENT AVAILABLE?

Sealing records alone can be ineffective because even if a record is technically sealed to everyone, it is physically still accessible and therefore can interfere with the youth's future plans. States that provide for complete sealing and expungement of juvenile records received the highest score, ensuring that kids can put their past behind them and focus on their futures.

2. WHAT RECORDS ARE SUBJECT TO SEALING OR EXPUNGEMENT?

Even where juvenile records are eligible for sealing or expungement, many jurisdictions limit the mechanisms to certain records. States where all court and law enforcement records can be sealed or expunged, without exception, are most effective and received the highest score.

3. WHAT OFFENSES ARE EXCLUDED FROM SEALING OR EXPUNGEMENT?

Many states limit sealing or expungement to records of certain offenses. States where records of all juvenile adjudications, regardless of the nature or grading of the offense, are eligible for either sealing or expungement received the highest score. (In states where both sealing and expungement are available we only reviewed which records would be eligible for expungement, because expungement ensures physical destruction with no further access.)

4. IS SEALING OR EXPUNGEMENT AUTOMATIC OR MUST THE YOUTH OR SOME OTHER INDIVIDUAL OR ENTITY FILE A PETITION TO INITIATE THE PROCESS?

In many states, young people must enlist the services of an attorney to seal or expunge a record, file a petition, appear at a hearing, and wait for a ruling from the court. This can be a lengthy, costly, and arduous process. To facilitate a more streamlined process to destroy juvenile records, many states have implemented automatic expungement procedures. States that provide for automatic sealing or expungement received the highest score. Still other states provide for a third party or agency to initiate the process. These states scored higher than states that require youth themselves to initiate the sealing or expungement process.

5. HOW AND WHEN IS THE YOUTH NOTIFIED OF THE AVAILABILITY OF SEALING OR EXPUNGEMENT, THE PROCESS FOR SEALING OR EXPUNGEMENT, AND ELIGIBILITY?

Many youth are not advised that juvenile records carry long-term consequences, or that expungement or sealing of their records is not automatic but requires the youth to initiate the process (if available at all). In order for notification to be most effective, it must be timely and repeated throughout the youth's court involvement. States that provide notice about availability, eligibility and process throughout the proceeding and thereafter received the highest score.

6. WHEN MAY A YOUTH'S RECORD BE SEALED OR EXPUNGED?

In the majority of states, an individual has to demonstrate eligibility for sealing or expungement. This can be tied to the individual's age at the time of the offense or discharge from court; the nature of the offense for which the youth was adjudicated; or the amount of time that has passed since the case was closed. States that provide for expungement eligibility earlier, at discharge or case closing, regardless of the youth's age, received the highest score.

7. MUST THE YOUTH PAY A FEE FOR SEALING OR EXPUNGEMENT?

Fees can deter young people from seeking to have their records sealed or expunged. Even when a fee can be waived based upon an individual's financial status, youth may be intimidated by the waiver process or may not know that it exists, or how to apply for it. While in many states fees are assessed locally at the county or municipality level, some states impose high fees for expungement or sealing statewide. States that assess no fee received the highest score.

8. ARE SANCTIONS IMPOSED FOR FAILURE TO COMPLY WITH SEALING OR EXPUNGEMENT LAWS?

To be effective, state sealing and expungement policies must be enforced. Sanctions in the form of a fine should be available when expungement or sealing policies are violated or records are unlawfully disclosed. States that impose sanctions received the highest score.

Expungement and Sealing of Juvenile Records

THE SCORES

The national average for all states' expungement and sealing laws was 3 stars. No state received 5 stars, and less than 30% of states received 4 stars – leaving 70% of states with a 3 star or less rating.

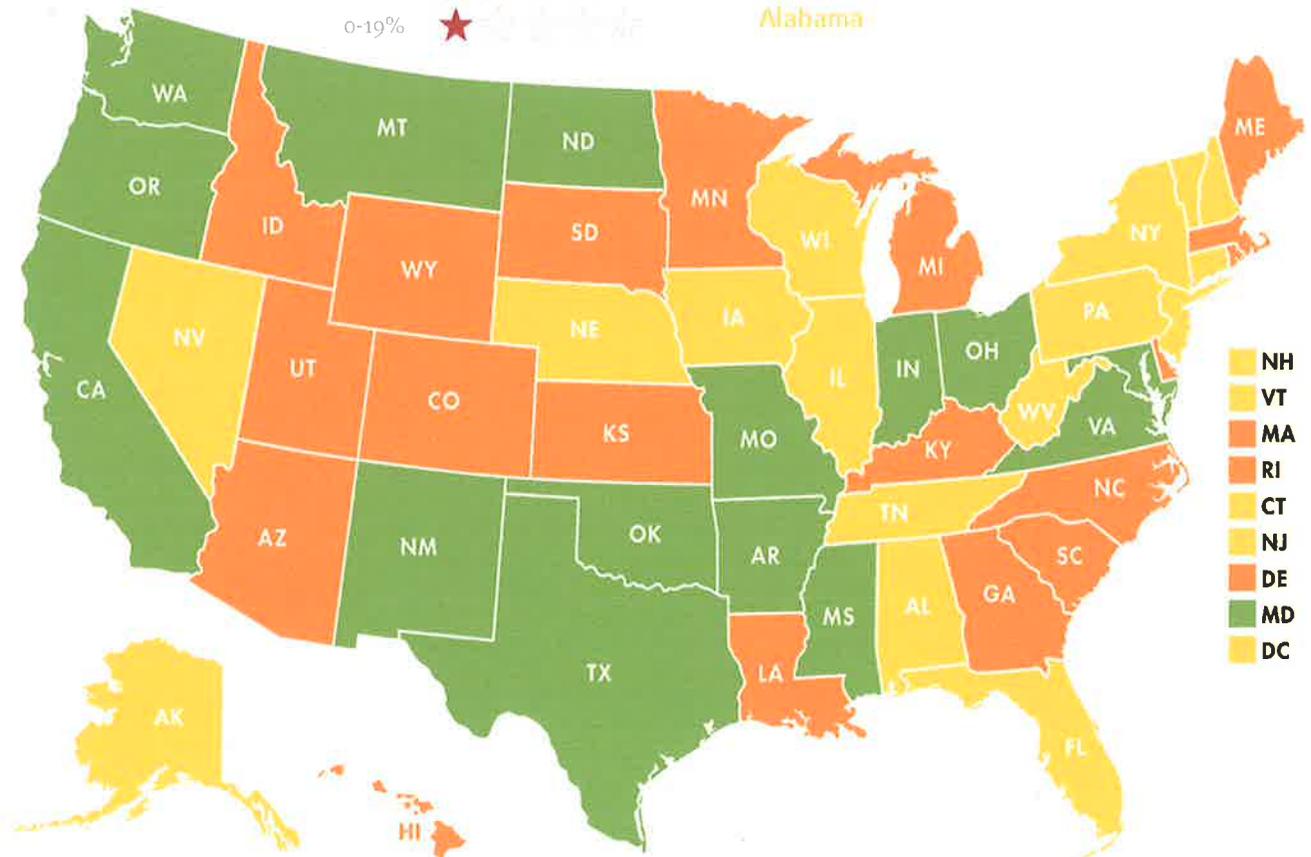
Only five states—Indiana, Maryland, Missouri, Oregon, and Wisconsin—have both complete sealing and expungement available for juvenile records. In 20 states sealing or expungement is available for any type of offense, with no exceptions. Many states received lower scores because they require youth to initiate the sealing or expungement process by filing a petition. Only five states automatically expunge juvenile records, while 24 states require the youth to file a petition. An additional 15 states provide that either the youth or another party (the prosecutor or court) can file on the youth's behalf.

States measured poorly in almost every policy area, but the majority of states scored lowest in response to the question about how youth are notified of their expungement rights and eligibility, with 34 states receiving no points at all.



STATES BY RANK

- New Mexico
- North Dakota
- Indiana
- Montana
- Oklahoma
- Washington
- Missouri
- Ohio
- Texas
- Oregon
- Virginia
- California
- Arkansas
- Maryland
- Mississippi
- New Hampshire
- Nevada
- West Virginia
- Illinois
- Wisconsin
- District of Columbia
- Nebraska
- Iowa
- Florida
- Vermont
- Alabama
- New Jersey
- Connecticut
- Alaska
- Pennsylvania
- Tennessee
- New York
- Georgia
- Wyoming
- North Carolina
- South Dakota
- Arizona
- Louisiana
- Maine
- Kentucky
- Massachusetts
- Kansas
- Michigan
- Hawaii
- Rhode Island
- South Carolina
- Idaho
- Utah
- Delaware
- Colorado
- Minnesota



Reasons for Changing Idaho's Juvenile Expungement Law

1. Historically, adjudications in the juvenile court system have not carried the same collateral penalties as adult criminal convictions. However, in recent years, adjudications of delinquency have increasingly resulted in extensive legal restrictions in a variety of areas, including education, employment, immigration, driving privileges, subsequent adult criminal justice system contact, military service, and housing.

Essentially, juvenile court records now have the same impact as adult court records. This is an unintentional change that has not resulted from law or policy but from a series of changes in how juvenile and adult records are made available to the public.

2. Changes in public records access

a. In the mid nineties, open record laws were passed that opened up juvenile court records to the public

b. Several years ago, courts begin making their records available in what are called in Idaho the Repository which can be accessed from the internet

c. Currently background checks are standard procedure for many business, educational, military and housing entities before hiring or acceptance

d. Aggregation of internet records, including records from the Repository, by private firms now is a standard practice and are made available for background checks

3. This insidious unintentional change doesn't match the common understanding by the public that juvenile court records are confidential.

a. Many juvenile cases are opened under Idaho Administrative Rule 32. Even if the case is closed, the public can have access to the disposition of the case upon sentencing.

b. It is not unusual for juvenile offenders to be told their case may be dismissed, however, even after dismissal the record of their case remains in the repository.

c. Even if the case is sealed the Repository still reflects that a case exists. This will change with the new case management system.

4. Business, educational, military, housing entities now frequently require disclosure of juvenile cases when considering applicants.

5. The continuing policy of the State of Idaho (and most state and federal juvenile justice systems) still reflects the idea that youth are not as culpable as adult offenders, thus are to be treated differently [See *In re Sweeney*, 492 F.3d 1189, 1191 (10th Cir. 2007) (noting how "juvenile delinquency is an adjudication of status—not a criminal conviction. This interpretation is consistent with the purpose of the federal Juvenile Justice and Delinquency Prevention Act, which is to remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation.")]

NATIONAL HUMAN TRAFFICKING RESOURCE CENTER (NHTRC) ANNUAL REPORT
1/1/2014 - 12/31/2014

OVERVIEW OF INCOMING SIGNALS

The following information is based on incoming signals made to the NHTRC from January 1, 2014-December 31, 2014 about human trafficking cases and issues related to human trafficking in the United States and U.S. territories. **Signals** refer to incoming communications with the NHTRC and can take the form of **phone calls, online tip reports, or emails**. Signals regarding topics unrelated to human trafficking are not included in this report. In 2014, the NHTRC received a total of **24,062** signals nationwide.



21,431 Phone Calls



1,149 Emails



1,482 Online Tip Reports

SUBSTANTIVE CALL DATA

The following statistics are based solely on substantive calls about human trafficking and issues related to human trafficking made to the NHTRC from January 1, 2014 – December 31, 2014. Substantive calls exclude hang-ups, missed calls, wrong numbers, and calls in which the caller’s reason for calling is unknown.

