AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Monday, January 16, 2017

SUBJECT	DESCRIPTION	PRESENTER
	Introduction of Page, Jack Wolthius	Senator Lodge
	General Organizational Committee Business	

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Monday, January 16, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, and Nye
ABSENT/ EXCUSED:	Vice Chairman Lee, Senator Burgoyne
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) meeting to order at 1:30 p.m.

INTRODUCTIONS: **Chairman Lodge** introduced Committee Page Jack Wolthius who gave an overview of his school accomplishments, interests, and future plans, including attendance at an Ivy League university, Georgetown, or BYU..

Chairman Lodge also introduced Senator Hagedorn, returning to the Committee, and Sentators Agenbroad, Foreman, and Nye who are new to the Committee.

GENERAL BUSINESS DISCUSSION: **Chairman Lodge** explained that the Journal is read everyday and a vote is taken to approve the Journal. Senators Foreman and Nye accepted the assignment to read the Journal. The procedure for reading and accepting the Committee Minutes were explained by **Chairman Lodge**.

The Committee was commended by **Chairman Lodge** for the respectful and collegiate manner in which the members have conducted business in the past. She encouraged Committee members to continue to show courtesy to each other, as well as to those who testify and those who are in the audience.

Chairman Lodge explained that the Committee will be receiving Gubernatorial appointments and noted that the appointment packets will be sent to each Committee member in advance of the meeting. She requested that everyone read the resumé and come prepared with a question for the appointee. She emphasized that this hearing is simply to get to know them.

Chairman Lodge serves on several boards and commissions. She inquired if any Committee members would be interested in substituting for her in case she would need to miss one of those meetings.

Chairman Lodge listed the areas of concern that are under the purview of the Committee, naming the Judiciary, the Department of Corrections, Juvenile Corrections, and the Idaho State Police. She encouraged the members to visit the Idaho Department of Corrections including prisons and detention facilities. She also suggested they visit some Parole Commission meetings, accompany a probation officer, and ride along with an Idaho State Police trooper.

Chairman Lodge indicated that the Justice Reinvestment Initiative (JRI) will be discussed by the Committee. She noted that some things have been working, but some things have not been working well. She reported that the JRI Oversight Committee is hoping to add twenty-four more parole officers to improve the success rate for reentry into the normal population. She shared with the Committee members a handout relating to the Rat Park study on addiction.

Senator Hagedorn requested an update on JRI. **Chairman Lodge** explained that there will be a presentation Monday, January 23, regarding the Idaho Commission of Pardons and Parole and JRI, as well as a presentation by the Idaho State Public Defense Commission. An update on JRI will be given at that time.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 1:44 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Wednesday, January 18, 2017

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Juvenile Justice in Idaho	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
Presentation	Idaho Criminal Justice Commission	Sharon Harrigfeld, Chair, Idaho Criminal Justice Commission
RS24818	Regarding open meeting law.	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
RS24819	Regarding notification of the release of a juvenile.	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
RS24860	Regarding uniformity when charging juveniles for possession of marijuana.	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections

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 Lee
Sen Davis
Sen Hagedorn
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Carol Cornwall
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Sen Anthon

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, January 18, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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) meeting to order at 1:32 p.m.

PRESENTATION: **Juvenile Justice in Idaho. Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC), expressed appreciation for Committee support over the years. **Director Harrigfeld** shared the mission of the IDJC: "Developing productive citizens in partnership with communities through juvenile crime prevention, education, rehabilitation and reintegration."

Director Harrigford noted that the IDJC operates with a bifurcated system requiring the state, counties, judiciary, and community stakeholders to cooperate. This system has been effective as shown by the decline in juvenile arrests, bookings, and commitments to state custody.

Director Harrigfeld explained that as juveniles move through the justice process there are a number of steps taking them from incorrigible or illegal behavior to incarceration or release. In addressing the issues of the juveniles, proven interventions are used. Each young person can be diverted from the system at any point.

Director Harrigfeld indicated that continual focus is placed on community incentive programs as most communities want to keep the juveniles local rather than having them committed to state facilities. Evidence– based programs they have used support this approach, producing a 93 percent successful completion rate for the 457 juveniles served. She reported that the cost of the community based program was $655,000 or $1,500 per youth (see attachment 1, page 2).

For those juveniles who are committed to a facility, efforts are made to ensure accountability from the juvenile and to reduce recidivism. **Director Harrigford** stated that evidence-based risk and needs assessments are used to ensure that the juveniles are put in the right placement for the right amount of time. Programs used include positive peer culture (St. Anthony program), dialectical behavioral therapy (Nampa facility), and social learning (Lewiston facility.) **Director Harrigfeld** advised that the residence of the juvenile is also considered in order to provide as much family engagement as possible, as research has shown that family engagement increases a young person's likelihood of success. To help provide this engagement, the IDJC is considering technology that will allow video conferencing between the juvenile and his/her family when a young person is placed in a facility distant from home.

Director Harrigfeld related that when young people are taken out of their home and put in placement, they lose some adolescent development. They may lose a sense of responsibility, temperance, the ability to look to the future, and to have hope. The IDJC provides the juveniles with skills through community service projects and through training to give them ways to give back to the community. In the past year, the young people in the three facilities performed 32,193 hours of community service by working at the food bank, building fences, and helping with the American Dog Derby.

Director Harrigfeld emphasized the need for an education program for the juveniles in placement facilities. She pointed out that 44 percent of the juveniles coming into the facilities are special education students. Of all juveniles in the facilities 42 percent earned a GED, 24 percent earned high school diplomas, 42 percent earned workforce certificates, and 17 percent earned college credits (see attachment 1, page 5). They also showed significant increases in academic scores. A major goal of the IDJC is to ensure that when young people leave the facility, they have enough skills to have a livable wage. Work certificates students can earn are OSHA, food handlers, first aid, CPR, salon prep, and flagger. The IDJC has its own school district and is a part of a consortium made up of 21 entities nationwide. Idaho consistently ranks 1st or 2nd in this consortium.

As **Director Harrigfeld** discussed the Substance Use Disorder System and thanked the legislators for the change in funding made previously which has provided treatment at the local level. She shared the fund usage for the Substance Use Disorder System (see attachment 1). At this time it costs around $2,600 for a young person to get substance abuse treatment. If the young person is committed to IDJC, the cost is $102,000.

Director Harrigfeld identified the staff as the most important resource of the IDJC. Work is ongoing to find ways to recruit and retain staff, and to meet the needs of the staff. She advised that one goal is to have the turnover rate of the IDJC lower than the State turnover rate. **Director Harrigford** announced that the IDJC accomplished that goal this quarter. An employment engagement survey showed that employees' understanding of the mission, morale, understanding of the values, and communication have improved over the past year. A "stay" survey was also instituted, providing information disclosing the positive and negative feelings of employees toward their jobs. Staff development opportunities have also been added. **Director Harrigfeld** reported that the IDJC invested salary savings for the safety and security officers and for the rehabilitation technicians, improving attraction to positions, and improving retention. She cited several other initiatives to support employees (see attachment 1, page 7). These efforts will help to have the right people to meet the challenge of working with adolescents who are in IDJC and their special needs..

Senator Burgoyne asked for clarification regarding the difference in costs as related to substance abuse treatment, whether done at the community level or through one of the state level institutions. **Director Harrigfeld** replied that a young person committed to the state in substance abuse treatment is there for 15 to 19 months. In the community the treatment is out-patient treatment. If they are in residential treatment it is approximately three months. **Senator Burgoyne** inquired if the juveniles are "with the state", does that mean they have been sentenced or committed to the custody of the IDJC. **Director Harrigford** affirmed Senator Burgoyne's understanding. **Senator Burgoyne** asked if the difference in price was for the cost of the substance abuse treatment, or for the total cost of incarceration versus the cost of treatment in a stay-at-home situation. **Director Harrigfeld** affirmed that it was the total cost of commitment to the state.

Senator Hagedorn asked if the IDJC is tracking the rate of recidivism for residential treatment and for treatment within a facility. He stated that he understood the rate to be 30 percent for facility placement, but asked what the rate is for residential treatments. **Director Harrigfeld** explained that they did not have that information at this time, but they are in the process of collecting it and will provide the Committee with that information when it is available.

Senator Lee thanked Director Harrigfeld for her work. She requested information regarding the number of juveniles who come from foster care or leave the IDJC program moving into foster care. **Senator Lee** acknowledged that there are difficulties getting that information. She inquired if there is a possibility of asking additional questions on an in-take form regarding the connections existing between foster care issues and juvenile correction. **Director Harrigfeld** responded that the IDJC is part of a multi-systems interagency committee that is considering this concern. She indicated that examining six cases involving cross-over juveniles who were involved with mental health, child protection, and IDJC resulted in beginning the process of developing a method to share data.

Chairman Lodge requested information regarding the number of juveniles who leave the facility and go into college classes or directly into dorm life. **Director Harrigfeld** replied that she will submit that information to the Committee. **Chairman Lodge** inquired if there are any statistics regarding juveniles who have been in the Idaho system and then enter the Idaho Department of Correction. **Harrigford** advised that those statistics have not been determined. She indicated that she would work with Director Henry Atencio to ascertain that information and submit it to the Committee.

Chairman Lodge emphasized that Director Harrigfeld's door is always open, and that she will provide answers to Committee members' questions. She encouraged the Committee members to become more familiar with IDJC and their efforts to end juveniles' involvement in crime so they can reach their full potential. She identified several positive changes Director Harrigfeld has implemented improving potential success for these young people. **Director Harrigfeld** reiterated that her door is always open, as well as the doors of all of the IDJC facilities.

PRESENTATION: **Idaho Criminal Justice Commission.** **Chairman Lodge** welcomed Sharon Harrigfeld, and thanked Sarah Thomas for helping Sharon to transition into the chairmanship of the Idaho Criminal Justice Commission (Commission). **Chairman Lodge** mentioned that she, along with Senator Burgoyne and two Representatives, serve on the Commission.

Sharon Harrigfeld, Chair of the Commission, expressed appreciation to former Chairman Sarah Thomas for her mentorship. **Ms. Harrigfeld** reported that the Commission was established in 2005. She introduced Sarah Thomas from the Idaho Courts; Eric Frederickson, State Appellate Public Defender; Director Henry Atencio, Department of Correction; and Director Sandy Jones, Pardons and Parole. She indicated that if there are any questions, these people will help answer them.

Ms. Harrigfeld explained that the Commission begins each meeting with discussing the vision, mission, and values of the Commission (see attachment 2). She quoted Judge Owen, "It's the commitment of the members to improve the system by sharing different perspectives." She assured the Committee that 23 people representing 3 branches of government will provide a number of different perspectives. **Ms. Harrigfeld** referenced Executive Order 2015-10 as it expresses the need to ensure the best interest of the citizens of the State by promoting efficiency and effectiveness of the criminal justice system, and to encourage dialogue among the branches of government. She recognized Senator Nye who was on the Commission at the time as discussing the value of the relationships among the members of the group, and pointed out that Director Richard Armstrong, Department of Health and Welfare, stressed the importance of sitting down and developing constructive and meaningful outcomes. She emphasized that the Commission promotes efficiency and effectiveness throughout the continuum of care in criminal justice.

Ms. Harrigfeld shared an outline of the representatives from each of the three branches of government as well as other stakeholders (see attachment 2). She remarked that the Commission has been informed regarding the progress of the Public Defense Commission, the settlement agreement with the Jeff D. lawsuit, and an update on the Sex Offender Management Board. The Commission also receives information concerning policies from other states. These resources assist the Commission in developing best-practice policies which include rigorous research.

Sarah Thomas, Administrative Director of the Idaho Courts, gave an overview of the three-year strategic plan of the Commission. She explained that the plan recognizes that combating crime and protecting citizens from criminal acts are of vital concern to the government. **Ms. Thomas** related that for every issue there is a goal. She identified three issues: 1) combating crime and protecting citizens; 2) providing policy makers and criminal justice decision makers with accurate information; and 3) promoting efficiency and effectiveness of the criminal justice system. She also identified the goals and objectives for each issue (see attachment 2). **Ms. Thomas** discussed information available on the Commission's website and recommended that those interested visit that site. **Ms. Thomas** identified the subcommittees associated with the Commission (see attachment 2).

Eric Fredericksen, State Appellate Public Defender, discussed the work of the subcommittees. He explained that the members of the subcommittees are selected by the Chair of the Commission. Membership is made up of practitioners who have the background and knowledge to address the issues of their respective committees. **Mr. Fredericksen** described the work of the Criminal Law Review Subcommittee as being a review of the sex offenses throughout the State of Idaho. This committee identifies what needs to be changed or added to those offenses. He referred to the Mental Health Subcommittee stating that it addresses issues related to mental health and their connections with the criminal justice system. **Mr. Fredericksen** asserted that the value of the Commission is evident, encompassing the legislative recommendations and the commitment of those who participate. Those who serve on the Commission, while focusing on their own entities, work with their colleagues for the ultimate goal of a safer Idaho.

Senator Lodge related that Mr. Fredericksen has also worked on other committees regarding the children of incarcerated parents and gang strategies.

Senator Burgoyne commented that serving on the Commission has been an eye-opening experience. He stated that the Commission is made up of very busy people who are comfortable with making decisions on the basis of evidence and facts. He extended his appreciation for this approach. **Senator Burgoyne** also expressed appreciation for the procedure of opening each meeting with a statement of vision and mission, establishing these as the focus of the work of the Commission. He observed that there is a uniformity about methodology–how to approach, analyze, deal with, and work on problems. Procedural things do not get in the way. **Senator Burgoyne** indicated that there is a lot to learn from the Commission for use in other areas of government.

Senator Nye asserted that the Commission is an exceptional committee. He pointed out that there are decision leaders from Health and Welfare, Public Defense, the Prosecutors Association, and Judicial Association. There are great speakers, eg. presenters from the Federal Bureau of Investigation. He stated that serving on this Commission has been a pleasure.

Chairman Lodge affirmed that presentations brought to the Commission are some of the best and most informative that she has ever listened to. She thanked the presenters for their work.

RS 24818 **Regarding Open Meeting Law. Sharon Harrigfeld**, Director, Department of Juvenile Corrections (Department), stated that this amendment will provide for correct citation of the Idaho Code for open meetings law and will change the "open meeting law" from singular to plural.

MOTION: **Senator Davis** moved to send **RS 24818** to print. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

RS 24819 **Regarding notification of the release of a juvenile.Sharon Harrigfeld**, Director, Department of Juvenile Corrections (Department), advised that this amendment is necessary to ensure listed parties are notified when the Department is considering the release of a juvenile, and again on the day of the juvenile's actual release. She added that this change in language will reflect a common practice that is already in place. She noted that notification given when the Department is considering the release, while helpful, is not as informative as notification at the actual time of release.

MOTION: **Senator Burgoyne** moved to send **RS 24819** to print. **Senator Lee** seconded the motion.

Senator Davis explained concern with the language of the change. A discussion ensued with **Senator Lee** suggesting including "and also at the time" of the juvenile's actual release. **Director Harrigfeld** agreed with that suggestion. **Senator Burgoyne** inquired if Director Harrigfeld would prefer the Committee vote on the legislation as is, of if she would like to have it back to change the wording. **Director Harrigfeld** replied that the Department's intent is to have the legislation match the practice. **Senator Nye** called for the question.

The Motion passed by **voice vote**.

RS 24860 **Regarding uniformity when charging juveniles for possession of marijuana. Sharon Harrigfeld**, Director, Department of Juvenile Corrections, explained that this amendment is necessary to allow uniformity when charging juveniles for possession of marijuana, and will remove any confusion about what court has jurisdiction over juvenile possessors of marijuana. Two statutes, Idaho Code §§ 20-505 and 18-1502C conflict. This legislation eliminates unnecessary court appearances and transfers of cases, and is in keeping with the legislative intent of the Juvenile Corrections Act.

MOTION: **Senator Davis** moved to send **RS 24860** to print. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

Senator Hagedorn requested that research in code be done to assure there is no conflict.

Chairman Lodge thanked the presenters. She reminded the Committee that the Idaho Criminal Justice Commission meets the last Friday of the month in the ICRIMP building at the top of VISTA. Everyone is invited to attend the meeting.

Chairman Lodge pointed out that a silent roll call was taken.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:29 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

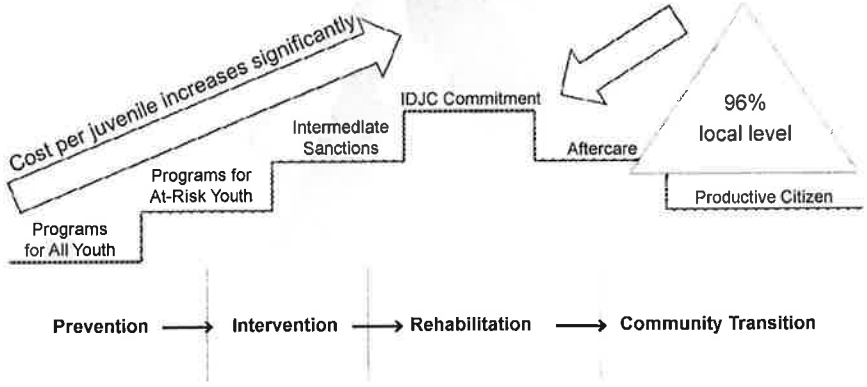
Idaho Department of Juvenile Corrections

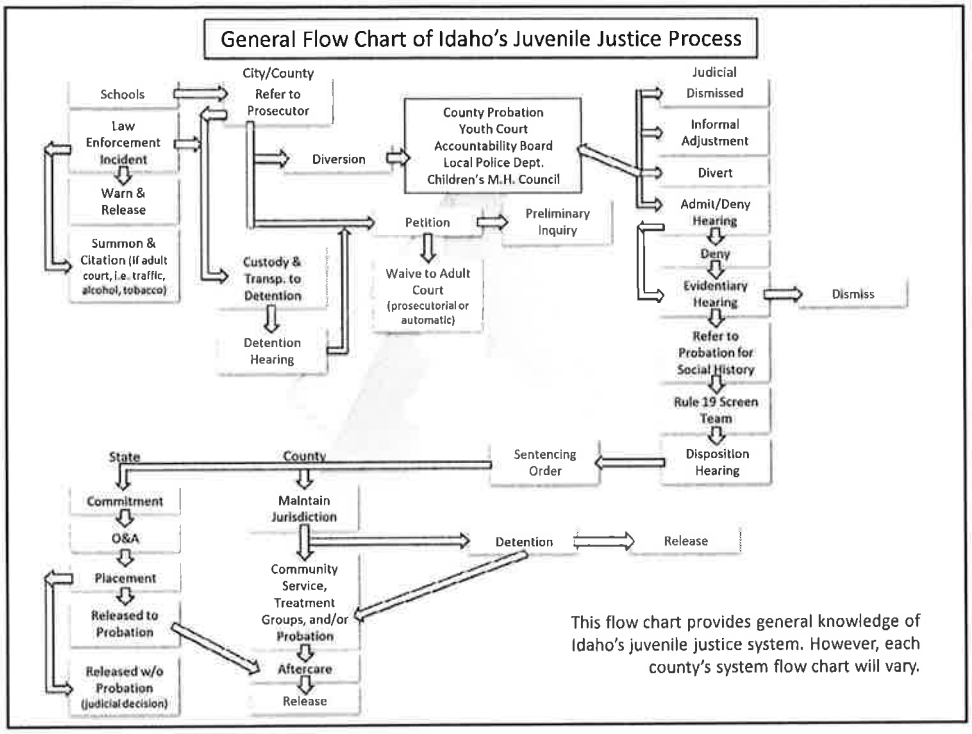
Senate Judiciary and Rules Committee

Sharon Harrigfeld, Director
January 18, 2017

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

Develop a well-structured system that addresses the needs of juvenile offenders, their families, and the safety of community





Diversion

DIVERTING IDAHO'S YOUTH FROM THE COURTS

- Training on diversion best practices - statewide
  - Models for Change
    - ✓ Juvenile Diversion Guidebook
    - ✓ Risk Assessment in Juvenile Justice
- Legislation in 2016
  - Idaho Code 20-511
    - ✓ Informally adjust a petition and dismiss upon successful completion of conditions

Community Incentive Programs

Supporting families and communities as they address juvenile delinquency strengthens local values while ensuring the use of best practice approaches.

- Critical elements of Justice Reintegration Principles used in IDJC Community Incentive Programs include:
  - Collaboration between practitioners and families
  - Evidence-based approaches
  - Making and protecting investments in youth

State Fiscal Year 2016

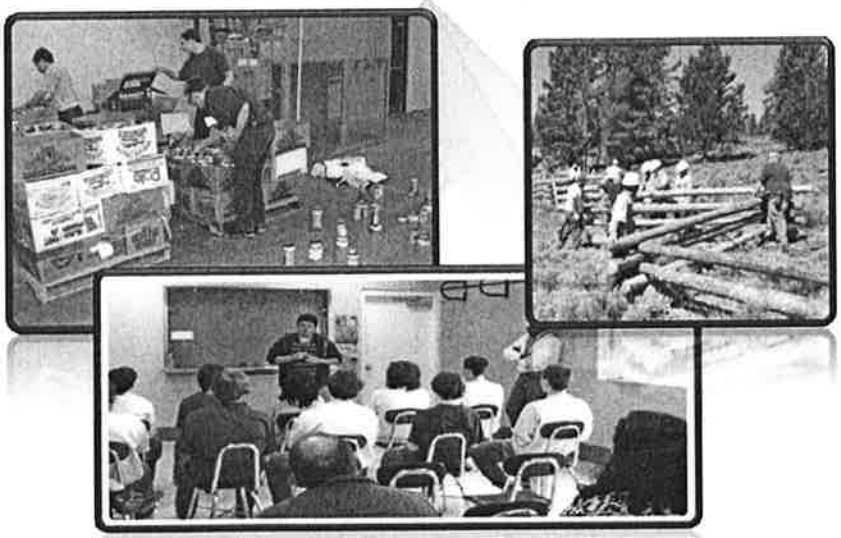
- 457 Juveniles Served
- $655,000 spent ($1,500 per youth)
- 93% successfully completed programming

Ensure juvenile accountability through effective use of evidence-based practices

- Evidence-Based Risk and Need Assessments
- Positive Peer Culture (PPC)
- Dialectical Behavioral Therapy (DBT)
- Social Learning Model

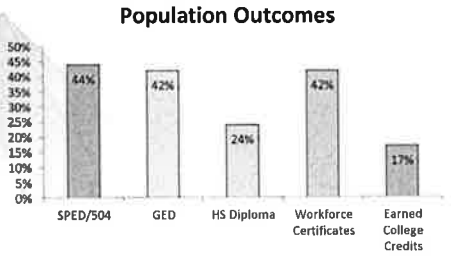
Family Engagement

Ensure community protection through skills improvement of juveniles returning to the community



Positive Youth Outcomes

- 888 credits earned in the first 6 months of this school year
- 66% of eligible students received a High School Diploma or a GED
- Academic Increase
  - 72% in reading scores
  - 82% in math scores



Substance Use Disorder System

- In partnership with Idaho counties and Idaho Tribes, the IDJC dedicates appropriated funds to serve justice-involved youth with substance use disorders at the local level.
- This model is intended to provide timely screening, professional level assessment, treatment, and recovery support services for juveniles with substance use disorders that do not require commitment to the IDJC.

Substance Use Disorder System

State Fiscal Year 2016

- Total appropriation $4,042,500
- 1247 juveniles served
- $3,579,410 spent

State Fiscal Year 2017

≈December 2016

- Total appropriation $3,154,900
- 514 juveniles served
- $1,291,674 spent

- $2,650 per juvenile in community
- $102,000 per in-custody juvenile

JJ SUD Treatment	Expenditures SFY 2016	Juveniles Served SFY 2016
Assessment	$ 124,372.13	563
Outpatient	$ 423,845.25	465
Intensive Outpatient	$ 233,355.48	152
Residential	$ 2,142,774.90	158

*Note: Some juveniles received services in more than one level of care throughout their treatment

Strengthen and support all resources within IDJC

Goal: Strengthen and support all resources within IDJC.

Objective: Increase leadership and professional capabilities of IDJC.

Performance Measure:
Maintain staff turnover at or below the average for state agencies.

Outcomes:
FY17 YTD Turnover is 13% below state turnover
(same time one year ago IDJC was 17% above state turnover)

IDJC	= 7.04
State	= 8.10

Employee Engagement:

Mission	5% Improvement
Morale	8% Improvement
Values	9% Improvement
Communication	7% Improvement

(Oct 2016 compared to Oct 2015)

WHAT GETS MEASURED GETS MANAGED

Initiatives:

- Implemented IMPACT job fit assessment
  - Improve quality of hiring for direct care staff positions
  - 1 out of 4 applicants screened not suited for this type of work
- Invested ongoing salary savings to raise Safety & Security and Rehab Tech pay levels
  - Improved attraction and retention
- Annual employee engagement survey
  - Provides tangible information to help us address employee perceptions related to the agency's mission, employee morale, values, and communication
- Implemented a "Stay Survey" conducted at four months of employment
  - Helps us improve our employee on-boarding process to help new employees be successful
- Invested in staff development
  - Certified Public Manager – six staff currently attending
  - Added Crucial Conversations training to Supervisory Skills training
    (over 95% of supervisors have completed the training)

Motivation is the force that initiates, guides, and maintains goal-oriented behaviors

IDAHO CRIMINAL JUSTICE COMMISSION

LEGISLATIVE UPDATE 2017

VISION

- Collaborating For a Safer Idaho

MISSION

- The Idaho Criminal Justice Commission is committed to collaboration to address important criminal justice issues and challenges by developing and proposing **balanced solutions**, which are **cost effective** and based on "best" practices to **achieve a safer Idaho**.

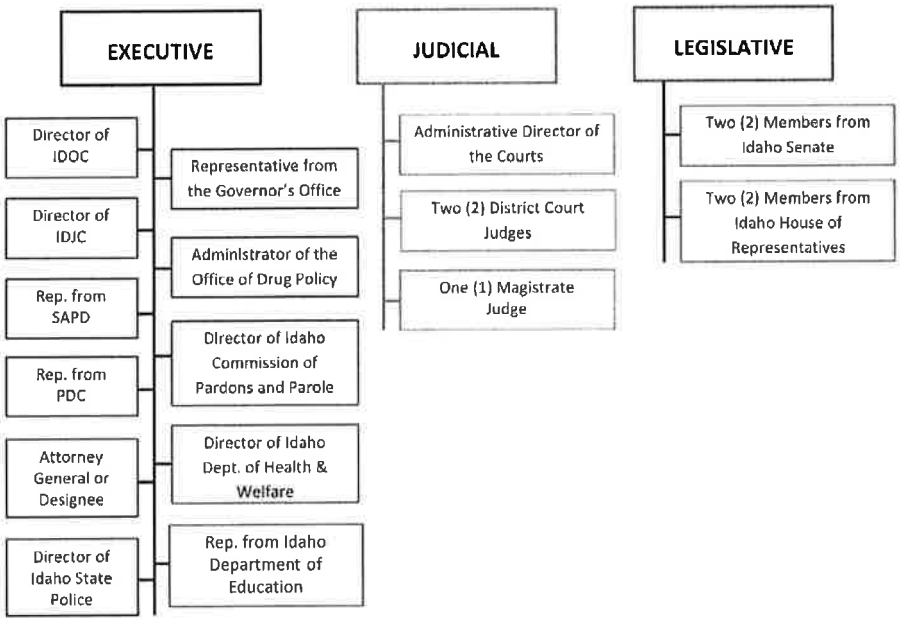
VALUES

- We are **committed** to learning and enhancing our understanding.
- We **communicate** honestly.
- We **encourage** open dialogue and feedback.
- We are **flexible** and innovative.
- We **keep** our commitments.
- We **respect** all contributions.
- We are **sensitive** to the unique perception and needs of others.

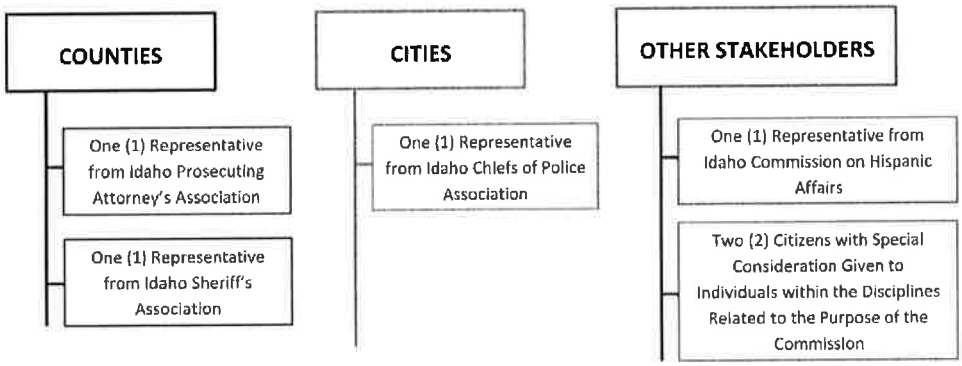
Executive Order 2015—10

C.L. "BUTCH" OTTER
GOVERNOR

WHEREAS, it is in the best interest of the citizens of the State of Idaho that government promote efficiency and effectiveness of the criminal justice system and, where possible, encourage dialogue among the respective branches of government to achieve this effectiveness and efficiency...



WHEREAS, communication and cooperation among the various facets of the community of criminal justice professionals is of utmost importance in promoting efficiency and effectiveness…



IDAHO CRIMINAL JUSTICE COMMISSION STRATEGIC PLAN FOR THE STATE OF IDAHO

COMBATING CRIME AND PROTECTING CITIZENS

GOAL - Reduce victimization and recidivism in the state of Idaho

Objective 1: Establish evidence-based and best practices relating to accountability, prevention, education and recidivism reduction

Objective 2: Strengthen knowledge base in Idaho by enhancing data collection abilities and sharing capabilities

PROVIDING POLICY MAKERS AND CRIMINAL JUSTICE DECISION MAKERS WITH ACCURATE INFORMATION

GOAL - Advance delivery of justice through effective interventions by proposing balanced solutions, which are cost effective and based on best practices

- Objective 1 - Determine reasonable expectation of community needs and services based on resources
- Objective 2 - Promote standards and equity
- Objective 3 - Reduce criminogenic risk factors through the expanded use of risk assessments, policies and programming
- Objective 4 - Ongoing assessment of problem-solving courts and other community-based sentencing alternatives
- Objective 5 - Examine emerging issues

PROMOTING EFFICIENCY AND EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM

GOAL - Promote well-informed policy decisions

- Objective 1 - Identify strategies to promote efficiencies and effectiveness in the criminal justice system
- Objective 2 - Continue presentations and training on trends, best practices and priority issues
- Objective 3 - Create and implement data sharing mechanisms and agreements among stakeholder agencies
- Objective 4 - Maintain awareness of substance abuse trends and priority issues

SUBCOMMITTEE WORK

PRE-TRIAL JUSTICE
RECIDIVISM DEFINITION
MENTAL HEALTH
RESEARCH ALLIANCE
DATA SHARING
CRIMINAL FEES AND FINES
GRANT REVIEW COUNCIL
CRIMINAL LAW REVIEW

Idaho Criminal Justice Commission

Collaborating For A Safer Idaho

http://icjc.idaho.gov/

AMENDED AGENDA #1

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Monday, January 23, 2017

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Approve Minutes of January 16, 2017	Senators Hagedorn and Nye
Presentation	Idaho Commission of Pardons and Parole and Justice Reinvestment	Sandy Jones, Director
RS24989C1	Relating to Funeral Processions to revise penalties for certain violations.	Michael Henderson, Counsel of the Supreme Court
RS24990	Relating to the Child Protective Act to revise a definition and to make technical corrections.	Michael Henderson, Counsel of the Supreme Court
RS24991	Relating to Administrative Judges.	Michael Henderson, Counsel of the Supreme Court
RS24992	Relating to Criminal procedure to revise a provision regarding who may apply for relief.	Michael Henderson, Counsel of the Supreme Court
Presentation	Idaho State Public Defense Commission	Kimberly J. Simmons, Executive Director

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 23, 2017

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye

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 of the Senate Judiciary and Rules Committee (Committee) to order at 1:32 p.m.

APPROVAL OF MINUTES: **Senator Nye** moved to approve the minutes of January 16, 2017. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Idaho Commission of Pardons and Parole and Justice Reinvestment (JRI).** **Sandy Jones**, Executive Director, Idaho Commission of Pardons and Parole (Commission) expressed appreciation for the opportunity to speak to the Committee about the Commission. She began by explaining the structure of the Commission (attachment 1, page 1) relating that there are five part-time commissioners, appointed by the Governor, who make the parole decisions. Representing different areas of the State, the commissioners meet solely to make parole decisions. These commissioners do not work in the Commission offices. **Director Jones** noted that in addition to the commissioners who make the parole decisions, there are 33 people who make up the Commission staff including the Executive Director, a deputy director, an operations manager, hearing officers, and administrative staff who all support the work of the Commission.

Director Jones described the Commission workload during the sessions. Parole hearing sessions are approximately two weeks long and occur once a month (attachment 1, page 2). During the sessions the commissioners hear cases either face to face or by performing administrative and file reviews. **Director Jones** detailed the procedures involved in determining eligibility for parole. She pointed out that there is no right to parole in Idaho. The granting of parole depends on the decision of the Commission and is based on risk factors. The details of the procedures followed by the Commission, and the factors used in determining the outcome of the parole request, were provided by **Director Jones** (attachment 1, pages 2-4). She detailed factors that the commissioners are required to study:

1. Criminal history
2. Nature of the crime
3. Risk assessments
4. Institutional behavior
5. Institutional programming
6. Victim/prosecutor input, if available

She advised the Committee of the procedures followed in the case of the granting or the denying of parole (attachment 1, page 4).

Director Jones pointed out that the commissioners are also responsible for addressing parole revocations. The commissioners receive the violation report from the offender's parole officer. The Commission staff reviews the report to determine if the parolee is eligible for intermediate sanctions required in some situations under JRI. If parolees do not meet the requirement for an intermediate sanction, they are scheduled for a revocation hearing. **Director Jones** explained that the hearing officer's role is to determine if the parolee is or is not guilty of any violations. If the parolee is guilty, the hearing officer can administratively impose sanctions, or the hearing officer can schedule a hearing before the Commission for revocation of parole. If no violation has been committed, the parolee can be restored back to the community under the original parole conditions. She indicated that the commissioners can deny or revoke parole and then schedule a hearing later. In serious situations the parole can be revoked and the offender must serve his/her full term (attachment 1, page 5).

Senator Anthon referred to legislation last year which addressed technical violations of parole in cases of violent crimes or crimes of a sexual nature. He inquired if there has been an increase in the number of those parolees coming back for full review hearings. **Director Jones** replied that the Commission does not have a lot of data. There have been more offenders coming back for revocation, and this situation has created a workload issue for the Commission but it has produced increased safety for citizens. She indicated that prior to the legislative change, repeat offenders of violent or sexual crimes often were released back into society. Now there has to be a review of the nature of the violation and the risk involved in continuing the parole. Since this legislation has been in place, no violators of those two types of crime have released. **Senator Anthon** asked if anyone is keeping a record of these revocations. **Director Jones** responded that there is no record at this time, but she will compile data for the Committee if desired.

Senator Hagedorn asked if two weeks out of the month is enough time. **Director Jones** responded that it is not enough time. She asserted that more time is being added. Alternatives to managing the workload include trying to keep the time frame short for a person to come before the Commission and working on motions to address the issue. **Senator Hagedorn** inquired regarding her perception of the roadblocks to keeping up with the workload. **Director Jones** specified the volume of work as the greatest contributor to the workload. Because the time the commissioners work is nearing full time, she emphasized that the State needs to decide if they want to have full-time commissioners. That same workload spreads across all of the staff both in preparing for the parole hearings and in the follow-up work following the hearing. **Director Jones** declared that the Commission has had the same structure for a long time, but the workload, the flow of people through the system, the nature of the hearings, and the nature of the prison population all have changed. She observed that JRI and the focus on best practices have produced a positive result. The lower risk people who were sitting in prison have been released, but that leaves a lot of people who are not low-risk. Those who are in jail now require more time and difficult decisions.

Senator Burgoyne asked how commissioners are compensated. He requested her views on having part-time or full-time commissioners and what considerations would apply to making a decision. **Director Jones** advised that the commissioners' pay is based on day of service. They are paid only for the days they sit for hearings, but not for the preparation for those hearings. Preparation for the hearings and reviewing the intensive reports may take up to a week and is done on their own time. They receive $200 per day by statute from the Commission's personnel budget. They are also paid for travel, hotel, and meals. **Director Jones** asserted that the personnel budget is stretched when additional hearing days have to be added and commissioners are brought in from around the state requiring the payment of their expenses away from home. One of the considerations is whether or not the State wants a full-time commission which would be more efficient but would add more cost. Adding more commissioners is another possibility being considered. **Senator Burgoyne** asked if consideration has been given to having hearing officers do the preliminary work, gather records, and then make a recommendation to the commissioners. **Director Jones** indicated that they do that now for regular parole hearings and decisions are made administratively. Revocation hearings involve concerns about due process.

Director Jones discussed parole release trends indicating an increase in paroles. She explained that this increase was due to a change in the criteria for parole. The therapeutic community program was accelerated and ultimately eliminated because it was not working well, so low risk inmates were released on parole, including all of those in the therapeutic community program. The statistics now show the number of releases to be more consistent with the norm. She referred to the graph showing the number of people committing new violations per month which reveals a significant upward trend since 2014. She pointed out that this increase results in an increase in administrative paperwork, parole officer work, and commissioners' efforts (attachment 1, page 6).

Referring to the graph on drug and property offenders, **Director Jones** reviewed the rates for granting paroles, denying paroles, and extending parolees to their full sentence term. The graph shows that 49 percent of drug and property offenders were paroled in 2016 as opposed to 35 percent of sex and violent crime offenders. She advised that drug and property offenders are more likely to recidivate.

Senator Burgoyne referred to the graph showing the increase in the number of violations in 2016 and asked if there is an increase in the number of people violating or if it is an increase in rate. **Director Jones** replied that the graph shows raw numbers, i.e. the actual number of people who are violating. She reported that discussions with the Department of Correction (IDOC) indicated that the rate of violations was reasonably flat, but starting to rise. **Director Jones** explained this disparity may be related to the use of sanctions whereby a parole officer will write three sanctions before the parole is revoked.

Senator Burgoyne inquired if there is a problem with some inmates being released who shouldn't be. **Director Jones** answered that, although she couldn't answer with certainty or science, she could share her theory. She has observed some issues regarding JRI and the 90 and 180 day sanctions. The sanctions seem like a good idea. They give us tools allowing the Commission to hold violators with issues that can be contained and give them sanctions as opposed to revoking parole and keeping them longer. However, there was no consideration of crime types so violators recidivate until they reach the maximum number of sanctions. **Director Jones** asserted that another problem has resulted from a rise in the number of people with higher scores for the risk to recidivate. Consequently, the decision for whom to parole is more difficult. If the Commission does not parole enough inmates, the prison will quickly become overcrowded. **Senator Burgoyne** expressed appreciation for the Director's professional insights on this difficult situation.

Senator Hagedorn inquired if, in relation to sanctions, attention has been paid to preparing a shared matrix for IDOC and the Commission in order to identify inconsistencies in reporting new offenders and repeating offenders. **Director Jones** replied although the Commission is not working with the same matrix as IDOC, they are coordinating their information. She explained that some of the statistics presented are from IDOC, and she indicated that IDOC could analyze their numbers to align with those of the Commission. She related that she reviews daily the number of people who are serving sanctions, and the numbers are going up for both sanctions and revocations. **Director Jones** advised that she would meet with IDOC with the intent of coordinating their information.

Senator Hagedorn asked if providing the commissioners with data for each individual regarding recidivism and type of violation would help the commissioners to decide the appropriate disposition of the case. **Director Jones** responded that the matrix and data from DOC is provided to the commissioners as well as any other information relevant to the commissioners' work. She specified that there needs to be a better way to analyze recidivism. She assured the Committee that the Commission and IDOC will be working together to solve this problem.

Chairman Lodge asked if the Commission's technology needs have improved in order to analyze data in a more effective manner. She also inquired what the cost is to hold a parole hearing. **Chairman Lodge** mentioned that the cost to hold a person in county jail is $45.00 per day and they receive no programming. She indicated that the cost of incarceration could be used for programming for parolees. **Director Jones** stated that the cost of the hearing is known, but the cost to complete the revocation process is not known as each case is different. In regard to the county jail issue, **Director Jones** pointed out that even if there were no sanctions for parolees and they went directly to revocation, they still have to be housed somewhere. If the State facilities are full, they will be housed in the county jails.

Senator Burgoyne asked if the budget has grown to support the addition of more parole officers, or if the case load increased. **Director Jones** stated that parole officers are under the purview of the IDOC. She then referred to Chairman Lodge's previous question regarding technology. She reported that the JRI changes provided funds for the Commission to hire a business analyst to help with technology. This analyst helped to develop a system using the technology that the Commission already had in a more effective way. With so many changes put into place at the time JRI was instituted, and additional changes which have been made since, it is difficult to have an accurate measurement.

Senator Foreman disclosed that with a background in law enforcement he had some concerns with JRI. He asked if JRI is putting pressure on the Commission to get people out of the prisons. **Director Jones** assured Senator Foreman that the commissioners do not feel pressure. They consider the merits and level of risk of each case individually. The commissioners' main focus is the risk to the community, not meeting a target percentage for granting paroles.

Chairman Lodge expressed appreciation for the Director's input as there is work underway for changes and updates to JRI.

RS 24989C1 **Relating to Funeral Processions to revise penalties for certain violations.** **Michael Henderson**, Counsel of the Idaho Supreme Court, explained that the Supreme Court has a constitutional responsibility to identify defects and omissions in the law. **RS 24989C1** addresses Title 49, chapter 27, which has provisions for how funeral processions are to be conducted. Idaho Code § 49-2701(4) requires pedestrians and operators of vehicles yield the right-of-way to funeral processions, and Idaho Code § 49-2704 forbids drivers from other acts that would interfere with a procession. Idaho Code § 49-2706, sets the penalty as a misdemeanor and punishable only by a fine. **Mr. Henderson** indicated that if this is the penalty, the violation should be an infraction unless it was knowing and intentional. This amendment would correct that error. The infraction would carry a fine of $33.50 and a total penalty with court costs of $90.00. The misdemeanor would be punishable by up to six months in jail and a fine of up to $1,000.

Senator Anthon asked for the intent of the infraction. **Mr. Henderson** replied that with an infraction you are required to operate a vehicle correctly. So it would be a moving traffic violation.

MOTION: **Senator Anthon** moved to print **RS 24989C1**. **Senator Hagadorn** seconded the motion. The motion carried by **voice vote**.

RS 24990 **Relating to the Child Protective Act to revise a definition and to make technical corrections.** **Michael Henderson**, Counsel of the Idaho Supreme Court, indicated that this is a defect bill to correct two errors regarding a protective order. He remarked that last year S 1328aa was enacted making several changes to the Child Protective Act. It contained two technical errors in the definition of "protective order" in Idaho Code § 16-1602(34). Regarding the first error, in referring to protective orders issued prior to an adjudicatory hearing, the code reference should have been Idaho Code § 16-1615(8). The second error was the failure to mention protective orders issued following an adjudicatory hearing as provided in Idaho Code § 16-1619(10). This bill would correct these errors in the definition of "protective order."

MOTION: **Senator Hagadorn** moved to print **RS 24990**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 24991 **Relating to Administrative Judges.** **Michael Henderson**, Counsel of the Supreme Court, cited Idaho Code § 1-907, which lists powers and duties of administrative district judges. He pointed out that the areas covered are now addressed in detail in the Misdemeanor Criminal Rules and Infractions adopted by the Supreme Court, and they have been made uniform throughout the State. This bill will simply remove the outdated provision.

Senator Lee declared a potential conflict of interest pursuant to Senate Rule 39(H) but intended to vote.

MOTION: **Senator Burgoyne** moved to print **RS 24991**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

RS 24992 **Relating to criminal procedure to revise a provision regarding who may apply for relief.** **Michael Henderson**, Counsel of the Idaho Supreme Court, advised that in some cases defendants can have their convictions or guilty pleas set aside or can have a felony conviction reduced to a misdemeanor if they have been on probation and met additional conditions. He cited some confusion in the language dealing with relief for a misdemeanor. He explained that the intent of the law was that if the individual were convicted of a misdemeanor, had a suspended sentence, and had successfully completed probation, he/she could apply for relief. This bill will clarify the intent and eliminate confusion.

Senator Burgoyne stated that he did not see any conflict. **Mr. Henderson** responded that sometimes the judges are confused. This bill will clarify the intent for the judges. **Senator Burgoyne** stated that the amendment does not address the possibility that subsection 5 controls all misdemeanor cases, but controls only the sentence issue and not the nature of the case, i.e. felony or misdemeanor. He stated he was confused mainly by the amendment, not the original law. **Mr. Henderson** explained confusion arising from subsection 5 wherein people saw it as the controlling factor in misdemeanor cases including all of the conditions leading to the eligibility for relief.

MOTION: **Senator Lee** moved to print **RS 24992**. **Sentor Foreman** seconded the motion. Motion carried by **voice vote**.

PRESENTATION: **Chairman Lodge** requested that Kimberly Simmons present her report on the Idaho State Public Defense Commission at a later date.

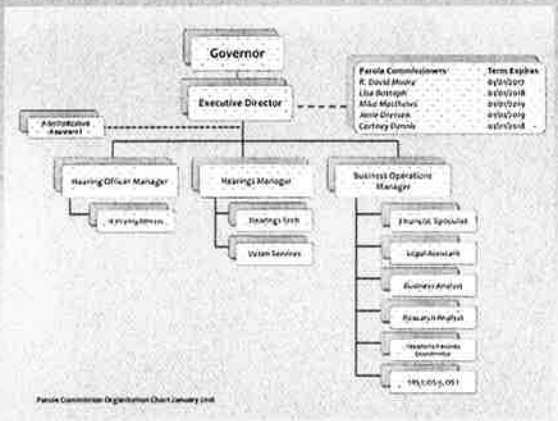
ADJOURNED: There being no further business before the Committee at the time, **Chairman Lodge** adjourned the meeting at 1:44 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

Idaho Commission of Pardons and Parole

Sandy Jones, Executive Director



Organizational Structure

- Five Part-Time Commissioners
- Meet monthly for approximately two weeks
  - 25 hearings per day face to face
    - Regular parole and revocations
  - Boise and Pocatello facilities
    Video to Orofino from Pocatello
- Two staff members support each hearing
  - Take minutes, audio recording, data collection
- 80 to 100 administrative reviews per month
  Executive session only

Commission workload

- Typical sentence includes fixed and indeterminate portions (Unified Sentencing Act)
- Individuals are not eligible to be considered for parole until the fixed portion is served
  - Exception is medical parole
- Parole in Idaho is at the discretion of the Commission

Parole 101

- Hearing officers interview each parole eligible individual early in the process
- Comprehensive report, including a parole guideline score, is provided for Commissioners
- Commissioners make initial parole decisions approximately 6 months prior to end of fixed portion of the sentence

Parole 101

- Commissions consider several factors for each case, plus case specific factors
  - Criminal History
  - Nature of the crime
  - Risk Assessments
  - Institutional Behavior
  - Institutional Programming
  - Victim/prosecutor input, if available

Parole 101

- If granted, release will be set by Commissioners, including supervision conditions
- If denied, reason will be provided in the official record
  - New hearing set or Full Term Release
- Informal appeal process can be requested

Parole 101

- Commissioners are also responsible for addressing parole violations
- Initial hearing by a Hearing Officer
  - Must determine whether or not guilty of any violations (more likely than not)
- If guilty, schedule for revocation with Commissioners

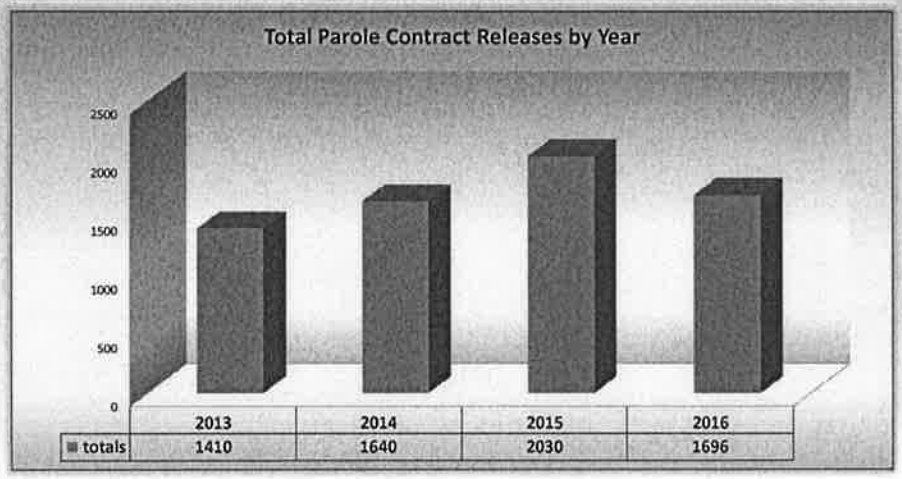
Parole Revocation

- If Parole is revoked, options are:
  - Grant a new parole date
  - Deny a new parole date but set a new hearing
  - Deny a new parole date and pass to full term
- Informal appeal process can be requested.

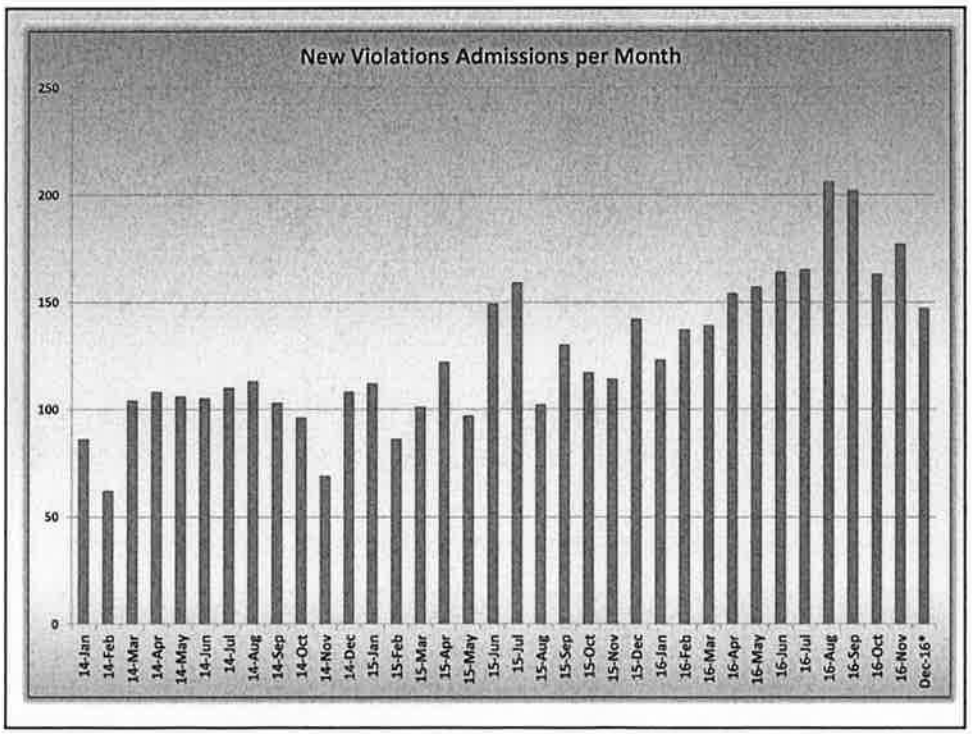
Parole Revocation

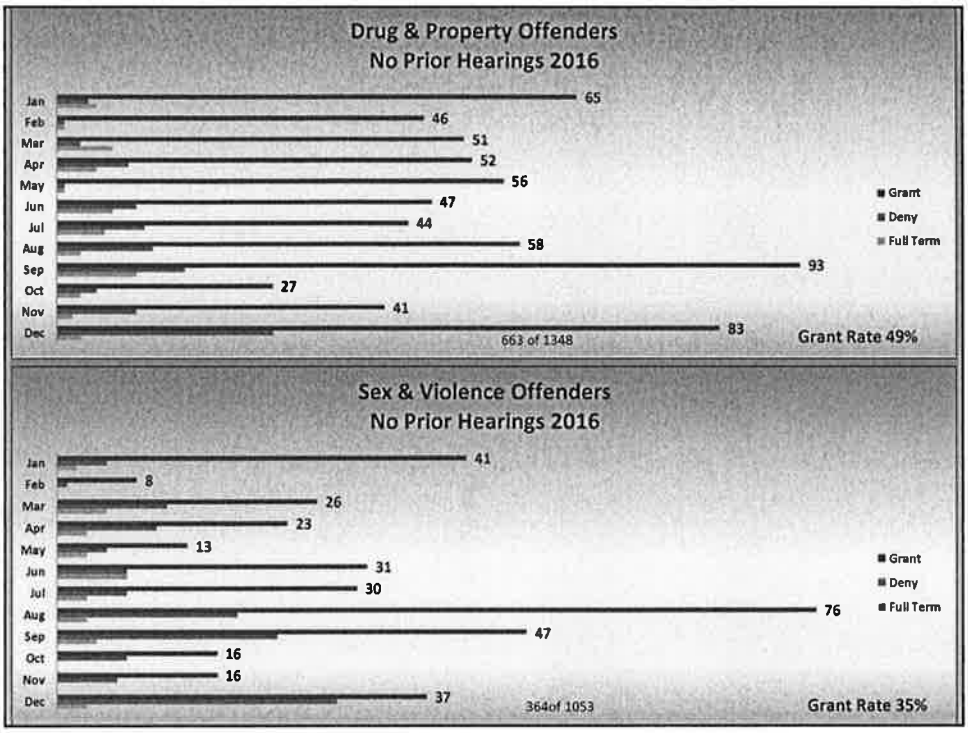
- Commission is Idaho's releasing authority
  - Parolees are supervised by IDOC Probation and Parole Officers
  - Once the Court imposes a term sentence, the Judge is no longer involved in the case.

Basic Parole Facts



Parole Release Trends




Drug & Property Offenders
No Prior Hearings 2016
Jan 65
Feb 46
Mar 51
Apr 52
May 56
Jun 47
Jul 44
Aug 58
Sep 93
Oct 27
Nov 41
Dec 83
663 of 1348
Grant Rate 49%
Grant
Deny
Full Term
Sex & Violence Offenders
No Prior Hearings 2016
Jan 41
Feb 8
Mar 26
Apr 23
May 13
Jun 31
Jul 30
Aug 76
Sep 47
Oct 16
Nov 16
Dec 37
364of 1053
Grant Rate 35%
Grant
Deny
Full Term

Questions?

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Wednesday, January 25, 2017

SUBJECT	DESCRIPTION	PRESENTER
DISCUSSION:	Explanation of procedure for rules approval.	Vice Chairman Lee
DOCKET NO. 11-1101-1601	Rules of the Idaho Peace Officer Standards and Training Council (POST) clarifying the definition of "Law Enforcement Profession," establishing the minimum prohibition of marijuana use, simplifying driver license status requirements, and simplifying the Agreement to Serve requirements. (Pending Rules, pg. 9)	Victor McCraw, Idaho POST Division Administrator
DOCKET NO. 11-1101-1602	Rules of POST establishing a requirement for a POST compliance review of each applicant involving a background investigation. (Pending Rules, pg. 18)	Victor McCraw, Idaho POST Division Administrator
DOCKET NO. 11-1102-1601	Rules of POST clarifying certification requirements for part-time juvenile detention officers, and eliminating the use of non-POST certified instructors for basic training. (Pending Rules, pg. 22)	Victor McCraw, Idaho POST Division Administrator
Docket No. 11-1104-1601	Rules of POST amending the text of the pending rule regarding correction officers and adult probation and parole officers. (Pending Rules, pg. 25)	Victor McCraw, Idaho POST Division Administrator

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 Lee
Sen Davis
Sen Hagedorn
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

Sen Anthon

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, January 25, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Agenbroad, Foreman, and Burgoyne.
ABSENT/ EXCUSED:	Senators Anthon and Nye
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 1:35 p.m.
PASSED THE GAVEL:	Chairman Lodge passed the gavel to Vice Chairman Lee.

DOCKET NO. 11-1101-1601

Rules of the Idaho Peace Officer Standards and Training Council (POST) clarifying the definition of "Law Enforcement Profession," establishing the minimum prohibition of marijuana use, simplifying driver license status requirements, and simplifying the Agreement to Serve requirements. Victor McCraw, Division Administrator for Idaho Peace Officer Standards and Training (POST) explained the administrative division operates under the POST Council (Council) which is made up of 15 individuals including sheriffs, chiefs, prosecuting attorneys, attorneys from the Attorney General's office, and representatives of the cities and counties. The Council gives guidance to the administrative division. The POST mission is to develop skilled law enforcement professionals who are committed to serving and protecting the people of Idaho. The rules by which POST functions are essential in accomplishing that mission.

Mr. McCraw stated that Sections 010 and 081 of **Docket No. 11-1101-1601** will be discussed together because the cause of the proposal is the same. Section 010 proposes changes for the definition of "law enforcement profession" as it applies to the POST rules only. It does not affect any other statutes or laws. Section 081 seeks to clarify what "Agreement to Serve" means. The proposed changes for the definition of law enforcement profession removes all unnecessary references to job duties, and they align the definition with the established titles of the nine certified law enforcement disciplines. **Mr. McCraw** identified those disciplines as:

1. Peace Officer, which is patrol officer;
2. County Detention Officer;
3. Communication Specialist;
4. Juvenile Detention Officer;
5. Juvenile Probation Officer;
6. Correction Officer;
7. Adult Probation and Parole Officer;
8. Idaho Department of Juvenile Corrections direct staff; and
9. Misdemeanor Probation Officer.

Mr. McCraw referred to Section 081 regarding the Agreement to Serve. Each trainee attends an academy. The academies differ in length depending on the disciplines and carry a cost for the training. He pointed out that training in four of the nine disciplines, numbers one, two, six, and seven from the list above, carries no charge to the agency as it is done through POST funding. When POST-trained individuals who serve in those disciplines leave the profession before serving two years, and consequently no longer serve the citizens of Idaho, the agreement allows POST to recoup some of the cost. If the POST-trained individuals stay beyond one year, there is a proration. If they leave immediately or within a few months for reasons other than being laid off or some medical or family emergency, the account, if not paid, is turned over to a collection agency. **Mr. McCraw** disclosed that currently POST is owed over $750,000 from 333 individuals who left the profession within two years. Not all can be recouped because some unpaid accounts are beyond the statute of limitations. The rule changes will help POST recover those costs.

