

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 17, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Hagedorn, Lakey, Anthon, Foreman, Potts, 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 1:30 P.M.

GUBERNATORIAL APPOINTMENT VOTE: Gubernatorial appointment confirmation vote for the appointment of **Colonel Kedrick Wills** as the Director of Idaho State Police. **Senator Nye** moved to send the gubernatorial appointment of **Colonel Kedrick Wills** as the Director to the Idaho State Police to the floor with the recommendation that he be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: **Chairman Lodge** passed the gavel to **Vice Chairman Lee** to commence with Administrative Rules review.

DOCKET NO. 05-0102-1701 **Regarding Rules of Standard for Secure Juvenile Detention Centers** by **Sharon Harrigfeld**, Director of Idaho Department of Juvenile Corrections (IDJC), presented this docket. **Director Harrigfeld** introduced Steve Jett, Director of the Idaho South West Juvenile Detention Center as well as other members of the IDOC present in the audience. She noted the Detention Standards Committee reviews the standards annually or every other year. It is comprised of members Steve Jett, Chelsea Newton, Brian Walker from 3B Detention Center in Idaho Falls, and JT Taylor in Coeur d'Alene. She noted that Power County Commissioner, Bill Lasley, provided input.

Vice Chairman Lee proposed that **Director Harrigfeld** address each definition and rule change in order. **Director Harrigfeld** addressed each amended definition. She noted a change in the definition pertaining to "pat search". **Senator Hagedorn** requested clarification whether passing of hands over a clothed body meant touching or not touching the clothed body. **Director Harrigfeld** affirmed it would be touching. **Senator Hagedorn** asked what the language was intended to achieve. **Director Harrigfeld** requested Steve Jett respond.

Director Jett noted that Senator Hagedorn's point was well noted on the passing of hands. **Senator Hagedorn** requested a clarification to be made regarding the definition of "pat search", and what was meant by "passing of hands over a clothed body" before the definition was once again brought before the Committee. **Vice Chairman Lee** requested the specific definition be brought before the Committee again to answer whether the intention of the rule was to be touching a clothed body. **Director Harrigfeld** and **Director Jett** affirmed.

Senator Hagedorn noted the rule needed to be corrected at present or as a temporary rule to fix the definition. **Vice Chairman Lee** requested input from **Chairman Lodge**.

Chairman Lodge noted **Dennis Stevenson** was not present in the audience to clarify steps how to modify the rule. She commented that part could be rejected or in the alternative approved as a temporary rule once the Legislative Session concluded.

Director Harrigfeld continued with definitions regarding "physical intervention", "strip search" as well as adding the language of "privately", to allow private interviews with juveniles and staff. **Senator Burgoyne** asked if it was a commonly accepted practice to involve a witness present during one on one interviews. **Director Harrigfeld** responded there are cameras recording the private interviews with no audio to ensure privacy. She added that each detention facility determines how they deal with the privacy issue independently.

Director Harrigfeld continued with review of amendments to Subsection 212.02 affecting staffing requirements and development. She noted redundant language was removed regarding the staffing plan pertaining to availability of female staff conducting intake of juvenile offenders. **Senator Anthon** remarked that the "gender" of employees in the language should be noted as "sex" rather than "gender". He noted that the gender identity issue has become more fluid as it dealt with "sex" and not "gender". **Senator Hagedorn** added that Subsection 212.03 would be better stated utilizing "shall" rather than "should". He noted that change could reduce IDJC liability if a female employee was not present to conduct the physical patting down of female juveniles. **Director Harrigfeld** requested input from Director Steve Jett. **Director Jett** elaborated that in larger facilities male and female employees are present. He noted in smaller rural areas lack of female employees is problematic. He added that all detention officers performing searches are trained how to conduct a search without touching. He noted the previous wording created a problem when a male officer had a female juvenile in custody and that officer would be in violation of the standards. He affirmed his facility's policy was that if a female officer is not on duty he summons a female deputy from a nearby facility. He noted most facilities do not allow cross-gender searches of any kind. He affirmed that training is provided how to conduct searches without touching usually performed on a juvenile via placing in a observation room. **Senator Hagedorn** asked if female officers were called for a same-sex pat down search. **Director Jett** responded that cross-gender searches are avoided.