CALLER TYPE	# OF CALLS	% OF CALLS
Community Member	5978	27.9%
Victim of Trafficking	2713	12.7%
Victim of Labor Exploitation	1889	8.8%
NGO Representative	1808	8.4%
Other	1522	7.1%
Victim of Other Crime	1158	5.4%
Family of Trafficking Victim	1109	5.2%
Student	601	2.8%
Law Enforcement	568	2.7%
Not Specified	476	2.2%
Friend of Trafficking Victim	444	2.1%
Contact from the NHTRC Referral Network	442	2.1%
Government Official	424	2.0%
Legal Professional	359	1.7%
Faith-Based Representative	354	1.7%
Medical Professional	339	1.6%
Trucker	230	1.1%
Educator/School Personnel	209	1.0%
Mental Health Professional	152	0.7%
Press/Media	151	0.7%
Business	150	0.7%
Buyer of Commercial Sex	115	0.5%
Acquaintance of Trafficker	114	0.5%

Visa Holder	58	0.3%
Airline/Airport Personnel	23	0.1%
Military Personnel	22	0.1%
Potential Trafficker	10	0.0%
Foreign Government Official	5	0.0%
Truck Stop Employee	5	0.0%
Asylee/Refugee	3	0.0%
TOTAL # OF SUBSTANTIVE CALLS	21431	100.00%

HOW DID CALLER FIND NHTRC (WHERE KNOWN)	# OF CALLS	% OF CALLS
Internet-Web Search	1491	21.5%
Referral	1142	16.5%
DOS Know Your Rights Pamphlet	791	11.4%
Word of Mouth	717	10.3%
Television	376	5.4%
Polaris	334	4.8%
Conference/Training/Presentation	328	4.7%
Awareness Campaign	299	4.3%
Other	273	3.9%
Poster	247	3.6%
Pamphlet/Brochure/Leaflet	209	3.0%
Newspaper-Magazine	167	2.4%
Other Media	101	1.5%
HHS Letter for T Visa Holders	93	1.3%
Radio	70	1.0%
Rescue and Restore Campaign	63	0.9%
Billboard	55	0.8%
211/311	36	0.5%
Film	33	0.5%
FBI Website	24	0.3%
Backpage.com	24	0.3%
DOJ Trafficking Hotline	19	0.3%
DHS Blue Campaign	12	0.2%
Newsletter	10	0.1%
UNICEF	6	0.1%
Craigslist.org	5	0.1%
Directory/Phonebook	2	0.0%
Ricky Martin Hotline	1	0.0%
NCMEC Cyber Tipline	1	0.0%
TOTAL # OF CALLS WHERE HOW CALLER FOUND NHTRC IS KNOWN	6929	100.00%

CALLS BY CALLER'S LOCATION (STATE)	# OF CALLS	% OF CALLS
California	3495	17.9%
Texas	1876	9.6%
Florida	1428	7.3%
New York	904	4.6%
Ohio	809	4.1%
Virginia	663	3.4%
Georgia	626	3.2%
Maryland	572	2.9%
New Jersey	566	2.9%
North Carolina	563	2.9%
Michigan	529	2.7%
Pennsylvania	527	2.7%
Washington	500	2.6%
Illinois	492	2.5%
Louisiana	417	2.1%
District of Columbia	404	2.1%
Kansas	336	1.7%
Missouri	290	1.5%
Oregon	289	1.5%
Arizona	288	1.5%
Nevada	275	1.4%
Colorado	273	1.4%
Oklahoma	271	1.4%
Tennessee	266	1.4%
Massachusetts	242	1.2%
Kentucky	236	1.2%
South Carolina	202	1.0%
Minnesota	201	1.0%
Wisconsin	189	1.0%
Indiana	186	1.0%
Alabama	169	0.9%
International Location	135	0.7%
Iowa	128	0.7%
Utah	121	0.6%
Nebraska	115	0.6%
Mississippi	111	0.6%
Arkansas	102	0.5%
Connecticut	100	0.5%
South Dakota	83	0.4%

Get Help. Report a Tip. Request Services.

TEL: 1-888-373-7888 • www.humantraffickingresourcecenter.org • nhtrc@polarisproject.org

Montana	74	0.4%
New Mexico	70	0.4%
Hawaii	56	0.3%
Idaho	56	0.3%
New Hampshire	48	0.2%
North Dakota	47	0.2%
West Virginia	39	0.2%
Maine	37	0.2%
Vermont	37	0.2%
Rhode Island	28	0.1%
Wyoming	27	0.1%
Delaware	24	0.1%
Alaska	18	0.1%
U.S. Territories	7	0.0%
TOTAL # OF CALLS WHERE CALLER'S LOCATION IS KNOWN	19547	100.0%

HUMAN TRAFFICKING CASE DATA

Each request submitted to the hotline is evaluated for evidence of potential human trafficking. In 2014, a total of 5,042 unique cases (incidents) of potential human trafficking were reported to the hotline.

PRIMARY REASON FOR CONTACTING THE NHTRC	# OF CASES	% OF CASES
Report a Potential Human Trafficking Tip	3110	61.7%
Request for Referral for Anti-Trafficking Services	1472	29.2%
Crisis Involving a Potential Victim of Human Trafficking	284	5.6%
Request for Technical Assistance and Information* on Topics Related to Human Trafficking	176	3.5%
TOTAL # OF CASES	5042	100.00%

**In some instances, an individual who is aware of a situation of potential trafficking may contact the NHTRC for general information about human trafficking or to learn more about services available to trafficking victims. In other instances, service providers or law enforcement working with a victim of trafficking may contact the NHTRC for technical assistance.*

VENUE/INDUSTRY OF POTENTIAL TRAFFICKING	# OF CASES	% OF CASES
Sex	3598	71.4%
Hotel/Motel-Based	411	8.2%
Commercial-Front Brothel	405	8.0%
Online Ad, Venue Unknown*	298	5.9%
Street-Based	202	4.0%
Residential Brothel	184	3.6%
Other Venue	161	3.2%
Escort/Delivery Service	154	3.1%
Pornography	145	2.9%
Truck Stop-Based	106	2.1%

Hostess/Strip Club-Based	50	1.0%
Bar/Club-Based	48	1.0%
Venues Referenced in Fewer than Three Cases**	3	0.0%
Venue Not Specified	1431	28.4%
Labor	818	16.2%
Domestic Work	152	3.0%
Traveling Sales Crews	100	2.0%
Agriculture/Farms	70	1.4%
Restaurant/Food Service	57	1.1%
Health & Beauty Services	55	1.1%
Begging Ring	39	0.8%
Other Industry	35	0.7%
Retail/Other Small Business	30	0.6%
Landscaping Services	26	0.5%
Illicit Activity	23	0.5%
Hospitality	20	0.4%
Peddling Ring	19	0.4%
Construction	18	0.4%
Traveling Carnivals	11	0.2%
Elder Care	11	0.2%
Forestry/Reforestation	11	0.2%
Manufacturing/Factories	10	0.2%
Housekeeping/Cleaning Service	10	0.2%
Residential Facility	6	0.1%
Aquafarming/Fishing	5	0.1%
Arts & Entertainment	5	0.1%
Bar/Club	5	0.1%
Education	4	0.1%
Hostess/Strip Club	4	0.1%
Industries Referenced in Fewer than Three Cases**	4	0.1%
Industry Not Specified	88	1.7%
Type of Trafficking Not Specified***	454	9.0%
Sex and Labor	172	3.4%
TOTAL # OF POTENTIAL TRAFFICKING CASES	5042	100.0%

*These cases typically involve reports of sex trafficking in which an individual is advertised for commercial sex online but the venue of the sex act is unknown or not specified.

**To protect the identity of the people we serve, the NHTRC does not disclose exact statistics related to venues, industries, victim information or caller information referenced fewer than three times.

***This typically occurs when a law enforcement agent or service provider contacts the NHTRC for resources and referrals but does not disclose details about the trafficking situation due to confidentiality. This category also includes cases in which the person reporting the information references human trafficking but does not provide further detail regarding the presence of labor or commercial sex. These cases are often submitted to the NHTRC through anonymous online tip reports.

VICTIM DEMOGRAPHICS (LABOR TRAFFICKING CASES)*	# OF CASES	% OF CASES
Adults	684	83.6%
Minors	143	17.5%
Females	466	57.0%
Males	416	50.9%
US Citizen/Legal Permanent Resident	127	15.5%
Foreign Nationals	557	68.1%
non-cumulative*		

*These statistics are non-cumulative. Cases may involve multiple victims and include females and males, foreign nationals and U.S. citizens, adults and minors. In some cases, demographic information is not reported. This table shows the number of cases referencing each demographic and not the number of individual victims.

**To protect the identity of the people we serve, the NHTRC does not disclose exact statistics related to venues, industries, victim information or caller information referenced fewer than three times.

VICTIM DEMOGRAPHICS (SEX TRAFFICKING CASES)*	# OF CASES	% OF CASES
Adults	2203	61.2%
Minors	1322	36.7%
Females	3250	90.3%
Males	173	4.8%
US Citizen/Legal Permanent Resident	1577	43.8%
Foreign Nationals	464	12.9%
non-cumulative*		

*These statistics are non-cumulative. Cases may involve multiple victims and include females and males, foreign nationals and U.S. citizens, adults and minors. In some cases, demographic information is not reported. This table shows the number of cases referencing each demographic and not the number of individual victims.

**To protect the identity of the people we serve, the NHTRC does not disclose exact statistics related to venues, industries, victim information or caller information referenced fewer than three times.

POTENTIAL VICTIM(S) COUNTRY OR COUNTRIES OF ORIGIN	# OF CASES	% OF CASES
U.S.A	1846	36.6%
Mexico	153	3.0%
Multiple Nationalities Referenced**	113	2.2%
Philippines	86	1.7%
China	82	1.6%
Nationalities Referenced in Fewer than Three Cases***	63	1.2%
Vietnam	28	0.6%
South Korea	26	0.5%
Guatemala	25	0.5%
India	24	0.5%
Honduras	23	0.5%
El Salvador	20	0.4%
Thailand	17	0.3%
Russia	16	0.3%