Senator Davis asked for clarity regarding uncollectible funds due to the statute of limitations. **Mr. McCraw** stated the money is owed to POST, but some of that amount cannot be collected. He commented the contract with the collection agency has been in place only a short time, so collection of the older accounts has just begun. **Senator Davis** asked if POST has assigned to the collection agency the collection of obligations that, as a matter of law, the State would be barred from collecting because of a limitation on actions. **Mr. McCraw** indicated that POST operates under the advice of their legal counsel, the Deputy Attorney General assigned to the Idaho State Patrol, who has defined what may be turned over to collection by matter of law. **Senator Davis** inquired if POST is only assigning for collection obligations in which POST has a lawfully enforceable claim. **Mr. McCraw** stated the answer is yes. **Senator Davis** alleged that would mean if an action is outside of the statute of limitations, the State is not trying to collect funds which are not otherwise enforceable. He asked if that is true. **Mr. McCraw** replied that is true.

Senator Davis inquired about the section regarding drug use. He remarked that in the past an applicant would be rejected if he/she used marijuana in the past three years. The change will adjust that time to one year. He then referred to the "regular and confirmed basis" in the past three years. He asked why it is important to have that policy shift. **Mr. McCraw** explained he will address that issue. It was skipped because the previous sections were taken out of order.

Vice Chairman Lee asked if anything has been added to or deleted from the definitions. **Mr. McCraw** replied the changes simply reduce the number of words to simplify the definitions, making them more understandable. **Vice Chairman Lee** inquired if, in the section on "in lieu of termination" when someone resigns, POST received any feedback from other jurisdictions regarding allowing people to leave for reasons other than for cause or discipline. **Mr. McCraw** responded that several times a year the hearing board, a three-member panel of the full Council, meets to hear the cases in which the individual feels he/she has an explanation that should be considered prior to being charged those costs. Due process is provided with the hearing board and the full Council.

Senator Hagedorn asked if Fish and Game Conservation Officers go through the Peace Officers certification. **Mr. McCraw** replied yes.

Mr. McCraw proceeded with a discussion of Section 055 involving marijuana use. He explained that the pending rule reduces the absolute prohibition of marijuana use prior to application to POST to one year. It revises the prohibition of regular and confirmed use to three years. The original rule states three years and five years respectively. **Mr. McCraw** explained the difficulties involved in the administration of this rule including the accuracy of self-reporting by the applicant. The Council decided that the use did not affect the suitability of the applicant as related to one or three years, but lying about the extent of use would be a problem with respect to character. If the behavior was not recent nor habitual in the last year, the requirement would be met. The prior use of "regular and confirmed" was problematic because it is difficult to find people who may know of this behavior from five years ago. The one-year limit allows POST to find witnesses concerning the applicant's drug use. **Mr. McCraw** observed that an applicant's suitability considering non-habitual, non-recent behavior is better assessed by a thorough background investigation and the hiring agency's subjective discretion than by the application of a pseudo objective rule. Instead of the applicants' best guess, background investigations will confirm whether they have or have not used, and if they have, those investigations will reveal the time frame and quantity of use. **Senator Davis** expressed concern about the ambiguity of the word "regular" in the phrase "regular and confirmed use." **Mr. McCraw** agreed with the analysis that the word is ambiguous, but informed the Committee that he can decide to send an applicant to a hearing board to help clarify the individual's situation. The hearing board will then evaluate the information and review the investigative findings. The Council does not want to reject an applicant based on this behavior alone. They consider other behaviors and characteristics as well. **Senator Davis** pointed out the unclear use of punctuation and requested that this be modified the next time POST reviews their rules.

Senator Burgoyne expressed appreciation for relaxing this standard. He inquired about the word "marijuana" as it appears in Section 055.01, asking if the current interpretation of the word "marijuana" includes FDA drugs and or those being tested for FDA approval. He also asked if someone using marijuana legally would be rejected for POST. **Mr. McCraw** remarked that the legality of the use was specifically and purposely avoided by the Council. The behavior and the substance were removed from the other controlled substances which are listed elsewhere. Any controlled substance, whether prescription or not, falls under this rule. The intent of the Council was that whether it be legal or illegal use of this drug, as long as it is considered a controlled substance and against federal law, it is to be interpreted within the definition of marijuana. **Senator Burgoyne** encouraged Mr. McCraw to clarify what is meant by "marijuana" if there is an FDA-approved drug. If it is not illegal under federal or Idaho State law, the rule needs to make clear what marijuana is and that it be limited to that which is illegal under state or federal law.

Senator Burgoyne illustrated his concern for the terms "regular and confirmed" using an example of college students who travel once a year to a country where marijuana is legal and where the students use the drug. This use can be considered regular as it is yearly, and it would be confirmable. He asked if these individuals would be denied acceptance to POST. He asserted that "regular" has no indication of frequency. He requested Mr. McCraw consider that issue. **Mr. McCraw** related that these terms were discussed by the Council. He stated defining the two terms too narrowly will cause the exclusion of applicants rather than giving them a chance to be heard before the hearing board. **Senator Burgoyne** suggested they go back to the introductory phrase and change "must" to "may." That change would allow POST to consider those situations on a case by case basis.

Senator Foreman thanked Mr. McCraw for POST's good work. In referring to the marijuana use time frame, he stated he would like to see the stricter standards stay in place. He asserted that applicants may not be honest when they claim they don't remember the extent of their use. **Senator Foreman** expressed his lack of tolerance for any illegal drug use as he has seen its effects. He pointed out that police officers have a big responsibility in serving the public. He inquired if this change was driven by recruitment. **Mr. McCraw** addressed the issue of the applicant not remembering the extent of his/her marijuana use. He indicated that most people do not keep a diary of their drug use, and so they do not know the time and frequency of the use. Because of the ambiguity of the terms the Council would like to have a minimum standard of one year. He reported that several agency heads have already told POST they are keeping the three year standard. The one year POST standard is a minimum standard for the agencies. **Mr. McCraw** stated with regard to the change being recruitment driven, that he has heard some concerns with the rule but has not seen any hard numbers indicating Idaho is losing applicants to other states because of the current rule. He remarked that agency heads are in a dilemma when there is an applicant who scores a 90 percent on the aptitude test but took a puff of a marijuana cigarette over a year ago, versus another who scores a 65 percent on the test but has never used marijuana. The agency has an opening they can't wait over a year to fill, so they have to take the less qualified applicant. **Senator Foreman** asked that emphasis be given to keeping the standards up as high a possible with respect to prior illegal drug use. He emphasized that the wearing of the badge is a sacred commitment, and that Idaho has the finest law enforcement anywhere.

Vice Chairman Lee commented that these rule sections regarding marijuana use by officers appear to have been changed, and she asked what they were before the changes. **Mr. McCraw** replied he began with POST in November of 2014, so he does not know. He observed that the rules have been in place for some time. He deferred to Meridian Police Chief and POST Chairman Jeff Lavey. **Chief Lavey** advised that prior to 2014 there was a lack of consistency across the State. A survey was conducted to establish a consistent policy for addressing drug use. The Policy resulting from that survey was presented to the Legislature in 2014, but it has resulted in numerous issues. He emphasized that he will not lower his standard of three years for hiring in Meridian, but he is not completely opposed to POST changing to a one year standard. **Chief Lavey** stated he sits on the review board and the vagueness of "regular and confirmed" allows applicants to come before the whole POST Council and tell their story. Common sense can then be applied in making the decision on a case by cases basis. **Chief Lavey** explained that when this change was first proposed, the Sheriffs wanted the change, but the police chiefs did not. He indicated that the chiefs are now in favor of the change, and that shift in attitude was based on recruitment issues.

Mr. McCraw continued on with Section 058, dealing with traffic record investigation and driver license status of the applicants. This change clarifies what is and what is not acceptable with regard to the driver license status. As the rule is written, the Division Administrator is required to look at every license suspension regardless of how much time has passed since the suspension. This change will reduce the number of suspension reviews and allow the consideration of what is important considering the suspension.

Senator Burgoyne expressed concern that if the change is from a two-year standard to a 10-year standard, it appears the opportunity to be admitted to POST is being reduced. **Mr. McCraw** responded the actual net affect would increase the chances of meeting the standard. Under the present rule, regardless of when the suspension occurred, it must be investigated. This rule eliminates anything that is a license suspension without criminal behavior beyond ten years. The two-year standard allows the administrator to waive suspensions not based on vehicle operation, eg. too many parking tickets. He pointed out the rule will still allow him to send questionable situations to the Council. **Senator Burgoyne** expressed further confusion. **Mr. McCraw** clarified that under the new rule there will be a limit of ten years. In addition, under the old rule if the suspension was within the two years prior to application to POST, the Council had to consider the case which could delay the applicant's admission for months. Under the changes, the administrator has discretion and would only send the most serious cases to the Council.

MOTION: **Senator Foreman** moved to approve **RS 24625** .**Chairman Lodge** seconded the motion. The motion carried by **voice vote.**

DOCKET NO. 11-1101-1602 **Rules of POST establishing a requirement for a POST compliance review of each applicant involving a background investigation. Victor McCraw**, Idaho POST Division Administrator, indicated that this change was in subsection 059, dealing with background investigation. He stated that this change is necessary to maintain the standards of POST. The basic investigation remains the same, but the documents must be compiled and retained, and the documents must be available to POST.

Senator Foreman referred to the statement on page 19 that says the Federal Bureau of Investigation (FBI) does not recognize POST as a law enforcement entity, and asked if the FBI has a problem with agencies sharing National Crime Information Center (NCIC) information with POST as a non-law enforcement agency. **Mr. McCraw** responded that the FBI has very strict rules regarding what can and what cannot be shared. He indicated that POST might be considered a criminal justice agency by Idaho statutes next year. The agencies can verify the applicant meets the requirements, but they cannot give POST any specific information. He added those agencies retain the records.

Senator Davis asked if POST is waiting another year to run the statute. **Mr. McCraw** answered the wording was not ready in time to meet the deadline for this year. **Senator Davis** inquired how much POST is disadvantaged by not having access to the information. **Mr. McCraw** replied the disadvantage is that POST cannot verify specifics about any candidate, and POST cannot conduct independent investigations to gather that information. **Senator Davis** asked if Mr. McCraw could share the proposed legislation with him. **Mr. McCraw** replied the Chairman of the POST Council has authorized him to share that information.

Senator Hagedorn pointed out that the current rule says the hiring agencies research and retain the records. He asked if the agencies will continue to do so. **Mr. McCraw** replied that the agencies would continue current practices. He added if POST regains the ability to conduct background checks using the FBI data base, the records would still be retained by the agencies. **Senator Hagedorn** suggested this would produce duplicate efforts if both POST and the agencies maintain the records. **Mr. McCraw** replied it is best practice for the agency to maintain these records, but it is not in rule that they do. The agencies need to have the records on file in order to know the status of their officers, and POST needs to have them, not only for applicant scrutiny, but also to be able to run background checks on currently certified officers in violation of POST's code of conduct who are undergoing decertification proceedings.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 11-1102-1602**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 11-1102-1601 **Rules of POST clarifying certification requirements for part-time juvenile detention officers, and eliminating the use of non-POST certified instructors for basic training. Mr. McCraw** explained this change in the rule is simply to improve the language. He stated that it removes unnecessary language referring to "the desire to become certified", and it removes references to "uncertified instructors" who are not being used. It also removes reference to "Verbal Judo" which is a trade name of a training product and should not appear in the rule.

MOTION: **Chairman Lodge** moved to approve **Docket No. 11-1102-1601**. **Senator Agenbroad** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 11-1104-1601 **Rules of POST amending the text of the pending rule regarding correction officers and adult probation and parole officers.** **Mr. McCraw** reported the Council agreed that all disciplines "shall meet the same standards for conduct and character. " As rule changes have been made this language was omitted in the case of correction officers. He advised this change includes correction officers under that standard. **Senator Davis** clarified the intent and result of the vote on this rule change. **Mr. McCraw** responded that these changes would improve the administrative processes for POST. **Senator Davis** inquired if there was any opposition to the proposed change. **Mr. McCraw** declared that both former Director Kevin Kempf and current Director Henry Atencio of the Idaho Department of Correction (IDOC) were present and expressed support for this change.

MOTION: **Senator Hagedorn** moved to approve **Docket No. 11-1104-1601**. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

PASSED THE GAVEL: Vice Chairman Lee passed the gavel back to Chairman Lodge.

Senator Lodge announced that the Committee will be meeting Friday, February 3. The meeting will start at 1:00.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 1:42 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Monday, January 30, 2017

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Magistrate Judges Review	
	Introduction to Judicial System	Senior District Judge Barry Wood
	Magistrate Judges Overview	Judge Jayme Sullivan, Third Judicial District
	Pre-trial Release Reforms	Judge Michael Oths, Fourth Judicial District
	Criminal Courts	Judge Rick Carnaroli, Sixth Judicial District
	Problem Solving Courts	Judge Ryan Boyer, Seventh Judicial District
	Domestic Violence	Judge Rick Bollar, Fifth Judicial District
	Juvenile Justice	Judge Bryan Murray, Sixth Judicial District
	Child Protection	Judge Anna Eckhart, First Judicial District
	Family Law (Guardian/Conservator)	Judge Kent Merica, Second Judicial District

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Monday, January 30, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Bock (Burgoyne), and Nye
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.
INTRODUCTION:	**Chairman Lodge** introduced Senator Bock who is sitting on the Committee in the absence of Senator Burgoyne.

PRESENTATION: **Magistrate Judges Review**. **Judge Barry Wood**, Senior District Judge, mentioned that he was a Page in the Senate 47 years ago and is pleased to be back, appearing before the Committee. He introduced Sara Thomas, Administrative Director of the Courts, and highlighted her background. **Judge Wood** explained that the Magistrates are here to present the important work of the Magistrate Court, and he reviewed the agenda.

Judge Wood explained the structure of the Courts (attachment 1, page 1). He gave the history of the court system in Idaho and its vested powers, detailing the hierarchy of courts, including the Appellate Courts (Supreme Court and Court of Appeals), the Trial Courts (District Court and Magistrate Court), indicating the number of judges in each court. **Judge Wood** explained that Supreme Court judges and Court of Appeals judges are elected statewide and must stand for election every six years. These judges serve staggered terms, and their elections can be contested. He indicated that District Court Judges serve four-year terms, and all are on the ballot at the same time. He related that the Magistrate Court judges do not have contested elections, but rather a retention system. These judges are appointed and serve four-year terms.

Judge Wood detailed the types of cases each court hears as follows:

- Supreme Court: appeals from District Court, all capital cases, Public Utility Commission cases, Tax Commission cases, and child protection cases.
- Court of Appeals: cases assigned by Supreme Court.
- District Court: felony cases, civil cases over $10,000, appeals from Magistrate Court, County Commission cases, and administrative boards cases.

Judge Wood further explained the establishment of Magistrate Court in Idaho and provided a map identifying Idaho's Judicial Districts (attachment 1, page 2).

PRESENTATION: **Magistrate Judges Overview**. **Judge Jayme Sullivan**, Third Judicial District Magistrate Judge, identified herself as treasurer and secretary of the Magistrate Judicial Association. She explained that Magistrates are appointed by a District-specific magistrate commission consisting of one county commissioner, three mayors, two citizens who are appointed by the Governor, two lawyers who are appointed by the State Bar, the Administrative District Judge, and a magistrate from the district. **Judge Sullivan** listed the qualifications for a magistrate judge as being 30 years of age, a lawyer for at least 5 years, a citizen of the United States, a resident of Idaho, and in good standing with the bar for at least 2 years preceding the appointment.

Judge Sullivan indicated that the first 18 months is a probationary period, and the newly-appointed judge can be removed or sanctioned by the commission that appointed him/her. She pointed out that magistrate judges are subject to discipline by the Judicial Council, and are bound by the same ethical code. **Judge Sullivan** reported that Idaho has 91 magistrates with at least one in each county. She provided demographic information for the magistrate judges.

Senator Hagedorn asked for the purpose of the Magistrate Judicial Association. **Judge Sullivan** replied that the Association ensures that the magistrates serve the judiciary and each other, and serve well in dealing with issues facing the magistrates in their duties.

PRESENTATION: **Pre-trial Release Reforms**. **Judge Michael Oths,** Fourth Judicial District Magistrate Judge, specified that he hears only criminal cases for Ada County. He described the constitutional responsibility of identifying defects in the law, and to make the Legislature aware of areas that may need to be examined in order to recognize areas that need to be improved.

Judge Oths advised that in Ada County the judges are currently reviewing the makeup of the county jail population, and why they are incarcerated. He pointed out that Ada County is near the capacity limit. **Judge Oths** indicated that an analysis of each individual in the jail population is being conducted to identify how long the inmates are being incarcerated, why they were incarcerated, the amount of their bond, and how appropriate changes can be made. He detailed a pilot program that is being instituted to address this issue, as well as a study to consider amending the Idaho Constitution regarding who can be held without bail. **Judge Oths** related that the Arnold Pretrial Tool, a data-based method of evaluating offenders' level of threat to the community, is used to determine if they should be released prior to their trial. **Judge Oths** suggested Committee members attend the Denton Derrington Program, February 9 at 4:00, to hear the New Mexico Chief Justice as he speaks on pre-trial release reforms that have been instituted in his state.

Senator Davis asked if the results of the studies indicate statutory modification, or if making the desired changes falls within the inherent power of the Court. **Judge Oths** replied that both would be needed based on the change.

Senator Davis voiced a concern about the bonding, its purpose, and if the goal of bail is being met. He asked about the involvement of the Legislature in modifying the bail standard. **Judge Oths** responded the statutory bond amount is set by the Supreme Court and can be adjusted by the courts. The purpose of the bond is determined by the Legislature in Idaho Code.

Senator Bock asked, among the 1,000 inmates, how many were unable to post bond. **Judge Oths** replied that about 200 of the incarcerated population are on Idaho Department of Correction (IDOC) holds, so they cannot bond. Others are being held without bond having not yet been sentenced after pleading guilty to a felony charge. The other 800 have a substantial bond amount that is beyond their means. The United States and the Idaho Constitutions say there shall not be excessive bail. **Senator Bock** pointed out that bail is not set to support an industry. He asked what cases might be dropped or moderated to simplify the process and eliminate the need of bail. **Judge Oths** explained that there is a pilot program in Ada County wherein bail would be eliminated based on the level of threat to the community. Resources could be used to monitor these individuals rather than incarcerate them prior to trial. This allows them to work and support their families. If they do not meet the conditions of their release, they will be incarcerated until the trial.

Chairman Lodge announced that the next presenter, Judge Rick Carnaroli, has been honored by the City of Pocatello with the Human Rights Award for his work in human and civil rights.

PRESENTATION: **Criminal Courts**. **Judge Rick Carnaroli**, Sixth Judicial District Magistrate Judge, informed the Committee that he has been a magistrate judge for over 12 years in Pocatello, and that he also goes to Rigby as needed to cover criminal docket and family law cases.

Judge Carnaroli explained that all criminal cases begin in the magistrate courts. He pointed out that both search and arrest warrants start in the magistrate division when police or the prosecutor's office want to conduct a search or want blood drawn. All warrants are based on probable cause. The judges review the probable cause in order to issue the warrant.

Judge Carnaroli reported that in areas with more than one judge, the judges may rotate through the on-call duty. In rural areas there may be only one magistrate judge who must be on call at all times.

Judge Carnaroli indicated that Magistrate Courts handle felonies, misdemeanors, and infractions. He specified consequences for these offenses as incarceration in the State penitentiary for felonies, incarceration in the county jail for misdemeanors, and fixed monetary fines that require no jail time for infractions.

Judge Carnaroli provided the types of cases for each type of offense as follows, and detailing the process for dealing with them:

- Felonies, which include complaint review, first appearance, and preliminary hearings;
- Misdemeanors, which include arraignment, pretrial proceedings, jury and bench trials, sentencing, and probation oversight;
- Infractions, which include traffic offenses, animal control, and other in fractions;

and

- Specialty Courts, which include drug courts and domestic violence courts.

Judge Carnaroli concluded by stating that magistrate judges see a lot of people and are focused on public safety. He feels the greatest outcome of these cases is seen when an offender changes his/her behavior and turns his/her life around.

Chairman Lodge inquired if animal control events occur mainly in cities rather than out in the counties. **Judge Carnaroli** replied that there is some State legislation on animal control issues, but these events are usually in cities.

PRESENTATION: **Problem Solving Courts**. **Judge Ryan Boyer**, Seventh Judicial District Magistrate Judge, emphasized that the purpose of Problem Solving Courts (PSC) is to change behavior. He shared the history of and the positive outcomes achieved by Idaho's PSC (attachment 2, page 1).

Judge Boyer declared that drugs and alcohol "drive the criminal offense train." He referred to the 80-80 rule stating that 80 percent of the crimes committed are in furtherance of addiction or under the influence of some level of addiction. **Judge Boyer** added that of that 80 percent of offenders, 80 percent have co-occurring disorders, i.e. disorders driven both by a mental health disorder and by a substance use disorder. He identified the three main groups of people who find themselves in trouble with the law: 1.) those whose use of alcohol and/or drugs affects their judgment; 2.) those who have mental health disorders, frequently undiagnosed, which cause poor judgment; and 3.) anti-social thinkers who basically think the law doesn't apply to them, and those who get caught are just stupid. PSC deal with the first two groups to help them to get treatment and change their behavior, thus reducing criminal offenses. **Judge Boyer** shared with the Committee the number and types of PSC in Idaho (attachment 2, page 1). In support of the success of PSC, he advised that 343 drug-free babies have been born of drug court participants and graduates.

Senator Hagedorn asked for the percentage of the people the magistrates see who go into specialty courts. **Judge Boyer** replied that finding a percentage is very difficult. He explained that the primary tool for evaluation is the Level of Service Inventory (LSI). If the probationer receives a specified score, a level of service is identified and the probationer is put in on an appropriate treatment plan. **Senator Hagedorn** requested more information regarding the number of cases and if that number has increased or decreased. **Judge Boyer** replied that statistics are hard to identify because of the differences in labeling. **Judge Boyer** voiced his perception that even with the increase in the general population, the jail population has not increased accordingly.

Senator Hagedorn asked if there is information on the recidivism rate annually, and what the trend appears to be for those who have been in problem solving court. **Judge Boyer** cited the report on Idaho's PSC, "Recent statewide outcome evaluations, addressing Idaho's . . . drug courts, highlighted a positive success rate in reducing both criminal recidivism and program failure when the appropriate high risk population is involved." Referring to this report, he pointed out statistical data regarding Senator Hagedorn's inquiry (appendix 2, page 1).

PRESENTATION: **Domestic Violence**. **Judge Rick Bollar**, Fifth Judicial District Magistrate Judge, shared the history of the Domestic Violence Courts (attachment 3, page 1). He stated that these courts deal with both civil and criminal cases, and offer treatment and programs that cause offenders to focus on employment, supporting their families, and addressing mental health and substance issues. Addressing these issues should ultimately keep the offenders out of jail. **Judge Bollar** explained the Domestic Violence Courts focus on family safety and offender accountability, and the purposes include enhancing victim safety and offender accountability; providing both civil and criminal case management, coordinating information for families with multiple cases, and using just one judge to process multiple cases involving the same family.

Judge Bollar enumerated the types of cases assigned to Domestic Violence Courts as civil cases; criminal cases (domestic assault, domestic battery, stalking, injury to child, violation of no contact orders, and violation of civil protection orders); and related cases including divorce, custody, and child support cases. **Judge Bollar** pointed out the Domestic Violence Courts' objectives are to provide a safe environment for families at risk; create coordinated responses to family

issues; and avoid separate judges providing different rulings which may be confusing and may have negative consequences for the family.

Judge Bollar discussed the organization, demographics, policies and guidelines of the Domestic Violence Courts, and he identified duties of the Courts. The duties of the Court Coordinators were also identified. **Judge Bollar** concluded by noting that reducing recidivism and providing safety for families are the commitments of the Domestic Violence Courts (attachment 3, pages 2-3).

PRESENTATION: **Juvenile Justice. Judge Bryan Murray**, Sixth Judicial District Magistrate Judge, detailed the specialty work of juvenile courts. He emphasized that juveniles are treated differently than adults because they are not adults. Their brains are still developing and juveniles need healthy adults to help them learn appropriate behaviors. **Judge Murray** informed the Committee that the states began developing juvenile courts in the late 1800s to treat juveniles differently than adults while they develop. Juveniles have all the rights adults do, except for the right to bail and jury trial. With juveniles swift justice is imperative in dealing with the consequences of their actions.

Judge Murray explained that in 1995 the Idaho Department of Juvenile Corrections (IDJC) was created, based on the three legs of restorative justice: 1.) Competency Development; 2.) Accountability; and 3.) Community Protection. He pointed out that this approach provides local control in helping juveniles succeed. The goal of IDJC and its community partners is to have 100 percent of the youth graduate from high school or get a general educational development (GED) certificate. **Judge Murray** enumerated benefits juveniles gain by graduating as it relates to making good choices. In addition to promoting high school graduation, he mentioned intervention methods being used, such as diversion programs for juveniles who are self-correcting or whose parents hold them accountable for their actions.

Judge Murray discussed juveniles who lack supervision, are born addicted to drugs, and whose homes encompass abuse, neglect, and household dysfunction (attachment 4, page 1). He observed that alcohol and drug use are of great concern. He emphasized the need to address these issues early. **Judge Murray** stated that IDJC has jurisdiction over parents. He explained the responsibilities required by parents of juveniles in the correction system, and he asserted that fulfilling these responsibilities builds strong families (attachment 4, page 1).

Judge Murray detailed the various aspects of maintaining juveniles in State custody including restitution, parental involvement, county duties, treatment, education, State controls, and release plans (attachment 4, page 2). Juveniles are committed to the custody of the State when parents do not cooperate and the community centered approach is not working. He shared the results of studies reviewing cross-over kids, or those who have been in the custody of the Department of Health and Welfare (DHW), who go on to the Juvenile Justice system, and who then enter the adult correction system as adults. **Judge Murray** emphasized the need to focus on the child not the crime, promote community service, and build competency to redirect troubled youth from lives of crime to becoming responsible citizens. He identified the following methods being used to get help for juveniles:

- Counseling and family services;
- Sex offender treatment;
- Aggression reduction treatment;
- Parenting programs;

- Mentor programs;
- Attendance court programs;
- Educational programs;
- Juvenile drug court;
- Family treatment drug court; and
- Parenting with Love and Limits program.

Judge Murray pointed out that funding comes from tobacco tax, lottery tax, county money, and grants. These funds are combined to provide the programs for juveniles in the correction system. He indicated that other sources are community entities, businesses, and school districts.

Senator Foreman asked how the reduction from misdemeanor to infraction has impacted juveniles' behavior. **Judge Murray** replied that he treats everything under the juvenile corrections act because it gives broad discretion. The change had not had an impact because youth with alcohol tickets were being assessed and assigned to diversion programs that fit each individual's needs. It is beneficial in the fact that juveniles and young adults will not have ongoing criminal records. He emphasized that the intervention work still needs to go forward. **Senator Foreman** commented that focus needs to be put on universities and the underage drinking that occurs. He felt this is a societal problem and should not rest solely with the courts. **Judge Murray** responded that there have been studies conducted that show a higher tax on alcohol yields a lower rate of underage consumption.

PRESENTATION: **Child Protection**. **Judge Anna Eckhart**, First Judicial District Magistrate Judge, explained the Child Protection Act, Idaho Code § 16-1601, which provides the framework for cases involving abused, neglected, or abandoned children. **Judge Eckhart** announced that in 2012 Idaho's child welfare system was ranked number one by the Foundation for Government Accountability (attachment 5, page 1). She explained the criteria for ranking the states including:

- How quickly they reacted to abuse allegations;
- Whether they made sure abused children were put in safe, permanent homes quickly;
- Whether foster care settings were supportive, safe, home-like and stable;
- Their work to reduce abuse and neglect.

Judge Eckhart also recognized Debra Alsaker-Burke, Idaho Child Protection Manager, who, in 2016, received the Mark Hardin Award for Child Welfare Legal Scholarship and Systems Change.

Judge Eckhart outlined the process for conducting a child protection case (attachment 5, page 2) from the reporting of risk to a child from any person having a belief that a child is abused or neglected, through the disposition of the case which determines whether efforts should be made toward reunification or toward permanent placement outside the home. **Judge Eckhart** shared information regarding funding for children in foster care, guardians ad litem, and the use of citizen volunteers (attachment 5, page 2). She provided statistics related to child safety and child protection cases (attachment 5, page 3).

Judge Eckhart emphasized that "the core of child protection is to ensure that every child that should be in care is in care, but not a single child more; and to ensure that every child that is in care is in a safe nurturing placement that is supportive of the permanency plan for the child" (attachment 5, page 3).

PRESENTATION: **Family Law (Guardian/Conservator)**. **Judge Kent Merica**, Second Judicial District Magistrate Judge, discussed family law, the Court Assistance Office (CAO), and the Guardianship and Conservatorship Committee (GC). He explained that the Coordinated Family Services (CFS) include Family Court Services (FCS), the CAO, and Domestic Violence, all which were established by Idaho Code Title 32, Chapter 14. The CFS provides coordination of the courts' involvement with families, and **Judge Merica** summarized the processes involved in this coordination (attachment 6, page 1). He noted that although he handles the complete spectrum of court cases, family law is the largest piece of his case load.

Judge Merica identified the seven core services provided by FCS, giving an overview of each one:

1. Co-Parent Education;
2. Supervised access for children to be with parents;
3. Mediation;
4. Civil intake screenings;
5. Pre-filing workshops;
6. Brief focused assessments; and
7. Parenting time evaluations (attachment 6, pages 1-2).

These core services were established by the Child and Families in the Courts Committee according to **Judge Merica** of which he is a member. He described the make up of this committee and the duties and tasks they perform in meeting the goals of the core services.

Judge Merica reviewed the role of the CAO indicating that over 57,000 people have used this service. The CAO provides access to the courts, resources, and legal information for self-represented litigants, detailing the applications of these tasks. He also remarked on the use of technology in the work of the CAO (appendix 6, page 2).

Judge Merica described the work of the CG, stating that its purpose is to encourage and enable people to lead independent, self-determined and community included lives. Until recently there were few of these cases, but now some of the most contentious cases he sees involve adult children contending with each other over the care of older parents and grandparents. This type of case increased from 7,997 in 2014 to 9,990 in 2016 (appendix 6, page 3).

Judge Merica reported the 2014 establishment of the Court Monitoring of Protected Persons (CMPP) project. He stated that under this project, every year conservators and guardians are required to report on the status of their wards, as well as on the status of their finances and assets. Evaluation of the CMPP affirm that the program provides needed resources, establishes consistency in case processing, gives assistance to the public, and improves the monitoring of cases (appendix 6, page 3). **Judge Merica** concluded by identifying other programs being used in various districts around the state.

ADJOURNMENT: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:08 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

Idaho State Judiciary

Presentation by Magistrate Judges to the

SENATE JUDICIARY & RULES COMMITTEE
JANUARY 30, 2017

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
JANUARY 31, 2017

INTEGRITY

FAIRNESS

INDEPENDENCE

RESPECT

EXCELLENCE

INNOVATION

Article II, Section 1 of the Constitution of the State of Idaho

- **Departments of government.**

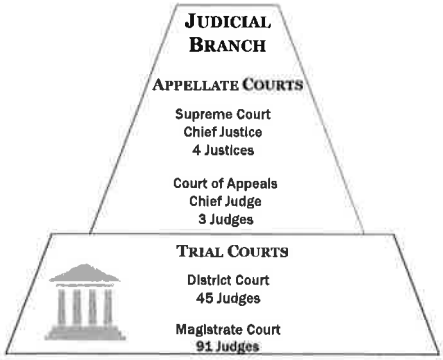
The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Article V, Section 2 of the Constitution of the State of Idaho

- **Judicial power – Where vested.**

The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, and such other courts inferior to the Supreme Court as established by the legislature. The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court. The jurisdiction of such inferior courts shall be as prescribed by the legislature. Until provided by law, no changes shall be made in the jurisdiction or in the manner of the selection of judges of existing inferior courts.

Overview



Idaho Code – Chapter 22

- **1-2201. Magistrate division of district court – Established.**

Pursuant to the provisions of section 2 of article V of the Idaho Constitution there is hereby established in each county of the state of Idaho a magistrate division of the district court.

Idaho's Judicial Districts

Report to the Governor
C.L. "Butch" Otter
and the
1st Regular Session of the
64th Idaho Legislature

IDAHO JUDICIARY

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www.isc.idaho.gov

IDAHO'S PROBLEM-SOLVING COURTS

Since the first two drug courts began in Idaho in 1998, problem-solving courts have expanded to a total of 68 courts dealing with offenders at high risk of recidivism and who have significant behavioral health treatment needs. Problem-solving courts offer an important sentencing option for Idaho courts. If not for problem-solving courts in Idaho, many of these offenders would be bound for the penitentiary at significant cost to taxpayers.

In FY2016 there were:

- 28 Felony Drug Courts
- 5 Juvenile Drug Courts
- 6 DUI Courts
- 2 Child Protection Drug Courts
- 1 Misdemeanor Mental Health Court
- 1 Domestic Violence Drug Court
- 11 Adult Mental Health Courts
- 5 Misdemeanor/DUI Courts
- 6 Veterans Courts
- 2 Juvenile Mental Health Courts
- 1 Young Adult Drug Court

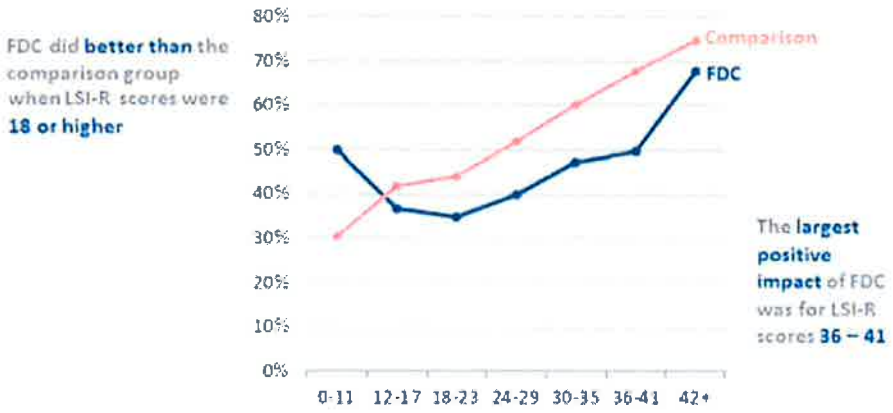
Funding from the Idaho Legislature and from cooperation with executive branch agencies, including the Department of Health and Welfare, Office of Highway Safety, and Division of Veterans Services have expanded options for treatment for persons in problem-solving courts.

Since inception, Idaho's problem-solving courts have served 15,642 individuals with over 6,000 graduates, including over 500 graduates in FY2016. The Ada County Drug Court alone recently reached graduate number 1,000. Across the state, the number of drug-free babies born to mothers in problem-solving courts grew to a total of 343.

Positive Outcomes Achieved

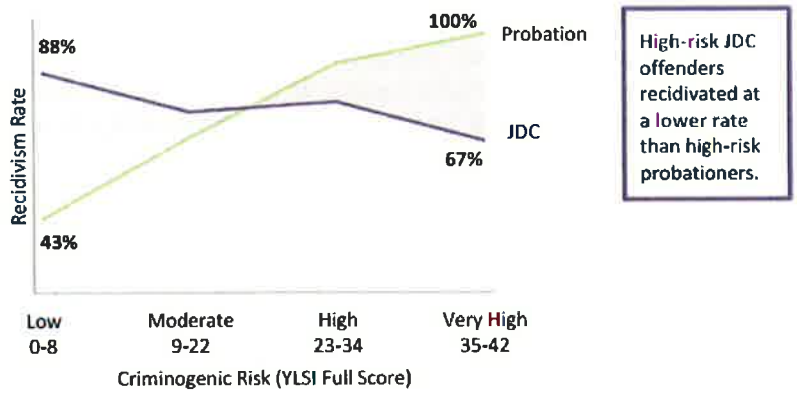
Recent statewide outcome evaluations, addressing Idaho's felony drug courts and juvenile drug courts, highlighted a positive success rate in reducing both criminal recidivism and program failure when the appropriate high risk population is involved. Idaho adult felony drug courts recidivism and program failure rates were 39% compared to the comparison group; 51% for offenders on a period of retained jurisdiction, and 54% for probationers.

FDC participants with LSI-R scores of 18 and above had lower rates of undesirable outcomes than probationers and those on retained jurisdiction



High or very high risk-to-recidivate juveniles who participated in a Juvenile Drug Court were much less likely to commit new crimes than those on probation. These better outcomes achieved by drug court participants not only reduced victimization, but saved real tax dollars that would otherwise be spent on commitment.

High-risk and very high-risk JDC offenders do very well in drug courts



National Recognition for Idaho Mental Health Court

Bonneville County Mental Health Court has again been recognized as a national model to guide other mental health courts in best practices. The Council of State Governments (CSG) Justice Center selected the eastern Idaho court as one of three National Learning Sites. CSG will facilitate visits from courts across the U.S., especially new mental health courts, for visits to Idaho Falls to observe court operations and to interview team members. The Bonneville County Mental Health Court provides strong leadership in working with felony offenders with serious mental illness who are at high risk for recidivism, and has developed tailored approaches to be effective in changing behavior and reducing future criminal offenses.

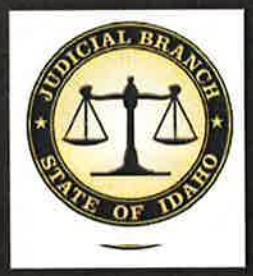
Veterans Treatment Courts Continue to Save Lives and Restore Honor

Veterans Treatment Courts in Idaho began in March 2011, and since that time there have been over 287 participants with 87 graduates. Idaho's Drug Court and Mental Health Court Coordinating Committee is the first in the country to adopt Veterans Court Standards and Guidelines for Effectiveness and Evaluation.

During FY2016 alone, a total of 136 veterans participated in the Veterans Treatment Courts and there were 40 graduates. High-risk and high-need veterans involved in the justice system now have access to Veterans Treatment Court through six courts in Ada, Bannock, Bonneville, Canyon, Nez Perce, and Twin Falls Counties. These courts can currently serve 110 veterans.

Idaho is home to 132,395 veterans including over 100,000 wartime veterans. When an Idaho veteran becomes involved with the justice system, challenges associated with their combat experience, redeployment, and returning home must be considered. These courts, and their evaluation, will help determine whether effective treatment, combined with court-managed accountability, will provide the best long-term outcome.

For more information, contact
Sara B. Thomas, Administrative Director of the Courts
sthomas@idcourts.net // 208-334-2246



Mission Statement of the Idaho Courts

As the Third Branch of Government, we provide access to justice by ensuring fair processes and the timely, impartial resolution of cases.

The Idaho Courts stand for:
Integrity
Fairness
Independence
Respect
Excellence
Innovation

The Idaho Courts strive to:

Provide Timely, Impartial Case Resolution through Legally Fair Procedures

Ensure Access to Justice

Promote Effective, Innovative Services

Increase Public Trust and Confidence in Idaho Courts

Adopted by the Supreme Court October 31, 2011 and revised April 25, 2016

DOMESTIC VIOLENCE COURTS

Family safety

Offender accountability

(*Presentation by Hon. Rick Bollar*)

Domestic Violence Courts

Created with support of the Legislature

- Passage of Idaho Code 32 – 1408(3)
- Providing funding for Domestic Violence Court Coordinators

Domestic Violence Courts

- Enhance victim safety and offender accountability
- Provide effective case management
- Coordinate information for families with multiple cases
- Use one judge to process cases

Domestic Violence Courts

DV Courts process:

- Domestic violence cases (criminal)
- Protection order cases (civil)
- Related divorce, custody, child support cases
- Family violence criminal misdemeanor cases

Domestic Violence Courts

Court's Objective:

- Provide a safe environment for families at risk
- Create coordinated responses to family issues
- Avoid separate judges providing different rulings
  - Confusing
  - Have negative consequences to the family

Domestic Violence Courts

Statewide Domestic Violence Court Coordinator – Amber Moe

- DV Courts and Coordinators in 6 of 7 Judicial Districts
- Different demographics and resources
  - Policies and Guidelines
  - Research-based best practices
  - Identify essential elements for Domestic Violence Courts
- All have
  - Fast- track criminal case disposition
  - Ongoing judicial reviews

Domestic Violence Courts

- Offenders held to a higher level of accountability
- Concentrate responsibility in a single judge
- Monitor compliance with court orders
- Oversee treatment programs
- Allow victims a greater voice
- Promptly address critical family issues
- Provide resources for victims early in the process

Domestic Violence Courts

Court Coordinators are critical to the effective operation

- Identify gaps and barriers in services
- Create services and treatment options for victims and offenders in rural areas
- Facilitate development of coordinated community response
- Improve the handling of domestic violence cases within the justice system

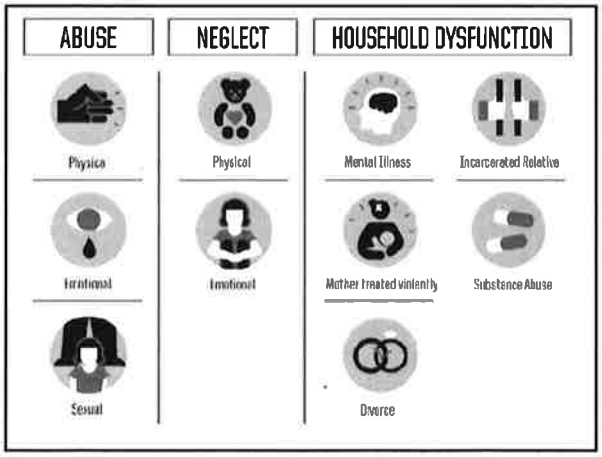
Domestic Violence Courts

Ada County Domestic Violence Court as Mentor Court

- Model and host for site visits for judges and prosecutors
- Bonneville County District wide and High Intensity DV Court
- All Districts are participate in evaluations

JUVENILE JUSTICE

- *(Presentation by Hon. Bryan Murray)*



JURISDICTION OVER PARENTS

1. Summons to court (IC 20-512)
2. Written Promise to bring juvenile to court (IC 20-516)
3. Authority to have parents sign a probationary contract (20-522) Subject to contempt proceedings.
4. Order (IC 20-520) Court may order reasonable conditions to be complied with by the parents.....
5. Order (IC 20-524 & 20-520) parents to pay reasonable sum for detention, support and treatment.....
6. Order parents to pay restitution not limited by IC 6-210. (IC 20-520)

KIDS IN STATE CUSTODY

Parents $ duty
County duty while in custody
Involvement of parents
Treatment
Education
Restitution
State controls treatment and time in custody
Plan for release with parents, schools and probation

CHILD PROTECTION IN IDAHO

(Presentation by Hon. Anna Eckhart)

IDAHO CODE 16-1601

- The Child Protective Act
- Enacted by you, the Legislature, provides the legal framework for cases involving abused, neglected or abandoned children are processed through the judicial system.

IDAHO RECOGNIZED NATIONWIDE!

- In 2012, Idaho's child welfare system was ranked number 1 in the nation by the Foundation for Government Accountability
- This is a non-profit government oversight committee that judged all 50 states and the District of Columbia on 11 outcomes and 41 data measures, including:
  - How quickly they reacted to abuse allegations
  - Whether they made sure abused children were put in safe, permanent homes quickly.
  - Whether foster care settings were supportive, safe, home-like and stable.
  - Their work to reduce abuse and neglect

- In 2016, Debra Alsaker-Burke, our Idaho Statewide Child Protection Manager received the Mark Hardin Award for Child Welfare Legal Scholarship and Systems Change
  - Created by the ABA Center on Children & the Law
  - Recognized Mark Hardin's 30 years of dedication to child protection and particularly in implementing the federal Adoption Assistance and Child Welfare Act of 1980 and conceptualizing 42 U.S.C. 629h which has provided millions of dollars to state court systems for improving their child protection cases

HOW DOES A CHILD PROTECTION CASE START?

- A law enforcement officer can shelter a child whose safety is at risk—meth labs or drugs/dangerous home, or during a criminal investigations.
- A judge can expand a juvenile correction proceeding into a child protection case
- Referral to either the Department of Health & Welfare or law enforcement. By statute, any physician, teacher, social worker, mental health professional—in fact any person—having reason to believe a child is abused, neglected or abandoned is required to report to either the Dept. of H & W, or law enforcement.

Anatomy of a Child Protection Case

- Once a case is filed, we are required to hold a hearing within 48 hours to determine whether reasonable grounds exist to support the allegations and whether the child should return home.
- We are then required to have a trial within 30 days, a Case Plan hearing 30 days after that, and then review hearings no less than every 6 months.
- At these hearings, we determine whether efforts should be directed toward reunification or permanent placement outside the home.
- We are required to make a finding whether the Department's efforts have been reasonable to avoid out-of-home placement at every hearing.

Anatomy, cont.

- I mention these requirements, particularly the time requirements, because federal funding (Title IV-E funds) for these children depends on Idaho judges complying with these requirements.
- Child Protection files are audited by the federal government. If we mess up, the kids lose funding.

GUARDIAN AD LITEM

- Our ability to do what's best for these children also depends on the Guardian ad Litem program.
- Each of the 7 judicial districts now has GAL – or what we sometimes call CASA—programs, comprised of citizen volunteers who go through specific training to serve as independent advocates for each child.
- In fiscal year 2016, GAL volunteers contributed 19612.5 hours, roughly the equivalent of 9 full-time positions, to advocate for Idaho's abused and neglected children.
- Funding for the training of these volunteers comes from you (2/3 of funding) and the remainder from community donors.

FISCAL YEAR 2016

- The Department of Health and Welfare received 22,346 referrals related to child safety.
- Of those referrals, 8,884 were assigned for a safety assessment
- Of those, investigations/assessments, 855 Child Protection cases were filed.
- Many investigations were resolved by the parents cooperating with the Department without judicial intervention.
- There were 7,591 hearings held with an overall timeliness compliance rate of 87%*.

The core of Child Protection

- TO ENSURE THAT EVERY CHILD THAT SHOULD BE IN CARE IS IN CARE, BUT NOT A SINGLE CHILD MORE; AND TO ENSURE THAT EVERY CHILD THAT IS IN CARE IS IN A SAFE NURTURING PLACEMENT THAT IS SUPPORTIVE OF THE PERMANENCY PLAN FOR THE CHILD.

FAMILY LAW (Guardian/Conservator)

- *(Presented by Hon. Kent Merica)*

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COORDINATED FAMILY SERVICES

Family Court Services (FCS), Court Assistance Offices (CAO), and Domestic Violence Courts (DVC) were established by Idaho Code Title 32, Chapter 14, as, "Coordinated Family Services," to meet the needs of families and children in the courts by fostering family relationships, offering legal assistance, and responding to domestic violence. FCS, CAO, and DVC provide innovative case management practices which are designed to promote an efficient use of family and court resources.

FAMILY COURT SERVICES

Families in transition may be better suited for alternative methods to resolve their dispute than the adversarial process. Family Court Service Managers assist with case management from the time of filing, through case disposition, to the final decree, with a number of helpful services along the path to a new family structure.

The Children and Families in the Courts Committee has adopted seven statewide core services.

- Co-Parent Education helped 9,028 parents understand how to keep their children out of the middle of a dispute and focus on their children's best interests.

- Supervised Access afforded the opportunity for 895 children to spend time with their parents under circumstances that would ordinarily make access difficult.

- Mediation was used in 668 custody disputes and family courts managed another 1,645 mediation cases with referrals to community professionals.

- Civil Intake Screenings assist the courts in triaging cases and efficiently finding the best service suited to the case.

- Pre-Filing Workshops gave 1,326 parents the opportunity to work with Family Court Services on parenting plans.

- Brief Focused Assessments help answer discreet questions by providing unbiased information to the court.

- Parenting Time Evaluations assist the court in the most difficult cases.

COURT ASSISTANT OFFICE

The role of the Court Assistance Office is to promote equal and meaningful access to the courts and increase the accessibility of resources and legal information for self-represented litigants. In FY2016, Court Assistance Officers throughout the state assisted over 57,000 people by providing information on the court process and court approved forms, reviewing court forms, and organizing legal advice clinics to help those without an attorney navigate the court system and better understand their rights and responsibilities.

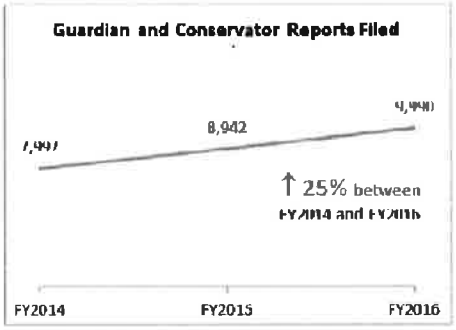
The Court Assistance Office continues to expand its use of technology to increase the ease of accessing the resources available to self-represented litigants. The office partnered with Idaho Legal Aid, Inc. on a grant from the Legal Services Corporation to create a text-line for obtaining immediate responses to frequently asked legal questions. The office is always using technology to simplify the process of completing and e-filing court forms via the continued development of the Guide & File interviews.

GUARDIANSHIPS AND CONSERVATORSHIPS

Guardianships and conservatorships are relationships created by Idaho law in which a court gives a person or entity (the guardian or conservator) the duty and power to make personal or financial decisions for another (the person under guardianship or conservatorship).

Encouraging and Enabling People to Lead Independent, Self-Determined and Community Included Lives

The Idaho Legislature has recognized through Title 66 (the Developmental Disability Code) and Title 15 (the Uniform Probate Code) that every individual has unique needs and differing abilities, and public welfare is promoted by establishing a guardianship or conservatorship that permits persons to participate as fully as possible in decisions affecting them. To further this objective, the Idaho Supreme Court Guardianship and Conservatorship Committee (GC Committee) is identifying and implementing promising practices to facilitate limited guardianships and conservatorships.



Compliance and Monitoring

A guardian is required by Idaho Code § 15-5-312(e) to report annually on the status of the person under guardianship. A conservator is required by Idaho Code § 15-5-419 to report annually on any income and expenses for that year.

While the number of guardianship and conservatorship petitions has remained stable, the number of reports to the court has steadily risen across the state due to increased training and public outreach.

Six years ago, the GC Committee implemented a statewide financial monitoring program that provides an independent review of conservators' reports to monitor effective asset management for the person under conservatorship. In FY2016, Idaho clerks of the court submitted 2,752 annual financial reports for review. These reports reflect $336 million dollars of assets under the care of another person.

In July 2014, the GC Committee launched two pilot projects in the Third and Fifth Judicial Districts, called the Court Monitoring of Protected Persons (CMPP) project. Coordinators were hired to provide court monitoring of persons under guardianship.

Evaluation of the CMPP shows that the program provides needed resources for clerks, establishes consistency in case processing, gives assistance to the public, and improves the monitoring of cases, including identification of cases in need of follow up.

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Wednesday, February 01, 2017

SUBJECT	DESCRIPTION	PRESENTER
Gubernatorial Appointment	Paula K. Garay, Re-appointed to the Sexual Offender Management Board.	Paula K. Garay
Gubernatorial Appointment	Debbie Field, Re-appointed to the State Board of Correction.	Debbie Field
Presentation	Idaho State Public Defense Commission	Kimberly J. Simmons, Executive Director
Docket No. 57-0101-1601	Rules of the Sexual Offender Management Board	Jon Burnam, Chairman, Sexual Offender Management Board
DOCKET NO. 05-0103-1601	Rules of the Custody Review Board	Sharon Harrigfeld, Director, Juvenile Correction

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, February 01, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Nye, and Bock (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:	**Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:34 p.m.
GUBERNATORIAL APPOINTMENT HEARING:	**Paula K. Garay, Reappointment to the Sexual Offender Management Board (SOMB)**. **Paula K. Garay** informed the Committee that she has been serving juveniles and adults who sexually offend since 2002. She has served as a therapist, clinical director, and executive director in a residential setting. In 2015 she opened a private practice in Meridian. **Ms. Garay** stated that she became interested in SOMB when a position became available, feeling it important to have representation for cultural diversity in the population served.

Chairman Lodge asked Ms. Garay what work she is currently doing with SOMB. **Ms. Garay** replied that she makes sure rules and standards for treatment providers, assessors, and polygraph examiners take into consideration cultural differences of SOMB's clients.

Senator Lee requested that Ms. Garay identify a quality she brings to SOMB that will ensure there is representation for cultural differences. **Ms. Garay** explained that those working with offenders need to understand culturally based beliefs that could affect an offender's reaction to treatment. She shared that examples of such beliefs are seeking counseling being a dishonor to the family, maintaining eye contact being disrespectful, and having wide age differences between partners in a relationship. **Ms. Garay** emphasized the importance of being sensitive to differences in cultural norms, and of adjusting treatment practices accordingly.

Senator Davis inquired if Ms. Garay sometimes felt she had a conflict of interest. **Ms. Garay** responded that she did not perceive any conflict of interest between her former work in residential facilities, her current private practice, and serving on SOMB. **Senator Davis** asked if SOMB has a policy relating to conflicts of interest. **Ms. Garay** explained that although she can't quote it, there is a policy. She related that these concerns were discussed when SOMB was formed, and conflicts of interest were avoided. **Senator Davis** inquired if SOMB periodically reviews those policies and standards. **Ms. Garay** affirmed that they do as they meet monthly.

Senator Hagedorn expressed appreciation for her service on SOMB. He requested Ms. Garay's observations regarding changes since Justice Reinvestment (JRI) was enacted. **Ms. Garay** stated SOMB agrees with the

standards ensuring competence in providers and examiners. She added that the courts and the judges can now identify good evaluations and treatment programs. **Ms. Garay** declared that the JRI has increased the caliber of services provided.

Senator Bock requested procedures related to SOMB as it certifies people who are competent to test and provide evaluations. He asked if members of SOMB are directly involved with offenders. **Ms. Garay** replied that those interested in becoming treatment providers, polygraph examiners, or psycho-sexual evaluator submit an applications to SOMB. Subcommittees review those applications which include evaluation or treatment plans. SOMB considers the applications and requests additional information if necessary.

Chairman Lodge inquired what differences have been made since the addition of the polygraph expert to SOMB. **Ms. Garay** believed that meeting the goal to increase competence of polygraph examiners has been enhanced by the addition of the polygraph expert.

Chairman Lodge invited Ms. Garay to introduce others from SOMB. **Ms. Garay** noted that Kimberly Simmons, Karen Magneli, and Brenda Bauges were in attendance.

GUBERNATORIAL APPOINTMENT HEARING:

Debbie Field, Reappointment to the State Board of Correction (SBC).
Debbie Field, State Board of Correction, reported she has served on the SBC for two years and has seen some good things happen. She acknowledged the presence of her husband, of Henry Atenco, Director of the SBC, of Josh Tewalt, and of Sharon Harrigfeld, Director of Idaho Department of Juvenile Corrections.

Senator Davis noted Ms. Fields' legislative experience and asked how that has helped or hindered her in her work with the SBC. **Ms. Field** replied that it has helped to understand issues that bring inmates to the facilities. She asserted that taking away freedom is a loss. She noted that the people in the field have to decide how to deal with people who have lost their freedom. **Ms. Field** observed that the SBC must address the issue of returning these people to society. She encouraged the Committee members to visit the facilities.

Ms. Field reported to the Committee that Idaho was invited to learn about the Norway system. Previously the institution had been a warehouse system with serious rioting and violence problems. In commenting on the deprivation of freedom, one of the inmates stated he had been treated like an animal in a cage and he came out like an animal. **Ms. Field** explained that the difference with the Norway system was that it allowed people to be treated like human beings. Housing areas had calming colors and murals, and the inmates were able to purchase small items to help them have some connection to normalcy. Under the Norway system, inmates worked in a horse-supported agricultural atmosphere. They had to be at work on the land or caring for the horses, or in school. They worked hard to improve their lives and their skill set. She recounted some of the stories of the inmates. She pointed out that inmates who were repeat offenders and had been in warehousing type institutions wanted to be better citizens when they were released from Norway. **Ms. Field** emphasized that the goal of the SBC is to have Idaho's inmates have that outlook.

Senator Davis asked if legislators listen as she tries to influence public policy, and how things are different now that she is not in the Legislature. **Ms. Field** identified some ways to educate others concerning the needs of the Department of Correction such as holding SBC meetings at the facilities and talking to inmates. She commented that State employees and legislators understand the need to listen and learn, and then to act when appropriate. She pointed out that there are many emotions involved when working with incarcerated people, and those emotions need to be worked through in order to recognize facts and make changes.

Senator Nye complimented Ms. Field on her service. He asked Ms. Field for her insight into Pocatello's women's prison and how Norway can affect that. **Ms. Field** responded the Norway experience has shed light on the women's abuse, trauma, and elements of incarceration. She pointed out that education and learning skills are important in helping the girls and women change the future of whole families. In the Norway system and in a program for incarcerated girls in Baltimore, inmates were taught how to budget, to purchase and cook food, and other everyday skills. Many completed school and went on to college. **Ms. Field** asserted that the system should be more mentor friendly, i.e. those who were known as "guards" previously can be known as "contact officers" who act in the capacity of mentors.

Senator Hagedorn inquired how Idaho can replicate Norway's transition process from prison to the private sector. **Ms. Field** answered that the reentry process is a work in progress. She mentioned that work is being done to have more probation officers in order to work better with high-risk offenders. Focus is being put on building community connections along with teaching skills that will assist the inmates in their transition back to society.

PRESENTATION: **Idaho State Public Defense Commission. Kimberly J. Simmons**, Executive Director, Idaho State Public Defense Commission (PDC), advised the Committee that the PDC is committed to improving the delivery of trial-level indigent defense by serving the indigent defense providers of Idaho. She emphasized that one goal of the PDC is to ensure the safeguards of the Sixth Amendment to the United States Constitution and are met. **Ms. Simmons** mentioned the PDC's duties included collecting data, supporting compliance with standards, providing training, and administering grants to achieve fair and just representation of the accused.

Ms. Simmons gave a brief history of the PDC, stating that it was established in 2014 by the Idaho Public Defense Act (attachment 1) and was updated in 2016. She shared information regarding the make up of the PDC and its powers and duties (attachments 1 and 2).

Ms. Simmons stated that a study was done by the National Legal Aid and Defenders Association and the results came out in 2010. The survey showed deficiencies in Idaho's defense system. Those included flat fee contracts, lack of structural safeguards to permit independence related to flat fee contracts, and high case loads in the seven counties studied. Other deficiencies were lack of communication with attorneys and lack of confidential communication areas, inadequate investigation by the defense attorneys due to lack of resources, availability of investigators as well as lack of time due to high case loads. There was also a lack of performance standards for public defenders and a lack of adequate representation for children in juvenile court.