Director Harrigfeld continued to review Section 225 regarding the use of "physical intervention", specifically the use of restraints. **Senator Foreman** asked if medical clearance was required before placing a juvenile with a known existing condition in restraints. **Director Harrigfeld** inquired if Senator Foreman was requesting a stronger language in the rule. **Senator Foreman** commented that the language was vague and he would prefer if a juvenile is known to have an existing medical condition that a certification of a medical authority be obtained before restrains are used. **Director Harrigfeld** asked if he requested the change in the future rule or presently. **Senator Foreman** confirmed in the future sufficed. **Senator Burgoyne** asked whether restraints were frequently utilized and whether the atmosphere in the facilities dictated the frequent use. **Director Harrigfeld** responded the intent was to deal with them more effectively.

Director Harrigfeld addressed language amendments to Paragraph 256.04.a regarding communications and correspondence. **Senator Burgoyne** requested a clarification as to what constituted a pre-notification and a notification; and asked if the facilities complied with Prison Rights Communications Act (PRCA).

Director Jett responded that PRCA requires that the notification be posted. **Senator Burgoyne** asked regarding differences in the wording "private" vs. "confidential" visits. **Director Harrigfeld** called Director Steve Jett to answer. **Director Jett** explained that "private" dealt with inspectors performing inspections of detention centers for compliance. He noted that "confidential" was to ensure the detention centers make accommodations for interviews deemed confidential on privilege visits. **Senator Lakey** asked for a clarification regarding the term "confidential" as defined within that rule. **Director Jett** responded that pertains specifically to juveniles' ability to talk and with whom. **Vice Chairman Lee** asked whether law enforcement officers were able to talk to juveniles when there are issues requiring privacy. **Director Jett** responded that his facility ensures all those requests are granted.

DISCUSSION:

Vice Chairman Lee requested revisiting the definitions in Subsection 010.02 regarding "body cavity searches". She asked for clarification regarding the difference between who would be performing the searches whether a medical authority or medical employee. **Director Harrigfeld** clarified the intention is for the use of medical authority or a licensed nurse from another location/facility. **Steve Jett** interjected that the medical employee works under the direction of a medical authority i.e., a physician or a properly licensed professional. **Vice Chairman Lee** directed the designation be clarified within the definition. **Senator Hagedorn** proposed to resolve the medical authority issue defined as health authority.

Senator Lakey requested clarification regarding a "confidential" interview in Subsection 256.07 with law enforcement and confidential material which would not be used to prosecute that juvenile.

Vice Chairman Lee requested Dennis Stevenson to approach the podium requesting clarification. **Senator Hagedorn** asked if members should move to accept the docket with the exception to omit that rule and would the existing rule still be in effect. He noted changing the word from medical to health authority. **Dennis Stevenson** clarified rejection of a Pending Rule only rejects that part of the rule and not the codified text. He stated it needs to be stated on the record regarding the intent and what it sets out to do either remove the legislative language or reject it. He noted if non-substantive changes are made than a motion can be made. Mr. Stevenson declined that a word can be changed. **Chairman Lodge** proposed changes to be facilitated at the end of session as temporary rule. **Director Harrigfeld** concluded the review of **Docket No.: 05-0102-1701**.

MOTION:

Senator Hagedorn moved to approve **Docket No. 05-0102-1701** with the exception of Subsection 010.37. **Senator Lakey** seconded.

Senator Burgoyne asked if an amendment is rejected does that than make the stricken language part of the rule with the clarification. He stated he supported the motion.

Senator Hagedorn moved to approve with the exception of the amendment Subsection 010.37. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PRESENTATION:

Chairman Lodge welcomed **Victor McCraw**, Division Administrator of Idaho Peace Officer Standards and Training (P.O.S.T.) who played a short video presentation.

Senator Burgoyne departed.

