

MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Monday, January 15, 2018

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon, McCrostie, Wintrow

**ABSENT/
EXCUSED:** None

GUESTS: Victor McCraw, POST; Sandy Jones, Geraint Morgan and Mary Schocker, Parole Commission; Holly Rebholtz, IPPA; Jason Spillman and Barry Wood, ISC; Jessa Taylor, ABC; Brody Aston, Legal Aid; Kelly Jennings and Kimberly Simmons, PDC

Chairman Luker called the meeting to order at 1:31 p.m.

Chairman Luker thanked **Reps. Wintrow** and **Chaney** for agreeing to act as the committee proof readers.

RS 25738: **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court presented **RS 25738**. It, along with the other proposed legislation addresses the requirement of the Courts under Section 25 article 5 of the Constitution to identify and correct defects in the law. This RS addresses the Court's ongoing effort to standardize the filing periods across the Courts to seven (7) day increments by changing the answer and notification deadline to twenty-one (21) days.

MOTION: **Rep. McCrostie** made a motion to introduce **RS 25738**. **Motion carried by voice vote.**

RS 25739: **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court presented **RS 25739**. Idaho Code § 19-2601 sets forth the sentencing options for the courts in criminal cases. Retained jurisdiction is where the defect in the law is noted. This section outlines actions when the Board of Correction takes custody of a prisoner, but the court retains jurisdiction to determine what action, such as probation, etc., is appropriate. Line 25 of the law states the courts "shall" retain jurisdiction over the prisoner. **RS 25739** amends the section to read "may," to reflect this is a matter of discretion and is not mandatory.

In response to questions from the committee, **Mr. Spillman** explained the change is intended to clean up the law to avoid future problems with interpretation. He confirmed that convictions remain in the system as recorded even in cases of retained jurisdiction when probation or other sentencing options are imposed. **Judge Wood, Senior Judge, Idaho Supreme Court** further clarified the Idaho Supreme Court has ruled when a guilty plea is entered, it is considered a conviction.

MOTION: **Rep. Dayley** made a motion to introduce **RS 25739**. **Motion carried by voice vote.**

RS 25740: **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court presented **RS 25740**. Last year **S 1120** made changes to Idaho Code § 6-310 that has caused problems with some of the pleading requirements as it relates to forcible detainer actions. This RS corrects these problems and makes additional technical corrections.

MOTION: **Rep. Chaney** made a motion to introduce **RS 25740**. **Motion carried by voice vote.**

RS 25762: **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court presented **RS 25762**. This RS covers several changes. The first brings the process for evaluation of domestic violence perpetrators into compliance with current practices. The second change amends the attempted strangulation statutes to require violators to follow the same evaluation, counseling and treatment process for other domestic violence crimes offenders. Finally, the RS amends the statute to direct the Idaho Supreme Court to establish a uniform system for qualification and approval of domestic violence evaluators. The intention is to create greater consistency among judicial districts and reflect the actual practices of the courts.

In response to questions from the committee, **Mr. Spillman** explained that Idaho Supreme Court has rule making authority, but judicial districts have some local rule making authority over some practices.

MOTION: **Rep. Zollinger** made a motion to introduce **RS 25762**. **Motion carried by voice vote.**

Chairman Luker turned the gavel over to **Vice Chairman Malek** for presentation of administrative rules.

DOCKET NO. 50-0101-1701: **Sandy Jones**, Executive Director, Idaho Commission of Pardons and Parole presented pending rules that support implementation of statutory amendments from the 2017 legislative session with most changes attempting to make the rules clearer and user friendly. The inclusion of firearm rights restoration language into the docket corrects what was overlooked when the rules were previously amended.

In response to questions from the committee, **Ms. Jones** clarified it is a parole officer's (or designee's parole supervisor's) responsibility to file a petition for early discharge on behalf of a parolee. A parolee has the right to notify the Commission their parole officer will not file. The parole officer must still file the petition on behalf of the parolee, but would need to document the reasons for not recommending parole. This is taken into consideration when the Commission makes its decision to grant early discharge. Ms. Jones, with the assistance of **Mary Schoeler**, Paralegal, Idaho Commission of Pardons and Parole, explained the language that was added regarding firearms restoration in Section 551 mirrors the language for pardons and commutation, including the requirement for public notification of hearing in a newspaper for four consecutive weeks. With regard to questions about public hearing notice on the restoration of firearms rights, the requirements for public hearings are outlined in open meeting law requirements. Public hearing and notice only applies to felony crimes outlined in Idaho Code § 18-310 such as rape, lewd conduct with a child, drug possession, burglary, robbery etc. Felony crimes not listed in this statute are subject to automatic firearms restoration without need for a hearing if the parolee either completes sentence or fulfills five years of supervision with no further offenses. These rules are the only process for addressing restoration of firearms rights.