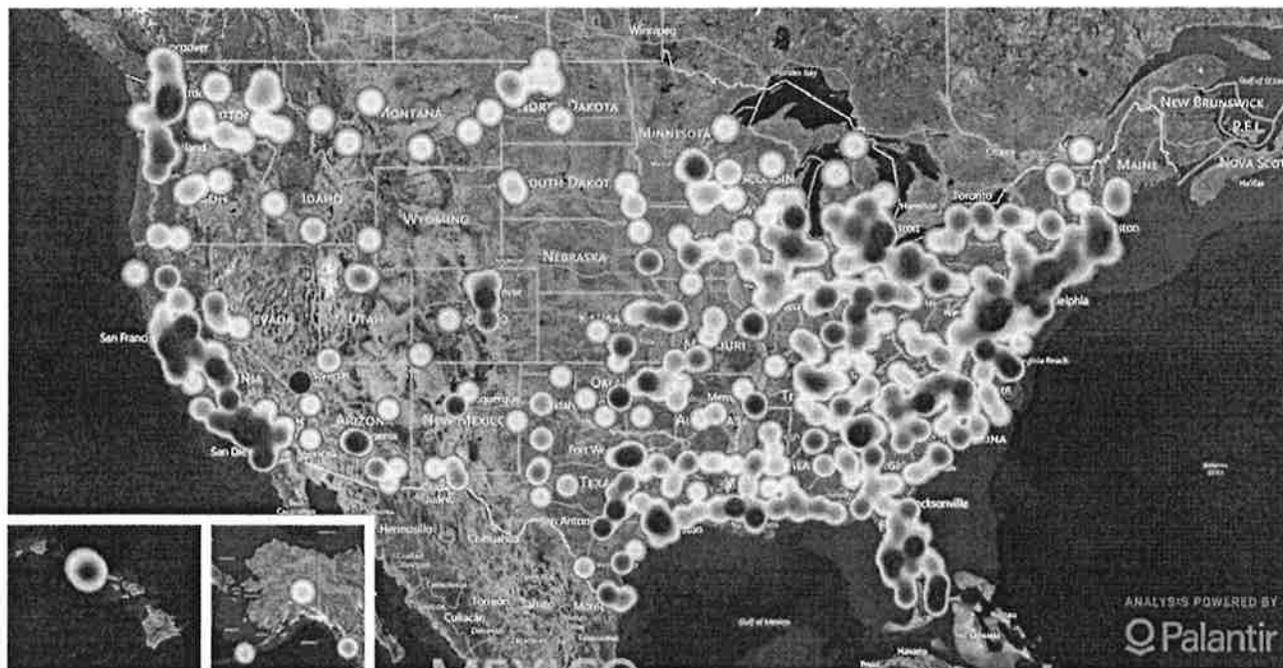
Jamaica	11	0.2%
Ethiopia	9	0.2%
South Africa	8	0.2%
Colombia	8	0.2%
Ukraine	7	0.1%
Romania	6	0.1%
Peru	6	0.1%
Dominican Republic	6	0.1%
Pakistan	6	0.1%
Japan	5	0.1%
Haiti	5	0.1%
United Kingdom	5	0.1%
Kenya	5	0.1%
Nepal	4	0.1%
Canada	4	0.1%
Indonesia	4	0.1%
Brazil	4	0.1%
Morocco	3	0.1%
Spain	3	0.1%
Bangladesh	3	0.1%
Uganda	3	0.1%
Ecuador	3	0.1%
Congo, Democratic Republic	3	0.1%
Czech Republic	3	0.1%
Nicaragua	3	0.1%
Nigeria	3	0.1%
Unknown/Not Specified*	2390	47.4%
Grand Total	5042	100.0%

* In some cases, demographic information is not reported to the NHTRC.

**Cases may involve multiple victims of multiple nationalities.

***To protect the confidentiality of the potential victims involved, the NHTRC does not disclose specific nationalities referenced in fewer than three cases.

LOCATION OF POTENTIAL TRAFFICKING CASES (WHERE KNOWN)*



**This map only reflects cases in which the location of the potential trafficking was known. Some cases may involve more than one location and are not reflected in this map.*

Important Note: *The data displayed in this report was generated based on information communicated to the National Human Trafficking Resource Center hotline via phone, email, and online tip report. The NHTRC cannot verify the accuracy of the information reported. This is not a comprehensive report on the scale or scope of human trafficking within the state. These statistics may be subject to change as new information emerges.*

Idaho Legislature
Senate Judiciary and Rules Committee
March 4, 2015

Good afternoon, Madam Chairman (Senator Lodge), Committee Members,

My name is Merikay Jost. I live in Boise. I have been involved in creating awareness of human trafficking since 2004.

I am in favor of S 1103 for many reasons.

This bill will help victims of human trafficking pick up the pieces and build their futures. Many of these victims have lost great chunks of their lives, some beginning in their early childhood. With S1103 some of the barriers this victim faces will disappear.

As it stands today prostitution is a felony in Idaho. As it stands across the country arrests are heavily one sided. The person purchased is arrested while the perpetrators get a mild slap on the wrist and walks.

In Idaho a child can be arrested for prostitution. That child will have a record under current prostitution laws.

A person with a felony will need to declare that record when applying for employment. As you can imagine felony convictions close most doors.

School loans, grants, and scholarships sources take into consideration felony charges.

Landlords will be conducting background checks of renters. Housing loans, low income housing, government subsidized housing will take into account the status of the applicant. Those with felonies could be denied entrance to homeless shelters depending on the felony type.

The person with a felony can be denied varying assistance programs, benefits such as food stamps or child assistance may become unavailable, and if the felony is drug related their problems compound.

Statistics are showing many victims of sex trafficking are using drugs to numb their experience. One method traffickers and pimps use to control their victims is generating and supporting their drug habits.

Boise is on the 'circuit', a city among a chain of cities pimps travel, selling their goods to insatiable buyers.

One begs to wonder what is taking place, under the surface in Idaho, when Men's Health magazine lists Boise #11 in their "Smuttiest Cities in America" list. 4/14/12.

S1103 will go a long way to helping the trafficked victim become a productive community member and at this point I would like to comment on some of the wording in this bill.

The bill reads, "The person may file the petition at any time." My concern is that an "any time" request may hamper an ongoing human trafficking case. The petition to have a felony expunged before or while a human trafficking trial is in session could compromise evidence that may be crucial in the trafficking prosecution. The loss of that material could jeopardize or at the very least make a difficult prosecution more difficult.

If the expungement proceeding takes place after the human trafficking case is closed, the victim will have better opportunity at obtaining restitution due them and that would contribute greatly to her ongoing and lengthy rehabilitation.

If prosecutors do not feel the point I've brought up is of concern, I gladly step down. If they do, with some minor re-wording S1103 will make an enormous difference in helping this victim re-enter society as a productive member unencumbered by a criminal record she did not create for herself.

This is a good first step in giving the human trafficking victims a hand up, maybe the first hand up she has had in a very long time.

Vice Chr – Hagedorn,

Sen.s Davis, Tippetts, Johnson, Bayer, Souza, Borgoyne,

Secretary Carol Cornwall 322-1317, sjud@senate.idaho.gov

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, March 06, 2015

SUBJECT	DESCRIPTION	PRESENTER
Vote on Gubernatorial Appointment	Darrel Bolz, State Public Defense Commission	
<u>RS23778</u>	Relating to trustees of a deed of trust as owner of property subject to a lien	Jared Larsen, Legal Intern to Senator Davis
<u>RS23767</u>	Relating to parole violations	Sandy Jones
<u>H 61</u>	Relating to authorizing probation for a juvenile offender	Michael Henderson
<u>H 64</u>	Relating to credit for time spent in custody pending trial	Michael Henderson
<u>H 62</u>	Relating to victim restitution	Judge Barry Wood, Senior District Judge

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Hagedorn

Sen Davis

Sen Tippetts

Sen Johnson

Sen Bayer

Sen Souza

Vacancy in District 17

Sen Burgoyne

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 06, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza and Burgoyne

ABSENT/ EXCUSED: Senator Davis, 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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:31 p.m.

RS 23778 **Jared Larsen**, Legal Intern to Senator Davis, gave information on **RS 23778** which amends Chapter 5 of Title 45 relating to claims of lien. It excludes a trustee of a deed of trust as an owner of the property subject to the lien.

MOTION: **Vice Chairman Hagedorn** moved to print **RS 23778**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the gubernatorial appointment of Darrel Bolz to the State Public Defense Commission to the floor with the recommendation that he be confirmed by the Senate. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

RS 23767 **Sandy Jones**, Idaho Commission of Pardons and Parole (Commission) explained this bill is an adjustment to the original language of the Justice Reinvestment Initiative (JRI). The Commission is to impose consequences for those who violate parole. As written, the language lengthens the time before the sanction can be imposed. It leaves more time in prison beyond the 90-180 days. This change will allow the Commission to delegate this duty to a hearing officer leading to a faster turn around time for parole violators.

Senator Burgoyne questioned whether the hearing officer's decision is final or if it goes before the Commission. **Ms. Jones** replied the decisions are typically final since the Commission has granted the hearing officer the authority to find the parolee guilty or not guilty of a parole violation. This legislation adds an element of specific jail time. The parolee can sign a waiver agreeing to the terms or go before the Commission. The hearing officer does not decide on the consequence, only whether the person is guilty or not guilty. The Commission makes the final decision on revocation of parole.

Chairman Lodge clarified the decision is appealable to the Commission. This bill helps shorten the long waiting times.

MOTION: **Vice Chairman Hagedorn** moved to send **RS 23767** to print. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 61

Michael Henderson, Legal Counsel with the Idaho Supreme Court, stated this bill is proposed by the Idaho Supreme Court and amends § 20-520 which is the sentencing section in the Juvenile Corrections Act. It provides a number of options a judge can employ when sentencing a juvenile. Subsection 1A states the court can place a juvenile on probation for up to three years but not beyond the 21st birthday. Subsection R allows the court to place the juvenile in the custody of the Department of Juvenile Corrections for an indeterminate time. The courts can offer a combination of these.

The amending language makes clear the courts can combine these options. It also provides that the period of probation can be up to three years but not beyond the defendant's 21st birthday. This bill adds flexibility for probation. It also provides that the court shall have a review hearing within 30 days following release to set the terms and conditions of probation.

MOTION:

Senator Souza moved that **H 61** be sent to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 64

Michael Henderson, Legal Counsel with the Idaho Supreme Court, explained **H 64** amends statutes addressing the credit a defendant would receive upon sentencing or revocation of probation for time previously served. When a court places a person on probation it can use jail time as a condition of probation. There is nothing in statute that states if a person violates probation and serves a sentence that credit is received for previous time served under probation. This bill provides that a defendant would receive credit for the time served as a condition of probation, ensuring that the defendant does not exceed the sentence imposed. The proposed amendments to Idaho Codes §§ 19-2603 and 20-2094A are intended to clarify that a defendant should receive credit for the time spent in jail after the service of the warrant if the probation is subsequently revoked and the defendant is ordered to serve the suspended sentence. This bill also corrects archaic language to bring it up to date for modern practice.

The fiscal impact would result from the shortened time spent in incarceration as a result of credit being given for time spent (see attachment 1).

Vice Chairman Hagedorn questioned the terminology of "time served" or "time spent in custody" asking if this is the same. **Mr. Henderson** answered they are equivalent terms. **Vice Chairman Hagedorn** asked if "time served" is defined in code. **Mr. Henderson** replied it is not defined, as it is a term well understood.

MOTION:

Senator Johnson moved that **H 64** be sent to the floor with a **do pass** recommendation. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

H 62

Judge Barry Wood, Senior District Judge, stated this bill amends Idaho Code §§ 10-1110 and 11-101 providing for liens resulting from restitution owed to a crime victim and to provide for execution of judgments for restitution owed to a crime victim.

Victims have a constitutional right to receive restitution. Forty-two days after the court orders restitution the victim can appeal. The life of the judgment is five years. This bill stretches out the current five years to twenty. It provides a longer time to collect the restitution. Frequently the innocent victim is not represented by a lawyer and does not understand that time is a factor in collecting on the lien.

Senator Tippets questioned the impact of current judgements for restitution and wondered if their time would be extended. **Judge Wood** replied the time would be extended. **Senator Tippets** questioned why these have a limit. **Judge Wood** said the original bill was not limited, but the House asked for limitation. The judgement can be renewed.

Senator Burgoyne stated the bill seems to come from the rationale that victims do not have representation. He asked if the court could provide a notice that sets out the process. **Judge Wood** replied the courts try not to give legal advice. The court does print brochures on procedure, and the court office puts information on the website. At the time of judgement there may be no immediate chance of recovery and the process may take a long time. There is an effort to help people collect their money.

MOTION: **Senator Burgoyne** moved to send **H 64** to the floor with at **do pass** recommendation. **Senator Tippets** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:15 p.m.