Senator Bock asked if there were areas where Ms. Simmons still saw deficiencies. **Ms. Simmons** indicated that many of the areas where there were deficiencies would be addressed in the Committee meeting on Monday, February 6, 2017. She stated that lack of resources continues to be an ongoing problem. Other areas were limited communication with attorneys and lack of confidential client communications, defense attorneys lack of speaking to their clients prior to court appearances, inadequate investigation of cases, excessive case loads, and flat feet contracts. **Senator Bock** asked what would happen if additional money was requested from the counties, for whatever reason, and the request was declined. **Ms. Simmons** responded that some counties are denying those requests. Funds come from different sources and there is no consistency. One of the issues that will be addressed is to put some standards in place regarding investigations and experts to achieve some consistency throughout counties.

Ms. Simmons discussed the Sixth Amendment Right to Counsel and talked about several cases using the Sixth Amendment in their defenses (attachment 1 and 2). The Supreme Court requires that all indigent defendants are to get a court-appointed attorney at public expense. Indigent defense providers are defined as the chief public defender in an in-house public defender office. Defending attorneys are any other attorney in the State of Idaho who is providing public defense services whether they are in-house or contracted with a county. The PDC has been given the task of providing continuing legal education programs for the State's indigent defense service providers. The Commission sponsored five different training programs in 2016 (attachment 3). **Ms. Simmons** indicated that HB 504 (2016) was created to improve the delivery of trial-level indigent defense services by providing funding and creating standards with which counties must comply. The powers and duties of Idaho Code § 19-850 are shown in (attachment 2).

Ms. Simmons went into detail about the Indigent Defense Grants and the appropriation of funds to provide counties with resources for indigent defense (attachment 4). She clarified the formula for the computation of indigent defense expenditures. The local share is based upon their expenditures. It is defined as the first three years of the last five fiscal years. For example, for Fiscal Year 2016, a counties local share would have been the median amount of the 2011, 2012, and 2013 budget (see Indigent Defense Expenditures found in attachment 2).

Senator Hagedorn asked why there were only 43 out of 44 counties that had applied for an Indigent Defense Grant. **Ms. Simmons** stated that Benewah County did not apply because they felt their public defense system was sufficiently funded. She indicated that she had encouraged Benewah County to apply in the future since they may need the money to comply with new standards.

Ms. Simmons indicated that she had visited 39 of 44 counties in the State of Idaho. A common concern was the increasing costs of providing public defense. Many of those involved expressed their concern about the permanence of the Indigent Defense Fund. They questioned whether the money would still be available year after year and were hesitant to hire people who they potentially wouldn't be able to retain. She gave her recommendations and asked for guidance from the Legislature for the upcoming year (attachment 2). **Ms. Simmons** concluded her presentation with the future goals for the PDC. She discussed the workload study being conducted by Boise State University (BSU) and the value it will bring the PDC. She stated that they would be promulgating additional rules in phases so as not to overload the counties with too many too quickly, to educate all of the stakeholders involved in this program, to continue to visit the counties, to train the defending attorneys and to define "extraordinary litigation costs."

Chairman Lodge recommended that the Committee go over the information provided and be prepared with their questions for Ms. Simmons when she returns to the Committee on Monday, February 6, 2017.

PASSED THE GAVEL:

Chairman Lodge passed the gavel to Vice Chairman Lee.

DOCKET NO. 57-0101-1601

Jon Burnam, Chairman Sexual Offender Management Board, stated that he had provided a complete copy of the proposed changes. One of the major changes is splitting the certification for post conviction sex offender polygraph examiners. Currently one was either certified or not. The rule would provide for two different levels of certified polygraph examiners either senior level or associate level approved. Schools have changed their criteria to allow for an associate level polygrapher. There is a change relating to the provisional level of certification proposing that the first 250 hours have face to face training and the remaining hours could be done at a supervision ratio. **Mr. Burnam** explained another area of change is in the number of hours one has to have face to face client practice. Individuals who have much experience in treatment or evaluation of offenders but who may not have practiced in the last three years were not being allowed to certify. To take into account the number of years they have previous to that period of time, it has been changed to a minimum of 500 hours in the previous three years rather than 1,500. A "Request for Conditional Waiver" would change the duration of that and establish new rules about the frequency in which a person might request that waiver. "Good Cause" may be changed to accommodate an instance of when a person may have requested a waiver, but became ill or had some other issue where they would have to exceed the one year mark. The language describing the difference between the senior level and associate level polygraph examiner is being changed but it is much the same as for treatment providers and evaluators. The requirements for graduating from polygraph school is a minimum of 40 hours, and the number of examinations that are successfully completed has changed. At the associate level they would be supervised as those exams are given and show their actual experience providing those exams. The number of continuing hours for the polygraphs is being reduced from 40 to 30. In "Considerations for the examiners" the wording "to be committed to community protection" and "to provide services in a manner that is ethical" is taken from the Polygraph Standards from the American Polygraph Association (APA). In "Certification periods and conditional waivers" the associate level post conviction sex offender polygraph examiner can only be at the associate level for two years; going beyond that will invalidate certification.

Senator Hagedorn asked how many people were involved in the negotiated rule making. **Mr. Burnam** indicated that he was not sure of the number, but it was everyone who was certified in the system.

Senator Davis was concerned about "or for good cause" and "or other extenuating circumstances." He felt that they were very arbitrary and would open the door for future litigation. **Senator Lee** stated that she was concerned about the appearance that the standards were being reduced. A discussion was held about their concerns.

Senator Hagedorn moved that these rules be held to the call of the chair so more discussion could be held. Motion was seconded by **Senator Anthon**. Motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Lee passed the gavel back to Chairman Lodge.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:10 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Assistant Secretary

Idaho Public Defense Act

Information Sheet

2014 – House Bill 542	2016 – House Bill 504

• Promulgate rules related to:
  ○ Training and CLE requirements for PDs
  ○ Uniform data reporting requirements
• Make recommendations to the Idaho Legislature regarding
  ○ Core Requirements for PD contracts
  ○ Qualifications and experience standards for PDs
  ○ Enforcement mechanisms
  ○ Funding issues
• Hire an Executive Director and other personnel
	• Promulgate rules related to:
	  ○ Training and CLE requirements for PDs
	  ○ Uniform data reporting requirements *and model forms*
	  ○ *Model contracts and core requirements for contracts*
	  ○ *Grants for which counties could apply to come into compliance with standards*
	  ○ *The administrative procedure act*
	  ○ *The procedures for oversight, implementation, enforcement and modification of indigent standards*
	  ○ *Standards for defending attorneys*
	  ○ *The Principles of a Public Defense Delivery System*
	• Make recommendations to the Idaho Legislature regarding
	  ○ Enforcement mechanisms
	  ○ Funding issues
	• *Review indigent defense providers and defense attorneys to evaluate compliance*
	• *Establish temporary procedures and model forms for indigent defense grants*
	• Hire an Executive Director and other personnel
	• *Provide training and CLE for indigent defense providers and defending attorneys*
	• *Establish procedures for providing extraordinary litigation costs to counties*
	• *Hire private counsel to represent the PDC in hearings per administrative procedure act and rules promulgated in this section*
	• *Adds Idaho Code §19-862A:*
	  ○ *Require compliance with indigent defense standards*
	  ○ *Provide for indigent defense grants*
	  ○ *Provide application procedures for indigent defense grants*
	  ○ *Provide procedures for noncompliance with indigent defense standards*
	• *Amends Idaho Code § 19-864*
	  ○ *Require reporting in compliance with the rules promulgated in this section*

**Italicized portions are the changes/additions created by House Bill 504*

IDAHO STATE PUBLIC DEFENSE COMMISSION

State Public Defense Commission

"

The price of freedom is eternal vigilance.
-Thomas Jefferson

Brief History

- Established in 2014 by the passage of House Bill 542 – Idaho Public Defense Act
  - Added/Amended Idaho Code § § 19-847 – 19-866
- Seven Member Commission
  - Appointed by different authorities
  - No appointees may be a prosecuting attorney or a current employee of law enforcement agency
- Staff: Executive Director and other personnel
- Result of the Public Defense Reform Interim Committee following a three-year study prompted by the Idaho Criminal Justice Commission

Powers and Duties Before HB504

- Promulgate rules related to training and CLE requirements
- Promulgate rules related to uniform data reporting requirements
- Make recommendations to the Idaho Legislature
  - Core requirements for PD contracts
  - Qualifications and experience standards for PDs
  - Enforcement mechanisms
  - Funding issues

Expansion of PDC's Powers and Duties

- *Tucker v. State of Idaho*
  - Plaintiffs: Four (Bonner, Shoshone, Ada, and Payette Counties)
  - Defendants: Governor and the individual members of the PDC
    1. Lack of resources
    2. Limited communication with attorney
    3. Lack of defending attorneys at initial appearances
    4. Flat-fee contracts – disincentive to hire experts or investigators
    5. Excessive caseloads

Sixth Amendment Right to Counsel

- *Powell v. Alabama* (1932)
  - Capital cases
  - Special circumstances: ignorance, feeblemindedness, illiteracy or the like
- *Gideon v. Wainwright* (1963)
  - Felony cases
  - Fundamental fairness
  - Fair Trial
- *Argersinger v. Hamlin* (1972)
  - Actual imprisonment
- *Alabama v. Shelton* (2002)
  - Any chance of the deprivation of liberty

Sixth Amendment Right to Counsel

- When does it apply?
  - **Critical Stages**, including but not limited to:
  - Custodial interrogation
  - Initial Appearance
  - Preliminary Hearing
  - Arraignment
  - Trial
  - Sentencing
  - Appeal

Effective Assistance of Counsel

- A defendant is entitled to effective counsel who has knowledge of defendant rights and capable of presenting defenses to which the accused is entitled
- If counsel does not effectively represent a defendant, a conviction could be overruled upon appeal because of the denial of assistance of counsel
- *Strickland v. Washington* (1984)

What House Bill 504 Accomplished

Improving the delivery of trial-level indigent defense services by providing funding and creating standards with which counties must comply.

Powers and Duties - Idaho Code §19-850

Shall Promulgate rules related to:

- Training and CLE requirements
- Uniform data reporting requirements and model forms
- Model contracts and core requirements for contracts
- Allowing counties to apply for a PDC Grant to come into compliance with standards

Powers and Duties - Idaho Code §19-850

Shall Promulgate rules related to:

- Administrative procedure act
- Procedures for oversight, implementation, enforcement and modification of indigent defense standards
- Standards for defending attorneys
  - Idaho's Principles of Public Defense Delivery System

Powers and Duties - Idaho Code §19-850

- Make recommendations to the Legislature
  - Enforcement mechanisms
  - Funding issues including calculation of local shares and state indigent defense grants
- Review indigent defense providers and defending attorneys to evaluate compliance
- Establish temporary procedures and model forms for indigent defense grants

Powers and Duties - Idaho Code §19-850

- Hire an Executive Director and other personnel
- Provide training and CLE for indigent defense providers and defending attorneys
- Establish procedures for providing extraordinary litigation costs to counties
- Hire private counsel to represent the PDC in hearings per administrative procedure act and rules promulgated in this section

The PDC in 2016

Annual Report - Executive Summary

- Training for Defending Attorneys – p. 16
- Collaborating with Idaho's Counties – p. 16
- Submission of Rules – p. 20
  - Training Rule
  - Standards for Defending Attorneys
- Inaugural Indigent Defense Grants – p. 22
- Going Forward – p. 24
  - Workload study

$3,819,346.99
FY2017
Indigent Defense Grants

$100,000.00
FY 2017
Joint County Incentive Grants

$92,552.00
FY2016
Training for Defending Attorneys

Indigent Defense Expenditures

County Summary

- 43 of 44 counties applied for an Indigent Defense Grant
- All counties who applied were eligible
- 20 counties were eligible for more than $25,000
- 4 counties applied for a joint grant award
- 12 counties have institutional offices
- No counties contract with an existing office of public defender
- Only 8 counties did not experience increased budgets between FY2011 and FY2015

Biggest County Concerns

- Concerns surrounding the ever-increasing costs for providing indigent defense services
- The feasibility of having defending attorneys at initial appearances
- Concerns about the permanence of Indigent Defense Grant funding
- Desire to have "extraordinary litigation costs" defined
- Annual Report – pp. 16 - 18

Recommendations

- Indigent Defense Grants
- Revision to FY2017 Budget
- The Commission asks the legislature to provide guidance regarding the following issues:
  - The addition of the PDC to agencies exempt pursuant to Idaho Code §74-124(1)(b).
  - Additional state monies for discretionary grants such as the Extraordinary Litigation Fund

Recommendations

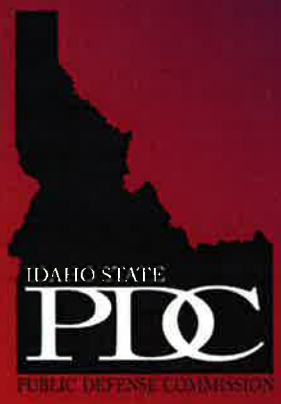
- The Commission asks the legislature to provide guidance regarding the following issues:
  - Recalculation of Local Share as defined by Idaho Code §19-862A to increase the amount for which counties are eligible
  - The possibility of additional monies to offset the costs of increased budgets due to the banning of fixed-fee contracts
  - Additional members of the Commission to increase representation from rural areas

Going Forward ...

- Workload Study
- Promulgate additional rules
- Educating stakeholders
- Training defending attorneys
- Define "extraordinary litigation costs"

THANK YOU FOR YOUR TIME!

Any questions?



Kimberly J. Simmons

Executive Director

Idaho State Public Defense Commission

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Legislative Report
January 2017

The State of Idaho's Public Defense System

Idaho State Public Defense Commission

"The price of freedom is eternal vigilance."

Idaho State Public Defense Commission
2016 Executive Summary

In 2016, the State Public Defense Commission (PDC) continued its mission to improve the delivery of trial-level indigent defense in Idaho as directed by the legislature. This year saw the Commission hire a new Executive Director and begin work under new legislation that went into effect on July 1. This report highlights the activities and accomplishments of the Commission throughout the year, as well as its priorities as it moves forward, as follows:

- **Training for Defending Attorneys** - The PDC sponsored five different training programs. Additionally, the PDC offered scholarships for defending attorneys to attend nationally recognized trainings. The PDC plans to sponsor at least four training programs in the upcoming calendar year.
- **Collaborating with Idaho's Counties** - The PDC met with representatives from almost all of Idaho's counties in an effort to educate stakeholders on the new legislation and receive feedback on the status of their indigent defense systems. The PDC is committed to building collaborative, effective working relationships with Idaho's counties.
- **Submission of Pending Rule** - This year the PDC submitted its first administrative rule related to standards for defending attorneys. These standards require, when reasonably practicable, representation at a defendant's first appearance, assignment of the same attorney throughout a defendant's case, and require annual continued legal education for defending attorneys. The germane committees will review these rules during this legislative session.
- **Inaugural Indigent Defense Grants** - For the first time, the PDC distributed over $3.9 million of state funds to 43 of Idaho's 44 counties to augment the cost of providing indigent defense. The counties have a variety of plans for the use of their grants to improve their delivery of public defense services.
- **Workload study and the collection of data** - The PDC plans on conducting a workload study in 2017 to collect data on the workload of Idaho's defending attorneys. This data will be used as a basis for PDC rulemaking in the future.
- **Going Forward** - The PDC will continue in its efforts to educate stakeholders and defending attorneys about the issues facing Idaho's indigent defense delivery system. It will also continue to meet its legislative directive to create administrative rules furthering Idaho's Principles of an Indigent Defense Delivery System. Finally, the PDC will develop procedures for distributing funds for "extraordinary litigation costs."

The foregoing represents a fraction of what the PDC has done and will do over the coming year. The Commission encourages you to review the full report contained herein and looks forward to any questions, comments or feedback about this report or the Commission's work more generally.

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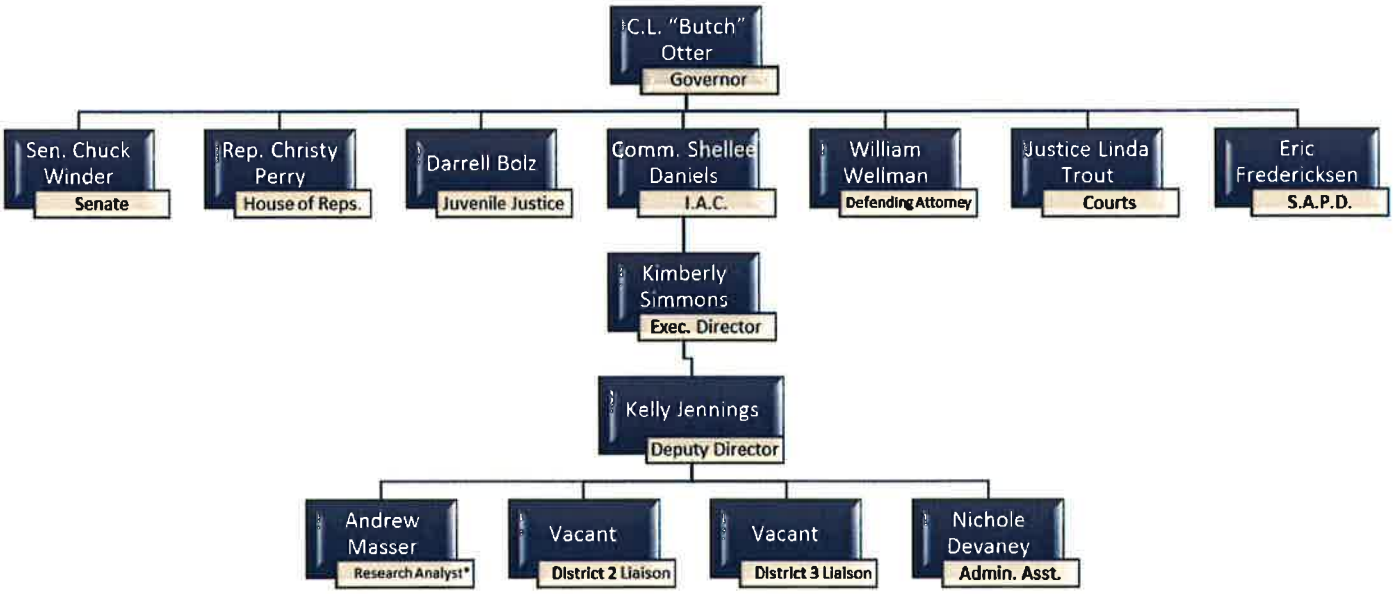
Created in 2014, the Idaho State Public Defense Commission (PDC) operates under the authority of Idaho Code §§19-848 through 19-864. Its mission is to improve the delivery of trial-level indigent defense services by serving the counties and indigent defense providers of Idaho. The PDC strives to ensure that the safeguards of the 6th Amendment to the United States Constitution and Article I, Sect. 13 of the Idaho Constitution are met. The PDC collects data, supports compliance with standards, provides training, and administers grants to achieve fair and just representation of the accused.

Pursuant to Idaho Code §19-859, each of Idaho's 44 counties shall provide for the representation of indigent persons by either establishing an office of public defender or contracting with an attorney or law firm to provide such services. At the end of 2016, twelve of Idaho's counties had elected to establish an office, while the remaining 32 counties provide contracted indigent defense services. Historically, the counties have funded indigent defense services. In 2016, the PDC was given the authority to distribute state monies to aid the counties in providing constitutionally-sound representation to their indigent citizens.

Idaho State Public Defense Commission Organizational Chart 2016-2017



*The Research Analyst is a temporary position from October 2016-April 2017, with an optional extension through June 2017.

From the Executive Director

January 20, 2017

This report showcases the composition, achievements and activities of the State Public Defense Commission (PDC) in 2016. The PDC, established in 2014, had been working on fulfilling their original responsibilities of promulgating rules related to the training and continuing legal education requirements for defending attorneys and uniform data reporting requirements for annual reports submitted pursuant to Idaho Code §19-864. During the 2016 legislative session, House Bill 504, Relating to Public Defense, was introduced by the Public Defense Reform Interim Committee. This bill exponentially increased the powers and responsibilities of the Commission to promulgate rules regarding: procedures for the creation, oversight, implementation, enforcement, and modification of indigent defense standards; requirements for contracts between counties and private attorneys for the provision of indigent defense services; data reporting requirements; procedures for grant applications by which counties can apply for state funds to offset the cost of compliance with indigent defense standards; and procedures for administrative review of Commission decisions. The bill passed and was signed by the Governor on March 24, 2016.

During the 2016 legislative session, the PDC provided input regarding House Bill 504, and since the passage of the bill, the PDC has worked diligently to fulfill the legislature's directives. In 2016, the PDC: distributed the very first round of Indigent Defense Grants to the counties to help the counties improve their indigent defense delivery systems; finalized a temporary rule regarding the use of appropriated funds for training programs; promulgated a rule regarding Standards for Defending Attorneys that, at the time of this report, is awaiting legislative review; hosted and co-sponsored several trainings for defending attorneys; collaborated with stakeholders on how to best improve indigent defense in Idaho; created a uniform annual reporting form for defending attorneys; and maintained communication with stakeholders and other interested parties through face-to-face meetings, the PDC website, e-mail, and social media.

The PDC is committed to fulfilling its statutory directives and assisting counties to provide effective and fair representation to Idaho's indigent citizens. The PDC will continue to establish effective working relationships with in-state stakeholders as well as nationally recognized experts in the area of indigent defense. Staff will research new approaches and methods to improve the indigent defense delivery system, and share Idaho's experiences so others can find new and innovative ways to improve the quality of indigent representation in their jurisdictions. Idaho has a unique opportunity to be a leader in indigent defense reform and the PDC will embrace this challenge with passion and diligence.

Sincerely,

Kimberly Simmons

Idaho Code §19-849
State Public Defense Commission

(1) There is hereby created in the department of self-governing agencies the state public defense commission. The commission shall consist of seven (7) members as follows:

(a) Two (2) representatives from the state legislature that shall include one (1) member from the senate and one (1) member from the house of representatives;

(b) One (1) representative appointed by the chief justice of the Idaho supreme court; and

(c) Four (4) representatives appointed by the governor and confirmed by the senate as follows:

(i) One (1) representative from the Idaho association of counties;

(ii) One (1) representative who has experience as a defending attorney;

(iii) One (1) representative from the office of the state appellate public defender; and

(iv) One (1) representative from the Idaho juvenile justice commission.

(2) No individual who is currently employed as a prosecuting attorney or who is a current employee of a law enforcement agency may be a member of the commission.

(3) The members of the commission shall serve the following terms:

(a) The gubernatorial appointees shall serve terms of three (3) years.

(b) The representative appointed by the chief justice of the Idaho supreme court shall serve a term of two (2) years.

(c) The representatives from the state legislature shall serve terms of two (2) years as appointed by the president pro tempore of the senate and speaker of the house of representatives during their legislative terms of office.

(4) A vacancy on the commission shall be filled in the same manner as the original appointment and for the balance of the unexpired term.

(5) The commission shall appoint a chairman and a vice chairman from among its members for a term certain.

(6) The members of the commission shall be compensated as provided for in section 59-509(b), Idaho Code.

2016 Commission Members

Representative Darrell Bolz (Retired), Chair

Represents the Idaho Juvenile Justice Commission, appointed by the Governor (Term: July 2014 –June 2017)

Mr. Bolz is a retired Idaho State Representative who served seven terms representing District 10. While in the legislature he served on the following committees: Joint Finance and Appropriations (JFAC), Judiciary, Rules & Administration, and Agricultural Affairs, with brief terms on Education and Commerce & Human Resources. He also served for three years on the Idaho Criminal Justice Commission's sub-committee on Public Defense Reform and was a Co-Chair of the Legislative Public Defense Interim Committee for two years. Prior to serving in the Legislature, Mr. Bolz was an Extension Agricultural Agent for the University of Idaho. He is a graduate of the University of Idaho with both bachelor's and master's degrees in Agricultural Education. He received a commission in the U.S. Naval Reserve through the Navy R.O.T.C. and served three years of active duty during the Vietnam War.

Representative Christy Perry, Vice Chair, Idaho House of Representatives

Represents the Idaho House of Representative, appointed by the Speaker of the House of Representatives (Term: January 2015 – November 2016)

Representative Perry is currently serving her fourth term as an Idaho State Representative for District 11, representing a large portion of Canyon County. She is active on the Health and Welfare and Judiciary, Rules & Administration committees, while chairing the Local Government committee. Ms. Perry served on the Public Defense Interim Committee when it developed House Bill 504, expanding the Commission's authority. She is a Top Ten Scholar Finalist and Distinguished Honors Award recipient at Boise State University and a businesswoman. Ms. Perry earned her bachelor's degree in Political Science and Master of Public Administration degree from Boise State University.

Eric D. Fredericksen, Esq., State Appellate Public Defender

Represents the Office of the State Appellate Public Defender, appointed by the Governor (Term: July 2016 – June 2017)

Mr. Fredericksen serves as the State Appellate Public Defender. He joined the office as a staff attorney, later becoming a senior attorney, before leaving for a short stint at a private law firm. Mr. Fredericksen handled all levels of criminal and civil litigation while in private practice. After two years in private practice, he returned to the State Appellate Public Defender's Office and was promoted to Chief of the Appellate Unit. In July of 2016, he became the interim State Appellate Public Defender upon the resignation of Sara Thomas, and was appointed to the titled position in November. Mr. Fredericksen earned his law degree from the University of Idaho College of Law.

Commissioner Shellee Daniels, Idaho Association of Counties

Represents the Idaho Association of Counties, appointed by the Governor (Term: October 2016 – June 2017)

Commissioner Daniels is serving her 2nd term as an Oneida County Commissioner, the first woman to be elected to the position in that county. Prior to

(Continued on page 7)

Commission Members Continued ...

being elected Commissioner, Ms. Daniels served in various departments for the State of Idaho including the Juvenile Justice Commission, the Office on Aging, and the Idaho State Police before relocating with her family to Malad City to farm and ranch. Commissioner Daniels earned her bachelor's degree in Political Science and Public Administration from Boise State University. While attending the University, Commissioner Daniels served as a legislative intern to Governor Andrus and helped manage his Ada County re-election campaign.

Justice Linda Copple Trout (Retired), Idaho Supreme Court

Represents the Idaho Supreme Court, appointed by the Chief Justice of the Idaho Supreme Court (Term: July 2016 – June 2018, member since January 2016)

Justice Trout is a former Chief Justice of the Idaho Supreme Court, the only female to hold that position. Since her retirement she has continued to serve the courts as a retired judge. She sat on the Supreme Court for 15 years, serving eight of those as the Chief Justice. Prior to her Supreme Court appointment, Justice Trout served as a Magistrate Judge in the Second Judicial District after being in private practice in Lewiston for six years. Justice Trout earned her bachelor's degree from the University of Idaho in Moscow and a law degree from the University of Idaho College of Law.

William H. Wellman, Defending Attorney

Defending attorney, appointed by the Governor (Term: July 2014 – June 2017)

Mr. Wellman is a criminal defense and family law attorney, practicing for more than 35 years. He currently serves as the Owyhee County Public Defender and the Special Deputy Attorney General for Child Support Enforcement. Prior to that, Mr. Wellman was a Canyon County Deputy Prosecuting Attorney and a Nampa City Prosecuting Attorney. From 2011 to 2014, Mr. Wellman served as the Idaho State Bar Commissioner for Districts 3 and 5, serving as President of the Bar from 2013 until 2014. He was also the director and officer of OGsBAD, INC., a local non-profit youth services agency. Mr. Wellman earned his bachelor's degree in Political Science from Miami University and received a law degree from West Virginia University College of Law.

Senator Chuck Winder, Idaho Senate

Represents the Idaho Senate, appointed by President Pro Tempore (Term: January 2015 – November 2016, member since July 2014)

Senator Winder is currently serving in his third term as Senator for District 20, representing east Meridian and west Boise. He is the Idaho Senate Assistant Majority Leader and is active on Transportation and State Affairs Committees. Senator Winder served in the U.S. Navy, and the inactive reserve, as a Naval Aviator. Upon his return, he was employed by Morrison-Knudsen Company and Emkay Development Company serving as Vice President. Senator Winder and his wife started The Winder Company, a commercial real estate brokerage they successfully ran for 29 years until it merged with Lee & Associates. Shortly after the merger, Senator Winder joined Grubb & Ellis,

(Continued on page 8)

where he served as Senior Vice President. Cushman and Wakefield Commerce acquired Grubb & Ellis where he currently serves as the Director. Senator Winder earned a bachelor's degree in Political Science and Pre-Law from the College of Idaho.

FORMER MEMBERS

Judge Molly Huskey, Idaho Supreme Court

Represented the Idaho Supreme Court, appointed by the Chief Justice of the Idaho Supreme Court (Term: July 2014 – December 2015)

Judge Huskey currently serves on the Idaho Court of Appeals. Prior to her appointment, she served as a District Judge in the Third Judicial District. She was a public defender and a prosecutor in Bonneville County before joining the newly-created Office of the State Appellate Public Defender (SAPD) in 1998. She became the Chief of the Appellate Unit a year later, then served as the State Appellate Public Defender for nine years before being appointed to the District Court bench. Judge Huskey earned a bachelor's degree in Public Relations from the University of Idaho in Moscow and a law degree from the University of Idaho College of Law.

Sara B. Thomas, Esq., State Appellate Public Defender

Represented the Office State Appellate Public Defender, appointed by the Governor (Term: July 2014 – June 2016)

Ms. Thomas currently serves as the Administrative Director of the Courts. During her time on the commission, Ms. Thomas was the State Appellate Public Defender. Prior to that she held the position of Chief of the Appellate Unit within that Office. She previously was a staff attorney with that unit for three years, and before that was a law clerk for Idaho Court of Appeals Judge Alan Schwartzman. Ms. Thomas was appointed as Chair of the Idaho Criminal Justice Commission in 2013, and serves as co-chair of the National Association for Public Defense Amicus Committee. Ms. Thomas earned a bachelor's degree in Criminal Justice Administration from Boise State University and a law degree from the University of Idaho College of Law.

Commissioner Kimber Ricks, Idaho Association of Counties

Represented the Idaho Association of Counties, appointed by the Governor (Term: July 2014 – September 2016)

Commissioner Ricks is in his 11th year of service as a Madison County Commissioner. He is a retired CPA, having spent forty years in fund raising, public accounting and teaching. Commissioner Ricks received his education at Ricks College, Idaho State University and the University of Utah.

2016 Staff

Executive Director

Kimberly Simmons came to the PDC from the Canyon County Public Defender's office, where she served as a senior trial attorney, handling felony cases. Prior to her tenure in the newly opened County office in Canyon, she served as a trial attorney in the Ada County Public Defender's office for eight years, after serving three years as a capital litigation attorney in the State Appellate Public Defender's office. Ms. Simmons has served on the Board of the Idaho Association of Criminal Defense Lawyers for several years and was responsible for the organization's newsletter for more than five years. She instituted free, monthly, in-house CLE's at the Ada County Public Defender's office, and because of her leadership skills and desire to promote justice, she was appointed to the Sexual Offender Management Board (SOMB) in 2013, where she continues to serve. Through that appointment, she participated in the creation of new standards and certification procedures for psychosexual evaluators and treatment providers, many of which have already been implemented. She has experience and familiarity with the negotiated rulemaking process and drafting administrative rules and regulations through her service on the SOMB. As a career public defender, Ms. Simmons brings not only the experience and knowledge required for the position, but also a strong dedication and passion for improving the indigent defense delivery system in Idaho. Ms. Simmons began her employment as Executive Director on May 9, 2016.

Deputy Director

Kelly Jennings began working with the PDC in August of 2016. She previously served as the charter coordinator of the Ada County Mental Health Court, where she oversaw all aspects of program and policy development and administration of a multi-disciplinary, multi-agency team for over ten years. Ms. Jennings actively participated on the Idaho Supreme Court

Staff Continued ...

committee that developed statewide standards for Idaho's Mental Health Courts. She is a past president and former board member of the Idaho affiliate of the National Alliance on Mental Illness. Ms. Jennings earned her bachelor's degree in American Studies from California State University, Fullerton, and her Master of Public Administration from Boise State University.

Research Analyst *(temporary position)*

Andrew Masser came to the PDC after briefly practicing as a public defender and private criminal defense attorney. His passion for improving public defense stems from the empathy he feels for criminal defendants. Mr. Masser's primary role at the Commission is to conduct research into issues affecting indigent defense and he will play a large role in the workload study the Commission hopes to conduct in 2017. He attended Pomona College, where he received a Bachelor's degree in Philosophy, and UC Davis School of Law, were he earned his Juris Doctorate. Mr. Masser began working as the Research Analyst at the Commission in October of 2016, after a two-month part-time internship demonstrated his outstanding skills in legal research, writing, and policy analysis.

Office Manager

Nichole Devaney currently serves as the Office Manager for the PDC, providing office administration, public relations, clerical and financial support. Ms. Devaney is also responsible for preparing and coordinating Commission meetings, special projects, training seminars, and organizing materials for use in reports, communications and day-to-day activities. Prior to joining the PDC staff, she was a Commercial Office Building Property Manager for over ten years, responsible for the operation and maintenance of multi-tenanted office buildings in Washington, DC. Ms. Devaney joined the PDC in November of 2014.

2016 Meetings and Activity

The Commission has, on average, met monthly since its creation in the fall of 2014. With the resignation of Mr. Ian Thomson in the fall of 2015, the Commission began the year without an Executive Director. Despite the absence of an Executive Director, the Commission continued its work on improving trial-level indigent defense as tasked by the legislature. The Commission had just approved a uniform annual reporting form and a Model Contracts document when 2016 began. In early 2016, draft legislation was proposed to greatly expand the powers and responsibilities of the Commission, including the authority to distribute funding to counties to offset future increased costs of public defense. The Idaho Public Defense Reform Interim Committee[1] wrote the legislation and sought the advice and judgment of the Commission on the draft legislation. In the early stages of 2016, the Commission thoroughly reviewed and vetted the draft legislation.

The next step for the Commission was to hire a new Executive Director, pursuant to Idaho Code §19-850(2)(a). The position was posted locally and nationwide in the early part of 2016, with interviews conducted during the Commission meeting in late April 2016. Kimberly Simmons was selected as the agency's Executive Director going forward. Ms. Simmons began her work May 9, 2016. During this time, the Commission continued its discussion and creation of a temporary rule addressing the use of the $110,000 of appropriated training funds, creation of a draft application for the $4.2 million appropriated for Indigent Defense Grants, and the planning and hosting of a training program for defending attorneys on the topic of immigration consequences of criminal convictions.

In the initial months after her hiring, Ms. Simmons focused her efforts on establishing a list of priorities for the Commission, meeting face-to-face with stakeholders around the State, and preparing the counties for the first round of Indigent Defense Grant Applications. By August 1, 2016, the Commission had received 43 application for Indigent Defense Grants.[2] In September, the Commission approved all 43 applications and distributed funds to the Counties by October 1, 2016, as required by the statute.

The Commission continued to work on its directives by prioritizing the standards for rule promulgation. Ultimately, the Com-

(Continued on page 12)

Meetings and Activity Continued ...

mission chose to focus on initial appearances, caseload standards and performance standards for defending attorneys. This decision was based upon Idaho's needs, conversations with nationally-recognized experts in public defense reform and ACLU priorities.[3] After engaging in the negotiated rulemaking process and holding several public hearings throughout the State, the Commission submitted a pending rule for legislative review that included guidelines regarding caseloads, a requirement that a defending attorney be available for initial appearances in all counties, and general performance standards for defending attorneys that includes an annual continuing legal education requirement.

The Commission met for open meetings nineteen (19) times in 2016. The minutes from these meetings are available on the Commission's website with highlights outlined below.

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[1]The Idaho Public Defense Reform Interim Committee was charged with undertaking and completing a study of potential approaches to public defense reform. The Committee was created in 2013 after a 2010 NLADA report deemed Idaho's indigent defense delivery system deficient.

[2]Benewah County was the only county that did not apply for a grant.

[3]The ACLU sued the State of Idaho in 2015, claiming deficiencies in these areas. Further, Ms. Simmons consults regularly with ACLU staff to gain insight into their priorities for Idaho in an effort to avoid further lawsuits being filed.

January 5, 2016

Meeting conducted at the JRW Building, East Conference Room

- Presentation by Judge Bryan Murray on High Quality Representation in Child Welfare Cases
- Discussion on Interim Committee Meeting Legislation: biggest hurdle is the enforcement mechanism

January 19, 2016

Meeting conducted at Len B. Jordan Building, Conference Room B-09

- Election of Commission Officers – elected a new chair and vice-chair
- Review Interim Committee's Proposed Legislation: House Bill 504

February 19, 2016

Meeting conducted at Len B. Jordan Building, Conference Room B-09

- Review of House Bill 504
- Discussion on Temporary/Proposed Training Rule
- Discussion regarding the hiring of an Executive Director

(Continued on page 13)

Meetings and Activity Continued ...

March 15, 2016

Meeting conducted at Len B. Jordan Building, Conference Room B-09

Negotiated Rulemaking Training

Executive Director Posting – discussion regarding distribution

Further Discussion on Temporary Training Rule

Discussion regarding the need for additional office space as the staff grows pursuant to House Bill 504

April 5, 2016

Meeting conducted at Borah Building, 4th Floor Conference Room

Discussion regarding interviewing candidates for the Executive Director position

Further discussion regarding office space

Legislation and the Effect of House Bill 504

Timeline for Negotiated Rulemaking addressed

April 14, 2016

Meeting conducted at Len B. Jordan Building, Conference Room B-09

Interviews held: Candidates for the Executive Director Position

April 28, 2016

Meeting conducted at Len B. Jordan Building, Conference Room B-09

Executive Session held to discuss candidates for the Executive Director Position

In open session, Kimberly Simmons was selected for the Executive Director Position

May 3, 2016

Meeting conducted at Borah Building, 4th Floor Conference Room

Discussion regarding draft Indigent Defense Grant Application

Discussion regarding Temporary Rule for Administration of Training funds allotted for education of defending attorneys

Decision to host training on Immigration Consequences of Criminal Convictions

May 11, 2016

Meeting conducted at Borah Building, 4th Floor Conference Room

Discussion with new Executive Director, Kimberly Simmons, regarding duties and expectations of the position

Discussion regarding other staff positions and duties

May 31, 2016

Meeting conducted at Len B. Jordan Building, Conference Room B-09

Executive Director presented a report of priorities and tasks for staff and

(Continued on page 14)

commission members

Discussion regarding annual reporting and the need to create a uniform reporting form

Further discussion regarding the draft Indigent Defense Grant Application

Executive Director would like to hire a Deputy Director by July 1, 2016

The Commission will move forward with temporary training rules regarding the administration of training funds

Training for defending attorneys planning session

June 21, 2016

Meeting conducted at PDC Office – new conference meeting space

Executive Director authorized to post the Deputy Director position

Further discussion on draft Indigent Defense Grant Application

Executive Director authorized to submit temporary Training Rules for publication

Introduction to the topic of "Extraordinary Litigation Costs" as described in Idaho Code §19-850(2)(e)

July 1, 2016

Conference Call & Open meeting conducted at PDC Office

Approval of FY2017 Indigent Defense Grant Application

Approval of FY2017 Strategic Plan

Commission Member Sara Thomas accepted position as Administrator of the Courts. She may no longer be on the Commission. To be determined.

Discussion and clarification regarding additional grant funding available to Counties who join together to provide indigent defense services through an in-house joint office

July 14, 2016

Meeting conducted at PDC Office

Summary of selected candidates for the Deputy Director position

Executive Director report on first visit to counties to meet with stakeholders

Continued discussion regarding training funds and definition of "extraordinary litigation"

Initial discussion regarding prioritizing which standards to promulgate this year – presentation by ACLU

August 2, 2016

Meeting conducted at PDC Office

Executive Director report on continued visits to counties

Initial draft of Proposed Rule incorporating standards discussed

43 Indigent Defense Grant Applications received

(Continued on page 15)

Meetings and Activity Continued ...

August 30, 2016

Meeting conducted at PDC Office

- FY2016 Performance Report and FY2018 Proposed Budget Approved by the Commission
- 43 Indigent Defense Grant Applications reviewed and approved for funding
- Approval of Proposed Rule incorporating standards after some amendments based upon comments received from stakeholders and nationally-recognized experts in the subject matter

September 19, 2016

Meeting conducted at PDC Office

- In-depth discussion regarding formula used for grant award calculations. Decision made to use prospective local share amounts in order to award grant funding
- ED Simmons subpoenaed to testify in capital case. Commission discussed issues surrounding the subpoena.

October 4, 2016

Meeting Conducted at PDC Office

- Approval of newly created Annual Reporting Form for defending attorneys
- Further discussion regarding the Extraordinary Litigation Fund
- Proposal to amend budget to fund workload study discussed
- Guidance provided to Commission regarding rulemaking priorities
- Commission addressed a potential issue with a county using Indigent Defense Funds improperly. ED Simmons will send communication to all counties regarding proper usage of the funds

October 27, 2016

Conference call hosted at the PDC Office

- Supplemental Budget request approved to ask legislature for transfer of funds for workload study

November 1, 2016

Meeting Conducted at PDC Office

- Commission presented a summary of the public hearings (regarding the proposed rule) that were held across the State in all seven Judicial Districts
- In-depth review of all comments received on the proposed rule
- Further discussion regarding the Extraordinary Litigation Fund

November 22, 2016

Meeting Conducted at PDC Office

- Approval of some amendments made to Pending Training Rule
- Approval of Proposed Rule incorporating standards for defending attorneys. Rule will now be pending and sent to legislature for approval

Public Defense Commission
Training Programs

FY 2016

February 4-5, 2016
Child Protection and Termination of Parental Rights Conference, Boise
30 attendees from 15 counties within all 7 Judicial Districts
Approved CLE Hours: 5.75 per attorney

March 4-5, 2016
Joint IACDL Sun Valley Conference
(in collaboration with Idaho Association of Criminal Defense Lawyers)
130 attendees from 28 counties within all 7 Judicial Districts
Approved CLE Hours: 10.75 per attorney

April 15, 2016
Mental Health and Involuntary Civil Commitment Conference, Twin Falls
33 attendees from 17 counties within all 7 Judicial Districts
Approved CLE Hours: 6 per attorney

May 27, 2016
Immigration Consequences of Criminal Convictions, Boise
31 attendees from 11 counties in 6 Judicial Districts
Approved CLE Hours: 6 per attorney

FY 2017

September 15-16, 2016
Federal Defenders Annual Western All-Star Conference, Boise
(in collaboration with the Federal Defender Services of Idaho)
111 attendees from 28 counties within all 7 Judicial Districts
Approved CLE Hours: 11.75 per attorney

January 27, 2017
2017 Child Protection Training, Boise
Anticipated attendees: 40
Approx. CLE Hours: 6.5

March 10-11, 2017
Joint IACDL Sun Valley Conference
(in collaboration with the Idaho Association of Criminal Defense Lawyers)
Anticipated attendees: 130
Approx. CLE Hours: 12

FY 2018

***Tentative*—August 9-12, 2017**
Public Defender Summit and Trial School
Anticipated attendees: 150+
Approx. CLE Hours: 15+

Training for Defending Attorneys

The Public Defense Commission has been tasked with providing continuing legal education programs for the state's indigent defense services providers, a task the Commission takes very seriously. In 2016, the Commission sponsored five different training programs on its own and jointly with organizations such as the Idaho Association of Criminal Defense Lawyers and the Federal Defender Services of Idaho. The trainings included areas of practice such as child protection and termination of parental rights, trial skills, mental health and involuntary civil commitment, and immigration. Across the five trainings, 335 participants represented 40 of 44 counties and the SAPD. The Commission also provided scholarships to assist attorneys and investigators to attend nationally recognized training programs. $4,500 in scholarships were awarded for these individuals to attend programs that would not otherwise be available to Idaho providers. The legislature allocated $110,000 for the PDC to provide these trainings. In fiscal year 2016, $92,552 was expensed on training programs. The PDC plans to host at least four training programs in fiscal year 2017, including a child protection training in January, partnering again with IACDL for a seminar in Sun Valley in March, a DUI program in May and a public defender summit in August.

Collaborating with Idaho's Counties

During the Summer and Fall of 2016, Executive Director Kimberly Simmons traveled across Idaho, meeting with representatives from 39 of Idaho's 44 counties. These meetings were an invaluable method of establishing communication and building rapport with indigent defense stakeholders around the state. As a result, similar meetings will take place in the Spring of 2017.

Ms. Simmons introduced herself as the new Executive Director for the Commission and reviewed the newly enacted portions of the statute that arose from House Bill 504, giving the Commission expanded powers and duties. Ms. Simmons reports many successful exchanges in which the various stakehold-

(Continued on page 17)

Collaboration Continued ...

ers were given opportunities to ask questions and express their thoughts regarding the new responsibilities of the Commission. Topics that arose repeatedly include, but are not limited to:

· Requirements for receiving an Indigent Defense Grant

· The feasibility of having defending attorneys at initial appearances

· Opinions that indigent defense services should be provided by the state rather than the counties

· Desire to see case weighting and an Idaho workload study before caseload standards are implemented

· Concerns about the permanence of Indigent Defense Grant funding

· Desire to have "extraordinary litigation costs" defined

· Desire to see uniform eligibility requirements for appointment of a defending attorney

· Concerns surrounding the ever-increasing costs for providing indigent defense services

In addition to these county-by-county meetings, the Commission also held a public meeting in each of the seven judicial districts during the negotiated rulemaking process related to the proposed standards for public defenders. County commissioners, public defenders and members of the public all offered valuable input during these public meetings. As a result of input from the meetings, as well as written comments from various stakeholders, significant changes were made to the proposed standards. Most notably, the Commission decided to forego a specific caseload standard this year until an Idaho workload study can be completed.

Both rounds of meetings demonstrate the Commission's commitment to open dialogue with all stakeholders interested in the Commission's work. The Commission believes that open, accessible channels of communication greatly increase its ability to achieve its goal of improving Idaho's indigent defense delivery system. The Commission anticipates this first year of meetings has fostered a strong base for long-term, collaborative relationships with Idaho's counties and the individuals in those counties who commit themselves to public service. Moving forward, the Commission will continue to treat as paramount the need for extensive communication with Idaho's counties and public defenders.

(Continued on page 18)

Additional Comments from around the State

- Appreciation for the trainings put on by the Commission
- Problems with adequate meeting space for defending attorneys to meet privately with clients
- Concerns expressed by a county commissioner that they are not the appropriate people to oversee a public defense system
- Desire for a mentoring program for public defenders
- The lack of funding for investigators and experts
- Desire for a county clerk to be on the Commission
- The appointment of defending attorneys in non-criminal cases
- How will the Commission enforce standards?
- Questions about the requirement for written contracts
- Concerns surrounding time and case tracking
- Use of grant funds for interpreters and immigration consultation
- Concerns about the use of "should" vs. "shall" in standards
- Concerns regarding public defender reimbursement ordered by the Court
- Concerns about the number of public defenders to cover child protection cases
- Questions about establishing a joint in-house public defender's office
- The increasing number of criminal cases involving heroin
- Desire to have an in-house social worker
- Justice Funds are at their limits

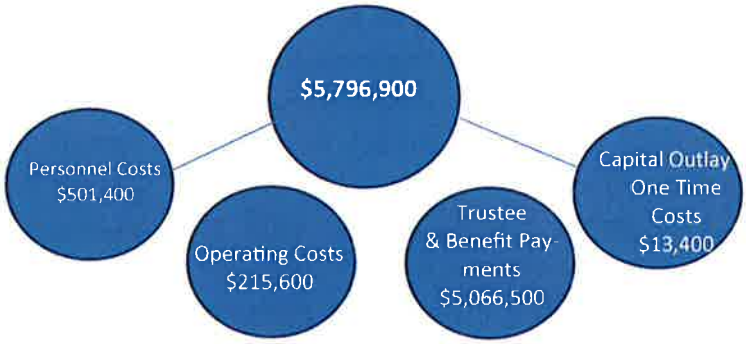
Collaboration Continued ...

(Continued from page 17)

A summary of all comments received can be found on the Commission's website: https://pdc.idaho.gov/rules/negotiated-rulemaking/.

Budget Summary

With the passing of House Bills 578 and 609, the Appropriations Committee appropriated additional monies to be allocated to the Public Defense Commission (PDC) for fiscal year 2017 and authorized an additional 4.5 full-time equivalent positions. The amounts were expended according to the designated expense classes from the General Fund as follows:



As a result of the additional full-time positions afforded by House Bill 609, the PDC needed to expand its office. Fortunately, the suite next door was available. In June of 2016, the Commission signed an amended lease to expand the office, more than doubling its original size. With the increase in square footage, the office now accommodates a conference room where commission meetings can be held, a copy/storage room, a reception area and three offices. The expansion occurred at the end of FY 2016 and much of the cost to furnish the space was expended using personnel cost savings. Those costs are broken down as follows: Furniture and services such as painting and cable installation totaled $16,249.24 and $7,987.52 in computer equipment.

Budget Summary Continued ...

A detailed listing of all FY 2017 expenditures through November 30, 2016 is below:

	FY2016	FY 2017			
	Actual Expenditures	Legislative Appropriations	Actual Expenses July - Nov.	Total Projected Expenditures for FY2017	Possible Remainder
Salary & Benefits	**56,721**	**501,400**	**82,914**	**391,066**	**110,334**
Communication Costs	1,334		970	3,982	
Employee Development	19,761		1,085	1,085	
General Services	15,808		6,012	17,962	
Professional Services	3,666		2,385	5,585	
Repair & Maint Svcs	1,030		1,209	1,609	
Administrative Services	1,490		754	1,779	
Computer Services	1,133		3,372	3,372	
Employee Travel Costs	6,091		12,262	15,662	
Administrative Supplies	2,498		1,657	2,307	
Fuel & Lubricants Costs	-		262	262	
MFG & Merch Costs	-		-	-	
Computer Supplies	3,277		833	1,133	
Repair & Maint Supplies	53		92	92	
Inst & Resident Supplies	-		-	-	
Specific Use Supplies	-		-	-	
Insurance	-		744	744	
Utility Charges	-		-	-	
Rentals & Oper Leases	15,577		11,222	31,581	
Misc Expenditures	58,258		24,939	104,939	
Total Operating Costs	**129,976**	**215,600**	**67,799**	**192,094**	**23,506**
Capital Outlay	19,325	13,400	2,028	12,028	1,372
Trustee & Benefit Payments	**-**	**5,066,500**	**3,819,347**	**3,919,347**	**1,147,153**
ID Grant Awards		4,266,500	3,819,347		447,153
Merger Incentive		550,000	100,000		450,000
Tech Assist/Extrordinary		250,000			250,000

Indigent Defense Grant Program

The Commission disbursed $3.8 million in Indigent Defense Grants (IDG) to 43 of the 44 Idaho counties pursuant to Idaho Code §19-862A. Grants can be awarded annually to eligible counties. Award amounts are determined by calculating 15% of the county's local share for the fiscal year or $25,000.00, whichever is greater. A county's local share is defined as the median of the annual amount in county funds expended by that county for indigent defense during each of the first three (3) of the preceding five (5) county fiscal years.

The Commission also disbursed $100,000 in Merger Incentive Grants to 4 of the 44 counties. Merger Incentive Grants are awarded to counties who elect to join with one or more other counties within the same judicial district to establish and maintain a joint office of public defender. Each participating county is eligible for $25,000 over their IDG award amount.

First Set of Indigent Defense Standards

In 2016, the legislature passed House Bill 504, which exponentially increased the powers and responsibilities of the Public Defense Commission. Idaho Code §19-850 instructs the PDC to promulgate rules in seven different areas: (1) training and continuing legal education requirements for defending attorneys, (2) uniform data reporting requirements and model forms, (3) model contracts and core requirements for contracts, (4) procedures and forms for Indigent Defense Grants, (5) procedures for administrative review, (6) procedures for oversight, implementation, enforcement, and modification of indigent defense standards, and (7) standards for defending attorneys.

In an effort to implement rules in stages so as to not overburden the counties and defending attorneys, the PDC chose to propose a rule in one topic area: standards for defending attorneys. This section was chosen based upon the concerns raised in the recent ACLU lawsuit filed against the State. In order to create these standards, the PDC collaborated with Idaho's counties and defending attorneys in order to come up with standards that would meet the needs of the counties, defending attorneys and their clients. The proposed standards address defending attorneys' workloads, experience, presence at defendants' first appearance in court and continuing legal education. These standards will be reviewed, and approved or rejected, by the Idaho Legislature during the 2017 legislative session.

The PDC is proud to continue the work of improving Idaho's indigent defense system in a collaborative manner with all of Idaho's criminal justice stakeholders who take on the important responsibility of providing constitutionally-sound representation for indigent defendants.

For this year's round of standards, the Commission chose to focus on five areas: workload of defending attorneys, defending attorneys' abilities, training and experience, representation at a defendant's first appearance in court, vertical representation and continuing legal education. On workload, the Commission received significant input from stakeholders and deter-

(Continued on page 21)

Standards Continued ...

mined that it would not set a specific caseload maximum in the absence of Idaho-specific data. However, a defending attorney's workload should not be so high that it makes it impossible to give each client's case the time it deserves.

Regarding a defending attorney's abilities, training and experience, the Commission has created a number of provisions requiring defending attorneys to be familiar with the relevant law and other aspects of being a defending attorney. Additionally, defending attorneys are encouraged to take only cases that they are experienced enough to handle.

The Commission is particularly excited to see the implementation of its standard requiring representation of all indigent defendants at their first appearance in court. The hope is that all defendants will have the opportunity to consult an attorney before pleading guilty. Additionally, this requirement should increase a defendant's chances of being released on bail rather than having Idaho's taxpayers bear the burden of incarcerating the defendant pending resolution of their case.

The vertical representation provision requires that the same attorney handle a defendant's case from start to finish. This will ensure that indigent defendants and their lawyers get to know and trust each other, leading to improved representation. Finally, the continuing legal education portion of the proposed standards makes sure that Idaho's defending attorneys will be aware of changes in the law.

As a whole, the proposed standards represent a necessary first step in improving Idaho's indigent defense system. The Commission is extremely grateful to all the individuals and entities, particularly Idaho's counties and defending attorneys, that provided comment or feedback as the rules and standards made their way through the negotiated rulemaking process. The Commission is proud to continue the work of improving Idaho's indigent defense system in a collaborative manner with all of Idaho's criminal justice stakeholders who take on the important responsibility of providing constitutionally-sound representation for indigent defendants.

Inaugural Indigent Defense Grants

Indigent Defense Grants are a key component of Idaho's reform of its indigent defense system. These grants provide counties additional resources to keep improving their manner of providing public defense. 2016 marks the first year in which state funds have been provided to counties in support of trial-level indigent defense. As part of this process, the Public Defense Commission issued grant applications to allow counties to apply for funding for their indigent defense services. Pursuant to Idaho Code §19-862A, counties are eligible to receive up to $25,000 or 15% of their indigent defense budget, whichever is greater.

The Commission was extremely pleased about the robust response to its call for grant applications. Of Idaho's 44 counties, 43 submitted grant applications. In their applications, the counties supplied extensive information about their current indigent defense expenses and their proposed plans for how they would use the additional funding. The Commission reviewed each application in detail and each county that applied was ultimately awarded the maximum amount for which it was eligible.

How the counties use their grant funds will depend in part on the type of public defender system each county employs. At the beginning of 2016, seven (7) counties operated independent, in-house, institutional public defender offices. These counties were Ada, Bannock, Bonner, Bonneville, Canyon, Kootenai and Twin Falls counties. By the end of 2016, Gooding County had joined this group. In addition, in 2016, Power and Oneida counties joined together to create an in-house public defender's office, joining Cassia and Minidoka counties as the only other two counties to offer public defender services through a joint office. These four counties received additional grant funds for their joint venture pursuant to statute. The remaining thirty-two (32) counties offer public defender services by contracting with private attorneys or law firms. The counties have a variety of plans for how they will spend their grant funds.

Some counties plan to use their grant funding to increase attorney staffing at their public defender offices, which would go

(Continued on page 23)

Grants Continued ...

far in reducing the crushing caseload that many defending attorneys in Idaho handle. Other counties plan to use their grant funding to remodel their public defender offices or courthouses in order to provide essential private meeting space for meetings between defending attorneys and their clients. One county plans to use their grant funds to support services that the public defender's office might otherwise not be able to utilize, such as an immigration consultant to advise about cases where the defending attorney's client is not a United States citizen. Many counties also proposed using their grant funds to increase the budget for their conflict defending attorneys, who handle cases when the main defending attorney has a conflict of interest. In short, counties across the state are using their grant funds in a variety of ways, but all in furtherance of an improved public defense system.

In reviewing the applications for Indigent Defense Grants, the Commission was cognizant of the need to get funds into the hands of the counties. Because there were no public defense standards in place at the time of the grant applications, the counties were only required to spend the funds on public defense, rather than on specific efforts to meet standards that did not yet exist. In the future, counties will be required to have a plan to meet the indigent defense standards in effect at the time of the grant application. Such a plan will likely require the counties to devote grant funds to meeting such standards. However, the Commission is committed to providing the counties the leeway necessary to spur innovation. Different counties face different situations and as a result the best use of grant funds may vary from county to county. Local control is a key component to Idaho's indigent defense reform and, more generally, Idaho's ethos. The oversight of the Indigent Defense Grants will keep this foundational principle at the forefront, allowing counties the freedom to use their grant funds as they see fit, so long as that use is consistent with the statutory directive to spend the money on improving indigent defense.

Recommendations

Pursuant to Idaho Code §19-850(1)(b), the PDC makes the following recommendations for improvements of the public defense system and further legislative action:

- That the legislature fully fund Indigent Defense Grants pursuant to Idaho Code §19-862A to assist with compliance of the first set of standards for indigent defense delivery systems.
- That the legislature approve the request for an object transfer of funds so the PDC can conduct a workload study and collect Idaho-specific data on the caseloads of its defending attorneys.
- The Commission asks the legislature to provide guidance regarding the following issues:
    1. The addition of the PDC to agencies exempt pursuant to Idaho Code §74-124(1)(b).
    2. Additional state monies for discretionary grants such as the Extraordinary Litigation Fund
    3. Recalculation of Local Share as defined by Idaho Code §19-862A to increase the amount for which counties are eligible
    4. The possibility of additional monies to offset the costs of increased budgets due to the banning of fixed-fee contracts
    5. Additional members of the Commission to increase representation from rural areas

Looking Ahead ...

- The PDC anticipates partnering with Boise State University's Idaho Policy Institute (IPI) to conduct a weighted caseload study regarding trial-level indigent defense cases to determine guidelines for establishing a maximum allowable caseload for Idaho defending attorneys. Such a maximum allowable caseload would ensure that attorneys can give each indigent defendant the time and effort necessary to provide

Looking Ahead ...

effective representation as required by the Sixth Amendment to the U.S. Constitution. The research will likely consist of a timekeeping component to determine how much time is currently being spent on different types and levels of cases and guided expert decision-making to determine how much time should be spent on cases with the goal of establishing recommended caseload limits. The study will be conducted in 2017, with the goal of having results in under 12-months. The PDC will work with IPI to document the current amount of time attorneys spend on cases in an effort to develop yearly caseload recommendations for the state of Idaho.