Rules Governing Idaho Peace Officers Standards and Training Council (Council) by **Victor McCraw**, Division Administrator of Idaho Peace Officer Standards and Training (P.O.S.T.) presented the docket. **Senator Hagedorn** asked whether management certifications were in statutes and what necessitated so many certifications. **Mr. McCraw** responded that only mandatory certifications are in statutes and there are different levels of certifications but in fact they are certificates. He noted the certifications are considered to be more of a recognition and an achievement by the county, rather than competence certifications to do one's job.

Senator Foreman noted that in a legal setting the certifications hold great value. **Mr. McCraw** responded that the Council is currently considering how to revise the certifications for that exact purpose. He gave an overview of the Pending Rule governing the Council with a focus on the revisions made.

Mr. McCraw explained each definition and the changes made. He addressed specific changes to Section 010 affecting age requirements, military documentations, disqualifications for military service, removing certain POST requirements, public safety and reports, and professional performance. He specifically noted Subsection 064.05 changes under "professional performance" that the desired applicant was to meet. He explained the previous wording was "dedicating myself before God"; which was to be replaced by "dedicating myself with sincere and unfaltering commitment to my chosen profession law enforcement/public safety."

DISCUSSION:

Senator Foreman stated that the words "before God" meant a great deal to most Idahoans and very few would be offended by those words. He noted whether it be appropriate to take the words out.

Mr. McCraw explained the change arose from an applicant's refusal to sign the application prior to certification. He noted the applicant's religious affiliation was unknown. He affirmed the applicant was otherwise well qualified in every aspect. **Mr. McCraw** consulted with the Deputy Attorney General on this specific change. He noted the Deputy Attorney General advised on whether a belief in God was essential to performing the duties of a law enforcement officer to the standards set by the Council. He explained that the Attorney General confirmed the application violated the First Amendment of the Constitution.

Mr. McCraw responded that for many people God is the most supreme and the profession in law enforcement field taps into that level. **Mr. McCraw** noted that the Council, in the code of conduct, was asking for sincerity from the applicants. He affirmed that the level of dedication was ongoing and unfaltering from the onset of the applicant's career and continuing throughout. **Mr. McCraw** stated the new language of "sincere and unfaltering dedication" was agreed upon by the Council.

Senator Foreman commented that the legal advice from Deputy Attorney General was sound, however from an American Citizen perspective, the legal machinations in the legislation are stricken in the interest of fairness.

Mr. McCraw finalized with review of Subsection 081.02.c regarding military requirements, certifications and specifically standards applying to emergency personnel. He requested questions from Committee.

MOTION: **Senator Nye** moved to approve **Docket No. 11-1101-1701**. **Senator Foreman** seconded.
Senator Potts expressed concern with the proposed change to Subsection 064.05 and the language "before God" to be stricken. He noted the importance of that section because it takes the applicant's mind to that level of responsibility to be held accountable to someone greater than ourselves making us better individuals. He noted that God means many different things to different people. He declined to support the section as it stands. **Senator Potts** stated he would support a motion to accept the rule with that portion excepted.
Senator Lakey proposed alternative form of attestation for those who have other views and to leave the section as is rather than to strike the language that is supported.

The motion carried by **voice vote**. **Senator Potts** was recorded voting **nay**.

DOCKET NO. 11-1105-1701 **Rules of Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff** by **Victor McCraw**, Division Administrator of Idaho Peace Officer Standards and Training (P.O.S.T.) **Mr. McCraw** introduced the docket governing the care of juvenile offenders as required for P.O.S.T. officers supervision of those juveniles in their immediate care. He elaborated on several additions that were made to the code. **Senator Hagedorn** inquired regarding training for the additional positions made to the Idaho Code. **Mr. McCraw** called **Director Harrigfeld** to respond. She responded the positions are already P.O.S.T. certified and the clarification is only in the amended language.

MOTION: **Senator Nye** moved to approve **DOCKET NO. 11-1105-1701**. **Chairman Lodge** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:58 p.m.

Senator Lodge
Chair

Anna Wroblewski-Jones
Secretary