Senator Lodge
Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

SAVINGS FROM CREDIT FOR TIME SERVED AS A CONDITION OF PROBATION**IDOC Estimate**

<u>Probationers ordered to serve sentence --</u>	633
<u>Average numbers of non-credit days --</u>	15.6
<u>Cost per day to house offender --</u>	\$57.46
<u>Estimated yearly savings --</u>	\$566,299.49

HB 64 – Michael Henderson

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 09, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approve Minutes	Approve the minutes of February 18, 2015	Senator Hagedorn and Senator Burgoyne
<u>S 1067</u>	The Uniform Interstate Family Support Act	Kandee Yearsley, Child support Bureau Chief, Department of Health and Welfare
<u>H 136</u>	Relating to county jails and funding for probationers and parolees	Michael Kane, Idaho Sheriff's Association
<u>H 138</u>	Relating to county jails and removal of prisoners in case of pestilence	Michael Kane, Idaho Sheriff's Association
<u>H 139</u>	Relating to fighting duels	Michael Kane, Idaho Sheriffs Association
<u>H 157</u>	Relating to Idaho State Police contracting with private entities for public safety	Major Steve Richardson

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Bayer
Vice Chairman Hagedorn	Sen Souza
Sen Davis	Sen Burgoyne
Sen Tippetts	Sen Jordan
Sen Johnson	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 09, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza, Burgoyne and Jordan

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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:33 p.m.

WELCOME: **Chairman Lodge** welcomed Senator Jordan to the Committee as a new member.

MINUTES APPROVAL: **Vice Chairman Hagedorn** moved to approve the Minutes of February 18, 2015. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Lodge passed the gavel to Vice Chairman Hagedorn.

S 1067 **Vice Chairman Hagedorn** asked Kandee Yearsley, Child Support Bureau Chief, Department of Health and Welfare, for a summary of the discussion she had at the Committee meeting on February 25, 2015. **Ms. Yearsley** summarized **S 1067** relating to the Uniform Interstate Family Support Act (UIFSA). On September 18, 2014, Congress passed the Prevent Sex Trafficking and Strengthening Families Act which included the requirement for all states to enact the 2008 Amendments to UIFSA during their 2015 Legislative session. These amendments incorporate the provision of the 2007 Hague Convention on International Recovery of Child Support and Family Maintenance to improve the enforcement of American child support orders abroad. All fifty states must enact UIFSA in a verbatim manner for the United States (US) to participate in and obtain benefits from the Hague Convention. **Ms. Yearsley** stated she had answers for the questions the Committee had asked earlier. **Ms. Yearsley** read those questions and gave answers to the Committee (see attachment 1).

Senator Johnson questioned what funds are at risk if Idaho does not pass this bill. **Ms. Yearsley** referred to the information received from the Department of Health and Human Services regarding which funding would be affected if the bill is not passed (see attachment 2). She explained that not passing the bill would result in immediate suspension of all federal payments for the State's Child Support Enforcement Program. The State also would lose funds from Temporary Assistance for Needy Families (TANF).

MOTION: **Senator Johnson** moved that **S 1067** be sent to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Hagedorn passed the gavel back to Chairman Lodge.

- H 136** **Michael Kane**, Idaho Sheriffs Association, answered inquiries from Senator Davis about the discretionary jail time that allows probation or parole officers to put someone in jail for up to three days. **Senator Davis** questioned the State paying for the cost of probation violation as counties traditionally paid for this cost. **Mr. Kane** answered it came from the Justice Reinvestment Initiative (JRI) and was to get the probationers' attention, keep court costs down and save money on housing of probationers for a longer time while waiting for a court hearing.
- Chairman Lodge** clarified it was also to help get offenders' attention, a wake up call, so they didn't have to go to the penitentiary.
- MOTION:** **Senator Davis** moved that **H 136** be sent to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion passed by **voice vote**.
- H 138** **Michael Kane**, Idaho Sheriff's Association, explained **H 138** repeals two obsolete laws. The first is requiring permission to remove a prisoner in case of pestilence or illness. The second half of the bill asks to repeal expenses of removing a person from the jail following section guidelines, but the section has already been previously removed from law.
- MOTION:** **Vice Chairman Hagedorn** moved that **H 138** be sent to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by voice vote.
- H 139** **Michale Kane**, Idaho Sheriff's Association, stated **H 139** is to repeal an obsolete law regarding jurisdiction in duels.
- DISCUSSION:** A short discussion ensued on the history of dueling and about this being a territorial law and its significance in history.
- MOTION:** **Senator Bayer** moved that **H 139** be sent to the floor with a **do pass** recommendation. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.
- H 157** **Major Steve Richardson**, Idaho State Police (ISP), explained that **H 157** will grant express authority to the Director of ISP to contract with entities requesting special public safety services which ISP can provide with the entity paying for these services. This legislation prevents the cost of special public safety services falling upon the taxpayers (see attachment 3).
- Senator Burgoyne** questioned why it is beneficial for ISP to take on activities that are not required and for which a charge is made. **Major Richardson** said these are usually activities like the mega-loads going through Idaho that require a permit from the Idaho Transportation Department (ITD). This requires ISP involvement. Activities can involve multiple counties, and ISP has the ability to carry out the duties and responsibilities needed to ensure public safety. Activities needing ISP presence can also happen when partnership is needed with a private entity. ISP is able to lend organization and authority ensuring safety at these events.
- Vice Chairman Hagedorn** wondered if there would be other options if the entity cannot afford the contract with ISP. **Major Richardson** stated the permit system through ITD requires ISP presence on certain events. A private entity would have to work out an alternative with ITD if they cannot pay ISP for their services. **Vice Chairman Hagedorn** inquired about the mega-loads that come through Idaho. Instead of using ISP, could it be handled by a private contractor. **Major Richardson** replied private contractors are involved but ISP is involved by escorting the trucks, doing the inspections, handling the protestors and enforcing the law.

Senator Souza clarified information about the Ironman run that takes place in Northern Idaho. The cost of the ISP contract is largely paid by the Chamber of Commerce and other community groups.

Senator Tippetts asked about the fiscal note and wondered if the ISP charges for anything beyond the cost. **Major Richardson** answered no. They only seek reimbursement for resources used and actual cost. **Senator Tippetts** asked if passage of the bill would change current practices. **Major Richardson** stated it would reinforce the practice of the past and strengthen implied authority.

Senator Davis questioned the need for this bill. He stated ISP already has legal plenary authority to enforce laws and the ability to recoup costs when ISP is required or chooses to participate in an area in which they normally would not be involved. **Major Richardson** reiterated that the purpose of the bill is to ensure there is statutory authority for ISP to contract with private entities.

Vice Chairman Hagedorn asked for clarity on what is beyond usual and ordinary services. **Major Richardson** answered that the House committee asked for the specific wording. It means when concentrated resources are involved for one particular purpose for more time than is customary. It is when ISP goes beyond what is normally provided. **Vice Chairman Hagedorn** asked if this would be an issue if ISP had more resources. **Major Richardson** replied it would be less of an issue.

Senator Johnson pointed out that a company wanting to haul mega-loads across Idaho needs detailed plans and permits from ITD. He asked if ITD could bear the responsibility of having the company hire additional people. **Major Richardson** explained while private entities can do many things, they cannot carry out law enforcement. ITD wants ISP involved. ITD requires help, and the companies expect law enforcement to be with them. Local agencies, when knowing there will be issues, also want ISP involvement.

Senator Johnson commented that in these types of projects ITD has jurisdiction. He inquired if ITD requires funding from the entity and a contract is made with ITD, could ISP charge for its services.

Senator Souza commented on the cost of private entities doing business in Idaho and needing ISP's help. ISP should be able to recoup the money spent.

Vice Chairman Hagedorn spoke about the motorcycle group that until last year was large, but because of the ISP and Boise City police costs the number of riders has been greatly reduced. He stated his concern is the scope of limitation, who chooses whom to charge. **Major Richardson** answered the motorcycle ride got so large that it tied up the interstate system and created a burden involving too many resources to do it safely, and the law enforcement groups started to charge. ISP is working with Harley-Davidson on doing a one-way ride so fewer resources are tied up. Each contract is looked at case by case. Charges come depending on the time and resources needed.

Vice Chairman Hagedorn asked if anything in the language of the bill would preclude ISP from choosing who they would or would not charge. **Major Richardson** answered the key component is the necessity for public safety. If the situation does not meet the standard of helping the public, then ISP is not involved.

Senator Tippets asked how much of this contracting is going on. **Major Richardson** answered in fiscal year (FY) 2013, \$33,604, and in FY 2014, \$38,419 was received for three events each year, totaling less than five percent of the overtime annually for officers. **Senator Tippets** questioned the impact if there could not be a reimbursement of the costs for these three events. **Major Richardson** answered it would differ each year. Three years ago it was \$700,000 and it does pose a significant amount of time when officers are off of their regular routine. **Senator Tippets** asked how difficult it would be for ISP to absorb the \$35, 000-45,000 each year. **Major Richardson** said it would reduce the number of troopers on the road by that equivalent amount. **Senator Tippets** asked for clarification on why the legislation is brought now. **Major Richardson** answered it is about transferring the cost to the taxpayers from the private entities and it is being able to provide the staffing for the overtime.

Marsi Woody, Financial Executive Officer, ISP, clarified with an example of FY 2012 when the cost was \$162,1487 in overtime. That cost was reimbursed by private entities. If this were added into the budget, it would be significant and the fluctuations from year to year would be a concern.

Vice Chairman Hagedorn asked about the average annual burden cost per officer. **Ms. Woody** answered she would get that number to him.

Senator Jordan asked if, without the legal authority to recoup the costs, ISP is able to absorb the cost. **Ms. Woody** answered ISP would not be able to do so.

Senator Davis asked if the wording could be changed so it did not look like ISP is a police force for hire. **Major Richardson** answered they are open for revisions.

MOTION: **Senator Burgoyne** moved that **H 157** be sent to the 14th Order for amendment. **Senator Davis** seconded the motion.

SUBSTITUTE MOTION: **Vice Chairman Hagedorn** moved that **H 157** be held in Committee. **Senator Souza** seconded the motion.

DISCUSSION: A discussion ensued with **Vice Chairman Hagedorn**, **Senator Davis**, **Senator Johnson**, and **Ms. Woody** commenting on issues of the cost to the tax payers, limitations, authority for reimbursement on unusual activities, permits including the cost and working with ITD to correct the wording.

SUBSTITUTE MOTION VOTE: **Chairman Lodge** called for a vote on the substitute motion to hold **H 157** in Committee. The substitute motion failed by **voice vote**.

VOTE: **Chairman Lodge** called for a vote on the original motion to send **H 157** to the 14th Order for amendment. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:53 p.m.

Senator Lodge
Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

Kandee Yearsly – 3/6/2015

Senate Bill 1067 - Uniform Interstate Family Support Act (UIFSA) 2008

Attached is correspondence obtained from the United States Department of Health and Human Services which provides responses to some of the questions posed by the committee. Specifically, the requirement that UIFSA 2008 be enacted with verbatim language and the potential funding impact should this legislation not pass.

Below is a summary of responses to the committee's specific questions.

Does the wording in the legislation have to be verbatim?

- All states must enact the UIFSA 2008 legislation verbatim. (see attached)

Are we broadening the current requirements to now include foreign countries?

- No, those requirements were already extended to foreign countries in existing Idaho Code. Sections 7-1002 through 7-1057 already apply to foreign countries that have direct reciprocating agreements with either the United States or specifically with the State of Idaho.

Are we now treating foreign countries as states?

- No, the stricken language in the previous definition of state that is being removed on page 5 line 46 through page 6 line 3 included foreign countries.