- The PDC will continue to prioritize and establish standards as directed in Idaho Code §19-850(1)(a) with potential focus areas on enforcement and oversight, procedures for Indigent Defense Grants, and additional standards as guided by Idaho's Principles of an Indigent Defense Delivery System (IPIDDS) in I.C. §19-850(1)(a)(vii).
- In 2017, the PDC will focus on educating stakeholders on the importance of its mission and vision statements and maintaining effective working relationships with the counties and the state. Currently, staff at the PDC plan to present to the Idaho Association of Counties on the day-to-day life of a defending attorney and the resources necessary to deliver effective representation.
- Training Idaho's defending attorneys will continue to be a priority for the PDC. The PDC currently has plans for at least three different training programs in 2017.
- The PDC recently created a subcommittee to continue working on the definition of "extraordinary litigation costs" pursuant to Idaho Code §19-850(2)(e). The subcommittee will make recommendations to the PDC on a definition as well as procedures for defending attorneys to apply for monies from the Extraordinary Litigation Fund (ELF). The legislature has appropriated $250,000 for this purpose, and the PDC hopes to distribute those monies based upon applications in early 2017.
- The PDC will continue to develop internal policies regarding agency procedures.

MISSION STATEMENT

The Idaho Public Defense Commission is committed to improving the delivery of trial-level indigent defense services by serving the Counties and Indigent Defense Providers of Idaho. We strive to ensure that the safeguards of the 6th Amendment to the United States Constitution and Article I, Sect. 13 of the State Constitution are met. We will collect data, support compliance with standards, provide training, and administer grants to achieve fair and just representation of the accused. In the words of Thomas Jefferson, "The price of freedom is eternal vigilance."

Idaho State Public Defense Commission

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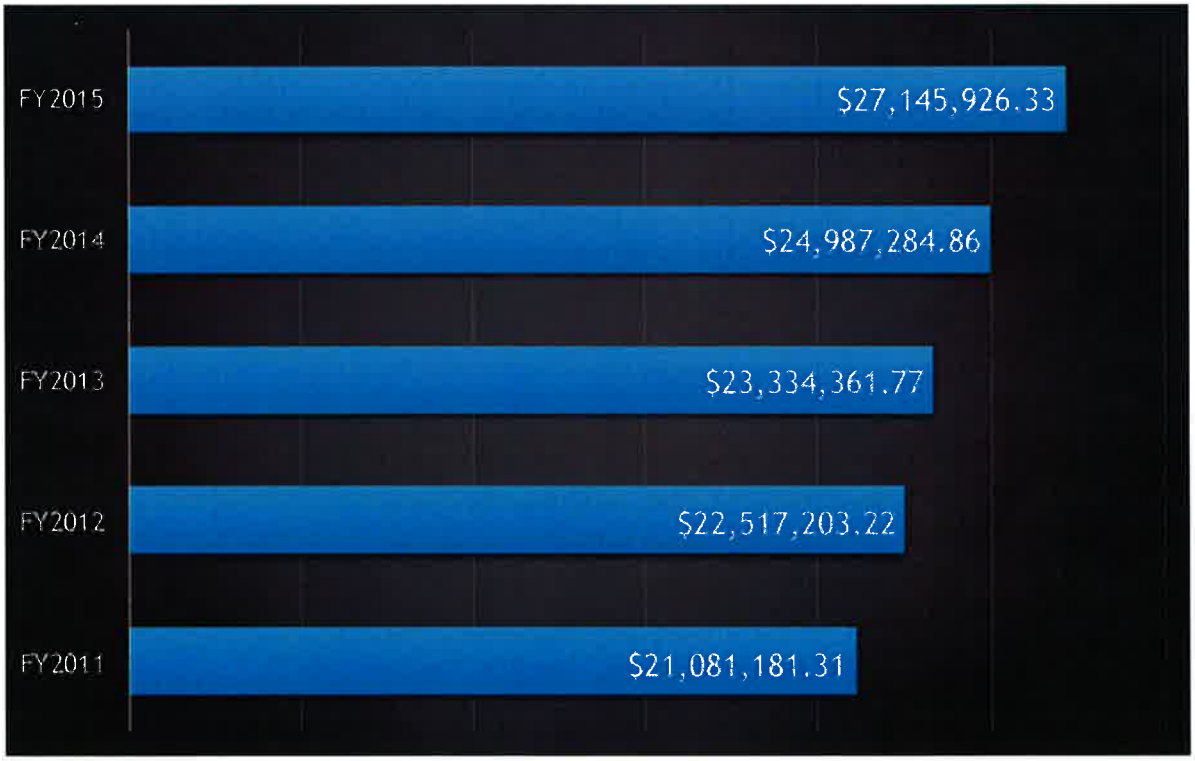
Idaho Indigent Defense Expenditures



Information on county expenditures on indigent defense were collected in 2016 through Indigent Defense Grant Applications. 43 of 44 counties submitted applications, the collective information is included in the figure above. As shown, expenditures on indigent defense have consistently increased over the last five (county) fiscal years, and are forecasted to continue to increase as the PDC establishes standards to improve the delivery of indigent defense services.

Attachment 4

INDIGENT DEFENSE GRANTS

Grant Award Report to Division of Financial Management and Legislative Services Office – Idaho Code § 19-862A(7)

State Public Defense Commission's report requesting the appropriation of funds necessary to provide state indigent defense grants to counties as approved by the Commission.

Kimberly J. Simmons, Executive Director

9/23/2016

INDIGENT DEFENSE GRANTS

Grant Award Report to Division of Financial Management and Legislative Services Office – Idaho Code § 19-862A(7)

On August 30, 2016, the Public Defense Commission approved Indigent Defense Grant Awards for 43 counties. 43 counties submitted applications requesting the maximum eligible amount[1] for which they could apply under Idaho Code §19-862A. Four counties requested an additional $25,000 for joining with another county to provide indigent defense services. The Commission approved all of those requests. On September 19, 2016, the PDC met via conference call and made the decision to adjust the IDG awards to be based upon the upcoming county fiscal year 2017, instead of 2016. This resulted in 17 counties receiving additional grant monies. Only the total grant awards are included in this report.

The total amount of indigent defense grants awarded, not including the joint grant awards: **$3,819,346.99**.
Amount appropriated by the legislature for indigent defense grants: **$4,266,500.00**.

The total amount of joint grants awarded: **$100,000.00**.
The amount of joint grants requested for appropriation: **$100,000.00**. The Commission will request the additional joint grants in the amount of $50,000.00 for Oneida and Power Counties at a later date.
Amount appropriated by the legislature for joint grants: **$550,000.00**.

The PDC requested that the following grant awards be distributed to the counties:

County	County Local Share - FY2017	Eligible Grant Amount	Grant Award Amount
Ada	$7,502,429.09	$1,125,364.36	$1,125,364.36
Adams	$42,553.00	$25,000.00	$25,000.00
Bannock	$1,284,373.00	$192,655.95	$192,655.95
Bear Lake	$38,984.00	$25,000.00	$25,000.00
Benewah	N/A	N/A	N/A
Bingham	$295,698.97	$44,354.85	$44,354.85
Blaine	$343,703.79	$51,555.57	$51,555.57
Boise	$70,920.99	$25,000.00	$25,000.00
Bonner	$917,144.00	$137,571.60	$137,571.60
Bonneville	$1,050,408.86	$157,561.33	$157,561.33
Boundary	$104,960.00	$25,000.00	$25,000.00
Butte	$22,857.82	$25,000.00	$25,000.00
Camas	$18,842.02	$25,000.00	$25,000.00
Canyon	$2,534,555.44	$380,183.32	$380,183.32
Caribou	$50,385.58	$25,000.00	$25,000.00
Cassia	$383,021.61	$57,453.24	$57,453.24

[1] $25,000 or 15% of the local share, whichever is greater. The original IDG awards were based upon the local share amounts for FY2016.

County	County Local Share - FY2017	Eligible Grant Amount	Grant Award Amount
Clark	$7,098.75	$25,000.00	$25,000.00
Clearwater	$176,015.70	$26,402.36	$26,402.36
Custer	$59,930.50	$25,000.00	$25,000.00
Elmore	$494,064.00	$74,109.60	$74,109.60
Franklin	$87,740.00	$25,000.00	$25,000.00
Fremont	$68,720.23	$25,000.00	$25,000.00
Gem	$184,950.00	$27,742.50	$27,742.50
Gooding	$368,145.00	$55,221.75	$55,221.75
Idaho	$163,139.00	$25,000.00	$25,000.00
Jefferson	$106,601.21	$25,000.00	$25,000.00
Jerome	$493,909.00	$74,086.35	$74,086.35
Kootenai	$2,251,442.83	$337,716.42	$337,716.42
Latah	$415,617.50	$62,342.63	$62,342.63
Lemhi	$80,295.23	$25,000.00	$25,000.00
Lewis	$50,806.92	$25,000.00	$25,000.00
Lincoln	$53,335.00	$25,000.00	$25,000.00
Madison	$65,645.00	$25,000.00	$25,000.00
Minidoka	$313,914.00	$47,087.10	$47,087.10
Nez Perce	$666,699.46	$100,004.92	$100,004.92
Oneida	$64,212.50	$50,000.00	$50,000.00
Owyhee	$113,926.00	$25,000.00	$25,000.00
Payette	$309,822.75	$46,473.41	$46,473.41
Power	$150,511.79	$50,000.00	$50,000.00
Shoshone	$207,407.00	$31,111.05	$31,111.05
Teton	$47,804.00	$25,000.00	$25,000.00
Twin Falls	$1,350,658.00	$202,598.70	$202,598.70
Valley	$251,666.60	$37,749.99	$37,749.99
Washington	$113,772.00	$25,000.00	$25,000.00

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:00 P.M.
Room WW54
Friday, February 03, 2017

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	Approval of January 18 Minutes	Senator Agenbroad and Senator Nye
Gubernatorial Appointment Vote	Paula K. Garay, Re-appointment to the Sexual Offender Management Board	
Gubernatorial Appointment Vote	Debbie Field, Re-appointment to the State Board of Correction	
Gubernatorial Appointment Hearing	Eric D. Fredericksen, State Appellate Public Defender	Eric D. Fredericksen
Gubernatorial Appointment Hearing	Eric D. Fredericksen, State Public Defense Commission	Eric D. Fredericksen
DOCKET NO. 50-0101-1602	Rules of the Commission of Pardons and Parole	Jarod Cash, Deputy Director
Docket No. 06-0102-1601	Rules of Correctional Industries	Andrea Sprengel, Correctional Industries

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Friday, February 03, 2017
TIME:	1:00 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Bock (Burgoyne), and Nye
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 of the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.
MINUTES APPROVAL:	**Senator Agenbroad** moved to approve the minutes of January 18, 2017. **Senator Nye** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT:	**Senator Lee** moved to send the gubernatorial appointment of Paula Garay to the Sexual Offender Management Board to the floor with recommendation that she be confirmed by the Senate. **Senate Bock** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT:	**Senator Davis** moved to send the gubernatorial appointment of Debbie Field to the State Board of Correction to the floor with recommendation that she be confirmed by the Senate. **Senate Lee** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT HEARING:	**Eric D. Fredericksen, State Appellate Public Defender (SAPD)**. **Mr. Fredericksen** introduced himself by sharing his background growing up in Idaho. He indicated that he grew up on a farm in Idaho and enjoys the outdoors. He has been serving as the Acting State Appellate Public Defender since July, 2016. **Senator Lee** asked Mr. Fredericksen to share what improvements and challenges he has seen with the Justice Reinvestment Initiative (JRI). **Mr. Fredericksen** replied that public defenders had been showing up in court and not following up with the defendant, but under JRI the focus is on incorporating a wholistic defense system in which the defendant has follow-up, including during probation, thus reducing recidivism. **Senator Davis** noted that Mr. Fredericksen is an adjunct professor at Boise State University (BSU). He asked what courses Mr. Fredericksen teaches, how long he has been with BSU, how much distraction this may be to the performance of his office, and what benefits it may bring. **Mr. Fredericksen** responded that he was an adjunct professor with BSU from 2003 until 2013. He taught Introduction to Law, Introduction to Criminal Procedure, and an evidence course. He indicated that a benefit of having taught is having developed the ability to communicate with individuals on a basic level regarding their defense. He stated there should be no distractions, and that his focus will be on his office. He emphasized his commitment to ensuring that the constitutional right to assistance of counsel is firm in Idaho, and that clients are adequately represented.

Senator Davis pointed out that Idaho has had multiple SAPD's during his tenure. He requested Mr. Fredericksen's opinion on why people readily leave that job. **Mr. Fredericksen** commented that he did not see anything being a problem with the job, but that it does provide training for positions with greater responsibility. **Senator Davis** inquired as to Mr. Fredericksen's gifts or talents that make him uniquely qualified to hold the SAPD position. **Mr. Fredericksen** advised that he has handled cases at every level of court in the State of Idaho. The cases included appeals, civil trials, felony criminal trials, and cases involving indigent individuals. **Senator Davis** asked what concerns or anxieties Mr. Fredericksen held about doing this job, and declared that the answer would not impact the vote. **Mr. Fredericksen** stated that his biggest concern is what he doesn't know that he doesn't know about the position. He observed that he has a tremendously talented group of attorneys and he wants to be sure he keeps those attorneys on his team. Learning new things every day, asserted **Mr. Fredericksen**, is what excites him about performing this job.

Senator Davis challenged Mr. Fredericksen to share something that is not on his resumé. **Mr. Fredericksen** related that he was the son of an English teacher and an attorney who instilled in him the knowledge that he needed to stand up for those who are not as lucky as he.

GUBERNATORIAL APPOINTMENT HEARING:

Eric D. Fredericksen, State Public Defense Commission (Commission). **Mr. Fredericksen** pointed out that public defense reform has been evolving, and has given the Commission the authority to enact rules. A new executive director has been hired to help negotiate the rules.

Senator Hagedorn expressed appreciation for Mr. Fredericksen's seriousness regarding public defense. He inquired what Mr. Fredericksen saw as the challenges facing the Commission. **Mr. Fredericksen** replied that the Commission is breaking ground for new processes. He expressed excitement regarding this new endeavor in improving Idaho's defense system.

PASSED THE GAVEL:

Chairman Lodge passed the gavel to Vice Chairman Lee.

DOCKET NO. 50-0101-1602

Rules of the Commission of Pardons and Parole. **Jarod Cash**, Deputy Director, Commission of Pardons and Parole (CPP), explained that this rule change is an extension of a temporary rule put into place in 2016 to change Idaho Code § 20-229B. This rule change grants more discretion to the CPP in how to manage parole violators whose offences were violent or sexual in nature. **Mr. Cash** explained that the CPP wants to extend the temporary status of this rule as there will be statutory changes this year. The CPP will make larger rule changes next year aligning the rules with statute.

Senator Davis asked why this was a temporary rather than a pending rule. **Mr. Cash** turned the question over to Dennis Stevenson, Rules Coordinator, Office of Administrative Rules. **Mr. Stevenson** explained that the rule arrived in the rules office too late to meet the deadline for pending rules, so the request was made for an extension of the temporary status.

Vice-Chairman Lee inquired if implementing this rule change has brought about the results CPP had hoped for. **Mr. Cash** responded it has helped by placing parolees who have a more serious offense before the Commission, rather than automatically giving those parolees short-term sanctions. He stated that the minimal change in language gave additional flexibility to the process.

Senator Hagedorn expressed the thoughts of those who run the jails regarding the 90-day and the 180-day sanctions. They believe this process is compounding their issues with space and the cost to their jails. He also inquired if changing the "will" to "can" as it relates to the parole officers' discretions would help. **Mr. Cash** responded that the parolees with sanctions are spending less time in county jails, and that this language change benefits the county jails and manages the flow of offenders in a more efficient manner. He also said there are many steps taken before the parolees reach the level of being returned to jail.

MOTION: **Senator Anthon** moved to accept **Docket No. 50-0101-1602**. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 06-0102-1601 **Rules of Correctional Industries**. **Andrea Sprengel**, Financial Manager, Correctional Industries (CI), explained that this docket amends the rule passed last year with a request to modify the language in Section 013. Modifications made include changing the heading from "Inmate Compensation" to "Disbursement of Funds," and changing the word "may" to "must" as suggested by the Committee last year.

MOTION: **Chairman Lodge** moved to accept **Docket No. 06-0102-1601**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice-Chairman Lee passed the gavel back to Chairman Lodge.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 1:40 p.m.

_____
Chairman Lodge
Chair

_____
Carol Cornwall
Secretary

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Monday, February 06, 2017

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT VOTE	Eric D. Fredericksen, State Appellate Public Defender	
GUBERNATORIAL APPOINTMENT VOTE	Eric D. Fredericksen, State Public Defense Commission	
GUBERNATORIAL APPOINTMENT HEARING	Kimberly Simmons, Sexual Offender Management Board to serve a term commencing January 1, 2017 and expiring January 1, 2020.	Kimberly Simmons
GUBERNATORIAL APPOINTMENT HEARING	Erwin L. Sonnenberg, Sexual Offender Management Board to serve a term commencing January 1, 2017 and expiring January 1, 2020.	Erwin L. Sonnenberg
DOCKET NO. 61-0101-1601	Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds.	Kimberly Simmons, Executive Director, Public Defense Commission
DOCKET NO. 61-0107-1601	Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System.	Kimberly Simmons, Executive Director, Public Defense Commission
S 1023	Relating to funeral processions.	Judge Barry Wood
S 1024	Relating to the Child Protective Act.	Judge Barry Wood
S 1025	Relating to Administrative Judges.	Judge Barry Wood
S 1026	Relating to criminal procedure.	Judge Barry Wood

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Carol Cornwall
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Phone: 332-1317
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MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Monday, February 06, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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.
GUBERNATORIAL APPOINTMENT VOTE:	**Eric D. Fredericksen, State Appellate Public Defender**. **Senator Anthon** stated that Eric Fredericksen has been a friend sinece they were classmates. **Senator Anthon** emphasized that Mr. Fredericksen is well thought of and a good student. He had an ideal upbringing from the Magic Valley. He shows a real dedication to his work and that would make him a great Appellate Public Defender. **Senator Anthon** moved to send the gubernatorial appointment of **Eric D. Fredericksen** as State Appellate Public Defender to the floor with recommendation that he be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT VOTE:	**Eric D. Fredericksen, State Public Defense Commission**. **Senator Anthon** moved to send the gubernatorial appointment of **Eric D. Fredericksen** to the State Public Defense Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT HEARING:	**Kimberly Simmons, Sexual Offender Management Board (SOMB)**. **Kimberly Simmons**, Executive Director of the Public Defense System and a member of SOMB, introduced herself stating that she started her career in Idaho in the State Appellate Defender Office, Capitol Litigation Unit, handling death penalty appeals and post-conviction cases. She stated that she gained trial level experience through the Ada County Public Defender's Office handling misdemeanor cases. She spent the last six years handling felony level cases. In 2014 Canyon County opened an Institutional Public Defender Office, where she handled felony cases for about eighteen months. **Ms. Simmons** advised that she is the Vice President of the Idaho Association of Defense Lawyers Board, a member of the National Association of Public Defenders, of SOMB, and of the Pre-Trial Justice Planning Subcommittee. **Ms.Simmons** stated that SOMB guidelines have been established for phychosexual evaluators, for treatment providers, and SOMB has provided the certification for the necessary training to meet those guidelines. **Ms. Simmons** said there is also a polygrapher on SOMB.

Senator Lee had a question regarding the need for diversity on SOMB. **Ms. Simmons** said diversity is an important issue as not all offenders are the same, nor do they have the same background. She emphasized that it is important to have an understanding of the background of defendants so they can receive appropriate treatment. **Ms. Simmons** asserted that SOMB should have diversity in their backgrounds as well, and her role is to make sure defendants are receiving due process as they go through the system. **Ms. Simmons** explained there is also a voice of the prosecutor, those who treat both adult and juvenile sexual offenders, which would provide an informed picture for treatment and evaluation.

Senator Burgoyne asked if the knowledge we have regarding sexual offenders and how to deal with them is changing, and if we are making progress with this process. **Ms. Simmons** responded she thought progress was being made. A lot of the standards and guidelines use evidence-based practices much like they have in other states and systems. Dr. Bumbey, a member of SOMB and an expert in the area, had helped form some of those standards and guidelines which have been proven to work in the past. **Ms. Simmons** explained that these offenders go to treatment and then integrate back into the community. She indicated that SOMB continues to focus on reducing recidivism. In 2009 tiered registration of sexual offenders was implemented. Under this system sexual offenders are not treated the same way; treatment is determined by level of risk. This system has been shown to work and is based on evidence from other jurisdictions. The measure of progress needs to be made through further studies. Certification of treatment plans is not done by providers, but they are submitted for review by the Idaho Department of Correction (IDOC) who does this certification. Work is being done on treatment plans and different models to try to find the one that best fits Idaho and its offender population.

Senator Hagedorn had a question regarding tiered registration and how well it has worked. He also wanted to know how long it took, and what challenges were encountered when going through the current population of sexual offenders. **Ms. Simmons** explained that she was not part of the process of repopulating the registration process. SOMB discussed when to bring the bill forward, and to determine what the legislators are looking for that will work for Idaho.

Chairman Lodge stated that the vote for Ms. Simmons confirmation would be on Wednesday February 8, 2017.

GUBERNATORIAL APPOINTMENT HEARING:

Erwin L. Sonnenberg, Sexual Offender Management Board (SOMB). **Erwin L. Sonnenberg,** informed the Committee he has been coroner for Ada County, was appointed the Chief Deputy Coroner in 1979, and served Ada County for thirty years. **Mr. Sonnenberg** explained that he gained insight on sexual offenders including people who have died from the offense, who have committed suicide, and those who have been accused of a sexual offense, whether falsely accused or not. He stated that this involvement in the investigative process gave him a good idea of what the public was looking for with regards to SOMB. **Mr. Sonnenberg** came to Idaho in 1969, graduated from Northwest Nazarene University, and did a residency in laboratory medicine before starting at the coroner's office. **Mr. Sonnenberg** stated it was an honor to serve on SOMB.

Chairman Lodge stated that SOMB was important for the safety of our citizens and expressed appreciation for all that Mr. Sonnenberg had done. **Senator Lee** extended appreciation to Mr. Sonnenberg for his role on SOMB to help protect public safety and share the human side of individuals who are accused.

Chairman Lodge stated that the vote for Mr. Sonnenberg's confirmation would be on Wednesday February 8, 2017.

PASSED THE GAVEL:

Chairman Lodge passed the gavel to Vice-Chairman Lee.

DOCKET NO. 61-0101-1601

Rules Governiong Training Requirements for Defending Attorneys and the Administration of Training Funds. **Kimberly Simmons**, Executive Director Public Defense Commission (PDC), explained that this rule deals with the administration of training funds, guides the PDC, and provides transparency to stakeholders. She reviewed the development of this rule including appropriations and those entities who were trained with these appropriations. She reported that this rule originally was a temporary rule allowing the PDC to administer those funds quickly and they have been doing that since the agency was established in 2014. This rule is now being submitted as a pending rule.

Ms. Simmons stated that those eligible for receiving training funds are defending attorneys, non-attorney staff of defending attorneys, or other persons engaged in work related to the representation of indigent defendants. She pointed out the rule also delineates aspects of maintaining the Public Defense Roster including membership, the process for application of membership, and updating the roster.

The types of training programs provided were identified by **Ms. Simmons** and include training exclusive for defending attorneys or public defenders, training held in conjunction with other organizations, and limited enrollment or specialized training. She indicated that from the appropriated funds, scholarships are awarded to send defending attorneys to nationally recognized training programs.

Senator Burgoyne noted that he has received over a hundred emails regarding the PDC suggesting these rules are inadequate. He asked if this was negotiated rulemaking so anyone could comment on the rules. **Ms. Simmons** replied that the training fund rule was not through the negotiated process. The temporary rule was used to enable the PDC to start using the funds. **Senator Burgoyne** inquired if anyone contacted the PDC with questions or concerns about the rules. **Ms. Simmons** replied that the PDC was not contacted with reference to the training rules. The rules were submitted for comment, but no comments were received on this docket.

Chairman Lodge asked how scholarships for non-attorney applicants would be used. **Ms. Simmons** responded they would be used for mitigation specialists and investigators who may work in the pubic defender's office or who may be contracted for mitigation and investigation. **Chairman Lodge** requested specification of qualifications for these positions. **Ms. Simmons** answered that for investigators the qualifications depend on the individual offices. For mitigation specialists the requirements are usually a social work background and experience in the justice system.

Senator Davis referred to the fiscal impact and temporary rules justification. He stated his understanding was that this was originally a temporary rule because funds had been appropriated, were available, and the PDC wanted to make a distribution of funds. **Ms. Simmons** replied that his understanding was correct. **Senator Davis** then noted that the word "person" was not defined, but under statute the word could also mean a partnership or an association. He asked if "person" meant an individual or as otherwise statutorily defined. **Ms. Simmons** advised that it was meant to be an individual. **Senator Davis** requested that in the future, when a change is made, this item be corrected.

Senator Davis asked what happens when the interest level in a particular training program becomes so strong that there are not enough funds to cover all applicants. **Ms. Simmons** commented that there is not a proration or apportionment. She indicated there is consideration being given to this issue. **Senator Davis** referred to factors considered in selecting individuals for training. He asked how time of service is applied, whether the shorter amount of time or the longer amount of time would be the determining factor. **Ms. Simmons** pointed out that this would depend on the training program. Some training programs cover basic fundamentals, therefore the shorter amount of time would be the determining factor. Other programs extend the skills to a more advanced level, making the longer period of time more applicable. **Senator Davis** observed that "time of service" might be better left undefined. He asked how the PDC would deal with someone who applied but was not selected for the program. **Ms. Simmons** replied that has never happened, but an individual could challenge the decision. She stated that unless the program was filled, they would probably admit the individual.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 61-0101-1601**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 61-0107-1601 **Rules Governing Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System**. **Kimberly Simmons**, Executive Director Public Defense Commission (PDC), reported that this rule has gone through the negotiated rulemaking process. She shared with the Committee two documents:

1. Idaho's Principles of an Indigent Defense Delivery System, Idaho Code § 19-850(a)(vii) (attachment 1),
2. Standards for Defending Attorneys (attachment 2)

Ms. Simmons explained the background of this rule including what was promulgated, why it was promulgated, and why it is important that this pass this year. Promulgating rules that are relevant for Idaho, ensuring ample input from stakeholders and considering the diversity of resources and practices throughout Idaho, is a time-consuming process if done thoughtfully and with integrity. Considering the time needed, it was decided to address only the Standards for Defending Attorneys this year (attachment 2) . **Ms. Simmons** detailed the process followed to promulgate these rules. Areas considered included definitions and standards for "case," for "case load", and how they apply to an amended determination of offense and the number of attorneys involved in a case. These rules will clarify those issues. **Ms. Simmons** indicated that other areas addressed in these rules are application of established standards, i.e. to whom the standards apply.

Senator Davis mentioned that he had received emails indicating concerns about items that were not included in these rules. Those who corresponded wanted more specifics. Some standards which had been included previously have been withdrawn. He asked why that section had been eliminated. **Ms. Simmons** stated that the PDC initially put in the national standards recommended by the American Bar Association (ABA). These standards were established in the 1970's, but they had no foundation of studies or research data. During the negotiated rulemaking process the PDC suggested possible use of these standards, immediately receiving serious opposition because the standards had no supporting data. Most of those in opposition stated they understood there would be an Idaho study before standards were put into place. **Ms. Simmons** advised the Committee that an Idaho study is now in the planning stage. **Senator Davis** summarized Ms. Simmons comments as the PDC took out the national standards now, but that

doesn't mean there will not be any case load standards to replace them. The situation is that we do not yet know what needs to be adopted that will be the best for Idaho, but the PDC is working to find what those standards should be. Once they are identified, the rules will be amended and will be brought before the Legislature for consideration. **Ms. Simmons** concurred with Senator Davis' assessment of the situation.

Senator Davis asked why the Standards for Defending Attorneys (attachment 2) were not put in administrative code. **Ms. Simmons** replied that this document will continue to grow as there are ten sections for which to promulgate rules. She reiterated that the PDC intends to do one section annually. **Senator Davis** felt the Committee should defer to Ms. Simmons judgement for a year to ascertain the effectiveness of this process.

Senator Hagedorn inquired if the definition of "case" in Idaho would agree with the standards which have been removed. **Ms. Simmons** commented that she is unaware of a national definition for "case." She noted that if it is in the literature, she has not seen it.

Vice Chairman Lee asked what feedback was given to the PDC regarding the "case" definition. **Ms. Simmons** explained that there was confusion about the term's application. She observed that the original definition came from the Idaho Supreme Court and was directed toward accounting of dispositions of cases, but the PDC focuses on workloads of attorneys. **Vice Chairman Lee** went on to ask what the counties' response was to the definition of "case." She stated that the definition of "case" is an integral part of identifying an attorney's workload. **Ms. Simmons** replied that there were questions which were answered satisfactorily, but there was no opposition.

Senator Nye indicated that the rule incorporates the principles (attachment 1). He reported that the feedback he received was concerned with the lack of specificity. The principles all state what should happen. He asked if the PDC reviewed these principles to make them more definite. **Ms. Simmons** commented that the principles are actually taken from the statute. In the Standards for Defending Attorneys (attachment 2) those principles are included but with more detail. **Senator Nye** cited the statute requiring the PDC make recommendations to the Legislature for legislation on the Public Defense System. He asked if tightening up the language for the principles had been considered. **Ms. Simmons** replied that they did not consider that. She assured the Committee that the PDC would address that issue.

Vice Chairman Lee asked where a public defender would find these standards. She also expressed concern for small counties who have difficulty finding attorneys to take specialized cases. Some attorneys have been willing to take the cases, but **Vice Chairman Lee** stated a fear that having to obtain more continuing legal education hours (CLE) might disuade attorneys from taking the cases. **Ms. Simmons** stated the standards are on the PDC website, and a packet for defending attorneys is being produced that will include the standards. **Ms. Simmons** addressed the concern with the CLE hours for specialized cases pointing out that an attorney could consult with another attorney who has experience in the specialized area. Two years is allowed for completing the training, and the PDC would provide the training.

Senator Burgoyne asked if the PDC heard from the people who are sending mass emails to the Senators. **Ms. Simmons** answered that recently she has not heard from those people. She commented that in October when the announcement for public hearing was published there were some emails, but there was confusion in trying to communicate with the senders. **Senator Burgoyne** inquired how Ms. Simmons addressed those emails with regard to the rulemaking. **Ms. Simmons** felt all concerns have been addressed. She emphasized that there has been some distress with the lack of case load standards, but those are coming. She pointed out that if this rule should be rejected based on those specific concerns, not only would the case load standards be eliminated, the guidance language regarding extensive parts of the pubic defense process would also be gone.

TESTIMONY: **Teresa Baker**, Association of Counties (AOC), stated that the AOC supports the rules. **Ms. Baker** affirmed that the AOC heard concerns from the counties, most of which centered on the lack of case load standards. She reported that AOC members attended the sessions around the State. She declared that the PDC listened to their concerns and removed the case load standards, allowing a work load study to be conducted prior to establishing the standards for the State of Idaho.

TESTIMONY: **Kathy Greismier**, American Civil Liberties Union (ACLU), stated that the ACLU asks that the rules, specifically the section in reference to the standards for defending attorneys, be rejected because they do not improve public defense system here in Idaho. **Ms. Greismier** explained that the ACLU was involved in the negoiated rulemaking throughout the summer, participating in meetings and offering input. Some input was used. She stated that the ACLU was supportive of the interim case load standards that were included. **Ms. Greismier** indicated that although the ACLU recognized these were national standards, they felt it was appropriate to maintain those standards until the Idaho study could be conducted. She remarked that keeping these standards would limit the number of cases an attorney could take, thus providing good defense for the client. She indicated that the ACLU also wanted to address all ten standards in one year, and to tighten up the language.

Senator Davis asked if Ms. Greismier is opposed to the rules as written or because something important is missing. **Ms. Greismier** replied that the ACLU is not opposed to the entire rule, only to the section referencing the document incorporated by reference to standards for defending attorneys (attachment 2). **Senator Davis** inquired why the ACLU would want to reject all the good work that has been done because it is not good enough. **Ms. Greismier** expressed that the ACLU is thankful to the PDC for making the achieved progress. She did not feel, considering the time it has taken to achieve the current status, that a little longer would no be problematic.

Senator Burgoyne asked how rejecting this rule would reduce the time to reach the goal. **Ms. Greismier** reiterated that the ACLU does not see these rules materially improving the working lives of public defenders nor their clients. She pointed out that next year it has to be addressed again, and changes then may make a difference. **Senator Burgoyn** pointed out if these rules are rejected, there will be nothing. **Ms. Greismier** repeated that this proposed rule does not improve the situation for public defenders.

MOTION: **Senator Hagedorn** moved to approve **Docket No. 61-0107-1601**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Lee passed the gavel back to Chairman Lodge

S 1023	**Relating to Funeral Processions**. Due to lack of time, hearing of this bill was postponed to the call of the Chair.
S 1024	**Relating to the Child Protective Act**. Due to lack of time, hearing of this bill was postponed to the call of the Chair.
S 1025	**Relating to Administrative Judges**. Due to lack of time, hearing of this bill was postponed to the call of the Chair.
S 1026	**Relating to Criminal Procedure**. Due to lack of time, hearing of this bill was postponed to the call of the Chair.
ADJOURNED:	There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:00 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Katy Miller
Assistant Secretary

Idaho's Principles of an Indigent Defense Delivery System

Idaho Code §19-850(a)(vii)

1. The delivery of indigent defense services is independent

The delivery of indigent defense services should be independent of political and judicial influence, though the judiciary is encouraged to contribute information and advice concerning the delivery of indigent defense services.

2. Attorneys have confidential space to meet with client

Defending attorneys should have sufficient time and private physical space so that attorney-client confidentiality is safeguarded during meetings with clients.

3. Workload controls are in place

Defending attorneys' workloads should permit effective representation.

4. Funding of public defense is independent

Economic disincentives or incentives that impair defending attorneys' ability to provide effective representation should be avoided.

5. Ability, training and experience match case complexity

Defending attorneys' abilities, training and experience should match the nature and complexity of the cases in which they provide services including, but not limited to, cases involving complex felonies, juveniles and child protection.

6. Offices provide vertical representation

The defending attorney assigned to a particular case should, to the extent reasonably practicable, continuously oversee the representation of that case and personally appear at every substantive court hearing

7. Resource parity between defense and prosecution

There should be reasonable equity between defending attorneys and prosecuting attorneys with respect to resources, staff and facilities.

8. Continuing legal education

Defending attorneys should obtain continuing legal education relevant to their indigent defense cases.

9. Quality assurance through routine review

Defending attorneys should be regularly reviewed and supervised for compliance with indigent defense standards and, if applicable, compliance with indigent defense standards as set forth in contractual provisions.

10. Representation free from conflicts

Defending attorneys should identify and resolve conflicts of interest in conformance with the Idaho rules of professional conduct and other applicable constitutional standards.

Updated 11/22/16

Section 7: Standards for Defending Attorneys

The provisions of this section establish the standards for defending attorneys utilizing Idaho's Principles of an Indigent Defense Delivery System (IPIDDS) as outlined in Section 19-850(1)(a)(vii), Idaho Code. IPIDDS, in blue, were adopted by the Idaho Legislature as a guide for defending attorneys and the development of standards. The standards take into consideration case complexity, support services, and travel while striving to meet the constitutional requirements of the Sixth Amendment to the U.S. Constitution. These standards are intended to be used as a model for professional conduct and performance. They may or may not be relevant in the judicial evaluation of effective representation, depending upon the circumstances.

I. The delivery of indigent defense services should be independent of political and judicial influence, though the judiciary is encouraged to contribute information and advice concerning the delivery of indigent defense services.

II. Defending attorneys should have sufficient time and private physical space so that attorney-client confidentiality is safeguarded during meetings with clients.

III. Defending attorneys' workloads should permit effective representation.

A. The caseload of a defending attorney shall allow the attorney to give each client the time and effort necessary to ensure effective representation. Neither indigent defense providers nor defending attorneys should accept caseloads that, by reason of their excessive size, interfere with the rendering of constitutional representation.

B. The Commission has chosen not to set a specific caseload standard at this time until an Idaho workload study can be completed. Counties should encourage defending attorneys not to exceed caseloads that would compromise the effective representation of their clients.

C. If a defending attorney is assigned to represent a group of clients in problem solving courts in addition to individual case assignments, consideration should be given to adjusting the caseload appropriately, recognizing that preparing for and appearing at such calendars requires additional attorney time.

D. Effective supervision is critical to the proper functioning of an indigent defense system. Those attorneys with supervisory responsibilities should carry a reduced caseload in recognition of the additional workload involved in providing meaningful supervision.

E. The increased complexity of practice will require a lower caseload. A caseload should be adjusted downward when the mix of case assignments is weighted toward capital cases, more serious offenses or case types that demand more investigation, legal research and writing, motion practice, use of experts and/or social workers, or other expenditure of time and resources.

IV. Economic disincentives or incentives that impair defending attorneys' ability to provide effective representation should be avoided.

V. Defending attorneys' abilities, training and experience should match the nature and complexity of the cases in which they provide services including, but not limited to, cases involving complex felonies, juveniles and child protection.

A. A defending attorney shall minimally meet the requirements of Idaho Code §19-855 before representing indigent persons or other individuals who are entitled to be represented by an attorney at public expense.

B. A defending attorney shall be familiar with substantive Idaho law, constitutional law, criminal law, ethical rules, criminal procedure, rules of evidence, and local rules and practices. Defending attorneys have a continuing obligation to know the changes and developments in the law and have the ability to recognize collateral consequences.

C. Defending attorneys shall be familiar with current forensic and scientific issues that can arise in a case, including current technology used by law enforcement and other investigative officers, and the legal issues concerning defenses that can be raised. Defending attorneys shall be able to effectively litigate those issues.

D. Defending attorneys shall be familiar with mental health, substance abuse, poverty, education and other psychological, medical and social issues that affect and impact the lives of their indigent clients.

E. Defending attorneys shall be familiar with office technology commonly used in the legal community, and technology used within the applicable court system. Defending attorneys shall be able to thoroughly review materials that are provided in an electronic format.

F. Prior to undertaking the defense of an indigent defendant or other person entitled to an attorney at public expense, counsel should have sufficient experience to provide competent representation for the case. A defending attorney should accept more serious and complex cases only after having had experience and/or training in less complex matters. As such, supervising attorneys should take the experience of a defending attorney into consideration when assigning cases. At a minimum, defending attorneys without adequate experience shall consult with a more experienced defending attorney before handling more complex cases.

G. Defending attorneys should, when possible, consult with more experienced attorneys to acquire knowledge and familiarity with all facets of indigent defense representation, including serving as co-counsel to more experienced attorneys.

H. Upon assignment to a case that requires specialized knowledge, a defending attorney shall acquire at least three (3) continuing legal education hours in the specialized area as soon as reasonably practicable if such training has not been acquired within the last three (3) years. If a training course is not readily available, a defending attorney shall consult with a more experienced defending attorney with such specialized training until a course is available. Specialized areas include, but are not limited to the following:

   a. Juvenile cases;
   b. Child protection cases;

c. Termination of parental rights and guardianship cases;
d. Civil contempt;
e. Mental health commitment cases;
f. Immigration law; and
g. Cases involving significant mental health and/or competency issues.

I. Defending attorneys shall engage in continuing legal education as required in Principle VIII, *infra*.

VI. The defending attorney assigned to a particular case should, to the extent reasonably practicable, continuously oversee the representation of that case and personally appear at every substantive court hearing.

A. A defending attorney should be appointed at the initial appearance and shall be immediately available in-person or through technology to an indigent defendant upon such appointment. At the initial appearance, the defending attorney should make efforts to preserve all of the defendant's constitutional and statutory rights, and seek pre-trial release at the initial appearance under conditions that serve the best interests of the defendant. Further, the defending attorney should encourage the entry of a not guilty plea in all but the most extraordinary of circumstances where a disposition at initial appearance is constitutionally appropriate.

B. In order to successfully advocate on a defendant's behalf at an initial appearance, a defending attorney should obtain information relevant to pre-trial release pursuant to Idaho Criminal Rule 46, and if possible, discuss the charges and possible consequences with the defendant.

C. Once assigned to a defendant's case, to the extent reasonably practicable, a defending attorney shall be present at all critical stages for that defendant. This is sometimes referred to as vertical representation.

VII. There should be reasonable equity between defending attorneys and prosecuting attorneys with respect to resources, staff and facilities.

VIII. Defending attorneys should obtain continuing legal education relevant to their indigent defense cases.

A. Defending attorneys shall annually complete seven (7) hours of continuing legal education courses relevant to the representation of indigent defendants or other individuals who are entitled to be represented by an attorney at public expense. Courses shall include skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. This may include CLE courses in specialized areas as listed in Principle V, *supra.*

B. Defending attorneys shall handle cases that reflect their abilities, training and experience as required in Principle V, *supra*.

IX. Defending attorneys should be regularly reviewed and supervised for compliance with indigent defense standards and, if applicable, compliance with indigent defense standards as set forth in contractual provisions.

X. Defending attorneys should identify and resolve conflicts of interest in conformance with the Idaho rules of professional conduct and other applicable constitutional standards.

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Wednesday, February 08, 2017

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	Approval of January 25, 2017 minutes	
Gubernatorial Appointment Vote	Kimberly Simmons, Sexual Offender Management Board	
Gubernatorial Appointment Vote	Erwin L. Sonnenberg, Sexual Offender Management Board	
Presentation	Administrative Judges Review	
	Introduction and the Role of the Administrative District Judge	Senior Judge Barry Wood
	Judicial Excellence and Education Program (JEEP)	Administrative District Judge Jeff Brudie
	Value and Use of Senior Judges in Idaho	Administrative District Judge Darren Simpson
	Update on iCourt and Odyssey Implementation	District Judge Timothy Hansen
	Problem Solving Courts and Crisis Centers	Administrative District Judge Richard Bevan
	Impact of a Capital Case on a Judicial District's Resources	District Judge Barbara Buchanan
	Implementation of the Justice Reinvestment Initiative and the Need for Additional Probation and Parole Officers	Administrative District Judge Mitchell Brown
	Courthouse Facilities, Security, ADA Compliance and Language Access	Administrative District Judge Bradly Ford

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, February 08, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, Nye
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 1:30 p.m. She thank the Administrative Judges from all districts for taking the time to come and present to the Committee.
MINUTES APPROVAL:	**Senator Foreman** moved to approve the Minutes of January 25, 2017. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT:	**Senator Burgoyne** moved to send the gubernatorial appointment of Kimberly Simmons to the Sexual Offender Management Board to the floor with a recommendation that she be confirmed by the Senate. **Senator Nye** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT:	**Senator Foreman** moved to send the gubernatorial appointment of Erwin L. Sonnenberg to the Sexual Offender Management Board to the floor with a recommendation that he be confirmed by the Senate. **Senator Nye** seconded the motion. The motion carried by **voice vote**.
PRESENTATION:	**Chairman Lodge** asked Judge Wood to outline the program for the Committee.

Judge Barry Wood, Senior District Judge, stated that he had practiced law in Idaho for 40 years, been in the judiciary for 30 years, and was a page here 48 years ago. He introduced the Trial Court Administrators attending and announced the agenda of speakers.

Judge Wood began his presentation by giving an overview of the Idaho Judiciary. He indicated that there were 45 district judges. This level of judgeship was put in the Idaho Constitution in 1890. One way to become a district judge in Idaho is to fill a vacancy in that position during the judge's term. The other way to be appointed is to be elected. The 45 district judges in Idaho live in 19 different counties, and they travel to cover cases in other counties. Their term of office is four years and all district judges are on the ballot in non-presidential years. They do not have staggered terms. Their jurisdiction is to hear felony criminal cases, civil actions if the amount involved is more than $10,000 in controversy, hear appeals from decisions of the magistrate division, hear appeals from administrative agencies in their district, and appeals from community boards. One of the judges was assigned to water adjudications in the State and hears all administrative appeals of water matters from the Department of Water Resources.

Judge Wood explained Idaho's Judicial Districts and the county breakdown in each district. Each district has an administrative district judge. For information regarding the selection, term, and duties as well as the administrative power and duties of the administrative district judges see attachment 1.

PRESENTATION: **District Judge Jeff Brudie** indicated that he would be discussing the Judicial Excellence and Education Program (JEEP). He stated a pilot program was created through the Administrative Office of the Courts to give judges feedback on their courts and areas that they might wish to improve on. One survey would be sent out to attorneys who appear before the judges and the other one would go to other courtroom professionals. There are 136 trial judges and the plan was to select 3-5 judges to be surveyed each month in a random selection. The feedback is confidential to the judge who is surveyed. There are two exceptions to the randomness and confidential nature of the survey. Magistrates who are selected by the Magistrates Commission have an 18 month probationary period at the start of their service, and they are automatically surveyed at 9 and 18 months. Those results will be shared with the Magistrates Commission who reviews the judges for continued service. It will take approximately three years to complete the survey process. The first group of three judges was selected in January 2017 and the surveys were expected back by the end of February. For the survey to be effective, it is important to get a good response rate. There is no way to predict that, but reminders will be sent out. Once the results are collected, the judges will have an opportunity to provide a response if they choose.

Senator Hagedorn asked if the judges who were being surveyed were aware that they were being surveyed before it happened. **Judge Brudie** indicated that they were. **Chairman Lodge** inquired about how long it would take to fill out the survey. **Judge Brudie** stated that he wasn't sure, but assured her that the survey was paired down as much as possible, and also stated that it was not mandatory.

PRESENTATION: **Darren Simpson**, Administrative District Judge for the 7th Judicial District, located in Bingham County. **Judge Simpson** indicated that he would be discussing the Senior Judge program in the State of Idaho. The Senior Judge Program began in 1999. Judges who have retired can apply to the Supreme Court to become a Senior Judge. They have all the rights in the court where they are assigned. Compensation is 85% of the acting judge's compensation and only based on the days they serve. As an alternative to the traditional Senior Judge Program, the Plan B Senior Judge serves for 35 days per year if he/she took office before July 1, 2012. After that time, one would have to perform 60 days per year for 5 years. There is no compensation except for health benefits during the Plan B status. Travel and per diem expenses are covered. Senior Judges are a great flexible resource in Idaho. **Judge Simpson** indicated that the Senior Judges worked 2,414 days in Fiscal Year 2016 which is approximately the equivalent of 11 additional judgeships.

Senator Lee asked if Plan B was a popular option for Senior Judges. **Judge Simpson** responded that, depending on where a person was in their career, it could be valuable. **Senator Foreman** asked the difference between an administrative district judge and a district judge. **Judge Simpson** stated that a district judge hears cases in civil matters that exceed $10,000 and felony criminal cases, appeals from the Magistrate Division and from Boards. An administrative judge has the additional duties of handling the administrative affairs within the district and is the bridge between the District and the Supreme Court. **Senator Burgoyne** asked Judge Simpson to explain the difference between a clerk of the district court, trial court administrators, and county clerks. **Judge Simpson** stated that clerks of the district court are responsible for court operations, deputy clerks, and responsibilities within their county. Trial court administrators have many of the same responsibilities that an administrative district judge has with some variation from district to district. Every trial court administrator brings their own philosophies which results in different approaches. A county clerk has responsibilities other than those directly related to the court, but which apply to their counties. There are differences in how those things are handled that are not directly dealt to

them statutorily. The administrative judge and the trial court administrator have a district-wide obligation as well as some responsibilities to the Supreme Court.

PRESENTATION: **Timothy Hansen**, District Judge 4th District for Ada County, stated that since he had been Administrative Judge for the past four years, he had been asked to do the presentation on iCourt and the Odyssey implementation. The iCourt project involved a change from a paper-based system to an electronic online judicial system. Case management software called Odyssey by Tyler Technologies was chosen because it was felt to be the most capable and cost effective program (see attachment 2). It has become apparent that additional time and training will be needed to enable counties to take advantage of everything Odyssey has to offer.

Senator Hagedorn asked what issues have caused glitches in using the Odyssey program. **Judge Hansen** responded that there were some software problems and some business process problems. All of the IT staffs involved participated in working to solve the issues. **Senator Hagedorn** asked if there had been a funding shortfall. **Judge Hansen** stated that the civil filings had gone down 26% and criminal felony case filings had gone up 23%. The impact was a reduction in the fees available to pay some of the costs for the Odyssey implementation. **Senator Burgoyne** questioned why there was a 26% drop in civil filings. **Judge Hansen** stated that some theories are that society was becoming less litigious or that people have less faith in the judicial process. He suggested that he had seen more binding arbitration as a result of contractual agreements between parties, and that may have contributed to the reduction.

Sara Thomas, Administrative Director of the Courts, gave a brief summary of the shortfall they have experienced. In 2014 a business plan was created for the implementation of this product. The revenues came from three different places. Those included filing fees, additional civil filing fees from HB 509 (2014), and one time appropriations from the General Fund. The Courts quickly realized that more people were needed to implement the iCourt program. Cuts were made in other areas to help with cost reduction. The filing fee level dropped by 18 percent between 2014-2016 causing more shortfalls. Initial filing fees are paid when something is filed and continue throughout the life of the case. The entire project through 2018 would result in a $3.7 million shortfall. The Courts have asked to have General Funds appropriated to address 50 percent of that amount. Without that appropriation, iCourt will not stay on schedule.

PRESENTATION: **Richard Bevan**, Administrative District Judge in Twin Falls County, stated that he had been asked to discuss problem solving courts and crisis centers. The Twin Falls Crisis Center was the third center to open and it has filled its expected role and has made a difference in the lives of displaced individuals. The benefit to local communities will be felt in areas such as hospitals and jail cells. A more long term positive result will be felt by the individuals served by the centers.

Judge Bevan indicated that Problem Solving Courts are an ongoing success in his district. By increasing direct supervision of offenders, coordinating public resources, and expediting case processing, the courts can help break the cycle of criminal behavior, alcohol and drug use, and incarceration. He discussed the financial sustainability of the Courts with the onset of Odyssey (see attachment 3).

PRESENTATION: **Barbara Buchanan**, District Judge for Bonner and Boundary Counties, stated that her topic was the impact of capital cases on a judicial district. She indicated that she was presenting because Judge Lancing Haynes is involved in a capital case. Idaho is one of 32 states that currently has a death penalty. In Idaho a person can receive the death penalty for first degree murder or first degree kidnapping. Death penalty cases literally take decades to reach final resolution, and they are extremely costly in both dollars and resources. They rely heavily on senior judges to help with case loads when one of their judges is involved in a capital case. **Judge Buchanan** gave Idaho execution statistics (see attachment 4).

PRESENTATION: **Mitchell Brown**, Administrative District Judge 6th District, stated that he had been asked to talk about the Justice Reinvestment Initiative (Initiative). The Council for State Governments prepared a report which formed the basis and framework for the Initiative. The report indicated that Idaho's prison population had increased as well as the related costs. The study identified the challenges and a five year plan was implemented as a solution. The goals included reducing recidivism by 15 percent, reducing prison population by 1 percent, and avoiding the $288 million in projected costs. **Judge Brown** indicated that the most important concept of the Initiative was reinvesting some of the savings into funding for additional resources to help those who have a higher risk of recidivism. He discussed the results of the initiative and how it was working at the two year mark (see attachment 5).

Senator Foreman asked if the Initiative would put Idaho ahead or behind compared to the system before the reinvestment program began. **Judge Brown** said that the report generated by the Council for State Governments indicated that the increased costs would be $288 million over the five year period. At this point in time, the prison population had decreased. He said that he believed that the benefits from reinvesting some of the savings into community programs would have a large impact on judges as they sentence individuals who would otherwise not have opportunities to be on community supervision instead of receiving a prison sentence. He believes there will be substantial benefits to the reinvestment process.

PRESENTATION: **Bradley Ford**, Administrative District Judge 3rd District, said that he would be discussing courthouse facilities and related issues. There are 44 county courthouses in Idaho as well as additional municipal court facilities. Many of Idaho's courthouses are beautiful, historic structures. These court facilities present challenges to efforts to construct new or improved courtrooms and to be compliant with the American's with Disabilities Act (ADA). The responsibility to provide adequate court facilities is statutorily assigned to the counties pursuant to Idaho Code §§ 1-1613, 1-2217, and 1-2218. The funding for necessary upgrades is challenging especially for the less populated counties. Some counties have also lacked access to important information and expertise in the maintenance of court facilities. A united effort has been made to identify and address current problems with courthouse facilities, security, accommodation for disabilities, and language access.

Judge Ford gave some examples of courthouse facilities and operational problems. In March 2015 complaints were filed stating that Idaho Courts were not providing language access accommodations for those with hearing impairments. The investigation of those complaints was closed about two weeks ago. In 2016 a complaint stated that a courthouse in the Nez Perce area was a non-compliant American Disability Act (ADA) courthouse built in 1889. A local disability attorney and a sitting Idaho Supreme Court Justice both encountered difficulty accessing the main courtroom in the courthouse because of a lack of wheelchair access. An ADA compliance review of the Kootenai County Courthouse built in 1889 resulted in a 28 page list of alleged violations. It can be anticipated that similar compliance reviews will be initiated with most if not all State court facilities in the foreseeable future. Most judges can describe courthouse experiences that raise concerns about public and court employees' safety. In Canyon County security screens at the public entrance routinely reveal weapons being carried to the facility by the prospective entrants. There are security personnel available in Canyon County, but in a number of the rural courthouses there is no screening at the public entrance and lack readily available security personnel.

Judge Ford stated that the Administrative Office of the Idaho Supreme Court asked the National Centers of State Courts in 2013 for the development of court facility designed guidelines for Idaho. In 2015 that was completed. The guidelines included compliance for ADA requirements. Realistically, many of the guidelines are not feasible for some of Idaho's courthouses but there is a plan to work with. A court task force had been established to address courthouse security concerns and to develop a statewide guideline for court security. In 2016, the Legislature provided an appropriation used to enhance the court's ability to provide disability and language access. Appropriations enabled the court to hire a statewide language access manager and to begin using video-remote interpreting. Development of the video resources allows for substantial savings in travel costs and provides timely access. Statewide guidelines have been developed to provide ADA and language access compliance.

Judge Ford stated that he had an opportunity to work with the Canyon County elected official and their facilities personnel as they oversaw the building of eight new courtrooms. Emphasis was placed on technology, ADA compliance, and language access compliance. They also focused on suitable work stations and counter top space to accommodate the iCourt hardware. He said that it would be very useful to develop statewide standards for the acquisition and installation of courtroom technology particularly audio/video systems.

Chairman Lodge thanked everyone for their presentations and the information they provided.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:10 p.m.

_____

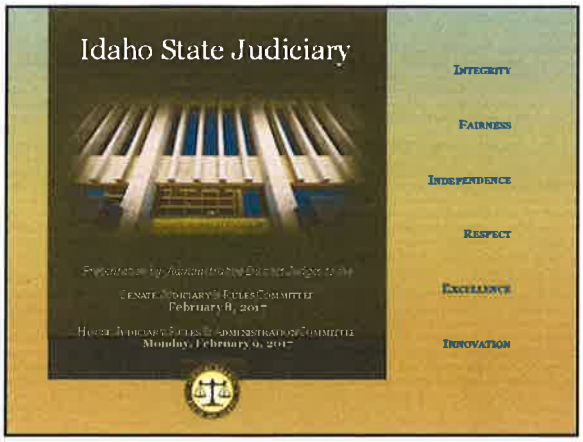
Senator Lodge
Chair

_____

Carol Cornwall
Secretary

_____

Sharon Pennington
Assistant Secretary


Idaho State Judiciary
Integrity
Fairness
Independence
Respect
Excellence
Innovation
February 8, 2017
Monday, February 6, 2017

Agenda for Today
Senior Judge Barry Wood
Introduction and the Role of the Administrative District Judge
Administrative District Judge Jeff Brudie
Judicial Excellence and Education Program (JEEP)
Administrative District Judge Darren Simpson
Value and Use of Senior Judges in Idaho
District Judge Timothy Hansen
Update on iCourt and Odyssey Implementation
Administrative District Judge Richard Bevan
Problem Solving Courts and Crisis Centers
District Judge Barbara Buchanan
Impact of a Capital Case on a Judicial District's Resources
Administrative District Judge Mitchell Brown
Implementation of the Justice Reinvestment Initiative
and the Need for Additional Probation and Parole Officers
Administrative District Judge Bradly Ford
Courthouse Facilities, Security, ADA Compliance and
Language Access

Overview of the Idaho Judiciary
Judicial Branch
Appellate Courts
Supreme Court
Chief Justice
4 Justices
Court of Appeals
Chief Judge
3 Judges
Trial Courts
District Court
45 Judges
Magistrate Court
91 Judges

Idaho's Judicial Districts

Chart of Terms for Administrative District Judges

District	Current / Former Administrative District Judge	Term Ending	Next / New Administrative District Judge	New Term Begins	New Term Ends
1	Judge Haynes	08-31-19			
2	Judge Brudie	12-31-17			
3	Judge Ford	01-31-18			
4	Judge Hansen	01-31-17	Judge Melissa Moody	02-01-17	01-31-20
5	Judge Bevan	12-31-18			
6	Judge Brown	08-31-19			
7	Judge Simpson	03-31-17	Judge Joel Tingey	04-01-17	03-31-20

Idaho Court Administrative Rule 42. Administrative Judge – Selection, Term and Duties.

- (a) In each judicial district, an administrative judge shall be elected by a majority of the district judges within the district. If a majority of the district judges cannot agree as to who shall be the administrative judge, then an administrative judge shall be appointed by a majority of the justices of the Supreme Court.
- (b) The administrative judge shall be elected or appointed for a term of three years subject to reelection.
- (c) In the event of a vacancy in the office of administrative judge, a replacement shall be elected by a majority of the district judges within the district to complete the unexpired term. If a majority of the district judges cannot agree as to who shall be elected to complete the unexpired term, then an administrative judge shall be appointed by a majority of the justices of the Supreme Court.
- (d) The administrative judge may be removed by a majority vote of the district judges of the district.
- (e) The actions of the majority of district judges pursuant to the above subsections of this rule shall be subject to disapproval by a majority of the justices of the Supreme Court.
- (f) The powers and duties of the administrative judge include all those powers and duties as established by the Supreme Court.

1-907. ADMINISTRATIVE JUDGE – ADMINISTRATIVE POWERS AND DUTIES.

The administrative judge or acting administrative judge in each judicial district, subject to the rules of the Supreme Court, shall have administrative supervision and authority over the operation of the district courts and magistrates in the district. These powers and duties include, but are not limited to, the following:

- (a) arranging schedules and assigning district judges for sessions of district courts;
- (b) arranging or supervising the calendaring of matters for trial or hearing;
- (c) supervising the clerks of the district courts in the discharge of the clerical functions of the district courts;
- (d) assigning matters to magistrates, and prescribing times and places at which magistrates shall be available for the performance of their duties;

1-907 continued...