MOTION: **Rep. Perry** made a motion to approve **Docket No. 50-0101-1701** with the exception of **Section 551.03(c) and (d)**. Speaking to the motion, Rep. Perry believes the process needs more vetting since the specifics of public notification is not in statute.

After further discussion by the committee, **Ms. Jones** stated there would not be a major impact if these sections were taken out of the rule.

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

Vice Chairman Malek turned the gavel over to **Chairman Luker**.

Victor McCraw, Division Administrator, Idaho Peace Officer Standards & Training (POST) presented an overview of POST which provides training and certification of law enforcement professionals across the state with the goal of maintaining high levels of skill and professionalism. POST supports and certifies nine officer disciplines.

Chairman Luker turned the gavel over to **Vice Chairman Malek** for presentation of administrative rules.

DOCKET NO. 11-1105-1701: **Victor McCraw**, Division Administrator, Idaho Peace Officer Standards & Training (POST) presented this docket which adds the job titles of Rehabilitation Technician Trainee, and Safety and Security Supervisor to the definition of Juvenile Corrections Direct Care Staff.

MOTION: **Rep. McCrostie** made a motion to approve **Docket No. 11-1105-1701**. **Motion carried by voice vote.**

DOCKET NO. 11-1101-1701: **Victor McCraw**, Division Administrator, Idaho Peace Officer Standards & Training (POST) presented the docket which adds language to support mandates outlined in last year's legislation which became law on July 1, 2017. It includes wording changes for consistency, adds the required certification of Emergency Communications Officers; defines minimum age requirements for employment in each of the nine disciplines; defines form of military record documentation needed for application; changes requirement for reimbursement under the Agreement to Service section for active military service; removes firearms qualification course requirement from Detention Officer certification exam; and changes language reference to a more generic phrase in the POST Code of Ethics/Standards of Conduct.

In response to questions from the committee, **Mr. McCraw** clarified although Emergency Communications Officers do not investigate cases or have the power to arrest, they often take an active role in the investigation of crimes. He reiterated certification of an Emergency Communications Officer is now required under Idaho statute. However, those in this position for more than five years prior to July 1, 2017 are grandfathered. He explained certification under one officer classification is not interchangeable if a person changes jobs, as the requirements for experience and number of training hours vary greatly.

MOTION: **Rep. Zito** made a motion to approve **Docket No. 11-1101-1701** with the exception of **Section 064.05**.

There was further discussion and questions about why the reference to "before God" in **Section 064.05** was removed. **Mr. McCraw** explained it is in response to concerns raised by a recent certification candidate. Upon consultation with the Attorney General and vigorous debate within the POST Council, the decision was made to change the wording to avoid future conflict. The proposed language, "with sincere and unfaltering commitment" was identified as an acceptable replacement. **Mr. McCraw** responded that inclusion of an either/or language option, similar to the language used for swearing in ceremonies, was considered. However, legal counsel advised the proposed language was a cleaner approach to help POST avoid Constitutional issues.

SUBSTITUTE MOTION: **Rep. Wintrow** made a substitute motion to approve **Docket No. 11-1101-1701**.

There was further discussion and questions about changing the rule to retain the current language along with the proposed language as an alternative. **Mr. McCraw** stated it is possible to adopt the language suggested by some committee members, but timing would make it difficult to change before the end of this legislative session.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

Substitute Motion failed by a vote of 3 AYE, 13 NAY and 1 Absent/ Excused. Voting in favor of the motion: Reps. Gannon, McCrostie and Wintrow. Voting in opposition to the motion: Reps. Luker, Malek, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt. Rep. Perry was Absent/Excused.

**VOTE ON
ORIGINAL
MOTION:**

The original motion carried by voice vote. Rep. Wintrow requested she be recorded as voting **NAY**, stating although her vote is not a reflection of her personal beliefs, she supports the proposed rule as presented to avoid potential legal challenges.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:44 p.m.

Representative Luker
Chair

Wendy Carver-Herbert
Secretary