Does the adoption of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance significantly change the application of UIFSA?

- Sections 1058 through 1071 which are new sections, are the only sections specifically addressing the handling of Hague Convention orders and Hague Convention countries. Other reciprocating countries are still handled on equal footing with other states through the previously existing statutory framework.

Would this bind Idaho courts to register and enforce a support order that would be manifestly unjust under Idaho law?

- Section 7-1066 subpart 2 outlines the grounds where an Idaho court could refuse to recognize or register a convention support order. One of those reasons is if enforcement of the order manifestly incompatible with public policy.

What is a quasi-judicial body?

- Relates to administrative or executive bodies that have been given authority to issue support orders under the laws of a state or foreign country. Ex.

Washington has non-judicial referees or special masters who are given the authority to issue administrative support orders.

What countries are participating in this Hague Convention?

- The Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance members include:

Albania, Austria, Belgium, Bosnia, Bulgaria, Burkina Faso, Croatia, Cyprus, Czech Republic, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

There has been no change in either the participating or signatory countries since 2007.



February 25, 2015

Kandace Yearsley
Director, Idaho Child Support Program
Department of Health and Welfare
P.O. Box 83720
Boise, Idaho 83720-0036

Dear Ms. Yearsley:

The purpose of this letter is to assist the Idaho Child Support Program in ensuring compliance with Section 301 of the Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, signed by the President on September 29, 2014. Title III, Improving International Child Support Recovery, includes provisions that make significant improvements to the child support program established under title IV-D of the Social Security Act (Act).

Section 301(f)(1) of P.L. 113-183 amends section 466(f) of the Act, requiring all states to enact any amendments to the Uniform Interstate Family Support Act "officially adopted as of September 30, 2008 by the National Conference of Commissioners of Uniform State Laws" (referred to as UIFSA 2008). UIFSA 2008 is widely supported by the child support community; because it will improve interstate case processing and ensure that more child support collections are paid to families who live in different states and countries.

Section 301(f)(3)(A) of P.L. 113-183 requires that UIFSA 2008 must be in effect in every state "no later than the effective date of laws enacted by the legislature of the State implementing such paragraph, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act." If a state has a 2-year legislative session, "each year of the session shall be deemed to be a separate regular session of the State legislature."

As stated in AT-14-11, dated October 9, 2014, in order to implement this new requirement, States will be required to submit a State plan amendment certifying to the Secretary of the Federal Department of Health and Human Services that the State has enacted UIFSA 2008 verbatim by the effective date noted in P.L. 113-183. Idaho is required to pass UIFSA 2008 in the next legislative session beginning in 2015.

A State must have an approved State IV-D plan in order to receive Federal funding under title IV-D of the Act. As stated in OCSE-AT-97-05, dated April 28, 1997, a State plan disapproval would result in immediate suspension of all Federal payments for the State's child support enforcement program. For Federal Fiscal Year (FFY) 2012, the Federal share of expenditures for the Idaho IV-D program, including incentive payments, was \$16,120,927 million.

In addition, section 402(a)(2) of the Act provides that the chief executive officer of a State must certify that the State will operate a child support program under an approved IV-D plan as a condition for

eligibility for a Temporary Assistance for Needy Families (TANF) block grant under title IV-A of the Act. Therefore, Idaho should be aware that the TANF funds might also be at risk. For FFY 2012, the TANF block grant to Idaho was \$30,412,562 million.

You also asked OCSE to provide an explanation for the requirement stated in AT-14-11 <http://www.acf.hhs.gov/programs/css/resource/pl-113-183-uifsa-2008-enactment> that all states must enact Uniform Interstate Family Support Act (UIFSA) 2008 verbatim. We have provided information on this requirement in attachment I.

We appreciate greatly your efforts and persistence in moving UIFSA 2008 forward in Idaho. We look forward to the day when all states are operating under the same version of UIFSA. There is widespread agreement that passage of uniform interstate child support laws has been extremely beneficial for improving the collection of child support in interstate cases.

Please contact me at (206) 615-3768 should you require additional clarification. OCSE is also available to provide additional assistance to Idaho for the state legislative session.

Sincerely,



Nancy J. Mathieson
Program Specialist, Region 10
Office of Child Support Enforcement

cc: Vicki Turetsky, Commissioner
Office of Child Support Enforcement

Yvette Riddick, Director
OCSE Division of Policy and Training

Levi Fisher, Regional Program Manager, Region 10
Office of Child Support Enforcement

Attachment I – Uniform Interstate Family Support Act

The 2008 amendments to the Uniform Interstate Family Support Act (UIFSA) represent a collaborative effort among the Uniform Law Commission, federal and state child support officials, and representatives of national child support organizations. The amendments standardize rules for the enforcement and modification of child support orders -- both domestic and international. Passed with bipartisan support, P.L. 113-183 requires all states to pass UIFSA 2008 verbatim in the current legislative session (42 USC 666(f)).

(f) Uniform Interstate Family Support Act

In order to satisfy section 454(20)(A), each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, including any amendments officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws. (emphasis added)

OCSE believes the clear language of the statute and intent of the Congress is for states to pass UIFSA 2008 verbatim as adopted by the National Conference of Commissioners on Uniform State Laws. Moreover, the Congressional Research Services report on P.L. 113-183 notes that the law requires all states to pass UIFSA 2008 verbatim. (Copy of report available if requested).

Please note that, as with UIFSA 1996, states may replace bracketed language with terminology appropriate under state law, for instance, “[tribunal]” may be replaced with “court.” States are not required to adopt the same numbering of the uniform statute. Also, where the statute refers to other laws or statutes by article or section number, even if not included in brackets, the state may replace these references with the appropriate article or section number of that state’s statutes. OCSE will review minor, nonsubstantive, and trivial deviations between UIFSA 2008 and state law on a case-by-case basis.

The remainder of this attachment provides historical information addressing the requirement for states to adopt UIFSA 1996 and UIFSA 2008 verbatim.

Background:

The U.S. Commission on Interstate Child Support’s Report to Congress recommended in 1992 that federal law require all states adopt UIFSA verbatim. U.S. Commission on Interstate Child Support’s Report to Congress (adopted May 21, 1992), pg. 236 (attached) “Supporting Our Children: A Blueprint for Reform” Recommendation #90 UIFSA Endorsement:

Subject to the risk of losing federal funding, states shall adopt verbatim the URESA drafting committee’s final version of UIFSA as printed in the report’s appendix, with the Act taking effect nationwide on the same date.

All 54 States and Territories with an approved title IV-D child support plan passed the Uniform Interstate Family Support Act (1996) in 1997 and 1998 (as required by federal law). As states were passing UIFSA 1996, OCSE issued this Q&A in AT-97-10.

AT-97-10 <http://www.acf.hhs.gov/programs/css/resource/miscellaneous-issues-regarding-prwora>:

UIFSA, ADOPTION OF UNIFORM STATE LAWS

Section 321:

Question 1: Section 321 of the PRWORA requires States by January 1, 1998 to adopt the version of UIFSA approved by the ABA on February 9, 1993 together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws.

Section 321 does not use the term "verbatim" but simply says we must have in effect the Act. Are minor changes acceptable?

Answer 1: To comply with section 321 of PRWORA, States must enact, by January 1, 1998, the version of UIFSA approved by ABA on February 9, 1993 together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws. Minor changes are not acceptable nor may States substitute their own wording or leave out parts of the UIFSA. However, throughout UIFSA there are parentheticals which allow States to have a choice in terminology (e.g., section 102 gives States some flexibility in identifying which entities constitute the "tribunal" authorized to deal with family support).

In the mid-late 2000s, in reviewing exemption requests from states to adopt UIFSA 2001, OCSE determined that some states had not passed UIFSA 1996 verbatim. Then, after the Uniform Law Commission developed UIFSA 2008, several states asked OCSE if states could adopt the new UIFSA 2008. In DCL-08-41 <http://www.acf.hhs.gov/programs/css/resource/uniform-interstate-family-support-act-2008>, OCSE stated that, "The Office of Child Support Enforcement has determined that States may enact UIFSA 2008 verbatim with a provision that the effective date of its enactment will be delayed until the Treaty is ratified and the United States deposits its instrument of ratification."

On September 29, 2014 President Obama signed Public Law (P.L.) 113-183, the Preventing Sex Trafficking and Strengthening Families Act. This law amended section 466(f) of the Social Security Act, requiring all states to enact any amendments to the Uniform Interstate Family Support Act "officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws".

OCSE issued guidance on UIFSA 2008 in AT-14-11 <http://www.acf.hhs.gov/programs/css/resource/pl-113-183-uifsa-2008-enactment> and noted the following: "All states must enact UIFSA 2008 verbatim by the effective date noted in P.L. 113-183. Where UIFSA 2008 has bracketed language, states may use terminology appropriate under state law." Also, in a conference call with state directors this past fall, Commissioner Turetsky and Yvette Riddick, Director, Division of Policy and Training, noted that while states need to pass UIFSA 2008 verbatim, OCSE understands that wording changes that are nonsubstantive, minor or trivial are acceptable. The Commissioner also acknowledged that numbering and section references will vary depending on the state.

Since 1996, states have been required to adopt UIFSA in order to receive federal funding for the child support program. The rationale for this requirement and the importance of "uniform" law is stated clearly in the following conference report for the Personal Responsibility and Work Opportunity Reconciliation Act.

PRWORA HOUSE REPORT NO. 104-651, pg. 1411 Mr. Kasich, from the Committee on the Budget, submitted the following R E P O R T together with MINORITY, ADDITIONAL, AND DISSENTING VIEWS Westlaw Screen #38 CHAPTER 3--STREAMLINING AND UNIFORMITY OF PROCEDURES 12. ADOPTION OF UNIFORM STATE LAWS.

Present law:

States have several options available for pursuing interstate child support cases including direct income withholding, interstate income withholding, and long-arm statutes which require the use of the court system in the State of the custodial parent. In addition, States use the Uniform Reciprocal Enforcement of Support Act (URESAs) and the Revised Uniform Reciprocal Enforcement of Support Act (RURESAs) to conduct interstate cases. Federal law imposes a Federal criminal penalty for the willful failure to pay past-due child support to a child who resides in a State other than the State of the obligor. In 1992, the National Conference of Commissioners on State Uniform Laws approved a new model State law for handling interstate child support cases. The new Uniform Interstate Family Support Act (UIFSA) is designed to deal with desertion and nonsupport by instituting uniform laws in all 50 States that limit control of a child support case to a single State. This approach ensures that only one child support order from one court or child support agency will be in effect at any given time. It also helps to eliminate jurisdictional disputes between States that are impediments to locating parents and enforcing child support orders across State lines. As of February 1996, 26 States and the District of Columbia had enacted UIFSA.

Explanation of provision:

By January 1, 1998, all States must have enacted the Uniform Interstate Family Support Act (UIFSA) and any amendments officially adopted by the National Conference of Commissioners of Uniform State Laws before January 1, 1998, and have the procedures required for its implementation in effect. States are allowed flexibility in deciding which specific interstate cases are pursued by using UIFSA and which cases are pursued using other methods of interstate enforcement. States must provide that an employer that receives an income withholding order follow the procedural rules that apply to the order under the laws of the State in which the noncustodial parent works.

Reason for change:

Mandatory passage and use of UIFSA is a cornerstone of a major purpose of the committee proposal-improved child support enforcement in interstate cases. Without uniform laws and procedures governing child support, the success of interstate cases will continue to be severely constrained. Virtually every witness that testified on interstate enforcement before the committee recommended that UIFSA be made mandatory. Effective date October 1, 1996, except where otherwise noted.