- (e) making arrangements with proper authorities for the drawing of civil jury panels and determining which sessions of the district court shall be jury sessions;
- (f) arranging for the reporting of civil cases by court reporters or other authorized means;
- (g) arranging sessions, to the extent practicable, for the trial of specialized cases, including traffic, domestic relations, and other types of cases, and assigning district judges to preside over these sessions so as to permit maximum practicable specialization by individual judges;
- (h) promulgating a schedule of offenses for which magistrates and clerks of court or other designated persons may accept written appearances, waivers of trial, and pleas of guilty, and establishing a schedule of fines and bails therefor;
- (i) assigning magistrates to temporary duty outside the county of their residence but within the district;
- (j) acting as chairman of the district magistrates commission of the district;
- (k) assigning to other district judges in the district various powers and duties as in this act provided; and
- (l) appointing personnel which needed to attend to the courts, and assigning duties to these court attendants for the purpose of maintaining the security and efficiency of court facilities.

Agenda for Today

JUDICIARY
Senior Judge Barry Wood
Introduction and the Role of the Administrative District Judge

> Second Judicial District
Administrative District Judge Neil Brown
Judicial Excellence and Education Program (JEEP)

> Seventh Judicial District
Administrative District Judge Darren Simpson
Vacant and Use of Senior Judges in State

> Fourth Judicial District
District Judge Timothy Hansen
Update on iCourt and Odyssey Implementation

> Fifth Judicial District
Administrative District Judge Richard Bevan
Problem Solving Courts and Crisis Centers

> Fifth Judicial District
District Judge Barbara Bacalman
Impact of a Capital Case on a Judicial District's Resources

> Sixth Judicial District
Administrative District Judge Mitchell Green
Implementation of the Justice Reinvestment Initiative and the Need for Additional Probation and Parole Officers

> Third Judicial District
Administrative District Judge Bryan Ford
Courthouse Facilities, Security, ADA Compliance and Language Access

Attachment 2
District Judge Timothy Hansen
February 8, 2017

Update on iCourt and Odyssey Implementation

I. What is the iCourt project?
   A. iCourt involves a change from a paper-based system to an electronic on-line judicial system
      1. This change was needed for two reasons:
         a. ISTARS (Idaho Statewide Trial Court Automated System) was declared by its vendor to be at the end of its life
         b. A modern computer system was needed to meet the Court's constitutional mandate to "resolve cases without delay"

II. The Idaho Supreme Court considered available options and ultimately chose a case management software called Odyssey by Tyler Technologies because it was felt to be the most capable and cost effective
   A. Tyler is a proven software company with at least 10 statewide court implementations and 500 county court implementations across the country
   B. In selecting this new case management system, consideration was given not only to the needs of the courts, but to other stakeholders including the legislature.
      1. Odyssey is designed to allow the courts to provide accurate information to allow the legislature to make reasoned policy decisions concerning the courts
         a. iCourt contains a centralized data base and standardized recording of data which allows the ISC to create reports as needed
      2. Other advantages include:
         a. Immediate access by judges to documents including access by travelling judges to court records from other counties
         b. Access by multiple persons to the same court record from different locations at the same time
         c. Access to court records 7 days a week, 24 hours a day
         d. Allowing judges, clerks and others to work from remote locations
         e. Allowing the parties to submit documents electronically 24 hours a day, 7 days a week, 365 days a year
         f. Allowing filing parties to digitally serve others eliminating paper service costs
         g. Reduce the need for physical storage space for case files

III. iCourt has already been launched in Twin Falls County on June 22, 2015, and in Ada County on August 8, 2016
   A. In Ada County the go-live not only included Odyssey Case Manager and Session Works for Judges (Judge Edition), it also included Attorney Manager for the Ada County Prosecutor's Office and the Ada County Public Defender's Office and the TriTech Jail Booking System for the Ada County Sheriff's Office
      1. Case Manager helps the clerks complete their tasks, but it also includes the judge's queue by which the clerk can send documents to the queue for the judge's review and signature electronically. In other words, judges now have an electronic in-box instead of an in-box filled with paper files.

2. Session Works for Judges is used by the judge for case preparation and while in court
    a. It allows the judge to bookmark those documents the judge needs to address during a hearing which reduces the time to locate and refer to those documents in court
    i. Speaking from personal experience, it has reduced the time I need to dispose of most cases at hearing on a law and motion day, which is no mean feat given how technologically challenged I am
3. Attorney Manager is an integrated electronic case management system that prosecutors and public defenders can utilize

IV. However, in spite of these advantages, it has become evident that more time needs to be spent in these two counties to improve business processes, provide additional training and enhance features of the technology to achieve greater benefits from iCourt. In other words, to make sure the counties can take advantage of everything Odyssey has to offer. ISC is intensifying its efforts to resolve high impact issues for Twin Falls and Ada counties to improve efficiencies in the case management system.

A. E.g., as of January 6, 2017, Ada County had 1,228 issues as of the go-live on August 8, 2016

1. Of those, 1,133 have been closed; however, 95 issues remain open and are still being addressed
2. This almost 94% resolution rate is due to the hard work of the IT and other staff at the AOC; Ada County's judges, clerks, IT and other staff; and Tyler Technologies
    a. For example, following the Ada County go-live, there were daily meetings for 3 weeks with on-site go-live support and an active "war room" where representatives from Tyler and the AOC met with Ada County personnel to address problems as they arose
    b. The AOC maintained an ongoing on-site presence through September 2016 and new incidents can now be reported to the ISC's IT Service Desk
    c. Since that time, AOC representatives have met regularly with Ada County personnel at bi-weekly Executive Support Meetings
    d. In addition, beginning January 31, 2017, representatives from Tyler and the AOC IT staff have been on-site at the Ada County Courthouse to observe processing, activities in some courts and the clerk's office to understand current issues
    e. Recently, representatives from the AOC including Administrative Director of the Courts Sara Thomas, Technology Division Director Kevin Iwersen, and Director of Court Management Janica Bisharat met with Ada County personnel including magistrates handling criminal matters on the 2nd floor to address ongoing issues with Odyssey and the magistrate criminal calendar
3. Among the issues resolved was an especially challenging one involving a freeze up in Judge Edition which required a restart every time it occurred. When this happened while the judge was on the bench, it took longer to get through the calendar because additional time was needed before the judge could again take up cases.

a. This issue was finally resolved after much hard work on October 31, 2016
b. Another issue which has now been addressed is putting bar code printers in each courtroom on the 2nd floor in the Ada County Courthouse which will improve the operational use of Odyssey in those courtrooms

V. Originally, the first wave deployment of the remaining ten counties in the Fourth and Fifth Judicial Districts was scheduled for April 2017. However, in an effort to address all of the issues in Twin Falls and Ada counties, including those mentioned previously, and, in particular, conversion of legacy data such as financial and case data into Odyssey and integration challenges with some of the data sharing partners, an adjustment to a more timely roll out of Odyssey in the other counties is needed

A. Ultimately the scheduled completion date will remain the same. However, the first wave or Implementation Event #3 will now include the ten remaining counties from the Fourth and Fifth Districts as well as Canyon and Owyhee counties from the Third District and is scheduled for October 10, 2017
B. The second wave or Implementation Event #4 will include the remaining counties from the Third District and all counties from the First and Second Districts and is scheduled for April 2, 2018
C. The final wave or Implementation Event #5 will include all counties from the Sixth and Seventh Districts and is scheduled for October 9, 2018

VI. With all of these programs being implemented and the work and personnel involved to insure success, ISC is working to repurpose some of the funds allocated to address the increased costs of implementing iCourt

A. E.g., the video conferencing project is now a limited pilot project rather than a statewide project as originally contemplated
B. However, the business plan for the iCourt implementation was designed in part to be covered by filing fees which with the decrease in civil case filings has resulted in a projected revenue shortfall over the life of the project
C. While it will require the help of the legislature to overcome this shortfall, ultimately iCourt will save the taxpayers money, provide greater access to court records and services and allow the courts to measure and improve performance in ways not previously possible

Attachment 3
District Judge Richard Bevan
February 8, 2017

Administrative District Judge Richard Bevan

I appreciate the opportunity to be back before this body to address a topic that I would hope is of interest to all of you – that is a brief update on problem solving courts and Crisis Centers in Idaho

First, as to the new Crisis Center in Twin Falls, let me express our thanks, on behalf of the 5th Judicial District, for your insight and willingness to address an important need through the crisis centers that are now open and operating in Coeur d'Alene, Idaho Falls and now Twin Falls, as of November 21, 2016. The Twin Falls Center is already making an impact by providing law enforcement and mental health professionals an option, short of hospitalization or jail stays, for those in crisis.

The Twin Falls Center, though in operation for not quite 90 days, is servicing an average of a little over one person per day; the high has been 8. The center has also served citizens from throughout the Magic Valley, although its residents have primarily come from the Twin Falls area. Those who work in the center are making a difference in locating resources for displaced individuals, and for those in crisis, whether those are simply people without a warm and secure location for the night, or those who may need more long-term medical intervention. The cost-savings to our local communities, though not measurable in Twin Falls this early-on, will no doubt be realized by, again, saving these individuals from spending time in more expensive or restrictive environments like hospitals and jail cells.

Moving to the problem-solving court aspect of my remarks, let me address briefly the ongoing success of problem-solving courts throughout Idaho. Problem Solving Courts divert non-violent, substance abusing offenders from prison and jail into treatment. By increasing direct supervision of offenders, coordinating public resources, and expediting case processing. Problem Solving Courts can help break the cycle of criminal behavior, alcohol and drug use, and incarceration.

The Idaho Legislature has established over 15 years ago that "It is in the best interests of the citizens of this State to expand the use of drug courts and mental health courts in Idaho." I.C. Subsection 19-5602(5). The State has continued to expand drug and mental health courts into additional arenas including veterans' treatment, domestic violence, DUI and family reunification, problem-solving courts. Idaho has long been the vanguard when it comes to the use and implementation of these courts. Idaho has 67 problem-solving courts in our seven judicial districts, with more on the horizon. We can be uniformly proud of the triumphs and benchmarks established by these courts locally, state-wide and nationally.

More than a decade of research now supports your findings from 2001: Problem-Solving Courts reduce crime by lowering re-arrest and conviction rates, improving substance abuse treatment outcomes, and reuniting families, while also producing the measurable "win-win" of cost benefits.

As we look to the success and cost-savings in these courts, their continued financial sustainability is threatened. A key component to funding these courts lies in the fees paid by court participants. To be frank, speaking of my experience in the 5th Judicial District, particularly in Twin Falls, these fees have been collected by the courts independently of other fees paid by probationers over the years. As a result, the court fees went directly to court operations without any flow-through to other agencies or obligations.

Idaho's statutory scheme for the collection of monies through the courts requires something different. Section 19-5302 prioritizes victim's restitution above all other payments to any governmental entity, except payments to IDOC for probationers' fees, and payments to jails for work-release fees.

The reality of that exception means that individuals with significant victim restitution will either 1) not be accepted into problem-solving courts based on their inability to pay for their participation (which likely violates the constitution); or 2) they will attend essentially for "free."

Recognizing this dilemma, let me share the story of Dawn Nutting. Dawn was a 3-time felon in the 5th District. She was convicted in Blaine County for Forgery, Grand Theft and No-account checks in 1998 and 2003. By 2006 Dawn's criminal activities brought her to Twin Falls where she pled guilty to an additional grand theft and was sentenced to MHC in 2007. Based on her conduct she owed over $27,000 in restitution for her crimes.

Dawn did an extraordinary job in MHC; she paid her fees both for the court and some restitution as she went along. She worked on the kill floor at Falls Brand meats in Twin Falls, and she took other jobs to make her way through the court. She ultimately graduated (completed the MHC) while still owing a substantial sum in restitution. Because of the good work she did in the court, she was able to get a better job, and by working extremely hard, she paid off <u>all</u> of the restitution within about 4 years.

The reason I bring up this success story is two-fold: first, to explain the problem with the current iteration of I.C. subsection 19-5302 as it pertains to problem solving court funding. Under this scheme, people like Dawn, who qualify for the benefits of MHC or drug court would either attend for free, or not be allowed to participate. That result is not what the Legislature intended in providing that drug, mental health and other PSC's should expand, but that they should also charge some amount to give the individuals participating some "skin in the game" for the privilege of attending.

Without a statutory change, however, it is unlikely that Dawn Nutting would ever qualify to attend MHC. Second, this result shows how, if we get people into problem-solving courts, and we help them succeed, that victims can be made whole, even though it takes some time for any participant to payoff $27,000+. Victims benefit from problem solving courts in the State of Idaho, but that benefit is limited by the scope and reach of Section 19-5302.

As an aside, Dawn obtained more education and became a case manager/recovery coach at Twin Falls' Salvation Army, and to come full-circle with my opening remarks, she is now

employed by the **Twin Falls Crisis Center** in that capacity. I couldn't be more proud of what she has accomplished.

I know the court attempted to address the issue of payment by participants in problem solving courts last year through HB 434. It went nowhere because victims were of a mind that allowing payment for problem solving courts outside the requirements of Section 19-5302 would relegate them further down the line in receiving their restitution. This is a complex issue, but it is one that is worth revisiting, given the frequency with which we have individuals with restitution orders, particularly in MH Courts.

But MH Courts are not the only ones suffering a shortfall in funding due to this requirement. The numbers bear this out, in that Twin Falls total collection of fees for drug court in 2014-2015 was $33,761.50. The next year, after Odyssey's implementation, the fees collected in Twin Falls dropped to $9,101.65, or a decrease of nearly 75%. For MHC, the total collection dropped from $8,960 to $3,600 for a 60% decrease. The loss of these funds is significant; if these courts are to be supported, then the fees for participation, like fees paid for probation supervision, must be preserved as a monthly cost to each participant.

I appreciate the opportunity to address this important issue, in light of our current posture and progress. I am happy to address any questions you may have.

Topic – Capital Cases and their Impact on a Judicial District's Resources

I. Capital Offenses –

A. First Degree Murder

1. 18-4003. **DEGREES OF MURDER**. (a) All murder which is perpetrated by means of poison, or lying in wait, or torture, when torture is inflicted with the intent to cause suffering, to execute vengeance, to extort something from the victim, or to satisfy some sadistic inclination, or which is perpetrated by any kind of willful, deliberate and premeditated killing is murder of the first degree.

(b) Any murder of any peace officer, executive officer, officer of the court, fireman, judicial officer or prosecuting attorney who was acting in the lawful discharge of an official duty, and was known or should have been known by the perpetrator of the murder to be an officer so acting, shall be murder of the first degree.

(c) Any murder committed by a person under a sentence for murder of the first or second degree, including such persons on parole or probation from such sentence, shall be murder of the first degree.

(d) Any murder committed in the perpetration of, or attempt to perpetrate, aggravated battery on a child under twelve (12) years of age, arson, rape, robbery, burglary, kidnapping or mayhem, or an act of terrorism, as defined in section 18-8102, Idaho Code, or the use of a weapon of mass destruction, biological weapon or chemical weapon, is murder of the first degree.

(e) Any murder committed by a person incarcerated in a penal institution upon a person employed by the penal institution, another inmate of the penal institution or a visitor to the penal institution shall be murder of the first degree.

(f) Any murder committed by a person while escaping or attempting to escape from a penal institution is murder of the first degree.

(g) All other kinds of murder are of the second degree.

B. First Degree Kidnapping -

According to Idaho Code § 18-4504, a person guilty of kidnapping in the first degree will be punished with death or life imprisonment. However, under Section 18-4504A, the death sentence will not be imposed unless the prosecuting attorney files a written notice asking for death penalty. Likewise, the death sentence will not be imposed, if the kidnapped person was discharged without any harm. **(I could not find an instance where a person was put to death for first degree kidnapping unless the person was also convicted of murder).**

II. Execution Statistics –

A total of **29 men** have been executed in Idaho since our existence as a territory. Each has been convicted of at least one count of murder. Idaho has never executed a woman. 14 men were executed, all by hanging, in the Idaho territory between 1864 and 1890, when Idaho was admitted to the Union. Another 12 men were executed, again all by hanging, between 1890 and 1957.

After 1957, there were no executions in Idaho for 37 years – until January 1994.

In 1973, Idaho amended our death penalty statute. The new statute provided that the **method of execution** would be by firing squad. In 1978, the legislature added lethal injection as a second method of execution. In 2009, the firing squad option was removed leaving lethal injection as the sole method of execution. No one was ever executed in Idaho by firing squad.

On January 7, **1994**, Keith Eugene Wells was executed by lethal injection. He was convicted of beating 2 people to death in a Boise bar in 1990 and executed four years later.

After 1994, there were **no executions in Idaho for another 17 years**.

Ring v. Arizona 2002- held that Arizona statute pursuant to which, following a jury adjudication of a defendant's guilt of first-degree murder, the trial judge, sitting alone, determines the presence or absence of the aggravating factors required by Arizona law for imposition of the death penalty, violates the Sixth Amendment right to a jury trial in capital prosecutions. **Following Ring, everyone on Idaho's death row had to either have their sentence changed to life imprisonment or be resentenced by a jury**.

On November 18, 2011, Paul Ezra Rhoades was executed by lethal injection for kidnapping and murdering two women. Rhoades was convicted and sentenced to death in 1988. It took 23 years before he exhausted all his appeals and was executed.

The following year, on June 12, 2012, Richard Albert Leavitt was executed for the 1984 murder of a woman in Blackfoot. Leavitt was convicted in 1985 and executed in 2012 – 27 years later.

III. **Death Row** - Since Idaho adopted its most recent death penalty statute in 1977, 40 people have been sentenced to death. Of those 40, 3 have been executed. 2 have died in prison, 26 have had their sentenced reduced; and 9 remain on death row - 8 men, 1 woman.

Longest -Thomas Creech has been on death row the longest for 34 years. The most recent are Azad Abdullah and Erick Hall. Both on death row for 12 years.

According to the IDOC website prisoners under the sentence of death are kept in their cells 23 hours a day. They have the option of being in an outside recreation area for 1 hour a day. The only other time they are out of their cells are for showers, attorney meetings and medical care.

IV. Cost in dollars and resources.

As the above stats indicate, death penalty cases can literally take decades to reach a final resolution. As a result they are extremely costly both in dollars and in resources expended.

Everything is different and takes much longer in a death penalty case. Special counsel is required, experts on aggravation and mitigation are required. There are 2 trials, one on guilty, one on sentencing. Juries may have to be sequestered and the case may have to be tried in another District. There are mandatory appeals and post conviction proceedings, first in State Court and then in Federal Court.

Judge must appoint 2 death penalty qualified attorneys to represent the D from a list of approved Capital Defense Counsel maintained by ISC. A lead attorney and a second chair attorney. (ICR 44.3)

Point out how few attorneys on the list. In my District there 6 attys on list. 3 lead, 3 2nd chair. 4 of the 6 work for the KCPD office and 2 of them, 2 of 3 who are qualified to be lead counsel are retiring.

V. Capital Crimes Defense Fund

In 1998, the legislature authorized Idaho's Counties (19-863A) to create a voluntary CCDF to ease the burden on a county trying to pay for a capital case.

County obligated to pay the cost of one of the attorneys and a 10,000 deductible. The CCDF then pays for the other attorney and all other trial costs. State appellate public defender and the attorney general's office handle the appeals.

At the conclusion of the trial, the Trial Judge must appoint at least one new attorney to handle post conviction proceedings. The attorney must be death penalty qualified for post conviction. The CCDF does not pay for post conviction.

All 44 counties have now joined the CCDF. The Fund levies $600,000 a year against the Counties on a per capita basis until they reach full funding of 5 million. I spoke to Dan Chadwick who oversees the CCDF last week. He indicated that the Fund is fully funded at 5 million and is not currently levying.

VI. 2 capital cases currently pending – 1. In 1st, one in 6th?

The CCDF has made a huge difference for Counties. It has made it possible for every County in Idaho to fund a Capital Case. Managing a capital case is still a huge endeavor for a judge and a judicial district however. Capital cases involve many, many motions and hearings - literally weeks of motions, many weeks of trials, and years of appeals. The 2 attorneys who handle a capital case must significantly reduce their case load. The same thing is true for the District Judge who is assigned a Capital Case. Unfortunately, the CCDF does not pay for additional judge time. Only realistic way to do that is with the assistance of senior judges. Senior judges have also been invaluable in mediating criminal cases, including capital cases. There is no way to predict when or how many capital cases will be filed in any District. The 1st District had 3 last year. In closing, I want to thank you for funding the senior judge program and urge you to continue your support.

Attachment 5
District Judge Mitchell Brown
February 8, 2017

Outline Presentation Legislature

- Chairman, Members of the Judiciary Committee

- I have been asked to make a short presentation on the Justice Reinvestment Initiative. In 2014, the Council for State Governments prepared a report which formed the basis and framework for Idaho's Justice Reinvestment Initiative.

- This Report noted that "Since 2008, the state's prison population had increased by 10% and is projected to increase another 16% over the next five years from 8,076 people in FY2014 to 9,408 people by FY 2019. Increasing the capacity of the system to absorb the growth over that time period was cost Idaho an estimated $288 million in operating and construction costs. Frustrated by rising corrections spending and a high rate of recidivism, policymakers came together to identify a more effective path forward.

- That path forward is Idaho's Justice Reinvestment Initiative.

- The Three (3) challenges identified by this study, which became the focus of Idaho's Justice Reinvestment Initiative were: (1) a revolving door syndrome i.e. "the state's supervision and diversion programs were not reducing recidivism; (2) Inefficient use of prison space – a large portion of the prison community was made of people whose supervision was revoked and/or sentenced to a Rider; (3) Inefficient oversight – failure to track outcomes, measure quality and assure reliability of recidivism-reduction strategies.

- A five year plan was implemented with the projected outcomes from this plan, if implemented and followed was: (1) to reduce recidivism by 15%; (2) Reduce Prison population by 1% and (3) Avoid the $288 million in projected costs.

- However, this outcome recognized the importance and need of **Reinvesting** some of this savings into funding for increasing the # and improving the training PPO, and providing improved and more effective community based treatment services to people on probation and parole supervision who have a higher risk of recidivism.

- I took the opportunity to read Chief Justice Burdick's State of the Judiciary Report to the Legislature. One of the topics he focused on was JRI and he stated that the important concept is REINVESTMENT! He stated that "Reinvestment this year is embodied in the Department's request for twenty-four new probation officers."

- So we are roughly two (2) years into this five (5) year projection, so I want to report on how we are doing.

Table 1. Incarcerated Offenders: In July of 2014, prior to JRI, a total of 13.9% (N=1,131) of Idaho's prison population were serving on a retained jurisdiction (rider) sentence. Between July 2014 and July 2016, the number of riders increased by an average of 32 offenders per year. From July 2016 to now (January 1,2017), the number of riders

increased by 131 offenders, a 27.6% increase. As of January 1, 2017, 17.3% of incarcerated offenders were serving a rider.

Table 1. Incarcerated Offenders

INCARCERATED	Termer population	Rider population	Parole Violator population	Total prison population	% Riders (riders/total prison population)
July 1, 2014; pre-JRI	6,579	1,131	410	8,120	13.9%
July 1, 2015	6,566	1,153	443	8,162	14.1%
July 1, 2016	6,105	1,134	474	7,713	14.7%
January 1, 2017; current	6,020	1,385	605	8,010	17.3%

able 2. Community Offenders in All Districts: In July of 2014, prior to JRI, a total of 77.8% (N=10,680) of Idaho's community population were on probation. Between July 2014 and July 2015, the number of probationers increased by 88 offenders, and experienced an even larger increase (405 offenders)between July 2015 and July 2016. From July 2016 to January 1, 2017, the number of probationers has remained relatively steady, decreasing less than one percent. As of January 1, 2017, 73.1% of the community population were probationers, a decrease from July 2014.

Table 2. Community Offenders in All Districts

ALL DISTRICTS	Statewide: Probation population	Statewide: Parole population	Statewide: community population	% Probationers (probation/statewide: community population)
July 1, 2014; pre-JRI	10,680	3,056	13,736	77.8%
July 1, 2015	10,768	3,417	14,185	75.9%
July 1, 2016	11,173	4,168	15,341	72.8%
January 1, 2017; current	11,089	4,077	15,166	73.1%

Note: Counts include the Limited Supervision Unit Offenders (LSU), a specialized caseload for low-risk offenders.

- Total prison population is down by 110 inmates as of Jan. 1, 2017
- Termer population is down by 559 inmates as of Jan. 1, 2017
- However, Rider Population (254) and Parole Violator (195) population has increased
- Probation increases by 409
- I believe based upon my personal observations as well as those of colleagues with whom I have discussed this trend that this increase in rider and parole violator populations to be the result of an increased number of moderate and risk offenders being supervised in our

communities who are not receiving resources necessary for them to be successful i.e probation oversight, behavioral health services.

- The recent 2017 Annual Community GAP Analysis prepared by the IDOC reflects that "only 7.9% of moderate and high risk probationers and parolees with an estimated mental health treatment need received services from IDHW. This is certainly consistent with my observations as I meet with probationers who appear before me on probation violations.

- My understanding is that the Director of the Idaho Department of Health and Welfare is seeking an 11 million dollar appropriation to serve the probation and parole population. The Judiciary is supportive of this reinvestment of monies into this community. We believe it will decrease the # of people who are caught up in this revolving door syndrome by addressing their mental health and behavioral health needs.

- It will increase the Judiciary's confidence that moderate and high risk offenders will get the services they need while in the community.

- Similarly, the Judiciary supports IDOC's request for 25 additional probation officers as mentioned by Chief Justice Burdick in his State of Judiciary Address. This allow for better and more intensive oversight and supervision of probationers and parolees.

- Again, thank you for this opportunity today to appear in front of this committee.

- I will stand for questions, if any.

AMENDED AGENDA #1

SENATE JUDICIARY & RULES COMMITTEE

1:00 P.M.
Room WW54
Friday, February 10, 2017

SUBJECT	DESCRIPTION	PRESENTER
DOCKET NO. 57-0101-1601	Rules of the Sexual Offender Management Board	Jon Burnam, Chairman, Sexual Offender Management Board
DOCKET NO. 05-0103-1601	Rules of Custody Review Board	Sharon Harrigfeld, Director, Juvenile Correction
RS25059C1	Regarding certification of emergency communications officers.	Michael Kane, Idaho Sheriffs Association
S 1011	Relating to Juvenile Corrections	Sharon Harrigfeld, Director, Juvenile Correction
S 1013	Relating to minors and controlled substances	Sharon Harrigfeld, Director, Juvenile Correction

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Friday, February 10, 2017
TIME:	1:00 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Senators Agenbroad, Foreman, Burgoyne, and Nye
ABSENT/ EXCUSED:	Vice Chairman Lee, Senators Davis, Hagedorn, and Anthon,
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.
DOCKET NO. 57-0101-1601	**Rules of the Sexual Offender Management Board (SOMB)**. **Jon Burnam**, Chairman, Sexual Offender Management Board, presented this docket noting that it had been presented on February 1, 2017. Feedback was offered concerning portions of the rule changes which was considered in revising these proposals. **Mr. Burnam** explained the current proposed changes include the removal of language needing further revision. He announced that SOMB will review the language in question for clarity and present it next year. He indicated that the revised proposal involves Section 150.02 and 150.04.
MOTION:	**Senator Foreman** moved to accept **Docket No. 57-0101-1601** with the changes notes in Section 150, .02 and .04. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
	Chairman Lodge announced that **Docket No. 05-0103-1601**, scheduled to be heard at this time, will be heard last.
RS 25059C1	**Regarding certification of emergency communications officers.** Michael Kane, Idaho Sheriffs Association, stated that this legislation is the result of several years of effort by many interested parties. He stated that although the legislation provides certification for emergency communications officers (dispatchers), it's focus is on training. **Mr. Kane** pointed out that currently no training is required for dispatchers. Standardized training for dispatchers is supported by the Chiefs Association, the Sheriffs Association, the Peace Officers Standards and Training Council (POST), and other entities throughout the State. The purpose is to provide standardized training throughout the State for dispatchers. The proposed training can be done online, and applies to those starting after 2012. He informed the Committee that there have been lawsuits against dispatchers and their chiefs or sheriffs. Consequently, the training not only protects the public, it protects the dispatchers.
	Senator Burgoyne asked if, in order for people to be a dispatcher, they would also have to meet eligibility requirements of police officers. **Mr. Kane** replied that gate keeping functions are already in place for dispatchers. He reiterated that this legislation deals with training.
	Senator Foreman declared this legislation is reasonable. He emphasized that it is essential this legislation is passed. Lives are at stake, and the dispatchers must have training.
MOTION:	**Senator Foreman** moved to send **RS 25059C1** to print. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

S 1011 **Relating to Juvenile Corrections.** **Sharon Harrigfeld**, Director, Department of Juvenile Correction, reported that this legislation simply changes the "open meeting law" from singular to plural ensuring that reference to Idaho Code § 20-533A cites the accurate applicable laws.

MOTION: **Senator Nye** moved to send **S 1011** to the floor with a **do pass** recommendation. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

S 1013 **Relating to minors and controlled substances.** **Sharon Harrigfeld**, Director, Department of Juvenile Correction, disclosed that Idaho Code §§ 20-505 and 18-1502C conflict. **S 1013** will repeal Idaho Code § 18-1502C and is necessary to allow uniformity when charging juveniles for possession of marijuana, and will remove any confusion about what court has jurisdiction over juvenile possessors of marijuana. This legislation eliminates unnecessary court appearances and transfers of cases, and is in keeping with the legislative intent of the Juvenile Corrections Act. **Director Harrigfeld** explained that currently juveniles charged with possession of marijuana must be charged in adult court. Upon the establishment of age, the juvenile is transferred to juvenile court. This legislation will remove the adult court section.

Senator Burgoyne inquired if either statute defined whether the offense is an infraction, a misdemeanor, or a felony. He also asked if the legislation would change the offense. **Director Harrigfeld** referred to Idaho Code and stated that infractions are excluded, and so the offense would be misdemeanors or felonies. **Senator Burgoyne** asked if, by repealing Idaho Code § 18-1502C, the Legislature is not subjecting juveniles to greater legal risk in terms of the charges he/she faces. **Director Harrigfeld** replied that the juveniles would not be subjected to greater risk, but would assign them directly to juvenile court. **Senator Burgoyne** inquired if his understanding is correct, i.e. this repeal in no way affects the nature of the offense, but only affects the court in which the juvenile will be tried. **Director Harrigfeld** reaffirmed that Senator Burgoyne's understanding is correct.

MOTION: **Senator Nye** moved to send **S 1013** to the floor with a **do pass** recommendation. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 05-0103-1601 **Rules of the Custody Review Board (CRB).** **Sharon Harrigfeld**, Director, Juvenile Correction, indicated that under the juvenile justice system, a juvenile is committed for an indeterminate amount of time. The CRB determines when a juvenile turns 19 whether he/she is retained in custody or released. This rules change is simply to clarify language including code correction, removal of unnecessary examples, adding clarifying veribage, and citation correction. **Director Harrigfeld** detailed these changes.

Senator Burgoyne inquired what the custody situation would be in the case of blended sentences. **Director Harrigfeld** replied that the CRB does not address blended sentences; district judges make that determination.

MOTION: **Senator Foreman** moved to approve **Docket 05-0103-1601**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 1:34.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AMENDED AGENDA #1

SENATE JUDICIARY & RULES COMMITTEE

1:15 P.M.
Room WW54
Monday, February 13, 2017

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval:	Approve minutes of January 23, 2017	Senator Burgoyne and Senator Anthon
RS24853	Regarding DNA testing for sex offenders	Major Charley Spencer, Idaho State Parole
RS24993C1	Regarding facility dogs in courtrooms.	Senator Shawn Keough
RS25042C1	Regarding the rights of persons who have capacity and do not need a guardian.	Robert Aldridge, Quality of Life Coalition
RS25049	Regarding the Delegation of Powers by Parent or Guardian.	Robert Aldridge, Trust & Estate Professionals of Idaho, Inc.
RS24917	Regarding a drafting error in LLC statute	Senator Bart Davis
RS25015	Regarding judgment renewal	Senator Bart Davis
RS25154	Regarding designated fire stations as a "safe haven"	Senator Bart Davis
RS25187	Regarding payment of rent	Senator Todd Lakey
RS25234	Regarding victim restitution	Chairman Patti Anne 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
Vice Chairman Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Bock(Burgoyne)
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Monday, February 13, 2017
TIME:	1:15 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 1:17 p.m. and welcomed those in attendance.
MINUTES APPROVAL:	**Senator Burgoyne** moved to approve the Minutes of January 23, 2017. **Senator Lee** seconded the motion. The motion carried by **voice vote.**
RS 24853	**Regarding DNA Testing for Sex Offenders**. **Major Charlie Spencer**, Idaho State Police, stated that legislation is being pursued to deal with the registration of sex offenders and obtaining DNA samples from them. Every year approximately 300 sex offenders move to Idaho with no provision to have DNA samples placed on file to help law enforcement determine if they have been involved in other crimes. In 2012 legislation was passed to collect samples from felons other than sex offenders, but that legislation created a lack of testing for approximately 1,534 offenders who did not have DNA samples on file. The passage of **RS 24853** would address both issues. **Major Spencer** requested $153,500 of one-time money to get the backlog of offenders added to the sex offender registry and for the collection of DNA samples, as well as an ongoing $30,000 per year to add the approximately 300 new sex offenders moving to the State of Idaho annually. **Senator Burgoyne** asked if there was a national registry for DNA samples or if it was done state by state. He questioned whether Idaho law enforcement would be able to match the DNA to crime scenes from the DNA sampled here. **Major Spencer** responded that when the samples are processed a list is kept. There are numerous other steps taken to confirm that a suspect does match the samples but that would be the first step. If a person becomes a suspect, then additional steps would be taken through the criminal process. **Senator Burgoyne** asked if the offender would pay for the DNA sample. **Major Spencer** replied that the offenders do not pay for the samples. **Chairman Lodge** asked why out-of-state offenders are not required to pay for their own DNA sample. **Major Spencer** responded that the State receives no funding from those fees. Some of the cost of the DNA samples is being passed on through the registration process in the counties, but at a State level there is no funding for collection of samples. The request is for General Fund money. Under Idaho Code the cost is currently being passed on to registrants through the counties. **Senator Lee** moved to print **RS 24853**. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.
RS 24993C1	**Regarding Facility Dogs in Courtrooms. Senator Shawn Keough** stated that **RS 24993C1** seeks to amend the Idaho Code § 19-3023 that deals with children summoned as witnesses.

Senator Hagedorn moved to print **RS 24993C1**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS25042C1 **Regarding the rights of persons who have capacity and do not need a guardian. Robert Aldridge**, representing the Quality of Life Coalition (Coalition), stated that the legislation presented would protect the rights of persons who have capacity and do not need or have a guardian to make their own medical choices. The term "developmental disability" covers a wide range of conditions, many of which do not impair the ability of the person to make competent medical decisions; this right has often been denied to such persons. It is a denial of their fundamental rights and can lead to expensive and unneeded court proceedings. If there is no guardian, the health care provider should make the standard checks already existing in the Medical Consent and Natural Death Act for capacity to make medical decisions. This bill also makes some clarifications regarding the revocation or suspension of an advance directive (for example, a living will or durable power of attorney for health care of a POST – Physician's Order for Scope of Treatment), and for presumed consent to resuscitation. The existing language of the statute had left some issues unclear which this bill now clarifies and which reflect actual practice. The bill amends Idaho Code § 66-405 where there is a guardian for a person with a developmental disability (called a "respondent") to have the proper legal standards in the statute. The existing statute, written many years ago, did not have those proper standards and could lead to violation of the legal protections required for respondents.

Senator Davis questioned the use of "respondent" and asked why the word "ward" was not being used. **Mr. Aldridge** stated that "respondent" is the term used through the Development Disability Act to refer to someone who is in a proceeding for guardianship. "Ward" and "protected person" are used in the Uniform Probate Code. Supreme Court committees are in the process of replacing existing language with more neutral language. **Senator Davis** asked if "do not resuscitate" (DNR) was defined in the bill. **Mr. Aldridge** responded that it was found elsewhere in the Code. It defines "do not resuscitate" and "do not intubate" orders in other areas, but it is not in the section being amended. **Senator Davis** asked why a change was being made from 17 to 18 years of age. **Mr. Aldridge** stated that wherever it said 17 years or less, it was easier to say 18 years or older, and that had been done consistently in previous bills.

Senator Anthon asked about a change in the definition of licensed independent practitioner to include an advanced practice registered nurse and a physician's assistant. He inquired if it was standard for someone with those qualifications to be able to make the determination which triggers either the do not resuscitate or other advance directives. **Mr. Aldridge** indicated that the language was previously added in other parts of the Code. **Senator Anthon** asked if it was common practice to include in living wills or advance directives reference to either a physician's assistant or a registered advance practitioner nurse. **Mr. Aldridge** stated that the current Natural Death Act has all three with the ability to make all of the decisions. Physician assistants and advanced practitioner nurses act under a licensed physician giving them added protection.

Senator Burgoyne asked if, in the case of no guardian, there would be a statement instructing the health care provider to perform the standard checks included in the Medical Consent and Natural Death Act to determine capacity. **Mr. Aldridge** indicated the Statement of Purpose clarifies that just because one has a diagnosis of developmental disability, one does not lose rights. This section indicates which tests should be applied. **Senator Burgoyne** was concerned about what would happen when someone who is developmentally disabled goes to an emergency room with an obvious disability, but whose level of cognition may not be obvious. He asked if the health care professional would be entitled to assume that this person needs to have the standard checks administered before treatment is given. **Mr. Aldridge** responded that everyone going into a medical situation has that right and those checks would be made.

Senator Anthon moved to print **RS 25042C1**. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

RS 25049

Regarding the Delegation of Powers by Parent or Guardian. **Robert Aldridge**, representing Trust and Estate Professionals of Idaho, Inc., stated that he would be asking for a bill regarding the delegation of powers by parent or guardian. With many troops going overseas, there was not an effective way to make sure their children were being taken care of. A power of attorney was created which allowed the person to delegate their parental authority on a limited and short term basis to another family member, usually grandparents. It provided a way for grandparents to work with doctors to provide medical care for those children. This bill will allow a person to have a springing delegation to name whomever they want to be responsible for their children. There are three things that could trigger the delegation. They include 1.) incarceration, 2.) incapacity, or 3.) by a statement that they now wish to delegate that power. These changes have been requested by a large number of people in various circumstances who are using a power of attorney. The time periods have been extended to 24 months. The delegation to someone who is not a grandparent or a sibling is now a 12 month period unless it is renewed. If the delegation is to a relative, a time period can be specified. This bill would clarify that a delegation of power does not supersede any court order regarding the care and custody of a minor child. This legislation would provide a way to rectify the circumstance when custody has been given to an unqualified person.

Senator Davis stated that this RS may replicate the faulty statutory language that the court criticized in the Doe decision because this legislation speaks of "a minor" or "a grandparent." He inquired if there was a reason that Mr. Aldridge had not followed the model that was in **H 148**. **Mr. Aldridge** indicated that when this bill was written, it was to comply with current law. **Senator Davis** suggested that Mr. Aldridge speak with the sponsors of **H 148** and ask them to include this legislation. **Mr. Aldridge** stated that his concern with that was that **H 148** deals totally with guardianship and this legislation is outside of that area. **Senator Davis** responded that it made sense then to do this as a stand-alone bill, and suggested that the Doe decision concept be addressed prior to introduction.

Senator Anthon indicated his concern was with capacity and whether the determination of capacity is one of a medical care opinion or a determination of the court. **Mr. Aldridge** stated that the determination of capacity could come from either source. **Senator Anthon** expressed that his understanding is that upon certification of a licensed physician the guardianship triggers, and it will remain so until another physician gives another opinion. He asked if there is one doctor who states that the parent is unable to care for the minor and another says the parent is able to care for the minor, would it become a judicial decision. **Mr. Aldridge** responded that generally unless there is a clear statement, it will not be triggered as a matter of practice because the people involved are usually close friends or family. He indicated that he had never seen competing statements from physicians except in an existing court case.

Senator Burgoyne asked Mr. Aldridge if the question was whether the parent or guardian could adequately care for the minor or if a physician had issued the certification. If the certification was issued, can the court inquire any further? **Mr. Aldridge** stated that normally there is not a court action in these cases. If there is, it is going to be an action for guardianship. **Senator Burgoyne** gave a hypothetical situation where a guardian made some decisions that had ongoing consequences and there was a guardianship court proceeding. In the proceedings the court found that a different guardian should be appointed or that no guardian should be appointed. What would be the legal justification for this action? **Mr. Aldridge** stated that the guardian of the person has to act in the best interests of the ward or the minor. If they made decisions that were incorrect, they would be potentially liable for those decisions. They would have the same rights and responsibilities that the parent had. **Senator Burgoyne** asked why "or incapacitated person" was deleted. **Mr. Aldridge** stated part of the reason for the bill was to remove that kind of language.

Senator Davis moved that **RS 25042C1** be returned to sponsor. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 24917 **Regarding a drafting error in LLC statute**. **Senator Davis** stated that **RS 24917** dealt with the Idaho's Limited Liability Company (LLC) section of the business organization code.

Senator Hagedorn moved to print **RS 24917**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 25015 **Regarding judgment renewal**. **Senator Davis** said this amendment strives to provide clarity and statutory parallelism within Idaho Code §10-1111, Judgment Renewal.

Senator Burgoyne moved to print **RS 25015**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 25154 **Regarding designated fire stations as a "safe haven"**. **Senator Davis** stated that this amendment would allow for fire stations where there are personnel on duty to be included as "Safe Haven" under Chapter 82, Title 39, of Idaho Code. Several years ago there were situations where frustrated mothers were dumping children into dumpsters. Idaho was among the first states to adopt "Safe Haven" legislation. Under that legislation a parent could give up a child by taking him/her to a particular location with no questions asked. The child would be safely received and turned over to Health and Welfare, a shelter care hearing would commence, and the child could be placed for adoption. Some states have added fire stations but until now Idaho had not. This has caused confusion for some parents. Adding fire stations as a "Safe Haven" is the only change being added to RS 25154.

Senator Agenbroad moved to print **RS 25154**. **Senator Burgoyne** seconded the motion.

Senator Nye indicated that "Safe Haven" on line 33 indicated that it would include "any other governmental entity" where there are personnel on duty. He stated that "any other governmental entity" should be taken out. **Senator Davis** agreed. He recommended that there needs to be "where there are personnel on duty." **Senator Anthon** moved to print **RS 25154**. **Senator Hagedorn** suggested sending **RS 25154** back to sponsor and listing all of the entities that are operating fire stations where personnel are on duty. **Senator Davis** requested to return **RS 25154** to him for language correction.

RS 25187 **Regarding payment of rent**. **Senator Lakey** asked to have **RS 25187** held for further work. There were no objections.

RS 25234 **Regarding victim restitution**. **Chairman Lodge** stated that she was presenting this bill for Senator Rice. The legislation raises unlawful entries to a felony when the offender is fleeing from the police. The bill would also clarify that the victim can recover restitution. She asked the Committee to print the RS and hold it until Senator Rice returns.

Senator Davis moved to print **RS 25234**. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

Chairman Lodge indicated that at this point the majority of the RS's have been printed. This Committee is a privilege committee and as such will be asked to print bills for other committees. Those committees need to have a unanimous consent request from their committee to be presented in Judiciary Rules.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:13 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Assistant Secretary

AMENDED AGENDA #2

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Wednesday, February 15, 2017

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Page Farewell	
RS25000	Relating to the use of judicial resources	Judge Barry Wood, Senior District Judge
RS25004	Relating to failure to return a rented vehicle	Senator Grant Burgoyne
RS25097	Relating to firearms restoration	Senator Grant Burgoyne
S 1023	Relating to funeral processions	Michael Henderson, Counsel of the Supreme Court
S 1024	Relating to the child protective act	Michael Henderson, Counsel of the Supreme Court
S 1025	Relating to administrative judges	Michael Henderson, Counsel of the Supreme Court
S 1026	Relating to criminal procedure regarding who may apply for relief	Michael Henderson, Counsel of the Supreme Court

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Bock(Burgoyne)
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, February 15, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye.
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 of the Senate Judiciary and Rules Committee to order at 1:24 p.m.
	Chairman Lodge welcomed students from Caldwell High School and gave them a brief explanation of what they would be seeing today in the Committee.
PRESENTATION:	**Page Farewell**. **Page Jack Wolthius** shared with the committee things he learned during the session, stating that his favorite tasks were doing the board on the Senate floor, and being in the "hot seat" which allowed him to move around and meet many of the people who work in the Senate. He also enjoyed meeting the people serving in the Executive Branch. Jack treated the Committee to a unique performance on the harmonica.
RS 25000	**Relating to the use of judicial resources**. **Judge Barry Wood**, Senior District Judge, stated that **RS 25000** amends several sections of Title 1, Chapter 22 of the Idaho Code dealing with the location of Magistrate Judges. The proposal asks the Idaho Legislature if Idaho Code § 1-2205 requiring a Magistrate Judge to be resident in each of Idaho's 44 counties is still the desired policy of the State.
	Judge Wood reviewed the history of the Idaho Code § 1-2205 and changes affecting the logistics of the State since this Code section was enacted. He pointed out the need for additional judicial resources in distinct parts of the State, identifying the reasons for this need as increasingly complex case loads, increased felony cases, increase in self-represented litigants, non-English language access needs, an increase in the number of problem-solving courts, and demographic shifts. **Judge Wood** indicated that Idaho's population is condensing primarily to six counties: Ada, Canyon, Kootenai, Bonneville, Bannock, and Twin Falls.
	Judge Wood related that the Supreme Court received a request for one new magistrate judge in Bonneville County, as well as requests for additional Senior Judge days in two other judicial districts. The Court requests Legislative guidance on whether to seek additional new judicial resources, or to be provided the statutory opportunity to relocate resources when vacancies occur.
	Senator Davis expressed concerns regarding how smaller counties will be affected. He stated he would support this proposal moving forward but felt there are issues that need to be addressed.
MOTION:	**Senator Davis** moved to send **RS 25000** to print. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote** with Senator Nye voting Nay.

RS 25004 **Relating to failure to return a rented vehicle**. **Senator Burgoyne** explained that this bill could be seen as a clarification or a substantive change to the statute. The change is on page 3 of Idaho Code § 18-2403 and would add "or other equipment" to the current law. He reported that Sam Castillo, Vice President of Tate's Rents, informed legislators that failure to return rented equipment is increasing. Often individuals rent equipment with no intention of returning it. Rental industry personnel report this situation to law enforcement who reply that it is a civil matter.

Senator Burgoyne acknowledged that one concern has been expressed regarding instances when timely return is not possible. He pointed out that page 3, line 6, specifies that the violation occurs if the failure to return is willful and intentional.

MOTON: **Senator Davis** moved to send **RS 25004** to print. **Senator Lee** seconded the motion. the motion carried by **voice vote**.

Senator Hagedorn noted that a correction will need to be made to the SOP regarding co-sponsors.

RS 25097 **Relating to firearms restoration**. **Chairman Lodge** stated that at the request of Senator Burgoyne, **RS 25097** will be held awaiting more information.

S 1023 **Relating to funeral processions**. **Michael Henderson**, Counsel of the Supreme Court, commented that this is a defect bill regarding defects and omissions in the law. This change relates to the penalty section, Idaho Code § 49-2706, which states that a violation of the provisions of the chapter is a misdemeanor, punishable by a fine not to exceed $100. He advised that if the only penalty for a violation is a fine, the violation should be an infraction. These types of violations would normally be infractions. If the violation is intentional and knowing, it would be a misdemeanor.

Mr. Henderson stated the amendment to this section would categorize the violations as "infractions" with a penalty of $33.50 in fine and $56.50 in court costs for a total of $90. If the violation is intentional and knowing, it will be a misdemeanor which would carry a penalty of up to 6 months in jail and up to a $1,000 fine.

Mr. Henderson observed that this situation does not happen often. He disclosed that the fiscal note indicates that the cost would be minimal. However, the Idaho Transportation Department (ITD) expressed concern that they have to make a change each time an infraction occurs because of their point system leading to license suspension. According to the IDT, the adjustment they would have to make carries a cost of $4,000 for each occurrence.

Senator Foreman asked if a violation of any of the items listed in Idaho Code § 49-2703 would result in a misdemeanor. **Mr. Henderson** replied that as it now stands those are misdemeanors; this amendment would change them to infractions, unless it is intentional and knowing. In that case the violation would be a misdemeanor.

MOTION: **Senator Lee** moved to send **S 1023** to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Senator Davis pointed out that the fiscal note needs to be revised before the bill is sent to the floor.

S 1024 **Relating to the child protective act.** **Michael Henderson**, Counsel of the Supreme Court, observed that this bill is a correction to S 1328 (2016) as amended. The definition of protective order in Idaho Code § 16-1602(34) contains an outdated statutory reference and fails to note all of the circumstances in which a protective order may be issued. This bill would correct those errors.

MOTION: **Senator Burgoyne** moved to send **S 1024** to the floor with a do pass recommendation. **Senator Lee** seconded the motion. The motion carried by voice vote.

S 1025 **Relating to administrative judges**. **Michael Henderson**, Counsel of the Supreme Court, informed the Committee that this is another technical update of the statute setting forth powers and duties of Administrative District Judges. This change will remove duties no longer being addressed by Administrative District Judges.

MOTION: **Senator Hagedorn** moved to send **S 1025** to the floor with a do pass recommendation. **Senator Anthon** seconded the motion. Passed by **voice vote**.

S 1026 **Relating to criminal procedure regarding who may apply for relief**. **Michael Henderson**, Counsel of the Supreme Court, explained that this bill is for clarification. Idaho Code § 19-2604 permits some individuals to have their convictions, pleas, or findings of guilt set aside if certain conditions are met. In the case of a misdemeanor, the statute is unclear whether a defendant who has had part of the sentence suspended would be eligible for relief. This bill would clarify that when any portion of the sentence has been suspended, the defendant could ask for relief if the required conditions are met.

MOTION: **Senator Foreman** moved to send **S 1026** to the floor with a do pass recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote.**

PRESENTATION: **Chairman Lodge**, called Jack Wolthius back to the podium. Speaking on behalf of the Committee, she wished Jack well and presented him with some mementos of his work in the Senate. **Senator Hagedorn** mentioned that when he received Jack's resumé he was very impressed. He asked Jack what his major will be. **Jack** responded that he likes government and politics. He is planning on taking both pre-law and pre-med classes and see where that takes him. He said that basically he just wants to help others.

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

_____

Chairman Lodge
Chair

_____

Carol Cornwall
Secretary

AMENDED AGENDA #1

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Monday, February 20, 2017

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval:	Approve Minutes of February 3, 2017.	Senator Hagedorn and Senator Nye
Gubernatorial Appointment Hearing:	Shellee Daniels, State Public Defense Commission	Shellee Daniels, Telephone Hearing
RS25272	Regarding post-traumatic stress	Senator Foreman
RS25288	Regarding judges' pay	Sara Thomas, Administrative Director of the Courts
RS25304	Regarding cost of Commercial Driver's License test	Senator Brackett
RS25097	Regarding firearms restoration	Sandy Jones, Director, Commission of Pardons and Parole
S 1089	Regarding facility dogs in courtrooms	Senator Shawn Keough
S 1104	Regarding the use of judicial resources	Judge Barry Wood, Senior District Judge
S 1090	Regarding quality of life	Robert Aldridge, Quality of Life Coalition

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Monday, February 20, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 Hagedorn** moved to approve the Minutes of February 3, 2017. **Senator Nye** seconded the motion. The motion carried by **voice vote.**
PRESENTATION:	**Shanyse Barber**, the new Committee Page, commented that she is from Payette, Idaho, and staying in Nampa. She explained that she learned about the Page program in October when she was here for a meeting. She applied for the Page position, and she expressed appreciation to Senator Lee who endorsed her. She stated that she hopes to learn a lot while she is here.
GUBERNATORIAL APPOINTMENT:	**Shellee Daniels, State Public Defense Commission (SPDC). Shellee Daniels** shared her background as a native Idahoan, growing up in Idaho and attending Boise State University. She earned a Bachelor of Science in Political Science degree with a focus on Public Administration. **Ms. Daniels** detailed her work experience including serving in Governor Andrus's office, the Commission for Children and Youth (now the Department of Juvenile Corrections), the Idaho State Police, the Oneida County Commission, and Mountain States Insurance. She stated that she felt this work helped build skills she brings to this appointment including an understanding of budgeting, revenues, expenses, rules and regulations, and the diversity of Idaho's population. **Ms. Daniels** shared with the Committee the background of the Oneida public defense efforts leading up to the establishment of a Public Defender Office serving Power and Oneida counties. She felt these opportunities strengthened her abilities for negotiation, cooperation, and coordination, qualities that will serve her well on the SPDC.
RS 25272	**Regarding post-traumatic stress**. **Senator Burgoyne** moved to send **RS 25272** to print and to send back to the Senate Health and Welfare Committee. **Senator Lee** seconded the motion. The motion carried by **voice vote**.
RS 25304	**Regarding the cost of the Commercial Driver's License test**. **Senator Lee** moved to send **RS 25304** to print and to send back to the Senate Transportation Committee. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.
RS 25288	**Regarding judges' pay**. **Senator Davis** pointed out that this RS represents the result of negotiation and there will be an opportunity for further, more significant conversation.
MOTION:	**Senator Davis** moved to send **RS 25288** to print.
	Senator Lee noted she had a conflict of interest pursuant to Senate Rule 39(H).

Chairman Lodge noted she had a conflict of interest pursuant to Senate Rule 39(H).

Senator Nye seconded the motion. The motion passed by **voice vote.**

RS 25097

Regarding firearms restoration. **Senator Burgoyne** noted that Sandy Jones, Director, Commission of Pardons and Parole (Commission), requested that he present this **RS 25097**. **Senator Burgoyne** reminded the Committee of similar legislation last year, but it needed clarification. This legislation provides that clarification. The intent of the legislation is to protect the Commissioners from public votes. Under this bill, application for firearm restoration hearings will continue to be held in pubic, but the Commissioners will go into executive session to decide whether or not to grant hearings. **Senator Burgoyne** pointed out that the bill explains confidentiality of records, and that only the voting results from the are to be public. He indicated those individuals who are covered by the confidentiality statute, including those recently added, and advised that breaching confidentiality by any of these individuals is a misdemeanor.

MOTION:

Senator Davis moved to send **RS 25097** to print. **Senator Hagadorn** seconded the motion. The motion passed by **voice vote**.

S 1089

Regarding facility dogs in courtrooms. **Senator Shawn Keough**, introduced Louis Marshall, Prosecuting Attorney from Bonner County. She shared pictures of facility dogs (attachments 1-5). **Senator Keough** explained that this bill amends Idaho Code § 29-3023 adding facility dogs to those having a supportive relationship with a child who is testifying in Court. Additions to the Code include the types of testimony the child is giving, how the dog's presence in the Court is managed, and the definition of a facility dog. **Senator Keough** requested Prosecutor Marshall address the Committee.

Prosecutor Marshall explained the history leading up to the use of facility dogs in Bonner County. He outlined the process used to build a relationship between the child and the dog prior to the Court hearing. In response to a query by Senator Burgoyne, **Prosecutor Marshall** described the training process for facility dogs. **Senator Burgoyne** asked if the training is designed specifically for this task or if the training is more generic. **Prosecutor Marshall** responded that the dogs are trained for this specific task.

Senator Anthon asked who requests that a dog be used. **Prosecutor Marshall** replied that the child and dog meet prior to a hearing. If the child likes the dog, the prosecutor asks if the dog can be on the stand. If the child does not like the dog, it is not used.

Senator Nye asked if there would just be the dog, or if a supporting person would also be there. He wanted to know who will pay for the dog and the training. He also inquired why this can only happen if the child is summoned, and only in non-criminal proceedings involving abuse. **Prosecutor Marshall** explained that when a dog is used, the parents do not accompany the child to the stand, only the dog and the handler. He added that a judge could include a parent, but he felt it is better to have just the dog to avoid coaching by a parent. Regarding the fiscal impact, **Prosecutor Marshall** commented that Bonner County's dog was provided free. The cost of sending the handler to California and paying for the training was paid from the County budget. The dog is still owned by the company to protect the dog from inadequate care or loss of certification by the handler. In answer to Senator Nye's question regarding using the dog only in non-criminal matters, **Prosecutor Marshall** replied that he believed the dog should be used in any court proceeding where it would help a vulnerable child.

Senator Hagadorn stated a concern with the specification of where the dog comes from. He referred to the requirement for training being overseen by Assistance Dogs International (ADI) or a similar internationally recognized organization. He asked who tracks that to know who those similar organizations are, and if they have the same accreditation capabilities as the ADI. **Prosecutor Marshall** replied that he is not aware of any other international organizations. This wording followed the pattern of other states already having passed similar legislation.

Senator Anthon inquired if there is any case law saying the use of facility dogs creates an appealable legal flaw in a court proceeding. **Prosecutor Marshal** stated that all appellate case law in the United States that he is aware of is positive for the utilization of facility dogs.

Senator Burgoyne commented that this statute uses the term "shall". He asked if there is anything that precludes a Court from allowing these dogs to be used in aspects of cases that are not in this statute, or if they have discretion for that decision. **Prosecutor Marshal** believes that a Court has overriding discretion over what happens in the judge's presence, including in civil cases or other instances not delineated in the statute.

Senator Keough closed by stating that the facility dogs are an asset that would help some children in this situation, while still allowing the judge to make a different decision.

MOTION: **Senator Lee** moved to send **S 1089** to the floor with a do pass recommendation. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

S 1104 **Regarding the use of judicial resources**. **Judge Barry Wood**, Deputy Administrative Director of the Courts, explained that **S 1104** amends Idaho Code § 1-2205 by eliminating statutory authority granted to the District Magistrate Commission to determine the number and location of magistrate judges as the number is of judges appointed in a given judicial district is primarily determined by the appropriation provided by the Idaho Legislature. He indicated that the purpose of the amendment is to eliminate the statutory requirement that there be at least one resident magistrate judge appointed in each of Idaho's 44 counties, except for those counties wherein the board of county commissioners has, by a majority vote, adopted a resolution waving that right.

Judge Wood related that the amendment to Idaho Code § 1-2206 would alter the initial residence requirement that the magistrate reside in the county for which the appointment was originally made, including the county to which the magistrate was reassigned under Idaho Code § 1-2207.

In reference to Idaho Code § 1-2207, **Judge Wood** named areas in this amendment concerning instances when there is a vacancy in the Magistrate position, when there is no vacancy in a magistrate position, and the reassignment of magistrates. He detailed processes, time constraints, and the request for appropriations.

Judge Wood indicated that the amending of Idaho Code § 1-2220 is necessary because of the other amendments in this bill.