Kandace Yearsley – 3/6/2015

Uniform Interstate Family Support Act

The 2008 amendments to the Uniform Interstate Family Support Act (UIFSA) represent a collaborative effort among the Uniform Law Commission (“ULC”), federal and state child support officials, and representatives of national child support organizations. They standardize rules for the enforcement and modification of family support orders -- both domestic and international. UIFSA 2008 builds upon important 2001 amendments to UIFSA.

WHY SHOULD A STATE ENACT THE 2008 UIFSA AMENDMENTS?

- **One Controlling Order**

The cornerstone of UIFSA is that it ensures there is one order between the parties that controls the amount of current support. That critical goal only works as long as every state has the same version of UIFSA with the same limitations on modification. The 2001 and 2008 amendments to UIFSA add three bases for modification jurisdiction: (1) Parties can consent to have the issuing state modify the order, even though no party continues to reside there. This amendment will particularly benefit residents of bordering states, who may have an order from one jurisdiction but now live in another. (2) A U.S. tribunal retains jurisdiction to modify its own order -- even if no one lives in that state -- if one party resides in another U.S. state and the other party resides outside the United States. This 2008 provision means that a U.S. resident continues to have a U.S. forum to hear the modification request. (3) A U.S. tribunal can modify a foreign order from a non-Convention country if the other country cannot or will not modify its order under its laws. This provision also ensures that, if needed, there is U.S. forum for a U.S. resident.

- **Improved Evidentiary Provisions**

The 2001 amendments provide that a tribunal cannot require the physical presence of an individual nonresident party (the petitioner or the respondent). This change increases a party’s access to the court or administrative agency. The amendments require a tribunal to permit a nonresident party or witness to testify by telephone, audiovisual means, or other electronic means at a location designated by the tribunal. This change is beneficial in several ways: (1) it ensures that a nonresident can participate in a hearing without the expense of travel; (2) it will therefore likely reduce the number of default orders; and (3) it ensures that the tribunal has access to more complete and current information than can be conveyed in paper pleadings. The 2001 amendments also recognize technological advances by referring to a “record,” which includes information stored in an electronic medium.

- **Duration of Support**

The amendments make clear that if a noncustodial parent has fulfilled the support duty under the controlling order, a tribunal in another state with a longer duration cannot impose a further support obligation through an establishment proceeding.

- **Redirection of Payments**

One of UIFSA’s goals is get support payments to a relocated custodial parent as quickly

as possible while ensuring that there is an accurate accounting record. When everyone has left the state that issued the controlling order, the 2001 amendments to UIFSA allow a support enforcement agency to request a redirection of payments to the support enforcement agency in the state in which the obligee is now receiving child support services.

- **Direct Income Withholding**

The 2008 amendments change direct income withholding so that a U.S. employer is no longer required to honor an income withholding order directly sent to the employer from a foreign country. This change will benefit U.S. employers because their payroll offices will no longer have to make legal decisions about the validity of a foreign order.

- **Funding**

The 2014 federal law requires a state to enact the 2008 UIFSA amendments by the end of its 2015 legislative session as a condition for continued receipt of federal funds supporting the state child support program.

- **International Cases**

The 2014 Preventing Sex Trafficking and Strengthening Families Act serves as the federal implementing legislation for the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The 2008 amendments to UIFSA implement the Convention at the state level. The United States cannot become a party to the Convention until all states have enacted UIFSA 2008. The Convention and implementing UIFSA 2008 amendments greatly improve child support services when one parent lives outside of the United States:

- Many foreign countries will not process foreign child support requests in the absence of a treaty obligation. More countries have already ratified the Convention than have entered into bi-lateral agreements with the U.S. Simply put, more U.S. families will receive child support once the U.S. becomes a party to the Convention.
- A country can only ratify the Convention upon submission of laws and procedures indicating its ability to comply with these Convention requirements.
- Enactment of the 2008 UIFSA amendments will ensure that U.S. residents receive free legal services when they seek enforcement of a child support order through the Central Authority in any Convention country.
- The current U.S. bi-lateral arrangements do not contain the important details that the U.S. helped negotiate into the Convention, such as administrative cooperation, procedures for recognition and enforcement of orders, and timeframes for taking specific actions.
- The 2008 amendments allow a state legislature to decide how it wants to handle international cases. A state can choose between two alternatives: (1) the state must, upon request, provide services to any petitioner, regardless of where the petitioner resides; or (2) the state must, upon request, provide services to a petitioner requesting services through a Central Authority [which means a Convention country or a country with which the U.S. has a bi-lateral agreement] and may, upon request, provide services to petitioners residing in other foreign nations. UIFSA 2008 gives states flexibility that does not currently exist under UIFSA.

ISP Authority to Contract with Private Entities Presentation
Idaho State Police HB 157
2015

Madam Chair and members of the committee, thank you for the opportunity to present HB 157 to you today. My name is Steve Richardson and I am a Major with the Idaho State Police.

Issue: The Attorney General's Office has advised that ISP does not have clear authority to contract with a private company or entity for certain services provided by ISP. There are various ISP programs that have the need to contract for services provided to a private company or entity, but that also serve the public safety needs of the citizens of Idaho.

The lack of ability to "contract" does not allow ISP to recoup costs associated with services provided to assist private companies to accomplish necessary tasks such as the safe transportation of mega loads, or ensuring safety and security for large-scale events such as festivals or events taking place on public roadways or otherwise significantly impacting public safety.

The proposed language will grant express authority to the Director of ISP to contract with those entities requesting special public safety services that ISP can provide for those private entities and the entity is willing to pay for. This legislation prevents the cost of special public safety services from falling upon taxpayers. Furthermore, these services would be provided when they fall outside normal and customary services provided by the Idaho State Police.

ISP is very selective when it comes to accepting these requests and there is considerable scrutiny given. Prior to work beginning with each private company or entity, ISP requests and receives approval from the Board of Examiners before the overtime work begins. Furthermore, review and approval from ISP command staffs (district/program and HQ), ISP Legal and ISP Financial Services are required.

There are various examples of such situations that have taken place in the past, including those outlined below. During FYs13 and 14 the total OT reimbursements for these projects totaled \$33,604 and \$38,419, respectively.

Traffic Safety Projects

- INL (CH2M-WG Idaho, LLC) – SH26 Traffic Safety Project

Heavy Haul Load (Mega Load) Projects throughout Idaho – ISP contracts for these in the past have typically been tied to permits required by ITD.

- Mammoet
- Omega Morgan
- Northwest Logistics Heavy Haul
- Emmert International

Sporting and other Events

- World Triathlon Corporation – CDA Ironman

The proposed language on the bottom of page 2 and the top of page 3 will:

- **Amend Idaho Statute:** 67-2901, Idaho State Police Created – Director – Divisions—Powers and Duties ... section (5) with a new subsection (n) Enter into contractual agreements for the Idaho state police to provide services to private entities if it is deemed necessary to enforce the law or ensure public safety when those services are beyond the usual and customary services provided by the Idaho state police.

Note: The language underscored on line 19 near the middle of page 3 was added by Legislative Services as clean-up.

Fiscal Impact: There will be a positive fiscal impact in that the Idaho State Police will have clear authority to recover expenses incurred.

Thank you for your consideration of House Bill 157. I respectfully request that you send this bill to the Senate floor with a do-pass recommendation. I will stand for questions.

03-6-15

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
11:30 A.M.
Room WW54
Wednesday, March 11, 2015

SUBJECT	DESCRIPTION	PRESENTER
	The Committee will attend a tour of the Idaho State Police headquarters.	

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge
Vice Chairman Hagedorn
Sen. Davis
Sen. Tippetts
Sen. Johnson

Sen. Bayer
Sen. Souza
Sen. Burgoyne
Sen. Jordan

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 11, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza, Burgoyne, Jordan

**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.

At the invitation of the Idaho State Police, the committee toured their facilities and observed training procedures.

Senator Lodge
Chair

Carol Cornwall
Secretary

AMENDED AGENDA #4
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Friday, March 13, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approve Minutes	Approve the minutes of February 16, 2015.	Senators Johnson and Tippetts
Approve Minutes	Approve the minutes of March 2, 2015	Senators Bayer and Johnson
<u>RS23792</u>	Unanimous Request from the Senate Health & Welfare Committee to have this RS Relating to family caregivers be sent to print	Sen. Heider
<u>RS23811</u>	Unannmous Request from Senate Health and Welfare Committee to have this RS to relating to medical care costs be sent to print	Sen. Hagedorn
<u>RS23840</u>	Relating to victims of human trafficking to have records expunged	Senator Rice
<u>RS23754C1</u>	Relating to the state system for contested administrative cases	Sen. Burgoyne
<u>S 1136</u>	Relating to hearing officers having certain powers and duties when a parole violation occurs	Sandy Jones
<u>H 101</u>	Relating to criminal procedures, refusing assistance to officers, and tampering with a vehicle	Rep. Luker
<u>H 102</u>	Relating to curfews for juveniles	Rep. Luker
<u>H 121</u>	Relating to certain language usage, flooding a highway, and smoking violations	Rep. Luker
<u>H 159</u>	Relating to selling or distributing tobacco products	Rep. Luker

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Hagedorn

Sen. Davis

Sen. Tippetts

Sen. Johnson

Sen. Bayer

Sen. Souza

Sen. Burgoyne

Sen. Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 13, 2015

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza, Burgoyne and Jordan

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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.

MINUTES APPROVAL: **Senator Tippetts** moved to approve the Minutes of February 16, 2015. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Johnson** moved to approve the Minutes of March 2, 2015. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Davis** moved to print **RS 23792** and **RS 23811**. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

RS 23840 **Senator Rice** gave a brief explanation of **RS 23840** on human trafficking. Coercion as a defense has been added to the bill. The bill provides direct guidance for the victim regarding the requirements for the petition.

MOTION: **Senator Tippetts** moved to print **RS 23840**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

RS 23754C1 **Senator Burgoyne** stated **RS 23754C1** provides for an interim legislative task force to study contested cases, the process for appealing, and contracting with administrative hearing officers. The purpose is to promote and preserve impartiality and due process for the public when involved in these cases.

MOTION: **Vice Chairman Hagedorn** moved to print **RS 23754C1**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

S 1136 **Sandy Jones**, Commission of Pardons and Paroles (Commission), explained that **S 1136** is an adjustment to the original language of the Justice Reinvestment Initiative Act (JRI). The change will allow the Commission to delegate to a hearing officer certain powers and duties when a parole violation occurs.

MOTION: **Senator Johnson** moved to send **S 1136** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 101 **Representative Luker** explained **H 101** repeals two statutes the JRI feels were not needed. The first, Idaho Code § 18-707, is the power given to a sheriff for impressment of a posse and is outdated. The second, Idaho Code § 49-230, deals with tampering with vehicles but is duplicated in other sections.

MOTION: **Senator Souza** moved to send **H 101** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion.

A discussion ensued with **Vice Chairman Hagedorn**, **Senator Tippetts**, and **Senator Burgoyne** regarding the use of an active posse and the civil liability of commandeering a posse. They also discussed aspects of tampering with vehicles and repeal of the penalty. **Representative Luker** and **Ms. Holly Rebholtz-Koole**, Idaho Prosecuting Attorney Association, gave answers as needed.

The motion carried by **voice vote**.

H 102 **Representative Luker** stated that **H 102** is a change to curfew violation making it an infraction with a \$150 fine.

Senator Jordan expressed concern over striking the word "detention" and wondered if language is needed allowing a juvenile to be detained while a parent is being found. **Representative Luker** said there is no arrest authority with an infraction. You can detain without arresting with probable cause.

Senator Davis clarified the bill as dealing with the punishment side of the problem.

TESTIMONY: **Kathy Griesmyer**, ACLU, spoke in support of the bill. She said moving curfew violations from misdemeanors to infractions helps reduce the case load of public defenders.

MOTION: **Senator Souza** moved to send **H 102** to the floor with a **do pass** recommendation. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

H 121 **Representative Luker** stated the bill modifies and updates H 434. The Idaho Supreme Court identified two statutes in which a fine was not set. This bill amends those statutes and sets a fixed fine.

MOTION: **Vice Chairman Hagedorn** moved to send **H 121** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 159 **Representative Luker** said this bill deals with the use of tobacco products by minors addressing distribution and use separately. The use of tobacco products would be an infraction, and distribution and sales or use of false identification to obtain such products would be a first offense infraction with a \$200 fine. The second offense would be a misdemeanor.

Chairman Lodge questioned the \$200 fine for a first time offender, as she knows this has happened. **Representative Luker** mentioned that under the law now it is a misdemeanor carrying a \$200 fine.

Senator Burgoyne questioned if the reduction of the misdemeanor penalty was more reasonable or if it would avoid public defender issues. **Representative Luker** said it was for the reasonable penalty. **Senator Burgoyne** noted that the courts can require a tobacco awareness program now. He asked if the court is going to have this option. **Representative Luker** replied that was a question not raised before. The penalty for an infraction would simply be a ticket unless contested by the defendant. This is something that could be looked at and clarified.

Senator Davis asked if a juvenile would be guilty of distribution if caught sharing a cigarette with a friend. **Representative Luker** answered yes. It is a misdemeanor. **Senator Davis** questioned if the term "distribution" can be defined. **Representative Luker** replied that the definition of distribution was not discussed. The determination of the act of distribution is left to the discretion of the officer involved. It is something that can be reviewed.

Senator Johnson asked what the violations are of Subsection 4 and 5. **Representative Luker** explained these are exculpatory for those involved in undercover police work. It protects them from violations when doing wrong in the course of their duty.

MOTION: **Vice Chairman Hagedorn** moved to send **H 159** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 1:45 p.m.

Senator Lodge
Chair

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, March 16, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approve Minutes	Approve Minutes of February 11, 2015	Senators Burgoyne and Hagedorn
Approve Minutes	Approve Minutes of February 23, 2015	Senators Souza and Burgoyne
<u>HCR 13</u>	Relating to rules of the Idaho Peace Officer Standards and Training Council	Senator Lodge
<u>S 1135</u>	Relating to the claims of lien	Jared Larsen, Legal Intern to Senator Davis
<u>H 158</u>	Relating to bail on a bench warrant	Judge Barry Wood
<u>H 163</u>	Relating to the Idaho criminal justice system	Rep. Wills
<u>H 104</u>	Relating to reclassification of low level misdemeanors to infractions.	Rep. Luker
<u>H 160</u>	Relating to reclassification of litter and debris offenses from misdemeanors to infractions.	Rep. Luker
<u>H 195</u>	Relating to providing penalties for a fireworks violation	Rep. Luker

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Hagedorn

Sen Davis

Sen Tippetts

Sen Johnson

Sen Bayer

Sen Souza

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 16, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza, Burgoyne and Jordan

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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:31 p.m.

H 163 **Representative Wills** stated the purpose of **H 163** is to revise effective training dates for provisions found in Sections 4, 15 and 17 of 1357 (2014) from March 1, 2015 to October 1, 2015, and to declare an emergency for this retroactive application.

MOTION: **Senator Souza** moved that **H 163** be sent to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 158 **Judge Barry Wood**, Idaho Supreme Court Senior District Judge, said **H 158** seeks to amend Idaho Code §§19-29-03 and 19-29-15 to alleviate a problem in the Bail Act of 2009. He explained when there is a bench warrant for failure to appear, there is a bond amount set on the face of the warrant. The defendant can bail back out before appearing before the judge. The bill allows courts discretion to either set no bail on a bench warrant, set bail but require that the defendant appear in court, or delay setting the bond and other conditions until the defendant appears in court.

Senator Jordan questioned what would constitute failure to appear. **Judge Wood** replied that depends upon the circumstances. There is a second statute providing that the order of forfeiture can be revised if the defendant appears and explains why the court date was missed.

Senator Burgoyne queried if the bill was constitutional. **Judge Wood** explained that everyone has a right to bail. This bill addresses the timing of when a defendant is allowed to post the bail and relates to failure to appear in court.

Senator Tippetts disclosed he has a conflict of interest pursuant to Senate Rule 39(H), but intends to vote.

MOTION: **Senator Johnson** moved that **H 158** be sent to the floor with a **do pass** recommendation. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

S 1135 **Jared Larsen** explained that **S 1135** will amend Chapter 5 of Title 45 regarding the mechanics of liens. Liens of realty involve deeds of trust and involve the trustee who holds legal title. When a creditor is placing a lien on the property for services rendered, the owner of the property subject to the lien must be listed. Omitting the trustee does not comply with the statute. This bill makes it so the creditor cannot include the trustee but can still attach the lien to the property.

Senator Davis stated the Land Title Association wanted the proposed language in this bill. He advised the Committee to send the bill to the 14th Order and add that language.

MOTION: **Senator Tippets** moved that **S 1135** be sent to the 14th Order for amendment. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 104 **Representative Luker** explained **H 104** reclassifies littering on private or public lands from a low level misdemeanor to an infraction. The infraction penalty fee would be \$150 for a first time offense, \$300 for conviction for a second offense within two years, and \$1000 and jail time of up to 30 days for the third offense within three years.

Senator Bayer asked for case examples of penalties now and what the change would do. **Representative Luker** responded that under **H 104** all of the cases would be infractions regardless of wherever the litter is. A void was left relating to hazardous litter, but **H 160** would make it a misdemeanor. Right now everything is a misdemeanor, and **H 160** as a trailer bill would cover intent on hazardous litter. **Senator Bayer** asked for clarification on why some are moving to infractions and some are not. **Representative Luker** stated that while they were all infractions originally, infractions on highways and infractions on public/private property were treated differently; infractions on highways were treated as a lesser charge. This bill increases the fine and jail time for highway litter when it creates a hazard.

Senator Tippets questioned if placing debris on a highway, whether creating a hazard or not, would carry the same fine. **Representative Luker** replied yes.

Senator Johnson asked for clarification on whether "intent" on the third offense carries jail time. **Representative Luker** answered yes, it would be a misdemeanor with jail time at the discretion of the judge. **Senator Johnson** noted line 24 states a fine not exceeding \$1000 and time in the county jail and asked if this is correct wording. **Representative Luker** stated discretion of the judge is permitted. **Senator Johnson** asked why jail time is mandated. **Representative Luker** mentioned there is no problem taking out that part. This was drafted before trailer bill **H 160**.

Senator Davis clarified this is typical language. This bill provides for a fine not to exceed \$1000 and jail time not to exceed 30 days.

MOTION: **Vice Chairman Hagedorn** moved that **H 104** be sent to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 160 **Representative Luker** stated **H 160** is a trailer bill identifying the definition of willful conduct that creates a hazard on highways and other roads.

Senator Tippets questioned how the language relating to the fine "and" imprisonment as opposed to the fine "or" imprisonment was determined. **Representative Luker** answered that customary language was used..

MOTION: **Vice Chairman Hagedorn** moved that **H 160** be sent to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

H 195 **Representative Luker** stated **H 195** is a reclassification of certain firework violations from low level misdemeanors to infractions. It is to better align punishment with crimes committed and costs related to public defense.

A discussion ensued with **Senator Davis**, **Senator Johnson** and **Senator Tippets** asking questions regarding illegal fireworks brought in from other states, life threatening usage, serious personal property issues, altering fireworks and whether the selling of any fireworks, whether legal or illegal, constitutes an infraction.

Representative Luker suggested the bill be held until he could do some research.

Chairman Lodge said the bill would be held in Committee until Wednesday, March 18, 2015.

HCR 13

Vice Chairman Hagedorn reviewed the background of **HCR 13** regarding the appropriate use of the GED and the GED requirement for homeschoolers. The Committee had asked ISP to change the rule and clarify the need for transcripts for homeschoolers. **HCR 13** represents the changes made.

Victor McCraw, Division Administrator, Peace Officer Standards and Training (POST), stated the intention of POST is to be as inclusive as possible for those qualified to apply, but there must be a minimum level of education to ensure applicants' success at the academy. Homeschoolers do not have standard and consistent requirements for graduation. The reason POST would like the GED requirement stricken from the rules is so POST can move forward. POST would still face homeschoolers' certificates from other states standards, and POST wants to be fair to all.

MOTION:

Vice Chairman Hagedorn moved that **HCR 13** be sent to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL:

Senator Burgoyne moved to approve the Minutes of February 11, 2015. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL:

Senator Souza moved to approve the Minutes of February 23, 2015. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

WELCOME:

Chairman Lodge introduced and welcomed Utah's Senate Pro Tempore Curt Bramble to the Committee meeting.

ADJOURNED:

With no further business, **Chairman Lodge** adjourned the meeting at 2:22 p.m.

Senator Lodge
Chair

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

AMENDED AGENDA #4
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 18, 2015

SUBJECT	DESCRIPTION	PRESENTER
Approve Minutes	Approve Minutes of February 25, 2015.	Senators Bayer and Tippetts
PRESENTATION	Update on Idaho Department of Correction	Kevin Kempf, Director
<u>RS23755C1</u>	Relating to judges qualifications	Sen. Burgoyne and Judge Wood
<u>S 1154</u>	Relating to human trafficking	Sen. Rice
<u>H 195</u>	Relating to providing penalties for a fireworks violation	Rep. Luker

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Bayer
Vice Chairman Hagedorn	Sen Souza
Sen Davis	Sen Burgoyne
Sen Tippetts	Sen Jordan
Sen Johnson	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 18, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza, Burgoyne and Jordan

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: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:32 p.m.

MINUTES APPROVAL **Senator Tippetts** moved to approve the Minutes of February 25, 2015. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Kevin Kempf**, Director Idaho Department of Correction (IDOC), complimented the Committee on their hard work and presented a PowerPoint update on IDOC. The assessment goals were set to look at the people, the protocol, and the structure to see where improvements could be made. IDOC focused on three questions: Are we positioned for success? Are we mission focused? Are we ready?

Mr. Kempf expounded on the confusion in the reporting structure and the opportunity to be more efficient. There has been a shift in resources so reporting happens in the area to which it relates. There has been a reclassification of 15 positions to better meet the needs of IDOC. For efficiency IDOC put some services under an evaluation and compliance area. They will be able to shut down an additional building by implementing these changes which will save \$38,000 year. Total savings resulting from these changes will be \$240,000 a year.

Mr. Kempf stated there is still a need to reduce officers' paperwork to allow them more time with probationers. The consideration of Pathways, through the Council of State Government (CSG), will assess where needs are still prevalent and changes will be made.

Vice Chairman Hagedorn complimented the presentation and questioned if they had considered a dashboard with access to measure goals. **Mr. Kempf** answered he would be happy to do that.

Senator Tippetts asked if there has been a survey on employee morale lately or if there are plans in the near future to do so. **Mr. Kempf** stated no, not recently but the Human Resource Department is looking into this and such a survey is in the formative stages. **Senator Tippetts** encouraged Mr. Kempf to do it soon as it is good to compare where IDOC is now and then in a year.

Chairman Lodge asked Mr. Kempf to explain Pathways. **Mr. Kempf** stated when an offender comes into the system they are assessed and classified and a route is determined for successful parole. This is called Pathways. Some of the Pathways are confusing and are in need of improvement.

Mr. Kempf introduced Josh Tewalt, Budget and Policy Administrator; Henry Antencio, Deputy Director; and Debbie Field.

Chairman Lodge thanked Senator Davis for his help in getting CSG up and going, which helped IDOC with the new Pathways to help offenders have a more successful life when leaving the prison system.

Senator Jordan asked what steps are being made to keep employees longer. **Mr. Kempf** answered the Governor's office, along with JFAC, has approved a retention plan that will be a significant help in retaining employees.

RS 23755C1

Senator Burgoyne explained **RS 23755C1** relates to judicial qualifications that are inconsistent and leave out ethical and other important qualifications. This bill makes qualification changes to fill in gaps, create consistency, and credit military legal work towards legal experience requirements. **Senator Burgoyne** clarified that "active in the practice of law" and "good standing" mean that one's license to practice law is unrestricted and the law license is not limited because of ethical violations.

MOTION:

Vice Chairman Hagedorn moved to print **RS 23755C1**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 195

Representative Luker returned to answer previous questions. He stated if the fireworks are altered to create a bomb the provisions would apply. As to injury of property or person there are other statutes that apply. The definition of fireworks is found in Idaho Code § 39-2609.

Senator Tippetts asked if the selling of illegal fireworks would be an infraction or a misdemeanor. **Representative Luker** answered it would be an infraction. **Senator Tippetts** suggested examining the issue of selling illegal fireworks.

Senator Tippetts moved to send **H 195** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

S 1154

Senator Rice explained the changes that were made to the bill after he met with a prosecuting attorney and detective. This bill now covers arrests and a number of other items. **Senator Rice** thanked Senator Davis for his notes on the earlier hearing. The bill would now cover any offenses in which victims were coerced to participate. There are now instructions in place for victims to petition to clear their records. Required will be name; case number; date and place of arrest; statement identifying the human trafficker; approximate date, place and manner in which the victims were enslaved; and the victims' age at the time. Victims also will need to state how they became involved in the activities leading to the crime.

Courts would then decide if the crime happened during the time of being trafficked and if they were coerced. The victims' records can then be expunged and court case information will be put in a sealed file. The information will be kept on a special index, not accessible to the public. All agencies outside of the court will erase the record. This information will not be used against a victim of human trafficking for any purpose. It will be available to use to prosecute and investigate human traffickers. **Senator Rice** emphasized that traffickers target anyone, and the State of Idaho should do what they can to help these victims.

Senator Tippetts asked if the judge documents the evidence status for a victim of human trafficking. **Senator Rice** answered the statements are under oath and the documentation is substantive. **Senator Tippetts** inquired why it is mandatory that a petitioner be required to raise a defense in a criminal case. **Senator Rice** answered that there is a principle of law stating you raise all the defense you have. The victim's fear sometimes prevents the use of this defense. **Senator Rice** also advised that there needs to be more education of police officers and prosecutors assisting them to do a better job of taking care of the victims.

Senator Davis questioned whether Idaho is trying to create a cross state boundary relief. **Senator Rice** replied Idaho cannot do it for other states' charges nor for federal charges. This only applies in arrests by an Idaho agency.

Senator Davis wondered if there was a constitutional problem by compelling a person to do something in defense of their case. **Senator Rice** answered he doesn't think it is a constitutional problem, but it can be taken out if the Committee feels it needs to be removed. **Senator Davis** questioned the prosecuting attorney versus prosecutor on page seven. **Senator Rice** stated it might cause confusion as the prosecuting attorney is a county prosecutor, and there may be city prosecutions as well. The bill can be sent to the 14th Order to amend the definitions.

Senator Burgoyne commended Senator Rice on the bill but questioned Subsection 5 in the wording of "raise the defense." What if the petitioner can not raise it. **Senator Rice** discussed language changes for the 14th Order.

TESTIMONY:

Representative McDonald, former U.S. Marshall, stated his support of this legislation as it has a direct relationship to human trafficking. He described the amount of human trafficking occurring and the crimes that go with it. He stated Idaho needs better law enforcement resources to help detect this crime as the State is not exempt from this problem.

Kelly Miller, Executive Director of Idaho Coalition Against Domestic Violence (Coalition), stated the Coalition supports this bill. This gives them an opportunity to expunge a record allowing victims to obtain gainful employment.

MOTION:

Vice Chairman Hagedorn moved to send **S 1154** to the 14th Order for amendment. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

Vice chairman Hagedorn asked if a misdemeanor record will be changed to an infraction with these new laws. **Senator Davis** said they would not be retroactive. It would be from July 1, 2015 forward.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 2:54 p.m.

Senator Lodge
Chair

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary

AMENDED AGENDA #3
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Monday, March 23, 2015

SUBJECT	DESCRIPTION	PRESENTER
<u>RS23896</u>	Unanimous Consent for Referral to Senate Judiciary and Rules for printing.	Senator Schmidt
<u>S 1170</u>	Relating to judges' qualifications	Senator Burgoyne
<u>H 92 As Amended</u>	Relating to the Uniform Voidable Transactions Act	Mike Brassey
GUBERNATORIAL APPOINTMENT	Hearing for Colonel Ralph Powell, appointed Director of the Idaho State Police for a term commencing March 18, 2015, and expiring on January 7, 2019.	Colonel Ralph Powell
APPROVE MINUTES	Approve minutes of February 9, 2015.	Senators Souza and Burgoyne
APPROVE MINUTES	Approve minutes of February 20, 2015.	Senators Johnson and Hagedorn
INTERN FAREWELL	Farewell to Sy Nebeker	Chairman Lodge
PAGE FAREWELL	Farewell to Page Savannah Martin	Chairman Lodge

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Bayer
Vice Chairman Hagedorn	Sen Souza
Sen Davis	Sen Burgoyne
Sen Tippets	Sen Jordan
Sen Johnson	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 23, 2015

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza, Burgoyne, and Jordan

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: **Chairman Lodge** called the meeting to order at 1:30 p.m.

RS 23896 **Senator Schmidt** presented **RS 23896** to be available as an alternative if the preferred bill does not pass in the House.

MOTION: **Senator Hagedorn** moved to send **RS 23896** to print. **Senator Jordan** seconded the motion.

Senate Tippetts asked if there was a unanimous consent request from the Health and Welfare Committee. He also inquired if the bill would go back to the Health and Welfare Committee for a full hearing. **Senator Schmidt** replied that Senator Tippetts was correct and that the unanimous consent was buckslipped Friday.

The motion passed by **voice vote**.

S 1170 **Senator Burgoyne** advised that **S 1170** fills gaps in judicial qualification requirements and creates consistent qualifications crediting military legal work and service as a judge toward experience. Qualifications set forth in this bill require all judicial officials, whether elected or appointed, to be 30 years old, a United States citizen, a legal resident of Idaho for 2 years, in good standing as an active member of the Idaho Bar for 2 years. In addition, magistrate appointees must have 5 years experience and other judicial appointees must have 10 years experience practicing law or holding judicial office. All judges must be registered to vote. **Senator Burgoyne** also enumerated oversights the bill corrects. Under current law, magistrate appointees do not have to be United States citizens or Idaho residents. Justices of the Idaho Supreme Court and the Idaho Court of Appeals do not have to be registered voters. Judicial officers are not required to have a clean ethical record, and judicial and military legal service are not recognized as experience.

MOTION: **Senator Jordan** moved that **S 1170** be sent to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion passed by **voice vote**.

H 92 AA **Senator Davis** announced that he would be presenting this bill in place of Mike Brassey. The bill updates the Uniform Fraudulent Transfer Act and amends the name to the Uniform Voidable Transactions Act. In this bill terms are clarified and rules are established governing the allocation of the burden of proof with respect to claims.

MOTION: **Senator Burgoyne** moved to send **H 92aa** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion passed by **voice vote**.

GUBERNATORIAL APPOINTMENT **Colonel Ralph Powell**, appointed Director of the Idaho State Police (ISP) for a term commencing March 18, 2015, and expiring on January 7, 2019, provided a summary of his background. He stated that he has enjoyed his work with ISP from starting as a State Trooper to his current position as Director. He recounted the progress ISP has made over the past few years. He also identified the goals ISP has set and the progress made toward achieving those goals. He feels morale is high and integrity is held as the standard.

Vice Chairman Hagedorn asked Colonel Powell what he anticipated as the greatest challenges in the next five and ten years, as well as possible resolutions for those challenges.

Colonel Powell responded that in the next year the mandatory fitness program needs to be in effect. There is an ongoing challenge of competing with other law enforcement agencies for employees. Salary is a critical area in retaining good employees. Increasing the level of rapport within ISP and establishing additional full time employee positions will help with employee retention. **Colonel Powell** emphasized that improving collaborative efforts with agencies and task forces, as well as the FBI, will help overcome some of the challenges.

Senator Tippetts thanked Colonel Powell for his service to Idaho. He then referred to a comment from a media source stating that Colonel Powell was at the center of the dispute with Corrections Corporation of America (CCA) over understaffing and overbilling when that organization was running the largest prison in Idaho. **Senator Tippetts** then asked the Colonel to explain his involvement in that situation.

Colonel Powell replied that he was at the center of the situation and the one making the final decision, but the real question should address how he was involved. The Idaho Department of Correction (IDOC) came to the ISP requesting an independent investigation regarding discrepancies in records submitted by CCA. Three problems were identified presenting the question of whether or not to conduct a criminal investigation. That decision was ultimately Colonel Powell's.

The controversy surrounding his decision concerned whether or not Colonel Powell made the decision with no counsel or if other stakeholders provided input. **Colonel Powell** emphasized that all stakeholders were involved in making the decision. Included were the director of IDOC, the prosecuting attorney's office, Ada County Sheriff's Office investigations team, and deputy attorney generals from IDOC and ISP, and two ISP majors who are experts in investigations. The issues identified during the investigation related to the fulfillment of the contractual agreement between IDOC and CCA. The attorneys advised that this was a case of breach of contract which is a civil matter rather than a criminal matter.

Colonel Powell then addressed the issue of fraud and why there had not been a criminal investigation. The investigative experts and the attorneys pointed out that the first action should be to conduct a civil investigation regarding the breach of contract while analyzing the process to determine if there was criminal activity. **Colonel Powell** advised that he agreed and followed this counsel. During the civil investigation he made it clear that if a criminal act became apparent, the ISP would begin a criminal investigation.

Senator Burgoyne inquired to what degree statutory shortcomings made law enforcement's job more difficult.

Colonel Powell conceded that he is not well versed on contractual and civil issues. ISP started with IDOC being the source of an abundant amount of information. ISP had complete access upon request.

Chairman Lodge thanked Colonel Powell for hosting the Committee at ISP's headquarters.

**MINUTES
APPROVAL**

Senator Souza moved to approve the Minutes of February 9, 2015. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL**

Senator Johnson moved to approve the Minutes of February 20, 2015. **Vice Chairman Hagedorn** seconded the motion. The motion passed by **voice vote**.

**CLOSING
REMARKS**

Chairman Lodge recognized Assistant Secretary Barbara Lewis, Intern Sy Nebeker and Page Savannah Martin and thanked them for their assistance to the Committee during the session.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 2:22 p.m.

Senator Lodge
Chairman

Carol Cornwall
Secretary