Judge Wood discussed the need for these changes including the changes in demographics in the State and the workload needs of the court. The court brought this legislation to ascertain if the Legislature wanted to adopt a policy involving reassignment of magistrates or to continue funding new positions.

A discussion ensued considering:

- the percentage of cases heard in one county by judges from another county;
- retention vote;
- the ability of citizens to become familiar with judges from another county; and
- reappointment to another county if voted out of office

Dan Chadwick, Executive Director, Idaho Association of Counties, requested that the Committee hold **S 1104**. He alleged that some counties would not be able to vote, relations between the courts and the county commissioners would be compromised, and that the amendment needs more work. He named nine counties that would never have the opportunity to vote under this legislation. The other counties will always get to vote on at least one magistrate. He declared that the county commissioners are willing to work with the courts to resolve this difficult issue.

MOTION: **Senator Davis** moved to hold **S 1104** in committee. **Senator Foreman** seconded the motion.

Senator Davis addressed the issue facing the counties that would not be able to elect the judges. He pointed out that at this time the public policy of Idaho grants the people a role in the selection of judges; because of the logistics of the State, this presents a dilemma. **Senator Davis** pointed out that Judge Wood is presenting a policy that addresses this problem, but there is the concern of the nine counties wherein citizens will not be able to vote on their magistrates. He emphasized that there needs to be a solution accommodating both the counties and the courts. **Senator Davis** expressed appreciation to Judge Wood for bringing this legislation which compels the Senate to focus on this problem.

Senator Burgoyne also expressed appreciation that the court brought this forward to initiate consideration of this issue. He reiterated some of the conflicting factors regarding the right to vote, the efficient and effective use of time, and funding concerns.

Senator Lee noted she had a conflict of interest pursuant to Senate Rule 39(H).

Senator Davis advised the Committee that Judge Wood and the court have been open to an honest conversation regarding this conundrum. They are willing to continue working with the Senate to solve the problem in a way amenable to all interested parties.

Motion passed by **voice vote**.

S 1090 **Regarding to quality of life. Robert Aldridge, Quality of Life Coalition**, suggested in the interest of this very important bill, and the lack of time remaining for the meeting, he would request the hearing be postponed. **Chairman Lodge** schedule the hearing for Wednesday, February 22.

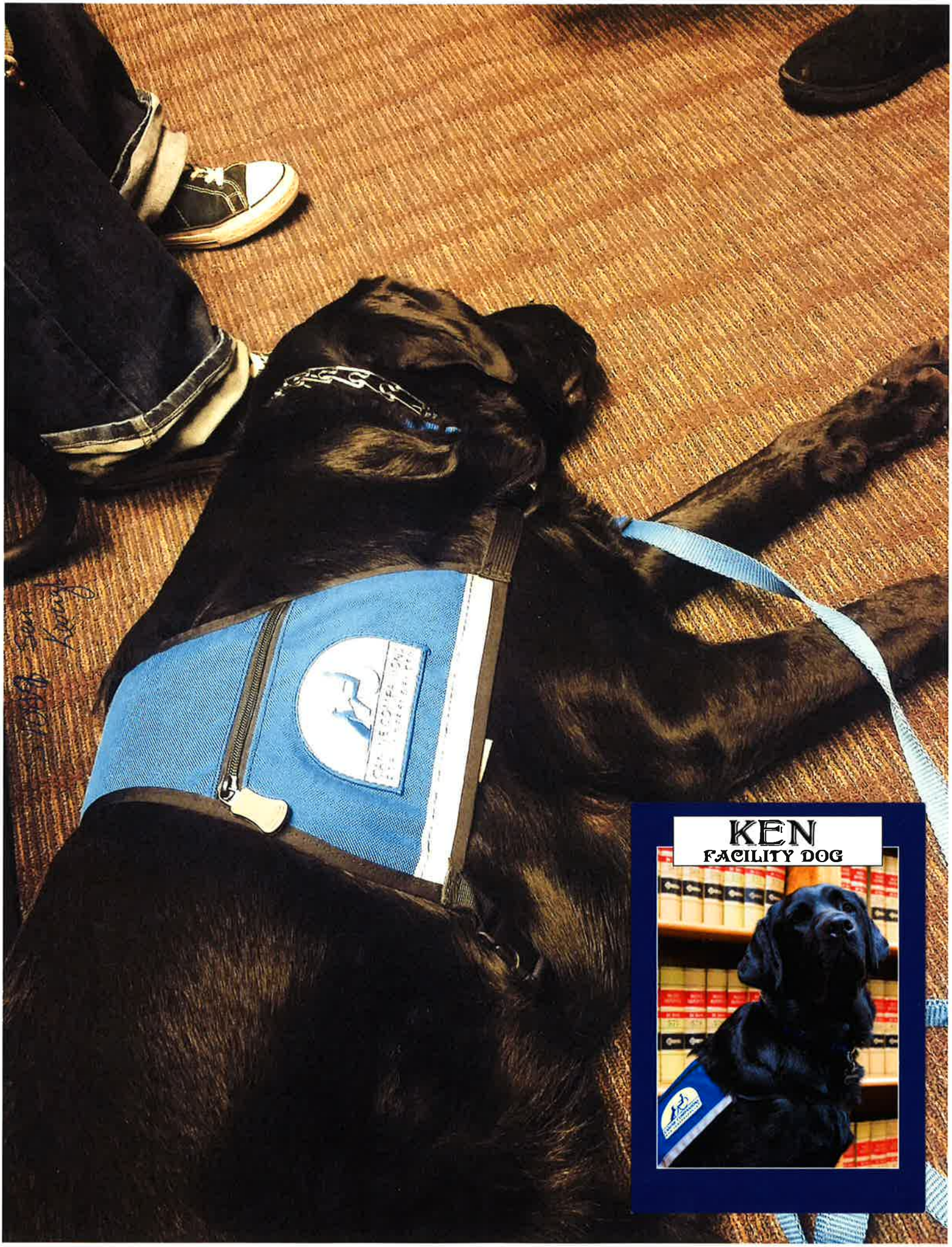
ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:52 p.m.

_____ _____

Chairman Patti Anne Lodge Carol Cornwall, Secretary

S-1089
Sen. Keough

Attachment 1


KEN
FACILITY DOG

S1089 - Sen. Keough

KEN

S1089
S. Keough

Date of Birth: 5 /24 /2013
Breed: Lab / Golden Cross
Weight: 74 pounds

Trained By:
Canine Companions for Independence
Oceanside, California

Hobbies:
Playing fetch, chasing tennis balls, swimming, cuddling and napping.

Ken is a Courthouse Facility Dog who specializes in making children and vulnerable people more at ease during the criminal justice process.
Call 208.263.6714 for more information.

Follow me on facebook:
BonnerCountyKen

Peggy Frye
Victim Witness Unit Coordinator
Bonner County Prosecutors Office
127 S. First Ave. Sandpoint, ID 83864
pfrye@bonnercountyid.gov
208.263.6714

Sgt. Kenny
5/08/09

S. 1089 - Sen. Keough

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:15 P.M.
Room WW54
Wednesday, February 22, 2017

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval:	Approve Minutes of February 15, 2017.	Senator Burgoyne and Senator Anthon
Gubernatorial Appointment Vote:	Shellee Daniels, State Public Defense Commission	
RS25328	Regarding Justice Reinvestment	Chairman Patti Anne Lodge
RS25308C1	Regarding businesses selling alcohol	Senator Bart Davis
S 1090	Regarding quality of life	Robert Aldridge, Quality of Life Coalition
S 1083	Regarding emergency communications officers	Michael Kane, Idaho Sheriff's Association
S 1091	Regarding limited liability companies	Mike Brassey, Uniform Law Commission
S 1092	Regarding renewal of judgments	Senator Bart Davis
H 97	Regarding to attorney's fees	Representative Lynn 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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, February 22, 2017
TIME:	1:15 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 of the Senate Judiciary and Rules Committee (Committee) to order at 1:10 p.m.
APPROVAL OF MINUTES:	**Senator Burgoyne** moved to approve the Minutes of the February 15, 2017 meeting. **Senator Anthon** seconded the motion. The motion carried by **voice vote.**
GUBERNATORIAL APPOINTMENT:	**Vote on Gubernatorial Appointment of Shellee Daniels to the State Public Defense Commission. Senator Davis** moved to send the Gubernatorial appointment of Shellee Daniels to the State Public Defense Commission to the floor with recommendation that she be confirmed by the Senate. **Senator Anthon** seconded the motion. The motion carried by **voice vote.**
PASSED THE GAVEL:	Chairman Lodge passed the gavel to Vice Chairman Lee in order to present **RS 25328.**
RS 25328	**Regarding Justice Reinvestment. Chairman Lodge** presented **RS 25328** reporting that it is legislation brought by a committee that met over December through February for improvements to the Justice Reinvestment Initiative (JRI).
MOTION:	**Senator Davis** moved to send **RS 25328** to print. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote.**
PASSED THE GAVEL:	Vice Chairman Lee passed the gavel back to Chairman Lodge.
RS 25308C1	**Regarding businesses selling alcohol. Senator Davis** informed the Committee there was threatened litigation last year regarding Idaho Code restrictions on alcohol consumption at a movie theater. Shortly after the Legislature amended the statute, a new lawsuit was filed over a different section of the law. The federal court rendered an adverse decision against the State of Idaho, and this bill repeals the entire problematic section and inserts language patterned after other laws which have been successfully defended in other states. The Attorney General has confidence these provisions will withstand a legal challenge.
MOTION:	**Senator Hagedorn** moved to send **RS 25308C1** to print. **Senator Anthon** seconded the motion.
DISCUSSION:	**Senator Nye** asked for back-up information to support the intent language in the first section. **Senator Davis** answered he will provide it at the Committee hearing on the bill. **Senator Nye** further requested case authority to support the proposed changes.

Senator Burgoyne stated he has many questions and concerns along the lines of what Senator Nye expressed, but he will support the motion to print. **Senator Davis** commented he will encourage the Deputy Attorneys General who drafted the bill to reach out to Senators Burgoyne and Nye to answer some of their questions.

The motion carried by **voice vote.**

S 1090

Regarding quality of life. Robert Aldridge introduced himself on behalf of the Quality of Life Coalition and said this is one of the most important bills he has presented in the 29 to 30 years he has appeared before the Legislature because it deals with fundamental human rights. He has shared the bill with numerous stakeholders and has heard no opposition.

Mr. Aldridge explained the term "developmental disabilities." Many developmental disabilities do not impair the mental capacity of the person, but the person is often considered mentally impaired due to physical issues. He gave several examples, including a woman with cerebral palsy who is very intelligent but has difficulty saying words. The woman has been constantly treated as if she was incapable and was told she could not make decisions, or else her decisions were ignored. **Mr. Aldridge** said he ruptured his Achille's tendon and was in a wheelchair with a full leg cast. When people talked to him, he noticed they spoke very slowly and loudly as if he could not understand. **Mr. Aldridge** commented he started an organization in the 1970's to help people with disabilities earn a living in the community. A school principal told Mr. Aldridge he didn't want "those kind of people around my kids" when referring to persons with Down's Syndrome.

Mr. Aldridge informed the Committee **S 1090** addresses situations when people with developmental disabilities are not allowed to make their own medical decisions and instead are required to have a guardian. Guardianships and conservatorships are a great deprivation of rights. Page 1 of the bill includes language that a person who is developmentally disabled and not under a guardianship is capable of making his or her own decisions. On page 9 a new section is added to specify a competent patient or surrogate decision maker may withhold or withdraw treatment unless the patient is under a guardianship.

Mr. Aldridge stated the bill incorporates the "Baby Doe" regulations relating to withholding or withdrawing care from a person under guardianship. The regulations appear in IDAPA 16.06.05.004.10 but were never incorporated into the statute. Unless certain tests are met, a guardian appointed for a developmentally disabled person does not have the authority to refuse or withhold consent for any medically necessary treatment when the effect would seriously endanger the life or health and well-being of the person. Any attempt to do so may be grounds to remove the guardian, and if the medical provider cannot receive proper consent then the provider must provide the care. This results in great protection to people with developmental disabilities.

Mr. Aldridge advised Section 8 on page 8 sets forth the three circumstances when medical care can be withdrawn or withheld and clarifies that nutrition and hydration cannot be withheld. This would bring Idaho Code into compliance with existing federal and State guardianship and withdrawal of treatment requirements.

Mr. Aldridge said the changes on pages 1 and 2 of the bill expand the method for revoking or suspending an advance directive. In addition, a provider is entitled to rely on an advance directive if the provider does not know the directive was suspended or revoked. The existing prohibition against euthanasia, mercy killing, and assisted suicide is unchanged. The general presumption is someone wants to be resuscitated by cardiopulmonary resuscitation (CPR), and exceptions in the statute were out of date. **S 1090** updates these exceptions to modernize terminology relating to advance directives, adds provisions relating to unconditional and conditional wishes not to be resuscitated, and allows for a "do not resuscitate" order by a doctor.

Mr. Aldridge mentioned the bill adds a definition of Licensed Independent Practitioner (LIP), and the term "person with a developmental disability" was replaced with the word "respondent" in several places to indicate the person is under a guardianship.

Senator Davis asked for clarification on the language on page 8 at the end of line 12 that "if the health care provider cannot obtain a valid consent for medically necessary treatment from the guardian, health care provider, or caregiver, shall provide the medically necessary treatment." **Mr. Aldridge** explained that sentence is subject to the beginning sentence which provides "except as provided in subsection 8." If those conditions are not met and the guardian still refuses to allow treatment to be given or withdrawn, then the medical provider must provide the treatment because removing a guardian takes time, and often these are emergency situations.

Senator Davis stated he initially thought the change was intended for situations when the guardian could not be found and asked if it means if the guardian says no, then the provider has an affirmative duty to go forward if subpart 8 applies. **Mr. Aldridge** answered that is correct.

Senator Anthon asked whether the current law allows a person with a developmental disability who is not under a guardianship or conservatorship to make decisions about his or her own health care. **Mr. Aldridge** answered the bill was drafted because of the different approaches taken by the two hospitals in town. One facility allowed the person to make his own decisions if the person was found to have mental capacity. However, the other facility did not allow a person with a developmental disability diagnosis to make decisions if the person did not have a guardian. **Senator Anthon** stated as a matter of law, the person has every right to do so. **Mr. Aldridge** replied that is true as a matter of law, but if the medical provider won't go along with it, the person must spend time and money going to court to defend that right.

Senator Anthon inquired why there is a difference in the three circumstances for withholding treatment in subsection 8 on page 8. One circumstance requires two LIPs to certify there is a chronic or irreversible comatose condition, while the other two circumstances require only one LIP to make the determination. **Mr. Aldridge** stated this language is taken verbatim from the Baby Doe regulations as originally written in federal law. The Baby Doe regulations were developed because of the need to protect people with developmental disabilities and should have been included in the original statute.

Vice Chairman Lee has heard concerns about someone speaking on behalf of a patient saying this is what the person wants, but the health care provider doesn't feel it was clear. She referred to page 2, line 21 of the bill and asked how the language "by any other action that clearly manifests" would allay the concerns of health care providers or keep someone from having to go to court. **Mr. Aldridge** responded this section refers to suspension of an advance directive by the maker, not through a surrogate. Current law states the suspension must be in writing or by oral expression, but there are times when a mentally cognizant patient is unable to speak or write but could still answer yes or no by shaking of the head or make some other indication such as spelling it out on a letter board. The health care provider can ensure it is a clear indication. This situation arises constantly, often in emergency room settings.

Senator Nye stated he did not see a definition of surrogate decision maker in the Idaho Code. **Mr. Aldridge** replied there is a large part of the Idaho Code that does not appear in the bill, and the term is clearly and extensively defined in Title 39. **Senator Nye** referred to page 8, line 17 and asked if a guardian may consent to withhold treatment even before the patient goes to a hospital or doctor. **Mr. Aldridge** responded the section only covers situations when there is a guardian in place, because that is the only time the Baby Doe regulations apply. Consent is normally given only to a medical provider, and there is no advance consent. The first person on the list who can give consent is a guardian. It is rare for a guardian not to be available in these situations, and many guardians are the parents of a developmentally disabled person.

Senator Nye asked for clarification of line 17 on page 8 that says a guardian appointed under this chapter may consent to withholding or withdrawal of treatment. **Mr. Aldridge** said it can be done subject to the "ifs," despite the language in subsection 7 saying a guardian cannot consent. **Senator Nye** commented someone might read the language to mean a guardian could choose to let the patient die at home without medical treatment. **Mr. Aldridge** answered that would be a severe violation of guardian duties and it would be grounds for removal as guardian. Also, the developmentally disabled community often intervenes if a guardian is not correctly providing care. **Senator Nye** asked if the language is interpreted differently than it is written. **Mr. Aldridge** replied the bill provides a guardian can only give consent to withhold or withdraw treatment "if," and the "ifs" are the Baby Doe regulations. If a guardian refuses to take a person to the doctor when medically necessary, that would be at minimum a civil violation and perhaps a criminal violation. **Senator Nye** inquired if the paragraph would apply to a situation when the patient asked the guardian to let him die. **Mr. Aldridge** answered if there is a guardian, it means the person does not have the clear ability to make good medical decisions. The guardian must carry out the known wishes of the person, as set forth in the guardianship statutes, and must look at all the factors and consult with the medical providers to see whether or not the Baby Doe regulations apply. If a person says he wishes to die, the guardian must decide how those wishes are carried out. However, the guardian would not have authority to withdraw nutrition or hydration.

Senator Burgoyne said he is confused by the language on page 8 that provides the guardian is to carry out the known wishes of the ward. He described a situation when a person makes his wishes known at the time he is competent by signing an advance directive, but many years pass, the directive has not been updated, and the person is now incompetent. He asked if there is some explanation of "known consent" to provide guidance to decision makers. **Mr. Aldridge** answered this title does not apply to a person who is not developmentally disabled. **Senator Burgoyne** declared people with developmental disabilities may be exactly the same as a non-disabled person in terms of cognition and may over time slip into another state when they need a guardian. **Mr. Aldridge** responded in that case, the standard rules would apply as specified in detail in the Medical Consent and Natural Death Act. The latest authentic expression does not have to be in the form of a living will or other legal document but can be made by statements, oral expressions, or another writing by the person that didn't meet the formal requirements.

Senator Burgoyne asked how a person's statements could still be effective if the person has a guardian. **Mr. Aldridge** said competency and incapacity are not like walking off a cliff where a person either is or isn't competent. People can, at different times of the day, have different layers of capacity or it may depend on medications or stress. He often makes house calls at clients' homes because for some clients, going to an attorney's office creates heightened stress and the person loses capacity. The guardian may have a ward who is totally unable to help or assist, or the ward might be able to take an active part in decisions. In the future, there may be more limited guardianships where the ward still has the ability to have input. The guardian should follow the factors set forth in § 39-4503 to determine if the person still has the ability to provide input in decisions.

Senator Burgoyne inquired what controls in the case of a developmentally disabled person who executes a living will or durable power of attorney at age 40 and lives to age 70 and is no longer competent: the decisions of the guardian; the 30-year old advance directive; or the analysis just provided. **Mr. Aldridge** answered it is the analysis, and these are complicated situations. It is important to keep advance directives current in order to carry out the person's latest wishes.

TESTIMONY:

Ginger Wardhaugh introduced herself to the Committee to speak in support of **S 1090** because of negative experiences under the current law with end of life care for her developmentally disabled brother, for whom she served as a guardian (see attachment 1).

Vice Chairman Lee offered her condolences and asked if Ms. Wardhaugh had not been there with her brother, could the health care provider have been able to understand her brother's wishes. **Ms. Wardhaugh** answered her situation was much different because her brother was never able to make an advance directive. As a guardian, she did not want her brother to suffer, and absent the guardianship, a health care provider would have had different guidance on the decision. **Vice Chairman Lee** stated she wants to make sure any statute change properly balances the concerns of the health care providers and the patients. She asked what this law change would have meant to Ms. Wardhaugh if she as the guardian requested treatment to end, but the health care provider felt the patient would have a different request. **Ms. Wardhaugh** replied she is comfortable with the three circumstances outlined in the bill. Her brother would have fallen under all three qualifiers and she is confident no physician would ever take the guardian's wishes for comfort care without those qualifiers.

TESTIMONY: **Tracy Warren** introduced herself to the Committee on behalf of the Idaho Council on Developmental Disabilities (Council) to speak in support of **S 1090**. The Council is concerned about situations where medical professionals demand a guardian make decisions for a developmentally disabled person when a court has not determined guardianship is necessary (see attachment 2). **Ms. Warren** referred to her friend Kristyn Herbert who has cerebral palsy and has difficulty speaking. Ms. Herbert could not be present at the meeting but provided written comments (see attachment 3). Ms. Herbert has encountered many situations when medical providers assume Ms. Herbert is incapable of making her own decisions. **Ms. Warren** said this bill addresses many of those concerns and provides guidance to medical professionals who work with developmentally disabled persons to ensure their voices are heard.

Ms. Warren informed the Committee her son has a developmental disability, but she and her husband have chosen not to be her son's guardians because they want him to retain all of his legal rights. In an emergency situation where he was very stressed, her son might refuse all medical treatment due to his fear of needles. **Ms. Warren** stated she and her husband would provide support for their son but would want the medical professionals to work with him to help him understand the consequences of not having medical treatment. Medical providers automatically make assumptions when they don't take the time to help a person understand, especially a developmentally disabled person without a guardian.

Senator Davis stated he agrees with the policy but wants to make sure the words of the bill match the policy and requested Mr. Aldridge return to the podium to respond to a question. **Senator Davis** commented it does not seem that subsections 7 and 8 match and the language seems circular. **Mr. Aldridge** explained subsection 7 refers to the inability of the guardian to withdraw or withhold certain types of medically necessary treatment unless the tests of subsection 8 are met. Subsection 8 contains the exceptions when treatment can be withheld, and subsection 8 incorporates the Baby Doe regulations. The two sections must be read together.

Senator Davis commented the bill makes sense when it is explained, but he finds the language of the two sections to be circular. **Mr. Aldridge** responded the language was derived after three years of stakeholder work, including medical organizations, patient representatives, and their respective legal counsel. The legal practitioners felt this language adequately gave the necessary guidance to the medical providers and has been thoroughly reviewed over a three-year time period. The bill was sent to a minimum of 15 outside entities who further circulated the bill, and all reviewers felt the language was clear and fulfilled the necessary requirements. This is a specialized area of law, and sometimes verbiage is used that doesn't make sense to the average person.

Senator Davis said he has a constitutional duty to write bills using the English language so a person doesn't have to be an expert. He supports the policy of the bill, but it shouldn't be necessary to diagram a sentence to make it understood. **Mr. Aldridge** said it is common when dealing with intestate succession or tax areas to use words or phrases because they are terms of art. For example, he often uses terminology in wills and trusts that most people would not understand, and some language is very arcane. The language of the bill and many alternatives were reviewed by hospitals, people in the developmental disability community, and legal practitioners in the development disability field. The bill as written will properly instruct the medical providers and guardians, and he asked that it be used as written. If a problem arises, it can be cured in the future, but he doesn't anticipate any problems.

Senator Burgoyne mentioned it is important for the developmental disability community to have language that makes sense to them, but ultimately it has to be understood by the judges. The entire stakeholder group can think it means one thing, and a magistrate judge can say he doesn't read it that way. **Mr. Aldridge** replied the intent of the bill is to avoid going to court but rather to have something the medical and developmental disability communities all understand. A judge will be involved only if there is a major disagreement on a term of the law. These situations are as distressing for the medical providers who feel required to provide futile treatment as for the families who are extremely upset. These conflicts use valuable resources and cost the State money. Sometimes a judge must be educated in a specialized area of law. Unfortunately, the bill can't be written in a way that meets the needs of the highly specialized community, and that is easily understandable by someone with no experience in the area.

Senator Nye referred to line 20 on page 8 and asked if a guardian would have discretion to withhold oxygen from a patient. **Mr. Aldridge** replied in addition to treatment, the MCNDA provides in all cases, comfort care must be provided, including oxygen and pain medication. Nutrition and hydration are not deemed to be comfort care.

Senator Hagedorn stated from a non-legal perspective, he can't understand the language, and he sees it as an endless loop between subsections 7 and 8. Not all physicians have legal counsel handy to have the statutes explained. **Mr. Aldridge** responded this bill pertains only to people with developmental disabilities. If a person has a child with a developmental disability, that person would not be trying to understand this language as a layman. The developmentally disabled community provides tremendous support, and someone would have had a lot of education and knowledge. Further, these are end of life situations. The default course of action is to provide treatment, but in certain limited circumstances, withdrawal of treatment is allowed. **Mr. Aldridge** commented that an intubation process is a serious procedure that creates pain and terror in a patient. These are not light decisions, and many end-of-life treatments are futile and inhumane.

Senator Hagedorn mentioned if he had a loved one he would want to know everything he possibly could to understand his options, but he can't follow the bill. He is not here as a lawyer but as a layman representing people in his district who could be in this situation. **Mr. Aldridge** answered he has come before the Committee numerous times on tax issues, and there has never been a tax bill written that can be understood by a normal human being. Language is written to satisfy the Internal Revenue Service and the State Tax Commission in a way that tax attorneys and certified public accountants can understand. This bill is similar in that it can't be written in plain language because professionals in the field would not know how to interpret it.

Senator Agenbroad stated today there is a statute interpreted in different ways by two institutions, and he asked how the revised statute would be interpreted by the two institutions. **Mr. Aldridge** replied both of the major institutions have been part of the committee that developed the bill, are in full support of it, and are currently preparing changes in internal procedures to match the new language. If a decision is not abundantly clear, a doctor will consult the ethics committee, and the ethics committee will review and provide guidance to the doctor or even obtain a second internal opinion. Many doctors who used to be in private practice now operate under one of the major hospitals because of the access to legal and other advice. This language is clear to the medical community, patients, and families, and they believe the bill will keep them out of battles in almost all cases.

Senator Burgoyne said he supports the policy of the legislation and wonders what the court system might think of this language if they saw it. He does not hear anyone say they understand what the language means. While there is a lot of language in tax laws that is not well understood, there are few tax emergencies, and people with developmental disabilities end up in emergency rooms. Language can be understood by the lawyers on the work group who agree on the language, but if a judge or a lawyer in a facility in another part of the state interprets the language in a different way, problems can arise.

Senator Davis commented he takes Mr. Aldridge's word that the language is verbatim from federal regulations. However, he is not prepared to send the bill to the floor with a do pass recommendation and will instead make a motion to send the bill to the amending order to try making it plainer.

MOTION: **Senator Davis** moved to send **S 1090** to the floor with a recommendation it be sent to the Fourteenth Order for possible amendment. **Senator Burgoyne** seconded the motion.

DISCUSSION: **Senator Anthon** stated he appreciates the concerns mentioned, and he would have supported a do pass motion. This is an important bill because it recognizes there is no life that does not have value. Regardless of the existence of a developmental disability, if a court has not determined a guardian is needed, the medical provider should be listening to the patient, and that is apparently not happening in medical offices and hospitals. Even when a developmentally disabled person needs a guardianship, it should be the least restrictive possible to allow the most decision making power for the patient. He wants the bill to succeed and will support the motion.

The motion carried by **voice vote.**

Mr. Aldridge commented he did send the bill to the courts for review and incorporated the comments he received.

S 1083 **Regarding emergency communications officers. Michael Kane** introduced himself to the Committee on behalf of the Idaho Sheriffs Association. **Mr. Kane** said he has previously spoken to every Committee member about the bill and has subject matter experts prepared to testify and answer questions. All of law enforcement, the fire chiefs, the entire Emergency Communications Commission, and three State agency directors request that the Peace Officer's Standards and Training (POST) Council be authorized to set up certification and training standards for dispatchers.

MOTION: **Senator Foreman** moved to send **S 1083** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

DISCUSSION: **Vice Chairman Lee** commented she likes the idea of required certification, the number of hours, and online availability, but asked why the State should require this training and take away local discretion. **Mr. Kane** replied this is not a situation where the State has asked for the change; rather, law enforcement has requested it. The Legislature has made sure that standardized training for any law enforcement entity goes through the POST Council, which is comprised of many different law enforcement entities. The POST Council will standardize the training and it can be done more cheaply and provided to all dispatchers. Lawsuits are being filed against dispatchers, and mandated standardized training will make it easier to protect the dispatcher and the Sheriff or Chief who employs the dispatcher. Further, it is the least expensive approach.

Senator Foreman commented he supports the bill and the training must be mandated at the State level. Dispatchers literally can determine who lives and who dies, and the mandate is absolutely needed.

The motion carried by **voice vote.**

S 1091 **Regarding limited liability companies. Mike Brassey** introduced himself on behalf of the Uniform Law Commission. **Mr. Brassey** explained the bill corrects a typographical error in Idaho Code § 30-25-701 made when Idaho's business statutes were recodified in 2015. The bill strikes duplicate language that was missed in proofreading at that time.

MOTION: **Senator Nye** moved to send **S 1091** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote.**

S 1092 **Regarding renewal of judgments. Senator Davis** explained the bill contains a style correction for language consistency between two portions of Idaho Code.

MOTION: **Senator Burgoyne** moved to send **S 1092** to the floor with a **do pass** recommendation. **Vice Chairman Lee** seconded the motion. The motion carried by **voice vote.**

H 97 **Regarding attorney's fees. Representative Luker** introduced himself to the Committee to present **H 97**. **Rep. Luker** stated the bill clarifies attorney's fees language as a result of a recent Idaho Supreme Court decision.

Rep. Luker provided the history of Idaho Code § 12-121 enacted in 1976 that provides a judge may award reasonable attorney fees to the prevailing party. An award of fees was left to the judge's discretion and this created uncertainty. Thereafter, Rule 54(e) of the Idaho Rules of Civil Procedure (IRCP) put sideboards on the discretion and said attorney fees could be awarded when a claim was brought or defended frivolously, unreasonably, or without foundation. This has been the standard over the course of the last 38 years, and it created certainty for attorneys and their clients. However, the Supreme Court's 3-2 decision in the case of Hoffer v. Shappard rescinded Rule 54(e). The legal community is overwhelmingly in favor of returning to the old rule that was in place for 38 years. **H 97** reinstates the previous rule, removes old intent language that was used by the court in Hoffer, and contains an emergency clause to make the change effective March 1.

MOTION: **Senator Davis** moved to send **H 97** to the floor with a **do pass** recommendation. **Senator Nye** seconded the motion.

DISCUSSION: **Senator Davis** commented the language in Idaho Code § 12-121 is taken from Rule 54(e) IRCP. New Rules of Civil Procedure will be effective July 1, 2017 and the new Rule 54 does not contain the same language. The State Constitution gives the Supreme Court the right to set their own rules; however, the principles of Rule 54(e) are accepted by most practitioners. **Senator Davis** said he feels comfortable with the historic standard and agrees with adding the language to § 12-121.

Senator Burgoyne commented many people who bring lawsuits are of modest means, and the ability to recover attorneys' fees is limited. There are other statutes that specifically allow the prevailing party to recover fees and costs from the other side, such as commercial disputes which have been interpreted fairly broadly. He has counseled clients over the years about the realities of bringing a suit in which they might end up paying not only his fee but the other side's fee. Certainty is important, and the consensus is to stay with the 38 years of case-made law and judges rulings and not litigate a new standard over the next 10 to 20 years. The current standard may not be perfect, but it is better than good enough, and many decisions in litigation need to have certainty behind them.

There being no more discussion, the motion carried by **voice vote.**

ADJOURNMENT: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:00 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Jeanne Jackson-Heim
Assistant Secretary

Ginger Wardhaugh
2/22/2017

Prior to his final hospitalization and death, my brother Curtis was a 62 year old man with a functional age of 11-15 months. Curtis, residing in a Residential Habilitation Home in the community, was very happy and extremely active, sometimes sleeping only 3-6 hours a day. With the assistance of a Merry Walker he ambulated freely through his house and was taken for frequent walks outdoors. When Curtis was diagnosed with pneumonia every effort was made to keep him in his familiar surrounding where he could maintain his routines and be free of the confines and restraints that hospitalization would require. Lack of understanding and therefore compliance with treatment led to the necessity for a visit to the Emergency Room.

The day of the ER visit, the MD notified us of the seriousness of Curtis's condition. Curtis was diagnosed with Acute Respiratory Distress Syndrome. We as guardians (my parents and I served as co-guardians of Curtis) elected to have Curtis placed on comfort care. Soon we were notified that this was not an option due to a statute to protect the developmentally delayed in the State of Idaho. We were not only legal guardians, we were family members. We had more than a legal interest in our Curtis. We were now forced by a statute to let the medical professionals perform undesired medical interventions that we would never choose in our advanced directives for our own care under similar circumstances. Curtis was intubated and became a patient in ICU.

The Ethics committee at St. Luke's Hospital was approached the next morning. The statute prohibited any action on their part other than continued intubation. I was assured that this was the "thing that had to be done....statutorily"

Some days later extubation was attempted and less than 24 hours later he had to be re-intubated. During this time, I was present and Curtis many times indicated with his limited sign language that this was not acceptable. Oxygen mask and partial sedation with restraints was not part of his active lifestyle.

This statue which was intended to give him rights was actually taking away his rights to refuse life saving measures that would only serve to prolong his dying process. There were many efforts by the medical team to change the care plan.

Doctors kept saying treatment was futile. The statute kept them from honoring wishes on his behalf.

Finally, after 21 days of torturing Curtis with futile treatment, we met with the Guardianship Judge and were able to get amended orders of Guardianship and have Curtis removed from all life support. Curtis died approximately 48 hours later. Curtis spent his last two days with family and was allowed to die with dignity even though the legal restrictions and circumstances did not provide him the opportunity for him to die at home.

My heart ached and tears ran down my cheeks as I watched him lay lifeless in his bed with a machine taking every breath for him. It seemed so wrong that he was not up and running.

Grief was multiplied for me. I actually had to go through the legal system, feel at times that I was a criminal (going through security, be sworn in,...etc.) and plead for a judge to make a decision about someone that he had never seen, could not really care about ...and hope that he would make the decision that would keep my brother from living out his life in a ventilator/trach unit. These legal issues were an unfortunate distraction that robbed me of my time in these last, precious few days with Curtis.

I loved Curtis. The love I had for Curtis was somehow different than that I have for other people in my life. I can't explain... it is just different. He was my "big brother", but developmental challenges kept Curtis from being the "big bro" that protected me from all the bad things and wrong boys a little sister might be exposed to. But he taught me so much without ever uttering a word.

For many years society did not accept Curtis, and others like him. Families were encouraged, sometimes mandated, to institutionalize those that were developmentally disabled. How that makes my heart ache.

From Curtis, I learned to nurture, care for and accept imperfections in people. I have learned from Curtis that life can be simple. His frustrations, anxiety and suffering were always been escalated due to rules and regulations. Curtis was happy drinking coke or coffee without a shirt and helmet. Curtis was happy

playing a quick game of tug of war with a bandana. A great pleasure in his life was taking a brisk walk out of doors. He loved and rewarded his favorite caregivers with a hug and a smile.

Many times I have met people that have worked with Curtis. They all loved and adored him.

In the end, I had to meet with a Judge and ask that Curtis be free of the machines that bound him. I am a nurse that has endured many difficult circumstances and helped countless families through the death and dying process. Despite all that, this was the hardest thing that I have ever done. I loved Curtis and his life. All I wanted was the right thing for him.

I am grateful for Curtis and all that he taught me. Because of him, I am the nurse that I am today. For many years I have asked why he had to endure all of his challenges. Perhaps I know now. I come before you now to ask that you help me to honor his life and his sacrifices. They stand as a reminder that we can do better and that we should. This bill will serve as a legacy of Curtis' life, example and sacrifices.

Ginger Wardhaugh

Boise, Idaho

IDAHO COUNCIL ON
DEVELOPMENTAL
DISABILITIES

700 W. State St.
JRW Building
First Floor West
Boise, ID 83702-5868
Phone: 208-334-2178
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C. L. "Butch" Otter
Governor

Debra Parsons
Chair

Christine Pisani
Executive Director

February 21, 2017

Senator Patti Ann Lodge, Chairman
Senate Judiciary and Rules Committee
Statehouse
Boise, ID 83720

RE: S1090 Medical Consent

Chairman Lodge and Committee Members:

The Council on Developmental Disabilities is authorized by federal and state law to monitor systems and policies and to advocate for improved and enhanced services that enable Idahoans with developmental disabilities to live meaningful lives, included in their communities. The Council is comprised of 23 volunteers appointed by the Governor.

The Council recognizes the rights of individuals with intellectual and developmental disabilities to direct their own healthcare and decisions about their medical treatment. We believe individuals are able to make competent decisions when they have proper support and information provided to them in a way they understand.

We have heard from many Idahoans with developmental disabilities that their voice, - their fundamental human right to decide about what happens to their body - has been ignored or denied before or during medical treatment. Medical professionals often make an assumption that a person is not able to make competent medical decisions even though the nature of their disability does not impair their ability to do so.

The Council is very concerned about situations where medical professionals demand a guardian make medical decisions for an individual with a developmental disability who has not been determined by the court that guardianship is necessary.

The Council believes Senate Bill 1090 addresses many of these concerns and provides guidance to medical professionals working with individuals who have intellectual and developmental disabilities who do not have guardians or partial guardians. These changes help to ensure their voice is heard in decisions about their medical treatment.

Tracy Warren

Tracy Warren
Program Specialist

From: Kristyn Herbert, Self-Advocate from Boise
To: Senate Judiciary and Rules Committee, Idaho Legislature
Re: February 22, 2017 - Comments about Senate Bill 1090 Medical Consent

Dear Chairman Lodge and Members of the Committee;

My name is Kristyn Herbert, I live in Boise and I am a person who has a developmental disability. I experience the effects of cerebral palsy which affects my ability to walk, so I use a wheelchair. It also affects my ability to speak, so I have support staff that understand me and are able to translate my words to others when needed and sometimes I use a letter board to spell out words. As a 41 year old female of sound mind, I am more than double the legal age to make my own decisions, receive my own medical records, test results, etc.

I would like to speak in support of Senate Bill 1090 relating to medical consent by people with developmental disabilities. I have had many experiences in my life with medical and dental professionals when my wishes and decisions about my treatment were not followed because the professional involved did not believe I was able to make decisions for myself. Not because I was in medical distress and was temporarily "incapacitated," but because they saw me as a person who was not able to make my own decisions. They didn't believe I knew what was best for me or that I could review my own records and give consent. Let me tell you – I do and I can.

I have had a dentist pull my teeth while I was under sedation for a dental procedure after I expressly told them I did not want my teeth pulled because I wanted to consider all my options. I have had hospital staff ignore my answers or directions until one of my support staff repeated (very strongly) that I had made my decision and I am capable of doing so. I would like to tell you about one recent example in getting information I needed to determine my choice about needed medical and surgical care.

Although I live here in Boise, my childhood Mama and Papa live in Louisiana. They are very involved in all aspects of my life, including being totally interested in my medical health. Because of that, I have my Mama listed as an emergency contact, at my doctor's office, along with all other offices.

I had an abdominal ultrasound administered at the hospital on Sunday, January 15, 2017, ordered by my doctor. This was done to determine whether or not I have a hernia. I checked, repeatedly, with his office during the week, to get the results of the ultrasound. I checked with them again on Jan. 19, 2017, at approximately 2:00pm. At that time, they claimed yet to have received it from the hospital. The receptionist staff became angry and rude at my last two times to check back with them by phone, stating that the hold-up must be with the hospital staff faxing to their office. (the hospital stated otherwise). Within two hours of that phone call, my doctor's office staff called **my Mama** in Louisiana, **not me!!!**

They left a voice mail on her home phone, to please return their call, she wasn't at home. This was **no emergency**...not even close! My Mama didn't get the voice mail until 8:45pm, long after the doctor's office had closed for the day. The next morning, Jan. 20, 2017, at 9:03am Louisiana time, my Mama returned the call to the physician's assistant who had left the voice mail. She was quite kind and pleasant to my Mama and said that "she had my ultrasound results and wanted to give the information to Mama, then, Mama could pass the information on to me." She went on to tell my Mama that I did, indeed, have an umbilical hernia, and that they were giving me three choices of medical centers to have my surgical referral sent to, and she named the surgeon at each location. The P.A. named the three places to Mama and asked her if **she** knew what **my choice** would be! Mama told her that she was way over in Louisiana and had no idea, but that she would talk to me, then would get back to the doctor's office. After speaking to me later that day to convey the physician's assistant's message, Mama left a voice mail on her direct line, telling her which medical center I'd like the referral sent to.

Please don't misunderstand where my complaint lies! My Mama would have been kept 100% informed **by me**, immediately, when **I** would have gotten the results. We are extremely close and each knows what goes on with the other, even almost 3,000 miles away! The issue is....what if we weren't close?? What if I didn't want her knowing my medical business?? What if I hadn't wanted her to worry and hadn't told her that I had even had an ultrasound done?? This P. A. doesn't know a thing about me personally, nor about my Mama! She has never met me. I tend to believe that the receptionist staff didn't care to deal with me for another phone call, and that's why my Mama was called, instead. Even if that wasn't the case...this P.A. **did not have the right to call my emergency contact, rather than call me.** It was during their regular office hours and I was home!

Too often, medical professionals make judgement calls about differently abled patients! Many patients tend to believe that they are lower than the "big, king-powered" doctors. Its past time that this stops happening! Imagine if this happened to you or someone you care about. If all of us would speak up when our legal rights are abused...this would eventually cease to happen!

Sincerely,

Kristyn Herbert

Kristyn Herbert
5173 Stoker Lane, Apt B103
Boise, ID 83703
Home phone 208-853-5378
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Email: attitudehk@aol.com

AMENDED AGENDA #2

SENATE JUDICIARY & RULES COMMITTEE

1:00 P.M.
Room WW54
Friday, February 24, 2017

SUBJECT	DESCRIPTION	PRESENTER
Approval of Minutes	Approve the Minutes of February 10, 2017.	Senator Agenbroad and Senator Nye
RS25336	Regarding forcible detainer	Senator Todd Lakey
RS25294C1	Regarding the Safe Routes to School Healthy Kids Program	Senator Bert Brackett
RS25339C2	Regarding commissioners on uniform laws	Senator Bart Davis
S 1088	Regarding DNA samples	Major Charlie Spencer, Idaho State Police
S 1108	Judges Salaries	Sara Thomas, Administrative Director of the Courts

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Friday, February 24, 2017
TIME:	1:00 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Agenbroad, Foreman, Burgoyne, and Nye
ABSENT/ EXCUSED:	Senator Anthon
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 of the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.
MINUTES APPROVAL:	**Senator Agenbroad** moved to approve the Minutes of February 10, 2017. **Senator Nye** seconded the motion. The motion carried by **voice vote**.
RS 25336	**Regarding forcible detainer. Senator Agenbroad** moved to send **RS 25336** to print. **Senator Nye** seconded the motion. The motion carried by **voice vote**.
RS 25294C1	**Regarding the Safe Routes to School Healthy Kids Program. Senator Agenbroad** moved to send **RS 25294C1** to print. **Senator Nye** seconded the motion. The motion carried by **voice vote**.
RS 25339C2	**Regarding commissioners on uniform laws. Senator Agenbroad** moved to send **RS 25339C2** to print. **Senator Nye** seconded the motion. The motion carried by **voice vote**.
S 1088	**Regarding DNA samples**. **Major Charlie Spencer**, Police Services, Idaho State Police (ISP), stated this legislation seeks to amend Idaho Code § 19-5506 and Idaho Code § 19-5507 to require registered sex offenders submit a DNA sample. He reported that although the DNA Database Act (Act), enacted in 2012, requires offenders convicted of a felony to submit a DNA sample, there are approximately 1,535 registered sex offenders who have not been required to provide DNA samples because they were registered in Idaho prior to enactment of the Act. This amendment provides an avenue to require those registered sex offenders to provide a sample, similar to those convicted in Idaho since 2012. **Major Spencer** reported that each year approximately 300 offenders move into Idaho that are required to register as sex offenders in Idaho. However, because they were convicted in other states, they are not required to provide a DNA sample. This amendment would require that sex offenders who move into Idaho would be required to provide a DNA sample. He went on to share the details of the changes in the law. He emphasized that this legislation will assist law enforcement to identify previously unknown suspects and to close additional cases. **Major Spencer** explained the fiscal impact of this legislation as determined by the ISP Forensics department. The cost analysis showed that to fully process a sex offender DNA sample, the cost is approximately $100 per sample. The one-time cost for the current 1,535 offenders equals $153,500, and the on-going cost is $100 times the approximately 300 offenders moving into Idaho per year.

Senator Burgoyne asked whether Idaho currently charges convicted sex offenders for their DNA samples, and if we do, why we would not charge these individuals as well. **Major Spencer** deferred to Dawn Peck. **Dawn Peck**, Manager, Bureau of Criminal Identification, Idaho State Police, and Administrator, Central Sex Offender Registry, responded the fee offenders pay when they register annually do not cover the cost of the DNA collection. Those fees are for the Sheriffs' departments to defray their costs of registering the offenders and to assure the departments are in compliance with the statute.

Senator Davis inquired if there is a statutory process in place for an individual on the sex offender registry to come off the registry. **Ms. Peck** affirmed that there is a judicial process whereby offenders may appeal to have their duty to register rescinded after a ten-year period. **Senator Davis** asked if there is a statutory process in place now or in this bill whereby the DNA sample would be destroyed when an individual comes off of the registry. **Ms. Peck** replied that she was not aware of any process; she deferred to Matthew Gamette, Lab Director, Forensics Services. **Matthew Gamette** indicated that Cyndi Hall, Lab Improvement Administrator, Forensics Services, would be able to answer the question. **Cyndi Hall** commented that the DNA statute currently has provision for an individual to have his/her DNA sample destroyed. The process requires petitioning the court to have the sample removed. The lab determines if there are any qualifying offenses which would require DNA collection. If there are no other offenses, the sample is destroyed. **Senator Davis** asked if that process would be impacted by the passage of **S 1088**. **Ms. Hall** indicated that it would not be impacted. **Senator Davis** queried if that would be true even if they had been convicted in another state. **Ms. Hall** replied that it would still be the case.

Senator Hagedorn asked what the longest time is that an offender has been on the registry. **Dawn Peck** answered that the initial sex offender law in Idaho went into effect in 1993. No one registered prior to that, so the longest would be 23 years because some are still on who registered at that time. **Senator Hagedorn** asked if they have been on the registry that long and have not reoffended, what is the necessity of asking for a DNA sample. **Ms. Peck** explained that the intent is to have all registered offenders treated equally.

MOTION: **Senator Davis** moved to send **S 1088** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote.**

S 1108 **Regarding Judges' salaries**. **Sara Thomas**, Administrative Director of the Courts, informed the Committee that this bill provides a base increase for all judicial officers in the amount of $3,200, and restores appropriate salary differentials between judges and justices serving at different levels of the judiciary. She explained how the normal variation in salaries became unbalanced, and delineated the changes this bill makes in order to restore that balance. **Ms. Thomas** noted that this is a negotiated bill.

Senator Lee noted she had a conflict of interest pursuant to Senate Rule 39(H), but intended to vote.

Senator Lodge noted she had a conflict of interest pursuant to Senate Rule 39(H), but intended to vote.

MOTION: **Senator Nye** moved to send **S 1108** to the floor with a **do pass** recommendation. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

Senator Davis explained that compensation for judges must be set by statute. Consequently, every year this section of code is amended. The Court has been asked to maintain a 3 percent or less increase in compensation and they have done that.

Senator Burgoyne commented that judges are drawn from attorneys who can make a comfortable living in the private sector. He believed this bill supports a reasonable level in compensation to keep dedicated judges on the bench.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 1:25 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:15 P.M.
Room WW54
Monday, February 27, 2017

SUBJECT	DESCRIPTION	PRESENTER
RS25359	Delegation of Powers	Robert Aldridge,
RS25023C2	Regarding the seizure of state tax refunds and credits	Senator Grant Burgoyne
RS25154C1	Regarding safe havens	Senator Bart Davis
S 1109	Regarding gun restoration	Senator Grant Burgoyne
S 1113	Regarding the Idaho Criminal Justice System	Senator Patti Anne 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
Vice Chairman Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Monday, February 27, 2017
TIME:	1:15 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 Lee** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:17 p.m.
RS 25359	**Regarding Delegation of Powers**. **Robert Aldridge**, Trust and Estate Professionals of Idaho, pointed out that this bill amends Idaho Code § 15-5-104, originally created in 1991 to aid deploying families in Desert Storm to provide temporary delegation of parental powers to someone at home. This bill adds a springing power of delegation based on the occurrence of certain events, and it makes some changes in the statute. **Mr. Aldridge** detailed the changes including the time an immediate delegation shall continue, provision for requirements for the delegation of powers to co-guardians, revision of terminology, and technical corrections. Under this bill, a delegation of powers shall not supersede a court order.
MOTION:	**Senator Hagedorn** moved to send **RS 25359**, **RS 25023C2**, and **RS 25154C1** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
S 1109	**Regarding gun restoration**. **Senator Burgoyne** explained that this bill amends Idaho Code § 20-213A which defines the open meeting requirements, executive requirements, and related confidentiality and disclosure requirements for the Idaho Commission on Pardons and Parole (Commission). He shared the background information regarding the Commission's responsibility for the restoration of firearms rights. **Senator Burgoyne** identified the problems in the current statute as: • the omission in subsection (a) of paroles and firearm restoration from the list of proceedings allowed to be heard in executive session; and • the omission in subsection (b) of firearm restoration from list of offenses for which votes of individual members of the Commission shall not be made public. **S 1109** adds firearm restoration to these subsections and elsewhere where applicable. **Senator Burgoyne** went on to state that the bill also adds "hearings" to the reference to meetings in subsection 1. **Senator Burgoyne** pointed out that the new language will clarify the exceptions to the open meeting law and the instances in which those exceptions may be applied through the use of executive session. He remarked that records must be kept of the actions taken in executive session, and that they must be kept confidential and privileged from disclosure, except that they shall be available to the Governor, the Governor's representative, and the Chairs and most senior minority members of the respective legislative judiciary committees.

Senator Davis referring to page 2, line 13, asked who the most senior minority member is. **Senator Burgoyne** felt it is good to have a multiplicity of views. He believed whoever drafted the original statute wanted the Governor to have access to the information, and the committee chairs were added. He pointed out that other agencies provide for minority and majority membership. **Senator Davis** inquired if "the governor, the governor's representative" meant both, or if it meant one or the other. **Senator Burgoyne** responded that his understanding is that it means the governor or the governor's representative.

Senator Nye asked for the rationale for having executive session meetings in the case of firearms restoration. **Senator Burgoyne** explained that executive sessions apply to the decisions regarding granting the hearing for parole, pardon, or commutation. Firearms restoration is not being singled out for any different process. He reaffirmed the reason for preserving from disclosure the individual votes of Commission members as a matter of their safety. **Senator Nye** referred to page 1, line 15-18, and stated that the initial decision is confidential; a hearing is conducted in open session. He commented that his understanding is that the firearms restoration would all be confidential. **Senator Burgoyne** stated that the hearing is public. He specified that the only parts that are confidential are deciding whether the application warrants a hearing, and to take the vote. The resulting aggregate vote is public, but how the individual Commissioners voted is confidential.

Senator Hagedorn asked if an individual doesn't request firearms restoration, is it possible to request the restoration after he/she is on parole. **Senator Burgoyne** referred to Idaho Code § 18-310 which explains the procedure and time frame involved in requesting firearms restoration.

MOTION: **Senator Hagedorn** moved to send **S 1109** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

Senator Anthon acknowledged that there is confusion, but the need for executive session in this instance is obvious with respect for the public policy for the safety of the Commissioners

The motion carried by **voice vote**. **Senator Nye** requested to be recorded as voting no.

S 1113 **Regarding the Idaho Criminal Justice System**. **Senator Lodge** stated that this legislation was introduced after some tragic events in Boise, Idaho involving Corporal Chris Davis, whom she recognized in the audience, and Corporal Kevin Holtry, still in recovery, who were injured in the line of duty. **Senator Lodge** dedicated **S 1113** to them and others who have been injured and who have given their lives in the service of public safety. The purpose of the legislation is to make improvements to the Justice Reinvestment Initiative (JRI). **Senator Lodge** reviewed the history of JRI, initially introduced by Senator Bart Davis, after he became aware of the Council of State Governments Justice Center (CSG). The process included an invitation being sent to stakeholders inviting them to meet with legislators and the CSG to complete a study and develop solutions using evidence based practices to improve Idaho's criminal justice system, making it more effective and efficient. She pointed out that all three branches of government were involved in addressing resource allocation to improve public safety, reducing recidivism, and reducing spending on correction. The CSG studied Idaho's system to discover why there was a high recidivism rate even though there was not a high crime rate. After meeting with 35 stakeholders from education, business, and those affected by the criminal justice system, legislation was proposed to begin the process of revising the system. Although some were not pleased with everything in the proposal, the JRI provided a data driven approach to a statewide framework for changes in our correction system. This legislation forms the basis of an improved justice system, but continual refinement is necessary. **S 1113** represents the changes that need to

be made to continue moving toward a successful justice system.

Senator Lodge explained that the biggest changes enacted by **S 1113** involve the Parole Commission (Commission). She described the extensive workload parole commissioners carry, and pointed out that two more members are being requested in order to hold the revocation hearings in a more timely fashion. The changes the legislation proposes will move offenders through the system and into proper placement, i.e. out into the community or back into incarceration, whichever is appropriate. **Senator Lodge** described other changes provided by **S 1113**, including the assignment of sanctions by parole officers without the necessity of a hearing. She advised that a main focus of the bill is to use prison space for those who commit the most serious offenses, or who have the highest likelihood of offending in the future. She pointed out that this legislation instructs the Department of Correction to create sufficient programming opportunities so lack of access to programming is not the primary cause in delaying parole. She noted that a report is due to the legislature including data involving the delay and/or denial of release. **Senator Lodge** emphasized that the most important part of the bill is increasing the number of members of the Commission.

TESTIMONY: **Jan Bennets**, Ada County Prosecuting Attorney, stated she is testifying in support of **S 1113** on behalf of the Ada County Prosecutor's office and the Idaho Prosecuting Attorneys Association. She expressed appreciation for all who have assisted in bringing this legislation forward. **Prosecutor Bennets** said Chairman Lodge covered the main points of this bill, but she wanted to add that these changes will have a positive impact on Idaho's communities and citizens. She declared that **S 1113** will provide the tools to the prosecutors and law enforcement to perform their responsibilities.

Senator Hagedorn mentioned that he did not see an emergency clause on the bill, so he understood that it would go into effect July 1. He asked if that is sufficient time. **Chairman Lodge** responded that it was an oversight and Prosecutor Bennets should be consulted. **Prosecutor Bennets** answered that she would support an emergency clause. **Senator Hagedorn** commented that including an emergency clause would impact the fiscal note. He asked why the date of reporting addressed in the bill had not been clarified. **Chairman Lodge** indicated that the JRI committee chose to leave it, but that they could reconsider the date in the future. She also expressed a need to consult the Commission prior to adding an emergency clause.

Sentor Anthon referred to the use of open meetings and executive meetings for the Commission in determining if a parole would be granted to an offender in cases when only two commissioners will be conducting the hearing. **Sandy Jones**, Executive Director, Idaho Commission of Pardons and Parole, stated that a revocation hearing will still be an open meeting. After they hear the case they will go into executive session to deliberate and vote; then they will go back into open session to give the aggregate results of the vote, without announcing individual votes. This will not change with the new legislation except it can be done with a panel of two commissioners instead of three for expediency.

Senator Foreman asked what was wrong with the existing legislation, and how this legislation will rectify it. **Director Jones** responded that the main problem revolves around the short term caps on parole violators, i.e. the mandatory sanctions prescribed in statute. There is no discretion allowed to decide if a violator should receive sanctions or have his/her parole revoked. She detailed the behaviors of violators under the current procedures, indicating that for many violators the system is not working. **Senator Foreman** asked if the change goes far enough to protect officers and society. **Director Jones** felt the part of JRI that focused on the prison population was based on the premise that it is more expensive to hold drug and property offenders in prison than it is to put them in the community. It was suggested that those people be put in the community, get appropriate treatment so they won't recidivate, and work toward becoming productive citizens. She pointed out that another factor involving the prison population dealt with changes in programming. **Senator Foreman** explained that his major concern is that this may release violators for whom rehabilitation does not occur. **Director Jones** replied that this change moves Idaho closer to the goal of considering each violator individually and making decisions accordingly, rather than having nondiscretionary direction.

Senator Nye stated he had a possible conflict of interest pursuant to Senate Rule 39(H), but intended to vote.

Senator Lee asked Director Jones to clarify if the intent language regarding focusing prison space was removed or if it had been moved to a different section. **Director Jones** responded that it had been moved, and that the wording had been changed to better describe those offenders who would remain incarcerated.

Chris Davis, Boise Police Department and Fraternal Order of Police, expressed his appreciation for the attention given this legislation. He stated that changes needed to be made, and he reviewed the shootings that recently occurred in the Treasure Valley. **Officer Davis** observed that officers around the State experience similar situations, often perpetrated by individuals who are in the community because of the current JRI requirements. He felt passage of **S 1113** would help Idaho move toward safer communities.

John Evans, Mayor of Garden City, stated he is here in his capacity as Legislative Committee Chair for the Association of Idaho Cities (AIC). **Mayor Evans** spoke in support of the legislation. He pointed out that although there may be cost savings at the State level, there are financial and human costs being incurred by the local governments caused by individuals who should be incarcerated. He emphasized that the major concern is for the safety of the police officers and the community.

Senator Nye noted that Idaho has one of the lowest rates of violent crime, but the highest rate of incarceration in the Intermountain West. He asked Mayor Evans for his understanding of the situation. **Mayor Evans** responded that having had five officer involved shootings by parolees in Ada County in one year, he does not view statistical data as very meaningful. He felt the changes made with **S 1113** will help considerably in keeping dangerous offenders in prison. **Senator Nye** asked what the Mayor saw as the reason for Idaho having the higher rate of incarceration per capita. **Mayor Evans** said he believed it to be due to a higher level of commitment and performance by Idaho's police officers.

Senator Foreman surmised that the JRI has inadvertently taken costs associated with crime and transferred those costs to the municipalities. **Senator Foreman** asked Mayor Evans if he shared that perception. **Mayor Evans** said he did view the situation in that way.

Senator Burgoyne observed that when JRI was first considered, some felt one of the reasons Idaho has a low crime rate is because more people are incarcerated than neighboring states. He pointed out that there was no statistical evidence identifying the cause of Idaho's lower crime rate. **Senator Burgoyne** felt this legislation is an important correction of the JRI. **Mayor Evans** reiterated that he sees the impact on the police department. He emphasized that under the current law individuals are given numerous chances. But parole in itself is a chance, and these offenders need to obey the rules or be put back into prison where they are not a danger to officers or communities.

Chris Goetz, Legislative Chair for the Idaho Sheriffs Association (ISA), spoke in support of **S 1113.** The ISA appreciates the new tools allowing the Commission to move parolees through the system more efficiently, reducing the number of individuals being held in the county jails. **Senator Hagedorn** asked if taking out the 90 and 180 day sanctions would have made a difference regarding the individual involved in the November shootings. **Mr. Goetz** replied that he did not know. **Senator Foreman** asked if the jails were full prior to JRI. **Mr. Goetz** acknowledged that they were.

Rick Allen, Chief of Police of Garden City and Idaho Chiefs of Police Association (ICPA), spoke in support of **S 1113**. **Chief Allen** expressed that this bill is extremely important for the safety of communities. He commented that since the implementation of JRI law enforcement has experienced a serious increase in violent crimes involving parolees. He reported that Garden City, an area of 4.5 square miles, has experienced increased violent crimes involving parolees including homicides, carjackings, robberies, and assault on officers. **Chief Allen** stated that in Ada County in the last year, there have been nine officer involved shootings, with 55 percent involving parolees. He emphasized that the ICPA does not support mass incarceration of non-violent offenders, and recognizes the difficulty of deciding whom to release. The JRI must continually be monitored and evaluated to insure it is efficiently and effectively achieving its goal.

Henry Atencio, Director, Idaho Department of Correction (IDOC), spoke in support of **S 1113**. **Director Atencio** expressed thanks to those who have worked on this legislation. He reiterated the important changes in this law, especially those allowing more discretion for the parole officers. He stated that he would like to have an emergency clause in this bill.

Lisa Growett Bostaff, Commissioner, Commission on Pardons and Parole, spoke in favor of **S 1113**. **Commissioner Bostaff** observed that when JRI was first enacted, the only area wherein the Commission did not have discretion was when dealing with parole violators. The Commission retained discretion with regard to initial paroles, commutations, or pardons. She remarked that prior to JRI the Commission could revoke a parole without waiting. **Commissioner Bostaff** emphasized that the changes in this legislation will restore that ability to the Commission, providing a way to respond quickly rather than waiting until the severity of violation increases.

Senator Lee inquired how the Commissioner views the change in the size of the Commission related to the ability to consider cases more thoroughly. **Commissioner Bostaff** replied that she supports having two more commissioners. She expressed concern about an emergency clause, and pointed out that those new commissioners need to be in place prior to bringing back violators. She detailed the work load and the process of the Commission in dealing with parole decisions.

Senator Lee asked how long it would take to get two additional commissioners. **Kendra Leighton**, Governor's Office, said it would depend on the amount of interest in the position. She outlined the process as advertising the position, interviewing, and then hiring.

DISCUSSION: **Senator Davis** commented that this is an important bill, reflecting a course Idaho needs to pursue. The State cannot afford to build another prison. He pointed out that Idaho Code allows the revocation of parole if the violation, shown by a preponderance of the evidence, was sexual or violent in nature. He asserted that passage of this bill will not totally solve the problem. He reminded the Committee that the purpose of the fixed standards was to deal with those instances that did not involve sex crimes and that were non-violent. **Senator Davis** shared the concern that this bill will have a fiscal impact Idaho cannot afford. He stated that he will support the bill, but he has serious concerns.

Senator Hagedorn asked Chief Allen how many of the nine parolees previously mention by the Chief had gone through at least the 90 or 60 day period of incarceration. **Chief Allen** replied that he did not know. **Senator Hagedorn** asked if anyone who has testified had that information. **Jan Bennets** said she did not have that information at hand but could get it for Senator Hagedorn. She pointed out that the perpetrator in the November shootings had been through the sanctions, and his parole could have been revoked if the Commission had the discretion this bill provides.

Senator Nye asked if the emergency clause could be added to the bill at this time. **Senator Davis** replied that it could not.

MOTION: **Senator Nye** moved to send **S 1113** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

Senator Burgoyne asserted that there are people who do not commit violent or sexual acts, whose behavior indicates that they do not belong out in the community. The Commission should be aware of those who may be escalating in the level of crimes they commit, and should have the discretion to make that judgement. **Senator Burgoyne** emphasized that the Commission should be able to make the decisions for which they are responsible.

Senator Lee noted she had a conflict of interest pursuant to Senate Rule 39(H).

Senator Anthon shared his concern for the high cost involved in this legislation. In looking at cost-benefit analysis, we have to look at the financial costs and public safety. He pointed out that those who commit crimes do their own risk assessment, considering how far they can go before receiving negative results from their behavior. **Senator Hagedorn** agreed with Senator Anthon's analysis.

Senator Davis expressed concerns involved with changing the number of commissioners in a hearing to two, such has having fewer people involved in making the decision about who will or will not go to prison. He reiterated his concerns about the financial cost involved in this change.

Senator Lodge thanked everyone for presenting their views, and acknowledged that the change will not solve all problems. She reaffirmed that Idaho will always have to fight crime, that all stakeholders need to work together, and that by so doing a safer Idaho will emerge.

The motion carried by **voice vote**.

ADJOURNED: There being nor further business at this time, **Vice Chairman Lee** adjourned the meeting at 3:03 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

AMENDED AGENDA #2

SENATE JUDICIARY & RULES COMMITTEE

1:15 P.M.
Room WW54
Wednesday, March 01, 2017

SUBJECT	DESCRIPTION	PRESENTER
S 1093	Regarding unlawful entry	Senator Jim Rice
Gubernatorial Appointment Hearing:	Raymond David Moore, re-appointed to the Commission on Pardons and Parole	Raymond David Moore

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, March 01, 2017
TIME:	1:15 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 of the Senate Judiciary and Rules Committee (Committee) to order at 1:25 p.m.

S 1093

Regarding unlawful entry. **Senator Rice** explained that this bill raises unlawful entries committed while an offender is fleeing from the police to a felony. He reported on an incident involving an offender fleeing from the police who broke into the bedroom of a teenage girl, causing her great emotional trauma. The highest level of penalty with which the offender could be charged was a misdemeanor. **Senator Rice** asserted that this behavior poses a severe risk of harm to citizens, thereby warranting a felony charge. He commented that while he does not like to create felonies, in this circumstance the felony charge is appropriate.

Senator Foreman indicated that as a police officer he has been involved in many pursuit incidents. He pointed out that most of those situations involved young, intoxicated, unarmed individuals who entered the premises out of desperation. Although agreeing that the situation was frightening and could be dangerous, **Senator Foreman** believed, in view of the age and the mindset of most of these offenders, that a felony charge was too heavy a penalty. In the cases involving people who were armed and running from the police for substantial reasons, those offenders have other charges to levy against them that are already in place. **Senator Rice** acknowledged that sometimes the offenders are fleeing after committing a felony, and sometimes the offense they are trying to escape is a misdemeanor. He pointed out that in an intoxicated state there is the danger of harm coming to the person inside the building. **Senator Rice** stated it is necessary to consider the level of harm done. Processes are in place to deal with offenders who were just being stupid ranging from prosecutorial discretion, whereby the prosecutor can decide whether to give felony or misdemeanor charge, to statutory processes allowing the offender to have the felony reduced at a later time. He emphasized that the State's criminal code should ensure that the level of punishment is appropriate to the harm that can be caused by the activity.

Senator Agenbroad asked what the charges would be if the offender mentioned had broken into the girl's room but had not been fleeing from the law. **Senator Rice** replied that had he not been fleeing but broke in without the intent to commit a criminal offense inside, it would have been a misdemeanor. Under **S 1093** it would still be a misdemeanor. This bill only deals with those circumstances when the entry is not for the purpose of committing a crime, but is for the purpose of trying to flee and evade the police. If the person were planning some other illegal activity upon gaining entrance, the burglary statute would be followed.

Senator Lee referred to Idaho Code § 19-5304, asking if recovery of economic loss is currently possible, if it is a new aspect of this crime under **S 1093**, or if its inclusion is just for clarification. **Senator Rice** replied there is some equivocation between two different statutes on victim restitution. Under one of the statutes the individual would not be entitled to restitution, so this clarifies that the victim can recover economic loss.

Senator Anthon what charge would be made for evading police. **Senator Rice** explained that if the offender is driving a vehicle the charge is felony eluding; if he/she is not driving a vehicle it is a misdemeanor.

Senator Hagedorn asked if having an arrest warrant pending would be considered being pursued by law enforcement. **Senator Rice** replied it would not be considered being pursued, but being sought by law enforcement.

Senator Burgoyne inquired if the crime of burglary involves breaking in with the intention of committing a felony. **Senator Rice** said the classic common law definition is breaking and entering a dwelling with the intent to commit a felony therein. That is not the statutory definition. The statutory definition includes just opening something that is not locked with the intent to commit a crime therein, and has been expanded to include areas other than a dwelling. **Senator Burgoyne** asked about the degree to which entering the dwelling in order to escape an officer is like breaking and entering to commit a crime. **Senator Rice** stated that the fleeing is occurring regardless of the entry, not as a result of the entry.

Senator Foreman offered the interpretation of law enforcement with regard to some of the issues mentioned. He reported law enforcement used the terms resisting and obstructing for fleeing from law enforcement. He stated that law enforcement considered entering a dwelling, car, or building with the intent to commit a theft or a felony as burglary.

Senator Davis quoted Idaho Code § 18-1401 as defining burglary as "any person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, trailer, airplane, or railroad car with the intent to commit any theft, or any felony, is guilty of burglary."

MOTION: **Senator Anthon** moved to send **S 1093** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

Senator Burgoyne felt this was a close issue, and he stated he understood the motivation. He expressed his concern with the tendency of our society for creating felonies, and thought adding "and is armed" would make it a more serious crime.

Senator Foreman disclosed that he was voting no for the same reasons as Senator Burgoyne. He stated he wanted to support the legislation, and he appreciated the good intent. He felt it was too harsh.

Senator Anthon expressed appreciation regarding the comments about watering down felonies. He felt that this bill represents a narrow situation where someone on foot is committing a misdemeanor and entering into someone's home. By doing so the person avoids the burglary statute that requires the intent to commit a felony. **Senator Anthon** asserted that **S 1093** deals with this situation in a reasonable manner. He emphasized that public policy needs to protect the sanctity of the home.

Chairman Lodge added her reflection on a recent situation wherein a father and his children were home when an offender fleeing the police broke into the house. It traumatized the family so much they have decided to move because they no longer feel safe in their home.

The motion carried by **voice vote** with **Senator Burgoyne** and **Senator Nye** requesting to be recorded as voting nay.

GUBERNATORIAL APPOINTMENT:

Raymond David Moore, reappointment to the Commission on Pardons and Parole. **Raymond David Moore**, Commissioner, Commission of Pardons and Parole (Commission), introduced himself and mentioned that he was first appointed to the Commission three years ago. He expressed appreciation to those who have been a support to him during his tenure on the Commission.

Commissioner Moore related that he has learned a lot serving on the Commission, and that he is ready to learn more. He discussed the work load of the Commission stating that it sits from one to two weeks each month in various prison facilities across the State, handling 100-125 cases per week in direct interviews with inmates and making parole decisions. During executive session, the Commission makes over 200 decisions in one day. The decisions deal with early parole, early discharge, pardon reviews, commutations, and self-initiated parole requests.

Commissioner Moore addressed the legislation being considered to move the hearing of firearms restoration cases into executive session. He felt that hearing these cases in open session has engendered serious threats against commissioners, as well as making public mental health and other issues of the inmate that should remain private. **Commissioner Moore** noted that all other cases are first heard in open session, and then the final decision is made in executive session.

Commissioner Moore reviewed the impact the Justice Reinvestment Initiative (JRI) has had on the work of the Commission since he began his tenure three years ago. He mentioned some of the positive results such as forming working relationships between the Commission and the Department of Correction. The directors of both entities were new at that time, worked together well, and were able to move the changes forward. Programming was instituted that had some positive outcomes for inmates. The sanctions, however, asserted **Commissioner Moore**, were not as successful. It worked for some, but not for all resulting in some serious problems involving those who should have been put back into prison. Now some changes are being made to improve this aspect of the JRI.

Commissioner Moore observed that the war on drugs has not been won. He pointed out that meth is as bad as it has ever been; heroin has made a major comeback. The highest recidivism rate among parolees is the result of meth use.

After serving several gubernatorial appointments over the years, **Commissioner Moore** commented that the work on this Commission has been his most fulfilling appointment. He brings to this reappointment skills he has developed over his previous service such as serious attention to his role as a Commissioner and diligence in his duties. He affirmed that his background, education, knowledge, and experience makes him an asset to the Commission.

Senator Burgoyne mentioned that one requirement for the Commission is partisan political balance. He asked Commissioner Moore if that balance will continue with his reappointment. **Commissioner Moore** replied that it will maintain the balance.

Senator Lee asked if the addition of new commissioners would reduce the work load. **Commissioner Moore** replied that there has been discussion regarding the need for going from five to seven commissioners. Some had concerns regarding decision making with redistribution of hearing officers. He felt there was still work to do in establishing how the new number of commissioners would function.

Senator Hagedorn requested a description of the process for executive session. **Commissioner Moore** explained that the hearing begins in open session, taking testimony from interested parties. The Commission then votes to go into executive session where they discuss the applicant's request and reports. They then vote on the issue. After that vote is taken, the Commission votes to move back into open session to announce the decision. The identity of the Commissioners who voted for or against the issue during deliberations is not revealed. These cases are heard one at a time. Records are kept and minutes are signed before the next individual case is heard. He emphasized how encouraging it is to see individuals who have been on parole come back having met all of the requirements of their parole. The most fulfilling part of this job is to grant parole to those who have turned their lives around.

Senator Davis asked if executive sessions are recorded and preserved. **Commissioner Moore** replied that the hearing officers keep records and written minutes which are signed before they go into the executive session. In addition they make audio recordings of the meetings. There is also a summary set of minutes for future reference. **Senator Davis** inquired if the executive session is recorded, and if the recording is subject to public records request. **Commissioner Moore** responded that the recorder is turned off during executive session. It is started again when the open meeting is resumes. **Senator Davis** explained that when most political entities go into executive session they deliberate. But the vote is taken after they return to open session. **Senator Davis** asked if that is the same standard for the Commission. **Commissioner Moore** advised that the Commission is under a different standard allowing the votes to be kept confidential. **Senator Davis** suggested that in the case of a two member Commission when there is a tie, the scope of who voted yes and who voted no is narrowed. He inquired if the exposure or risk for Commissioners would be increased by not providing adequate protection regarding their votes. **Commissioner Moore** explained that when the open meeting resumes, the inmate is informed of the decision. If the decision is not unanimous, the case goes to the full Commission. In the case of a three person panel, the vote has to be unanimous. If it is not unanimous, the inmate is told only that the vote was not unanimous so the case will go to the full Commission.

Chairman Lodge inquired how much time is spent for each hearing. **Commissioner Moore** stated that there is no set time for each hearing, that they are scheduled for 20 to 25 hearings per day, and they stay until they are finished. The hearings vary widely in complexity and the amount of time needed.

Chairman Lodge asked if the Commissioners ever fear for their safety. **Commissioner Moore** remarked that his career over the years has been fraught with dangerous situations. He revealed that some of the inmates in these hearings scare him, and those without the same background as his may deeply feel the threat. He emphasized that the Commissioners still do the job.

Chairman Lodge thanked Commissioner Moore and those in attendance. She specified that the vote on his appointment will be taken on Friday, March 3.

Chairman Lodge announced that there will be a meeting on Friday, March 3, and that we will begin at 1:00 instead of the usual 1:30 time.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:19 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:00 P.M.
Room WW54
Friday, March 03, 2017

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval:	Approve Minutes of February 6, 2017.	Senator Hagedorn and Senator Burgoyne
Minutes Approval:	Approve Minutes of February 24, 2017.	Senator Burgoyne and Senator Agenbroad
Gubernatorial Appointment Vote:	Raymond David Moore, re-appointed to the Commission on Pardons and Parole	
RS25426	Regarding prohibited acts	Senator Bart Davis
RS25389	Regarding operating vehicles without insurance	Senator Bart Davis
RS25422	Regarding the health care assistance program	Senator Marv Hagedorn
S 1105	Regarding failure to return rented equipment	Senator Grant Burgoyne
S 1122	Regarding commissioners on uniform laws	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
Vice Chairman Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Friday, March 03, 2017
TIME:	1:00 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 Lee** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.
MINUTES APPROVAL:	**Senator Hagedorn** moved to approve the minutes of February 6, 2017. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
MINUTES APPROVAL:	**Senator Agenbroad** moved to approve the minutes of February 24, 2017. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT VOTE:	**Raymond David Moore, reappointed to the Commission on Pardons and Parole**. **Senator Davis** moved to send the gubernatorial appointment of Raymond David Moore to the Commission on Pardons and Parole to the floor with recommendation that he be confirmed by the Senate. **Senator Hagedorn** seconded the motion. The motion carried by voice vote.
MOTION:	**Regarding RS 25426, RS 25389, and RS 25422**. **Senator Hagedorn** moved to send **RS 25426**, **RS 25389**, and **RS 25422** to print. **Senator Anthon** seconded the motion. **Senator Nye** stated his opposition to **RS 25426**.
SUBSTITUTE MOTION:	**Senator Nye** moved to vote on **RS 25426** separately. The motion died from lack of second.
SUBSTITUTE MOTION:	**Senator Davis** moved to send **RS 25426** to print. **Senator Anthon** seconded the motion. **Senator Davis** indicated that he wanted to give a member of the Committee wishing to vote "no" the opportunity to do so. He pointed out that the Attorney General's office reviewed it with two members of the Committee who had concerns, and some of those issues have been addressed in this bill. It does have an emergency provision to address litigation that might arise subsequent to enactment and signature. **Senator Hagedorn** asked if the Committee would vote on the original motion if this motion does not pass. **Senator Lee** affirmed that Senator Hagedorn's assessment is correct. **Senator Nye** stated his objection is that the **RS 25426** is a lawyer's bill and has constitutional issues. He remarked that the intent of the bill is good, but it may not stand up to scrutiny considering its constitutionality. The motion passed by **voice vote** with Senator Nye requesting to be recorded as voting no.

MOTION: **Senator Anthon** moved to send **RS 25389** and **RS 25422** to print. **Senator Nye** seconded the motion. The motion passed by **voice vote**.

S 1105 **Regarding failure to return rented equipment**. **Senator Hagedorn** presented **S 1105** in the absence of Senator Burgoyne. **Senator Hagedorn** explained that some of the rental companies brought this bill because prosecuting attorneys were not able to prosecute for the willful or intentional failure to return rented equipment because of language in the theft statute. This bill will add "other equipment" to the list of items included in that statute.

TESTIMONY: **Sam Castillo**, Tates Rents, and President, American Rental Association of Idaho, indicated that the American Rental Association has 42 members representing 75 stores across the State. He reported that together they employ over 2,500 Idaho residents and generated nearly $500,000 in the State economy in 2016. **Mr. Castillo** related that unscrupulous people have discovered they can steal from equipment rental companies and not be prosecuted. He explained that the companies have requested assistance from law enforcement and prosecuting attorneys, but have found the companies have no rights of prosecution as this is a civil matter. **Mr. Castillo** pointed out that the loss of revenue involved in dealing with the theft of these assets can cause the rental companies to lose their businesses, especially the smaller companies. This will cause a loss of jobs for Idaho citizens and a loss of tax revenue for the State.

Senator Foreman expressed surprise that these incidents occur. **Mr. Castillo** assured him that equipment being intentionally kept in the renter's possession happens, and that the prosecutor informed the company this action is not covered under statute. He advised that the companies have used tracking devices, cameras, and other precautions, but that smaller companies cannot afford these precautions.

MOTION: **Senator Davis** moved to send **S 1105** to the floor with a **do pass** recommendation. **Chairman Lodge** seconded the motion.

Senator Hagedorn explained this language came from the Idaho Prosecutor's Association.

The motion passed by **voice vote.**

PASSED THE GAVEL: Vice Chairman Lee passed the gavel to Chairman Lodge.

S 1122 **Regarding commissioners on uniform laws**. **Senator Davis** detailed the history of the Uniform Law Commission (ULC), explaining that the ULC was formed to protect state sovereignty and is in statute in Idaho. **Senator Davis** identified the organizational aspects of the ULC, and the procedures it follows to address various issues. He emphasized that the commissioners are not paid, but only reimbursed for expenses incurred while they are serving on the ULC. After detailing the process for gubernatorial appointment to the ULC and the terms of service, **Senator Davis** pointed out that two of the four Idaho commissioners have become life members after 20 years of service. This will be the first time Idaho has had any life members. Having two life members in addition to the traditional four members enables Idaho to have six representatives on the commission. **S 1122** allows the life members to be reimbursed for expenses incurred while performing duties of the ULC as are the four appointed members.

Chairman Lodge asked Senator Davis how long he has served on the ULC. **Senator Davis** responded he has served 17 or 18 years.

Senator Burgoyne commented that he has viewed the ULC as having attributes of State government in the use of the appointment process, but it is really the legal profession at work. When the uniform law proposals are returned to the states, the legislature decides whether to adopt them. Having lawyers who work at the federal level, the state level, and those in private practice is a reasonable make up of the ULC.

MOTION: **Senator Burgoyne** moved to send **S 1122** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote.**

ADJOURNED: Chairman Lodge adjourned the meeting at 1:40 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Monday, March 06, 2017

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approve Minutes of February 13, 2017	Senator Nye and Senator Foreman
S 1120	Relating to forcible detainer	Senator Todd M. Lakey
S 1125	Relating to Set-off procedure for delinquent debts	Senator Grant Burgoyne

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Bock(Burgoyne)
Sen Nye

COMMITTEE SECRETARY

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MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Monday, March 06, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, Nye
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 1:30 p.m.
MINUTES APPROVAL:	**Senator Nye** moved to approve the Minutes of February 13, 2017. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.
S 1120	**Senator Lakey** District 12, stated that this legislation is a result of a situation that arose in Nampa, Idaho. He indicated that Tiffany Hales, the attorney who represented the property owners, would outline the circumstances.

Tiffany Hales, attorney from Bryan Webb Legal, **Ms. Hales** stated that she represented Brian and Renae Prindle from Nampa, Idaho in the situation which resulted in this legislation. The Prindles put their house on the market in the fall of 2015, decided to move in with Renae's parents, and received an offer to sell their house contingent upon the buyer of their house selling her home in California. During this time they drove by often to check on the property. In March of 2016 they found a vehicle in the driveway, children running around and the front door open. A woman named Debbra Smith identified herself to Brian as the renter of the house, stating that she had found the house on Craigslist, paid a man $1,500 for rent, and presented a contract which Brian had never seen before. Brian told her he was the owner of the home and was going to call the police. The police arrived, Debbra produced the contract, and Nampa Police Department (NPD) determined this was a civil matter and would not get involved.

The next day Brian had a discussion with Debbra telling her that the house was for sale, and had a buyer ready to close within 30 days. She agreed to move out two days later. When the Prindles returned two days later, they found that the locks had been changed and they were unable to enter. They were able to enter the house through a sliding door in the back. They found the house dirty, holes in the wall, and the house smelled of marijuana. They also found pipes used for marijuana and a zip lock baggie that appeared to have marijuana residue in it. Debbra returned to the house and found that the Prindles had the locks changed to allow their entrance, and that she could no longer get in. She called NPD. They called the Prindles and required them to give Debbra keys to the home and told them they could not have the utilities turned off.

Ms. Hales told the Prindles that she knew Debbra Smith because she had evicted her approximately 3 days before she began occupancy of the Prindles' property. She indicated to the Prindles that if Debbra had $1,500.00 to give to someone when she "rented" their home, she would have had $1,500.00 to stay in the previous property.

Ms. Hales reviewed the law to determine how to evict a squatter. She determined from her research that there was a hole in Idaho's eviction statute that needs to be fixed in order to protect individuals who find themselves in the position of the Prindles (see attachment 1).

Senator Hagedorn stated that he had a similar problem and the police officers didn't have an issue charging the people with trespass. He asked why the same rules couldn't apply in this situation. **Ms. Hales** indicated that since Debbra presented the contract, the Nampa Police concluded that it was a civil matter to be addressed by the courts.

Senator Foreman asked if anyone determined whether the contract was fraudulent. **Ms. Hales** responded that since the situation was resolved, no judge viewed the contract.

Senator Nye asked what was meant in reference to "treble damages" referenced in the new legislation. **Senator Lakey** responded that the intent was to provide additional protection. If a landlord used this as an opportunity to evict someone more quickly who had a legitimate lease and tried to use the forcible detainer to get them out sooner, it would be brought in bad faith. In that case the renter could be awarded treble damages against the owner for bringing the claim in bad faith.

Senator Lakey stated what the bill proposes. He indicated that it would modify the definition of forcible detainer, taking out the old reference to night time, so it applies to someone who unlawfully enters the residence day or night. If they refuse to leave on demand, and there is no lease agreement in place, this gives the landlord (property owner) the ability to utilize the forcible retainer expedited eviction process. There must still be a complaint filed and all items contained on page two of the legislation must be met. An address of the property must be given. The defendant must be in possession of the premises. They must meet the definition of forcible detainer. There must be no lease or other agreement in place for that individual and that the plaintiff's are entitled to the premises. The court has to schedule a trial within 72 hours, not evict the person within 72 hours. The individual has to be served at least 24 hours prior to the trial setting.

Senator Burgoyne questioned the meaning of "schedule a trial within 72 hours." **Senator Lakey** explained that the intent is that they set the date for the trial within 72 hours (excluding weekends and holidays) of the complaint and summons being filed thus expediting the process.

Senator Lee asked how the courts felt about the process in regard to lead time. **Senator Lakey** stated that they originally started out with a 48 hour time limit and extended it to 72 hours excluding weekends and holidays.

Senator Hagedorn asked why this type of action would not fall under Idaho Code Title 18 Chapter 70? **Senator Lakey** indicated that in this particular case, he believes that when the Nampa Police Department saw the contract she showed them, they were concerned about becoming involved in a civil issue.

Senator Nye asked if this legislation would allow treble damages for intentional infliction of emotional distress. **Senator Lakey** responded that this legislation is talking about actual damages not causes of action.

Senator Davis asked why a property owner whose renter has not paid rent and has made meth on the property has to wait 12 days for a trial but for a squatter it is only 72 hours. **Senator Lakey** stated that there is a more expedited process for making meth and nonpayment of rent or other areas in which the agreement has been violated. Idaho Code § 6-310 is only an action for possession. **Senator Burgoyne** asked if Idaho Code § 6-310 is only an action for possession, then what are the damages? **Senator Lakey** stated that damages would be considered after the person was removed. **Senator Burgoyne** asked if one could be awarded damages under the language of Idaho Code § 6-310. **Senator Lakey** stated that Subsection 5 relates to bad faith action that would be raised by a landlord if there was a landlord/tenant relationship. **Senator Burgoyne** commented that when a statute is amended, there is always the question of the whether the amendment has to own the original statute as well as the amendment.

Wendy Chapman represented the National Association of Residential Property Managers (NARPM) and is the owner of 208 Houses Property Management, LLC. She stated that NARPM is an association designed for real estate professionals who know first-hand the unique challenges of managing single family and small residential properties. NARPM promotes a high standard of business ethics, professionalism and fair housing practices. **Ms. Tanner** testified in support of **S 1120** stating that it would add clarification and protection of the rights and privileges of property owners without infringing on the rights of legal tenants in the State. This bill would allow property managers to assist property owners in reclaiming possession of their property more quickly which would allow them to generate rental income and avoid longer periods of loss (see attachment 2).

Cory Tanner, testified as a board member of NARPM and an individual property manager. He currently has several commercial properties and over 500 residential units under management. **Mr. Tanner** stated that he had dealt with several evictions and in each case the property owner was the loser in the end. He supported this legislation to help reduce the burden carried by property owners and maintain control of their investments.

Senator Davis suggested sending this legislation to the 14th Order for an addition of an emergency clause. **Senator Lakey** stated that there were not any imminent situations so he would prefer a normal effective date on the legislation.

MOTION: **Senator Davis** moved to send **S 1120** to the floor with a do pass recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

S 1125 **Senator Grant Burgoyne**, District 16, stated that this legislation amends Idaho Code § 1-1624. This bill will permit the Idaho Supreme Court to seize taxpayers tax refunds and credits when they have delinquent debts owing to the courts. Debts include fines, court costs, surcharges, penalties, fees, restitution, the cost of indigent defense services and other charges in criminal or civil case judgments or payment agreements. The reason for the bill is that administrative and accounting issues have arisen regarding the agreements signed by convicted criminal defendants for the payments of said costs. Payment agreements typically require monthly payments and court practice has been to seize tax refunds for delinquencies when no payments have been made for two months preceding the seizure decision. Issues have arisen about whether there is a delinquency when the total amount paid equals or exceeds the total amount due to that point in time under the agreement even if the two months most recent have been skipped. While some of the costs of supervision agreements are enforced through tax refund seizures, some such as parole through the Idaho Department of Corrections (IDOC), are not. On page 1 line 29 the reference to civil actions is removed because the courts were not aware of tax refund seizures being used for civil cases, nor does it seem like civil cases would give rise to the "any debts of the courts" language. Beginning on page 1 line 34, the statute is amended to require that payment agreements

enforced by tax refund seizures: 1.) be filed with the court and placed in the court's case file; 2.) be approved by the court; 3.) provide that all payments shall be made to the clerk of the court; 4.) notify taxpayers of payment due dates, the statute's seizure remedy for enforcing payment and the statutory right to object to seizure. Changes are important to assure that the clerk knows what is required to be paid, what is paid, so delinquency can be determined accurately. Changes further assure that the debtor knows of the tax remedy for noncompliance, and that there is a right to object if a mistake is made. Nothing in these changes will require any cost of supervision agreement to be filed with the court or for payments to be made through the court. The IDOC can keep on doing its cost of supervision agreements with its parolees as it chooses to do. Changes mean that in order for a cost of supervision agreement to be enforced through tax refund seizures, the new provisions will not be followed. The IDOC does not enforce their cost of supervision agreements with tax refund seizures. The definition of "delinquent" is changed to make clear that those who skip some monthly payments after previously paying ahead but whose aggregate payments still equal or exceed the total amount of required payments will no longer be regarded as delinquent. The current statute says a debtor can seek a waiver of the tax refund seizure. The waiver says the seizure was valid but the court may forego it anyway. "Waiver" was changed to "objection" to make clear that the only seizures that will be foregone are those which were inappropriate for some reason. There were some issues at the Supreme Court with the transition of ISTARS to Odyssey. The bottom line is that the fiscal impacts are minimal and are not expected to result in increased appropriations at either the State or local level. The amendments were created to provide a more uniform system across the State so the Supreme Court knows when it requests a tax refund seizure that it is appropriate.

Senator Davis asked how this would be done with a credit. **Senator Burgoyne** stated that he wasn't aware of a credit being used. There may be a credit such as a grocery tax credit where a person may not have paid any advance payment on taxes but by filing the return they get a "credit." That could be seized to satisfy the court debt. **Senator Davis** asked about exemptions. **Senator Burgoyne** said that tax exemptions paid over and above what one has paid through the year sounded like a refund.

Michael Henderson, legal counsel with the Idaho Supreme Court, stated that he didn't know the answer to Senator Davis's question.

Senator Lee voiced concern about the consequences of taking out the ability to assess any civil fines in court cases. **Mr. Henderson** stated that the Supreme Court was aware that it was possible to owe in a civil case, but had not seen that actually happen. **Senator Lee** asked for the difference between the proposed language and what is currently called a "court judgment" to be explained. **Mr. Henderson** stated that under the statute as it is currently written, there is no requirement that "court judgments" be in a court case file and the court approval is not required.

Jim Harris, retired prosecutor, stated that he became aware of the problems with this statute when he represented a client who lost a substantial amount of money being seized pursuant to this statute. The Canyon County Clerk determined that the person on probation had been victimized because she had paid substantially more under the contract she made with the probation officer than was due at that time according to the contract. She had paid based on the schedule established by the probation officer. It was determined that there was confusion among county clerks as to how this seizure was supposed to operate. Based on the misinterpretation or misunderstanding of the statute, the county clerk's offices were violating the terms of the contracts based on their interpretation. An Attorney General's opinion was obtained on the proper interpretation and was issued in June or July of 2016.

Senator Lee stated that Chairman Lodge had left and asked for any questions.

Senator Davis, **Mr. Harris**, **Senator Burgoyne**, and **Senator Anthon** had a short discussion about how unpaid taxes may impact this legislation. They determined that advice would need to be obtained from an individual trained in that area.

MOTION: **Senator Anthon** moved to send **S 1125** to the floor with a do pass recommendation. **Senator Davis** seconded the motion. Motion passed by **voice vote**.

ADJOURNED: There being no further buisness, **Senator Lee** adjourned the Committee at 2:44 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Assistant Secretary

My name is Tiffany Hales and I am an attorney in Eagle Idaho. I work for Brian Webb Legal which is located at 839 E. Winding Creek Drive, Suite 102 in Eagle Idaho 83616.

On March 29, 2016, Brian and Renae Prindle walked into my office for a consultation on an eviction matter. This was not unusual, as I handle a lot of eviction cases. There eviction was unusual. In the fall of 2015, they decided to put their house located at 37 S. Westwood in Nampa, Idaho on the market. The Prindles have small children and rather than having to juggle keeping the house clean and prepared for showings with the daily needs of their small children, they elected to move out of the house and in with Renea's parents. They received an offer on their house in December 2015 which was contingent with the buyer of their house selling her house in California. During the time the house was unoccupied and on the market, they would drive by and check on the property every week to 10 days.

On March 12, 2016, the Prindles checked on the Westwood property and everything was fine. They got busy and were not able to check on the property again until March 24, 2016. When they arrived at the property that day they found a vehicle in the driveway, children running around, the front door open. Brian approached the front door and could see furniture had been moved into the house and several individuals inside the house. Brian asked what was going on. A woman who identified herself as Debbra Smith came to the door and Brian explained he was the owner of the house. Debbra Smith said she had rented the house and produced a contract Brian had never seen or signed. Debbra told Brian she found the house on Craig's list and paid a gentleman $1500.00 to rent the house. The contract was signed and the address given for the owner was in Portland. She also indicated she had been living in the house since March 13, 2016.

Knowing this was not his contract, nor had he authorized anyone to contract a rental agreement for the house, Brian told Debbra and the other individuals at the house that he was going to call the police. At the mention of the police, several of the individuals in the house immediately left the house and got into a van that was parked in front of the house and drove away. When the Nampa Police Department arrived, Brian explained that he owned the house and Debbra had no right to be in the house. After Debbra produced the contract NPD determined this was a civil matter and would not become involved. My client was frustrated.

The next day on March 25, 2016, my client went to the house and had a conversation with Debbra. My client explained that Debbra could not live in the house, the house was for sale, and had a buyer ready to close on the house within the next 30 days. Debbra agreed to move out by Sunday March 27, 2016 at 6:00 p.m.

My clients returned to the house on Sunday March 27, 2016 at 6:00 p.m. and found that no one was home. Wanting to determine if Debbra had vacated the property my clients tried to unlock the front door, only to discover that the locks had been changed and my clients, the owners of the house, no longer had access. They went around to the back of the house and discovered a sliding glass door that was unlocked and entered the house. What they found astonished them. The house was dirty, there were holes in the wall, a cat was using a back closet for a litter box and the house smelled of marijuana. They found several pipes that appeared to them to be marijuana pipes, along with a zip lock baggie that appeared to have marijuana residue in the bag. It was clear Debbra had not moved out of the house. Since Debbra had agreed to move out of the house by then, they elected to change the locks. The changed the locks, secured the house and left. Debbra returned to the Westwood property a short time later and discovered she no longer had access and called the Nampa Police Department. NPD called my clients and

told them they could not lock Debbra out of the property and they needed to immediately give a key to Debbra. They were also instructed that they could not turn off the utilities to the property.

So, when these clients arrived in my office, they had a squatter in their property, they were paying utilities for her to live there, she was refusing to leave and damaging their property and her occupancy of the property was threatening to derail their sale of the property.

After they told me their story, I told them I knew Debbra Smith because on March 10, 2016, approximately 3 days before she began occupancy of the Westwood property, I had evicted her from a residence at 148 Shoshone Ave, in Nampa, which was approximately one block from the Westwood property. This confirmed their belief that the she had falsified the story that she found the house on Craig's list and entered into a contract. I told them that if she had $1500.00 to give someone in March 13, 2016, then she would have had $1500.00 to pay her rent and stay in the Shoshone property.

I began reviewing the law to determine how to evict a squatter, Debbra Smith, from the Westwood property.

Idaho Code § 6-302. FORCIBLE DETAINER DEFINED

Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps possession of any real property, whether the same was acquired peacefully or otherwise; or,

2. Who, in the nighttime, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five (5) days, refuses to surrender the same to such former occupant. The occupant of real property, within the meaning of this subdivision, is one who, within five (5) days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Per the code Debbra Smith held the property pursuant to Forcible Detainer. So now that I knew how she was holding the property, I needed to get her out.

§ 6-310. ACTION FOR POSSESSION - COMPLAINT - SUMMONS

In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent, or on the grounds that a landlord has reasonable grounds to believe that any person is, or has been, engaged in the unlawful delivery, production or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, or in the event the tenant is a tenant at sufferance pursuant to subsection (11) of section 45-1506, Idaho Code, it is sufficient to state in the complaint:

(1) A description of the premises with convenient certainty;

(2) That the defendant is in possession of the premises;

(3) That the defendant entered upon the premises, holds the premises, and is in default of the payment of rent or that the landlord has reasonable grounds to believe that any person is, or has been, engaged in the unlawful delivery, production or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant;

(4) That all notices required by law have been served upon the defendant in the required manner or no notice is required because the defendant is a tenant at sufferance pursuant to subsection (11) of section 45-1506, Idaho Code; and

(5) That the plaintiff is entitled to the possession of the premises.

Upon filing the complaint, a summons must be issued, served and returned as in other actions, provided, however, that at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint and the service of the summons,

complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court.

The law, as it is currently written, provides for what is known as an "expedited" eviction if the tenant has failed to pay rent, or is using or manufacturing illegal drugs on the property. My clients had no valid rental agreement with Debbra Smith requiring her to pay rent to them, so they could not file an expedited eviction for non-payment of rent. The statute does not provide for an expedited eviction of a squatter, which meant for my client to evict her for squatting on the property, they had file a traditional law suit, meaning she could continue to remain in possession of the property for 3-6 months depending on the time it would take the lawsuit to wind its way through the legal system.

Since my clients had seen drugs and paraphernalia on the property, we decided to see if we could make an expedited eviction "stick." We went to court on Monday April 11, 2016. My client, Brian, testified about entering the property to determine if she had vacated and finding the marijuana pipes and a baggie with marijuana residue. Brian testified that he had a brother who used marijuana so he was familiar with the odor and the equipment used, such as marijuana pipes. Debbra Smith denied those items were in house and denied she used drugs. This despite multiple arrests and convictions she had for possession of marijuana and paraphernalia, with the most recent arrest on Friday April 8, 2016, two days before the trial. Judge Debra Orr found that because Brian had not taken the marijuana pipe and baggie with the residue to be tested to confirm that the substance was marijuana, she could not find that Debbra Smith was using illegal substances in the house. She did not dismiss, our case but rather gave us the opportunity to file an amended complaint and go the route of a traditional eviction with Debbra Smith remaining in the house. I filed the amended complaint.

This case, as you can imagine, received a significant amount of media coverage. Because of that media coverage and the pressure that coverage was putting on Debbra Smitha and the Nampa Police Department, the Nampa Police Department stepped up to the plate and helped negotiate a solution to this case. My client agreed to pay for three months' worth of storage for Debbra Smith's belongings, and NPD agreed to arrange for her belongings to be moved from the house to a storage unit, and the house was turned back over to my clients. My client's words to me were that he was not happy about paying for Debbra Smith's storage, but three months of her storage was cheaper than my hourly rate. I could not disagree.

I am very happy that my clients got their house back, and what I learned from this experience was there was a "hole" in our eviction statute that needs to be fixed to protect individuals like Brian and Renae Prindle in the future.

I have been working with Todd Lakey to draft this legislation. Senate Bill Number 1120 provides that someone who is in possession of property pursuant to the definition of "Forcible Detainer" can be evicted under section 6-310 which provides for an expedited proceeding. When a complaint is filed, a hearing must be held with 72 hours, excluding weekends and holidays. This will allow property owners such as the Prindles, immediate access to the court system to remove a squatter from the property. Had the Prindles been able to remove Debbra Smith within 72 hours, it would have limited the damage to their property, limited the utility cost to them, and they would not have had to pay for her storage, in addition to avoiding over a month of emotional turmoil that Debbra Smith put them through. This bill provides that if a landlord is acting in bad faith or a landlord/tenant relationship existed, the landlord would be liable for treble damages if they lose in court.

I would submit to the committee that this bill that is necessary to correct an oversight in the eviction process in Idaho, and I would ask that the committee approve this bill and send it to the Senate for a vote on the floor. Thank you.

Does the committee have any questions?

My name is Wendy Chapman. I am here today representing the National Association of Residential Property Managers (NARPM). I serve on the board of the local chapter as the legislative chair. I also serve on the national level as a member of the Governmental Affairs Committee in which we will be sponsoring a day on the hill in Washington this spring. I am a business owner of a property management business operating in the treasure valley under the name of 208 Houses Property Management, LLC.

The NARPM organization is an association designed for real estate professionals who know first-hand the unique challenges of managing single-family and small residential properties. Members of the Association handle all aspects of the management of single family and multi-family properties for property owners. NARPM promotes a high standard of business ethics, professionalism and fair housing practices. The Association also certifies its members in the standards and practices of the residential property management industry and promotes continuing professional education. NARPM has over 4,500 members across the nation with over 60 chapters. The Southwest Idaho Chapter meets monthly to further education of property managers and discuss local challenges facing property managers in the State of Idaho.

I am here today to tell you that the NARPM organization supports this bill. This bill would add substantial clarification and protection of the rights and privileges for property owners without infringing on the rights of legal tenants throughout the state. In the wake of recent abuses by scammers and squatters the drawn out legal process required by a traditional eviction to cure these breaches of ownership rights, have had a detrimental financial impact on property owners. Not only are these owners effected with the expense of eviction proceedings and court costs, they are experiencing vandalism, damage to their properties, and loss of rental income, as well as interference with legitimate real estate contracts which can result in substantial financial losses.

Many (if not all) of the members of our local chapter of NARPM have had experiences or been impacted by scams and attempts to inflict forcible detainer on properties they manage. This type of scamming has become a widespread practice by criminally minded individuals and current legislation makes it difficult to combat these scams. Adding clarity to the law and additional protection for property owners is necessary to protect their rights and empower property owners and managers to reclaim possession more quickly of their property when they have become victim to these scams.

Local property management businesses are also seeing an impact when these unlawful detainers occur. These businesses experience loss in revenues due to uncollected rents which affect their bottom line. This places undue financial burdens on business owners. This bill would allow property managers to assist property owners in reclaiming possession of their property more quickly which will allow them to generating rental income and avoid longer periods of loss.

I ask that this legislation be adopted. It adds needed protection and is in the best interest of the citizens of the State of Idaho.

Thank you for your time and this opportunity to share testimony as a representative of NARPM.

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:30 P.M.
Room WW54
Wednesday, March 08, 2017

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approve minutes of March 1, 2017.	Senator Hagedorn and Senator Nye
RS25367	Regarding designation of Police Officer Training and Standards a criminal justice agency	Victor McCraw, Division Administrator, Peace Officer Training and Standards
RS25394	Regarding enhancing hearing officer impartiality and due process	Senator Grant Burgoyne
S 1124	Regarding Parents and Guardians	Robert Aldredge
H 123	Regarding profiling	Representative Robert Anderst

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, March 08, 2017
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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.
MINUTES APPROVED:	**Senator Hagedorn** moved to approve the minutes of March 1, 2017. **Senator Nye** seconded the motion. The motion passed by **voice vote**.
RS 25367	**Regarding designation of Police Officer Training and Standards as a criminal justice agency**. **Victor McCraw**, Division Administrator, Peace Officer Training and Standards (POST), explained that the purpose of this bill is to allow POST to have access to information from the Federal Bureau of Investigation (FBI) or the Criminal Justice Information System (CJIS). The duties of POST, by statute, are to make sure all applicants for peace officer certification in Idaho meet all requirements of the POST Council. One of those requirements is to be free of any disqualifying criminal history including certain misdemeanor convictions and all felony convictions. He asserted that this is POST's responsibility and the POST Council would like to be able to obtain that information rather than the hiring agencies.
MOTION:	**Senator Lee** moved to send **RS 25367** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
RS 25394	**Regarding enhancing hearing officer impartiality and due process**. **Senator Burgoyne** commented that much of **RS 25394** is changing Idaho Code section references. He advised that this legislation arose from the 2016 Administrator Hearing Officer Interim Committee which identified improvements to enhance hearing officer impartiality and due process. He reported that this legislation updates the Administrative Procedures Act; adopts portions of the Uniform Act on Administrative Procedures with modifications fitting Idaho's needs; and continues current exemptions for the Industrial Commission, Public Utilities Commission, and other agencies having their own alternative statutory hearing processes.

Senator Burgoyne detailed the following specifics of the legislation:

- Amending the definitions of "contested case" and "record", and specifying the requirements for the contested case record (pages 2, 3, and 9);
- Designating hearing officers as "presiding officers" and specifying their qualifications, and the grounds for their disqualification (pages 3, 5, and 11);
- Outlining hearing procedures including referring parties to mediation, conducting hearings by electronic means, and conducting hearings in open meeting;
- Giving agency heads legal, but not evidentiary, review of presiding officer decisions;
- Providing simple discovery tools and disqualification processes (pages 12-13);

- Providing standards and procedures for emergency hearings (pages 9, 10, and 13);
- Modifying the scope of judicial review, and providing limited de novo judicial review in cases of manifest injustice pages 17-20; and
- Providing for indexing and public availability of final orders and other documents.

MOTION: **Senator Lee** moved to send **RS 25394** to print. **Senator Anthon** seconded the motion.

Senator Nye noted he may have a conflict of interest pursuant to Senate Rule 39(H).

The motion carried by **voice vote**.

S 1124 **Regarding parents and guardians.** **Robert Aldridge**, Trust & Estate Professionals of Idaho, explained that **S 1124** amends Idaho Code § 15-5-104, a statute written in 1991 to allow parents being deployed to Desert Storm to delegate their parental powers to someone else. The use of this delegation of powers has expanded, and it avoids formal court proceedings when there is no controversy. **Mr. Aldredge** indicated that members of the Guardianship and Conservatorship Committee have reviewed **S 1124** and he submitted their responses (attachment 1).

Mr. Aldridge indicated that this legislation would split the existing language, which currently provideds only for an immediate delegation of powers, into two parts, by establishing a springing delegation. He explained that a springing delegation provides for the enactment of the delegation of powers to occur as the result of some event. He stated that the original language allowing a guardian to make a delegation was removed. He detailed the changes included in the proposed amendments.

Senator Anthon asked why the delegations of the powers of a guardian are being eliminated in regard to an incapacitated person. **Mr. Aldridge** replied that it is not appropriate for an individual who is subject to court monitoring to delegate that power to someone not reviewed by the court, including undergoing criminal background checks and training. **Senator Anthon** inquired if the new legislation allows for the delegation of powers of a guardian. **Mr. Aldridge** answered that it does not.

Senator Hagedorn asked for clarification regarding the use of the term "co-guardians". **Mr. Aldridge** answered that there are different types of guardians such as a court-appointed guardian, a natural guardian, a guardian ad litem, or a delegated guardian. He defined "guardian" as someone who protects. **Senator Hagedorn** cited page 3, line 20, "If a delegation of powers from parents are made to co-guardians . . . " and asked if those co-guardians are precluded from delegating the powers as indicated in other sections. **Mr. Aldridge** responded that they are precluded, explaining that if a parent delegated powers to grandparents as co-guardians, who later did not want this responsibility, they could not delegate that position to someone else. The delegation would have to be made by the parent.

Senator Lee expressed concern about the springing aspect of this legislature. She commented that there is already a mechanism in law that this type of delegation can be made. She asked why this is needed. **Mr. Aldridge** stated that there is a difference in how delegation is handled between court appointed and non-court appointed guardians. He explained that work on legislation regarding minors is ongoing. He pointed out that children may be left with friends or relatives in the absence of parents, but they would have no authority regarding school and medical needs. The springing delegation allows for clear authority to act in an emergency. He explained that springing delegation is similar to immediate but depends on certain situations that may arise, and it names a specific person to act as guardian in those situations. **Senator Lee** shared concerns regarding the handling of a minor's funds. **Mr. Aldridge** responded that this bill is not a conservatorship; guardians cannot handle funds.

Senator Anthon inquired if this delegation would allow for a challenge by any other interested party, as might occur in the case of incarceration. **Mr. Aldridge** pointed out that the language specifies any interested person can start a formal proceeding under the probate code. In the case of incarceration this could be used. This springing delegation is used when there are no conflicts among interested parties. If there are conflicts, the decision will go to the courts.

Senator Burgoyne requested further information regarding funds being left for access by the guardian, and if the guardian has to have a conservatorship. **Mr. Aldridge** responded that a checking account can be set up with the guardian as a signer on the account. If there is a large amount of money involved, there would be a need for a conservator.

Senator Burgoyne expressed concern about some of the language dealing with a physician making the determination that a parent is not able to adequately care for the minor. He suggested that this language would need to be adjusted if problems arise.

MOTION: **Senator Anthon** moved to hold **S 1124** in committee. **Senator Lee** seconded the motion.

Senator Anthon commented that he was not opposed to the bill, but he has serious concerns about medical doctors making determinations of legal capacity. He felt there needs to be language making clear that nothing in statute limits a judge's authority to make a determination as to legal capacity. **Senator Burgoyne** was also concerned regarding the physician issue.

SUBSTITUTE MOTION: **Senator Hagedorn** made a substitute motion to send **S 1124** to the 14th Order. **Senator Nye** seconded the motion.

Senator Hagedorn believed the bill to have merit, and it clarifies actions to be taken in unforeseeable situations. He felt the language could be revised to alleviate the concerns expressed.

The substitute motion passed by **voice vote**. **Senator Lee** and **Senator Anthon** requested to be recorded as voting no.

S 123 **Regarding profiling**. **Representative Anderst** declared that the motorcycle community has been subject to profiling stops for many years, and they have worked hard to bring this bill to the legislature. He pointed out that the bill: 1.) states that motorcycle profiling is prohibited for purposes of traffic stops, detention, or other actions; and 2.) defines motorcycle profiling as "the arbitrary use of the fact that a person rides a motorcycle or wears motorcycle related paraphernalia as a factor in deciding to stop and question, take enforcement action, arrest or search a person or vehicle." He emphasized that the goal is to ensure that law enforcement relies on conduct as the determination to initiate a stop. **Representative Anderst** described the diverse makeup of the motorcycle community, and discussed the importance of improving the relationship between cyclists and law enforcement.

TESTIMONY: **David Devereaux**, Washington State Counsel of Clubs and National Counsel of Clubs, spoke in favor of **S 123**. He discussed the problems with motorcycle profiling around the nation. He shared instances of motorcycling (attachment 2) and laws passed in other states. He stated that the bill codifies important constitutional principles as well as reducing incidents of profiling, reducing liability issues, reducing financial strain on the victim, reducing incidents of civil liberty violations, and improving the relationship between the motorcycle community and law enforcement.

Jacob Kautz spoke in favor of **S 123**. He pointed out that he is an Idaho native, is a former United States Air Force staff sergeant, and is attending Boise State University (BSU). He detailed an incident that occurred on the BSU campus and continued into downtown Boise when he perceived that he was being profiled by a Boise City Police officer.

Senator Nye asked Mr. Kautz if he was trying to make a statement by wearing leathers. **Mr. Kautz** replied that leathers protect against cold weather and is a form of freedom of speech. He mentioned that wearing leathers lets others in the motorcycle community know who he is.

Representative Anderst reiterated that some language codification needs to take place to clarify this issue.

Senator Foreman referred to his background in the United States Airforce, as a combat veteran, his service in law enforcement, and as a member of the motorcycle committee. He maintained that POST teaches its people to make stops based on reasonable suspicion, not appearance, and he emphasized that law enforcement management would not tolerate profiling. **Senator Foreman** asserted that, although there are isolated instances, there is not a systemic problem and pointed out that it is unnecessary to add laws that say to do what other laws already require.

Representative Anderst responded that the motorcycle community was not implying that all police officers profile, but the practice does exist. He reiterated that they want clarified in statute that profiling would be considered a prohibited activity.

Senator Foreman inquired if the victims of this practice have notified the officers' superiors and file complaints. **Representative Anderst** stated that some have used the chain of command but have not been successful in reducing the incidents of profiling.

Senator Burgoyne asked whether the extent of profiling has been quantified in our State. **Representative Anderst** commented that he does not have that information, but that it is available. Mr. Devereaux distributed a hand out to the Committee (attachment 2). **Senator Burgoyne** commented that the information is a list of incidents that have occurred. **Senator Burgoyne** commented that profiling is wrong, but does exist. He pointed out that there is a mechanism in place for victims to sue the government and those who violate their civil rights. His concern was that this law will give rise to similar legislation from every group that feels it is being profiled. He suggested that if we write such a law, it should apply to everyone.

Senator Hagedorn asked if the Council of Clubs followed up with law enforcement in the incidents listed in attachment 2. **Mr. Devereaux** explained in most cases when there is follow-up, the victim has to go to court, and even when found innocent it is costly to the victim. Complaints have been filed and law enforcement has met with the victims and their counsels, but incidents of profiling have not been reduced.

Senator Lee asked what corresponding actions the motorcycle community would bring to improve the relationship with law enforcement. **Representative Anderst** stated that the motorcyle community is willing to work with law enforcement, and that this legislation is a step.

MOTION: **Senator Foreman** moved to hold **H 123** in committee. The motion failed for lack of a second.

MOTION: **Senator Burgoyne** moved to send **H 123** to the 14th Order for possible amendment. The motion failed for lack of a second.

MOTION: **Senator Lee** moved to send **H 123** to the floor with a **do pass** recommendation. **Senator Agenbroad** seconded the motion.

Senator Agenbroad noted that he rides a Harley and, while not being profiled himself, he has witnessed profiling. He stated that he supports law enforcement, but will be supporting this bill.

Senator Burgoyne commented that he will not support the motion. He believes there are some issues but a bill could have been written that would apply to everyone.

The motion passed by **voice vote**. **Senator Foreman** and **Senator Burgoyne** requested to be recorded as voting no.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:00 p.m.

_____
Chairman Lodge
Chair

_____
Carol Cornwall
Secretary

SB1124- 2017 Legislative Session
Summary of Responses

Email sent by Deena Layne on March 3, 2017:
Attached please find SB 1124 proposed by Bob Aldridge and T.E.P.I. (Trust and Estate Professionals of Idaho, Inc.) regarding changes to I.C. § 15-5-104 Delegation of Powers by Parent or Guardian. Some of you may recall a similar bill from last year (SB1375) which was circulated for comment in early February 2016. I.C. § 15-5-104 has been in place since the early 90s and the drafters are seeking to expand existing statute to allow for a "springing" delegation. In reviewing the comments from last year, many of the comments focused on problems with the existing statute and the concept of delegation. Recognizing that the existing statute has some problems, we are primarily interested in hearing your comments on the proposed changes and the proposal for a "springing" delegation.

Once again, we greatly appreciate your review as well as your comments. Please send your comments to dlayne@idcourts.net by **Monday, March 6, 2017**. Thank you for your assistance.

Responses from Members of the Guardianship and Conservatorship Committee:

RESPONSE (Judge A):

My general impression is that the more contingencies on transfer of parental authority, the more we invite conflict. Perhaps the medical "springing" power is a valuable option to deal with the rare situation where both parents are unable to exercise their parental responsibilities. It seems, however, that the incarceration situation can be handled directly if the need arises.

RESPONSE (Judge B) :

I will review carefully but am confirming that the introductory paragraph 1.a appears to eliminate delegation of authority by a guardian of an incapacitated adult. When I was a successor court appointed GAL for an incapacitated adult, in my audit of the ward's status and the file I found a wholesale delegation of authority from the court appointed guardian to an unlicensed in-home caregiver under this section. The delegation was never filed with the court, and was subject to no court oversight. The guardian also failed to mention this development in his own annual reporting. The guardian was ultimately removed for a number of poor choices, the delegation of his authority being one of the least of them as no physical harm had come to the protected person. So far as I could tell, the delegation was authorized under this section at the time. There may be times when a guardian of an adult does need to make such delegations, but parameters probably need to be established.

Thank you Bob and TEPI for all the continuing good work.

RESPONSE (Judge C):

I'm always nervous when something "springs" to life in an uncertain future, especially when it applies to the changed circumstances in a child's life. And, after all, we are talking about a three year period. Best interests often depends on more than a primary caretaker, and what may work at one point may not be workable at another. Of course, I understand, too, that the delegation can be revoked by the parents at will, a check on unintended consequences.

Apparently, this is becoming quite common according to the Statement of Purpose, with "numerous requests" to add the springing delegation. I am wondering why that is happening. As a parent, I would think you would want to exercise your best judgment about what is best for your children at the time you're are making that decision, not based on some assumed future competence of the presumed springee.

Because I am assuming this has received some "extreme vetting" by TEPI, I don't have huge concerns about the statute. But I do see some potential for mischief, and I am genuinely curious about the presumed need.

Please consider these comments as being from someone who may not even fully understand the issue. Thank you.

EXECUTIVE SUMMARY

Motorcycle Profiling Is A Pervasive Problem In Most States:

The historical pattern of evidence is documented and irrefutable. Individuals and groups of motorcyclists are regularly the victims of selective enforcement from coast-to-coast, even during political and charitable events, based on their appearance, not their conduct. A mass of recently signed Victim Statements prove this pattern persists and is widespread in most states.

Examples:

(01-20-17) Friday night I was pulled over by Boise police on the Boise State campus while riding my Harley Davidson. I pulled over, stood up to obtain my insurance, registration and ID. The officer screamed, yelled and threatened me with his hand on his firearm before ever even approaching me. I was told I was pulled over because of "the way you changed lanes and your speed. " End result: they took several photos of me, my motorcycle and my jacket. I told them I did not approve and do not consent to my photo being taken. I was "let go with a warning." I was then told to keep my hands on the bars and to not move until all officers had left the premises. (There were 3 cop cars and one campus security officer.)

Shortly after (three blocks away) I was followed by another vehicle (license plate: BPD 033) for 13 city blocks. To prove my point of profiling and discrimination, I circled the block three times and was followed and then pulled over after the third trip around the block (13th and Main).

This time I could not take my hands off my bars and the police reached inside my pockets for my license. I was held this time for approximately one hour while the police took additional photos of me, my bike and vest. There were 5 police cars surrounding me and a 6th police car blocked the intersection of 13th and Main. Several witnesses came forward stating there were several officers standing out of my view (behind a vehicle and several behind me) with firearms drawn and pointed at me. My ticket?.....turning into the wrong lane..?? They again told me to not move or even breathe until all officers were out of sight.

(01-26-17) On my way home after closing my business ("Crusin Biker Wear"). Driving westbound on Hwy 19 near Greenleaf. The speed limit is 60. The speed limit signs drops to 45 then 35 in Greenleaf. I was pulled over in Greenleaf. The officer stated I was doing 75 in a 60 to which I firmly disagreed. I absolutely was NOT speeding. He then asked "What name do you go by?" and "How many weapons do you have in your vehicle?" I told him I go by "Bree," and I had no weapons in my vehicle. This is the same vehicle with my business logo on my windows. He went back to his police vehicle and came back stating he "wasn't going to cite me."

2016 As a business owner "Cruisin Biker Wear," and ABATE member, we hold an event at Victors Hogs and Horns every Thursday for motorcyclists socializing. As ABATE we hold several different meetings at that location also. For months, every time there was a biker event or a meeting scheduled at victors, police officers would be sitting out in the parking lot. After events/meetings, members/motorcyclists/friends would go to leave, we were followed, and several times, pulled over for profiling reasons. i.e. "Your licence plate light is too bright," Your licence plate is too dim," "You did not come to a complete stop," "Your blinker was not on long enough," etc. This was always followed by "how much have you had to drink?" and many times with an on the side of the road DUI test which by the way, never amounted to a DUI. It got so bad that some members of the ABATE board, requested to move the meetings as they were tired of the harassment.

One evening as I was leaving after a meeting, I decided to approach them, obtain their business card so I could meet with a supervisor to discuss why we were being profiled and harassed. I slowly approached their vehicles so as not to alarm them sitting in their cars, and they watched me as I did. On that occasion I was in my vehicle which has my business logo on the windows. I stopped approximately 20 feet away from one of the police

vehicles and asked the female officer for her card. Immediately, the male officer jumped out of his car, hand on gun, yelling as he demanded to know why I wanted their business card. I calmly stated my reasons and he told me he didn't have a business card He stated if I wasn't drinking and driving I shouldn't be worried about them sitting in the parking lot and further more, they could sit where ever they wanted to. I calmly stated that I wanted their names so I could have a conversation with a police superior and get this resolved. The female officer finally gave me her card. About 15 minutes later, my husband and I got into our truck to leave, the police vehicles had not moved. The male officer saw us leaving, performed a U-Turn with his tires squealing and followed us for 3 miles. So closely in fact, we could not see his headlights nor the front of his police car. There was a follow up meeting with his supervisor.

(10-15-16) While attending a motorcycle function, we observed several police vehicles (state, federal and county) observing us from down the street for several hours prior to our leaving the event. By the time we (appx. 12 bikes) were leaving the event, it was approximately 10:30 p.m., dark and pouring rain. We were traveling slow due to the rain/road conditions. When we passed the law enforcement vehicles, they ran to the vehicles and proceeded to follow our group. We were on the freeway when all law enforcement vehicles pulled our group over. They did not pull us fully onto the shoulder, they were blocking the right lane of traffic on the freeway, it was pouring rain and put all parties in danger. Another rider, not riding with our group, was coming towards the illegal traffic stop and was waved into the group stop. We were harassed, searched, questioned and ultimately, everyone pulled over was issued a ticket for doing 65 in a 45, including the rider who had not been riding in our group. Not the case due to weather conditions and being on the freeway. We plead Not Guilty the charges and found that Law Enforcement/Prosecuting Attorney then amended their Complaint to state we were at different location when the violation occurred.

NCOM 2015. ABATE of Idaho hosted the yearly regional meeting for the National Coalition of Motorcyclists. This is an event where motorcyclists from western states get together to discuss what is going on politically in their states and support each other with ideas and discussions. Our meetings were held in Boise at the Wyndham Garden Hotel. During the weekend event, Federal, State, County and City law enforcement continually drove through the parking lot, cars were parked for several hours at a time and they were also walking through the hotel monitoring. No biker caused incidents.

September 2014. ABATE of Idaho, Fall Closer event. Our 2-day fundraising event was held on private property at the corner of Black Cat and Chinden. During the early evening, we were informed there was law enforcement sitting outside the gates with binoculars. After observing this, a couple of us approached one of the officers and asked him why he was there. His response was that he was making sure that there wasn't going to be a problem. We explained who we were and asked him to go on his way as he was causing concern to those that were attempting to attend our event. We then returned to the event, and after a phone call to the police station, he finally left. No biker caused incidents.

(04-22-14) Live for 175 fund raising event "Breaking the Cycle of Child Abuse," on the corner of Fairview and Eagle. A group of motorcyclists rode to the event to participate and support this cause. As we walked towards the event, we were approached by two officers, one of which pointed towards one of the riders and asked him to step over towards them as they stated they had some questions to ask him. Another rider spoke up and said any questioning could be done in front of the group. The police officer then asked him why he was at the event. The rider stated he was supporting this event. The officer than asked him who he was affiliated with and his "real" reasons for being there. The rider asked the officer if he does this to everyone that attends fund raisers to which the officer responded, "No, only those that look like unscrupulous characters." The back patch the rider has on is vest is a United States Flag, with an Eagle that says "All Gave Some, Some Gave All." He is retired Air Force and Fire Fighter. No biker caused incidents.

These are just a few examples of many.

AMENDED AGENDA #1

SENATE JUDICIARY & RULES COMMITTEE

1:15 P.M.
Room WW54
Friday, March 10, 2017

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approve minutes of January 30, 2017	Senator Nye and Senator Foreman
MINUTES APPROVAL:	Approve minutes of February 8, 2017	Senator Anthon and Senator Burgoyne
MINUTES APPROVAL:	Approve minutes of March 3, 2017	Senator Nye and Senator Anthon
RS25507	Relating to Garvee	Senator Brackett
RS25508	Transportation Funds	Senator Brackett
Presentation	SOMB Report	Jon Burnam, Chairman, Sexual Offender Management Board
H 201	Relating to a petition for a name change	Michael Henderson, Counsel of the Supreme Court
H 148	Relating to guardians and conservators, and the appointment of temporary guardians	Michael Henderson, Counsel of the Supreme court

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Friday, March 10, 2017
TIME:	1:15 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 of the Senate Judiciary and Rules Committee (Committee) to order at 1:15 p.m.
MINUTES APPROVAL:	**Senator Nye** moved to approve the Minutes of January 30, 2017. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.
	Senator Anthon moved to approve the Minutes of February 8, 2017. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
	Senator Nye moved to approve the Minutes of March 3, 2017. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
RS 25507	**Relating to Garvee. Senator Davis** moved to send **RS 25507** and **RS 25508** to print. **Senator Anthon** seconded the motion.
RS 25508	**Transportation Funds. Senator Brackett** said the SOP for RS 25508 needs to be sent back to committee for a change in the SOP.
VOTE:	The motion was carried by **voice vote** with **Senator Hagedorn** voting no.
PRESENTATION:	**Sexual Offender Management Board (SOMB) Report**. **Jon Burnham**, Chairman, SOMB, stated that SOMB exists under the Idaho Department of Corrections (IDOC), and its aim is to represent the diversity in the different populations that may be impacted by their decisions, and who may have feedback. She stated that 2016 was a year of transition with Kathy Baird, an administrative assistant with much experience, retiring. The position title has since been upgraded to program manager. A different level of expertise and responsibility has been given to the position, and Nancy Volle was hired as the new Program Manager.
	Administrative rules and standards are in place for evaluations, treatment programs, treatment providers, and for polygraphers throughout Idaho. SOMB operation procedures have been completed. The number one goal is to refine the quality assurance process. Another goal is the refinement of the sexual offender registration system for juveniles and adults. Quality assurance is tied to the risk-based registration system. Certified providers are required to have on-going training. Current supervision guidelines pertain to adults; probational supervision guidelines for juveniles have not yet been developed (attachment 1).
DISCUSSION:	**Senator Hagedorn** said the multi level risk based system had not passed previously. How would it be more successful this time? **Mr. Burnham** said the risk assessment pieces are solid and in place. That will impact how the levels get designated.

Chairman Lodge introduced Nancy Volle. **Nancy Volle** stated she was the new Program Manager for SOMB. She graduated in Criminal Justice and has been a Parole & Probation Officer and a Sex Offender Officer for the state of Idaho.

H 201 **Relating to a petition for a name change. Michael Henderson**, Legal Counsel of the Idaho Supreme Court, stated **H 201** was presented last year, but it has been revised to correct some issues. Language was not gender neutral and it appeared to only refer to name changes for minors. One question raised last year concerned emancipated minors. The term "emancipated minor" was not clear. Provisions for who has to be named in the petition of name change are clarified. Notice on the petition must be given at least 30 days before the hearing. This bill amends publication of the notice. Language was changed to allow the court to decide what newspaper would be used for the notice.

Senator Anthon asked why a newspaper of general circulation such as those used in city publications would not be used. **Mr. Henderson** said there is some existing inconsistency in the Idaho Code in this area. **Senator Anthon** said defining newspaper was one of the struggles. Would the court name the newspaper? **Mr. Henderson** said he was unsure how the newspapers were designated under the current statute. Magistrates will probably decide on the newspaper and designate it in the clerk's office**. Senator Anthon** asked if newspaper folks had looked at the bill. **Mr. Henderson** replied yes.

Senator Davis asked for clarification on wording for line 36 on page one. **Mr. Henderson** agreed the word "chapter" would be better than "section". **Senator Davis** asked about clarification of lines 29 and 30 wording. **Mr. Henderson** replied that the term "minor" in the context of lines 29 and 30 does not include an "emancipated minor".

Senator Nye asked about lines 31 and 34 which stated "must cause notice to be served on relevant people." He asked what would happened if the relevant people could not be found. **Mr. Henderson** said the "if known" provisions in 7803 would be applied. **Senator Nye** asked about page 1 line 34 serving grandparents. He wondered why, since grandparents do not have visitation rights, they have to be served? **Mr. Henderson** said it was a policy call whether or not they were included.

MOTION: **Senator Burgoyne** moved to send **H 201** to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

H 148 **Relating to guardians and conservators, and the appointment of temporary guardians**. **Mr. Henderson**, Legal Counsel of the Idaho Supreme Court, said guardians were appointed when they are needed for three types of persons: children; incapacitated persons; and persons with developmental disabilities as defined by law.

This bill permits co-guardians instead of a singular guardian. The authority of those guardians would be clear. Temporary guardian appointment provisions spell out how the appointment will take place, and the authority of the temporary guardian.

If a guardian fails to perform the duties as they should, a temporary guardian can be appointed. These provisions are repeated in regards to incapacitated persons. Temporary guardians for persons with developmental disabilities would be put into statute for the first time.

Court visitors are appointed by the court to act as the eyes and ears of the court in cases involving incapacitated persons. They investigate the nature and cause of the incapacity, what the individuals needs are, and other matters to provide assistance to the court. The proposed changes will take provisions out of statute regarding court visitors and place them in court rules. The proposed rule would state the court visitor must have a master's level degree in psychology, social work, or counseling. Those requirements can be waived if the visitor has a bachelor degree in one of the above disciplines.

Evaluation Committees are teams of three people who have technical training and experience in the area of developmental disability. They provide reports to the court on the impairment of the individual, the individual's needs, suitability of the person's proposed guardian, and recommendations on the type of guardianship that may be required. This bill proposes that the details of the reports be placed in rule, rather than statute. They can be adjusted then as needed to meet the needs of the courts.

DISCUSSION: **Senator Anthon** asked about a request for conservatorship regarding an incapacitated person. Was this included in the statute? **Judge Chris Beiter**, Magistrate Judge in Ada County, stated there was a provision for temporary conservatorship already in the statute. **Senator Anthon** said in a rural community, it can be a struggle to find someone with an appropriate degree. Some of the best court visitors were experienced nurses.

Judge Beiter said he would take that into consideration. **Senator Nye** asked how a matter was handled where co-guardians disagree. **Judge Beiter** said the court will have to determine individual situations.

Senator Nye asked if section 1 of this bill applied to guardians ad litem. **Judge Beiter** replied that the guardian ad litem does not have to be an attorney. Section 1 does not apply. **Senator Lee** asked about a situation where two grandmothers came to court. Would a temporary guardianship not be assigned because there are two people who have the ability or authority and willingness to act? **Judge Beiter** stated the court would have to decide between the competing petitions. **Senator Lee** wanted to make sure it did not preclude the ability to appoint a temporary because the language says "there is no other." **Senator Burgoyne** said the bill stated that no person other than the guardian appears to have the ability to act. If a grandparent did have the authority to act, the requirement has not been met to appoint a guardian.

Senator Anthon asked if the court would consider the petition if one grandmother held delegation, and the other grandmother wanted guardianship? **Judge Beiter** said the court would not have the authority to act while a case for guardianship is pending.

MOTION: **Senator Nye** moved to send **H 148** to the floor with a do pass. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:25 p.m.

_____
Senator Lodge
Chair

_____
Carol Cornwall
Secretary

_____
Audrey Hays
Assistant Secretary

3/10/2017

Attachment 1

IDAHO SEXUAL OFFENDER MANAGEMENT BOARD

BOARD MEMBERS:

Jon Burnham, LCSW
Chairman
Idaho Dept. of Juvenile Corrections

Michael Johnston, PhD
Vice-Chair
Adult Sexual Offenders

Jeffrey Betts, LCPC, LMFT
Juvenile Sexual Offenders

Paula Garay, LMFT
Cultural Diversity

Moira Lynch
Idaho Dept. of Correction

Jean Fisher
Deputy Ada County Prosecuting Attorney

Kimberly Simmons
Executive Director Public Defense Commission

Matt Thomas
Washington County Sheriff

Erwin Sonnenberg
Public Member

William Crawford
PCSOT Polygraph

Christina Iverson
Idaho Supreme Court

BRIEF SHEET 2017

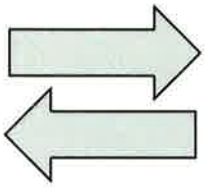
WE ARE

The Sexual Offender Management Board (SOMB) was formed by the Idaho Legislature in 2011 to develop, advance and oversee statewide sexual offender management policies. It is an independent 11-member policy board administratively based within the Idaho Department of Correction, but functions separately from IDOC.

Idaho Sexual Offender Management Board

Standards and Guidelines for Adult Sexual Offender Management Practices

Edition 2013
Revised 11/2013



Year of Transition

- Retirement of Kathy Baird (our rock)
- Upgraded position– sustainability of board
- New Program Manager– Nancy Volle
  - New OS2– Aileen Lucas

ACCOMPLISHED

✓ Administrative rules and standards in place for evaulations , treatment programs, polygraphs

✓ Certification process for evaluators, treatment providers, polygraph examiners

✓ Board operation procedures

IN DEVELOPMENT

❑ Refine Quality Assurance processes

❑ Multi-level risk-based sexual offender registration systems for juveniles and adults to:
- ◊ Enhance public safety by accurately identifying and assessing offenders' risk of sexual re-offense
- ◊ Assist in focusing law enforcement and community supervision resources on higher risk offenders
- ◊ Provide incentives for offenders' prosocial behavior

❑ On-going continuing education program for community providers who work with sexual offenders

❑ Juvenile community supervision guidelines/ recommendations

"Any displayed, physical or unlawful solicitation for sexual conduct with a person who is unwilling or unable to give legal consent is an act of sexual violence."

SOMB
c/o ID Department of Correction
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AMENDED AGENDA #1

SENATE JUDICIARY & RULES COMMITTEE

1:00 P.M.
Room WW54
Monday, March 13, 2017

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Regarding foster care providers	Rakesh Mohan, Director, Office of Performance Evaluations
HCR 19	Regarding a concurrent resolution stating findings of the legislature and authorizing the appointment of a committee to undertake and complete a study of the foster care system in Idaho.	Senator Abby Lee
H 146	Regarding sexual assault evidence	Representative Melissa Wintrow
PRESENTATION:	Idaho Department of Correction Report	Henry Atencio, Director, Idaho Department of Correction

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 13, 2017

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye

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: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:02 p.m.

PRESENTATION: **Regarding foster care providers**. **Rakesh Mohan**, Director, Office of Performance Evaluations (OPE), thanked the foster parents and the social workers as they are the heart and soul of the child welfare program. This report (attachment 1) discusses how to build a bridge between those two groups, and it was completed with help from the Department of Health and Welfare (Department).

Mr. Mohan identified the three main areas this report addresses as solving complex problems using a systems approach, establishing preventive measures, and establishing a legislative oversight committee to provide accountability and access to all stakeholders.

Lance McCleve, OPE, explained that he would be sharing the key findings from the Child Welfare System report. He mentioned that there are important issues leading to inconsistency in program delivery, lack of program fidelity, and a lack of accountability. He identified the issues as:

- a shortage of foster parents, causing decisions to be made according to availability rather than what is best for the child;
- excessive work loads compromising performance;
- cultural compromise, whereby workers cannot complete their work consistently with high quality, erodes accountability and produces workers always in a state of crisis.

Mr. McCleve pointed out that taking a systems approach requires that the many stakeholders involved in child welfare come together on every case to provide a positive outcome for the child. The Department is the most visible part of the system, but there are many other participants who are involved that can have negative influences on the operation of the child welfare system. He reported that after extensive study, the OPE recommends the formation of a system-wide oversight entity, preferably from the legislature, to ensure ongoing accountability, visibility, and accessibility for all child welfare partners and stakeholders (attachment 1).

PASSED THE GAVEL: Chairman Lodge passed the gavel to Vice Chairman Lee.

Senator Hagedorn asked if there were any metrics for measurement of the process. **Mr. McCleve** answered that there are different aspects of accountability for which metrics have been established. He pointed out the child and family review process which considers 14 different conditions, resulting in the development of an improvement plan.

Senator Nye asked for the financial amount needed to correct the problem. **Mr. McCleve** explained that the most costly concern deals with the workload issues, and providing the staff needed. Other costs can be supported within the existing budget.

Senator Burgoyne inquired concerning the social workers having 28-38 percent more cases than they can effectively serve. He surmised that a greater proportion of the problem and of the money may be in that area. **Mr. McCleve** replied that all of the issues are interrelated. The workload problem is an underlying issue perpetuating other issues; resolving that alone will not solve everything. He advised that the workload issue should be one of the first problems to address.

Senator Burgoyne stated there is some legislation to improve the stipends for foster parents. He requested Mr. McCleve elaborate on the main issues surrounding foster parents. **Mr. McCleve** indicated that the significance of the shortage of foster parents varies around the State. Recruiting and training foster parents has always been difficult, and the problem is getting worse. He observed that there are some things Idaho can fix such as communication, responding promptly to concerns, and support. **Mr. McCleve** expressed concern that something else is happening societally that is compelling the reduction in the foster parent pool. **Senator Burgoyne** viewed the societal issue as the most important issue. He felt that the growing expenses facing today's young families would impact the number of people in a position to be foster parents.

PASSED THE GAVEL: Vice Chairman Lee passed the gavel to Senator Hagedorn.

HCR 19 **Regarding a concurrent resolution stating findings of the legislature and authorizing the appointment of a committee to undertake and complete a study of the foster care system in Idaho**. **Senator Lee** explained that **HCR 19** is a request to continue the interim committee for foster care. **Senator Lee** declared that the interim committee has brought the Department, the courts, the foster families, and the parents together in a collaborative way. She noted that the report presented by OPE is just a summary, and she emphasized the need for an oversight committee. Issues the interim committee needs to continue analyzing include what it means to be in the best interest of the child, and what is examined in considering placement.

MOTION: **Senator Anthon** moved to send **HCR 19** to the floor with a **do pass** resolution. **Senator Agenbroad** seconded the motion.

Senator Nye asked if this interim committee has a sunset, and why it is being paid for by the Legislature. He also asked about non-legislative members receiving expenses other than their per diem. **Senator Lee** commented that the reference to non-legislative members is standard language and allows for experts to be consulted. The appropriation is also standard for interim committees. She pointed out that this request is just for the next interim, not ongoing.

Senator Burgoyne observed that like the criminal justice system, the child welfare system deals with intractable problems. He pointed out that although the State has made progress, crime will never go away, nor will foster children and the need for foster parents. He perceived the oversight function to be a viable possibility.

Senator Hagedorn declared that it is critical to involve all stakeholders in bringing about change, and oversight is an important aspect of the challenge.

The motion passed by **voice vote**.

PASSED THE GAVEL: Senator Hagedorn passed the gavel back to Vice Chairman Lee.

H 146 **Regarding sexual assault evidence**. **Representative Melissa Winthrow** stated that this bill is about preservation of sexual assault evidence. She introduced Matthew Gamette, Assistant Director, Idaho State Police (ISP) Forensic Services Labs (labs). **Mr. Gamette** presented the audit explaining the location of previously unsubmitted sexual assault kits. These untested kits had been on law enforcement shelves until 2014 when efforts were focused on finding and testing these kits. Submission of the kits from the various agencies was voluntary. **Mr. Gamette** advised that agencies were helpful and reviewed the kits, submitting those they deemed appropriate. Idaho Code § 67-2919 became effective July 1, 2016 and required the Labs to provide a one-time report to the Legislature of all untested sexual assault evidence collection kits existing in Idaho. Law enforcement agencies were actively engaged in completing this task, and all agencies are now complying with the required process in handling the kits. **Mr. Gamette** discussed the process used in examining the kits, and the kit-tracking software that allows the labs to know where various kits are at any given time. He shared data collected from the audit (attachment 2).

Senator Anthon asked if there is a centralized data base that has DNA evidence that can be cross checked. **Mr. Gamette** replied that there is a DNA database for the State of Idaho and it feeds into the national DNA database.

Senator Hagedorn asked how Mr. Gamette determined the number of kits needed. **Mr. Gamette** indicated the number was determined by the budget.

Representative Wintrow explained that the information presented by Mr. Gamette was the result of the passage of Idaho Code § 67-2919 last year. **H 146** takes the use of the kits further by dealing with the preservation of the evidence. If the evidence is not preserved, perpetrators are less likely to be held accountable, victims already traumatized may incur further emotional distress by perceiving the system as having forgotten them, and someone who is falsely charged may be incarcerated. **Representative Wintrow** mentioned that some victims do not come forward for several years or the perpetrator is not known at the time of the crime, so it is important to preserve this evidence. She informed the Committee that Idaho is one of seven states in the country that have no law establishing standards for preserving evidence. She emphasized that this legislation improves victim trust, helps provide consistency for law enforcement, and may help exonerate someone falsely charged. **Representative Wintrow** then identified the changes in the bill.

Craig Kingsbury, Chief, Twin Falls Police Department, and Vice President of the Idaho State Police Association (ISPA), outlined his background in law enforcement and in dealing with sexual assault cases. **Chief Kingsbury** indicated the approval of the ISPA for law enforcement being the entity to contact victims rather than the prosecutors, as well as the retention rate for the evidence.

Senator Hagedorn asked about the consolidation of storage facilities. **Chief Kingsbury** replied that storage consolidation has not been considered. The law enforcement agency handling the case stores the evidence so the agency and the prosecutor have access to it.

TESTIMONY: Testimony in support of the bill was offered by

- Sheriff Kieran Donahue, Canyon County Sheriff's Department and the Idaho Sheriffs Association;
- Linda Anderson, AAUW of Idaho (attachment 3);
- Ilse Knecht, Joyful Heart Foundation (attachment 4); and
- Jennifer Landhuis, Idaho Coalition Against Sexual & Domestic Violence (attachment 5).

MOTION: **Senator Anthon** moved to send **H 146** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion passed by **voice vote**.

PRESENTATION: **Vice Chairman Lee** announced that the Idaho Department of Correction Report will be rescheduled.

ADJOURNED: There being no further business at this time, **Vice Chairman Lee** adjourned the meeting at 2:00 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

Attachment 1

Child Welfare System

Report highlights **February 2017**

Gaps in placement services, program capacity, organizational culture, and system-level oversight prevent the state's child welfare system from performing at the high level of expectation set through policy making and program design processes.

Findings

A worsening shortage (8% decrease between 2014 and 2016) of foster parents threatens the fidelity of the state's child welfare system.

> "There is a sense of anxiety that comes over you because you have to find someone to take [the children]. —Social worker

Compromised performance and a persistent expectation gap are the effects of excessive workloads.

> "I believe that most health and welfare workers want to do a good job and are good people. I also believe that...because they are overwhelmed, they are only capable of doing an average job. I'd give them a grade of "C" if I were a teacher. But there is ample room for them to be improved. —Judge

Additional staff are likely necessary to improve workloads, but alone, adding staff will not be sufficient to address workload challenges. Workload should be addressed by examining processes, expectations, documentation, technology, and other requirements for opportunities to improve efficiency.

> "Because of resource constraints, social workers have to settle for C-grade work. The problem is that there is an expectation for A-grade results. —Chief of social work

The belief that workers cannot consistently meet requirements and quality expectations has led to a culture of compromise in which poor performance is explainable, excusable, and expected; a condition that critically undermines meaningful accountability.

Addressing complex, entrenched problems of child welfare requires a systems approach with ongoing system-level oversight.

Legislative standing committees dedicated to child welfare, children, or families have been established in many other states, any one of those states could function as a model for Idaho.

We estimate social workers are carrying on average **28–38%** more cases than what program managers, supervisors, and social workers believe social workers can carry while still serving every case effectively.

Organizational culture is undercut by a constant feeling of crisis. Social workers described a detrimental cycle of priority and compromise.

Despite collaboration and multiple forms of accountability, Idaho's child welfare system lacks system-wide accountability and oversight.

Recommendation

We recommend the formation of a formal, system-wide oversight entity with authority to ensure ongoing accountability, visibility, and accessibility for all child welfare partners and stakeholders.

Office of Performance Evaluations ope Idaho Legislature

View the report: www.legislature.idaho.gov/ope/

Attachment 2

Idaho State Police

Service Since 1939

Colonel Ralph W. Powell
Director

C.L. "Butch" Otter
Governor

To: Idaho Legislature, Idaho Prosecutors, and Idaho Law Enforcement Agencies

From: Matthew Gamette, ISP Forensic Services Laboratory System Director

Subject: Idaho Sexual Assault Kit Survey 2016

Date: December 21, 2016

Idaho Code 67-2919 became effective on July 1, 2016 requiring that Idaho State Police Forensic Services (ISPFS) provide a one-time report to the Idaho Legislature of all untested sexual assault evidence collection kits existing in Idaho. This one-time report was due on or before 12/28/2016 and ISPFS completed and posted this data on the ISPFS website on 12/21/2016. We want to thank every law enforcement agency in Idaho for completing this audit and the thorough approach each agency took to address this issue. Without exception, Idaho law enforcement agencies have proactively engaged to solve this problem and by all indications are now complying with the new state statute for determining when and how kits need to be submitted to ISPFS for testing. The data from each agency has been reviewed by the appropriate county prosecutor and the prosecutorial review process will be maintained from this point forward.

In addition, ISPFS is required to provide a legislative report on sexual assault kits in Idaho on or before January 20th (and every year thereafter). The 2017 report (for calendar year 2016 data) is also now available on the ISPFS website.

Further, ISPFS is required to report how many sexual assault kits are currently in the laboratory that have been in the laboratory more than 90 days. That number today (12/21/2016) is 36 kits. This does not include the 541 unsubmitted kits identified in the 2016 state legislative survey.

ISPFS has been very proactive on this issue for several years. Our first request for law enforcement agencies to address this issue was in June 2014. In September 2014 ISPFS started working with Idaho agencies to send kits to the FBI laboratory and also started to work many of these cases in the ISPFS laboratory. Since September 2014, the FBI laboratory has worked 246 previously unsubmitted sexual assault kits from Idaho. Since September 2014 the ISPFS lab has worked approximately 336 sexual assault kits. ISPFS has been working with the eight law enforcement agencies in Idaho that have the largest numbers of unsubmitted kits to get assistance from the FBI laboratory. We anticipate that over the next year the FBI laboratory will work at least 240 of the 541 unsubmitted kits that remain in Idaho. ISPFS will begin to work with law enforcement agencies in Idaho in January 2017 to bring in the additional 301 kits over time until the project is completed. ISPFS will do everything we can possibly do to address these additional kits while not negatively impacting the other DNA case submissions needed for current court cases. Improvements to methods and additional staffing will help address this critical need and we will continue to work with the Governor and Idaho Legislature to evaluate appropriate staffing levels in the DNA unit of the laboratory. We appreciate the efforts of the executive, judicial, and legislative branches of government in Idaho for their support of the ISPFS laboratory. It makes a huge difference in what we can accomplish!

The Idaho Sexual Assault Kit Tracking System (IKTS) has been completed and training has commenced. Hospitals, clinics, law enforcement agencies, and prosecutor's offices will be trained on the web-based software in January and February of 2017. This software will allow ISPFS to track kits from distribution all the way through the collection, testing, and retention process. ISPFS will be contacting customers soon regarding training opportunities and implementation.

Totals for All Data

Total # of Agencies	116
Total # of Agencies That Did Not Participate in Audit	0
Total # of Kits in Agency Possession	2538
Total # of Tested Kits	1422
Total # of Completed Tests	1203
Total # of In-Progress Tests	219
Total # of Untested Kits	1116
Total # of Anonymous or Unreported Kits	47
Total # of Kits Determined No Crime Was Committed	191
Total # of Kits No Longer Being Investigated as Crimes	271
Total # of Kits Where Victim Expressly Declined Testing	66
Total # of Kits Still Required to Be Submitted for Testing	541

Additional Kit Data

Number of Sexual Assault Kits Purchased by ISPFS in 2016	512	*Not all kits purchased in one fiscal year are distributed in the same fiscal year
Number of Sexual Assault Kits Distributed by ISPFS in 2016	271	
Number of Sexual Assault Kits Tested by ISPFS in 2016	126	
Number of Sexual Assault Kits With Analysis Pending in 2016	77	
Number of DNA Database Hits from Sexual Assault Cases in 2016	Data not yet available due to limited software capabilities. Data will be available for 2017 on the report due January 2018.	*Kit tracking software has not been implemented in Idaho yet

Testimony in Support of H 146

Chairman Lodge and Committee Members:

My name is Linda Anderson. I am testifying in support of H 146 on behalf of the American Association of University Women of Idaho. I currently serve as public policy chair of the AAUW Boise Area Branch.

In 2016, the Idaho Legislature passed a bill that was a critical step toward rape-kit-processing reform. You were tremendously supportive of that measure. This bill goes further, providing assistance to local jurisdictions to implement a more comprehensive survivor-centered approach. H 146 will ensure safer Idaho communities and create a path to justice and healing for survivors of sexual assault.

AAUW believes that the policies set forth in this proposed legislation are in the best interest of survivors. They encourage consistency in the retention and preservation of evidence and eliminate some of the

discretionary decision-making that has governed the handling of rape kits in our state for so long. In addition, ensuring that indigent victims of sexual assault are not denied medical examinations because of their inability to pay is a necessary and humane thing to do.

AAUW will continue to advocate for policies that are in the best interest of survivors of sexual assault. We support the committed legislators and stakeholders invested in this bill. Your support of H 146 will create tangible change in a murky and often neglected part of the justice system.

Thank you for the opportunity to speak to you.

Linda Anderson

323 W. Jefferson St. #509

Boise, ID 83702

Attachment 4

32 West 22nd Street, 4th Floor
New York, New York 10010
(212) 475-2026
joyfulheartfoundation.org

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Valli Kalei Kanuha, Ph.D.

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Noelle Wolf

Maile M. Zambuto
Chief Executive Officer

March 13, 2017

TO: Senator Patti Anne Lodge, Chair
Senator Abby Lee, Vice Chair
Members of the Senate Judiciary and Rules Committee

FROM: Ilse Knecht
Director, Policy and Advocacy
Joyful Heart Foundation

RE: Testimony in Support, H.B. 146

The Joyful Heart Foundation submits this testimony in strong support of House Bill 146, which would increase access to medical forensic exams, strengthen victim notification rights, and establish forensic evidence retention policies.

Joyful Heart Foundation's mission is to transform society's response to sexual assault, domestic violence, and child abuse, support survivors' healing, and end this violence forever. Since 2010, Joyful Heart has made the elimination of the national rape kit backlog our top advocacy priority, and we work directly with survivors, stakeholders, and jurisdictions to achieve this goal. Our staff, consultants, and partners have decades of expertise that allow us to be at the forefront of rape kit reform efforts. This has afforded us the unique opportunity to support the development and implementation of best policies and practices to address the rape kit backlog in jurisdictions nationwide, including; Charlotte, NC; Cleveland, OH; Detroit, MI; Fayetteville, NC; Las Vegas, NV; Memphis, TN; Portland, OR; and Virginia Beach, VA; among others. We have been instrumental in passing state-level rape kit reform legislation in Florida, Georgia, Hawai'i, Iowa, Kentucky, Minnesota, and New York, and are working directly to support rape kit reform legislation in 15 states in the 2017 legislative session.

Given Joyful Heart's legislative record and expertise, we are pleased to submit this testimony in support of H.B. 146.

Idaho began taking steps to end the backlog of untested sexual assault evidence kits last year by enacting legislation to require the state crime lab to conduct an annual audit of untested kits. In December 2016, the Idaho State Police released its first report, finding that statewide 1,116 kits remain untested. Each one of these kits represents a survivor who has consented to the invasive and lengthy evidence collection examination after experiencing a significant and life-changing trauma. Most research and clinical reports regarding survivors and rape evidence exams find that survivors usually consent to this exhausting evidence-gathering procedure because they hope, believe, and expect that the evidence will be tested and that their offenders will be brought to justice. The public expects the same.

They are right to think so. When jurisdictions test every kit, they solve crimes, bring answers and a path to justice for survivors, take criminals off the streets, increase public safety, and exonerate the innocent. We commend the legislature for moving forward with components of comprehensive rape kit reform to eliminate the backlog and for allocating $222,300 in new funding in 2016 to support the Idaho State Police crime lab.

DNA technology is a powerful tool to help law enforcement professionals solve and prevent crime, but first, it must be collected. The option to have a rape kit must be must be made available for every survivor who chooses it. Further, inability to pay should never be a barrier to an examination that could yield probative DNA evidence critical to apprehending the offender. Unfortunately, access to medical forensic exams is limited in many areas across the country. H.B. 146 would increase access to these exams by requiring all entities performing medical forensic exams to offer rape kit exams to all survivors regardless of ability to pay.

Once a rape kit is collected, most survivors are never contacted about the status of their rape kit. Our 2016 research in victim notification found that for survivors who want to know about their case, not having access to such information can severely hamper recovery. Survivors in our study strongly asserted that information about their case "belongs" to them and limiting access to information is "unacceptable and misguided." As one advocate asserted, "everyone should have access to information about their life. If sometimes an advocate or law enforcement picks or chooses who is capable of receiving news, it becomes infantilizing, maternalistic, patronizing. We are assuming we have the power to choose who is fragile and who is resilient, when most people are both." Survivor access to critical information about the status of their kits can help counter the loss of self-determination and control at the core of the sexual assault experience.

H.B. 146 affirms that survivors have a choice about whether, how, and when to receive such information. This legislation would strengthen victim notification rights by requiring law enforcement officials to notify survivors, upon request, when there is a change in the status of their case or when their case is reopened. The law would also require that survivors be notified no later than 60 days before the destruction of their kit, giving survivors the right to petition a court if they chose to preserve their kits for a longer period. Such provisions ensure Idaho's efforts are survivor-focused.

The law should also clearly mandate the length of time for which sexual assault kits must be retained. Without such statutes, discretion exists over when to destroy the kits. This is even more true with states like Idaho that do not have a statute of limitation on rape crimes or other possible guidance for the destruction of evidence. Because of this, local law enforcement agencies across the state lack uniform, standard guidance on when to destroy rape kits. H.B. 146 would establish statewide evidence retention policies, including 55 years from the date of the examination for felony cases. These provisions remove discretion over how long rape kits will be retained and standardize the length of time a kit will be held.

We thank Representative Melissa Wintrow and the esteemed members of the Senate Judiciary and Rules Committee for bringing this bill up for consideration today. H.B. 146 demonstrates Idaho's continued commitment to bringing a path to justice and healing for survivors and to taking dangerous offenders off the streets. We look forward to continue supporting legislative reforms in Idaho.

March 6, 2017

Chairman Lodge
Senate Judiciary & Rules Committee

RE: H146

Dear Chairman Lodge,

The Idaho Coalition enthusiastically supports H146. Across the nation, we know that 1 out of every 6 women has been the victim of an attempted or completed rape in her lifetime. About 3% of men, or 1 in 33 men, have also experienced and attempted or completed rape in their lifetime. Sixty-six percent of these victims are between the ages of 12-17.

Of the thousands of rapes that occur in the United States, an estimated 30% are reported to law enforcement. Victims choose not to report for numerous reasons, unfortunately the most prevalent reason is because they fear society and the criminal justice system will not believe them. In our society today, we are quick to blame victims and slow to hold offenders accountable. We also know victims of sexual assault experience an immense amount of trauma. Research shows that victims of sexual assault experience the same level of PTSP or higher levels of PTSD as combat veterans.

H146 takes into account the immense amount of trauma and victimization experienced by a rape survivor. When a victim reports a sexual assault, forensic DNA kits or "rape kits" are collected at a medical facility or another entity, typically by trained Sexual Assault Nurse Examiners. The grueling process of evidence collection lasts 4-6 hours and is extremely traumatizing for victims. It is essential that the evidence collected is preserved accordingly and not destroyed without notification to a victim.

The time frames that have been added to this bill take into account the trauma that victims experience. It allows for notification to be given to victims when their rape kit is going to be destroyed. It sets parameters for kits collected anonymously to be kept for 55 years before they are destroyed. This 55 year timeframe takes into account those situations where victims initially do not feel safe or able to submit the kit for testing and allows for them to come forward at some time in the future to go forward with the case. In cases where law enforcement believes no crime has been committed, the kit will be held for 10 years. Although we have made significant progress in our understanding and investigation of sexual assault, this 10 year time period allows for the chance that new evidence may come to light in the case.

From a victim advocacy standpoint, H146 allows victims of sexual assault the respect and notification they so justly deserve. As someone who has dedicated the last 20 years providing advocacy for victims of sexual assault, I was proud to be a part of this committee and the Idaho Coalition enthusiastically supports this bill. We encourage you to pass H146.

Sincerely,

Jennifer Landhuis
Director of Social Change

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AGENDA

SENATE JUDICIARY & RULES COMMITTEE

1:00 P.M.
WW 54
Wednesday, March 15, 2017

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approve minutes of February 1, 2017.	Senator Nye and Senator Agenbroad
MINUTES APPROVAL:	Approve minutes of February 20, 2017	Senator Burgoyne and Senator Anthon
MINUTES APPROVAL:	Approve minutes of February 22, 1027	Senator Agenbroad and Senator Burgoyne
RS25548	Relating to transportation	Senator Brackett
S 1154	Relating to obtaining and retaining confidential criminal justice information	Victor McCraw, Division Administrator, Peace Officer Standards and Training
H 202	Relating to civil forfeitures	Senator Burgoyne

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 15, 2017

TIME: 1:00 P.M.

PLACE: WW 54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye

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 of the Senate Judiciary and Rules Committee to order at 1:22 p.m.

Chairman Lodge announced that the agenda will be taken in a different order than printed due to conflicting committee appearances by some of the presenters.

H 202 **Relating to civil forfeitures**. **Senator Grant Burgoyne** requested that **H 202** be sent to the 14th Order for amendment. He emphasized that the amendments have been agreed upon by the following stakeholders:

- Idaho Peace Officers Standards and Training;
- State Controller;
- American Civil Liberties Union;
- Idaho Sheriff's Association;
- Idaho State Police;
- Idaho Freedom Foundation; and
- Idaho Association of Criminal Defense Lawyers.

Senator Burgoyne reviewed the history of the civil forfeiture law, originally enacted in the 1960s. He mentioned that although surrounding states have updated their civil forfeiture laws, Idaho has not done so. He stated that **H 202** would update the law as appropriate for Idaho. **Senator Burgoyne** then explained the changes covered in **H 202** and possible amendments to address prior points of opposition. He reminded the Committee that there had been concerns expressed by some of the stakeholders, but that those issues have been resolved and consensus has been reached by the interested parties.

TESTIMONY: The following gave testimony supporting the bill:

- Carlyn Ward, Idaho Freedom Foundation (attachment 1);
- Elisa Massoth, President, Idaho Association of Criminal Defense Lawyers;
- Kathy Griesmyer, American Civil Liberties Union (attachment 2); and
- Michael Kane, Idaho Sheriff's Association, also representing the Idaho State Police and the Idaho Chiefs of Police Association.

The testimony indicated agreement with the amendments and the withdrawal of previous opposition.

There was no testimony in opposition to the bill.

MOTION: **Senator Davis** moved to send **H 202** to the **14th Order** for amendment. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

S 1154 **Relating to obtaining and retaining confidential criminal justice information.** **Victor McCraw**, Division Administrator, Peace Officer Standards and Training (POST), stated the POST Council (Council) has a statutory responsibility to ensure that all individuals certified as police officers within the State meet all requirements of the Council, including to be free of any disqualifying misdemeanors or any felonies. **S 1154** will give the ability to check or recheck criminal histories being run on police applicants to ensure they meet the minimum requirements.

Senator Davis moved to send **S 1154** to the floor with a **do pass** recommendation. **Senator Foreman** seconded the motion. The motion passed by **voice vote**.

MINUTES APPROVAL: **Approve minutes of February 1, 2017.** **Senator Nye** moved to approve the minutes of February 1, 2017. **Senator Agenbroad** seconded the motion. The motion passed by **voice vote**.

Approve minutes of February 20, 2017. **Senator Burgoyne** moved to approve the minutes of February 20, 2017. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

Approve minutes of February 22, 2017. **Senator Agenbroad** moved to approve the minutes of February 22, 2017. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

Chairman Lodge noted that Senator Brackett had not arrived to introduce **RS 25548**, so his legislation will be considered at a later time.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 1:43 p.m.

_____

Chairman Lodge
Chair

_____

Carol Cornwall
Secretary

Carol Cornwall

From: Carlyn Ward [carlyn.ward@gmail.com]
Sent: Wednesday, March 15, 2017 10:50 AM
To: Carol Cornwall; Representative Ilana Rubel
Subject: HB 202 Testimony

Chairwoman Lodge, members of the Committee, my name is Carly Ward and I served as the lead researcher to obtain civil asset forfeiture data in Idaho through the last few months.
I am a student at Concordia University School of Law, and was asked by Representatives Rubel and Harris to research incidents of civil asset forfeiture around the state.

Today, I want to share with you what I found, which is that there is no uniform recording of data, no public access to the data, and no transparency of the civil asset forfeiture system.

With the help of IFF and ACLU we submitted information requests to the following counties. For their records of civil asset forfeiture cases from 2010 thru Oct 2016

- Ada
- Bannock
- Bonneville
- Canyon
- Elmore
- Kootenai
- Latah
- Payette
- Twin Falls
- And the Idaho State Police

We felt these counties would provide a good sample of the counties within the state.

Of those 10 counties,

5 of the counties responded to our request with varying forms of information. These counties either did not have the information in one place,or would have to go through a number of cases in storage to determine which cases were asset forfeitures.
2 counties did not respond to our requests at all.
Only 3 of the counties had logs of civil asset forfeitures, only two of those provided the amount or designation of what was seized. None of the counties were able to tell us the value of the non monetary items seized.

The Idaho State Police was one of those agencies that has been very forthcoming.

I was able to piece together information for 2 other counties by looking up civil cases on the Idaho repository that contained the county prosecutor as the plaintiff, and since these are in rem actions, the defendant is an object or sum of money

Because of the difficulty in obtaining these numbers, it took approximately 90 hours to accumulate and analyse the information we were able to put in our sample size.

The reporting requirements included in this bill would remedy this time consuming venture. The information we were able to gather ranged greatly and the consistency with which the information reported was haphazard at best.

There is currently no method or requirement to report civil asset forfeitures. In some counties, reporting was not consistent from year to year. Between information requests and research there is no central location to find this information. Some counties were able to give us names, items forfeited, case numbers, criminal charges, arrest reports, receipts, intake sheets and financial records. Others just contained a name and a date.

None of the counties kept a record of the worth of items seized. There is no way to determine what the counties received from seized items like personal vehicles, a Peterbuilt, diamond rings, jewelry, gold and silver, weapons, lottery tickets, motorhomes, animals, etc.

So why do we need reporting? In a word, accountability. Reporting would reduce the temptation and incentive to police for profit. Additionally, the transparency of the records will reduce claims of abuse of the statute.

If we did have the reporting requirements proposed by this legislation, what would the public discover?

I discovered some signs of questionable practices regarding civil asset forfeitures that should be examined further. These signs included:

- In two counties, over 50% of seizures involved a vehicle.
- There were notes on the civil asset forfeiture logs that the amount of money was under $500 so the money wasn't worth seizing.
- Notes on civil asset forfeiture logs that noted that vehicles weren't seized because it was leaking oil, or wasn't worth it etc.,
- Notes in civil asset forfeiture logs that the defendant paid anywhere from $500-$3000 in 'exchange' for the vehicle seized, a number well in excess, and sometimes in addition to, paying the costs of towing and storage.
- A number of cases where judgements were handed down that split significant amounts of money (most $10k+) between the state and the defendant. This seems to indicate settlements like the ones mentioned earlier.
- The number of stipulated and contested judgements also lead one to believe that often these civil asset forfeitures might not have a major corresponding criminal action. In other counties we see that those forfeitures that default often default because the defendant is in prison or cannot afford representation. If a large amount of contested judgements exist, there seems to be an inference that there are no corresponding criminal charges or convictions.

In conclusion, the uniform reporting and public access requirements proposed by this bill will lead to transparency.

I thank you for your time. I stand for questions.

Carly Ward

ACLU
AMERICAN CIVIL LIBERTIES UNION of IDAHO

Attachment 2

ACLU of Idaho
PO Box 1897
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Testimony of Kathy Griesmyer
HB 202: Civil Asset Forfeiture Reform
Before Senate Judiciary and Rules Committee
March 13, 2017

The ACLU of Idaho stands before you today in support of HB 202, which aims to bring long over-due transparency to Idaho's shadowed civil asset forfeiture policies.

As you may know, civil asset forfeiture is the ability granted to local, state, and federal law enforcement departments to seize property believed to be connected to criminal activity including an individual's cash on hand, car, home or other property located at the scene of the suspected crime. This over-abused action surged during the War on Drugs when Congress passed legislation to authorize the forfeiture of proceeds from drug transactions[1] and then amended the law to permit the exclusive earmarking of forfeited assets for law enforcement[2].

The civil forfeiture laws were supposed to help fight the War on Drugs, by making sure that crime wouldn't pay. But this broken system also sweeps innocent property owners into its net, seizing money based on a premise of drug activity with no hard evidence and no requirement to prove anything to a judge. It's no surprise that asset forfeiture practices disproportionately impact low-income, hard-working African-American or Hispanic people who the police decide look suspicious and who have little means to challenge their plight.

HB 202 is merely a starting point to address the various concerns embedded in our current civil asset forfeiture policies in Idaho. The limitations on abuse included in this bill – that presence of cash is insufficient probable cause and the opportunity for seized property to be returned to its owner if it's reasonably necessary for the owner's employment – are critical first steps in implementing appropriate safeguards on how law enforcement and prosecutors use our civil asset forfeiture laws.

However, the most important component of HB 202 is the newly mandated annual reporting requirements. These requirements to collect data on forfeiture rates, demonstrate when property is connected to a criminal conviction and to show where the money is going will ensure increased public transparency in this policing practice. At minimum, it will shed light on how this policy is currently being used and better identify patterns of abuse, targeted policing, and needs for additional protections for property owners.

While the ACLU of Idaho ultimately believes the practice of civil asset forfeiture should be abandoned, especially given that Idaho already has criminal asset forfeiture incorporated into statute, we also would encourage the legislature to support additional meaningful reforms that would better incorporate the principles of due process as these reforms are clearly needed. In a 2015 Institute for Justice report titled *"Policing for Profit"* the state of Idaho earned a D- for its civil forfeiture laws due to its low bar to seize and forfeit an individual's property, that no criminal conviction is required to formally seize an individual's property, and that there are poor protections for innocent third-party property owners. To better ensure that Idaho property owners will have increased due process protections as Idaho continues its civil asset forfeiture policies, the ACLU of Idaho recommends the following reforms:

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[1] Psychotropic Substances Act of 1978 (coded as amended in various sections of 21 U.S.C.).
[2] Brant Hadaway, *Executive Privateers: A Discussion on Why the Civil Asset Forfeiture Reform Act Will Not Significantly Reform the Practice of Forfeiture*, 55 U. Miami L. Rev. 81, 93 (2000).

ACLU
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Requirement of a Criminal Conviction
In more than 80 percent[3] of asset forfeiture cases, the owner of the property is never charged with a crime, yet government officials can and usually do keep the seized property. The best solution is to require a conviction before the government can take property, as is the rule in North Carolina, Minnesota and New Mexico. This would allow law enforcement agencies to seize criminal profits legitimately, while protecting innocent property owners from having to spend months or years in court fighting to reclaim their money.

Increase Due Process Protections
In most states, the standard of proof[4] in civil asset forfeiture laws is lower than the standard required to prove that a person has committed a crime. In Idaho, law enforcement agents need to only tie the property to a crime by a preponderance of the evidence—a low bar to forfeit. Instead, lawmakers should increase the burden of proof to beyond a reasonable doubt to avoid punishing innocent property owners and to prove that there is clear evidence that property seized was connected to criminal wrongdoing.

Redistribute Funds Away from Law Enforcement
What's most troubling about Idaho's civil asset forfeiture law is that law enforcement in the state reaps all the rewards of civil forfeitures - meaning the agencies keep 100 percent of all funds and currently face no requirement to collect or report data on forfeiture use and proceeds. According to the Department of Justice, in FY14, local and state police in Idaho seized property totaling almost $800,000, all of which was funneled back into the budgets of law enforcement agencies[5]. Rather than giving police and prosecutors a direct financial incentive to increase forfeitures, Idaho should redirect that money away from law enforcement budgets and put that money into a general, neutral fund, perhaps for education or drug treatment.

End Equitable Sharing
Under the guise of "equitable sharing", local law enforcement can pass on seized assets to the federal government, or they can seize them in conjunction with federal officers. The property then becomes subject to federal civil forfeiture law—not state law. Under federal law, as much as 80 percent of the proceeds eventually goes to state law enforcement and in doing so, the equitable sharing loophole provides a way for local law enforcement to profit from forfeitures that may have originally been off limits under state law. According to the Institute for Justice, Idaho is the 8th best state in the country for federal forfeiture, with over $5 million in Department of Justice equitable sharing proceeds from 2000 to 2013, averaging nearly $384,000 per calendar year. The solution is simple – Idaho must end its contract with the federal government and repeal Section 34-2744B which authorizes equitable sharing in Idaho.

The political climate at the federal and state levels is ripe for reform and members on both sides of the aisle have joined together to introduce civil asset forfeiture reform legislation, just as we have seen in Idaho. While HB 202 begins the conversation on much needed reforms, we encourage your yes vote on this bill and ask you to consider the additional reforms needed to end policing for profit in Idaho.

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[3] See *Presumed Guilty: The Law's Victims in the War on Drugs* http://www.fear.org/pittpres.html
[4] See *Policing for Profit: The Abuse of Civil Asset Forfeiture* pages 16-18
[5] See DOJ Asset Forfeiture Program Report https://www.justice.gov/afp/reports-congress/fy2014-idaho

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

9:00 P.M.

Room WW54

Wednesday, March 22, 2017

SUBJECT	DESCRIPTION	PRESENTER

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

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

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, March 22, 2017
TIME:	9:00 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 of the Senate Judiciary and Rules Committee (Committee) to order at 9:03 a.m.
MINUTES APPROVAL:	**Senator Foreman** moved to approve the minutes of February 27, 2017. **Senator Lee** seconded the motion. The motion carried by **voice vote**.
	Senator Burgoyne moved to approve the minutes of March 6, 2017. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.
	Senator Hagedorn moved to approve the minutes of March 8, 2017. **Senator Lee** seconded the motion. The motion carried by **voice vote**.
	Senator Hagedorn moved to approve the minutes of March 10, 2017. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
	Senator Agenbroad moved to approve the minutes of March 15, 2017. **Senator Lee** seconded the motion. The motion carried by **voice vote**.
S 1202	**Relating to Wage Garnishment**. **Senator Burgoyne** informed the Committee that **S 1202** is a rewrite of Idaho's garnishment statutes dating back as far as 1889. He explained that some of the language was archaic and that the application of the statutes across the State was not consistent.
	Senator Burgoyne addressed changes resulting from this bill relating to the amount of the various fees involved in garnishment, who pays the fees, and how they are paid, with a focus on keeping the fees reasonable. He described continuing garnishments and pointed out that they are easier to administer, ensure the repayment of the creditor, and provide order in the process of garnishment of wages.
	Senator Burgoyne advised that there was some opposition considering the fees as some stakeholders wanted an increase. He felt this bill is a good starting point, and that this issue could be addressed in the future. He reviewed the laws relating to comingling, and he felt that the managing of fees will be transparent.
	Senator Hagedorn inquired why changes in an entire section of code is brought forward so near the end of the legislative session. **Senator Burgoyne** replied that during this year a great deal of time focused on the opposition expressed by financial institutions. Efforts to solve the conflict were not successful, so the decision was made to move forward. **Senator Davis** noted that this bill has been five years in the making, and all concerns have been met except the one involving the financial institutions which can be addressed through future legislation.

John Watts, Veritas Advisors, emphasized that since 2012 an attempt has been made to rewrite wage garnishment statute. He commented that although it is not perfect, **S 1202** sets a foundation to build upon. **Mr. Watts** expressed appreciation to all who have helped and shared a roster of the working group (attachment 1) who have worked together for the last two years to complete this bill, combining three separate chapters of Idaho Code.

Senator Burgoyne referred to an email from Howard Belodoff, Idaho Legal Aid Services, and asked Mr. Watts to explain that message. **Mr. Watts** replied that Idaho Legal Aid Services supports this legislation. He related that Mr. Belodoff was instrumental in clarifying the law on comingling.

Senator Anthon inquired if the bankruptcy and commerce section of the State Bar have analyzed this bill. **Michael Henderson**, Counsel for the Courts, responded that the attempt was made to bring all stakeholders together, but this group was not represented. **Senator Anthon** asked if Debtor's Counsel was consulted. **Mr. Henderson** responded that the effort was made to bring together those who were involved in collections, and individuals sharing the interests of the Debtor's Counsel were involved.

Senator Davis commented that the modifications do not apply to any exemptions under Titles 55, 72, or 11 except for removing comingling because of federal law.

Senator Agenbroad disclosed that he had a conflict of interest pursuant to Senate Rule 39(H).

MOTION: **Senator Davis** moved to send **S 1202** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

Chairman Lodge welcomed the Eagle High School government class to the Committee.

PRESENTATION: **Page graduation. Shanyce Barber**, Page, Senate Judiciary and Rules, expressed her appreciation for the working relationship of the Committee members. She shared her plans of attending Lewis and Clark College, pursuing a degree in criminal justice, and felt this goal was enhanced by serving on the Judiciary and Rules Committee as the work relates to criminal justice. A short discussion ensued between Shanyce and the member of the Committee. **Chairman Lodge** presented Shanyce with tokens of appreciation and letters of recommendation from the Committee.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 9:26 a.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

My name is Wendy Chapman. I am here today representing the National Association of Residential Property Managers (NARPM). I serve on the board of the local chapter as the legislative chair. I also serve on the national level as a member of the Governmental Affairs Committee in which we will be sponsoring a day on the hill in Washington this spring. I am a business owner of a property management business operating in the treasure valley under the name of 208 Houses Property Management, LLC.

The NARPM organization is an association designed for real estate professionals who know first-hand the unique challenges of managing single-family and small residential properties. Members of the Association handle all aspects of the management of single family and multi-family properties for property owners. NARPM promotes a high standard of business ethics, professionalism and fair housing practices. The Association also certifies its members in the standards and practices of the residential property management industry and promotes continuing professional education. NARPM has over 4,500 members across the nation with over 60 chapters. The Southwest Idaho Chapter meets monthly to further education of property managers and discuss local challenges facing property managers in the State of Idaho.

I am here today to tell you that the NARPM organization supports this bill. This bill would add substantial clarification and protection of the rights and privileges for property owners without infringing on the rights of legal tenants throughout the state. In the wake of recent abuses by scammers and squatters the drawn out legal process required by a traditional eviction to cure these breaches of ownership rights, have had a detrimental financial impact on property owners. Not only are these owners effected with the expense of eviction proceedings and court costs, they are experiencing vandalism, damage to their properties, and loss of rental income, as well as interference with legitimate real estate contracts which can result in substantial financial losses.

Many (if not all) of the members of our local chapter of NARPM have had experiences or been impacted by scams and attempts to inflict forcible detainer on properties they manage. This type of scamming has become a widespread practice by criminally minded individuals and current legislation makes it difficult to combat these scams. Adding clarity to the law and additional protection for property owners is necessary to protect their rights and empower property owners and managers to reclaim possession more quickly of their property when they have become victim to these scams.

Local property management businesses are also seeing an impact when these unlawful detainers occur. These businesses experience loss in revenues due to uncollected rents which affect their bottom line. This places undue financial burdens on business owners. This bill would allow property managers to assist property owners in reclaiming possession of their property more quickly which will allow them to generating rental income and avoid longer periods of loss.

I ask that this legislation be adopted. It adds needed protection and is in the best interest of the citizens of the State of Idaho.

Thank you for your time and this opportunity to share testimony as a representative of NARPM.

AGENDA

SENATE JUDICIARY & RULES COMMITTEE

2:15 P.M.
Room WW54
Monday, March 27, 2017

SUBJECT	DESCRIPTION	PRESENTER
RS25604	Relating to Transportation	Senator Brackett

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 Lee
Sen Davis
Sen Hagedorn
Sen Anthon
Sen Agenbroad
Sen Foreman
Sen Burgoyne
Sen Nye

COMMITTEE SECRETARY

Carol Cornwall
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email: sjud@senate.idaho.gov

MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Monday, March 27, 2017
TIME:	2:15 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye
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 of the Senate Judiciary & Rules Committee to order at 3:27 p.m.
RS 25604	**Relating to Transportation. Senator Brackett**, Chairman, Senate Transportation Committee, advised that this transportation revenue bill addresses $3,000,000 in GARVEE funds for new projects, a surplus eliminator, creation of a new capacity congestion mitigation fund, and reallocation of the cigarette tax. He then pointed out the specifics of each section of the bill explaining funding sources, project selection, sunset clauses, and new funds to be established.
MOTION:	**Senator Davis** moved to send **RS 25604** to print. **Senator Hagedorn** seconded the motion. **Senator Burgoyne** requested to be recorded as voting no.
ADJOURNED:	**Chairman Lodge** adjourned the meeting at 3:42 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary