

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Thursday, January 11, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	Organizational Meeting	

COMMITTEE MEMBERS

Chairman Luker      Rep Kerby  
Vice Chairman Malek      Rep Nate  
Rep Perry      Rep Chaney  
Rep Dayley      Rep Amador  
Rep McDonald      Rep Hanks  
Rep Cheatham      Rep Zito

Rep Zollinger  
Rep Ehardt  
Rep Gannon  
Rep McCrostie  
Rep Wintrow

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Thursday, January 11, 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:** Representative(s) Dayley, Hanks  
**GUESTS:** Holly Koole Nebholtz, IPPA; Barbara Jorden, ITZA

**Chairman Luker** called the meeting to order at 1:30 p.m.

**Chairman Luker** welcomed the committee and those in attendance. He welcomed new committee member **Rep. Ehardt**, who is replacing former **Rep. Trujillo**; new committee secretary **Wendy Carver-Herbert**; and House Page, **Trent Kuykendoll**, a senior from Boise High School.

**Chairman Luker** explained the Rules Review will be handled by the full committee and **Vice Chairman Malek** will lead the Rules Review process. He will determine how and when each agency will address the Rules before the committee.

**Chairman Luker** asked the committee if there is any interest in taking a trip to one of the correctional facilities for a committee tour. Based on the positive response from committee members, a tour will be set up for later in the session.

**Rep. Nate** asked whether it would be possible to allow remote testimony since several committee members have constituents from all over the state, and other committees have allowed this in the past. **Chairman Luker** agreed to look into this request and will get back to the committee with a response at a later date.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 1:36 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Monday, January 15, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS25738</a>	Relating to courts	Jason Slade Spillman, Administrative Office of the Courts/Idaho Supreme Court
<a href="#">RS25739</a>	Relating to suspension of judgement and sentence	Jason Slade Spillman
<a href="#">RS25740</a>	Relating to action for possession	Jason Slade Spillman
<a href="#">RS25762</a>	Relating to assault and battery	Jason Slade Spillman
Docket No. <a href="#">50-0101-1701</a>	Rules of the Commission of Pardons and Parole	Sandy Jones, Idaho Commission of Pardons and Parole
	Idaho Peace Officer Standards and Training (POST) Council Overview	Victor McCraw, Idaho Peace Officer Standards and Training (POST) Council
Docket No. <a href="#">11-1101-1701</a>	Rules of the Idaho Peace Officer Standards and Training Council	Victor McCraw
Docket No. <a href="#">11-1105-1701</a>	Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff	Victor McCraw

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

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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.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Wednesday, January 17, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS25763</a>	Crimes & punishments regarding prostitution trafficking	Representative Brent J. Crane
<a href="#">RS25764</a>	Crimes & punishments regarding patronizing a prostitute	Representative Brent J. Crane
Docket No. <a href="#">11-0301-1801</a>	Temporary Rule: Governing Alcohol Testing	Matthew Gamette, Idaho State Police, Forensic Services
	Idaho State Public Defense Commission Overview	Kimberly Simmons, State Public Defense Commission
Docket No. <a href="#">61-0104-1701</a>	Temporary Rule: Procedures & Forms for the Application & Disbursement of Indigent Defense Grants	Kimberly Simmons
Docket No. <a href="#">61-0106-1701</a>	Pending Rule: Procedures for Oversight, Implementation, Enforcement, & Modification of Indigent Defense Standards	Kimberly Simmons
Docket No. <a href="#">61-0107-1701</a>	Pending Rule: Standards for Defending Attorneys That Utilize Idaho's Principles of Indigent Defense Delivery System	Kimberly Simmons
Docket No. <a href="#">61-0108-1701</a>	Pending Rule: Administration of Idaho's Indigent Defense Delivery Systems	Kimberly Simmons

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Wednesday, January 17, 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:** Kimberly Simmons, Brianne McCoy, Kelly Jennings, PDC; Dawn Maglish, Isabella Kokos, Inside Out; Amanda Forest, H.E.R. Oceans Survivor Advocate; Andrew Masser; Tony Geddes, Ada County Public Denfender; Tom Arkoosh, Assoc. Criminal Defense Attorneys; Merikay Jost, IDHT Awareness; Brad Hunt, O.A.R.C.; Eric Fredericksen, SAPD; Matthew Gamette, ISP; Kathy Griesmyer, ACLU Idaho

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

In response to a previous Committee member request, **Chairman Luker** explained the taking of remote testimony via teleconferencing and video is currently being piloted in the House Education Committee. Decisions regarding the expansion of that capability to other Committees will be made once the pilot is finished.

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the January 11, 2018 meeting. **Motion carried by voice vote.**

**RS 25763:** **Rep. Crane** presented **RS 25763**. There is a nuance in Idaho Code § 18-5601 that makes it difficult to charge someone unless they are trafficking more than one person. This RS amends the law to address matters of human trafficking and prostitution by replacing the word "persons" with "another person."

**MOTION:** **Rep. Kirby** made a motion to introduce **RS 25763**.

In response to questions from the committee, **Rep. Crane** explained the word "interstate" was also removed. There are several pieces of human trafficking legislation that are going through a rewrite to bring them more into conformity with Federal statute, so all will dovetail together once completed.

**VOTE ON MOTION:** **Chairman Luker** called for a vote on the motion to introduce **RS 25763**. **Motion carried by voice vote.**

**RS 25764:** **Rep. Crane** presented **RS 25764**. This proposed legislation makes the act of patronizing a prostitute a felony on the first offense. Rep. Crane, said he was unaware of the pervasiveness of the issue of human trafficking until recently. Unfortunately, offenders have been able to evade the current laws. One goal is to cut down on human trafficking by reducing the demand and supporters of this change believe this is a first step.

**MOTION:** **Rep. McDonald** made a motion to introduce **RS 25764**. **Motion carried by voice vote.**

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

**DOCKET NO. 11-0301-1801:** **Matthew Gamette**, Laboratory System Director, Idaho State Police Forensic Services presented the Docket which amends the rule to include the National Highway Traffic Safety Administration's November 2, 2017 Conforming Products List of Evidential Breath Alcohol Measurement Devices. It clearly delineates that all the relative testing instruments in Idaho are approved for use. Because this temporary rule change was necessary during last year's legislative moratorium period, ISP plans to come back next year to complete the rule making process. Mr. Gamette explained there was no additional cost to Idaho to abide by the updated list.

**MOTION:** **Rep. Wintrow** made a motion to approve **Docket No. 11-0301-1801. Motion carried by voice vote.**

**Kimberly Simmons**, Executive Director, and **Kelly Jennings**, Deputy Director, Idaho State Public Defense Commission (PDC) provided the annual Legislative update. The mission of the Commission is to improve the delivery of trial-level indigent defense in Idaho. New standards were created, grant funds were dispersed to the counties and ongoing legal education to defending attorneys was provided throughout the state. Through the Indigent Defense Grants and Extraordinary Litigation Fund (ELF), the PDC has distributed more than \$4.2 million of state funds to 43 of Idaho's 44 counties to augment the cost of providing indigent defense. A growing number of attorneys are submitting the required annual report, and the new Regional Coordinators will use data from these reports to create new uniform indigent defense standards tailored for Idaho. Results from the Workload Study are not yet available.

**Tom Arkoosh**, on behalf of the Idaho Association of Criminal Defense Lawyers stated they support the PDC's goal of developing a workload standard and members are concerned about the independence of criminal defense attorneys when the prosecutors have some input in to the defense process.

**DOCKET NO. 61-0104-1701:** **Kimberly Simmons**, Executive Director, Idaho State Public Defense Commission (PDC) presented this Docket. Under Idaho Code, the PDC has the responsibility to disperse Indigent Defense Grants. The rule creates definitions and a process for applying for grants. The purpose for putting the rule in place is to allow the counties an appeals process if a grant is denied. In response to questions from the Committee, Ms. Simmons said they haven't yet determined the need or process for taking back unused funds that were dispersed to the counties. In many cases, the counties reported they still have plans for the funds even though they weren't used by the end of the year. However, the Commission will take into consideration the suggestion to have unused funds returned in the future. Every county that has applied has received their maximum eligible amount. It was clarified that information about the appeal process is listed under Section 022.06 (a) and is pursuant to the Idaho Administrative Procedure Act.

**MOTION:** **Rep. Perry** made a motion to approve **Docket No. 61-0104-1701. Motion carried by voice vote.**

**DOCKET NO. 61-0106-1701:** **Kimberly Simmons**, Executive Director, Idaho State Public Defense Commission (PDC) presented this Docket, which includes procedures for the oversight and enforcement of the Indigent Defense Standards. The rule outlines the participants and roles; minimum standards; oversight program management and procedures; corrective actions; and compliance verification and enforcement. In response to questions from the Committee, Ms. Simmons explained defendants can report to the PDC complaints of non-compliance and the Regional Coordinator would investigate. Defendants may not know about the process at this point, but the ACLU is directing people to the PDC and staff is doing what it can to inform defendants within the parameters of respecting attorney client privilege. She stated the mechanism for reporting accountability at this time is through annual reports to

the Executive and Legislative branches as noted in Section 023.04. Since the rule is new, attorneys have a six-month grace period to comply.

**Andrew Masser**, Baldauf Masser testified **in support** of this rule. He stated his background as a former ACLU and Public Defender intern, Public Defense Commission attorney and private practice criminal defense attorney provides a unique perspective. He stated this rule provides a measured use of regulatory authority. He is pleased with the collaborative approach the PDC is taking to work with the counties and defense attorneys to achieve the goal of creating a better system. The fact the PDC has included language to address removing barriers shows it is committed to moving forward in a collaborative way and not creating compliance expectations blindly. While it is natural to expect some criticism for not going far enough with the standards and compliance, it's important to take a methodical approach and understand it has to be done in collaboration with the counties. By making compliance too hard, too soon, it could sabotage the end goal.

**Kathy Greismyer**, Policy Director, American Civil Liberties Union of Idaho (ACLU) testified as a neutral party on the enforcement rules to hold the counties and public defenders accountable, but there are still some concerns they would like to see addressed as the rule-making process continues. Those items are identified in the attached communication with the State Public Defense Commission provided as testimony. (Attachment 1) In response to questions from the Committee, Ms. Greismyer said there are a number of topics the PDC can discuss with clients without interfering with attorney, client privilege. Such topics include whether the attorney was present at the initial appearance, whether they are responding to clients' inquiries regarding their cases, whether they are discussing case strategy with enough time to gather the necessary resources such as expert witnesses, etc.

**Ada County Board of Commissioners** also provided written information that is included as testimony. (Attachment 2)

**MOTION:** **Rep. Perry** made a motion to approve **Docket No. 61-0106-1701**. **Motion carried by voice vote.**

**DOCKET NO. 61-0107-1701:** **Kimberly Simmons**, Executive Director, Idaho State Public Defense Commission (PDC) presented this docket, which amends the rule by creating standards for defending attorneys who represent indigent defendants in capital cases, and standards related to investigation and the use of experts. The definitions and documents incorporated by reference were taken out of this rule and moved to another chapter to streamline the process and cost of updating definitions and documents in the future. The rule also updates the Public Defense and Capitol Counsel Rosters. In response to questions from the Committee, Ms. Simmons explained the purpose of maintaining a roster of Former Defending Attorneys is to better understand why they may no longer be practicing as public defenders such as retired, no longer taking these types of cases, contracts not renewed, non-compliant, etc. Currently, there isn't a time frame for purging names from the Former Defending Attorneys roster, but it is something that can be looked at in the future. The rosters are public record but are not online and need to be requested from the PDC office.

**MOTION:** **Rep. Perry** made a motion to approve **Docket No. 61-0107-1701**. Speaking to the motion, Rep. Perry commended the PDC and stakeholders who provided input to building this program from the ground up.

**SUBSTITUTE MOTION:** **Chairman Luker** made a substitute motion to approve **Docket No. 61-0107-1701**, with the exception of **Section 020.01(d)**. Speaking to the motion, Chairman Luker said he was concerned that a public list of Former Defending Attorneys is required, when these attorneys are no longer providing public defense services.

Following questions from the Committee, **Ms. Simmons** said she did not believe removing the Former Defending Attorney (FDA) Roster from the rule would have any affect on the operation of the PDC. However, she clarified the docket requires the Commission to maintain a list of deficiencies, which includes attorneys that are deemed to be non-compliant, and therefore, removed from the list of compliant attorneys and added to the Secondary Roster.

**VOTE ON  
SUBSTITUTE  
MOTION:**

**Vice Chairman Malek** called for a vote on the substitute motion to approve **Docket No. 61-0107-1701**, with the exception of **Section 020.01(d)**. **Motion carried by voice vote.**

**DOCKET NO.  
61-0108-1701:**

**Kimberly Simmons**, Executive Director, Idaho State Public Defense Commission (PDC) presented this Docket, which is the single location to incorporate documents and define terms used in all rules promulgated by the PDC. **Kelly Jennings**, Deputy Director, PDC presented an overview of Documents Incorporated by Reference, which include Idaho's Principles of an Indigent Defense Delivery System; Standards for Defending Attorneys; and an Application for the Capital Counsel Roster. The standards only apply to indigent defense attorneys and public defense capital case attorneys and does not apply to the entire base of defense attorneys in the State Bar. In response to questions from the Committee, Ms. Jennings said attorneys can go before a resource judge to request funds for experts, but if they are declined, they may apply for Extraordinary Litigation Funds. The PDC will standardize the numbering system between dockets.

**MOTION:**

**Rep. Gannon** made a motion to approve **Docket No. 61-0108-1701**. **Motion carried by voice vote.**

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 4:09 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary



## Idaho

Kimberly Simmons  
Executive Director  
Idaho Public Defense Commission  
816 W Bannock Street, Suite 201  
Boise, Idaho 83702

November 3, 2017

### Re: ACLU formal comments on draft proposed PDC Rules for 2018

Kimberly and members of the Public Defense Commission:

The American Civil Liberties Union and the American Civil Liberties Union of Idaho asks the Idaho Public Defense Commission (PDC) to consider the following comments on several of the proposed rules published online in August 2017:

1. 61.01.06 – Rules Governing Procedures for the Oversight, Implementation, Enforcement and Modification of Indigent Defense Standards
2. 61.01.07 – Rules Governing the Standards for Defending Attorneys that Utilize Idaho’s Principles of an Indigent Defense Delivery System
3. 61.01.08 – Rules Governing the Administration of the Idaho Indigent Delivery Systems – Rule Definitions
4. Performance Standards utilizing Idaho’s Principles of an Indigent Defense Delivery System

After reviewing the proposed rules, we believe they require further edits and revisions to ensure that Idaho’s indigent defense system is constitutionally sound. Please see below for specific recommendations and/or questions for clarification for each rule listed above.

#### **61.01.06 – Rules Governing Procedures for the Oversight, Implementation, Enforcement and Modification of Indigent Defense Standards**

- *021.03. Indigent Defense Providers and Defending Attorneys:* What will meaningful cooperation and participation look like for indigent defense providers and defending attorneys, particularly in the PDC review process (subsection a), and how will it be monitored by the PDC and its staff?
  - We recommend amending 021.03.b. to state, “Report to the PDC all deficiencies with compliance within 30 days of determining that such deficiencies exist.”
  - We also recommend amending 021.04.b. to state, “Report to the PDC all deficiencies with compliance within 30 days of determining that such deficiencies exist.”
- *023.01. Applicability of Oversight Program:* What appears to be missing from this list of monitoring techniques is any communication with the individuals who hold the Sixth Amendment right itself—the clients. We recommend that their constitutional rights be at the very center of any monitoring program created by the PDC. In doing so, the PDC should ensure that indigent clients know what is happening in their case, ensure that clients feel like they have enough information to make decisions about their cases and are able to speak with their attorney privately and promptly to get their questions answered. In centering this oversight program around the unique needs of indigent clients, the PDC should evaluate, track, and record the client’s level of participation and their trust and rapport with their defending attorney(s), which is essential to a functional client-lawyer relationship.

- *023.03. PDC Staff Reporting to PDC:* We recommend more clearly defining what the term “regular reports” means and what information would be required to be provided in such a report - caseload, outcomes (pleas v. trials, etc.), hours spent per case, etc.
  - We also recommend defining “policy change” so that public defense stakeholders are clear as to what triggers a new initial review.
  - Under 021.03.a.ii., we are unsure who would be providing the “notice of deficiency.” If indigent defense providers or defending attorneys would be required to provide notice themselves, this raises substantial concerns about self-policing among defense providers and the likely outcome that such deficiencies would not be reported to the PDC and its staff for fear of adverse outcomes.
- *023.07. Indigent Defense Providers and Defending Attorneys Reporting to PDC Staff:* This provision presents significant independence issues — without additional protections to promote candor, any indigent defense provider or defending attorney who reports non-compliance risks their incumbency, whether through contract non-renewal or removal from an institutional office. Instead, we suggest that various Board of Commissioners’ actions (contract non-renewal, chief defender removal, budget reduction, probationary status, etc.), taken after a report of non-compliance by an indigent defense provider or defending attorney automatically trigger additional review and other scrutiny by the PDC. Additionally, individual defending attorneys in multi-attorney offices who report compliance issues to the PDC are risking termination or other adverse employment actions. For these scenarios, we again suggest that if a defending attorney reports to the PDC any adverse employment action taken against them after previously reporting a compliance issue to the PDC that too should trigger additional review and other PDC scrutiny.
- *023.09. Other Stakeholders Reporting to PDC Staff:* How will the PDC facilitate the complaint process for indigent defendants – including creating a process for collecting such reports and informing indigent clients that such a process exists? The rule should set out a clear procedure for investigating and remedying deficiencies reported by the central stakeholders: the individuals whose constitutional rights (and personal liberty) are at stake.
- *024.04. Items Subject to Review:* The items subject to review in this paragraph will not reveal much about the quality of representation and should instead include additional materials for review. We recommend including, at the very least: caseloads, extent of investigations, rates of cases taken to trial, motions filed, pretrial release efforts, and information from supervisors, among other things.
- *024.06. Persons Subject to Interview:* This should explicitly include and require interviews with public defender clients to ensure the PDC continues to center its work on those whose Sixth Amendment rights continue to be jeopardized under Idaho’s current indigent defense delivery system.
- *025.01. Corrective Action Plans:* For subsection (a) – County Response, we strongly urge the PDC to adopt a shorter response timeframe of 30 days. The current timeframe outlined in the draft standards will only further perpetuate the harm suffered by indigent defendants every day as they navigate Idaho’s public defense system. Given the option of a request for an extension in filing the report – which we also recommend only be for good cause – we firmly believe the 30-day timeframe provides a

reasonable period for counties to respond while helping to diminish the ongoing harm indigent defendants may face in light of non-compliance. Although we acknowledge that government systems can be slow to correct themselves, the stakes are extremely high—with many individuals' jobs, futures, families, liberty, and life at stake anytime a deficiency is identified in this system.

- *026.04. Defending Attorney Non-Compliance:* Subsection (b) states that non-compliant defending attorneys will be removed from the public defense roster while deficiencies in representation are corrected, yet they are still allowed to provide indigent defense services during this time period. Based on the language of this section, there appears to be no penalty for attorney non-compliance with PDC directives and rules, which in turn will continue to perpetuate many of the existing problems with Idaho's public defense system.

### **61.01.07 – Rules Governing the Standards for Defending Attorneys that Utilize Idaho's Principles of an Indigent Defense Delivery System**

- *020.01. Public Defense Rosters:* For subsection (c), we recommend publishing appropriate contact information for each county on the PDC website to facilitate indigent defendants reaching indigent defense providers and defending attorneys.

### **61.01.08 – Rules Governing the Administration of the Idaho Indigent Delivery Systems – Rule Definitions**

- *010.03. Case:* Based on the provided definition of a case, it is not clear what happens when multiple defending attorneys work on the same charges. As such, this definition should be more clearly defined as to how cases are counted when multiple attorneys are involved, especially in non-vertical representation cases.
  - For subsection (d), we recommend replacing "significant representation" with "0.2 hours or less of defending attorney work."
- *010. Indigent Defense Stakeholders ("stakeholders"):* To ensure that the PDC's work continues to be centered on those whose Sixth Amendment rights need defending, we recommend adding "indigent defendants" as an explicit stakeholder.

### **Performance Standards utilizing Idaho's Principles of an Indigent Defense Delivery System**

- *V. Training and Experience:* The current language provided in subsection (H) appears to indicate that, aside from capital cases, defending attorneys will be allowed to continue with representation even if they have not yet received training in the specialized area in question. To ensure that defending attorneys have the training and guidance that specialized cases require, we recommend that attorneys without the requisite training only be assigned to specialized cases with direct supervision by a more experienced attorney with the required training and expertise related to the specialized case at hand.
- *VII. Equity Between Defending Attorneys and Prosecutors:* For subsection (A), we agree, "defending attorneys shall have equal access to investigators and experts as a prosecuting attorney." However, we suggest that a clearer definition for "access" would be beneficial to the standards and should include that defending attorneys shall be able to hire investigators and experts of their own, to the same extent that prosecuting attorneys are able to use law enforcement investigators and experts.

- In an effort to more clearly define what qualifies as a “reasonable” request, we offer the following language suggestion: “Requests for funds by a defending attorney or Indigent Defense Provider to pay for investigators, experts, or forensic testing must be funded, unless the entity receiving the request can establish by clear and convincing evidence that the services will not assist in the defense for which they are sought.”
- We also recommend that the standards require that defending attorneys and indigent defense providers can access funds for investigators, experts, and forensic testing confidentially and ex parte.
  
- *Performance Standard – Investigation and Experts:* For the following set of standards, we recommend the following additions:
  - Subsection (A) does not define what is entailed in an “investigation.” To ensure a clear understanding among indigent defense providers and defending attorneys, we suggest integrating the NLADA’s 2006 “Performance Guidelines for Criminal Defense Representation,” particularly guidelines 4.1 through 4.3.<sup>1</sup>
  - In addition, we recommend including the ABA’s Defense Function Standard on Investigation, Std. 4-4.1., specifically subsection (d) which reads as follows: “Defense counsel should determine whether the client’s interests would be served by engaging fact investigators, forensic, accounting or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation.”
  - For Subsection (B) we recommend the following language changes: “Except in exceptional cases that may not lend themselves to investigation, a defending attorney shall request funds to retain an investigator, or, for defending attorneys working for an institutional public defender office with investigators on staff, shall submit a request for investigative support, to assist with the client’s case.”
  
- *Performance Standard – Capital Counsel Qualifications and Roster:* For the following set of standards, we recommend the following additions:
  - For subsection (B) regarding the defense team, we recommend including an additional provision regarding regular defense team meetings. We propose the following language addition: “5. Lead counsel will be responsible for ensuring regular defense team meetings and frequent communication among team members regarding the investigation and litigation.”
  - To clearly emphasize the importance of being familiar with the performance standards in the current American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, we recommend making that the second requirement (ii) listed under section (D)(1)(a).
  - Under section (2) regarding appellate/post-conviction counsel, we believe that a minimum of five years of criminal defense experience combined with the additional skill requirements provided in the standard are sufficient to serve as adequate counsel.

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<sup>1</sup> <http://www.nlada.org/defender-standards/performance-guidelines/black-letter>



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## Idaho

- While skills in investigation and evidence are critical requirements to serve as trial counsel, we don't believe they are necessary requirements to serve as appellate or post-conviction counsel.
- For subsection (E)(3) regarding term of eligibility, we feel that annual or biannual certification of compliance with capital training and adherence to ABA guidelines is sufficient to maintain one's position on the capital defense roster.

We appreciate the ongoing opportunities to provide comments on the various public defense rules currently drafted as a part of negotiated rule-making before the 2018 legislative session. We look forward to continuing to work with the Idaho Public Defense Commission to collaboratively reform Idaho's indigent defense delivery system. Upon release of a formal draft, we will provide further, formal comment before the late October 2017 official deadline.

A handwritten signature in black ink, appearing to read "Kathy Griesmyer".

Kathy Griesmyer  
Policy Director  
ACLU of Idaho  
[kgriesmyer@acluidaho.org](mailto:kgriesmyer@acluidaho.org)  
208-344-9750 x 1204



# ADA COUNTY

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October 30, 2017

*Via Email*

Idaho Public Defense Commission  
816 Bannock #201  
Boise, Idaho 83702

RE: Public Defense Proposed Rules

Dear Public Defense Commission:

Thank you for the opportunity to provide additional comments, following the October 11, 2017 public hearing held in Boise, on the Proposed Public Defense Rules. The comments previously made in Ada County's letter to the PDC dated August 1, 2017 were addressed, in part, at the hearing, and this letter will provide a response to those items, specifically. To the extent our concerns were not addressed, we will reiterate a few of the more troubling issues. To the extent our concerns are not reiterated herein, we request that our letter dated August 1, 2017<sup>1</sup> remain a part of the record, and the contents be considered in the PDC's future deliberations on these Proposed Rules.

Ada County continues to have reservations about inconsistencies in the Proposed Definitions and their use in the Proposed Rules. At the hearing on the Proposed Rules, the PDC explained that "Corrective Action Plans" were considered "less formal" than the Compliance Proposal process. It was stated, in essence, that no form for [Corrective Action Plans] had yet to be developed, and it was simply a way to help counties be compliant with issues of compliance they may have. After a more careful review of the Corrective Action Plan Rules, Ada County offers the following observations:

Proposed Rule 61.01.08.010.07 defines a Corrective Action Plan as a "plan developed by a county or defending attorney *with the assistance of PDC staff* that addresses any PDC designated deficiencies and how those deficiencies will be corrected."

Proposed Rule 61.01.06.021.02.c. states that the "PDC Staff shall: ...*Prepare and assist* in the implementation of corrective action plans."

Proposed Rule 61.01.06.025.01 under CORRECTIVE ACTIONS AND COMPLIANCE VERIFICATION states as follows:

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<sup>1</sup> The letter is attached for your reference.

01. Corrective Action Plans. Upon report of non-compliance by PDC staff or PDC designation of non-compliance, a county *or* defending attorney shall describe a proposed corrective action to be taken. *The plan* shall be submitted to the PDC electronically using a reporting system specified by the executive director, as approved by the PDC.

Subsections a.- d. of that Rule continue by detailing, with great specificity, the required *separate* county *and* defense attorney responses to a PDC report of non-compliance, as well as monthly/annual follow-up PDC review requirements. While the “Corrective Action Plan” is defined as an electronic submission that *either* the county or defending attorney complete, the subsequent provisions require a *separate* response from *both* the county and the defending attorney. Which of these (if either) is the actual “Corrective Action Plan” to be implemented? Why separate responses? Why is there no required cooperation between the county and defending attorney in creating their respective responses and/or the creation of *the* Corrective Action Plan? Within “not more than 60 days following *receipt of a response* to a report,” subsection c. states that the PDC staff *shall* conduct a follow-up review, to occur monthly thereafter, until “complete implementation of the corrective action has occurred.” However, either entity can seek a 60-day extension in providing a response. Is the follow-up review process held in abeyance until both responses are received? Will the Rule provide for this contingency?

Moreover, these provisions do not contain *any* directives for PDC staff to take part in this response process. How are the PDC staff duties to “*prepare and assist* in the implementation of corrective action plans” being addressed by Proposed Rule 61.01.06.025.01.a. – d., if these are, in fact, true duties? Further, where in Proposed Rule 61.01.06.025.01.a. –d. is the required “assistance” of the “PDC staff” in helping the county or defending attorney develop a Corrective Action Plan, as described in Proposed Rule 61.01.08.010.07? There appear to be no mechanisms for a county and/or defending attorney to seek *assistance* from the PDC to develop a Corrective Action Plan.

The inconsistencies of these proposed provisions should be addressed before the Rules are finalized, so that the roles and responsibilities of the parties are clearly understood, as well as the mechanics of *creating* an actual “Corrective Action Plan.” Pursuant to proposed Rule 61.01.06.026.02, the failure of a county or defending attorney to respond to a reported deficiency within the required time appears to be the first step toward a potential enforcement action under I.C. § 19-862A. In the interests of due process, it is critical that the Rules governing the creation and implementation of the Corrective Action Plans be exceedingly clear. With all due respect, the PDC may wish to consider a less “bureaucratic” approach to an issue of non-compliance.

Further, in the spirit of compliance with the I.C. § 19-862A (1) directive that “counties, indigent defense providers and defending attorneys shall *cooperate and participate with the commission* in the review of their indigent defense services,” it would seem fitting that the Corrective Action Rules incorporate some degree of PDC assistance to counties and defense attorneys in developing Corrective Action Plans to correct identified compliance issues.

Ada County is still troubled by the use of the Proposed Rule 61.01.08.010.10 definition: Findings of Compliance with Recommendation. It was explained, at the hearing, that the PDC will be aware of "things that are coming," and that a county, even though currently compliant, will have room to improve, based on the standards *yet to be promulgated*. Again, either a standard *is or is not* in existence, at any given point in time. When it becomes a standard, it must be complied with, and *at that point in time*, a finding of compliance should or should not be issued. If a county or defending attorney chose not to follow a "recommendation," would the PDC act on it in some capacity? The Proposed Rules only allow the PDC to issue reports of non-compliance with standards that currently exist. It would seem that the PDC will have plenty to do without assuming the additional responsibility of recommending that counties adhere to standards that do not yet exist.

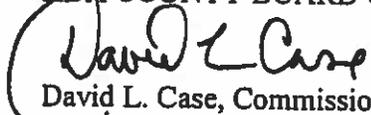
Ada County continues to have concerns that Proposed Rule 61.01.08.010.02 does not clearly state that, if the State Legislature fails to appropriate funds for grants, counties are not responsible for funding more than their local share. It should be made clear that enforcement procedures will not be taken against counties that are forced into a state of non-compliance with the standards, *through no fault of the county*.

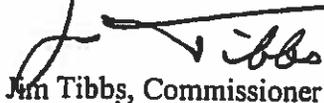
Proposed Rule 61.01.06.021.04 states that counties...*"are subject to the oversight program described herein."* Again, Ada County reiterates its position that a statutory duty to *"cooperate and participate with the commission in the review of [its] indigent defense services"* is a far cry from being *"overseen"* by the PDC. The PDC does not have the statutory authority to *"oversee"* the activities of county officers, and the wording of this Proposed Rule should reflect the actual statutory directive that does exist.

Finally, Ada County appreciates the opportunity to engage in the current rule-making process, and it is hopeful that this input will assist the PDC in its efforts to create a system that will better deliver indigent defense services to the citizens of Idaho.

Sincerely,

ADA COUNTY BOARD OF COMMISSIONERS

  
David L. Case, Commissioner

  
Jim Tibbs, Commissioner

  
Rick Visser, Commissioner

cc: Kimberly J. Simmons, Executive Director, Public Defense Commission  
County Commissioners



# ADA COUNTY

COMMISSIONERS'  
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August 1, 2017

*Via Email*

Idaho Public Defense Commission  
816 W. Bannock, #201  
Boise, ID 83702

Dear Public Defense Commission:

Thank you for providing the opportunity to comment on the proposed public defense rules. As county commissioners, we have a particular interest in how the rules might impact county budgeting and compliance, and the provision of public defense services in Ada County.

I. **Conflicting Definitions Lead to Confusion**

The first concern we have relates to the language used to describe the Indigent Defense Grant Application. Idaho Code §19-862A provides in relevant part:

[E]ach county may submit to the commission an application for a state indigent defense grant that shall include a plan that specifically addresses how indigent defense standards shall be met and, if applicable... how any deficiencies previously identified by the commission will be cured. (Emphasis added).

Under proposed Rule 61.01.08.010.01, an applicant is defined as a county that has a need for a grant "by submission of a compliance proposal."

Under proposed Rule 61.01.08.010.06 and .07, the "compliance proposal" and the "corrective action plan" can be perceived to be the same thing. Both definitions focus on how deficiencies identified by the Public Defense Commission are supposed to be addressed.

These proposed Rules and definitions create confusion, in that a grant application is also termed a "compliance proposal." This implies that if a county is applying for an Indigent Defense Grant that they are out of compliance, and in need of a corrective action plan.

According to the statute, a county may submit an application for a grant. This process should not come with an implication that the county is out of compliance. It seems that it would be more appropriate to separate the grant application process from issues related to compliance and/or corrective action.

In addition, proposed Rule 61.01.08.010.10 states:

A finding of compliance with recommendation refer to a condition whereby a county...may technically be in compliance with Indigent Defense Standards; however, the provision of indigent defenses services could be improved to ensure constitutionally sound representation or achieve compliance with indigent standards yet to be promulgated.

Such a proposal is troubling on two levels. First, it provides the staff for the Public Defense Commission the ability to make subjective determinations based on unknown criteria. A county can technically be in compliance, but still be determined to be in need of improvement as put forward in any recommendations. Second, the subjective recommendation can be related to prospective rules that have not yet been promulgated. This has the potential of holding the counties to an unachievable standard.

The purpose of the rules is to provide standards for the delivery of public defense. A county is either in compliance with the standards or they are not. The rules should not allow for subjective analysis, especially if such analysis can relate to standards not yet written. Idaho's legislature made it clear that the rules were to define what the standards of compliance should be (see Idaho Code §19-850(vi)). This definition as proposed is outside the bounds of what the statute allows and the legislature intended.

The final phase of the proposed rule is an overreach of what the statute allows, when it contemplates the possibility of a county technically being in compliance, but still with the possibility of the Public Defense Commission making the determination that they should still make improvements. This sets counties up for perpetual inability to satisfy the standards.

It was perhaps the intent of the drafters to say that a county can be in compliance, but the Public Defense Commission may have additional recommendations. If that is the intent the rule needs to be crafted to make that clear.

Our final concern relates to Proposed Rule 61.01.08.010.02. The last sentence of the approval definition states: "Disbursement of funds is subject to availability as appropriated by the State Legislature each year." There should be additional language that states that in the event funding in any given year is not appropriated by the legislature, the counties will not be obligated to fund more than their local share. This would be a situation beyond the counties control, and as such, should not subject the counties to make up the difference on their own, and/or potentially subject them to the enforcement provisions outlined in 61.01.06.026. This should be made clear in the plain language of the rule.

## **II. 61.01.06 – Proposed Rules Regarding Oversight, Implementation, Enforcement, and Modification of Indigent Defense Standards**

Proposed Rule 61.01.06.021.02 deals with the roles of the Public Defense Commission Staff. This rule gives the staff authority to review counties for compliance. Our concern with the

language of this rule mirrors our previous concerns noted in the definitions section, in that it allows PDC Staff to make subjective determinations of compliance or noncompliance with a finding of "compliance with recommendation," as stated in proposed rule 61.01.08.010.10. We feel this is inappropriate. The rule of law requires clarity so that the people can in good faith adhere to the law. This rule as proposed does not follow this principal.

Of further concern is Proposed Rule 61.01.06.021.02(f). It gives the PDC staff the authority to "review and assist with the creation of county indigent defense budgets." There is no statutory authority for the PDC to review county budgeting or provide assistance with the creation of county budgets. County budgeting is governed by Idaho Code §§ 31-601 *et. seq.* All decisions related to the budget, and the adoption of the county budget is the sole province of the county commissioners, those elected to make the financial decisions of the county.

A similar overreach is seen in proposed rule 61.01.06.021.04. Idaho Code §19-862A provides that all counties shall cooperate with the commission in their review of indigent defense services. The counties cooperating with the public defense commission is quite different than stating that the county commissions "and other county staff necessary for the administration of indigent defense services, including but not limited to elected county clerks, are subject to the oversight program described herein." The county commissioners and the county clerk are constitutional officers and their duties are defined by statute. The PDC does not have statutory authority to oversee the activities of elected county commissioners and/or elected clerks and/or their staffs.

It also appears that the word "oversight" is intended to tie into the Oversight Program Management (Rule 61.01.06.023) where the PDC, through proposed rule, attempts to have oversight of county budgets, court proceedings, and compliance with membership in the Idaho State Bar. Again, there is no statutory authority to oversee county budgets, to oversee the courts, the Idaho State Bar, or individual attorney's compliance with State Bar membership.

Perhaps the most troubling statement comes at the end of Proposed Rule 61.01.06.026.06. It states that the PDC can determine a county has willfully and materially failed to comply "[e]ven if a county...complies with the black letter of this chapter, the PDC may make findings of non-compliance notwithstanding their cooperation." That statement does not make sense – how can the PDC find that a county willfully and materially failed to comply if the county is complying with the requirements that are in that statute and in published rules. This is very concerning because if there is a finding that the county willfully and materially failed to comply, the statute allows the PDC to enact its enforcement authority. Idaho Code §§ 19-862A(11)-(12). Under the proposed rule, this remedy would be allowed even if a county were in black letter compliance because the "ultimate assessment of compliance is the responsibility of the PDC." See 61.01.06.023.08.

### **III. 61.01.07 – Proposed Rules Regarding Standards for Defending Attorneys**

The comments on standards for defending attorneys are being prepared by Ada County's Chief Public Defender. He and his leadership team have many years of experience in criminal defense,

Idaho Public Defense Commission  
August 1, 2017  
Page 4

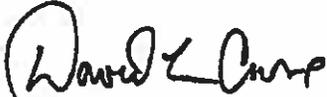
including murder cases, and they are in the best position to offer an analysis of whether the standards are measurable in a meaningful way.

**IV. Conclusion**

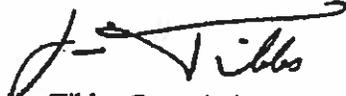
Finally, the state and the counties have limited resources. It appears from the rules that many of the resources that could be devoted to public defense will be expended on additional public defense staff who will need to be hired to implement all the rules. See initial reviews, periodic reviews and annual reviews. As county commissioners we face hard choices every year regarding funding and often have to step back and determine how to provide services to our constituents and make the budget work. We suggest that the public defense commission take a step back and prioritize those rules that will result in the effective delivery of public defense.

Sincerely,

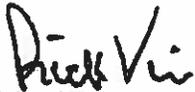
ADA COUNTY BOARD OF COMMISSIONERS



David L. Case, Commissioner



Jim Tibbs, Commissioner



Rick Visser, Commissioner

cc: Kimberly J. Simmons, Executive Director, Public Defense Commission  
County Commissioners

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Tuesday, January 23, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">H 357</a>	Filing of claims for small claims cases	Jason Slade Spillman, Administrative Office of the Courts/Idaho Supreme Court
<a href="#">H 358</a>	Suspension of judgement and sentence / retained jurisdiction	Jason Slade Spillman
<a href="#">H 359</a>	Action for possession in unlawful detainer / forcible detainer cases	Jason Slade Spillman
<a href="#">H 360</a>	Assault and battery in domestic violence cases	Jason Slade Spillman
	Introduction to the Courts	Senior Judge Barry Wood, Administrative Office of the Courts
	Guardianship and Monitoring Program Achievements	Judge David Kress, Sixth Judicial District
	Malicious Harassment – Safety Plus Justice Challenge	Judge James Cawthon, Fourth Judicial District
	Civil Protection Orders and Related Orders	Judge Jayme Sullivan, Third Judicial District
	Self-represented Litigants – Challenges and Successes	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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

- DATE:** Tuesday, January 23, 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:** Sara Thomas, Jason Spillman, Christina Iverson, ISC; Jayme Sullivan, David Kress, Barry Wood, Kent Merica, ISC Magistrate; Jim Cawthon, Ada County Magisitrade; Greg Hedger, IFRM; Mike Kane, ISA
- Chairman Luker** called the meeting to order at 1:31 p.m.
- H 357:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court presented **H 357**. This bill amends the answer and notification filing deadline in small claims cases to twenty-one (21) days. This brings this section of the statute in alignment with the seven (7) day increments used across the courts.
- MOTION:** **Rep. Kerby** made a motion to send **H 357** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Ehardt** will sponsor the bill on the floor.
- H 358:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court presented **H 358**. Line 25 of Idaho Code § 19-2601 currently states the court "shall" retain jurisdiction over the prisoner. This bill amends the section to read "may," to reflect this is a matter of discretion and is not mandatory.
- MOTION:** **Rep. Chaney** made a motion to send **H 358** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Cheatham** will sponsor the bill on the floor.
- H 359:** **Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court presented **H 359**, which corrects pleading requirements as it relates to serving notice in forcible detainer cases. It also makes additional technical corrections. In response to questions from the committee, Mr. Spillman explained a property owner must attempt to make a demand for vacating a property as outlined in the law enacted last year. However, no documentation is required, but is advisable. He also confirmed that **Sen. Lakey** and **Rep. Youngblood**, the sponsors of last year's legislation, are aware of and support the changes in **H 359**.
- MOTION:** **Rep. McCrostie** made a motion to send **H 359** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McCrostie** will sponsor the bill on the floor.

**H 360:**

**Jason Slade Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court presented **H 360**. This bill amends the attempted strangulation law to treat all domestic violence offenders consistently with regard to evaluation, counseling and treatment. It clarifies the role of the Idaho Supreme Court in establishing uniform standards for domestic violence evaluators. The bill updates language regarding domestic violence evaluation and counseling to reflect consistent and current practices. In response to questions that came up during the RS introduction, Mr. Spillman clarified local judicial districts have the ability to propose rules for stricter standards, but it has been the Supreme Court's jurisdiction to establish uniform standards in criminal proceedings since 1995, as outlined in Idaho Code.

**MOTION:**

**Rep. Kerby** made a motion to send **H 360** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.

**Barry Wood**, Senior Judge, Administrative Office of the Courts/Idaho Supreme Court introduced the panel of judges along with a brief overview of the seven Idaho judicial districts.

**David Kress**, Judge, Sixth Judicial District provided an overview and update on Idaho's guardianship and monitoring program. Legislative funding for program expansion to all seven judicial districts last year has resulted in identifying a significant number of cases that benefited from further review and referral. This ultimately helps protected individuals. However, it continues to be a challenge to find willing and qualified guardians.

**James Cawthon**, Judge, Fourth Judicial District presented an overview and current results of the Safety Plus Justice Challenge. Ada County is the recipient of \$1 million grant from the MacArthur Foundation to evaluate and implement programs that create more efficient jail usage and better justice work. The program's approach to finding innovative solutions has resulted in better partnerships across the county justice system and could be a model for other Idaho counties. He stated the increase in felony filings is a challenge and will require a change in business as usual practices. Despite the jail running at near capacity levels, he believes progress can be made. In response to questions from the committee, Judge Cawthon explained Ada County law enforcement agencies are looking into why the number of felony cases are increasing. The answers are not clear, but population growth, and issues associated with drugs and domestic violence are factors. When asked what can be done to address the challenges, he stated, there are things that can be done at the front end to divert people from the courts. However, that must be balanced with the need to make sure jails are used for those who are a danger to our community.

**Jayme Sullivan**, Judge, Third Judicial District provided an overview and update on the effects of last year's change and expansion of civil protection orders. Changes in the domestic violence crime provisions have increased new case filings by 43% since the law's expansion. The courts have responded with a reallocation of resources and changes in how dockets and calendars are managed with the goal of adjudicating quickly and appropriately, but it is a challenge. Changes in the stalking provision provides a more expedient form of protection, which is an important step in extending protections to Idaho citizens. The malicious harassment provision is very narrowly defined in this statute, so very few people meet the "preponderance of evidence" standard to receive a protection order on these grounds. There also is a redundancy with the criminal process. Generally, people are already receiving protections under a criminal "no contact order," so there are very few cases that come up under this statute. The telephone harassment provisions are broadly defined and the courts are seeing an increase in cases that cover a wide range of topics that may, or may not, have been the intent of the statute when it was

enacted. In response to questions from the committee, Judge Sullivan clarified Magistrate judges are the only judges who see the types of cases where volatile or inflammatory exchanges are occurring in social media and people are seeking protection orders and civil actions.

**Kent Merica**, Judge, Second Judicial District presented on the growing number of self-represented litigants and the challenges that accompany this trend. More than 50,000 Idahoans access court assistance. He provided an overview of the new File and Guide program. This online system was launched to help people seeking self-representation in family law, small claims and guardianship cases. It provides easy access to filing forms, FAQs and videos. In answer to questions from the committee, Judge Merica explained the program is just rolling out, so results are not available, but word is spreading about it's availability. He said it is difficult to provide an answer on how well self-represented individuals do against professional legal representation, as some do rather well, but conceded knowledge of the law and procedural process can be an advantage.

**Judge Wood** ended the panel session by saying they have received feedback from judges across the state that telephone harassment proceedings have resulted in an enormous resource grab, and many do not have merit. However, the courts are not yet asking for a change in the statute because the recent changes are too new. The courts would like to gather more data to evaluate the statute, so they can ensure people who need to be protected, remain protected, but can come up with language that eliminates issues that are without merit.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:07 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Thursday, January 25, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">SCR 125</a>	Joint Rule 4	Carrie Maulin, Chief Clerk of the House
<a href="#">RS25729C1</a>	Victim confidentiality, addresses	Lisa Mason, Secretary of State's Office
<a href="#">RS25789</a>	Crime victim compensation	Rep. Wintrow
	State Appellate Public Defender's Office Update	Eric Fredericksen, State Appellate Public Defender's Office
	Idaho Commission of Pardons and Parole Update	Sandy Jones, Idaho Commission of Pardons and Parole

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Thursday, January 25, 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:** Geraint Morgan, Sandy Jones, Parole Commission; Julie Custer, Wendy Rancourt, Tracy Bicknell-Holmes, Gayle Wilde, Donora Looze, Karen Haven, Jim Haven, Jane Post, Sylvia Chariton, Gail Kirkpatrick, Kathy Scott, Paulette Penney, Judy L. Seevist, AAUW; Emily Jackson-Rodney, Catherine Fluete, ITHAL/Pride Foundation; Brody Aston, Legal Aid; Kimberly Conklin, Lisa Just, Luann Pettman, ICDVVA; Marilyn McAllister; Marc Schlegel, Interfaith Equality Coalition; Annie Pelletier, Idaho Coalition Against Sexual Violence; Carrie Maulin, Chief Clerk of the House; Jennifer Novak, Senate; Justice Cochran, Samantha Katana, Mistie Tolman, Dusty Ginner, Planned Parenthood; Eric Federicksen, SAPD; Kimberly Simmons, PDC; Maggie Smith, LSO, Holly Koole, IPAA

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

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the January 15, 2018, meeting. **Motion carried by voice vote.**

**SCR 125:** **Carrie Maulin**, Chief Clerk of the House presented **SCR 125**, which amends Joint Rule 4 to confirm the existing practice of enrolling and engrossing bills.

In response to questions from the Committee, **Ms. Maulin** explained enrolling a bill passes both legislative houses and the Chief Clerk verifies it is an actual bill as passed by the Legislature. Engrossing is when amendments are made to an existing bill and the Clerk verifies whether amendments are included as passed.

**MOTION:** **Rep. McDonald** made a motion to send **SCR 125** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.

**RS 25729C1:** **Lisa Mason**, Administrator Legislative and Executive Affairs, Idaho Secretary of State Office, presented **RS 25729C1**. This legislation amends current law by allowing victims of human trafficking to participate in Idaho's Address Confidentiality Program. It also expands the law by allowing eligible violent crime victims to provide various forms of evidence in lieu of requiring a protection order prior to program enrollment.

**MOTION:** **Rep. Cheatham** made a motion to introduce **RS 25729C1**. **Motion carried by voice vote.**

**RS 25789:** **Rep. Wintrow** presented **RS 25789**. Currently, sexual assault is the only crime in Idaho where the victim's insurance is billed for forensic evidence collection. This RS amends current law by directing Idaho's Crime Victims Compensation Program to pay the entire cost of sexual assault evidence collection when done at a medical facility or justice center. Rep. Wintrow explained there are a multitude of details that need to be worked out with regard to including minor aged victims under this change. Therefore, at this time, this change only applies to adult victims. It was determined to be the most expedient way to address this matter.

**MOTION:** **Rep. Malek** made a motion to introduce **RS 25789**. **Motion carried by voice vote.**

**Eric Fredericksen**, State Appellate Public Defender, Appellate Public Defender's Office (SAPD) provided an overview of his agency, which provides relief to Idaho counties by representing indigent offenders in felony appeals and capital crime cases. The Capital Crimes Defense Fund provides important relief by covering defense costs in felony and death penalty appeals cases. He described an example where a county expressed an interest in withdrawing from the fund. His office was able to prove value to the county by showing SAPD provided more than \$700,000 in services, for the county's \$10,000 investment in the fund. In response to questions from the Committee, Mr. Fredericksen stated his office is getting to a more appropriate staffing level so it can more effectively manage case load. However, there are plans for a budgetary increase to improve the staff to attorney ratio. He said case load in 2017 went down significantly due to more counties using more Rule 11 agreements. This is a binding agreement to a plea of guilty, and an appeal is waved in those cases. While the number of cases are going down, the number of substantive cases are going up.

**Sandy Jones**, Executive Director, Idaho Commission of Pardons and Parole provided an overview and update on behalf of her agency. The Commission added two new commissioner positions last year and there are 20 parole hearing officers that carry a heavy load, but do a good job. The Commission is Idaho's releasing authority. Parole is not a given. Some release factors are statutory and others are Commission determined. Last year, the number of parole hearings increased significantly as a result of the change in statutory language for parole violators serving mandatory minimums. What was previously a matter of managing paperwork, now has become a required hearing. She discussed the changes implemented regarding revocations of parole, and highlighted the work of the Problem Solving courts that were implemented as a result of the Judicial Reinvestment Initiative. They are seeing some numbers go down, but it is too early to know whether the program is working to cut down the amount of time and number of parole violators going back to prison.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:29 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Monday, January 29, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS25826</a>	Civil asset forfeitures	Representative Steven Harris
<a href="#">RS25856</a>	Breastfeeding exemption, indecent exposure	Representative Paul Amador
<a href="#">H 379</a>	Non-profit corporation filing requirements	Chad Houck, Office of the Secretary of State
	Sexual Offender Management Board Update	Nancy Volle, Sexual Offender Management Board
Docket No. <a href="#">57-0101-1701</a>	Pending Rules of the Sexual Offender Management Board	Nancy Volle

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Monday, January 29, 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:** Rebecca Lemmons, Corey Surber, Saint Alphonsus; Nancy Volle, SOMB; Mike Kane, ISA; Phil Haunschild, IFF; Maria Kennedy, ACLU; Adrian Carener, Mosaic Advisors

**Chairman Luker** called the meeting to order at 1:32 p.m.

**RS 25826:** **Rep. Harris** presented **RS 25826**. This legislation is brought forward with bi-partisan support. It also is supported by a number of stakeholders. It changes the current code regarding certain property that is subject to forfeiture. It also addresses replevin of property, forfeitures that are proportionate to alleged crime, absolves innocent owners of costs associated with seizure, gives law enforcement an option to retain property with judicial approval and establishes reporting requirements.

**MOTION:** **Rep. McCrostie** made a motion to introduce **RS 25826**. **Motion carried by voice vote.**

**RS 25856:** **Rep. Amador** presented **RS 25856**, which provides an exemption from the criminal act of indecent exposure for the act of breastfeeding and/or the expression of breastmilk for the purpose of feeding a child. Rep. Amador explained Idaho is the only state that does not provide protections to breastfeeding mothers, despite the tremendous nutritional and health benefits to children.

**MOTION:** **Rep. Wintrow** made a motion to introduce **RS 25856**. **Motion carried by voice vote.**

**H 379:** **Chad Houck**, Deputy Secretary, Secretary of State presented **H 379**. This bill amends Title 30 by changing the number of required signatures needed when filing articles of incorporation for a nonprofit corporation. Changes to the law will make it consistent with filing requirements for corporations.

**MOTION:** **Rep. Perry** made a motion to send **H 379** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Zito** will sponsor the bill on the floor.

**Nancy Volle**, Program Manager, Sexual Offender Management Board (SOMB) provided an overview of the board's accomplishments and plans for the upcoming year. SOMB is an independent, 11-member policy board that oversees statewide sexual offender management policies and standards for the evaluation and treatment of sex offenders. Last year, the board developed a certification process for evaluators, treatment providers and polygraph examiners. Key training was provided to evaluators, treatment providers and POs throughout the state, at no cost to the participants. The board plans continued refinement of the audit tool for evaluators, followed by treatment providers and polygraph examiners. Education and training for all certified providers will continue, with course development based on the surveyed needs of participants.

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

**DOCKET NO.  
57-0101-1701:**

**Nancy Volle**, Program Manager, Sexual Offender Management Board presented the pending rule which removes references to the Association for the Treatment of Sexual Abusers (ATSA) from sections of this docket. These changes are due to Idaho's philosophical differences regarding the use of certain evaluation and treatment methods for sexual offenders. In response to questions from the Committee, Ms. Volle stated the use of polygraphs is one area of difference. Based on a survey of the state's treatment providers, all but one believe the use of this tool is effective but ASTA now supports only limited use of polygraphs. By removing ASTA from the board's rules, Idaho's treatment providers are not bound to adhere to ASTA's standards, providing latitude that is in keeping with Idaho practices.

**MOTION:**

**Rep. Wintrow** made a motion to approve **Docket No. 57-0101-1701. Motion carried by voice vote.**

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

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 2:02 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Wednesday, January 31, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS25809</a>	Extends filing period time for unpaid wages	Rep. Mathew Erpelding
Docket No. <a href="#">11-1101-1701</a>	Rules of the Idaho Peace Officer Standards and Training Council	Dennis Stevenson, Office of the Administrative Rules
Docket No. <a href="#">05-0102-1701</a>	Rules and Standards for Secure Juvenile Detention Centers	Sharon Harrigfeld, Idaho Department of Juvenile Corrections
	Idaho Department of Juvenile Corrections Update - Jason Stone, Idaho Department of Juvenile Corrections	Sharon Harrigfeld
	Idaho Criminal Justice Commission Update - Henry Antencio, Idaho Department of Correction - Lisa Bostaph, Public Member - Sandy Jones, Idaho Commission of Pardons and Parole - Eric Fredericksen, State Appellate Public Defender's Office - Christina Iverson, Idaho Supreme Court	Sharon Harrigfeld

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Wednesday, January 31, 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:** Chelsea Newman, Bree C. Shoup, Jason Stone, Steven Jett, Karen Skow, IDJC; Christina Iverson, ICJC; Henry Atencio, IDOC/ICJC; Sharon Harrigfeld, IDJC/ICJC; Sandy Jones, Parole Commission/ICJC; Jesse Taylor, ABC; Dennis Stevenson, Rules Coordinator; Holly Koole, IPAA

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

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the January 23, 2018, meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the January 25, 2018, meeting. **Motion carried by voice vote.**

**RS 25809:** **Rep. Erpelding** presented **RS 25809**, which extends the period of time an unpaid wage claim can be made to twelve (12) months.

**MOTION:** **Rep. Malek** made a motion to introduce **RS 25809** with the following change: in paragraph five, line two of the Statement of Purpose, the November date should read "2017". **Motion carried by voice vote.**

**DOCKET NO.  
11-1101-1701:** **Dennis Stevenson**, Administrative Rules Coordinator, Office of the Administrative Rules readdressed Section 064.05 by stating the Peace Officer Standards and Training Council (POST) intends to come back next year with language that includes the "before God" reference as well as the words, "with sincere and unfaltering commitment" to provide candidates a choice when attesting to the Code of Ethics/Standards of Conduct. He also explained there was an erroneous text change in Section 201.01(d). Therefore, the Committee was asked to approve the entire Docket, with the exception of Sections 064.05 and 201.01(d). By doing so, this will retain the language in both sections as currently written. In response to questions from the Committee, Mr. Stevenson said POST consulted with legal counsel about using both references in Section 064.05 and they are fine with this alternative.

**MOTION:** **Rep. Kerby** made a motion to approve **Docket No. 11-1101-1701**, with the exception of **Section 064.05** and **Section 201.01(d)**. **Motion carried by voice vote.** **Rep. Wintrow** requested she be recorded as voting **NAY**.

**DOCKET NO.  
05-0102-1701:**

**Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC), with support from **Steven Jett**, Director of the Southwest Juvenile Facility, Idaho Department of Juvenile Corrections presented the Docket. Changes include clarifying definitions and Ms. Harrigfeld stated the Senate approved the Docket, with the exception of Section 010.37, which defines what constitutes a "Pat Search." It was explained that if this Section is rejected, the current definition will remain as is. Regardless, IDJC intends to come back next year to define this more clearly. The Docket also includes changes to update procedures; combine or reorganize sections; and rename section titles to clarify each section's content and remove some redundancies. The Docket also adds law enforcement officers to the list of individuals who may confidentially interview offenders. Following questions from the Committee, Ms. Harrigfeld stated private one-on-one interviews with certain individuals are still allowed, but recorded video/visual is available.

**MOTION:**

**Rep. Kerby** made a motion to approve **Docket No. 05-0102-1701**, with the exception of **Section 010.37**. **Motion carried by voice vote.**

**Sharon Harrigfeld**, Director and **Jason Stone**, Community, Operations and Program Services Administrator, Idaho Department of Juvenile Corrections (IDJC) provided an update for the agency. IDJC represents more than 400 employees, and the agency's results are dependent on successful relationships with judiciary, counties, education, families and private providers. Their goal is to keep youth in their communities and out of the IDJC system, which is being accomplished with a variety of programs. The Substance Use Disorder System is being used effectively to provide timely screening, professional level assessment, treatment and recovery support services for youth with substance use disorders. It is significantly less expensive to intervene and educate/treat for drug and alcohol issues within the community (\$2,998 per youth), before it reaches a critical point, requiring commitment to a facility (\$102,000 per youth). Last year, 791 youth were served through the Substance Use Disorder System. Young people are coming into the IDJC with more complex issues. Nearly 60% have complex mental health needs. IDJC is getting better at identifying trauma and is training direct care staff with "Think Trauma" curriculum to improve outcomes. Education and training are an important aspect of IDJC care. Most come into the system several years behind academically, but are much improved by the time they leave. Many leave with GEDs, or certifications and job training skills that help them become productive citizens. Family and environment are critical to supporting youth. IDJC works to provide families with support tools such as video conferencing to maintain ties and communication. Families are also involved in "family group decision making". This fosters collaboration and leadership from within the family. This all significantly improves a young person's ability to transition back into the community. Following questions from the Committee, Mr. Stone said their goal is to challenge youth enough to change their thinking, so they don't get hooked back into the behaviors that got them into custody in the first place. He explained the Counties will need to find funding for the 15 projects currently supported by the Millennium Fund, if the grant is not extended. The types of crimes most often committed are sex, battery and drug offenses. Ms. Harrigfeld clarified the staff uses many tools to evaluate youth to develop treatment plans, including a questionnaire to identify how much trauma youth have experienced prior to coming into custody.

**Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC) introduced the panel representing the Idaho Criminal Justice Commission (ICJC).

**Sandy Jones**, Executive Director, Idaho Pardons and Parole provided an overview of ICJC – a cross-functional group representing state, county and city government with the goal of creating constructive, meaningful outcomes within the criminal justice system. This is accomplished through relationship building, sharing of information, and talking about issues that foster better decision-making and recommendations for policy as a system.

**Henry Atencio**, Director, Idaho Department of Correction, provided an overview of the Commission's Strategic Plan and Goals. They include: combatting crime and protecting citizens through the establishment of subcommittees and creation of a dashboard that collects data on victims, offenders and community indicators. Other goals include: providing policy makers and criminal justice decision makers with accurate information; and promoting efficiency and effectiveness of the criminal justice system through presentations and training on trending topics.

**Christina Iverson**, Statewide Sentencing Alternative Manager, Idaho Supreme Court presented on the Pretrial Justice Program. This subcommittee is charged with examining current pretrial practices in Idaho by assessing the defendant and whether they are a danger to the community. The goal is to use a consistent tool for sharing information with judges prior to a defendant's first arraignment. There are 30 Idaho counties performing some level of pretrial functions and they vary, but they focus on standardizing the case management system and following the recommendations of the ICJC.

**Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC) provided an overview of the Mental Health and Substance Abuse subcommittee. This past year, the group looked at the ongoing statewide opioid epidemic. It also looked into mental health issues, which are complicated and reach across many agencies at the state, county and city level. A Mental Health Summit was held where a variety of topics were discussed including: more training via POST, transportation, phone applications, weighted blankets, Idaho Code changes and more. The report is available on the Idaho Association of Counties website. Ms. Harrigfeld also provided an update on the Research subcommittee. She noted the ICJC Dashboard was going live Feb. 1st. Data from all aspects of the criminal justice system will be available. Boise State University has also conducted a victim's survey and the Commission will consider the possibility of conducting it bi-annually.

**Eric Fredericksen**, State Appellate Public Defender, Appellate Public Defender's Office provided an update on the Human Trafficking subcommittee. He discussed a report card completed in 2016 by Sharing Hope International. The report card assessed various aspects of Idaho's criminal justice system as it relates to Human Trafficking. It is a national organization and has done this for many states across the country. While some of the scores were less favorable, a few of those scores are not accurate. In response to questions from the Committee, Mr. Fredericksen explained the report card is important because it provides a starting assessment tool with valuable information and shouldn't be overlooked, even though some of the data is not accurate. He said Idaho does not have a lot of specific statistics on human trafficking, but it is of growing importance. The Commission has made several recommendations on this matter, including instituting POST training so human trafficking can be better identified, as well as code changes so offenders can be more effectively prosecuted.

**Eric Fredericksen**, State Appellate Public Defender, Appellate Public Defender's Office closed out the session with an update on the Criminal Law Review subcommittee. Statutes have been reviewed, and proposed changes have been recommended to address: forcible penetration by use of foreign object, sexual battery and aggravated sexual battery.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 3:24 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**2:00 P.M.**  
**Room EW42**  
**Thursday, February 01, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS25907</a>	Marijuana possession, penalty amendment	Rep. John Gannon
<a href="#">H 376</a>	Crimes & punishments regarding prostitution trafficking	Rep. Brent Crane
<a href="#">H 377</a>	Crimes & punishments regarding patronizing a prostitute	Rep. Brent Crane

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Thursday, February 01, 2018

**TIME:** 2:00 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:** Eric Fredericksen, SAPD; Amy Hubach, Steve Nisula, Amanda Gigray, Grace Lutheran Church; Saleah Snelling; Bree Gager, Mike Maglish, Shaunna Olson, Makayla Shropshire, Bella Dolavicci, Amanda Forest, Dawn Maglish, Wayne Broding, Carla Shields, Karen Sorenson, Inside Out Cares; Tom Arkoosh, Arkoosh Law/IACDL; Natalie Needham, Blue Backpack Project; Joshua A Tuttle, We the People; Pam Riggins, IACDL; Phil Hunschild, IFF; Holly Kolle Nebholtz, IPAA; Niwe Fitzgerald, ODP; RaeAnn Manship; Mark C Snowball; Tiara Roper; Steven Roper

**Chairman Luker** called the meeting to order at 2:01 p.m.

**RS 25907:** **Rep. Gannon** presented this proposed legislation to amend the law for first-time offenders in possession of less than a 1/2 ounce of marijuana. It adds a new section that reduces the charge of misdemeanor to an infraction if the offender voluntarily completes four (4) hours of court approved drug/alcohol education and pays a fine of \$250 or completes eight (8) hours of court approved community service.

**MOTION:** **Rep. Cheatham** made a motion to introduce **RS 25907**.  
Speaking to the motion, **Rep. Malek**, stated he will vote to introduce **RS 25907**, but will be vocal against it when it comes to Committee for hearing.

**VOTE ON MOTION:** **Chairman Luker** called for a vote on the motion to introduce **RS 25907**. **Motion carried by voice vote.**

**H 376:** **Rep. Crane** presented **H 376** by stating it is an important piece of legislation to combat human trafficking and more specifically sex trafficking in the state. This legislation makes a technical change to remove the letter "s" from the word persons, so if someone is trafficking one individual, they can be charged.

**MOTION:** **Rep. Malek** made a motion to send **H 376** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Crane** will sponsor the bill on the floor.

**H 377:** **Rep. Crane** presented **H 377** There's been a lot of news and discussion around this piece of legislation. It would be landmark policy to make it a felony for solicitation of a prostitute on the first offense, and Idaho would be the first state to do so if it passes. It sends a message that sex and human trafficking is not welcome here. In answer to questions from the Committee, Rep. Crane stated there is a clear connection with sex trafficking and solicitation. Often victims are abused, drugged, enslaved and forced into prostitution. Current policy and statute is not working because it punishes the prostitute, who is often a victim, and the pimp, but the law goes lightly on the buyer. In answer to questions from the Committee, he explained it is about addressing the demand for services and if that can be curtailed it is believed it will curtail sex and human trafficking. He explained what rights are lost when a person is charged with a felony which include possession of firearms

and voting. In answer to questions about unintended consequences, he said he would respect the wishes of the Committee if they move to amend the legislation to charging a felony on the second offense or other changes, but the bill does allow prosecutors and judges discretion in sentencing. While there are not other states with similar policy, similar law with even more stringent sentencing is in place in Scandinavia and has significantly reduced prostitution.

**Daniel Truscott** provided written testimony **in opposition** to **H 377**. (Attachment 1)

**Saleah Snelling**, with Underground Railroad, testified **in support** of **H 377**, stating sex trafficking is very real and happening in Idaho. It ranges from prostitution to kidnapping. She asked the committee to open their hearts and minds to this and explained that people who steal things get more serious penalties, and yet buyers of services from enslaved women, girls and boys is a serious crime and the punishment should be commensurate. In response to questions from the Committee, she said she didn't think you can change someone's behavior, but this is about ensuring there is punishment for a real crime while protecting the victims. Sex trafficking is the third largest industry in the world.

**Mike Maglish**, CEO, **Dawn Maglish**, Founder and **Bree Gager**, theraputic foster mom, Inside Out, testified **in support** of **H 377**. Their comments echoed much of what was shared by **Rep. Crane**, but Mr. Maglish provided additional background and statistics, including online ads for prostitution has increased 800%. Children are being found online and 68% of teen girls have been asked to send nude photos and adults are asking for them. The average age of a coerced, sex trafficked young person is 12 to 14. This is not an issue of two consenting adults engaging in an illicit act. It is a systemic reality directly tied to human trafficking. Shared Hope International, a national organization dedicated to this issue, has graded all states on their policies to address human trafficking. In 2014, Idaho received an F based on its policies. In answer to questions from the Committee, Mr. Maglish said progress has been made on addressing issues in Idaho and in 2016, Idaho received a C grade from Shared Hope International. Inside Out currently works with more than 40 minor aged girls who have been brought out of human sex trafficking. It is believed for every one girl who is found, there are 10 more out there. He said law enforcement is doing a good job with what they have to fight with, but he believes there are resource issues making it difficult to find the traffickers. He explained his organization has reached out to law enforcement and the Idaho Internet Crimes Against Children Coalition on a number of issues, but understanding of the issue of sex trafficking varies and there is a strong sense among victims that too little is done to address the purchasers. Coercion begins before a victim is 18-years old and regardless of whether they are no longer a minor, they are forced into slavery and servitude. This legislation sets a tone that, "we mean business," by going after the buyers.

**Makayla Shropshire**, **Bella Dolavicci**, **Amanda Forest**, and **Tiara Roper** spoke **in support** of **H 377**. They all shared their harrowing stories of being child sex trafficking victims and passionately reiterated that in order to stop sex trafficking, the demand must be stopped. Ms. Forest, shared a more detailed overview of what is being done in some Scandinavian countries where the charges and sentences for buyers are stringent. Sweden implemented a policy in 2015 that requires mandatory prison time for buyers and it has reduced sex trafficking by half.

**Tom Arkoosh**, representing Idaho Association of Criminal Defense Lawyers (IACDL) testified in opposition to **H 377**. He stated human trafficking for sex or labor is deplorable. However, the IACDL strongly disagrees with the premise that stemming demand will solve the problem. He explained Idaho already has laws in place to address all the concerns described in previous testimony including L & L and kidnap statutes. He said it is a felony to procure and a felony to run a house of prostitution and every story described by previous testifiers would have resulted in a life sentence if the buyers had been arrested and prosecuted, and yet the cycle continues. He described ideas he believes would work, including focusing on identifying victims sooner. He stated rather than focusing resources that would be spent on incarcerating offenders, it would be better to give more resources to police, schools and recovery programs. He proposed it would be better to allow the Idaho Criminal Justice Commission to continue working on this matter to determine what resources are needed and how best to direct them.

**Rep. Crane** concluded the testimony for **H 377** by stating sex trafficking is a \$1 billion business. In response to comments from the opposition, he stated there are laws to protect minors, however it doesn't protect those over age 18, who are often brought into prostitution while they are minors. In answer to questions from the Committee, Rep. Crane said even though this would be a felony on the first offense, he explained judges and prosecutors have the discretion in sentencing and he doesn't believe it would divert resources away from other crimes. It would give prosecutors another tool to address this matter.

**ORIGINAL  
MOTION:**

**Rep. Malek** made a motion to send **H 377** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE  
MOTION:**

**Rep. Chaney** made a substitute motion to **HOLD H 377** in Committee, subject to the call of the Chair.

**Rep. Perry** spoke to the substitute motion, stating there are a number of things that should be considered including: the extremely broad definition of sexual contact; coordination with stakeholders; and the policy needs to ensure the right resources are in place.

**Rep.(s) Malek, McDonald and Amador** spoke **in opposition** to the substitute motion. They stated human trafficking is a not just a human rights issue, it is a civil rights issue that should be dealt with now. With respect to the process, this is a serious issue that deserves a vote on the House Floor.

**Rep. Wintrow** stated regardless of the outcome of the vote, she believes her colleagues and those who are now aware of this problem are compelled to make a difference on this issue.

**Rep.(s) Ehardt, McCrostie, Gannon and Zollinger** spoke **in support** of the substitute motion. They stated the impact on the prisons will need a money source. They questioned if there could be more prosecution information on buyers, including charges, numbers and evidence that charging buyers with felonies has a connection to eliminating prostitution and human trafficking. They also would like to make sure the language in the bill is correct to ensure there are no unintended consequences.

**Rep. Kerby** spoke **in support** of the original motion, stating he was compelled by the data from Scandinavia and believes buyers will be very aware of the consequences. **Rep. Cheatham** spoke **in support** of the bill and shared his own emotional story as a detective.

**Rep. Malek** said he was confounded by the debate, because it's likely that a first-time offender would face probation rather than prison, and the lack of room in the prisons is not a viable argument for not trying to keep traffickers out of the state.

**Rep. Nate** stated he feels uncomfortable voting to move the bill forward until there is more data from law enforcement and the courts, as well as accurately defining what constitutes sexual contact. He questioned whether there was time to get this information before moving the bill forward.

**Chairman Luker** explained the deadlines for legislation, and said it was uncertain if a delay would affect the passage of the bill. He said including input from the sponsor would be beneficial.

**ROLL CALL  
VOTE:**

**Rep. Perry** requested a roll call vote on the substitute motion to **HOLD H 377** in Committee subject to call of the chair. **Motion carried by a vote of 11 AYE, 6 Nay. Voting in favor** of the motion: **Reps. Perry, Dayley, Nate, Chaney, Hanks, Zollinger, Ehardt, Gannon, McCrostie, Wintrow, Luker. Voting in opposition** to the motion: **Reps. Malek, McDonald, Cheatham, Kerby, Amador, Zito.**

**ADJOURN:**

There being no further business to come before the Committee, the meeting adjourned at 4:36 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

Chairman Luker:

Greetings. This is Daniel Truscott. I testified in front of your committee last year on the minimum mandatory drug laws, and informed you of my experience as a criminal defense attorney in Idaho, with 25 years of experience. I am very disturbed by a piece of proposed legislation that is set for hearing on Thursday, HB377 (making solicitation a FELONY!) Unfortunately, once again the religious zealots have proposed a law which is absolutely absurd in the context of a consensual agreement between adults. Solicitation is already a crime in Idaho, and, as in all other 50 states, properly a misdemeanor. This HB 377 would make Idaho the ONLY state in the nation to treat even a first time offender as a felon, and the ridiculously loose definition of "sexual conduct" would give prosecutors unfettered discretion to strong arm people to plead guilty even if they were innocent. This is just a really BAD bill with no purpose or relation to "sex trafficking" and just another attempt by the religious right to impose their definition of "morality" on everyone else. There's no reason in the world Idaho has to be the only state to make this conduct a felony. This bill would be used by prosecutors to destroy lives, and give yet an already over-loaded judiciary even more nonsense 'felonies' to deal with. Most afternoons, the district courts are swelled to over-full with case after case after case and we often wait hours just to hear our cases, with morning calendars often spilling over into the afternoons. Adding even more "felonies" to this mix would be just absurd, and address a problem that is not anywhere near a level that such a draconian measure should even be considered. In 25 years as a lawyer, I've seen one, what I would even possibly consider, 'sex-trafficking' case, like 10 years ago, that involved a chinese massage parlor. This is an absurdly over-blown response to what is simply not a big problem, at least not in Idaho. And the definition of "solicitation" could encompass all kinds of innocuous behavior that has nothing to do with "sex-trafficking". PLEASE PLEASE PLEASE do NOT vote for this right-wing, religious fanatic garbage. Solicitation is already a crime, and there is no reason whatsoever to make it a felony, contrary to every other state in the union! Making every crime a felony just multiplies the judicial and court resources needed to deal with all of this forced morality nonsense, and eventually results in all kinds of added costs and drain on our tax dollars and government employees. There is simply no reason why a first-offender in this context should be subjected to MORE than a year in jail and have their lives and families destroyed by a felony charge. Felonies should be reserved for the most serious offenses, and there are plenty of felonies already on the books to deal with true "sex-trafficking" situations against the pimps and establishment owners. Subjecting ordinary Idaho citizens to these absurd penalties for a moment of indiscretion, even if they are guilty, is just a punishment that far outweighs the conduct, and every other state recognizes that. I've attached the 50 state chart you may have already seen. Please do not let this nonsense bill pass!

Sincerely,

Daniel M. Truscott

208-333-8810

	<b>State</b>	<b>Penalty for Prostitutes</b> (Crime Classification)	<b>Penalty for Customers</b> (Crime Classification)	<b>Penalty for Pimps</b> (Crime Classification)	<b>Penalty for Brothel Owners</b> (Crime Classification)
1	<a href="#">Alabama</a>	Up to 1 yr and/or \$6,000 (Class A misdemeanor)	Up to 1 yr and/or \$6,000 (Class A misdemeanor)	1-10 yrs and/or \$15,000 (Class C felony)	1-10 yrs and/or \$15,000 (Class C felony)
2	<a href="#">Alaska</a>	Up to 90 days and/or \$2,000 (Class B misdemeanor)	Up to 90 days and/or \$2,000 (Class B misdemeanor)	Up to 5 yrs and/or \$50,000 (Class C felony)	Up to 5 yrs and/or \$50,000 (Class C felony)
3	<a href="#">Arizona</a>	1st offense 15 days, 2nd 30 days, 3rd 60 days, 4+ offenses 180 days-1.5 yrs  (First offense class 1 misdemeanor, 4 or more offenses are a class 5 felony)	Up to 30 days and/or \$500  (Class 3 misdemeanor)	18 months and/or \$150,000  (Class 5 felony)	18 months and/or \$150,000  (Class 5 felony)
4	<a href="#">Arkansas</a>	Up to 90 days and/or \$500, then up to 1 yr and/or \$1,000  (First offense class B misdemeanor, subsequent offense class A misdemeanor)	Up to 90 days and/or \$500, then up to 1 yr and/or \$1,000  (First offense class B misdemeanor, subsequent offense class A misdemeanor)	Up to 1 yr and/or \$1,000  (Class A misdemeanor)	Up to 1 yr and/or \$1,000  (Class A misdemeanor)
5	<a href="#">California</a>	Up to 1 yr and/or \$1,000 (Misdemeanor)	Up to 1 yr and/or \$1,000 (Misdemeanor)	3-6 yrs in a state prison (Felony)	3-6 yrs in a state prison (Felony)
6	<a href="#">Colorado</a>	Up to 6 months and/or \$50-\$750  (Class 3 misdemeanor)	Up to 6 months and/or \$500, then 6-18 months and/or \$500-\$5,000 (First offense class 1 petty offense, 3+ offenses class 1 misdemeanor)	4-12 yrs and/or \$3,000-\$750,000  (Class 3 felony)	3 months-1 yr and/or \$250-\$1,000  (Class 2 misdemeanor)
7	<a href="#">Connecticut</a>	Up to 1 yr and/or \$2,000 (Class A misdemeanor)	Up to 1 yr and/or \$2,000 (Class A misdemeanor)	1-10 yrs and/or \$10,000 (Class C felony)	1-10 yrs and/or \$10,000 (Class C felony)
8	<a href="#">Delaware</a>	Up to 6 months and/or \$1,150	Up to 30 days and a minimum mandatory fine of \$500	Up to 5 yrs and/or a fine	Up to 5 yrs and/or a fine

		(Class B misdemeanor)	(Misdemeanor)	(Class E felony)	(Class E felony)
9	<a href="#">District of Columbia</a>	First offense 1-90 days and \$500, 2nd 1-135 days and \$750, 3+ 1-180 days and \$1,000	First offense 1-90 days and \$500, 2nd 1-135 days and \$750, 3+ 1-180 days and \$1,000	Up to 5 yrs and/or \$5,000  (Felony)	Up to 5 yrs and/or \$5,000  (Felony)
10	<a href="#">Florida</a>	First offense 2nd degree misdemeanor, 2nd offense 1 misdemeanor, 3+ offenses 3 felony	2nd degree misdemeanor-3 felony \$500 fine	3rd degree felony	First offense 2nd degree misdemeanor, subsequent offenses 1 misdemeanor
11	<a href="#">Georgia</a>	Up to 1 yr and/or \$1,000 (Misdemeanor)	Up to 1 yr and/or \$1,000 (Misdemeanor)	Up to 1 yr and/or \$5,000 (Misdemeanor of a high and aggravated nature)	Up to 1 yr and/or \$5,000 (Misdemeanor of a high and aggravated nature)
12	<a href="#">Hawaii</a>	30 days and/or \$500  (Petty misdemeanor)	30 days and/or \$500  (Petty misdemeanor)	Up to 5 yrs and/or \$10,000 (Class C felony)	Up to 5 yrs and/or \$10,000 (Class C felony)
13	<a href="#">Idaho</a>	1-6 months and/or \$500, then 1-5 yrs  (First offense misdemeanor, 3+ offenses are a felony)	1-6 months and/or \$500, then 1-5 yrs  (First offense misdemeanor, 3+ offenses are a felony)	2-20 yrs and/or a fine of \$1,000-\$50,000 (Felony)	2-20 yrs and/or a fine of \$1,000-\$50,000 (Felony)
14	<a href="#">Illinois</a>	Up to 1 yr and/or \$2,500 then 1-3 yrs and/or \$25,000  (First offense class A misdemeanor, subsequent convictions are a 4 felony)	Up to 1 yr and/or \$2,500 then 1-3 yrs and/or \$25,000  (First offense class A misdemeanor, subsequent convictions are a 4 felony)	Up to 1 yr and/or \$2,500 then 1-3 yrs and/or \$25,000  (First offense class A misdemeanor, subsequent convictions are a 4 felony)	Up to 1 yr and/or \$2,500 then 1-3 yrs and/or \$25,000  (First offense class A misdemeanor, subsequent convictions are a 4 felony)
15	<a href="#">Indiana</a>	Up to 1 yr and/or \$5,000, then 6 months-3 yrs and/or \$10,000  (First offense class A misdemeanor, 3+ convictions are a D felony)	Up to 1 yr and/or \$5,000, then 6 months-3 yrs and/or \$10,000  (First offense class A misdemeanor, 3+ convictions are a D felony)	2-8 yrs and/or \$10,000  (Class C felony)	2-8 yrs and/or \$10,000  (Class C felony)
16	<a href="#">Iowa</a>	Up to 2 yrs and/or \$500-\$5,000 (Aggravated misdemeanor)	Up to 2 yrs and/or \$500-\$5,000 (Aggravated misdemeanor)	Up to 5 yrs and/or \$750-\$7,500 (Class D felony)	Up to 5 yrs and/or \$750-\$7,500 (Class D felony)

17	<a href="#">Kansas</a>	Up to 6 months and/or \$1,000  (Class B nonperson misdemeanor)	Up to 1 month and/or \$500  (Class C misdemeanor)	Up to 1 yr and/or \$2,500 then 1-5 yr and/or \$100,000  (First offense class A person misdemeanor then subsequent convictions are severity level 7)	Up to 1 yr and/or \$2,500 then 1-5 yr and/or \$100,000  (First offense class A person misdemeanor then subsequent convictions are severity level 7)
18	<a href="#">Kentucky</a>	Up to 90 days and/or \$250  (Class B misdemeanor)	Up to 90 days and/or \$250  (Class B misdemeanor)	1-5 yrs and/or \$1,000-\$10,000  (Class D felony)	1-5 yrs and/or \$1,000-\$10,000  (Class D felony)
19	<a href="#">Louisiana</a>	First offense up to 6 months and/or \$500, 2nd offense up to 2 yrs and/or \$250-\$2,000, 3+ convictions 2-4 yrs and \$500-\$4,000	Up to 6 months and/or \$500	5 yrs and/or \$5,000	5 yrs and/or \$5,000
20	<a href="#">Maine</a>	Up to 6 months and/or \$1,000 then up to 1 yr and/or \$2,000  (First offense Class E crime, then consequent offenses class D crime)	Up to 6 months and/or \$1,000 then up to 1 yr and/or \$2,000  (First offense Class E crime, then consequent offenses class D crime)	Up to 1 yr and/or \$2,000  (Class D crime)	Up to 1 yr and/or \$2,000  (Class D crime)
21	<a href="#">Maryland</a>	Up to 1 yr and/or \$500  (Misdemeanor)	Up to 1 yr and/or \$500  (Misdemeanor)	Up to 10 yrs and/or \$10,000  (Misdemeanor)	Up to 1 yr and/or \$500  (Misdemeanor)
22	<a href="#">Massachusetts</a>	Up to 1 yr and/or \$500	Up to 2 1/2 yrs and/or \$1000-\$5000	5 yrs and \$5,000	5 yrs and \$5,000
23	<a href="#">Michigan</a>	First offense up 93 days and/or \$500, 2nd offense up to 1 yr and/or \$1,000, 3+ convictions up to 2 yrs and/or \$2,000  (1-2 offense misdemeanor, 3rd offense felony)	First offense up 93 days and/or \$500, 2nd offense up to 1 yr and/or \$1,000, 3+ convictions up to 2 yrs and/or \$2,000  (1-2 offense misdemeanor, 3rd offense felony)	Up to 20 yrs  (Felony)	5 yrs or \$2,500  (Felony)
24	<a href="#">Minnesota</a>	First offense is up to 90 days and/or \$1,000, consequence offense is up to 1 yr and/or \$3,000	First offense is up to 90 days and/or \$500-\$1,000, consequence offense is up to 1 yr and/or \$1,500-\$3,000	Up to 15 yrs and/or \$30,000	Up to 15 yrs and/or \$30,000
25	<a href="#">Mississippi</a>	6 months and/or \$200	6 months and/or \$200	6 months and/or \$200	6 months and/or \$200

26	<a href="#">Missouri</a>	30 days-6 months and/or \$500 (Class B misdemeanor)	30 days-6 months and/or \$500 (Class B misdemeanor)	Up to 10 yrs and/or \$5,000 (Class C felony)	Up to 10 yrs and/or \$5,000 (Class C felony)
27	<a href="#">Montana</a>	6 months and/or \$500	First offense up to 1 yr and/or \$1,000, consequence offense up to 5 yr and/or \$10,000	10 yr and/or \$50,000	10 yr and/or \$50,000
28	<a href="#">Nebraska</a>	Up to 1 yr and/or \$1,000  (Class I misdemeanor)	First offense at least \$200, consequent convictions at least \$500  (First offense class I misdemeanor, subsequent offenses class IV felony)	Up to 5 yrs and/or \$10,000  (Class IV felony)	Up to 1 yr and/or \$1,000  (Class I misdemeanor)
29	<a href="#">Nevada</a>  <a href="#">See Section III below for legal prostitution</a>	Up to 6 months and/or \$1,000 (Misdemeanor)	Up to 6 months and/or \$1,000 (Misdemeanor)	1-4 yrs and/or \$5,000 (Category D felony)	Up to 6 months and/or \$1,000 (Misdemeanor)
30	<a href="#">New Hampshire</a>	Up to 1 yr and \$2,000 (Misdemeanor)	Up to 1 yr and \$2,000 (Misdemeanor)	Up to 1 yr and \$2,000 (Misdemeanor)	Up to 1 yr and \$2,000 (Misdemeanor)
31	<a href="#">New Jersey</a>	First offense up to 6 months and/or fine, consequent convictions up to 18 months and/or fine  (First disorderly persons offense, subsequent offenses crime of the fourth degree)	First offense up to 6 months and/or fine, consequent convictions up to 18 months and/or fine  (First disorderly persons offense, subsequent offenses crime of the fourth degree)	3-5 yrs and/or fine  (Crime of the third degree)	3-5 yrs and/or fine  (Crime of the third degree)
32	<a href="#">New Mexico</a>	First offense up to 6 months in a county jail and/or \$500, subsequent offenses up to 1 yr in a county jail and/or \$1,000  (First offense petty misdemeanor, subsequent offenses misdemeanor)	First offense up to 6 months in a county jail and/or \$500, subsequent offenses up to 1 yr in a county jail and/or \$1,000  (First offense petty misdemeanor, subsequent offenses misdemeanor)	Up to 18 months and/or \$5,000  (Fourth degree felony)	Up to 18 months and/or \$5,000  (Fourth degree felony)
33	<a href="#">New York</a>	Up to 3 months and/or \$500	Up to 1 yr and/or \$1,000	Up to 7 yrs and/or \$5,000	Up to 7 yrs and/or \$5,000

		(Class B misdemeanor)	(Class A misdemeanor)	(Class D felony)	(Class D felony)
34	<a href="#">North Carolina</a>	Up to 45 days and a fine (Class 1 misdemeanor)	Up to 45 days and a fine (Class 1 misdemeanor)	Up to 45 days and a fine (Class 1 misdemeanor)	Up to 45 days and a fine (Class 1 misdemeanor)
35	<a href="#">North Dakota</a>	Up to 30 days and/or \$1,000 (Class B misdemeanor)	Up to 30 days and/or \$1,000 (Class B misdemeanor)	Up to 5 yrs and/or \$5,000 (Class C felony)	Up to 5 yrs and/or \$5,000 (Class C felony)
36	<a href="#">Ohio</a>	Up to 60 days and/or \$500 (Third degree misdemeanor)	Up to 60 days and/or \$500 (Third degree misdemeanor)	Up to 180 days and/or \$1,000 (First degree misdemeanor)	Up to 180 days and/or \$1,000 (First degree misdemeanor)
37	<a href="#">Oklahoma</a>	First offense 30 days-1 yr or up to \$2,500, 2nd offense 30 days-1 yr or up to \$5,000, consequent offenses 30 days-1 yr or up to \$7,500  (Misdemeanor)	First offense 30 days-1 yr or up to \$2,500, 2nd offense 30 days-1 yr or up to \$5,000, consequent offenses 30 days-1 yr or up to \$7,500 (Misdemeanor)	First offense 30 days-1 yr or up to \$2,500, 2nd offense 30 days-1 yr or up to \$5,000, consequent offenses 30 days-1 yr or up to \$7,500  (Misdemeanor)	First offense 30 days-1 yr or up to \$2,500, 2nd offense 30 days-1 yr or up to \$5,000, consequent offenses 30 days-1 yr or up to \$7,500  (Misdemeanor)
38	<a href="#">Oregon</a>	Up to 1 yr and/or \$6,250 (Class A misdemeanor)	Up to 1 yr and/or \$6,250 (Class A misdemeanor)	Up to 5 yrs and/or \$125,000 (Class C felony)	Up to 5 yrs and/or \$125,000 (Class C felony)
39	<a href="#">Pennsylvania</a>	First two offenses up to 1 yr, 3rd offense up to 2 yrs, and subsequent offenses up to 5 yr  (1st and 2nd offense a 3rd deg. misdemeanor, 3rd offense a 2nd deg. misdemeanor, 4+ offenses 1st deg. misdemeanor)	First two offenses up to 1 yr, 3rd offense up to 2 yrs, and subsequent offenses up to 5 yr  (1st and 2nd offense a 3rd deg. misdemeanor, 3rd offense a 2nd deg. misdemeanor, 4+ offenses 1st deg. misdemeanor)	Up to 7 yrs  (3rd deg. felony)	Up to 7 yrs  (3rd deg. felony)
40	<a href="#">Rhode Island</a>	Up to 6 months and/or \$250-\$1,000, subsequent convictions up to 1 yr and/or \$500-\$1,000  (Misdemeanor)	Up to 1 yr and/or \$250-\$1,000, subsequent convictions up to 1 yr and/or \$500-\$1,000  (Misdemeanor)	First offense 1-5 yrs and \$2,000-\$5,000, subsequent convictions 3-10 yrs and \$5,000-\$10,000 (Pandering)	First offense 1-5 yrs and \$2,000-\$5,000, subsequent convictions 3-10 yrs and \$5,000-\$10,000  (Pandering)

	[Editor's Note: Indoor prostitution became legal in 1980 as a result of an unintentional legal loophole created by legislators when enacting laws targeting street prostitution. The state passed new legislation to close this loophole on Nov. 3, 2009.]		Up to 6 months and/or \$500-\$1,000, subsequent convictions up to 1 yr and/or \$750-\$1,000  (Only applies to soliciting from motor vehicles)		
41	<a href="#">South Carolina</a>	First offense up to 30 days or \$200, 2nd offense up to 6 months and \$1,000, 3+ at least 1 yr and/or up to \$3,000	First offense up to 30 days or \$200, 2nd offense up to 6 months and \$1,000, 3+ at least 1 yr and/or up to \$3,000	First offense up to 30 days or \$200, 2nd offense up to 6 months and \$1,000, 3+ at least 1 yr and/or up to \$3,000	First offense up to 30 days or \$200, 2nd offense up to 6 months and \$1,000, 3+ at least 1 yr and/or up to \$3,000
42	<a href="#">South Dakota</a>	Up to 1 yr in county jail and/or \$2,000  (Class 1 misdemeanor)	Up to 1 yr in county jail and/or \$2,000  (Class 1 misdemeanor)	Up to 2 yrs and/or \$4,000  (Class 6 felony)	Up to 2 yrs and/or \$4,000  (Class 6 felony)
43	<a href="#">Tennessee</a>	Up to 6 months and/or \$500  (Class B misdemeanor)	Up to 6 months and/or \$500  (Class B misdemeanor)	1-6 yrs and/or up to \$3,000  (Class E felony)	1-6 yrs and/or up to \$3,000  (Class E felony)
44	<a href="#">Texas</a>	First offense up to 180 days and/or \$2,000, 2nd up to 1 yr and/or \$4,000, 3+ 180 days-2 yrs and/or \$10,000  (First offense is a class B misdemeanor, 2nd A misdemeanor, 3+ is a state jail felony)	First offense up to 180 days and/or \$2,000, 2nd up to 1 yr and/or \$4,000, 3+ 180 days-2 yrs and/or \$10,000  (First offense is a class B misdemeanor, 2nd A misdemeanor, 3+ is a state jail felony)	2-10 yrs and up to \$10,000  (3rd degree felony)	2-10 yrs and up to \$10,000  (3rd degree felony)

45	<a href="#">Utah</a>	First offense up to 6 months and/or \$1,000, subsequent offenses up to 1 yr and/or \$2,500  (First offense class B misdemeanor, subsequent offenses are class A misdemeanors)	Up to 6 months and/or \$1,000  (Class B misdemeanor)	Up to 5 yrs and/or \$5,000  (3rd degree felony)	Up to 5 yrs and/or \$5,000  (3rd degree felony)
46	<a href="#">Vermont</a>	First offense up to 1 yr or \$100, second offense up to 3 yrs	First offense up to 1 yr or \$100, second offense up to 3 yrs	1-10 yrs and/or \$200-\$2,000	1-10 yrs and/or \$200-\$2,000
47	<a href="#">Virginia</a>	Up to 1 yr and/or \$2,500 (Class 1 misdemeanor)	Up to 1 yr and/or \$2,500 (Class 1 misdemeanor)	2-10 yrs and up to \$100,000 (Class 4 felony)	2-10 yrs and up to \$100,000 (Class 4 felony)
48	<a href="#">Washington</a>	Up to 90 days and/or \$1,000 (Misdemeanor)	Up to 90 days and/or \$1,000 (Misdemeanor)	Up to 5 yrs and/or \$5,000 (Class C felony)	Up to 5 yrs and/or \$5,000 (Class C felony)
49	<a href="#">West Virginia</a>	60 days-6 months and \$50-\$100	First offense 60 days-6 months and \$50-\$100, 2nd offense 6 months-1 yr and \$100-\$200, consequent offenses 1-3 yrs	First offense 6 months-1 yr and \$100-\$500, subsequent offenses 1-3 yrs	First offense 6 months-1 yr and \$100-\$250, subsequent offenses 1-5 yrs
50	<a href="#">Wisconsin</a>	Up to 9 months and/or \$10,000 (Class A misdemeanor)	Up to 9 months and/or \$10,000 (Class A misdemeanor)	Up to 12.5 yrs and/or \$25,000 (Class F felony)	Up to 6 yrs and/or \$10,000 (Class H felony)
51	<a href="#">Wyoming</a>	Up to 6 months and/or \$750 (Misdemeanor)	Up to 6 months and/or \$750 (Misdemeanor)	Up to 3 yrs and/or \$3,000 (Felony)	Up to 3 yrs and/or \$3,000 (Felony)
	<b>State</b>	<b>Penalty for Prostitutes</b> (Crime Classification)	<b>Penalty for Customers</b> (Crime Classification)	<b>Penalty for Pimps</b> (Crime Classification)	<b>Penalty for Brothel Owners</b> (Crime Classification)

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Monday, February 05, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS26034</u></a>	Joint Rule 16 / Senate and House Chamber hours	Carrie Maulin, Chief Clerk of the House
<a href="#"><u>RS26049</u></a>	House Rule 58 / House Chamber usage	Carrie Maulin
<a href="#"><u>RS25964</u></a>	Records retention / law enforcement recordings	Seth Grigg, Idaho Association of Counties
<a href="#"><u>RS25988</u></a>	Public records disclosure / child abuse reporting exemption	Rep. Paul Amador
	Update on gangs in Idaho	Paul Jagosh, Fraternal Order of Police Brian Holland, Fraternal Order of Police

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Monday, February 05, 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:** Holly Koole, IPAA; Carrie Maulin, House of Representatives  
**Chairman Luker** called the meeting to order at 1:30 p.m.

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of January 29, 2018. **Motion carried by voice vote.**

**RS 26034:** **Carrie Maulin**, Chief Clerk of the House of Representatives presented **RS 26034**, which amends Joint Rule 16 of the Idaho Senate and Idaho House of Representatives. It deletes specific times that the Senate and House Chambers must be open. The hours listed in the current rule do not comport with the actual hours for the State House. Following questions from the Committee, Ms. Maulin confirmed the Department of Administration manages the hours for the Capitol, but the department doesn't set them. Under the listed hours, it requires an additional shift for security and it was determined that people who need access to get in during off hours should have the security badges to do so. By making the rule more general, the hours can be changed, but the rule doesn't need to be amended.

**MOTION:** **Rep. McDonald** made a motion to introduce **RS 26034**. **Motion carried by voice vote.**

**RS 26049:** **Carrie Maulin**, Chief Clerk of the House of Representatives presented **RS 26049**, which amends Rule 58 of the Idaho House of Representatives to clarify the process for using the House Chambers. In response to questions from the Committee, Ms. Maulin clarified the process of setting up public tours through the Department of Administration won't change.

**MOTION:** **Rep. McDonald** made a motion to introduce **RS 26049**. **Motion carried by voice vote.**

**RS 25964:** **Seth Grigg**, representing the Idaho Association of Counties, presented this proposed legislation to amend the amount of time a county needs to retain records, specifically as it pertains to video and audio recordings. The legislation adds language that sets minimum retention times based upon the evidentiary value of the digital media file. Upon questioning from the Committee, Mr. Grigg explained the intent of this RS is to create a new category for handling video/audio recordings. The law, as currently written, is a barrier for counties to move forward with implementing body camera programs because the burden for retaining mass amounts of data for the required two years is cost prohibitive.

**MOTION:** **Rep. Kerby** made a motion to introduce **RS 25964**. **Motion carried by voice vote.**

**RS 25988:** **Rep. Amador** presented this proposed legislation, which provides an exemption from public record disclosure for persons reporting crimes of child abuse, neglect or abandonment unless the party consents to disclosure, or the identity is required for administrative or judicial proceedings. The intent is to encourage reporting without fear of retaliation. Following questions from the Committee, Rep. Amador said an attorney would be available during the bill hearing to answer questions about this impact on civil law. However, care was taken in drafting the RS to allow for the release of protected records for appropriate proceedings.

**MOTION:** **Rep. Malek** made a motion to introduce **RS 25988. Motion carried by voice vote.**

**Paul Jagosh, Detective Brian Holland and Detective Dave Harris**, representing the Fraternal Order of Police provided an overview and update on gangs in Idaho. Today there approximately are 400 known gang members and 55 documented gangs in the state. Several key gangs were categorized and described. They ranged from the most notorious, to the most violent, to the less known, but still very concerning. Most of the gangs and activities described are from Boise and the greater Treasure Valley, but it was emphasized that gang activity is taking place throughout the state. In fact, small communities can be attractive to gangs as there tends to be little, to no, resistance to their activities until problems and menacing becomes more known. Unfortunately, by the time gang activity reaches that point, it is significantly more difficult to combat. According to Det. Holland, "once a gang takes a territory, there is virtually no way to take it back." He provided several examples of Northwest cities where the gang activity is reaching crisis levels. The Legislature's previous action in clearly defining what constitutes a "Criminal Street Gang" has greatly helped efforts to combat gang activity in the state. Continued work to create policies that make it less attractive for gangs to set up in the state is needed. In response to questions from the Committee, Det. Holland said one of the most effective things a community can do to combat gangs is to provide good programs for youth. He mentioned, Boys and Girls Clubs as a program example that can keep youth busy, provide better purpose and ultimately deter young people from being recruiting targets. Drugs/narcotics; pandering, prostitution and human trafficking; and guns are the three drivers of gang activity. Approximately 75% to 80% of gang activity is drug related; as it is the biggest money maker. Boise, Nampa and Caldwell have gang units, but other communities could benefit from having dedicated law enforcement resources to the issue. The Idaho Criminal Intelligence Center (Fusion) is proving to be very helpful in gathering actionable information to fight gangs and terrorism, but it is underfunded and staffed. When asked about efforts to eliminate mandatory minimums and the possible effect on gang activity, Mr. Holland said gangs need boundaries. Even though they will push those boundaries, they tend to work within them. If it makes it less attractive to do business here, then having a ceiling is good.

**ADJOURN:** There being no further business to come before the committee, the meeting adjourned at 3:07 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

JOINT  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**AND**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Lincoln Auditorium**  
**Wednesday, February 07, 2018**

SUBJECT	DESCRIPTION	PRESENTER
	Administrative Judges Presentation – Introduction	Senior Judge Barry Wood, Administrative Office of the Courts
	Structure of the Districts, Role of the TCAs, Role & Duties of the ADJ–Challenges & Successes	Administrative District Judge Susan Wiebe
	Update on iCourt & Odyssey Implementation	Administrative District Judge Eric Wildman
	Judicial Performance Evaluations	Administrative District Judge Jay Gaskill
	Courthouse Facilities, Security, ADA Compliance	Administrative District Judge Mitchell Brown

COMMITTEE MEMBERS

Chairman Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES  
JOINT MEETING  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE  
SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 07, 2018

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

**PLACE:** Lincoln Auditorium

**MEMBERS:** Chairman Luker, Vice Chairman Malek (Patano), Representative(s) Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon, McCrostie, Wintrow

Chairman Lodge, Vice Chairman Lee, Senators Hagedorn, Lakey, Anthon, Foreman, Potts, Burgoyne, Nye

**ABSENT/  
EXCUSED:** Representative(s) Perry, McDonald, Zollinger, McCrostie

**GUESTS:** Jay Gaskill, Idaho Courts; Susan Wiebe, Idaho Courts; Lansing Haynes, Idaho Courts; Barry Wood, ISC; Sara Thomas, ISC; Karlene Behringer, ISC; E. Jones, ISC; Michael W. Brown, ISC; Melissa Moony, ISC; Shelli Tubbs, ISC; Patrick Denton, OAG/ISP; Janica Bigharat, ISC; Dan Forman, Senate J&R; Michelle Crist-Agular, ISC; Burt Butler, 7th Judicial District; Linda Wright-Hartgen, Public; Andnu Petterson, ISC; Greg Hodges, IFRM; Tawnya Jones, ISC; Linsmoz, ISC; S. Barnes, Ada County; Melinda Merrill, Idaho Bail Coalition; Jaime Hansen, Family Advocates; Audrey Kenney, ITLA; Charlie Spencer, ISP; M. Kane, ISA; Matthew Gamette, ISP; Woody Richards, Ins Cos; Barbara Joeden, ITLA

**Chairman Lodge** called the meeting to order at 1:30 p.m.

**Judge Barry Wood**, Idaho Supreme Court, began the presentation by the Administrative District Judges with a brief overview of the Idaho Judiciary. He explained the Judicial Branch is comprised of Appellate Courts and Trial Courts. Appellate Courts are comprised of Supreme Court, Chief Justice, four Justices, Court of Appeals, Chief Judge and three Judges. Trial Courts are comprised of a District Court, forty-five Judges, Magistrate Court and ninety-two Judges. Judge Wood introduced the judges.

**Administrative District Judge Susan Wiebe**, Third Judicial District, structure of the Judicial Districts, Role and Duties of the Administrative District Judge, and Role of Trial Court Administrator. Judge Wiebe explained Idaho is divided into seven judicial districts. Each district encompasses four to ten counties. The Constitution of Idaho mandates a unified and integrated judicial system for administration and supervision by the Supreme Court. Challenges in adhering to the concept of being unified and integrated vary by region depending on the unique problems and needs of the districts within each region. The regional structure allows each judicial district authority over issues unique to that particular district and is set up to ensure each district's participation in policy decisions while maintaining uniform, statewide rules and procedures. Each district has an administrative district judge and a trial court administrator. Administrative District Judges (ADJ) manage court operations in the district, assigns judges to cases and coordinates activities of the clerks of the district courts. ADJ's are elected by a majority of the district judges within the district for a three-year term, subject to re-election. The ADJ assumes the administrative duties for the entire district while maintaining an active case load. The position is a leadership role developing working relationships with all people and entities

that interact with the courts. The ADJ is responsible for case management to ensure expeditious and efficient processing of all cases with equitable division of case loads among judges. ADJ oversees development and preparation of the annual budget. The ADJ acts as spokesperson for the courts within the district and is charged with establishing effective relations between the courts and the media; is responsible for insuring the security of courthouses and courtrooms; chairs the Magistrate Commission which selects and appoints magistrate judges; and, provides supervision and direction to the trial court administrator with the administrative director of the courts.

Trial Court Administrator (TCA) for each district is selected by the administrative district judge and the administrative director of the courts for each district to assist the administrative district judge in managing district court operations, overseeing judicial staff employees, working on budgetary issues, handling media contact with court personnel and judges. The TCA insures senior judge coverage when judges are sick or on vacation, when judges have multiple cases proceeding to trial or double settings in different courts. TCA assigns court reporters, schedules and coordinates meetings between local officials and administrative District Judges, works with court clerks monitoring status of court dockets and calendars, is responsible for appointing judges in the event a judge is disqualified, coordinates and manages court services including: problem solving courts, family and children services, language access, and court assistance offices. The TCA also works with the administrative director carrying out policy directives of the Idaho Supreme Court.

**Administrative Judge Eric Wildman**, Fifth Judicial District, and **Sara Thomas**, Administrative Director of the Courts, Idaho Supreme Court IT manager, update on iCourt and Odyssey Implementation. Project pilot in Twin Falls, Idaho went live June 22, 2015 case management scanning and financial management components presented challenges delaying mandatory electronic filing six months following go live. Ada County go live occurred August 8, 2016 with smoother deployment. Mandatory electronic filing three months following go-live due to adoption of training protocol, lessons learned during the project pilot in Twin Falls, and on-site assistance for counties. The addition of a "help desk" tracking system along with other steps has resulted in 96% of issues being resolved since go-live. iCourt is now live in fourteen counties. Smoother transition and mandatory electronic filing within thirty days following go-live is expected with the remaining wave one deployment in seven counties in fifth district; three counties in the fourth district; and Owyhee and Canyon counties from the third district. Go-live in remaining thirty counties will be accomplished in two additional waves.

Wave two will include ten counties across districts one and two, plus an additional four counties from the third district, which are scheduled to go-live on April 9, 2018. The Appellate case-manager component of go-live is scheduled for May 21st, 2018. Wave three is scheduled go-live on October 9th, 2018 and will include sixteen counties across the sixth and seventh judicial districts, with anticipated thirty-day mandatory e-filing.

The supervision module allows a system for tracking individuals on pretrial or misdemeanor supervision and problem solving courts and Kootenai and Lewis counties elected not to use. The Jury Module allows counties to manage the jury process, including identification and notification of jurors, jury selection, and it communicates in real time with jurors via text messages regarding the current status of their need in court. Initial go-live will occur by the end of 2018. The New Portal Version is scheduled for update the summer of 2018 and will

allow public access to the software. The Software upgrade of Odyssey is at no additional cost. Once live in all 44 counties, work will begin on upgrading to the newest version. They are unable to configure software to utilize full capacity until all counties are on line.

Benefit highlights include: more robust data collection; e-filing convenience; elimination of paper files; and eliminating travel by allowing judges to prepare cases remotely as well as ability to sign orders remotely. Public access will be better than ISTARs, and will ease access to court calendars by trial court administrators.

**Administrative Judge Jay Gaskill**, Second Judicial District, reported that Judicial Performance Evaluations (JPE) in the year 2000 were a voluntary survey. By 2011, only thirty-three of judges were participating. In 2014, the Court obtained a grant from national experts to assist in creating an evidence-based JPE's. In 2016, the legislature partially funded the program to get JPE's. In 2018, evaluations of forty-six judges were completed, all new judges were evaluated at nine and eighteen months. All judges will be evaluated every three years. A request for FY2019 appropriation of \$153,500 to train and implement 16 mentor/facilitator judges to follow up and expand on JPE's.

**Administrative District Judge Mitchell Brown**, Sixth Judicial District, Courthouse Facilities, Security and ADA Compliance. Judge Brown explained Article 1- Section of the Constitution of the State of Idaho reads "Courts of Justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay or prejudice". Both United States Code Title 42- The Public Health and Welfare and Chapter 26- state no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. Advances in technology like video remote interpreting and assistive listening systems have significantly improved accessibility to court services for the hearing impaired and for non-english speaking individuals. The Bearlake County Court House, built in 1885, has undergone multiple renovations over the last 130 years. However, the facility continues to have ADA challenges.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 3:02 p.m.

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Representative Luker  
Chair

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Karen Westen  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**2:45 P.M.**  
**Room EW42**  
**Wednesday, February 07, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS26019</a>	Courts, criminal case payments	Jason Spillman, Administrative Office of the Courts/Idaho Supreme Court
<a href="#">RS26014</a>	Alcohol, sunset clause repeal (Medical Amnesty)	Clayton King, University of Idaho
<a href="#">RS25969</a>	Child, family legal services fund	Brody Aston, Idaho Legal Aid Services
<a href="#">RS25962</a>	County jails, housing payments	Michael Kane, Idaho Sheriffs' Association
<a href="#">RS25997</a>	Bail enforcement agent guidelines	Michael Kane, Idaho Sheriffs' Association
<a href="#">RS25998</a>	Sales under execution/online auctions	Michael Kane, Idaho Sheriffs' Association

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, February 07, 2018

**TIME:** 2:45 P.M.

**PLACE:** Room EW42

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

**ABSENT/  
EXCUSED:** None

**GUESTS:** Brody Aston, Russell Westerberg, Idaho Legal Aid; Jason Spillman, Sara Thomas, ISC; Mike Kane, ISA

**Chairman Luker** called the meeting to order at 3:09 p.m.

**RS 26019:** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts/Idaho Supreme Court introduced **RS 26019**. It seeks policy decisions from the Legislature to establish a disbursement schedule for payments received from defendants in criminal cases. The proposed legislation consolidates the various fee statutes into a single statute and removes the burden on the Courts to establish prioritization of funds distribution. This does not change the amount of the fees assessed. In response to questions from the Committee, Mr. Spillman will explain how and who was involved in developing the recommended order of distribution at the bill hearing.

**MOTION:** **Rep. Perry** made a motion to introduce **RS 26019**. **Motion carried by voice vote.**

**RS 26014:** **Clayton King**, Lobbyist, Associated Students University of Idaho introduced the proposed legislation which will provide for continued limited immunity from misdemeanor charges of Consumption by a Minor, and Possession by a Minor, in cases where emergency medical help is sought. This is frequently referred to as Medical Amnesty. The existing law was enacted in 2016, with a three-year sunset clause. This proposed bill will repeal the sunset clause to make the law permanent.

**MOTION:** **Rep. Chaney** made a motion to introduce **RS 26014**. **Motion carried by voice vote.**

**RS 25969:** **Brody Aston**, representing Idaho Legal Aid Services (ILAS), introduced **RS 25969**, which establishes a Children and Families Legal Services Fund within the Idaho state treasury. The fund will be administered by appropriation to and dispersed by the Idaho Supreme Court. The funds will assist ILAS to continue providing legal representation for indigent citizens in specific civil matters. The bill does not have a fiscal impact because no funds are required. It only creates the fund to hold funds should they be appropriated.

**MOTION:** **Rep. McCrostie** made a motion to introduce **RS 25969**. **Rep. Gannon** invoked **Rule 38**, stating a possible conflict of interest because he had a contract with Idaho Legal Aid Services last year. He will not be voting on this legislation. **Motion carried by voice vote.**

**RS 25962:** **Mike Kane**, representing Idaho Sheriffs' Association and Idaho Association of Counties presented the proposed bill, which will increase the daily rate for state sentenced prisoners housed in county jails from \$45 per day to \$55 per day for the first seven days. After that, the rate will increase to \$75 per day. On average, it costs \$81 per day to house prisoners in county jails. The additional cost is being shouldered by county residents. The fee structure is tiered to give the Department of Correction the mandate-allowed time to make arrangements for the movement and permanent housing of prisoners.

**MOTION:** **Rep. Gannon** made a motion to introduce **RS 25962**.  
Upon further discussion and questions from the Committee, **Mr. Kane** explained the intent is to incentivize the Idaho Department of Correction to move prisoners more quickly. If the practice of moving prisoners from county facility to county facility to avoid the higher fee starts to occur, then further legislation will be needed to address this. He emphasized this is not a money making matter for the Counties, and the figures discussed in the Fiscal Note are realistic.

**VOTE ON MOTION:** **Chairman Luker** called for a vote on the motion to introduce **RS 25962**. **Motion carried by voice vote.**

**RS 25997:** **Mike Kane**, representing Idaho Sheriffs' Association introduced **RS 25997**. This proposed legislation sets guidelines for professional bond enforcement agents. Currently, there are no regulations for this industry and great work has been done since last year to create a compromise that addresses the needs of law enforcement, general public and bail enforcement agents.

**MOTION:** **Rep. McDonald** made a motion to introduce **RS 25997**. **Motion carried by voice vote.**

**RS 25998:** **Mike Kane**, representing Idaho Sheriffs' Association presented this proposed bill to allow law enforcement agencies to conduct on-line auctions for the sale of property under execution.

**MOTION:** **Rep. Kerby** made a motion to introduce **RS 25998**. **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 3:36 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Friday, February 09, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">S 1208</a>	Agriculture, inmate labor	Sen. Patti Anne Lodge
<a href="#">RS25823C2</a>	Ignition interlock system, DUI	Sen. Grant Burgoyne
<a href="#">RS26060</a>	Probation, supervision fees	Jim Tibbs, Ada County Commissioners
<a href="#">RS26039</a>	Diversion programs, DUI	Rep. Ryan Kerby
<a href="#">RS26051</a>	Safety restraints, negligence	Rep. Greg Chaney

***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 Luker  
Vice Chairman  
Malek(Patano)  
Rep Perry  
Rep Dayley  
Rep McDonald  
Rep Cheatham

Rep Kerby  
Rep Nate  
Rep Chaney  
Rep Amador  
Rep Hanks  
Rep Zito

Rep Zollinger  
Rep Ehardt  
Rep Gannon  
Rep McCrostie  
Rep Wintrow

COMMITTEE SECRETARY

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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Friday, February 09, 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:** Vice Chairman Malek

**GUESTS:** Andrea Sprengel, Kevin Mickelson, Idaho Correctional Industries (CI); Matthew Conde, AAA; Charles Robinson, Symms Fruit Ranch; Bill Clayton, CTE; Dennis Tanikuni, Idaho Farm Bureau; Barbara Jordon, ITLA; Jim Tibbs, Larry Maneely, Ada County Board of Commissioners; Sandy Jones, Parole Commission; Noel Barlow-Hust, Gypsie Akers, Darlene Haley, Henry Atencio, Idaho Department of Correction (IDOC); Tom Arkoosh, IACDL; Holly Koole, IPPA; Mark Estess, ICOPA; Kathy Griesmyer, ACLU; Russell Westerburg

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

**S 1208:** **Sen. Lodge** introduced **Andrea Sprengel**, Financial Manager, Idaho Correctional Industries (CI), who runs the agriculture inmate work program to present **S 1208**.

**Ms. Sprengel** stated the agricultural inmate work program provides a work opportunity for 200-250 inmates, supplying a steady workforce for six agricultural companies throughout the state to grade, sort, package, plant and harvest perishable food products. **S 1208** amends statutory language to allow non-edible horticultural products to be included in the types of work in which inmates can participate. Ms. Sprengel reported on the programs operating capacity and how the amendment would provide a more steady level of work all year by allowing work in the off-season to be obtained. She advised that potential employers must certify they are unable to attract and maintain a non-inmate work force, and CI consults with the Idaho Department of Labor (IDOL) to set a prevailing wage for the location and nature of the work to be performed by the inmates. Ms. Sprengel explained the prevailing wage became part of the billing rate, updated with the IDOL 's prevailing wage information every year, which is billed to the employer along with taxes and workers' compensation, so that inmate costs to employers are comparable to a non-inmate worker costs. Idaho Code §20-4012 currently prevents CI from providing workers' compensation to inmates participating in their programs, but billing workers' compensation costs and the prevailing wage costs to employers ensures no inmate worker discounts are given and discourages non-inmate worker displacement. The funds received from the agricultural employer are distributed to the inmate, IDOC and CI. CI uses the funds to cover the program operating costs of transportation, security, food, supplies and program overhead. CI has current plans to work with the IDOC to restructure the distribution of funds that will pay inmates a higher amount. Participation by inmates in the program is voluntary and inmates must be in a minimum security status with permission to leave the complex. Injuries are handled by the company that the state has currently contracted with for medical care.

In response to committee questions, **Ms. Sprengel** replied CI has plans to talk with IDOC about re-evaluating inmate wages, and inmates with minor injuries are returned to the facility for care unless they require a specialty doctor or emergency room care or have serious injuries, in which case Idaho has a supplemental policy covering dismemberment or death. She also explained inmates can work alongside civilians when the employer and staff attend IDOC boundaries training to learn the rules of working with an inmate regarding contraband and appropriate relationships.

**Bill Clayton**, founder of Clayton Tree Farm in Nampa and Wilder; **Charles Robinson** Food & Safety Director, Symms Fruit Ranch; **Noelle Barlow-Hust**, Warden, South Women's Correctional Facility; **Gypsie Akers**, former inmate with IDOC; **Darlene Haley**, inmate at South Boise Women's Correctional Center; and **Dennis Tanikun**, Assistant Director of Government Affairs, Idaho Farm Bureau spoke in support of **S 1208** saying agricultural workers are needed to harvest crops and trees and agricultural employers are unable to get the workers they need even with raised pay scales and bonuses. Well-behaved inmates get a chance for fresh air, to learn new employment skills and a good work ethic, make \$1.65 an hour with an occasional bonus, to work year round, and can be provided job opportunities or letters of recommendation to help with employment upon inmate release from incarceration.

In response to committee questions, **Mr. Robinson** informed the committee inmates learn to be checkers, tally, prune and to drive tractors, forklifts and use chain saws.

**Kathy Griesmyer**, Policy Director for ACLU Idaho, testified as a neutral party on **S 1208**. She acknowledged the benefits of the agricultural inmate work program for many of the reasons cited by previous testifiers. She questioned whether the IDOC's current maximum coverages for medical and accident insurance would adequately cover a catastrophic inmate injury. She stated the merits of moving forward outweighed holding back support for the bill, but she urged the Committee to make sure inmates have adequate protections.

**MOTION:**

**Rep. McDonald** made a motion to send **S 1208** to the floor with a **DO PASS** recommendation.

**Reps. Chaney, Zollinger, Gannon, Wintrow**, expressed concerns with the supplemental policy coverage for permanent disability and the increased likelihood of more hazardous work opening up under **S 1208** and the life-long employment and economic impact to a disabled inmate and to the state fiscal burden.

**Sen. Lodge** was called upon to answer a question from **Chairman Luker** regarding her willingness to address the lack of protections that is the source of many committee member concerns, and she replied that those concerns can be addressed.

**SUBSTITUTE MOTION:**

**Rep. Chaney** made a substitute motion to send **S 1208** to General Orders.

**Sen. Lodge** was called upon to answer questions from the committee regarding whether she felt the fastest and easiest way to address committee concerns about inmate pay, health care insurance and workers' compensation coverage would be to send **S 1208** to General Orders or to do a trailer bill that answers committee concerns. She replied she would prefer to work with CI and the agricultural employers on a trailer bill to bring back before the committee during this legislative session. Committee members commented that with this commitment to protect the safety of the inmate workers, as well as help the agricultural industry, the original motion could be addressed.

**VOTE ON  
SUBSTITUTE  
MOTION:**

**Chairman Luker** called for a vote on the substitute motion to send **S 1208** to General Orders. **Motion failed by voice vote.**

**VOTE ON  
ORIGINAL  
MOTION:**

**Chairman Luker** called for a vote on the original motion to send **S 1208** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kauffman** will sponsor the bill on the floor.

**RS 25823C2:**

**Sen. Burgoyne** explained **RS 25823C2** requires the installation and operation of an ignition interlock device on all vehicles operated by an individual with first-time Driving Under the Influence (DUI) status for a period of one year, concurrent with the driver's license suspension already in law. Ignition interlock devices are already required for repeat offenders, and this proposed legislation extends the requirement to first-time offenders. An exception is proposed where there is clear and convincing evidence that the person in DUI status will not present a danger to the public or where there are exceptional or mitigating circumstances demonstrating the installation is unnecessary or unwarranted. Each county has a County Interlock Device Fund which can be used by DUI offenders to procure the devices. The proposed legislation's effective date is January 1, 2019 .

**MOTION:**

**Rep. Dayley** made a motion to introduce **RS 25823C2**. **Motion carried by voice vote.**

**RS 26060:**

**Jim Tibbs**, Ada County Commissioner, informed the committee the county is responsible for providing a program to supervise misdemeanor offenders whose sentences include probation, but they are not to be obligated beyond the funds generated by fees pursuant to Idaho Code §31-3201D, which obligates probationers to pay a fee set at a maximum of \$75 per month for their monthly supervision during the probation period. The fees generated from the probationers are to be used exclusively to support the program. Ada County transitioned to Odyssey in August 2016 which resulted in all payments received by the clerk being distributed by the **Idaho Supreme Court's** (ISC) priority of payments order which places misdemeanor probation payments in tenth place in the order. When the county clerk accepts a payment from the probationer, it gets applied to fines, fees or costs listed ahead on the list, and each item on the list needs to be remitted in full before payments are applied to the next item on the list. The results are misdemeanor probation payments being delayed or not received at all, causing a \$250,00 decrease in county revenue between FY2016 and FY2018. Commissioner Tibbs outlined the financial application problems for probationers caused by the list order in the Odyssey program.

In response to committee questions, **Commissioner Tibbs** replied the proposed legislation would give counties the option to take their probation fees out of the Odyssey system and give them back to their county misdemeanor probation funds or to leave them in Odyssey. He further stated Ada County has unsuccessfully tried to resolve their disbursement priority issues with the ISC, and Ada County cannot guarantee the probation program won't be cut.

**Chairman Luker** responded to committee concerns regarding **RS 26060** conflicting with **RS 26019**, which addresses the ISC's desire to have the legislature make a policy decision regarding prioritization of fees and payment distribution within the Odyssey system by stating that both can be printed and heard together.

**Commissioner Tibbs** introduced **Erica White**, Deputy Prosecuting Attorney, Ada County Prosecutor's Office, Civil Division, who confirmed as Idaho Code §31-3201D is currently written, fee monies are to be spent exclusively for probation, and the county clerk cannot comply.

**MOTION:**

**Rep. McCrostie** made a motion to introduce **RS 26060**. **Motion carried by voice vote.**

**RS 26039**      **Rep. Kerby** explained **RS 26039** is a diversion program where an individual who has a DUI with a .08 and .20 reading can be diverted and have a contract of items to complete within six months to one year. The sentence can be dismissed upon successful contract completion. One of the requirements would be to have the ignition interlock paid for by the individual. Unsatisfactory completion of the contract would result in the case being refiled and charges reinstated. This bill requires a camera on the ignition interlock device so that friends and family cannot blow into the device for the DUI offender. Fiscally, there will be less fines paid, but counties could save approximately \$612,000 with less public defense and magistrate costs.

**MOTION:**      **Rep. Gannon** made a motion to introduce **RS 26039**. **Motion carried by voice vote.**

**RS 26051:**      **Rep. Chaney** stated this bill puts **H 457** back to the way it was before it was modified in 2014. Since 2014, if someone does not wear a seat belt and someone else is negligent in injuring them, the law requires them to prove the degree to which the failure to wear the seat belt was responsible, and to prove the degree of injury in order to determine negligence. It has become an extremely litigious and expensive practice that involves experts to move court cases forward. **H 457** basically holds the negligent party responsible for all the damage they cause.

**MOTION:**      **Rep. Cheatham** made a motion to introduce **RS 26051**. **Motion carried by voice vote.**

**ADJOURN:**      There being no further business to come before the committee, the meeting adjourned at 3:22 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

**AMENDED AGENDA #3**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Tuesday, February 13, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS26061</a>	Controlled substances, sentencing	Rep. Ilana Rubel
<a href="#">RS26171</a>	Justices, judges' salaries	Sara Thomas, Idaho Supreme Court
<a href="#">RS26167</a>	Threats of school violence Annual report of sexual assault kits tracking	Rep. Pat McDonald Matthew Gamette, Idaho State Police Forensic Services
<a href="#">H 430</a>	Victim confidentiality, addresses	Lisa Mason, Secretary of State's Office
<a href="#">RS26139</a>	Forcible entry, unlawful detainer	Paul Smith, Idaho Apartment Association
<a href="#">RS26008</a>	Sex crimes, video voyeurism	Rep. Luke Malek
<a href="#">RS26012</a>	Driving without privileges	Rep. Greg Chaney
<a href="#">RS26151</a>	Firearms, domestic violence	Rep. Melissa Wintrow
<a href="#">RS26169</a>	Juror Compensation	Rep. John Gannon
<a href="#">RS25961</a>	Rule 75	Rep. Lynn Luker
<a href="#">RS26018</a>	Tort claims, government liability	Rep. 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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Tuesday, February 13, 2018

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

**PLACE:** Room EW42

**MEMBERS:** Chairman Luker, Vice Chairman Malek (Widmyer), Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session the sign-in sheet will be filled with the minutes in the Legislative Services Library.

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

**RS 26061:** **Rep. Perry** presented **RS 26061**, which allows judges some discretion for mandatory sentencing within the drug trafficking statute, similar to federal law. The minimum imprisonment term may be imposed only if the court finds imposition of sentence would result in manifest injustice and is not necessary for public protection. This helps filter out first-time offenders who are often young adults who made a mistake.

**Rep. Rubel** responding to a question, advised she attended the only Idaho Criminal Justice Commission subcommittee to address this issue, and they didn't anticipate making any decision in 2018.

**MOTION:** **Rep. McCrostie** made a motion to introduce **RS 26061**. **Motion carried by voice vote. Rep. Malek** requested to be recorded as voting **NAY**.

**RS 26171:** **Sara Thomas**, Administrative Director of the Courts, presented **RS 26171** to provide an base salary increase for all judicial officers of \$3,700 and to restore differentials between judiciary levels. The total of all increases represents a less than 3 percent change in overall judicial compensation.

**MOTION:** **Vice Chairman Malek** made a motion to introduce **RS 26171**. **Motion carried by voice vote.**

**RS 26167:** **Rep. McDonald** presented **RS 26167** to update the school violence statute to include electronic communication and provide escalating charges for weapon implementation. Reference is made to modification of weapons.

**MOTION:** **Rep. Amador** made a motion to introduce **RS 26167**. **Motion carried by voice vote.**

**Matthew Gamette**, Laboratory Assistant Director, Idaho State Police Forensic Services Labs, presented the 2017 report on sexual assault (SA) kits tracking. The legislatively requested 90-day SA kit turn around time continues as a goal, with additional resources requested. More kits are coming into the lab instead of staying on law enforcement shelves. The Idaho State Police (ISP) website now includes SA kit tracking, with confidentiality maintained. The 2017 retention statute has been fully implemented. Kit destruction has stopped. Initial training for the website was provided to 213 people. In 2017, 512 SA kits were purchased, 560 kits distributed, 456 kits were collected, and the average law enforcement transmittal time was 60 days. A request to increase the current statute 30-day timeframe to 60 days is being developed. SA kit validation includes new instrumentation for faster processing. A request has been submitted for a new biology DNA Examiner. In response to committee questions, Mr. Gamette said the additional turn around time for law enforcement is needed for furthering their investigation and giving survivors case resolution.

**H 430:** **Lisa Mason**, Secretary of State's Office, presented **H 430**. The Address Confidentiality Program, through this legislation, expands the eligibility determining documentation to cover victims who are not able to get protection orders. It also allows the Secretary of State to consider other forms of evidence, including police reports and professional documentations. The \$1,500 anticipated increase in mail costs would be absorbed by the existing budget. Answering committee questions, Ms. Mason said they are currently servicing 43 households, and there are 86 people in the program. Over 30 additional calls were received last year from victims who wanted to be, but didn't qualify to be in the program.

**MOTION:** **Rep. Cheatham** made a motion to send **H 430** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Cheatham** will sponsor the bill on the floor.

**RS 26139:** **Paul Smith**, Executive Director, Idaho Apartment Association, presented **RS 26139** to standardize and modernize the eviction act, reduce bottlenecks, increase transparency, clarify the process, and clarify rights of communities by allowing criminal evictions to proceed faster. This provides help for both landlords and tenants. A provision is included to require third-party property managers to hold deposits in specific trust account types and protects tenants with specific penalties for security deposit refund delays.

**MOTION:** **Vice Chairman Malek** made a motion to introduce **RS 26139**. **Motion carried by voice vote.**

**RS 26008:** **Vice Chairman Malek** presented **RS 26008**, pertaining to revenge pornography. The original language was determined to be too broadly written for court cases. The changes narrow and tailor the statute to address these constitutional challenges.

**MOTION:** **Rep. Wintrow** made a motion to introduce **RS 26008**.

**Kassandra Slaven**, Ada County Prosecutor's Office, was called upon to answer a question from the committee, and she explained the exceptions are defined in the statute and the changes narrow and address the hypothetical problems relating to intent and prosecution under the statute.

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

- RS 26012:** **Rep. Chaney** presented **RS 26012** which would reclassify driving without a license from a misdemeanor to a first and second offense infraction with third and subsequent violations remaining a misdemeanor. For certain driver's license suspensions, driving on a suspended license would be reduced to an infraction. For remaining misdemeanor violations for driving on a suspended license, the legislation would eliminate statutory mandatory minimum jail sentences. The legislation also would reinstate driving privileges for certain citizens previously suspended for no other reason than non-payment. This proposed legislation would remove 7,000 cases a year from the court system and save over \$9 million annually in incarceration, prosecution, and public defence costs. The LSO fiscal evaluation has been complete and will be included in the SOP.
- MOTION:** **Rep. Perry** made a motion introduce **RS 26012** with the insertion on page 1, line 38, behind the word "infraction," the words "punishable by a fine of \$150." **Motion carried by voice vote.**
- RS 26151:** **Rep. Wintrow** presented **RS 26151** which prohibits anyone convicted of a domestic violence misdemeanor charge from possessing firearms for two years. Already prohibited by federal law, this helps Idaho law enforcement protect women from violent abusers. The presence of a gun in a domestic violence situation increases injury to a woman and her family by five times.
- MOTION:** **Rep. Perry** made a motion to introduce **RS 26151**. **Motion carried by voice vote.**
- RS 26169:** **Rep. Gannon** presented **RS 26169** regarding juror compensation. This proposed legislation requires jurors be paid \$50 per day plus mileage for lengthy (over five days) trial service, of which \$40 per day shall be reimbursed from the General Fund to be distributed by the court. The fiscal note will be updated to \$75,000.
- MOTION:** **Vice Chairman Malek** made a motion to introduce **RS 26169**. **Motion carried by voice vote.**
- Chairman Luker** turned the gavel over to **Vice Chairman Malek**.
- RS 25961:** **Chairman Luker** presented **RS 25961**, which updates Rule 75 for recording, filming, and transmitting news information. The changes include the gallery in the House Chamber, the accredited media, and non-accredited individuals.
- MOTION:** **Rep. Kerby** made a motion to introduce **RS 25961**. **Motion carried by voice vote.**
- RS 26018:** **Chairman Luker** presented **RS 26018**. The Tort Claims Act sovereign immunity provides some exceptions. The change addresses property damage and injury caused from supervision failure of residents in mental health centers or facilities. The fiscal note is unknown because it is subject to the number and type of claims.
- MOTION:** **Rep. Chaney** made a motion to introduce **RS 26018**. **Motion carried by voice vote.**
- Vice Chairman Malek** turned the gavel over the **Chairman Luker**.
- ADJOURN:** There being no further business to come before the committee, the meeting adjourned at 3:29 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Thursday, February 15, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>HCR 40</u></a>	Joint Rule 16 / Senate and House Chamber hours	Carrie Maulin, Chief Clerk of the House
<a href="#"><u>HR 5</u></a>	House Rule 58 / House Chamber hours	Carrie Maulin
<a href="#"><u>H 474</u></a>	Joint publishing committee	Lisa Mason, Secretary of State Office
<a href="#"><u>H 535</u></a>	Sales under execution / online auctions	Michael Kane, Idaho Sheriffs' Association
<a href="#"><u>H 447</u></a>	Civil forfeiture, property	Rep. Steven Harris, Rep. Ilana Rubel
<a href="#"><u>H 429</u></a>	Crime victims compensation	Rep. Melissa Wintrow

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Thursday, February 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:** Carrie Maulin, HOR; Lori Burell, Mary Mosley, Nirmalia Sandhu, Joy McKinnon, NOW; Julie Custer, David Scott, Linda Simmons, Gayle Wilde, Linda Beebe, AAUW; Fred Birnbaum, Idaho Freedom Foundation; Nick Landry, Kristi Abel, Nick Stout, Tom Limbaugh, Idaho Industrial Commission; Kathy Griesmyer, ACLU; Carly Ward; Tom Arkoosh, Lauren Arkoosh, Arkoosh Law; Mike Kane, ISA; Annie Pelletier, Idaho Coalition Against Sexual & Domestic Violence; Toni Lawson, Idaho Hospital Association, Tracy Olson, Jessica Nebeker

**Chairman Luker** called the meeting to order at 1:33 p.m.

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the January 31, 2018 meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the February 5, 2018 meeting. **Motion carried by voice vote.**

**HCR 40:** **Carrie Maulin**, Chief Clerk of the House of Representatives presented **HCR 40**, which amends Joint Rule 16 of the Idaho Senate and Idaho House of Representatives. It deletes the specific times that the Senate and House Chambers must be open. Amending this rule allows flexibility to change the times to comport with the same hours the Capitol is open.

**MOTION:** **Rep. McDonald** made a motion to send **HCR 40** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.

**HR 5:** **Carrie Maulin**, Chief Clerk of the House of Representatives presented **HR 5**, which amends Rule 58 of the Idaho House of Representatives to clarify the process for using the House Chambers and removes the specific times the House Chambers are open.

**Rep. Malek** made a motion to send **HR 5** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.

**H 447:**

**Rep. Rubel** presented **H 447**, a bill addressing civil asset forfeitures. This legislation is very similar to what was introduced last year and passed both Houses, but was vetoed by the Governor. Since that time, a lot of work has been done to meet with all of the original stakeholders, the Idaho State Police, and other law enforcement agencies and it is believed all opposition has been removed. This legislation provides for the forfeiture of a vehicle, but only when in connection with actual trafficking of drugs, not when it, or other property, is in proximity of controlled substances. The presence of U.S. currency without any evidence of wrong doing is not subject to seizure. It also creates a right of repleven of property when there is a need for the property while a judicial proceeding is pending. Courts must determine whether the property forfeiture is proportionate to the crime alleged. Innocent owners are absolved from paying the fees and State's cost related to property seizure and storage. Law enforcement can still retain property with judicial approval. It institutes reporting requirements, which now addresses the issues brought forward by law enforcement.

**Rep. Harris**, co-sponsor of **H 447** stated the bill's reporting requirements are a major improvement from last year's version. He thanked all who worked together over this summer to bring this forward.

**Fred Birnbaum**, Idaho Freedom Foundation spoke **in support** of **H 447** and stated a lot of work went into the bill and moves it forward in the right direction as a bi-partisan effort.

**Kathy Griesmyer**, Policy Director, ACLU of Idaho spoke **in support** of **H 447**, particularly the section dealing with reporting requirements. The ACLU sent out a series of public records requests to the counties to better understand how asset forfeitures are being handled. It was a large project that entailed 300 to 400 hours of work. The reporting requirements in this bill will make it more transparent for members of the public to better understand how the counties are using this policy.

**Carly Ward**, Student at Concordia University School of Law worked with the ACLU the past 18 months researching the state of civil asset forfeiture practices in Idaho. It was a very time consuming and difficult process, which highlights the need for the reporting requirements in the bill. Public records requests were sent to all 44 county sheriffs' departments requesting information on seizures commenced from 2014 to 2016. Information about the cases, the corresponding criminal charges, department procedures for disposal of assets and department funding received as a result of the seizures was collected. Fourteen counties reported no forfeitures in this time frame. Less than a handful of counties keep any sort of log on forfeitures. Many counties reported they knew there were civil asset forfeitures, but the time and cost to go back through every case to pull the information was not practical. No county with a forfeiture was able to provide the information required in this bill and most do not know how much money is collected as a result of these actions. It took 2.5 months of 40 hour work weeks to collect and analyze this information. Ms. Ward stated, holding officials accountable should be an achievable goal for Idaho citizens and the current system makes that difficult. Following questions from the committee, Ms. Ward stated that nearly \$500,000 in money has been seized in the last year, but the value of other types of property is not known because no one is tracking that information. Assets go through a civil proceeding and any unclaimed property is redistributed to the county prosecutor and sheriff.

**Tom Arkoosh**, Arkoosh Law Offices, representing the Idaho Association of Criminal Defense Council spoke **in support of H 447** and stated the Statement of Purpose is one of the most accurate SOPs he has seen. It provides important transparency. In response to questions from the committee, Mr. Arkoosh stated the record keeping required in this bill will show how much money is going into the system, and the annual budgetary process for the county sheriffs' and Idaho State Police should report out how the money is spent. Accountability is enhanced because law enforcement must get court approval to keep certain assets. Otherwise, the asset must be liquidated and reported using a form that will be developed by Idaho State Police.

**Sen. Burgoyne**, co-sponsor of **H 447** testified this bill has been fully vetted by all people who have a stake in this legislation. It is a good example of collaboration and compromise.

**MOTION:** **Rep. Malek** made a motion to send **H 447** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Rubel and Rep. Harris** will sponsor the bill on the floor.

**H 474:** **Lisa Mason**, Administrator Legislative and Executive Affairs, Idaho Secretary of State Office presented **H 474**. In 2015, the legislature moved the responsibility to print, publish and distribute the session laws from the Secretary of State to the joint publishing committees of the legislature. However, the responsibilities outlined in this legislation were not removed from the section of Idaho Code specific to the Secretary of State (I.C. § 9.67). The bill moves the applicable code sections out of Chapter 9 and puts them in Chapter 5, relating to the duties of the legislature.

**MOTION:** **Rep. Cheatham** made a motion to send **H 474** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Gannon** will sponsor the bill on the floor.

**H 535:** **Michael Kane**, representing Idaho Sheriffs' Association presented **H 535**, which will bring Idaho law up-to-date with regard to how sheriffs' departments can dispose of debtor and creditor assets. In an effort to gain the maximum financial benefit, the proposed law will allow the use of online auctions. In response to questions from the committee, Mr. Kane clarified that large assets such as property will still be sold in person at on-site auctions.

**MOTION:** **Rep. Kerby**, made a motion to send **H 535** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Kerby** will sponsor the bill on the floor.

**H 429:** **Rep. Wintrow** presented **H 429**. Under today's system, if a sexual assault victim goes to a justice center, emergency room or medical center to get a forensic exam after being assaulted, their private health insurance is billed first, then any remaining amount due is billed to Idaho's Crime Victims Compensation Program (CVCP). Sexual assault is the only crime in Idaho where a victim's insurance is billed for forensic evidence collection. It is burdensome and is preventing people from reporting. This bill takes the billing of third party insurance out of the process for victims over age 18 and directs CVCP to cover the costs. The process doesn't change for minors as the issues of privacy are different, and there are mandatory reporting requirements in place. This legislation is not intended to harm the CVCP, so the fiscal note was developed by a State budget analyst and by working with the CVCP over several months. Current law requires tracking the number of collections kits that are distributed and processed through the crime lab. Therefore, the numbers in the fiscal note are realistic. In the past, the CVCP has paid between \$50,000 to \$60,000 for kit collection. Under this legislation, the CVCP could access the \$300,000 identified in the fiscal note once the \$50,000 threshold has been reached. The goal is to ensure that no victim ever faces a denied claim, or has to face the possibility of being financially responsible for their assault. In response to

questions from the committee, Rep. Wintrow explained it is the preference to have forensic collections done by officially trained medical staff through country justice centers, but not all districts have them, so private medical facilities do work with victims for kit collection. There currently isn't a set price for what private entities can charge, but information from the hospital association says the range is \$400 to \$1200. If this legislation is passed, work can be done to standardize a fee structure for private entities. Currently, the CVCP is funded from fines, fees and Federal dollars.

**Annie Pelletier**, Director of Law & Policy, Idaho Coalition Against Sexual & Domestic Violence testified **in support of H 429**. She has worked for more than 11 years with young, adult sexual assault victims and many times young people are reluctant to report within the 120 hour time frame needed to collect viable evidence. Therefore, it is important to remove the barriers to undergoing a sexual assault forensic examination. If a victim receives an exam, the kit can be stored until he or she is prepared to report to law enforcement or anyone else they choose to inform. According to Ms. Pelletier, a majority of victims ask how the cost of a forensic exam is covered and when they learn it is covered by private health insurance, most are concerned about privacy. If they are covered under a parent's health insurance plan they fear their parents finding out about the assault via the explanation of benefits. Sexual assault is the kind of crime that carries a significant amount of self-blame, stigma and embarrassment. The release of private medical information following an assault can cause additional challenges for victims because it takes away a victim's agency to control his or her information.

**Jessica Nebeker**, Nurse at St. Lukes and a member of the SANE team read the statement of **Cindy Cooke**, the SAFE Coordinator for the community who couldn't be present due to schedule changes. See attached testimony **in support of H 429**. (Attachment 1)

**Joy McKinnon**, Southwest Idaho National Organization for Women spoke **in support of H 429** and stated when a woman is sexually assaulted, her body becomes a crime scene and the collection of forensic evidence should be treated like all other crimes in Idaho with regard to covering all costs associated with sexual assault kit collection.

**Julie Custer**, Co-president, American Association of University Women spoke **in support of H 429** and shared information stated in previous testimony, but emphasized current billing practices demonstrates bias against victims of rape and sexual assault, which are predominantly women and girls. She implored the Committee to not let their decisions be driven by dollars and cents, but to do what is right for the victims.

**Carmel Crock** testified **in support of H 429** and said she testified about the same issue, before the same committee in the 1980s when the bill did not pass the House. It is her hope the time is right to do what is right for victims now. She suggested the State should be able to find the dollars to support this program.

**MOTION:**

**Rep. McCrostie** made a motion to send **H 429** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

**Chairman Luker** recognized the Committee Page, **Trent Kuykendoll**, and thanked him for his work in the Committee.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 2:34 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

2-13-2018

## HB 429

Proposed change by Representative Melissa Wintrow

Mr. Chairman/Madam Chair

My name is Cyndee Cook. I work for Saint Alphonsus as a Registered Nurse and I am the SAFE Coordinator for our community. My team and I provide forensic exams for victims of sexual assault and domestic violence. We do the majority of our forensic exams at Faces of Hope Victim Center. This center provides a location where victims can receive many of the services they need at one location. This includes meetings with law enforcement, prosecutors, attorneys, crisis counselors, Health & Welfare, etc.

I am here to testify in support of HB 429. This change will provide sexual assault victims with much-needed anonymity in the billing process. Currently the bill for a sexual assault forensic exam has to go through private insurance before Crime Victim's Compensation Program. This has created a barrier in receiving services and even resulted in victim's leaving without receiving care. Part of the medical care includes providing prophylaxis or prevention against an unwanted pregnancy and medications to decrease risk of contracting Gonorrhea or Chlamydia, two of the common sexually transmitted infections. Sexual assault puts these patients at risk.

Whenever you visit a medical facility, and have private insurance, a bill is sent to the primary insurance company. This bill is processed and determination made on amount of reimbursement. The payment is given to the medical facility and an explanation of benefits (EOB) is sent to the insured person (may be the victim or someone else). This EOB may reveal that a victim received a forensic exam and/or evaluation for complaint of sexual assault. A victim loses their ability to decide who is aware of the crime.

Sexual assault is an extremely personal crime. Victims lose power and control over what is occurring to their body. Many victims have a hard time even disclosing that this crime occurred. Confidentiality is very important. A victim should be able to choose who knows about the crime. This law will help to ensure this choice for a victim. This bill ensures that victims have the opportunity to take back some control as she/he gets to choose whom has access to information related to her assault.

I would like to share an example. A young college student comes to FACES to report a sexual assault. She wants privacy. She is afraid, anxious, and full of self-blame and guilt. I reassure her that the sexual assault is not her fault. She is not ready yet to tell her parents about the assault. Her insurance coverage is through her father's insurance. She asks about the bill. Will her parents see it? I have to tell her they may see the EOB (Explanation of Benefits) and figure it out or ask her about the bill. She decides to leave without receiving care as a direct consequence of potentially exposing this crime to her parents. This barrier (billing to parent's insurance) caused this patient to leave without receiving medical care and forensic evidence collection. This victim has lost her chance to obtain justice for the crime. Maintaining privacy and confidentiality is important and applicable to any victim of any age.

I am in support of this bill because I never want the ability to pay or insurance requirements to be the reason a victim does not receive the care she/he needs.

**AMENDED AGENDA #3**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Monday, February 19, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 531</u></a>	Alcohol, sunset clause repeal	Clayton King, University of Idaho
<a href="#"><u>H 588</u></a>	Threats, school violence	Representative Pat McDonald
<a href="#"><u>H 534</u></a>	Bail enforcement agents	Michael Kane, Idaho Sheriffs' Association
<a href="#"><u>H 533</u></a>	County jails, housing payments	Michael Kane, Idaho Sheriffs' Association
<a href="#"><u>H 448</u></a>	Breastfeeding exemption, obscenity	Representative Paul Amador

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Monday, February 19, 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(17), McCrostie, Wintrow (Hale)

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Luker** called the meeting to order at 1:32 p.m.

**H 531:** **Rep. Troy** informed the committee the sunset clause in **H 531** is removed. Passed in 2016, **H 531** provides limited immunity for Minor Consumption or Minor in Possession of Alcohol charges for someone who needs emergency medical help or whose friend needs it. To receive immunity, the minor must remain on the scene and cooperate with emergency medical personnel and law enforcement. Protection from other criminal charges such as Driving Under the Influence is not provided.

**Clayton King**, Associated Students with the University of Idaho, spoke **in support** of **H 531** saying students on campus have taken steps to educate students on alcohol awareness, and using this legislation has helped in that education. Mr. King shared various campus activities they have done to support alcohol awareness.

**MOTION:** **Rep. Amador** made a motion to send **H 531** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Troy** will sponsor the bill on the floor.

**H 588:** **Rep. McDonald** explained **H 588** updates Idaho Code §18-3302I to take into account electronic threats. The bill provides a misdemeanor charge to willful threats of violence and escalates punishment as the threat escalates. **H 588** does not require that a threat take place on the school grounds but does pertain to school buses and other school activity venues. There is a felony clause if a person is found to be in possession of a deadly dangerous weapon in furtherance of such a threat.

**Stu Hobson** Police Officer and School Resource Officer, Nampa Police Department; **Stephen Gasser**, Police Officer and School Resource Officer, Twin Falls Police Department; **David Gomez**, Police Officer and School Resource Officer, Meridian Police Department; **Ryan Rhodes**, Idaho State Fraternal Order of Police spoke **in support** of **H 588** because it extends Idaho Code §18-3302I to criminalization threats to do violence at a school that are made at any time or through electronic social media platforms where young people express themselves. The officers said it is through social media they are most likely to become aware of a threat while violence can still be prevented, and the added language in **H 588** enables them to prevent, rather than just respond to tragedies. A threat does not have to come from a student. **Officer Gasser** told of a threat from the father of a daughter to kill administrators that put a school in lock down, but they were unable to charge the father because Idaho Code §18-3302I, without the amendments this bill makes, only affects threats made on school grounds. **Officer Gomez** explained that a school in Missouri made a threat against MHS on Snapchat, and every MHS

in the country, including Meridian High School, had to go on alert, and since the threat was not made on school grounds, no charges could be brought. This has happened multiple times. **H 588** would change it so charges could be brought in these instances.

**Rep. Horman**, spoke in support of **H 588** informing the committee the bill is a result of the Law Enforcement Advisory Committee, that serves through the Office of School Safety and Security, for whom she serves as Chair of their Advisory Board, and it has been well vetted.

In response to committee concerns about the effect **H 588** would have on a young student bringing a pocket knife to school, **Officer Hobson** replied Idaho uses the federal statute saying the blade has to be 2 1/2 inches long to be subject to a criminal code violation, and school resource officers have discretion to look at the circumstances. Committee members discussed whether under **H 588** a threat also needed to be linked to the student with the pocket knife. **Officer Hobson** stated language about damage to school property was included in the bill to address bomb threats.

In response to committee concerns about §(b) of Idaho Code 18-3302I allowing students to be charged with a felony for possessing dangerous weapons based upon law enforcement discretion, and although the bill language says the possession of the weapon must be in the furtherance of carrying out a threat made by word or electronically, it also provides in §(c) that the prosecution is not required to prove the student intended to carry out the threat, **Officer Rhodes** replied prosecutorial proof of intent is for the social media threat sections of the bill and does not act on whether the student intended to carry out the threat on the felony portion of the statute where probable cause must be shown.

**Holly Koole Rebholtz**, Idaho Prosecuting Attorneys Association, was called upon to answer questions from the committee regarding conflicting intent of the language in §b and §c lines 28-29 of **H 588**. She explained she thinks it is proper. Committee concerns were raised about the bill limiting free speech under the First Amendment because it extended punishment from a threat in a limited public forum where free speech can legally be limited to an open public forum. In response to committee questions on whether threatening to use a firearm or a dangerous weapon against a person at an educational institution would be protected free speech, she responded she was not the proper person to answer the question.

**MOTION:** **Rep. Chaney** made a motion to send **H 588** to General Orders. **Motion carried by voice vote. Rep. McDonald** will sponsor the bill on the floor.

**H 534:** **Michael Kane** Idaho Sheriffs Association, explained under **H 534** a bail enforcement agent cannot be a child, a fugitive, adjudicated mentally ill, or an illegal alien. A bounty hunter in pursuit must be empowered by a bail officer/agent, have an affidavit approved by the Idaho Supreme Court, have the name, last known address, and a photograph of the individual sought, have the name and principle address of the surety, and have a valid driver's license or photographic identification, as well as an identifying jacket, shirt or vest with the words "bail enforcement agent" visible on the front. When planning an apprehension, a bail enforcement agent must notify the sheriff located within the boundaries of the apprehension area. They cannot pretend to be law enforcement, give a false name, or carry a weapon unless it is legal to do so.

**Nate Fisher**, spoke in support of **H 534**.

**MOTION:** **Rep. Perry** made a motion to send **H 534** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. McDonald** will sponsor the bill on the floor.

**H 533:**

**Michael Kane** said twenty years ago, Idaho counties were paid \$35 a day for housing state prisoners in their jails, and the expense of housing state prisoners rose every year with state reimbursement increasing only once in 2000 to \$45 a day. Currently, the daily cost per prisoner to the counties to house them is \$81, so the counties bear about fifty percent of the cost, which the counties are recovering through property taxes. There are approximately 1,100 state prisoners being held in county jails for about two to three months. There is an Idaho Supreme Court case saying state prisoners must be taken out of county jails as soon as possible, or within seven days. **H 533** provides the Idaho Department of Correction (IDOC) the incentive to move state prisoners within the first seven days by requiring a daily payment per day per prisoner of \$55 which goes up to \$75 a day after the seven day period. Daily prisoner costs are still not completely covered at \$75 but it is much closer than \$45.

**In support of H 533, Kieran Donahue**, Sheriff of Canyon County and President of the Idaho Sheriff's Association, advised he has 30 county prisoners a day he has to locate outside his county in six locations to find room for state prisoners. He cannot send his county prisoners out of county to stay because they are not sentenced and have constitutional rights. **Stephen Bartlett**, Ada County Sheriff, emphasized they have 255 IDOC inmates in custody, and Ada County is paying \$24,000 to house them and being reimbursed \$11,000 from IDOC. but it is a large sum the county tax payers are taking on. A lot of prison parolees around the state are released out of Ada County.

In response to committee questions, **Sheriff Donahue** replied the current fiscal note of \$3,650,000 is figured on 1,000 prisoners for 365 days for an extra \$10 a day. If it is figured at 1,000 prisoners for 365 days at \$75 a day, the fiscal impact would be \$11 million; however, that does not consider the seven lower cost days or that, as a result of the considerable work done by the Idaho Sheriff's Association and others, IDOC will be working to get state prisoners out within seven days, including, 250 in a very short period of time, and 1,000 prisoners will be sent out of state.

**Chairman Luker** directed **Mike Kane** to update the fiscal note.

**MOTION:**

**Rep. Gannon** made a motion to send **H 533** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.

**H 448**

**Rep. Amador** presented **H 448** stating it is not a women's right issue but a family issue. It encourages a healthy bond between mother and child. He shared information on the nutritional and emotional benefits of breast feeding. The feeding of a child should not be confused with exhibitionism or indecency but promotes the health and welfare of children.

**MOTION:**

**Rep. Cheatham** made a motion to send **H 448** to the floor with a **DO PASS** recommendation.

Speaking **in support of H 448** were **Sandy Mudge**, M.D.; **Kathy Griesmyer**, Policy Director, ACLU; **Adrian Cavener**, contractor with Treasure Valley United Way, who informed the committee of many of the emotional, mental and economic benefits of breast feeding and citing the many health groups that support it, stating it is good for women's health, reproductive health, children's health and dad's and all sorts of family partners' health.

Speaking **in opposition to H 448, Fairy Hitchcock** informed the committee she nursed one of her children 3 years, one 4 years, tandem nursed children and is a long-time member of La Leche League. She stated when babies are nursed, they should be covered up for their own safety to protect them from the sun and cold. This bill is about exhibitionism and babies do not need to be uncovered as an encouragement to nurse.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Rep. Amador** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 4:00 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

**AMENDED AGENDA #2**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Wednesday, February 21, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">H 532</a>	Child, family legal services fund	Brody Aston, Idaho Legal Aid Services
<a href="#">H 499</a>	Records, law enforcement recording	Seth Grigg, Idaho Association of Counties
<a href="#">H 554</a>	Safety restraints, negligence	Rep. Greg Chaney
<a href="#">H 599</a>	Driving without privileges	Rep. Greg Chaney
<a href="#">H 491</a>	Marijuana possession, penalty	Rep. John Gannon
<a href="#">S 1208</a>	Agriculture, inmate labor - Update on Legislation Only	

***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 Luker  
Vice Chairman  
Malek(Patano)  
Rep Perry  
Rep Dayley  
Rep McDonald  
Rep Cheatham

Rep Kerby  
Rep Nate(King)  
Rep Chaney  
Rep Amador  
Rep Hanks  
Rep Zito

Rep Zollinger  
Rep Ehardt  
Rep Gannon  
Rep McCrostie  
Rep Wintrow

COMMITTEE SECRETARY

Wendy Carver-Herbert  
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Phone: 332-1127  
email: hjud@house.idaho.gov

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, February 21, 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(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

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

**H 532:** **Brody Aston**, Contract Lobbyist, Westerberg and Associates, on behalf of Legal Aid Services, presented **H 532** to create a family and legal services fund for future possible appropriation. Any funding would be excluded from use for class action law suits, criminal cases, abortion or reproduction services, representation of persons who are incarcerated, representation of undocumented persons, or lawsuits against Idaho or any of its political subdivisions. Answering questions from the committee, Mr. Aston said the fund is being set up to provide oversight for any state funding, instead of the previously used line item on the Attorney General's budget.

**Jim Cook**, Director, Idaho Legal Aid Services, further presented information on **H 532**. Legal Aid Services is a 501(c)(3) statewide non-profit legal organization. Because domestic violence cases are very complicated, dangerous, and the need is great, they employ a lethality assessment component. Help from the state would allow them to serve more people, usually women with minimum wage jobs and children. This will save the state costs for law enforcement, emergency rooms, loss of wages, and serve the citizens. Answering questions from the committee, Mr. Cook explained there has been, or is expected to be a reduction in funds from grants, the Federal Legal Services Corporation, Department of Federal Housing and Urban Development, United Way, and the Agencies on Aging. This bucket provides the Idaho Supreme Court oversight and would house only state funds.

**Rep. Gannon** declared **Rule 38**, stating a possible conflict of interest and that he would not be voting.

**Daniel Dinger**, Ada County Prosecutor's Office, testified **in support** of **H 532** and the need for civil assistance for individuals with domestic violence cases. Victims lack financial resources to pay for assistance beyond the prosecutor's office.

**Maureen Wishkoski**, Core Advocate Manager, Women's and Children's Alliance (WCA), testified **in support** of **H 532**. The statewide attorney access makes Legal Aid resources even more valuable. They also produce information to help victims understand the civil legal system and host the victims' hotline They insure the law is for everyone.

**Lisa Thompsen**, Owner, Administrator, Senior Care Resource, testified **in support** of **H 532**. She shared stories of three clients who were successfully helped by Legal Aid Services. This service fills a legal community void and helps incapacitated adults with financial protection, medical oversight, and continuum of care support.

**MOTION:** **Rep. Wintrow** made a motion to send **H 532** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Nate, Hanks, Zitto, and Ehardt** requested to be recorded as voting **NAY. Rep. Malek** will sponsor the bill on the floor.

**H 499:** **Seth Grigg**, Executive Director, Idaho Association of Counties (IAC), presented **H 499** to add a fourth level of media records retention at the county level. There are three types of records: permanent, semi-permanent, and temporary. Law enforcement digital recordings fall within the temporary category, with a two-year retention. The requested fourth category provides shorter retention with specific parameters.

**Terry Durden**, Ada County Sheriff, further presented **H 499**. This addition helps implement body camera programs, which collect 8-1/2 gigabytes per deputy per month, which costs \$1,000 per deputy per year for cloud storage. The largest portion of the videos are garden variety activities not requiring lengthy retention. Videos needing lengthy storage are marked early in the retention process. Cities have a different retention schedule than counties. Answering questions from the committee, Mr. Durden said many county sheriffs are still using VHS tapes for mounted recordings. The determinate of evidentiary value is the use of force policy definition, the code for criminal offense, a public records request, or a complaint. The spoliation instruction will assure flagging for discovery in cases. Cloud metadata offers a variety of information and is kept for a long time.

**MOTION:** **Rep. Amador** made a motion to send **H 499** to the floor with a **DO PASS** recommendation.

**Kathy Griesmyer**, Policy Director, ACLU of Idaho, testified **in support** of **H 499**. The minimum retention period provides transparency.

**VOTE ON MOTION:** **Motion carried by voice vote. Rep. Ehardt** will sponsor the bill on the floor.

**H 554:** **Rep. Chaney** presented **H 554** to repeal and restore the statute to provide failure to wear a seat belt as inadmissible in a civil action. The 2014 change did not work as intended and caused confusion for juries and the courts.

**MOTION:** **Rep. Perry** made a motion to send **H 554** to the floor with a **DO PASS** recommendation.

**Barbara Jorden**, Idaho Trial Lawyers Association (ITLA), testified **in support** of **H 554**. Their previous work with insurance companies has proven to be a mistake and needs to be corrected. This will allow those persons injured in accidents caused through no fault of their own to be put back to whole instead of being penalized.

**Mike Kane**, Property and Casualty Insurers Association of America, American Insurance Association, testified **in opposition** to **H 554**. The original statute was in conflict with the state policy to wear seat belts. Any problems need to be fixed instead of returning to the previous statute wording.

**Woody Richards**, Farm Bureau Mutual Insurance Company, Allstate Insurance Company, American Family Insurance Company, testified **in opposition** to **H 554**. Repeal will exclude valuable information from jury consideration.

**Kent Day**, Liberty Mutual Insurance Group, testified **in opposition** to **H 554**. This may allow the seat belt defense to be used to equitably distribute first and second collision injuries with a judicial finding of likelihood.

**Kurt Holzer**, ITLA, testified **in support** of **H 554**. Jurors do not hear all of the evidence in a case. He shared a specific case leading to imposing defence costs on a client who did nothing wrong and was not wearing a seat belt at the time of the accident, although she had been previously wearing it.

**Nancy Sharp**, Self, testified **in support** of **H 554** and told of her accident, how not wearing their seat belts saved her life and her sister, and how she was forced to sue her sister to continue medical coverage.

Answering a question from the committee, **Mr. Kane**, said the current legislation provides a different damage consideration by the jury. There have been no conversations regarding working together to make the existing statute work, although they are willing to do so.

**SUBSTITUTE MOTION:**

**Rep. McDonald** made a substitute motion to send **H 554** to General Orders.

**Mr. Holzer**, responded to a question, stating the simple law became complex making it harder and farther from the basic Idaho standard of "you cause an accident, you are responsible."

**Rep. Chaney**, in closing remarks, said the current statute confuses the liability issue for everyone. There is no change for the purposes of negligence. Answering a question, he said the changes are a verbatim return to the previous legislation.

**VOTE ON MOTION:**

**Substitute motion failed by voice vote.**

**VOTE ON MOTION:**

**Original motion carried by voice vote. Rep. McDonald** requested to be recorded as voting **NAY. Rep. Chaney** will sponsor the bill on the floor.

**Chairman Luker** put the committee at ease at 3:20 p.m.

**Chairman Luker** resumed the meeting at 3:28 p.m.

**H 491:**

**Rep. Gannon** presented **H 491**. This legislation concerns the possession of one half of an ounce or less of marijuana. For these first-time offenders, education and rehabilitative consequences are more important than jail time. When they take the initiative options prior to trial and sentencing, they are rewarded with the charge dropped to an infraction. The community service option helps those making minimum wage and unable to afford the \$250 fine. If a defendant does not take advantage of the options, the court case continues and the charge remains a misdemeanor. **H 491** recognizes both the illegality of marijuana use and the impact on minor offenders.

**MOTION:**

**Rep. Zollinger** made a motion to send **H 491** to the floor with a **DO PASS** recommendation.

**Matt Vrasper** testified **in support** of **H 491**. This will help kids who make a mistake that impacts their student loans and their future.

**Joe Goode**, Boise State University student, testified **in support** of **H 491**. With a misdemeanor charge, scholarships are lost, students may drop out of college, and they may not find jobs. This change invests in the futures of young people who make a mistake.

**Sam Gold**, Boise State University student, testified **in support** of **H 491**. He shared the testimony of his friend, **Zebulon Morris**, who was arrested for possession in another state and given a five-hour course option which taught him a lot without impacting his future.

**Andrew Masser**, Criminal Defense Attorney, testified **in support** of **H 491**. This is an example of a smart, cost savings approach. The drug education component is very valuable.

**Maria Kennedy**, ACLU, testified **in support** of **H 491**.

**Yvonne Sandmire**, Coach, Boise State University, testified **in support** of **H 491**. Pot smoking, unlike other substances, does not lead to serious crimes.

**Jody Pederson**, Co-Director, Interfaith Sanctuary Homeless Shelter, testified **in support of H 491**. The existing charges lead to many young people at the shelter who are not able to get that next step into life because of their record. Diversion is more important than jail time, and it gives people a second chance, for which they are grateful.

**Chris Goetz**, Idaho Sheriffs Association, testified **in opposition to H 491**. There are other misdemeanor charges beyond marijuana. This can lead to a cycle when the individual fails to complete the options and returns to court multiple times.

In closing, **Rep. Gannon** said the misdemeanor charge stands until the diversion work is done. The timing remains vague to allow for rural court access. This is intended to be done before sentencing by a remorseful defendant. First time alcohol consumption has previously been changed to an infraction. Having the offender take care of the problem eases the court system and prosecutor burdens.

**SUBSTITUTE MOTION:**

**Rep. Perry** made a substitute motion to **HOLD H 491** for time certain at the discretion of the Chair. **Substitute motion carried by voice vote. Reps. McDonald and Amador** requested to be recorded as voting **NAY**.

**H 599:**

**Rep. Chaney** presented **H 599**. This legislation removes 7,000 court cases every year by helping persons who are unable to pay their fines, which can have a spiral effect with serious consequences. The changes reclassify non-driving related driving without privileges, removes mandatory jail time, reclassifies first and second failure to purchase offenses, allows reinstatement when suspension is the failure to pay cause, and ends court fee license suspension. Answering a question from the committee, Rep. Chaney said the Idaho-specific suspensions do not impact interstate agreements.

**MOTION:**

**Rep. Amador** made a motion to send **H 599** to the floor with a **DO PASS** recommendation.

**Tom Arkoosh**, Idaho Defense, testified **in support of H 599**. The predicated acts do not affect public safety in terms of driving habits.

**Matthew Conde**, AAA Idaho, testified **in opposition to H 599**. A drivers license demonstrates training and basic motor vehicle proficiency. This legislation provides a person who never had a drivers license a diminished consequence.

**Andrew Masser**, Criminal Defense Attorney, testified **in support of H 599**. This provides a cost savings in prosecutorial and court resources.

**Kathy Griesmyer**, Policy Director, ACLU Idaho, testified **in support of H 599**. This frees up time and costs for public defenders, jails, courts, and counties.

**SUBSTITUTE MOTION:**

**Rep. McCrostie** made a substitute motion to send **H 599** to General Orders for amendments on Page 5, Line 34, to add a sentence making it a misdemeanor to operate a motor vehicle when never licensed.

**ROLL CALL VOTE:**

Roll call vote was requested. **Substitute motion failed by a vote of 7 AYE, 10 NAY. Voting in favor of the substitute motion: Reps. Luker, Malek, Dayley, McDonald, Gannon (17), McCrostie and Wintrow. Voting in opposition to the substitute motion: Reps. Perry, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt.**

**VOTE ON  
ORIGINAL  
MOTION:**

**Original motion carried by voice vote. Rep. Chaney** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 6:03 p.m.

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Representative Luker  
Chair

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Karen Westen  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:00 P.M.**  
**Room EW42**  
**Friday, February 23, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 500</u></a>	Public records disclosure / child abuse reporting exemption	Rep. Paul Amador
<a href="#"><u>H 587</u></a>	Tort claims / Government liability	Rep. Lynn Luker
<a href="#"><u>H 584</u></a>	Sex crimes / video voyeurism	Rep. Luke Malek

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Friday, February 23, 2018

**TIME:** 1:00 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(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** Representative(s) Cheatham, Zollinger

**GUESTS:** Holly Kool, Rebholt, IPAA; KJ Brant, First Judicial District CASA; Natasha Lattin, Idaho CASA Association; Kassandra Slaven, Ada County Prosecutor; Lynn Norris; John Dinger, Ada County Prosecutor; Sandee Mayer, IPAA; Jim Bangler, DRI

**Chairman Luker** called the meeting to order at 1:02 p.m.

**MOTION:** **Rep. Chaney** made a motion to approve the minutes of the February 7, 2018, 1:30 p.m. meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Chaney** made a motion to approve the minutes of the February 7, 2018, 2:45 p.m. meeting. **Motion carried by voice vote.**

**H 500:** **Rep. Amador** presented **H 500**. This legislation will bring into congruence the current public records law for reporting child abuse. Two differing child abuse reporting identity statutes exist for the Department of Health and Welfare (DHW) and the criminal code. This legislation adds a new subsection stipulating the maintenance of the confidentiality of an individual's identity when reporting child abuse to law enforcement or via 911 unless consent is given in writing or necessary for administrative or judicial proceedings. Reporting confidentiality is allowed when child abuse is reported to DHW.

Answering questions, **Rep. Amador**, said family, neighbors, or close friends may have suspicion, but not proof of abuse and be concerned about retribution. The victims of child abuse do not have the ability to report the crimes themselves. This does not provide reporting anonymity to law enforcement, only name redaction for public use, until needed for a judiciary proceeding. In court proceedings the individual's name would be disclosed during discovery.

**K.J. Brandt**, First Judicial District Court Appointed Special Advocate (CASA) Program, North Idaho, testified **in support of H 500**. Most people do not know they can call the DHW or 911. In her experience with over 1,000 child protection cases, someone knew about the child abuse and did not report it due to fear of their name being made public and retaliation or intimidation by the accused.

**Natasha Lattin**, Idaho State CASA Association, testified **in support of H 500**. This legislation helps persons step forward, report the abuse, and save the life of a child. Abuse is a cycle and bringing it to light helps stop the cycle.

**MOTION:** **Rep. Wintrow** made a motion to send **H 500** to the floor with a **DO PASS** recommendation.

In closing remarks, **Rep. Amador** said persons concerned about an abuse situation will pick up the phone and dial 911, not look up their options in code. This bill can alleviate a barrier to reporting.

**VOTE ON MOTION:**

**Motion carried by voice vote. Rep. Amador** will sponsor the bill on the floor.

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

**H 587:**

**Rep. Luker** presented **H 587**. The Idaho Tort Claims Act was developed to allow the state to be sued when an agent of the state causes an injury or accident. Persons receiving mental health services at a state mental health center, hospital, or similar facility are wards of the state and listed among the exclusions. This legislation would provide potential tort compensation to innocent third parties who suffer injury or property damage by patients in these facilities when there is a supervision failure. Responding to questions from the committee, Rep. Luker stated the Department of Administration handles most of the claims. This would not apply to state employees because of the Workers Compensation exclusive remedy feature. There is no liability if the supervision is according to reasonable standards and not controllable.

**MOTION:**

**Rep. Kerby** made a motion to send **H 587** to the floor with a **DO PASS** recommendation.

**Lynn Norris** testified in support of **H 587**. She shared the story of their car, which was vandalized by a patient at the Southwest Idaho Treatment Center (SWITC), the inability to prosecute, the denied claim, and subsequent insurance claim they had to file.

**Lee Rice** testified in support of **H 587** because the state needs to be held accountable.

**VOTE ON MOTION:**

**Motion carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

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

**H 584:**

**Rep. Malek** presented **H 584**. The 2014 statute regarding video voyeurism deals with revenge pornography and has been used extensively by prosecutors.

**Kassandra Slaven**, Ada County Prosecutors Office, Vulnerable Victim's Unit, further presented **H 584**. The statute is important to combat a very real community problem where offenders use the internet as a tool and weapon to violate, harass, and humiliate victims, most of whom are female. Recent challenges have required the statute be more in line with constitutional principles. The changes add an intent element, a requirement of victim identifiably from the image or circumstances around the image, an exception for voluntary body parts exposure in commercial or public settings, and a legitimate public purposes exception. Although these additions increase what the state has to prove to show the conduct is illegal, it continues to hold persons accountable and creates a conduct deterrent.

**MOTION:**

**Rep. McDonald** made a motion to send **H 584** to the floor with a **DO PASS** recommendation.

Answering a question, **Ms. Slaven** said the effective July 1, 2018, date does not impact anything currently being litigated.

**Rep. Malek** further answered questions, stating an emergency clause was not necessary because there are no pending cases falling within the exceptions. Malicious postings are with the intent to annoy and offend, result in drastic consequences, and require the felony charge.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Rep. Malek** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 3:04 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Tuesday, February 27, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">H 530</a>	Courts, Criminal Case Payments	Judge Barry Wood, Jason Spillman, Idaho Supreme Court
<a href="#">H 552</a>	Probation, County Supervision	Jim Tibbs, Ada County Board of Commissioners
<a href="#">H 553</a>	Diversion Programs, DUI	Rep. Ryan Kerby
<a href="#">H 551</a>	Ignition Interlock System, DUI	Sen. Grant Burgoyne
<a href="#">H 586</a>	Juror Compensation	Rep. John Gannon

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon(17)
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Tuesday, February 27, 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(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** Representative Perry

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Luker** called the meeting to order at 1:32 p.m.

**H 530:** **Senior District Judge Barry Wood**, Acting Deputy Administrative Director of the Courts, presented **H 530** by informing the committee the Courts seek important policy decisions from the Legislature to establish a disbursement schedule in a single statute that sets an order of priority among 24 competing priorities of various fee statutes governing criminal defendants' partial-payment remission of fees, fines and restitutions (fees). There exists a conflict between at least five statutes to be resolved; there is no priority stated in approximately 19 statutes that results in confusion and disparate practices around the state; and the Courts need to program Odyssey, the official court record, to effectuate the policy and objectives regarding the fee disbursement schedule. He provided background and context for making the policy decision. Judge Wood remarked the bill also seeks a policy decision on whether to order the established disbursement in one statute. The Idaho Supreme Court has ruled that all the fees assessed against a defendant are an entire debt owed by the defendant, and the Legislature should set the policy in what order they should be paid. **H 530** asks the Legislature to establish these priorities rather than the courts administratively.

**Jason Spillman**, Legal Counsel for the Administrative Office of the Courts, presented an analysis that set forth all the statutory sections requiring fees from criminal defendants, the costs, and distribution instructions. The rationale for the policy request is to attempt to give heed to previously announced legislative intent regarding disbursement priorities, such as the five statutes mentioned that have priority intent within their statutory language, and address the funding needs of important county public safety programs by moving misdemeanor probation supervision fees and problem solving court fees up in order on the list. He said not all fees are always assessed and some are one-time fees. Mr. Spillman provided a breakdown of reasoning behind the order for each section of Idaho Code §§ 31-32011 (1) through (24). (Attachment 1)

In response to committee questions on whether a percentage of the fees assessed could be prorated throughout the case or be done dollar-for-dollar, **Mr. Spillman** replied the interpretation of the legislative history indicates following the five statutes' payment placement directives, so each item on the distribution list is funded fully before going down the list. He also replied that the distribution list ordering in the bill is based upon a combination of past legislative projections and suggestions from the current court. Having all fees in one statute would work better when new statutes come along, and if reorganization is desired at some time, it would be easier to address.

**Holly Koole Rebholtz\***, Idaho Prosecuting Attorneys Association (IPAA), spoke in **opposition** to **H 530** saying they have concerns about the removal of language in Idaho Code §19- 5302 which says victims shall get priority payment for restitution. She said victims do not choose to be in the criminal justice system but are put there by defendants' actions, and the IPAA believes they should be made whole before other programs are funded.

In response to a committee question, **Mr. Spillman** replied the courts recognize victims need to be compensated, and defendants reporting to probation are more likely to pay restitution because someone is monitoring them.

**MOTION:**

**Rep. Gannon** made a motion to send **H 530** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

**H 552:**

**Jim Tibbs**, Ada County Commissioner, presented **H 552**, by informing the committee the bill seeks to rectify funding for the misdemeanor supervision program and compliance with the law and statutory legislative intent. The implementation of Odyssey resulted in a significant debt to the program, and if the funding problem is not resolved, Ada County will have to decide whether to reduce the program or fund it in another way, most likely through property taxes. This is a valuable program and one for which Ada County would still like to provide services. Odyssey's implementation in August 2016 resulted in misdemeanor probation fees being delayed or not received, causing a deficit in FY2017 of approximately \$250,000 from Ada County's current expense fund contrary to the requirements of Idaho Code §31-3201D. **H 530**, which moves probation fees from item 10 to 3 would probably resolve some of the funding issues, but does not resolve that the statute still requires funds to be diverted and not applied exclusively to the county probation program, contrary to law. Counties can choose whether to receive their probation fees under the Odyssey disbursement schedule in **H 530** or opt out and receive monthly probation fees directly under **H 552**. Both the **H 530** and **H 552** can coexist.

In response to committee questions, **Commissioner Tibbs** explained the probation fee is not included in the judgment of conviction or the deferred monthly payment arrangement but is treated as a separate payment by Ada County Courts. Specifically, **H 552** allows the Board of County Commissioners to designate the Ada County Sheriff's Office to collect misdemeanor supervision payments, who then reports them to the Ada County Clerk's Office (Clerk) to record as received in the Register of Actions. They have confirmed with the Clerk the approach they have proposed can be carried out as Odyssey stands today, but would defer to the Courts whether Odyssey can be re-programmed to carry out this approach.

**Sheriff Steve Bartlett**, Ada County Sheriff; **Erica White**, Attorney, Ada County Prosecutor's Office; **Michael Kane**, Sheriff's Association and the Association of Counties spoke **in support** of **H 552** stating the county misdemeanor probation fee is a separate fee incurred on a monthly basis that defendants can have waived or changed. At a meeting of Idaho counties, **H 552** was unanimously supported, and the counties are asking for their probation service fees to be treated similarly to the Idaho Department of Correction felony probation supervision fees, which are excluded from Odyssey disbursement list.

**Judge Wood** spoke **in opposition** to **H 552** and in response to committee questions, informing the committee Odyssey allows the order of payments set up by the Idaho Supreme Court's Administrative Order, which was entered to resolve some of the differences discussed previously. Judge Wood asked committee members to look with him at Idaho Code § 31-3201D, that Ada County says Courts have not followed, and see that it does not say anywhere that the money is to be paid to the county sheriff. It says it is supposed to be paid to the Clerk of the Court. Judge Wood remarked that each of the 24 items in the disbursement list have a statutory claim to payment of fees, which is the reason the courts are seeking a policy decision from the Legislature.

**Commissioner Tibbs** was called upon to answer a question from the committee regarding the economic impact of the current Courts' distribution priorities through Odyssey on other counties, and he replied Canyon County was short about \$400,000 this year, but Twin Falls County had done better financially.

**MOTION:**

**Rep. Zollinger** made a motion to **HOLD H 552** in committee.

In response to a committee question, **Judge Wood** advised the setting of probation fees, as well as other fees, fines and restitution, is a judicial function and not an administrative function to be set by probation officer.

**Commission Tibbs** closed saying before Odyssey they were in conformance with the law by being self funded. This is an effort for Ada County to comply with the law.

**VOTE ON MOTION:**

**Motion carried by voice vote. Reps. Luker, McDonald and Wintrow** requested to be recorded as voting **NAY**.

**H 533:**

**Rep. Kerby** presented **H 533**, which provides an optional diversion program for first time driving under the influence (DUI) offenders and requires an ignition interlock device installed in their cars for six months to one year to run concurrent with the driver's license suspension. Rep. Kerby stated this has been identified as an effective way to change behavior and have fewer people driving on the road causing accidents and death while under the influence. Recidivism is reduced 67 to 71 percent. To be eligible for diversion, a DUI offender's alcohol concentration must be between .08 and .20, and they cannot have a conviction or been in a diversion program within the last 10 years. A diversion contract is entered into and an ignition interlock device must be installed on every car a DUI offender operates, and the contract can include educational requirements, therapy, counseling, inmate labor work details, and probation supervision fees. It is optional for both the prosecuting attorney and the DUI offender. Upon agreeing to a diversion, a DUI offender waives the right to a speedy trial. Successful completion of the diversion program results in the charges being dismissed, and the original charges are prosecuted for program failure.

**Frank Harris**, Director of State Government Affairs, Mothers Against Drunk Driving; **Brad Frolick**, Director of Government Relations, Intoxalock, member of a coalition of interlock manufacturers; **Michael Kane**, Sheriff's Association and the Association of Counties; **Tom Arkoosh**, Idaho Association of Criminal Defense Attorneys; **Dan Blocksom**, Boise County Prosecutor; **Mary Helen Freeman**, Mothers Against Drunk Driving; spoke **in support** of **H 533** saying Idaho is one of only two states with no provision for ignition interlock devices for first-time offenders, and states with it have seen a reduction in repeat offenders, arrests and fatalities. There is a safety valve for the court not to impose diversion if it presents a security threat to the community. Sending people to prison does not guarantee they will not drink and drive when they come home.

In response to committee questions, **Mr. Frolick** replied that the interlock devices cost about \$75 a month with installation being \$80-\$100, but competition is so strong, many times installation is free. The device measures the deep air coming off of the lungs. There are three levels of devices, ones with no camera, with camera and with camera and GPS. Idaho will be using the type without a camera or GPS.

**Grant Loebs**, Prosecuting Attorney, Twin Falls County, spoke **in opposition** to **H 533** saying the Prosecuting Attorneys Association, the Fraternal Order of Police, and the Chiefs of Police oppose this bill as written. The bill has one fatal flaw in an otherwise good bill by not requiring a plea of guilty. Requiring interlocks and diversion is good; however, without a guilty plea a DUI offender would have no conviction of DUI on his record.

**Rep. Kerby** stated at the end of the diversion, a guilty plea can be entered if the diversion program failed. The Clerk of the Idaho Supreme Court advised Rep. Kerby that a diversion disposition is going to be added to the Odyssey program, so defendants will have a guilty or a diversion disposition entered. In many cases, in counties across Idaho, prosecutors are reducing first time DUI charges to Reckless Driving to keep people employed, and for lack of resources. Unfortunately, that gives DUI offenders no opportunity for rehabilitation, and diversion keeps people employed and reduces resources for trial. Convicting offenders does not change their behavior.

**MOTION:** **Rep. McCrostie** made a motion to **HOLD H 533** for time certain, March 1, 2018. **Motion carried by voice vote.**

**H 551:** **Sen. Burgoyne** introduced **H 551** by stating it does not conflict in any way with **H 553**, and in fact, it supplements it. He explained some of the testimony given for **H 553** is relevant to this bill. Research shows an interlock device on a first offence had a significant impact on having a second offence and has an overall impact on DUI deaths, disability, and other damages.

**Matt Conde**, Triple AAA Idaho; **Michael Kane**, Idaho Sheriff's Association, The Idaho Association of Counties, Property Casualty Insurance Association of America, American Insurance Association; **Frank Harris**, Director of State Government Affairs, Mothers Against Drunk Driving; **Kara Sessions**; **Brad Frolick**, Director of Government Relations, Intoxalot, and member of coalition of interlock manufacturers; and **Benny Siders** spoke **in support** of **H 551** stating the objectives of ignition interlock are to keep people safer on Idaho roads. Every DUI offender pays a \$15 fee which goes into an interlock device fund that is for users with financial hardships. Interlock device data is downloading every 30 to 60 days which is then uploaded to the state, and random retests are run. Interlocks detect breath samples post conviction. A state with an all DUI offender policy can expect at least a 7% reduction in DUI fatalities and a 7% reduction in recidivism. The fiscal impact is minimal, and there is federal incentive grant money to encourage states to pass interlock legislation.

**Michael Kane** was called upon to answer a question from the committee regarding whether an ignition interlock device under **H 551** would be mandatory to persons who have a license suspension because of refusal to take a Breathalyzer test, and he responded it is required when they are driving again, but can be expedited if they need to get to work.

**MOTION:** **Rep. McDonald** made a motion to send **H 551** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

**H 586:** **Rep. Gannon** presented **H 586** and stated this is an important bill because it affects the people who serve on Idaho juries, in a voluntary capacity, who make important decisions such as whether people go to prison or should be awarded damages in a civil matter and gives them some compensation for their service. Since 1968 the counties have been required by statute to pay \$10 a day for that service. A 2013 bill gave counties the option of paying up to \$50 a day, and one or two counties are paying very close to it, although many still pay \$10. There has been an argument for twenty years on whether the state, through the Supreme Court system, or the counties should pay jurors. This bill provides that jurors serving in lengthy trials that last more than 5 days will be paid \$50 a day by statute, and the state will reimburse counties \$40 a day. This is supported by the counties and the Supreme Court. The fiscal impact is estimated at \$75,000 based upon information from 2014 provided from the Supreme Court.

**Chairman Luker** spoke in opposition to **H 586** opining that counties are responsible, not the state, and in civil cases, it would prevent judges accessing jury fees as costs.

**Rep. Wintrow** spoke in support of **H 586** saying \$75,000 is not a large amount to invest in something so important as jurors who provide a benefit directly for Idaho citizens.

**MOTION:** **Rep. Wintrow** made a motion to send **H 586** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Luker** requested to be recorded as voting **NAY.** **Rep. Gannon** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting adjourned at 6:18 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

THE STATE OF IDAHO  
SUPREME COURT

JASON SLADE SPILLMAN  
LEGAL COUNSEL

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February 23, 2018

Ms. Wendy Carver-Herbert  
Secretary – Judiciary, Rules and Administration Committee  
EW56 – Idaho State Capitol

**Via Hand Delivery Only**

Re: House Bill 530

Dear Ms. Carver-Herbert,

We have prepared a twelve (12) page explanatory document regarding the distribution of payments received by court clerks in criminal cases. This document reflects the distribution priority suggested by House Bill 530, and it outlines the statutory basis for, and amount of, each possible fee. In addition, it explains which funds, persons and entities ultimately receive the fees when they are disbursed. Please find attached seventeen (17) copies of this letter and the explanatory document. As you know, the merit hearing on House Bill 530 is set for next Tuesday, February 27<sup>th</sup>. In order to provide all of the members of the committee an opportunity to review the explanatory document before the hearing, I kindly ask that you provide one (1) of the attached copies to each of them at your earliest convenience.

As always, I very much appreciate your gracious assistance, and I urge you to contact me with any questions you may have. Thank you.

Very truly yours,



Jason Slade Spillman | Legal Counsel  
Administrative Office of the Courts | Idaho Supreme Court  
P.O. Box 83720, Boise, ID 83720-0101  
(208) 947-7404  
[jspillman@idcourts.net](mailto:jspillman@idcourts.net)

Copies of the letter and attachments have been provided for the following House Judiciary, Rules and Administration Committee members:

Representative Lynn Luker, Chairman  
Representative Luke Malek, Vice Chairman  
Representative Christy Perry  
Representative Thomas Dayley  
Representative Patrick McDonald  
Representative Don Cheatham  
Representative Ryan Kerby  
Representative Ronald Nate  
Representative Greg Chaney  
Representative Paul Amador  
Representative Karey Hanks  
Representative Christy Zito  
Representative Bryan Zollinger  
Representative Barbara Ehardt  
Representative John Gannon  
Representative John McCrostie  
Representative Melissa Wintrow

Be it Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 32, Title 31, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 31-3201J, and to read as follows:

31-3201I. DISTRIBUTION OF PAYMENTS IN CRIMINAL CASES. When ordered by the Court to make one of the following payments in a criminal case a defendant shall make the payment to the clerk of the court. The clerk of the court shall distribute the payments received as required by statute, and such distributions shall first completely satisfy the amounts due in the following order before distribution of payments for any other amounts owed to the court:

- (1) Fees for each felony, misdemeanor and infraction paid pursuant to section 31-3201A(2), Idaho Code;

Statute provides:

\$17.50 court costs for felonies, misdemeanors and first-time infractions under I.C. § 23-604 or 23-949 (\$12.50 distributed 86% to general fund and 14% to P.O.S.T. Fund, and \$5.00 to district court fund\*; if magistrate court facilities are provided by the city, then \$10.00 distributed 86% to general fund and 14% to P.O.S.T. Fund, \$5.00 to city general fund and \$2.50 to city capital facilities fund) (I.C. § 31-3201A (2), (3) and (15)).

\$16.50 court costs for infractions, except first-time infractions under I.C. § 23-604 or 23-949 (\$11.50 distributed 86% to general fund and 14% to P.O.S.T. Fund, and \$5.00 to district court fund; if magistrate court facilities are provided by the city, then \$9.00 distributed 86% to general fund and 14% to P.O.S.T. Fund, \$5.00 to city general fund and \$2.50 to city capital facilities fund) (I.C. § 31-3201A(3)).

*\*NOTE: I.C. § 31-867(1) provides that a county may establish a “district court fund” for the purpose of providing for the functions of the district and magistrate courts. Money in the district court fund may be expended for all court expenditures other than courthouse construction and remodels. I.C. § 1-1613 (District Court) and I.C. § 1-2217 (Magistrate Court) require the counties to provide suitable and adequate facilities and equipment necessary to make the space provided functional for its intended use, and to provide for the staff, personnel, supplies, and other expenses of the courts.*

Payments:

I.C. § 31-3201A(14) requires court fees to be paid to the clerk of the court.

Distribution:

*If the charge is a felony, a misdemeanor or first-time infraction under I.C. § 23-604 or 23-949:*

**Distribution of the \$17.50 – if County provides the court facility**

<b>State General Fund</b>	<b>\$10.75</b>
<b>P.O.S.T. Training Fund</b>	<b>1.75</b>
<b>County District Court Fund</b>	<b>5.00</b>

**Distribution of the \$17.50 – if City provides the magistrate court facility**

<b>State General Fund</b>	<b>\$ 8.60</b>
<b>P.O.S.T Training Fund</b>	<b>1.40</b>
<b>City General Fund</b>	<b>5.00</b>
<b>City Capital Fac. Fund</b>	<b>2.50</b>

*If the charge is an infraction (except first-time infractions under I.C. § 23-604 or 23-949):*

**Distribution of the \$16.50 – if County provides the court facility**

<b>State General Fund</b>	<b>\$ 9.89</b>
<b>P.O.S.T. Training Fund</b>	<b>1.61</b>
<b>County District Court Fund</b>	<b>5.00</b>

**Distribution of the \$16.50 – if City provides the magistrate court facility**

<b>State General Fund</b>	<b>\$ 7.74</b>
<b>P.O.S.T Training Fund</b>	<b>1.26</b>
<b>City General Fund</b>	<b>5.00</b>
<b>City Capital Fac. Fund</b>	<b>2.50</b>

- (2) Fines or reimbursements paid for the crime victims compensation account pursuant to section 72-1025, Idaho Code;

Statute provides:

Victims' Compensation Account (I.C. § 72-1025). Unless the court makes a finding of inability to pay, \$37.00 fine or reimbursement for each misdemeanor count; \$75.00 fine or reimbursement for each felony count; and \$37.00 fine or reimbursement for each first-time conviction of an infraction under I.C. § 23-604 or 23-949. In addition to the \$37.00 misdemeanor and \$75.00 felony fine or reimbursement, there is a fine or reimbursement of not less than \$300.00 per count for any conviction or finding of guilt for any sex offense, including, but not limited to, offenses under I.C. §§ 18-1506, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6605, and 18-6608.

Payments:

By operation of I.C. § 19-4705(1)(a), the fine or reimbursement assessed by a judge in a judgment of conviction is paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and is then remitted to the county auditor for distribution.

Distribution of fees:

Distribution of the \$37 for each misdemeanor, \$75 for each felony, \$37.00 for each first-time conviction of an infraction under I.C. § 23-604 or 23-949, or \$300 for each sex offense is to the Victim's Compensation Account which is a dedicated fund (I.C. §72-1009) appropriated to the Idaho Industrial Commission for compensation as restitution to certain crime victims under certain circumstances. I.C. §72-1016.

(3) Misdemeanor probation supervision fees paid pursuant to section 31-3201D, Idaho Code;

Statute provides:

County misdemeanor probation supervision fee not to exceed the amount of a felony probation supervision fee (Maximum \$75 a month- I.C. § 20-225). Administrative District Judge of the Judicial District sets the fee. (I.C. § 31-3201D). Misdemeanor probation services performs such functions as prescribed by the Administrative District Judge in each judicial district. (I.C. § 31-878).

Payments:

I.C. § 31-3201D(2) requires misdemeanor probation supervision fees to be paid to the clerk of the district court.

Distribution:

\$1 of each monthly fee (the first \$1 collected of the monthly fee) to the P.O.S.T. standards and training fund (I.C. §19-5116) to offset training costs of misdemeanor probation officers.

The remainder of each monthly fee, at the option of the board of county commissioners, to either county misdemeanor probation fund or to the county justice fund.

(4) County drug and mental health fund fees paid pursuant to section 31-3201E, Idaho Code;

Statute provides:

Drug Court and Mental Health Court Fee (generically referred to as “Problem Solving Court fee”). (I.C. § 31-3201E). Unless a court determines a participant is indigent or unable to pay, a monthly fee not to exceed \$300 per month for participants in drug or mental health courts or a lesser amount as set by the Administrative District Judge.

Payments:

I.C. § 31-3201E requires drug and mental health fund fees to be paid to the clerk of the district court.

Distribution:

Problem Solving Court fees are deposited into the county drug court and mental health court fund created in each county which has such a court.

(5) Fines paid for the peace officer and detention officer temporary disability fund pursuant to section 72-1105, Idaho Code;

Statute provides:

Peace Officer and Detention Officer Temporary Disability Fund (I.C. § 72-1105). Unless the court makes a finding of inability to pay, \$3.00 fine for each felony, misdemeanor, or conviction of a first-time infraction under I.C. § 23-604 or 23-949.

Payments:

By operation of I.C. § 19-4705(1)(a), the fine assessed by a judge in a judgment of conviction is paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and is then remitted to the county auditor for distribution.

Distribution:

Distribution of the \$3 is to a dedicated fund which is administered by the Industrial Commission for the purpose of providing a full rate of salary for certain injured individuals.

- (6) Restitution to victims of crime paid pursuant to section 19-5304, Idaho Code, if paid through the clerk of the court;

Statute provides:

Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim. The court at sentencing must enter a separate written order establishing the amount owed as victim restitution.

Payments:

I.C. § 19-5305(2) provides that restitution may be paid to/collected by the clerk of the district court on behalf of the victim.

Distribution:

Distribution is to the victim(s). The Court may set the distribution priority among victim(s). (I.C. §19-5304(5)).

- (7) Community service fees paid pursuant to section 31-3201C, Idaho Code;

Statute provides:

Community service fee of 60 cents per hour for each hour of community service to cover worker's compensation insurance (I.C. § 31-3201C).

Payments:

I.C. § 31-3201C requires community services fees to be paid to the district court (clerk of the court).

Distribution:

Distribution is to the State Insurance Fund unless the county is self-insured.

(8) Victim notification fund fees paid pursuant to section 31-3204, Idaho Code;

Statute provides:

Victim Notification Fund Fee (I.C. § 31-3204). \$15.00 for each felony or misdemeanor count, or first-time infraction under I.C. § 23-604 or 23-949.

Payments:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distribution is to the state victim notification fund established in §67-2912. The monies are to be distributed to the Idaho State Police and the Idaho Sheriff's association for the purposes of defraying the costs of the automated victim information and notification system for the purpose of satisfying the provisions of Article 1, §22 of the Idaho Constitution requiring victim notification of offender court and incarceration status.

(9) Court technology fees paid pursuant to section 31-3201(5), Idaho Code;

Statute provides:

\$10.00 court technology fee on each criminal and infraction offense. (I.C. § 31-3201(5)).

Payments:

I.C. § 31-3201(5) requires collection by the clerk of the district court.

Distribution:

Distribution is to the dedicated Court Technology Fund I.C. §1-1623.

Monies are used by the Supreme Court for the purpose of maintaining, replacing, and enhancing the court technology program, and other technologies that assist in the efficient management of the courts or which improve access to the courts and court records.

(10) Surcharge fees paid pursuant to section 31-3201H, Idaho Code;

Statute provides:

The court shall charge a fee of \$100.00 for each felony count; a \$50.00 for each misdemeanor count and for each first-time infraction under I.C. § 23-604 or 23-949; and \$10.00 for all other infractions.

Payments:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distribution of each fee collected is:

80% to the State General Fund

20% to the dedicated Court Technology Fund I.C. §1-1623

- (11) Peace officers standards and training fees paid pursuant to section 31-3201B, Idaho Code;

Statute provides:

\$15.00 P.O.S.T. Academy fee paid by each person found guilty of any felony or misdemeanor or infraction or minor traffic ordinance except unlawfully parked cars or when a court determines the person is indigent and unable to pay. (I.C. § 31-3201B).

Payments:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distribution of the fee is to the P.O.S.T. standards and training fund, I.C. §19-5116.

- (12) Domestic violence court fees paid pursuant to section 32-1410, Idaho Code;

Statute provides:

For persons who are found guilty of the offenses provided in I.C. § 32-1410, a \$30.00 fee to assist in funding domestic violence courts.

Payments:

Under I.C. § 32-1410(2), the fees are paid to/collected by the clerk of the court.

Distribution:

Distribution of the fee is to the dedicated state Drug Court, Mental Health Court, Family Court Services fund (I.C. § 1-1625) to assist in funding domestic violence courts.

- (13) Criminal fines;

Statutes provide:

*Felony, misdemeanor, infraction defined.* A felony is a crime punishable with death or by imprisonment in the state prison. An infraction is a civil public offense, not constituting a crime, punishable only by a penalty not exceeding three hundred dollars (\$300) and for which no period of incarceration may be imposed. Every other crime is a misdemeanor. (I.C. § 18-111).

*Misdemeanor offenses in general.* Except in cases where a different punishment is prescribed, every offense declared to be a misdemeanor, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000), or by both. (I.C. § 18-113).

*Felony offenses in general- maximum fine authorized.* In addition to any other punishment prescribed for felonies in specific statutes of the Idaho Code, the court may also impose a fine of up to fifty thousand dollars (\$50,000). This does not apply if a specific felony statute provides for the imposition of a fine. (I.C. § 18-112A).

*Felony crimes of violence.* Irrespective of any penalties set forth under state law, and in addition thereto, the court, may impose a fine not to exceed five thousand dollars (\$5,000) against any defendant found guilty of any felony listed in I.C. § 19-5307(2). (I.C. § 19-5307(1)). The fine operates as a civil judgment against the defendant, and is entered on behalf of the victim, or the family of the victim in cases of homicide or crimes against children, and is not subject to any distribution otherwise required in section 19-4705, Idaho Code.

Payments:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

By operation of I.C. § 19-5307(1), the fines imposed for felony crimes of violence may be collected by the clerk of the district court and the clerk shall then remit any money collected in payment of the fine to the victim or the family of the victim in a case of homicide or crimes against minor children.

Distribution:

Distribution of fine monies is typically governed by I.C. §19-4705.

I.C. §19-4705(1)(b): Fish and Game:

2 ½% State General Fund  
10% Search and Rescue Account  
22 ½% County District Court Fund  
65% Fish and Game Fund

I.C. §19-4705(1)(c): State motor vehicle laws, DWP, DUI,:

*IF issued by State or County Officer:*

8.6% State General Fund  
1.4% P.O.S.T Standards and Training Fund  
45% Highway Distribution Account  
22 1/2% County District Court Fund  
22 ½% Public School Income Fund

State motor vehicle laws, DWP, DUI, 19-4705(1)(c):

*IF issued by City Officer or agency contracted by the City for enforcement:*

- 8.6% State General Fund
- 1.4% P.O.S.T. Standards and Training Fund
- 90% City which issued the arrest or citation

I.C. §19-4705(1)(d): State Law violations NOT involving motor vehicle laws, DWP, DUI, or Fish and Game, to the county in which the violation occurred:

- 8.6% State General Fund
- 1.4% P.O.S.T. Standards and Training Fund
- 90% County District Court Fund

I.C. §19-4705(1)(e): County Ordinance violations to the county in which the violation occurred:

- 8.6% State General Fund
- 1.4% P.O.S.T. Standards and Training Fund
- 90% County District Court Fund

I.C. §19-4705(1)(f): City Ordinance violations to the city in which the violation occurred:

- 8.6% State General Fund
- 1.4% P.O.S.T. Standards and Training Fund
- 90% City whose ordinance was violated

I.C. §19-4705(1)(g): Violations not otherwise specified in prior sections above:

*IF issued by State or County Officer:*

- 8.6% State General Fund
- 1.4% P.O.S.T. Standards and Training Fund
- 90% County District Court Fund

*IF issued by City Officer or agency contracted by the City for enforcement:*

- 8.6% State General Fund
- 1.4% P.O.S.T. Standards and Training Fund
- 90% City which issued the arrest or citation

I.C. §19-4705(1)(h): Violations involving registrations of motorcycles, motor driven cycles, snowmobiles, or use of winter recreation parking areas:

- 8.6% State General Fund
- 1.4% P.O.S.T. Standards and Training Fund
- 90% County or City general fund which entity issued the arrest or citation

I.C. §19-4705(1)(i): Overweight violations:

- 100% Highway Distribution Account

I.C. §19-4705(2): Any Misdemeanor violation for which an increase in the maximum fine became effective on or after July 1, 2005.

I.C. §19-4705(2)(a): any funds remitted as a fine for the misdemeanor up to the maximum amount that could have been imposed before July 1, 2005 are distributed according to the applicable schedule above.

I.C. §19-4705(2)(b): any funds remitted as a fine for the misdemeanor in excess of the maximum amount that could have been imposed before July 1, 2005 are distributed to the drug court, mental health court, family court services fund I.C. §1-1625.

I.C. § 19-5307(2): Distribution of fines for felony crimes of violence. The fine operates as a civil judgment against the defendant, is entered on behalf of the victim or the family of the victim in cases of homicide or crimes against children, and is not subject to any distribution otherwise required in section 19-4705, Idaho Code. The clerk of the district court may collect the fine and shall remit any money collected in payment of the fine to the victim or the family of the victim in a case of homicide or crimes against minor children.

- (14) Reimbursement for public defender costs paid pursuant to section 19-854(7), Idaho Code;

Statute provides:

Unless the requirement would impose a manifest hardship on the indigent person, an indigent person who receives the services of an attorney provided by the county may be required by a court to reimburse the county for the costs of the services (I.C. § 19-854(7)).

Payments:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distribution of monies received, when ordered by a court as reimbursement for indigent defense, is to the county which paid the costs of the public defense.

- (15) Costs of prosecution ordered as a condition of probation and paid pursuant to section 19-2601(2), Idaho Code and Idaho Criminal Rule 33(d)(2);

Statute provides:

Costs of prosecution ordered as a condition of probation.

Payment:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distribution to the county pursuant I.C.R. Rule 33(d)(2) in the manner provided in I.C. § 19-4705.

- (16) Domestic violence fines for the domestic violence project account paid pursuant to section 39-6312, Idaho Code;

Statute provides:

For persons who violates a domestic violence protective order (I.C. § 39-6312), the first \$10.00 of the criminal fine is to be distributed to the domestic violence project account (I.C. § 39-5212), as provided in I.C. § 39-6312(1).

Payment:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distributed to the domestic violence project account created in the state operating fund which is perpetually appropriated to the council on domestic violence and victim assistance grants for domestic violence projects and to meet the costs of maintaining the operation of the council.

- (17) Drug hotline fees paid pursuant to section 37-2735A, Idaho Code;

Statute provides:

For persons who violate the provisions of title 37, chapter 27, a \$10.00 fine to be deposited in the drug and driving under the influence enforcement donation fund (I.C. § 57-816), as provided in I.C. § 37-2735A.

Payments:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distributed to the drug and driving while under the influence enforcement donation fund separate and apart from any other moneys in the fund to be used exclusively to support a twenty four (24) hour anonymous hotline and reward system for the reporting of drug violations.

- (18) Additional fish and game fines for the search and rescue account paid pursuant to section 36-1405, Idaho Code;

Statute provides:

Additional fish and game fine of \$7.50 against each person convicted of I.C. § 36-1402 or 36-1404 to be deposited into the search and rescue account (I.C. § 67-2913). (I.C. § 36-1405).

Payments:

I.C. § 36-1402(h) requires that the fines be remitted in accordance with I.C. § 19-4705. I.C. § 19-4705(1)(a) requires payment to the district court clerk for entry in the court docket, and remittance to the county auditor for distribution.

Distribution:

Distributed to the Search and Rescue fund administered and re-distributed by the Director of the Idaho State Police to one of four (4) sub-accounts as provided in I.C. §67-2913.

- (19) County administrative surcharge fees paid pursuant to section 31-3201(3), Idaho Code;

Statute provides:

\$10.00 county administrative surcharge fee on each criminal case and first-time infractions under I.C. § 23-604 or 23-949, \$5.00 on all other infractions, for deposit to the county justice fund (I.C. § 31-4602), or to county current expense fund where no county justice fund has been established. (I.C. § 31-3201); *OR*

\$10.00 county administrative surcharge fee on each civil case, including each appeal, to support the county court facilities fund, or to the county district court fund if no court facilities fund has been established. (I.C. § 31-3201(3)).

Payment:

I.C. § 31-3201(3) requires the clerk of the district court to collect administrative surcharge fees.

Distribution:

Distributed to the county for deposit into the appropriate fund as referenced above.

- (20) Motor vehicle violation surcharge fees and ignition interlock and electronic monitoring fees paid pursuant to sections 18-8008 and 18-1810, Idaho Code;

Statute provides:

\$15.00 surcharge on DUI and DWP convictions or withheld judgments, for deposit in the court interlock device and electronic monitoring device fund. (I.C. § 18-8010).

Payment:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distributed to the county where the person was adjudicated for deposit into the county's "court interlock device and electronic monitoring device fund." Monies in this fund may be used for multiple purposes including interlock devices, other monitoring devices, and alcohol or drug abuse related probation, treatment or prevention programs for adults or juveniles.

(21) Costs for toxicology testing paid pursuant to section 37-2732C(g), Idaho Code;

Statute provides:

In addition to fines assessed under I.C. § 37-2732C, notwithstanding I.C. § 19-4705, the court may assess restitution to the defendant in an amount not to exceed two hundred dollars (\$200) to be paid to the arresting and/or prosecuting agency or entity to offset the expense of toxicology testing.

Payment:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distributed to the appropriate fund to offset the expense of toxicology testing.

(22) Costs incurred by investigating law enforcement agencies for racketeering, money laundering and illegal investment violations paid pursuant to section 37-2732(k), Idaho Code;

Statute provides:

For convictions or withheld judgments for violations of title 37, chapter 27, or for racketeering (I.C. § 18-7804) or money laundering (I.C. § 18-8201), restitution pursuant to court order for law enforcement costs incurred. (I.C. § 37-2732(k)).

Payment:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distributed to the applicable law enforcement agency investigating the violation; which agencies may include the Idaho State Police, county and city law enforcement agencies, the office of the Attorney General, and county and city prosecuting attorney offices.

Monies paid to the Idaho State Police shall be deposited into the drug and driving while under the influence enforcement donation account (I.C. §57-816).

Monies paid to the Attorney General shall be deposited into the State General Fund.

- (23) Restitution for the repair or replacement of simulated wildlife paid pursuant to section 36-1101(b)(8), Idaho Code; and

Statute provides:

Restitution of no less than \$50.00 for the repair or replacement of simulated wildlife, to be paid by persons pleading or found guilty of attempting to take simulated wildlife. (I.C. § 36-1101(b)(8)(B)).

Payment:

By operation of I.C. § 19-4705(1)(a), all fines and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distributed to the Idaho Department of Fish and Game as restitution for the repair or replacement of the simulated wildlife.

- (24) Abandoned vehicle fees paid pursuant to section 31-3201F, Idaho Code.

Statute provides:

\$150.00 Abandoned Vehicle Fee for infractions in violation of I.C. § 49-1802, to be transmitted to the Abandoned Vehicle Trust Account created by I.C. § 49-1818. (I.C. § 31-3201F).

Payment:

I.C. § 31-3201F requires the court to charge an abandoned vehicle fee. By operation of I.C. § 19-4705(1)(a), all fine and fees assessed by a judge in a judgment of conviction are paid to the district court clerk for entry in the court docket for purposes of satisfying the judgment, and are then remitted to the county auditor for distribution.

Distribution:

Distribution of the fee is to the Abandoned Vehicle Trust Account (I.C. § 49-1818) for reimbursement of expenses incurred in the disposition of an abandoned vehicle.

SECTION 2. That section 19-5302, Idaho Code, be, and the same is hereby amended to read as follows:

19-5302. VICTIMS OF CRIME — ~~RESTITUTION PRIORITY~~. If a district court or a magistrate's division orders the defendant to pay restitution, the court shall order the defendant to pay such restitution to the victim or victims injured by the defendant's action. ~~There shall be a full restitution to such victim or victims before the court may order any payment be made by the defendant to any governmental entity; provided, however, the court may order the defendant to make the payments required in sections 20-225 and/or 20-614(7), Idaho Code, before any payment of restitution is made to the victim or victims.~~

SECTION 3. That Section 72-1025, Idaho Code, be, and the same is hereby amended to read as follows:

72-1025. FINES — REIMBURSEMENTS — ~~PRIORITY~~ — DISPOSITION. (1) In addition to any other fine which may be imposed upon each person found guilty of criminal activity, the court shall impose a fine or reimbursement according to the following schedule, unless the court orders that such fine or reimbursement be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court:

- (a) For each conviction or finding of guilt of each felony count, a fine or reimbursement of not less than seventy-five dollars (\$75.00) per felony count;
- (b) For each conviction or finding of guilt of each misdemeanor count, a fine or reimbursement of thirty-seven dollars (\$37.00) per misdemeanor count;
- (c) For each first-time conviction or finding of guilt of an infraction under section 23-604 or 23-949, Idaho Code, a fine or reimbursement of thirty-seven dollars (\$37.00) per count;
- (d) In addition to any fine or reimbursement ordered under paragraph (a) or (b) of this subsection [section], the court shall impose a fine or reimbursement of not less than three hundred dollars (\$300) per count for any conviction or finding of guilt for any sex offense, including, but not limited to, offenses pursuant to sections 18-1506, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6605 and 18-6608, Idaho Code.

~~(2) The fine or reimbursement imposed under the provisions of this section shall have priority over all other judgments of the court, except an order to pay court costs.~~

(3) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines or reimbursements imposed under the provisions of this section shall be paid into the crime victims compensation account.

SECTION 4. That Section 72-1105, Idaho Code, be, and the same is hereby amended to read as follows:

72-1105. FUND ESTABLISHED — FINES — ~~PRIORITY~~ — DISPOSITION. (1) The peace officer and detention officer temporary disability fund is hereby created in the state treasury and shall be administered by the industrial commission for the purpose of providing a full rate of salary for any peace officer or detention officer who is injured while engaged in those activities as provided in section 72-1104, Idaho Code, and is thereby temporarily incapacitated

from performing his or her duties. Moneys shall be paid into the fund as provided by law and shall consist of fines collected pursuant to subsection (2) of this section, appropriations, gifts, grants, donations and income from any other source. Moneys in the fund may be appropriated only for the purposes of this chapter, which shall include administrative expenses. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

(2) In addition to any other fine that may be imposed upon each person found guilty of criminal activity, the court shall impose a fine in the amount of three dollars (\$3.00) for each conviction or finding of guilt of each felony or misdemeanor count, or for each conviction or finding of guilt of a first-time infraction under section 23-604 or 23-949, Idaho Code, unless the court orders that such fine be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court.

(3) ~~Except as otherwise provided in section 72-1025, Idaho Code, the fine imposed under this section shall have priority over all other judgments of the court, except an order to pay court costs.~~

(4) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines imposed under this section shall be paid into the peace officer and detention officer temporary disability fund.

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm or Upon Adjournment**  
**Room EW42**  
**Thursday, March 01, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 644</u></a>	Diversion Programs / DUI Amended	Rep. Ryan Kerby
<a href="#"><u>H 553</u></a>	Diversion Program / DUI	Rep. Ryan Kerby
<a href="#"><u>H 582</u></a>	Justices, Judges' Salary	Sara Thomas, Administrative Office of the Courts/Idaho Supreme Court
<a href="#"><u>H 623</u></a>	Administrative Procedures Act	Rep. Lynn Luker
<a href="#"><u>H 643</u></a>	Magistrate court funding	Seth Grigg, Idaho Association of Counties
<a href="#"><u>H 585</u></a>	Firearms / Domestic Violence	Rep. Melissa Wintrow

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney(Chaney)	Rep Gannon(17)
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Thursday, March 01, 2018

**TIME:** 1:30 pm or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Luker, Vice Chairman Malek (Widmyer), Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Luker** called the meeting to order at 2:57 p.m.

**H 582:** **Sara Thomas**, Administrative Director of the Courts, Idaho Supreme Court presented **H 582**. She stated this bill is the Change in Employment Compensation Committee (CEC) recommendation for judicial officers and the increase is in line with the CEC/JFAC recommendation for other state employees. Judges make important and difficult decisions about Idaho citizens every day. The courts strive to recruit judges of the highest caliber, but it has become difficult to do so as some judgeships remain unfilled. This bill allows for a base salary increase for all judicial officers of \$3,700 and to restore differentials between judiciary levels. The total of all increases represents a less than three percent change in overall judicial compensation.

**MOTION:** **Rep. Amador** made a motion to send **H 582** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Chairman Luker** will sponsor the bill on the floor.

**H 623:** **Sen. Burgoyne** and **Chairman Luker** presented **H 623**, which is the culmination of work by an interim legislative committee to address concerns over due process, conflicts of interest and impartiality in contested administrative proceedings. The concerns came up as a result of a 2015 Office of Evaluation report that found there was a risk of bias in Idaho administrative contested proceedings because there weren't sufficient safeguards to ensure fair hearings by neutral hearing officers. The focus of the bill changes the current system agencies use to choose and hire hearing officers. More specifically it establishes an Office of Administrative Hearings (OAH) with an independent chief hearing officer and hearing officers housed in the Department of Self Governing Agencies. All contested case proceedings will be handled through OAH with the exception of the Public Utilities Commission, Industrial Commission, Department of Water Resources and other proceedings exempt by law. Department heads continue to have final review over all policy and the ability to resolve portions of contested cases. Additionally, the bill lays out the details of procedure and oversight. In answer to questions from the Committee it was explained this was shifting positions out of the agencies and by bringing many of the processes in house rather than contracting them out, it is anticipated there will be an overall cost savings once OAH is set up.

**Richard Seaman**, Professor of Law, Idaho State University, and **Jeremy Chou**, Lobbyist, Givens Pursley both testified on their own behalf **in support of H 623**. Mr. Seaman requested permission to submit written testimony. (See Attachment 1) Both stated the benefits of creating due process that is independent. It enhances overall fairness and bolsters public perception and confidence in the process.

**Tom Donovan**, Idaho Department of Insurance spoke on behalf of department Director Dean Cameron. While the agency is not taking a position on this bill, there are some concerns. He stated they don't think there is a problem that needs to be fixed and it will require more time and cost than the current process.

**Nicole McKay**, Attorney General Division Chief, Idaho Department of Health and Welfare(DHW), spoke **in opposition** to **H 623**. It is unnecessary and duplicative of the departments hearing process. She explained due to a federal ruling, all DHW contested Medicaid cases needed to be transferred to the Attorney General's Office. This was time consuming and costly and does not believe the fiscal note is accurate with regard to DHW. **Chairman Luker** clarified to Ms. McKay the intent of section 67-5240 of the bill, is to exempt certain cases that are operating under other provisions of law, and the department's contested Medicaid cases would fall under this exemption. **Sen. Burgoyne** further clarified that with the exception of the three agencies listed in section 67-5240, all agencies would be subject to this legislation, with the exception of certain programs within those agencies that are subject to other provisions of law.

**Shelley Davis**, Attorney with Barker Roshalt & Simpson, on behalf of the Water Bar, which represents both ground water and service water attorneys. She stated there are attorneys on both sides of supporting and opposing the fact the Water Resources Board is exempted from this legislation. The common concern is there is no mechanism for their clients to lawfully challenge the Water Resources Board. **Chairman Luker** clarified to Ms. Davis that the interim committee was directed to exclude the Water Resources Board, but it has full authority to promulgate its own rules and has until January 1, 2019 to adopt any portions of the Administrative Procedures Act it chooses. This would be the time to bring concerns forward to them about the lack of process for contested cases.

**MOTION:** **Rep. Dayley** made a motion to send **H 623** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** and **Chairman Luker** will sponsor the bill on the floor.

**Chairman Luker** put the Committee at ease at 4:58 p.m.

**Chairman Luker** resumed the meeting at 5:15 p.m.

**H 644:** **Rep. Kerby** presented **H 644**, which is the replacement bill for **H 553** that he presented to the Committee on February 27, 2018. He reviewed the changes in bill that include only installing the interlock device in vehicles operated by the offender. To be eligible, participants cannot be convicted of DUI within the last 10 years, nor can they have a conviction removed as a result participating in a diversion program. It clarifies who may order a defendants' participation and who will oversee participation. This bill clarifies if a person defaults on their contract during the diversion period, the court can immediately rule they failed to comply. Upon successful completion, the court's order must note the dismissal is based on successful completion of the diversion program.

**MOTION:** **Rep. McDonald** made a motion to send **H 644** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.

**H 553:** **Chairman Luker** stated the committee needed to dispense with **H 553**.

**MOTION:** **Rep. McCrostie** made a motion to **HOLD H 553** in committee. **Motion carried by voice vote.**

**H 643:** **Seth Grigg**, Executive Director, Idaho Association of Cities (IAC) presented **H 643**. This is a bill of compromise and collaboration and is the outcome of a working group comprised of IAC, Associations of Idaho Cities and the Administrative Office of the Court. This works to resolve the conflict between the counties and cities over who has the responsibility to fund the magistrate courts. A number of cities are paying counties for magistrate court services through a voluntary arrangement. However, other cities and counties have litigated over the responsibility of cities to fund magistrate court operations. The intent of this bill is to provide for funding of the magistrate courts throughout the state and remove the conflict over funding that has arisen. The bill establishes a unique funding formula that involves appropriating a percentage of the local share of state liquor funds, dollars from district court fees, and relieving cities of their obligation to fund district courts through the counties with a repeal of the statute that requires them to do so. The state liquor funding and transfer of funds from the cities will be phased in over five years. Directing dollars from the district court fees will be diverted immediately upon enactment of this legislation. It will have a fiscal impact to the State, however, it is the consensus that the State has some obligation in the provision of court services, as the State has a unified court system and the magistrate division is responsible for adjudicating infractions and misdemeanors. The Idaho State Police generates workflow into the courts as well.

**Shawn Barigar**, Mayor, City of Twin Falls; and **Jeremy Chou**, Givens Pursley, representing Ada County; spoke **in support** of **H 643**.

**MOTION:** **Rep. Ehardt** made a motion to send **H 643** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Chairman Luker** will sponsor the bill on the floor.

**H 585:** **Rep. Wintrow** presented **H 585** by stating this is a simple bill that tightens a loophole in state law. Federal law already prohibits individuals convicted of misdemeanor domestic violence from possessing a gun. This law seeks to de-escalate future acts of domestic violence through a statutory two-year prohibition on firearm possession for people convicted of misdemeanor domestic violence. If they are found in possession, own, or purchase a firearm within two years of the conviction, the person will be guilty of a misdemeanor. **Rep. Wintrow** stated victims are five times more likely to be killed when an abuser owns a firearm.

**Laura Diaz** and **Judy Diaz** spoke **in support** of **H 585**. They shared their story of loss when their father murdered their mother with a gun after being convicted of misdemeanor domestic abuse. They compelled the Committee to stand with victims and survivors to make a policy change.

**Kieran Donahue**, Sheriff, Canyon County on behalf of Idaho Sheriff's Association; **Annie Pelletier**, Director of Law and Policy, Idaho Coalition Against Sexual & Domestic Violence; **Mike Kane**, Idaho Sheriff's Association, **Kimberly Stretch**, Civil Attorney, Idaho Legal Aid; spoke **in support** of **H 585**.

**ORIGINAL MOTION:** **Rep. McDonald** made a motion to send **H 585** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION:** **Rep. Ehardt** made a substitute motion to send **H 585** to General Orders.

**ROLL CALL VOTE ON SUBSTITUTE MOTION:** A roll call vote was requested on the substitute motion to send **H 585** to General Orders. **Substitute Motion failed by a vote of 5 AYE, 10 NAY, 2 Absent/Excused.** **Voting in favor** of the substitute motion: **Reps. Chaney, Hanks, Zito, Zollinger, Ehardt.** **Voting in opposition** to the substitute motion: **Reps. Luker, Malek, Dayley, McDonald, Cheatham, Kerby, Nate, Gannon, McCrostie, Wintrow.** **Reps. Perry** and **Amador** were Absent/Excused.

**VOTE ON  
ORIGINAL  
MOTION:**

**Chairman Luker** called for a vote on the motion to send **H 585** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Hanks** requested to be recorded as voting **NAY. Rep. Wintrow** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the Committee, the meeting adjourned at 7:29 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

March 1, 2018

Honorable Lynn M. Luker, Chair  
House Committee on Judiciary, Rules & Administration  
Idaho State Capitol  
Boise, ID 83702

Re: House Bill 623, Administrative Procedures Act  
(referred to committee 2/23/2018)

Dear Committee Members:

I would like to submit the attached written testimony supporting House Bill 623. Although I work for the University of Idaho, I do not submit this testimony on behalf of the University of Idaho. I submit it in my personal capacity. I hope the Committee will find it useful.

Thank you for your consideration.

Sincerely,

Richard H. Seamon  
1297 Highland Drive  
Moscow, ID 83843

**TESTIMONY SUPPORTING House Bill 623, ADMINISTRATIVE PROCEDURES ACT,  
AS REFERRED TO THE HOUSE COMMITTEE ON JUDICIARY, RULES & ADMINISTRATION,  
2/23/2018**

By Richard H. Seamon, Professor, University of Idaho College of Law

**Introduction**

Chairman Luker and Honorable Members of the Committee:

My name is Richard Seamon, and I am a professor at the University of Idaho College of Law. I say that for identification purposes, though my testimony today is not presented on behalf of the University of Idaho. I am here today solely in my personal capacity.

I would like first to say just a few words about my experience with administrative law and procedure, since that is the subject of House Bill 623. I hope this will give the Committee useful context for my testimony.

My experience with administrative law and procedure goes back more than 30 years, to 1986, when, for my first job after graduating from law school, I clerked for a judge on a court that has a steady diet of administrative law cases. That was the United States Court of Appeals for the District of Columbia Circuit, where I clerked for a year. After the clerkship, I spent 9-10 years in the full-time practice of law, devoting much of it to administrative litigation and court litigation brought against, or on behalf of, federal agencies. For six of those years, I was at the U.S. Department of Justice.

I've now been a full-time law professor for 21 years, and I've taught administrative law in every one of those years. During that time, I've devoted significant attention to state agencies and state administrative law, including -- since 2004 -- Idaho agencies and Idaho administrative law. I became specifically familiar with House Bill 623 when it was before the Administrative Hearing Officer Interim Committee. If the Committee wishes more information on my background, it can be found on the UI website.

With that background out of the way, I'd like to offer two kinds of comments on House Bill 623: general and specific. I'll pause after my general comments, and before getting into my specific comments, to ask whether the Committee wishes for me to give oral testimony of the specific. All of my comments are in my written testimony, and the specific ones get quite deep into the weeds. I don't want to wear out my welcome.

**General Comments**

My general comments concern the aspect of House Bill 623 that, in my opinion, is the most significant and beneficial one: the creation of an office of administrative hearings within the department of self governing agencies. This new office will hire full-time, professional hearing officers to conduct contested-case hearings for essentially all Idaho agencies except the public utilities commission, the industrial commission, the department of water resources, and the water resources board. This new office's hearing officers will take on a job that is now being done in many agencies by contract hearing officers. If House Bill 623 is adopted, Idaho will join about half of the States that currently put all their hearing officers in a single, separate agency. These are known as "central panel States." They include our neighbors Washington State, Oregon, Nevada, and Wyoming. They do not include Montana or Utah.

I support House Bill 623 and, in particular, its creation of this new office of administrative hearings. I believe the office will produce three public benefits. First, it will enhance the overall fairness of contested case hearings. Second, it will enhance public perception of, and confidence in, the fairness of contested-case hearings. Third, it will enhance public access to administrative justice. I will briefly elaborate on these benefits and then discuss possible objections to putting all the contested-case hearing officers into one office of administrative hearings.

1. Overall Fairness of Contested Case Hearings

As to the overall fairness of contested case hearings, in my view, it boils down to one main fact: It is hard for a hearing officer to be impartial in a dispute between a member of the public and an agency, when the hearing officer works for that agency. In our jobs, we like to feel like we're part of a team. Hearing officers are no different. As a result, when a hearing officer rules against the agency that the hearing officer works for, the hearing officer can feel like he or she has done something that hurts his or her own team.

This feeling can arise even when the hearing officer works for the agency on a contract basis. In that arrangement, moreover, the hearing officer may have an additional pressure to rule in favor of the agency. The hearing officer may fear that, by ruling against the agency, the hearing officer reduces the chance that the agency will continue contracting with him or her to hold hearings.

The law has long recognized that it is hard to judge your own team. In 1610, the famous English Judge Sir Edward Coke said no person can be a judge in his own cause. In the United States, James Madison articulated the maxim in the Federalist Papers, No. 10. And in a 2009 decision the U.S. Supreme Court extended the principle in a way that's relevant to House Bill 623. The Court said, "Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when —without the consent of the other parties— a man chooses the judge in his own cause." *Capterton v. A.T. Massey Coal Co.*, 556 U.S. 868, 886 (2009). But that is essentially what happens when agencies employ the hearing officers who hold the hearings.

I don't mean to impugn the objectivity of hearing officers under the current system. I am simply saying that House Bill 623 would relieve the inherent pressure to rule in favor of the agencies for whom the current hearing officers work.

2. Public Perception of, and Confidence in, the Fairness of Contested Case Hearings

My second general remark relates to public perception of, and confidence in, the fairness of contested-case hearing and is as simple -- I hope not simplistic -- as my first comment.

Federal law requires a judge to recuse him or herself "in any proceeding in which his [or her] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The American Bar Association's Code of Conduct for judges says that a judge must "avoid impropriety and the appearance of impropriety." Canon 1. These provisions reflect that appearances matter. I think the average member of the public who was a dispute with an agency would find it hard to believe that he or she could get a fair hearing from an employee of the agency. The person is much more likely to believe in the fairness of a system in which the hearing is held by someone who is not being directly paid by the agency.

For that reason, the public will benefit from House Bill 623's creation of a single new office for contested-case hearing officers.

### 3. Public Access to Administrative Justice

Although I do not have statistics on this matter, I suspect that in many contested case hearings in Idaho, members of the public will be either entirely unrepresented by an attorney or they will be represented by an attorney who has limited experience with that specific agency's hearing procedures. These circumstances make it really hard for members of the public to make their case effectively.

Those circumstances might well be mitigated by having an office of administrative hearings. For one thing, the office could effectively and efficiently train its hearing officers on how to deal with unrepresented parties and inexperienced attorneys. For another thing, the office develop more uniform hearing procedures, which would benefit general-practice attorneys who pick up occasional cases involving different agencies, and those attorneys' clients. Thirdly, the office of administrative hearings might well be able to develop a user-friendly set of forms for people who want to represent themselves, like the Idaho courts have done. All these measures would better assure access to administrative justice.

### 4. Potential Objections to Creation of an Office of Administrative Hearings

I can envision three objections to the creation of an office of administrative hearings. I will describe them and explain why, in my opinion, they do not carry the day.

First, agencies develop expertise in the areas for which they are responsible, and the hearing officer should be equipped with that expertise to ensure the completeness of the hearing record and the accuracy of factual and legal determinations. This expertise argument might justify the creation of specialized subject-matter divisions within the office of administrative hearings. House Bill 623 authorizes the chief administrative hearing officer to do that. (Proposed 67-5271(2)(j), p. 23, lines 1 and 2.) In addition or alternatively, hearing officers could do rotations that would give them time to develop expertise in specific subject matters. Even so, there are some benefits of having hearing officers handle cases involving a variety of subject matter. That variety should make the job more attractive to well-qualified applicants. Furthermore, frankly, requiring the agency to present its case to an at least somewhat-generalist hearing officer helps keep the agency honest by forcing it to articulate and defend rationales, policies, and factual matters that would otherwise be unstated if the hearing officer were an "agency insider."

A second objection is that creating an office of administrative hearings increases the bureaucracy. House Bill 623, however, does not, by its terms, increase the number of contested case hearings; it just addresses who presides over those hearings. As the Fiscal Note to House Bill 623 observes, House Bill 623 could end up saving the State money by reducing or eliminating the use of contract hearing officers. It is true, however, that House Bill 623 might increase the number of requests for contested case hearings, especially if it changes public perception about the likelihood of these hearings being objective. That would not be a bad thing, especially since hearing officers -- like judges -- have means of quickly and efficiently resolving matters that are frivolous.

A third possible objection is that creating the office of administrative hearings will unduly burden agencies. On this view, agency heads will often be forced to review the decisions

of hearing officers to ensure consistency and accuracy in agency decision making, especially with regard to cases that implicate the exercise of agency discretion and important agency policies or important issues of statutory interpretation. This argument about an increased need to agency-head review rests on the premise that hearing officers are less likely to be "on the same page" as the agency if they work in a different office from the agency. Indeed, there may be a tradeoff between the potential benefits of separating hearing officers from the agencies for which they hold hearings -- namely, increase in real and perceived fairness -- and the potential downside -- namely, less familiarity with agency policies and positions. But because House Bill 623 does authorize all agency heads to review all hearing officer decisions, it enables the agency to be the final administrative decision maker on all significant matters. Any additional burden associated with exercising this review is speculative.

#### Specific Comments

1. p. 4, line 9, 67-5201(8) (definition of "Contested order") - I suggest consideration of revising the definition along the following lines to clarify that this term does not include interlocutory rulings by a hearing officer -- e.g., rulings on discovery disputes, admissibility of evidence, etc.:  

"'Contested case order' means an order issued by a hearing officer resolving ~~issues in~~ a contested case..."
2. p. 4, after line 14, 67-5201 (Definitions) - I suggest consideration of adding a definition of "emergency adjudication," which is the subject of 67-5247, p. 11. Without a definition, it is unclear that 67-5247 applies only to contested cases. One possible definition comes from the 2010 Model State APA, § 102(10): "'Emergency adjudication' means an adjudication in a contested case when the public health, safety, or welfare requires immediate action."
3. p. 5, line 23, 67-5201(25)(b)(ii) - The reference to "67-5232" should be changed to "67-5268."
4. p. 6, line 8, 67-5241 (DISPOSITION BY AGREEMENT) - I suggest consideration of prefacing this section by the phrase "Unless prohibited by other provisions of law." I suggest this change because, for example, some other provisions might bar the use of a settlement agreement, in lieu of a consent order. In addition, subsection (4), line 46, contemplates that the right to judicial review can be expressly waived. I could envision situation in which such a waiver might be contrary to law. For example, an agency official might have authority to settle a matter but lack authority to waive judicial review.
5. p. 9, lines 8-10, 67-5244(1) - This provision appears to allow the hearing officer to refer a case to mediation or other alternative dispute resolution only with the consent of the parties. In contrast, 67-5272(5), p. 24 line 10, empowers the hearing officer, seemingly without the parties' consent, to "*order* ... the use of alternative dispute resolution when appropriate ..." These two provisions seem to conflict.
6. p. 12, line 22, 67-5248(1) - This provision refers to a "pending" contested case, and specifies when the contested case begins, but not when it ends. One possibility is to refer back to 67-5201(11)(a), p. 4, lines 16-17, where a "final order" is defined to include "A contested case order that is final as provided in sections 67-5253 and 67-5254."

7. p. 15, lines 32-33, 67-5254(2) - I suggest consideration of adding commas to clarify, as follows:

If the request is declined, the contested case order shall be final from the date of the notice of, or last day for declining, the review or twenty-eight (28) days after filing of the contested case order, whichever is later.

8. p. 16, lines 1-2, 67-5254(4) - I suggest consideration of specifying what "relevant time periods" are tolled under this sentence. The only time period I could think of is the one a few lines down the page, p. 16, lines 7-10, in 67-5254(6).
9. p. 16, lines 11-21, 67-5254(7). I suggest consideration of addressing, either in this subsection or in the following section -- 67-5256, p. 16, lines 25-42, whether not only the hearing officer, but also the agency head, can reconsider a decision. Although reconsideration is addressed in 67-5256, that provision currently appears to contemplate only reconsideration by the hearing officer, not by the agency head. For what it is worth, in my experience most agency heads can reconsider their final orders in contested cases. Compare 2010 Model State APA § 416, which authorizes reconsideration of any "final order," whether it's issued by a hearing officer or the agency head, and uses the term "decision maker" to refer to them both.
10. p. 16, lines 31-33, 67-5256(2) - This provides for tolling of "the time for filing a request for a judicial review" while a request for reconsideration is pending before a hearing officer. But this ignores that judicial review of the hearing officer's order will be premature if the agency head reviews the hearing officer's decision on reconsideration. It also raises the question: Must a party dissatisfied with the hearing officer's decision seek agency head review as a prerequisite to seeking judicial review? I had this same question after reading the exhaustion provision, 67-5265, on pp. 19-20. I have not completely researched existing law on this issue. My preliminary research, though, suggests that Idaho courts generally require exhaustion of all available administrative remedies, even administrative remedies that are not expressly required by statute. *E.g., Regan v. Kootenai County*, 140 Idaho 721 (2004). If my preliminary research is accurate, then a party dissatisfied with a hearing officer's decision would have to seek agency head review before seeking judicial review. In that event, the tolling provision in 67-5256(2) would not apply.
11. p. 18, lines 42-47, 67-5262(2) - I would like to offer three comments about this provision. First, as discussed above, House Bill 623 appears not to authorize, expressly, reconsideration by the agency head, and a hearing officer's decision on reconsideration probably is probably not subject to immediate judicial review (before disposition of a request for agency-head review). Second, I suggest consideration of requiring that a request for reconsideration will toll the time period for seeking judicial review only if the reconsideration request is filed timely and in accordance with all procedural requirements. Third, this provision says that the 28-day period for judicial review starts on the date of service of the decision on reconsideration. It does not address a situation in which reconsideration is deemed denied by the lapse of time, pursuant to 67-5256(3),

on p. 16, lines 39-41. The second and third comments could be addressed by amending the provision along these lines:

(2) A petition for judicial review of a final order must be filed within twenty-eight (28) days of the service date of the final order, or, if reconsideration is sought in a timely request filed in accordance with all applicable procedural requirements, within twenty-eight (28) days after the service date of the decision thereon or after the date on which the request is deemed denied by lapse of time under 67-5256(3)...

12. pp. 20-21, 67-5267 (STANDARD OF REVIEW) - This provision address the standard for judicial review of an agency order, but not an agency rule. The existing Idaho law prescribing the standard for judicial review of an agency rule is Idaho Code 67-5279(2). But all of Idaho Code 67-5279(2) is proposed for repeal by House Bill 623 Section 7, on p. 7, lines 5-6. I suggest consideration of reinstating 67-5279(2).
13. p. 21, line 13, 67-5268(1) - I suggest consideration of revising the current wording to read, "Any person may request that an agency issue ..."
14. p. 24, lines 10-11, 67-5272(5) - As discussed above in specific comment 5, this provision appears to conflict with 67-5244(1), on p. 9, lines 8-10, because it apparently authorizes a hearing officer to order the parties to attempt alternative dispute resolution without their consent.

#### **Summary**

I thank the Committee for its consideration of these comments.

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
 1:30 pm or Upon Adjournment of House Floor Session  
 Room EW42  
 Monday, March 05, 2018

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">HR 6</a>	Rule 75	Rep. Lynn Luker
<a href="#">H 485</a>	Wage claims / Extends filing period	Rep. Mathew Erpelding
<a href="#">H 581</a>	Controlled substances / Sentencing	Rep. Ilana Rubel / Rep. Christy Perry
<a href="#">H 656</a>	Forcible entry / Unlawful detainer	Rep. Caroline Nilsson Troy / Paul Smith, Idaho Apartment Association

***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 Luker  
 Vice Chairman  
 Malek(Widmyer)  
 Rep Perry  
 Rep Dayley  
 Rep McDonald  
 Rep Cheatham

Rep Kerby  
 Rep Nate  
 Rep Chaney  
 Rep Amador  
 Rep Hanks  
 Rep Zito

Rep Zollinger  
 Rep Ehardt  
 Rep Gannon(17)  
 Rep McCrostie  
 Rep Wintrow

COMMITTEE SECRETARY

Wendy Carver-Herbert  
 Room: EW56  
 Phone: 332-1127  
 email: hjud@house.idaho.gov

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

- DATE:** Monday, March 05, 2018
- TIME:** 1:30 pm or Upon Adjournment of House Floor Session
- PLACE:** Room EW42
- MEMBERS:** Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow
- ABSENT/  
EXCUSED:** None
- GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.
- Chairman Luker** called the meeting to order at 3:23 p.m.
- HR 6:** **Chairman Luker** presented **HR 6**, which recognizes the modern era of phones with video and photo capability, making it easy for consumers to document events. This resolution amends House Rule 75 by allowing the public to record and transmit House proceedings and hearings. It also provides provisions for accredited media.
- MOTION:** **Rep. Chaney** made a motion to send **HR 6** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Luker** will sponsor the bill on the floor.
- H 581:** Out of respect for the law enforcement officers recently killed in the line of duty in Coeur d'Alene and Sandpoint, **Rep. Malek** asked the sponsors if they would be willing to hold **H 581** until next year. The sponsors, **Rep. Rubel** and **Rep. Perry** shared their condolences but stated they believe the issues are unrelated.
- Rep. Rubel** and **Rep. Perry** presented **H 581**, a bill that amends the mandatory minimum sentencing provision for trafficking in controlled substances. They stated mandatory minimums have contributed to extreme overcrowding in the prisons. Today, there are 900 first time, low level offenders incarcerated in Idaho prisons at a cost of \$20 million per year. The current law does not allow sentencing discretion based on lack of past record, conduct, or levels of offense. They stated current statute also is not targeting only high level offenders and traffickers, as was initially intended when it went into effect in the 1990s. They stated mandatory minimums ruins lives and fracture families as many low level offenders do not get the benefit of rehabilitation and are often drawn deeper into depression and addiction by not having the support of family and friends. This is complicated by the fact low level offenders are being shipped out of state to other prisons to ease crowding. They stated this bill is about balancing power between prosecutors and the judiciary. It transfers sentencing discretion to the judges and still provides the intent of stringent minimum sentencing requirements for high level offenders, but allows a safety valve for cases of manifest injustice and in cases where a minimum sentence is not necessary for the protection of the public. In answer to questions from the Committee, Rep. Rubel stated a definition for manifest injustice is not included in the bill.

**Daniel Clark**, Bonneville County Prosecuting Attorney spoke **in opposition** to **H 581**. He stated, no matter how you look at it, this bill is a repeal of the mandatory minimum trafficking statute. The law as it exists today was designed to address dealers and not users. Only four percent of Idaho's prison population is made up of those serving mandatory minimums. He stated drug traffickers are very well aware of the fact Idaho has mandatory minimums and believes it will lead to an increase in violent crime, petty crime, drug trafficking, and an expansion of criminal enterprises in the state if this legislation passes. In answer to questions from the committee, Mr. Clark described how he uses mandatory minimums in plea agreements and takes several factors such as age, past record, weights of drugs in possession, cooperation, among other things when determining appropriate charges. He stated prosecutors have no recourse if a judge deviates from the intent of statute and applies manifest injustice in a case. He said the use of mandatory minimums is a matter of deterrence, not discretion when it comes to moving large amounts of drugs in the State.

**Ian Thompson**, Idaho Association of Criminal Defence Lawyers, Legislative Committee Chairman spoke **in support** of **H 581**. He stated first degree murder, repeated sexual abuse of a child and drug trafficking are the only three crimes with a mandatory minimum prison sentence and yet there are many more serious crimes that do not. He said if mandatory minimums is the answer to deterring crime, then why wouldn't it be applied to other types of crime. He stated the original rationale for the mandatory minimums law was to target large to middle scale drug dealers and he believes this bill does not change that intent. Unfortunately, the law is not only applicable to drug dealers as it merely requires possession of certain amounts of drugs, which includes users, drug addicts, and mules. While the original law provided incentive for low level offenders to cooperate because judges had discretion to reduce sentences for any reason, the Idaho Supreme Court ruled that doing so invalidates mandatory minimums, therefore that section of Idaho Code was repealed more than 20 years ago, taking away a judge's ability to determine an appropriate sentence and the incentive for offenders to cooperate with police or prosecution. In answer to questions from the Committee, he said he does not believe most users and addicts are making economic decisions based on Idaho's mandatory minimums law and the most don't even know about it. He also stated he believed this bill would be a repeal of mandatory minimums if it was challenged in a higher court, and the sentences outlined in this legislation are not mandatory.

Due to time constraints, **H 581** will be carried over to the meeting of March 7, 2018 at 1:30 p.m. or upon adjournment of the House of Representatives floor session. **Chairman Luker** explained testimony will be taken for **H 581** from those who signed up to testify at the March 5th meeting only. No new sign-ups will be accepted for this topic.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 5:12 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm or Upon Adjournment of the House Floor Session**  
**Room EW42**  
**Wednesday, March 07, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1240</u></a>	Release of juvenile offenders	Sharon Harrigfeld, Dept. of Juvenile Corrections
<a href="#"><u>S 1242</u></a>	Juvenile offender / clarifies escapee	Sharon Harrigfeld, Dept. of Juvenile Corrections
<a href="#"><u>S 1257</u></a>	Public Defense Commission / members	Kimberly Simmons, State Public Defense Commission
<a href="#"><u>S 1258</u></a>	Public Defense / litigation costs	Kimberly Simmons, State Public Defense Commission
<a href="#"><u>H 581</u></a>	Controlled substances / Sentencing – Continued testimony will be heard	Rep. Ilana Rubel / Rep. Christy Perry

***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 Luker

Vice Chairman Malek

Rep Perry

Rep Dayley

Rep McDonald

Rep Cheatham

Rep Kerby

Rep Nate

Rep Chaney

Rep Amador

Rep Hanks

Rep Zito

Rep Zollinger

Rep Ehardt

Rep Gannon(17)

Rep McCrostie

Rep Wintrow

COMMITTEE SECRETARY

Wendy Carver-Herbert

Room: EW56

Phone: 332-1127

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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Wednesday, March 07, 2018

**TIME:** 1:30 pm or Upon Adjournment of the House Floor Session

**PLACE:** Room EW42

**MEMBERS:** Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** None

**GUESTS:** Ian Thomson, Joseph C. Miller, IACDL; Kathy Griesmyer, ACLU; Fred Birnbaum, IFF; Kip Paporello, Jacob Mulkey, Terry Weir, Paul Jagosh, FOP; Daniel Clark, Bonner County Prosecutor; Jeff Lavey, ICOPA; Holly Koole, IPA; Kimberly Simmons, PDC; Sharon Harrigfeld, IDJC; Kelli Brassfield, IAC; Elisa Massoth, Attorney; Scott McKay, Nevin, Benjamin, McKay; Phil Frans, Susanne Ingman, LeeAnn Clark, John Lynn, Doug Guillory Curt McKenzie, Self

**Chairman Luker** called the meeting to order at 1:32 p.m.

**MOTION:** **Rep. Chaney** made a motion to approve the minutes of the January 17, 2018 meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Chaney** made a motion to approve the minutes of the February 1, 2018 meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Chaney** made a motion to approve the minutes of the February 15, 2018 meeting. **Motion carried by voice vote.**

**S 1240:** **Sharon Harrigfeld**, Executive Director of the Idaho Department of Juvenile Corrections (IDJC) presented **S 1240**, which clarifies stakeholders, such as judges, prosecuting attorneys and victims will be notified when the IDJC releases juvenile offenders, as well as when the department contemplates doing so. This law comports with current practice.

**MOTION:** **Rep. Perry** made a motion to send **S 1240** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**S 1242:** **Sharon Harrigfeld**, Executive Director of the Idaho Department of Juvenile Corrections (IDJC) presented **S 1242**. This is a technical correction to clarify the definition of an escapee, by deleting one reference to the word "custody".

**MOTION:** **Rep. McDonald** made a motion to send **S 1242** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Cheatham** will sponsor the bill on the floor.

**S 1257:** **Kimberly Simmons**, Executive Director of the State Public Defense Commission (PDC) presented **S 1257** which adds two (2) additional members to the PDC. It includes a second representative recommended by the Idaho Association of Counties (IAC) and a second defending attorney recommended by the PDC from the Public Defender Roster. These two members, along with four others are appointed by the Governor and confirmed by the Senate. Three additional positions consist of one (1) representative from the Idaho Senate, one (1) representative from the Idaho House of Representatives and one (1) representative appointed by the chief justice of the Idaho Supreme Court. The intent of this bill is to gain good representation of urban and rural geographies and demographics, as well as provide representation from a contract defending attorney and a defending attorney from an institutional office. In answer to questions from the Committee, Ms. Simmons explained the fiscal note was based on the worst case scenario of bringing members from counties the furthest distance to convene for PDC business, but she anticipates the actual costs will be less. She stated rather than prescribing what types of backgrounds and positions should be considered for PDC recommendations, the legislation is written to provide the counties flexibility in who they recommend, as they have better knowledge of their needs and challenges.

**MOTION:** **Rep. Nate** made a motion to send **S 1257** to General Orders.

Speaking to the motion, **Rep. Nate** stated he was not comfortable with the composition of the PDC being determined by a super majority appointed by the Governor. The power should remain with the counties. He also stated if the intent is to have a county clerk and rural counties represented, as mentioned by **Ms. Simmons**, then it should be spelled out in the legislation.

**Kelli Brassfield**, Idaho Association of Counties was called upon to answer questions from the Committee regarding the nomination process for PDC members. She stated, IAC provides a list of three names to the Governor for each appointment. She said the process has been working well and association members voted **in support** of this legislation.

**SUBSTITUTE MOTION:** **Rep. Chaney** made a motion to send **S 1257** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Chaney** stated he philosophically supports the original motion; however, from a legal perspective, there could be potential issues with a private entity such as IAC making appointments without Executive branch or other governmental oversight.

In answer to questions from the Committee, **Ms. Simmons** stated she is amenable to providing future clarification on the types of candidates that should be considered for Commission recommendations and could use the rule making process if needed.

**VOTE ON SUBSTITUTE MOTION:** **Chairman Luker** called for a vote on the substitute motion to send **S 1257** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Nate, Hanks, Zito** and **Zollinger** requested to be recorded as voting **NAY**. **Rep. Perry** will sponsor the bill on the floor.

**S 1258:** **Kimberly Simmons**, Executive Director of the State Public Defense Commission (PDC) presented **S 1258** which amends Idaho Code to provide a way for Idaho counties to apply for state funding to assist with extraordinary expenses related to the provision of indigent defense delivery services. The legislation adds the counties to an already existing statute that provides a way for an indigent defense provider to apply for such funding. In answer to questions from the Committee, Ms. Simmons explained through the movement of money from joint initiative grants, the budget for the Extraordinary Litigation Fund will go from \$250,000 in 2016 and 2017, to \$421,000 in 2018 and 2019 for counties and defending attorneys with extraordinary litigation costs such as contract attorneys, travel and expert witnesses.

**MOTION:** **Rep. Gannon** made a motion to send **S 1258** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Zollinger** will sponsor the bill on the floor.

**H 581:** Continuation of the meeting on March 5, 2018.

**Phil Franz, Susan Ingman, LeeAnn Clark, and Doug Guillory** spoke in support of **H 581**. Each shared their stories of loved ones who they believe are incarcerated under mandatory minimum drug possession sentences without just cause.

**Kathy Griesmyer**, Policy Director, ACLU of Idaho spoke in support of **H 581**. She stated mandatory minimum sentencing was a popular national policy move from the 1990s that is changing. Since then, many states have repealed or changed their mandatory minimum laws and some have experienced declines in prison populations as well as violent and property crimes. She stated recent information from the U.S. Department of Justice indicates certainty of being caught and prosecuted is a more powerful deterrent than severity of punishment. In answer to questions from the Committee, Ms. Griesmyer stated this ultimately comes down to allowing judges discretion in making sentencing decisions and redirecting money currently spent on incarceration to programs for drug addiction, rehabilitation and education.

**Fred Birnbaum**, Idaho Freedom Foundation spoke in support of **H 581** because it provides a good system of checks and balances between the prosecuting attorneys and judges by providing both with discretionary power. In answer to questions from the Committee, Mr. Birnbaum said he was not convinced removing from the law, the word, "mandatory" before the word "minimum" would pose a great risk of driving more drug trafficking into the state. If the guidelines for sentencing were removed, then that could impact sentencing, but with those guidelines in place, judges can make decisions for tough sentencing when warranted. He went on to say if a pattern emerges that shows judges are issuing softer sentences, then it could send a signal that might change drug trafficking behavior. If that were to happen, the law could be amended in the future.

**Kip Paporello and Terry Weir**, Fraternal Order of Police and **Jeff Lavey**, Idaho Chiefs of Police Association, spoke in opposition to **H 581**. They stated drug dealers are very aware of Idaho's laws and cited a known heroine dealer from a neighboring state who refuses to come into Idaho because of it's mandatory minimum drug trafficking laws. They stated drug trafficking goes hand-in-hand with theft, robbery, violence and other crimes that impact the safety and security of communities. They stated the amount of drugs required to trigger a mandatory minimum sentence are more than an average user or addict would purchase or have on hand because the street value alone would typically prohibit it. They said dealers and traffickers know the amounts that can be distributed to members of their networks to avoid the maximum penalties and they do not trust those who push to secure higher amounts out of fear they are distributing to undercover cops. He explained that Idaho is situated between drug hubs in Seattle, Portland and Salt Lake and he predicted if this legislation is passed, the state would see an increase in drug trafficking and the price of drugs on the street will go down because supply will go up, creating an ever growing cycle of crime, violence, addiction and death. In answer to questions from the Committee, Detective Paporello stated keeping mandatory minimums in place is important because it drives a clear message about sentencing statewide, and no matter where you are, you will be treated the same. He is concerned about sentencing discrepancies in urban vs rural areas, for example. This can send a signal to traffickers who may exploit the differences.

**Scott McKay**, Nevin, Benjamin, McKay; **Joseph Miller**, Idaho Criminal Defense Committee and **Elisa Massoth**, a criminal defense attorney spoke **in support of H 581**. Each shared their perspective as criminal defense attorneys. They stated this is about providing balance in the sentencing process by allowing judges the discretion to make sentencing decisions. They stated while there are many well intended prosecutors, often they do not have all the information needed when issuing charges. During the course of pre-trial investigation (PSI) many details are gathered that can provide greater insight into the case, but by the time a PSI is completed, it's often too late as the case has progressed to trial or sentencing, and the Judge has no choice but to issue the required sentence. Since judges have access to all the information in the PSI they can use their judgement to determine an adequate sentence if the legislation passes. Today, there are several sentencing mechanisms in place to address high level drug traffickers, including Federal drug statutes, and while there is a safety valve in Federal statute, there isn't one in Idaho statute for low-level, first-time offenders. Despite this fact, mandatory minimums have been removed from Federal drug trafficking laws and there has not been a floodgate of softer charges.

**Holly Koole Rebholtz**, Idaho Prosecuting Attorney's Association spoke **in opposition to H 581**. She clarified the number of offenders who are incarcerated and serving mandatory minimums and invited the Committee to review any of the approximately 400 cases to better understand the facts behind the original charges. In answer to questions from the Committee, she stated judges have some, if not all, the information from these cases when they go to sentencing.

**MOTION:**

**Rep. Chaney** made a motion to send **H 581** to the floor with a **DO PASS** recommendation.

**Reps. Malek, McDonald and Hanks** debated **in opposition** to the motion. They stated this is a matter of fighting a war on criminal enterprise, and if the desire is to change the law, then law enforcement should be better included in the conversation about how to change it. The kinds and amounts of drugs the mandatory minimums law addresses are for people who are connected to a higher level drug dealer and no matter how you look at it, transport of drugs is a criminal offense.

**Reps. Nate, Zito and Chairman Luker** spoke **in support** of the motion. They spoke about the importance of allowing discernment and discretion, which judges must rely upon in all aspects of the cases they handle, and these same skills and qualities can be used in determining sentencing for drug traffickers as well. They said it provides a good balance of power. The original intent of the law, when it was written in the 1990s, included the safety valve to allow some judicial discretion, but it was repealed because of a challenge in the Idaho Supreme Court.

**Rep. Gannon** said he has serious concerns about drugs coming into the state, but he pointed out this legislation does not repeal the sentencing guidelines that a judge will use. However, he is concerned about the lack of definition for "manifest injustice" that should be included to alleviate any question about how to apply it in sentencing. He said he would support the motion, but he will ask the Attorney General for an opinion before voting on the floor.

**ROLL CALL  
VOTE:**

**Rep. Perry** requested a roll call vote on **H 581**. **Motion carried by a vote of 11 AYE and 6 NAY. Voting in favor** of the motion: **Reps. Luker, Perry, Kerby, Nate, Chaney, Zito, Zollinger, Ehardt, Gannon, McCrostie, Wintrow (Hale)**. **Voting in opposition** to the motion: **Reps. Malek, Dayley, McDonald, Cheatham, Amador, Hanks**. **Reps. Rubel and Perry** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the Committee, the meeting adjourned at 6:47 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm OR Upon Adjournment of the House Floor Session**  
**Room EW42**  
**Tuesday, March 13, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 429aaS</u></a>	Crime Victims Compensation	Representative Melissa Wintrow
<a href="#"><u>SCR 137</u></a>	POST Rule Rejection	Victor McCraw, Peace Officers Standards and Training
<a href="#"><u>SCR 139</u></a>	POST Rule Rejection	Victor McCraw, Peace Officers Standards and Training
<a href="#"><u>S 1277</u></a>	Civil Actions, Claims for Damages	Barbara Jorden, Idaho Trial Lawyers Association
<a href="#"><u>S 1232</u></a>	Transfer of Foreign Offenders	Dawn Howell, Idaho Commission of Pardons & Parole
<a href="#"><u>S 1254</u></a>	Wireless Phone Service Transfers / Domestic Violence	Carlie Foster, Lobby Idaho, LLC

***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 Luker

Vice Chairman Malek

Rep Perry

Rep Dayley

Rep McDonald

Rep Cheatham

Rep Kerby

Rep Nate

Rep Chaney

Rep Amador

Rep Hanks

Rep Zito

Rep Zollinger

Rep Ehardt

Rep Gannon(17)

Rep McCrostie

Rep Wintrow

COMMITTEE SECRETARY

Wendy Carver-Herbert

Room: EW56

Phone: 332-1127

email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

- DATE:** Tuesday, March 13, 2018
- TIME:** 1:30 pm OR Upon Adjournment of the House Floor Session
- PLACE:** Room EW42
- MEMBERS:** Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow
- ABSENT/  
EXCUSED:** Representatives Malek, Nate, Wintrow
- GUESTS:** Victor McCraw, POST; Carlie Foster, Lobby Idaho; Tara Thue, AT&T; Dawn Howell, Gerdent Morgan, Mary Schoeler, Parole Commission; Barbara Jorden, Matt Andrew, ITLA; Kristi Abel, Industrial Commission; Sen. Keough; Dennis Stevenson, Rules Coordinator
- Chairman Luker** called the meeting to order at 1:31 p.m.
- H 429aaS:** **Sen. Keough** presented this amendment which clarifies that the costs of collecting sexual assault forensic evidence will be paid by the Crime Victims Compensation Program (CVCP) after collecting from any federal and federally-financed third-party who has liability. Sponsors are aware of this Senate amendment. The federal government provides some funding for the CVCP, so the Senate consensus was to make this amendment to appease any concerns that may arise.
- MOTION:** **Rep. McCrostie** made a motion to concur with the amendments made in the Senate to **H 429aaS. Motion carried by voice vote. Rep. Wintrow** will sponsor the bill on the floor.
- SCR 137:** **Victor McCraw**, Division Administrator, Idaho Peace Officer Standards and Training Council (POST) presented this Concurrent Resolution which rejects the amended language within Section 201 of the Idaho POST Rules. This was a request made by POST to correct an inadvertent error that occurred when the rule was printed.
- MOTION:** **Rep. Perry** made a motion to send **SCR 137** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Amador** will sponsor the bill on the floor.
- SCR 139:** **Victor McCraw**, Division Administrator, Idaho Peace Officer Standards and Training Council (POST) presented this Concurrent Resolution which rejects the proposed amendment in Section 064. of the Idaho POST Rules due to the Legislature finding that the language is not consistent with legislative intent. This will retain the words, "before God" and alternative language will be added to the code of ethics section of this rule in the future.
- MOTION:** **Rep. Kerby** made a motion to send **SCR 139** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Ehardt** will sponsor the bill on the floor.

**S 1277:** **Barbara Jorden**, Idaho Trial Lawyers Association presented **S 1277**, which amends Idaho Code by updating the dollar value limits from \$25,000 to \$35,000 for cases that fall under the small lawsuit criteria. These statutes provide fair, efficient and inexpensive systems to settle small dollar amount cases, and reduce the number of civil cases that would end up in court. This changes the dollar amounts for the Small Lawsuit Resolution Act (SLRA) threshold and the fee limit for prevailing party attorneys in civil actions. The dollar amounts for these two statutes have not been increased for many years and the increase took into consideration the Consumer Price Index. The SLRA threshold will be on par with current inflationary measures. However, if the rate for prevailing party attorney's fees were brought to today's inflationary measure it would total \$56,000, so the increase to \$35,000 is considered justified.

**MOTION:** **Rep. McCrostie** made a motion to send **S 1277** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McCrostie** will sponsor the bill on the floor.

**S 1232:** **Dawn Howell**, Business Analyst, Idaho Commission of Pardons and Parole presented **S 1232**. Since 2006, the Idaho Department of Correction has delegated to the Commission of Pardon's and Parole the responsibility of making decisions regarding the transfer of foreign citizens or nationals when a treaty is in effect between the United States and a foreign country. This bill amends current language to comport statute with what is already taking place. In answer to questions from the Committee, Ms. Howell explained this is a U.S. Department of Justice (DOJ) program. The DOJ initiates possible transfers, but it allows the State to conduct the initial review and determine if an offender is suitable for transfer. An offender may serve either a Federal or State sentence to be considered.

**MOTION:** **Rep. Kerby** made a motion to send **S 1232** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.

**S 1254:** **Carlie Foster**, Lobby Idaho, LLC, introduced **Tara Thue**, AT&T who presented **S 1254**, which allows domestic abuse victims to obtain a court order to retain their existing wireless telephone number and access to the contacts and other information that may be contained in that wireless phone when the victims are not the account holders. Currently, only an account holder has the authority to release the telephone number and/or information contained in that account. Upon transfer, the requesting party will assume financial responsibility for costs associated with the phone. In cases of domestic abuse, it's common for the abuser to be the account holder. This provides victims a critical lifeline for making appointments, maintaining a support system and communicating with advocates. In answer to questions from the Committee, Ms. Thue confirmed it is the intent for victims to retain their phones even though the bill language only states a victim may transfer their phone numbers and those of minor children. She also explained that most wireless phones are purchased in connection with service plans so the implication is a phone would follow the associated plan if it is transferred into another person's name. She said this legislation is working in other states.

**MOTION:** **Rep. Cheatham** made a motion to send **S 1254** to the floor with a **DO PASS** recommendation.

**Rep. Zollinger** debated in favor of leaving the bill as is, as there may be issues of property rights if the language was amended to included references to keeping the phone.

**Rep. Perry** stated she supports this bill and will not keep it from moving forward, or attempt an amendment, but it may be something to look at in the future to ensure the bill language matches the intent to allow victims to not only keep their phone number and children's numbers, but to keep the phones as well.

**Rep. Gannon** stated retaining property such as the phone is something a judge would address when issuing a protection order.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Rep. McDonald** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 2:18 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
 1:30 pm OR Upon Adjournment  
 Room EW42  
 Thursday, March 15, 2018

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">S 1225</a>	Civil Actions / Renewing Judgement	Jason Spillman, Administrative Office of the Courts / Idaho Supreme Court
<a href="#">S 1341</a>	Child Protective Act	Rep. Christy Perry
<a href="#">S 1298</a>	Criminal History Records / Finger Prints	Sen. Grant Burgoyne
<a href="#">S 1314aa</a>	Criminal Records / Expungement	Rep. Christy Zito, Sen. Grant Burgoyne, Mark Manweiler, Manweiler, Breen, Ball & Davis
<a href="#">S 1245aa</a>	Legal Immunity / Vehicle Entry	Sen. Mark Nye, Rep. Elaine Smith

***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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon(17)
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

Wendy Carver-Herbert  
 Room: EW56  
 Phone: 332-1127  
 email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Thursday, March 15, 2018

**TIME:** 1:30 pm OR Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Luker** called the meeting to order at 1:32 p.m.

**MOTION:** **Rep. Chaney** made a motion to approve the minutes of the February 9, 2018; February 13, 2018; February 19, 2018; February 21, 2018; and February 23, 2018 meetings.  
**Motion carried by voice vote.**

**S 1225:** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented **S 1225**, this bill corrects a defect in the law. Current law allows judgement creditors to obtain a renewed judgement in order to extend the time period to collect. The current statute also permits the judgment creditor to establish a lien against the debtor's property by recording the renewed judgment. However, the issuance of a renewed judgement and the lack of language specifying that the original lien may be continued, creates potential ambiguity between the collection priorities of the original lien, a lien subsequently created by a different judgment creditor, and the lien established by the recording of a renewed judgment. This legislation resolves the ambiguity and allows the lien established by the recording of the original judgment to maintain its priority over a lien subsequently created by a different judgment creditor.

**MOTION:** **Rep. Chaney** made a motion to send **S 1225** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

**S 1341:** **Rep. Perry** presented **S 1341** which improves foster care and child protective services in Idaho. It reflects recommendations and information gathered from a two-year Interim Foster Care Committee, as well as information from three reports on at-risk and foster care children in Idaho. This bill is a first step to begin providing more structure and oversight to cases and issues in the complex system. This legislation is designed to do the following things: Preserve sibling connections in foster care; strengthen support services for newly reunified families in foster care; establish a system for increased accountability for child welfare outcomes through citizen review panels; enhance procedures that guide investigations of suspected child abuse and neglect; establish an oversight committee to begin to bring a system's perspective to multi-faceted and disparate child protection efforts; and specifically clarify the process and standard for contesting foster care and permanency placement. Rep. Perry commended Idaho Department of Health and Welfare for the high level of support on this initiative. She stated many of the outcomes have yet to come to light in the public and legislature, but many things have been done to move things forward in a positive way. Primary focus has been on improvements in internal processes and the creation of an independent and objective, external review process through the citizen review panels that will be established in all seven public health districts and align with Idaho's judicial districts.

Additionally, a Legislative review panel will be formed to review reports from the citizen review panels and the annual report from the Department of Health and Welfare. In answer to questions from the Committee, Rep. Perry stated all health districts were included in discussions about the changes to current law and will be responsible for putting the citizen review panels together for their respective districts. She clarified that this bill codifies the process for establishing the citizen review panels and the panel's responsibilities. Due to the sensitive nature of the information discussed by the citizen review panels, it is the intent to shield aspects of the reports detailing specific cases from public disclosure. In answer to a question about possible unintended consequence and conflict with another piece of legislation that requires Department of Health and Welfare meetings to be open to the public. **Chairman Luker** stated since the citizen review panels are not a decision making body they would differ from Committees that fall under the public disclosure law.

**Sen. Lee, Christine Triddens**, Idaho Voices for Children and **Robert Ball**, Idaho Youth Ranch spoke in support of **S 1341**. They spoke to the importance of addressing sibling relationships and providing support programs for reuniting families. They addressed the topic of trauma and Mr. Ball stated that childhood trauma brought on by abuse, neglect, abandonment, parental addiction and more may be the most significant public health issue of today. If untreated, it can impact a person throughout their lives. In answer to questions from the Committee, Mr. Ball stated agencies are getting better at identifying trauma earlier so it can be addressed. **Chairman Luker** stated he worked on the Interim Committee for this initiative and it is a good bill.

**Ivy Smith, Chalyce Hurt and Beth Horton**, spoke in support of **S 1341** and shared their stories as former foster children. They spoke to the critical need to maintain sibling relationships. Siblings are often split up in foster care and have no means of communication with each other. This compounds the trauma and the ability to rebound when reunited is diminished. Ms. Horton spoke about trauma and PTSD is frequently a long-term impact on children in and after foster care. She spoke about the need for children affected by parents with opioid addictions to receive a high level of therapy and support beyond foster care.

**MOTION:** **Rep. Amador** made a motion to send **S 1341** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**S 1298:** **Sen. Burgoyne** presented **S 1298**. He stated this legislation modernizes the system for public criminal background checks with the goals of increasing public safety and eliminating costs for repeated background checks for licensed positions, particularly sensitive positions such as child care workers, teachers, foster parents, licensees and others. At the same time it has been strengthened to protect the rights of individuals who are subject to background checks: After not making it through the legislative process in 2015, this bill is back at the behest of the Executive Branch and others who see an important need for it, but it has been extensively rewritten so it could more clearly state what it does and does not do. Current law requires some people holding positions of trust in the public or private sectors to have fingerprint-based criminal background checks before they are hired, appointed or licensed. Once a pre-hiring or pre-licensing background check is completed, the fingerprints are destroyed and future criminal activity remains unknown, unless the person is re-fingerprinted for an additional background check. This can be costly. This bill allows such authorities to receive ongoing updates of future criminal charges and convictions. Sen. Burgoyne stated the bill also provides protection to those who are fingerprinted for these purposes by granting rights such as: all criminal updates must be kept confidential; they must receive notification of any criminal history updates; they must have an opportunity to respond to such updates; their fingerprints shall be removed from the system and destroyed, free of charge, when they no longer hold a position or license subject to background checks, or the authority opts out of receiving updates; and they will be

notified of all rights granted by this legislation. This program is referred to as the "Rap Back Services". He explained several state agencies support this bill and will testify, but the Idaho Department of Health and Welfare, Idaho Department of Correction and City of Coeur D'Alene are unable to attend this hearing, but have stated their support for **S 1298**. In answer to questions from the Committee, Sen. Burgoyne stated current background checks include both charges and convictions and employees and authorizing agencies already have access to the level of information in the initial background checks. Additionally, this legislation does not contradict any current law regarding criminal background checks.

**Dawn Peck** Criminal Identification Bureau Chief, Idaho State Police testified in support of **S 1298**. She stated the National Child Care Protection Act, requires centers and programs to be subject to background checks. Currently the only organizations authorized to participate in Rap Back are organizations outlined in this federal law. In Idaho, certain entities go through federal background checks and others go through the cities. If there is a city or county ordinance authorized by the FBI they can enroll those finger prints. In answer to questions from the Committee, Ms. Peck stated there are rails in the bill that safeguard individuals who shouldn't be in the system as there must be a biometric match before the system will trigger a match. Individuals are notified of a match and the responsible agency must share a copy of the background record. Individuals can challenge this by providing new fingerprints. It's believed there is no additional cost to implement the program because information is already in the system and only requires a programming change to share the information with entities that have opted in.

**Susan Odom**, Associate Executive Director, Idaho State Board of Nursing, **Mike Kane**, representing Idaho Sheriff's Association, **Ann Lawler**, Idaho State Board of Medicine and **Tom Shaner**, Idaho Tax Commission spoke in support of **S 1298**. They each stated their agencies all require criminal background checks for employees and some of them are federally mandated to do so. They each have different recheck requirements, but the Rap Back system would be a cost savings. More importantly, it would provide real time insight that could help protect the public when a person is in a position of trust. They stated there are personnel systems in place to ensure due diligence is completed before taking permanent action on continued employment. In cases of licensing, a person may have their license suspended pending the outcome of a criminal case to ensure protection of patients or clients.

**Sen. Burgoyne** closed his remarks by stating he understands the perceived intrusiveness of criminal background checks, but they don't just happen. Individuals who hold sensitive positions of trust knowingly participate in background checks as they are required to do so for so many positions. This bill provides a good balance between the need for privacy and the need for public safety.

**MOTION:** **Rep. Zollinger** made a motion to **HOLD S 1298** in committee.

Speaking to the motion, **Rep. Zollinger** stated he is concerned about several things, but the lack of due process if an employer takes action against an individual based on charges being filed is problematic. He stated there are criminal procedures in place for a purpose and they need to run their course.

**SUBSTITUTE MOTION:** **Rep. Wintrow** made a substitute motion to send **S 1298** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Wintrow** stated background checks are done as a normal course of business and it is a good balance of meeting business needs, the rights of employees and it provides information that may be important for public safety. Based on her experiences at the University, she believe most businesses don't decide to fire someone without due process. It might be a matter of suspending someone, if charges are filed and public safety is at risk, but businesses are not going to fire someone without due process.

**Rep. Amador** and **Rep. McDonald** spoke in support of the substitute motion. They stated a certain level of trust is placed in people in some positions and the solution isn't to watch the newspaper to see if a crime is committed, especially when it comes to protecting children. They stated employers have a right to ask about criminal history in these types of positions and it's doing nothing more than that. It was explained that as consumers, people give their fingerprints away everyday to access their mobile phones. The companies that have this data are commercial entities. Therefore, protecting privacy is not a good excuse for not doing something to protect children and vulnerable individuals.

**Rep. Perry** spoke in opposition to the substitute motion. She stated the bill is incredibly broad because the legislation does not spelled out how the notification process should work and a formal challenge shall not preclude any entity from taking adverse action against the employee or licensee.

**ROLL CALL VOTE ON SUBSTITUTE MOTION:** **Rep. Perry** requested a roll call vote on the substitute motion for **S 1298**. **The motion failed by a vote of 5 AYE, 10 NAY, 2 Absent/Excused. Voting in favor** of the substitute motion: **Reps. McDonald, Amador, Gannon, McCrostie, Wintrow. Voting in opposition** to the motion: **Reps. Perry, Dayley, Kerby, Nate, Chaney, Hanks, Zito, Zollinger, Ehardt, and Chairman Luker. Vice Chairman Malek and Rep. Cheatham** were absent/excused.

**VOTE ON ORIGINAL MOTION:** **Chairman Luker** called for a vote on the original motion to **HOLD S 1298** in committee. **Motion carried by voice vote. Reps. McDonald, Amador, Gannon, McCrostie, Wintrow** requested to be recorded as voting **NAY**.

**S 1314aa:** **Rep. Zito** and **Sen. Burgoyne** presented **S 1314aa**. This legislation corrects oversights in Idaho law that permits the expungement of fingerprint and criminal history records in certain cases. However, it doesn't allow expungement if a case is dismissed by prosecutors for lack of evidence, or dismissals by courts because the state's case lacks the probable cause necessary to proceed to trial. Furthermore, expungement is limited to the fingerprint and criminal history records in official law enforcement databases. Such records in the courts' publicly available online database cannot be expunged. This legislation amends the statute to correct these oversights. **Rep. Zito** stated she became aware of the need for this legislation from a constituent in her district, who even with an attorney's help, could not have dismissed charges removed from her record.

**Dawn Peck**, Criminal Identification Bureau Chief, Idaho State Police (ISP) was called to answer questions from the Committee by stating if the State expunges a record, then it will be expunged at the federal level as well. **Ms. Peck** stated her department is neutral on this bill. She reviewed the details of the current fiscal note and stated there would be an impact to her agency of nearly \$280,000, which is not reflected in the fiscal note. She said it is not an easy process to remove records if all charges are dismissed because it would take a full-time person on her team to remove records. Due to the complexity of some cases it may also require the assistance from the Attorney General's office to provide a professional level of research to determine which cases will qualify. She stated the fiscal note calculations were not brought up in the Senate hearing.

**Andrew Masser**, on behalf of the Idaho Criminal Defense Lawyers, spoke in support of **S 1314aa**. He reiterated some of what was explained by the Sponsors and provided examples of cases that might be dismissed because of lack of evidence and may never have the opportunity to win an acquittal to be expunged. This bill does not impact the internal databases for law enforcement and the courts, it only affects the large criminal databases of the FBI, Idaho State Police and sealing the court records. He spoke to the fiscal note impact discussed by **Ms. Peck**, and according to his determination of the number of cases affected, there would be much less of an impact to the state.

**MOTION:** **Rep. Chaney** made a motion to send **S 1314aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Zito** will sponsor the bill on the floor.

**S 1245aa:** **Rep. Smith** and **Sen. Nye** presented **S 1245aa**. This bill provides immunity from civil liability and criminal prosecution when someone provides aid to another person in a locked motor vehicle and they believe in good faith that the individual is in imminent danger of dying, or could suffer serious bodily harm. It is known as the good samaritan bill. She said the statistics she found on the issue are for children, but there are others who may need aid. She stated six Idaho children have died in cars between 1990 and 2016. Cars can quickly heat up to dangerous levels and Utah, Oregon and Texas have has passed similar laws. In answer to questions from the Committee, Rep. Smith stated insurance companies have only been included informally in discussions about the bill. She clarified that a current law to provide aid to someone in a vehicle only applies to accidents on the side of the road.

**MOTION:** **Rep. Cheatham** made a motion to send **S 1245aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Smith** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 5:14 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:30 pm OR Upon Adjournment**  
**Room EW42**  
**Monday, March 19, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1246</u></a>	Correctional Facilities / Medical Payments	Kendra Knighten, Idaho Governor's Office
	Idaho Department of Correction Update	Henry Atencio, Idaho Dept. of Correction
<a href="#"><u>S 1269</u></a>	Aggravated Sexual Battery	Sharon Harrigfeld, Idaho Dept. of Juvenile Correction, Paul Panther, Idaho Attorney General Office
<a href="#"><u>S 1270aa</u></a>	Forceable Penetration, Foreign Object	Sharon Harrigfeld, Idaho Dept. of Juvenile Correction, Paul Panther, Idaho Attorney General Office
<a href="#"><u>S 1316aa</u></a>	Attorney's Fees / Licensing Authority	Sen. Grant Burgoyne, Sen. Lori Den Hartog
<a href="#"><u>S 1300</u></a>	Pretrial Release Supervision	Sara Thomas, Administrative Office of the Courts, Idaho 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 Luker	Rep Kerby	Rep Zollinger
Vice Chairman Malek	Rep Nate	Rep Ehardt
Rep Perry	Rep Chaney	Rep Gannon(17)
Rep Dayley	Rep Amador	Rep McCrostie
Rep McDonald	Rep Hanks	Rep Wintrow
Rep Cheatham	Rep Zito	

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Monday, March 19, 2018

**TIME:** 1:30 pm OR Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** Vice Chairman Malek

**GUESTS:** Pat Donaldson, Idaho Department of Correction; Paul Panther, AG & ICJC; Tom Dolan, Connie Smock, Corizon; Melinda Merrill, Lance Giles, Ryan Beruhard, Idaho Bail Coalition; Corey Sarber, St. Alphonsus; Rich Hahn, American Bail Coalition; Ken McClure, Brian Whitlock, IMA; Sarah Bettwieser, St. Lukes; Sara Thomas, Christina Iverson, ISC; Seth Grigg, IAC; Sharon Harrigfeld, ICJC;

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

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the March 5, 2018 meeting.  
**Motion carried by voice vote.**

**S 1246:** **Kendra Knighten**, Special Assistant on Criminal Justice, Idaho Office of the Governor presented **S 1246**. The Idaho Department of Correction (IDOC) is required to provide health care services to inmates in accordance with the Eighth Amendment standards. IDOC currently contracts with Corizon, a third-party provider of on-site health care services who also handles payments for off-site medical services. This bill clarifies §20-237B of Idaho Code to specifically state that a privatized medical provider under contract with the Department is authorized to pay health care providers for medical services provided outside of correctional institutions at an amount no greater than Idaho Medicaid reimbursement rates. The goal is to limit IDOC exposure to rising health care charges. The Idaho Supreme Court recently ruled against the State/Corizon because the current law does not allow for a third-party to bill other private hospitals and medical providers at the Medicaid rate. In the process of resolving the lawsuits and drafting this bill, the State worked with hospitals to attempt to resolve concerns. As a result, amendments to this bill were drafted to further clarify the rates and the process for payment. She requested the Committee send **S 1246** to the amending order so the new amendments could be applied. In answer to questions from the Committee, Ms. Knighten clarified the cost savings will be passed back to IDOC and are not profit to Corizon. She stated this is needed because tax payers cover the burden of providing medical services to the 600 to 700 inmates seen offsite. The existing fiscal note for the amendment will remain the same as stated in the original bill.

**Ken McClure**, Idaho Medical Association, spoke **in opposition** to **S 1246**. He stated he appreciated the fact that the hospitals were consulted on this legislation; however, the Medical Association was not and there are concerns. He stated Medicaid is difficult to manage because it does not cover the actual cost of providing service. Many providers are making difficult decisions to no longer accept Medicaid patients. It's complicated because prisoners are a difficult population to serve and yet medical providers are being reimbursed at half the rate of a commercial insurance companies, so they simply do not want to do it. The only exception where care must be provided is in emergency situations. This disproportionately impacts emergency and specialty medical providers because most primary care services are provided at the prison.

**Brian Whitlock**, President, Idaho Hospital Association, spoke in support of **S 1246**. He reiterated this bill and its amendments as stated by **Ms. Knighten**. He agreed with **Mr. McClure** that Medicaid rates do not cover costs, but as it became apparent that rates were not something that could be negotiated in this legislation, the association turned its focus on negotiating a workable and timely process for how payments would be handled. He stated the amendments to the bill offer a good compromise to all parties, and not everyone got what they wanted, but it allows a path for moving forward. In answer to questions from the Committee, Mr. Whitlock stated medical providers can opt out of providing services. If the IDOC has an inmate who requires care that is not provided in an area of the state, they would need to find a service provider elsewhere. In cases where Medicaid does not cover certain services or procedures, then a rate could be negotiated to provide that service.

**Pat Donaldson**, Chief of Management Services, Idaho Department of Correction, was called upon to answer questions from the Committee. He stated it has always been the intent to only pay Medicaid rates and current statute addresses this, but the problem arose when Corizon, a third-party other than the state, began paying the medical bills on behalf of the state.

**MOTION:** **Rep. Gannon** made a motion to send **S 1246** to General Orders with amendments. **Motion carried by voice vote. Rep. Kerby** will sponsor the bill on the floor.

**Henry Atencio**, Executive Director, Idaho Department of Correction provided an update on prisons in Idaho. Population reached a record high of 8,468 in February 2018. Drivers of this increase include: Idaho is fastest growing state in country and not everyone is a law abiding citizen; felony criminal filings are increasing; and probation and parole violators are coming back. Feels there is room for improvement on IDOC part to reduce population rates, but there's been great improvement in releasing drug offenders and property offenders at a better rate. He provided an overview of the Community Reentry Centers (CRC), which offer a good six to 18 month transition for inmates getting ready for parole and preparing to assimilate into the community on their own. He stated the optimum time in the CRC is 12 to 18 months. In answer to questions from the Committee, Director Atencio stated inmates who are moved out of state come back to Idaho when they are getting close to their parole date so they can participate in their required programming. The goal is to have them ready by the end of their fixed term. He explained IDOC sends a Deputy Warden to the contracted out-of-state prisons for weekly monitoring.

**S 1316aa:** **Sen. Den Hartog** and **Sen. Burgoyne** presented **S 1316aa**, which entitles the prevailing party, in an administrative proceeding between a licensee and a self-governing licensing authority to recover reasonable investigative and defense costs. The assessment of fees in such proceedings will be subject to judicial review if judicial review is requested. To the extent this bill incentivizes sound investigatory and litigation management practices resulting in well-grounded licensure actions, licensure authorities will be able to recover their reasonable and appropriate investigative costs and attorney's fees. To the extent licensure authorities bring licensure actions in which they cannot prevail, they will owe reasonable and appropriate defense costs and attorney's fees to licensees. **Sen. Den Hartog** stated as the current law stands, it is a one way street for a license holder. The bill is currently directed at self-licensing boards and a few others. If it goes well it could be expanded to others in the future. **Sen. Burgoyne** explained the Bureau of Occupational Licenses came forward with technical corrections and they are good with the changes outlined in this bill.

**MOTION:** **Rep. Zollinger** made a motion to send **S 1316aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Zollinger** will sponsor the bill on the floor.

**S 1269:** **Sharon Harrigfeld**, Executive Director, Idaho Department of Correction and Chair of the Idaho Criminal Justice Commission introduced **Paul Panther**, Chief of Criminal Law Division, Deputy Attorney General on behalf of the Criminal Justice Commission. Mr. Panther presented **S 1269**. This legislation amends Idaho criminal code relating to battery by adding a new section pertaining to sexual battery to differentiate between unlawful touching (which would be charged under the current law as battery), and unlawful touching of private areas for the purpose of degrading, humiliating, or demeaning the victim or for the defendant's sexual gratification (which could be charged as sexual battery under this legislation). Under this bill, sexual battery remains a misdemeanor, with the possibility of an increased fine and jail time. This also provides a new section on aggravated sexual battery, which would be a felony with an increased sentence. Finally, the bill revises the Sexual Offender Registration Notification and Community Right-to-Know Act to include aggravated sexual battery as a registrable offense.

**MOTION:** **Rep. Wintrow** made a motion to send **S 1269** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

**S 1270aa:** **Paul Panther**, Chief of Criminal Law Division, Deputy Attorney General, presented **S 1270aa** on behalf of the Idaho Criminal Justice Commission. This bill removes language requiring that the conduct of forcible penetration was done for sexual arousal, gratification, or abuse. This allows for other possible cases where the forbidden conduct takes place. He stated, proving sexual intent is sometimes difficult, so removing this language and adding the word "willfully" clarifies the act was done on purpose.

**MOTION:** **Rep. Wintrow** made a motion to send **S 1270aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

**S 1300:** **Sara Thomas**, Administrative Director of the Courts, Idaho Supreme Court presented **S 1300**. This legislation adds new language to the current "Bail, Release on Recognizance and Condition of Release" statute, I.C. § 19-2904 that authorizes the courts to require, as a condition of a defendant's release, that they be supervised while awaiting trial. Each county can decide whether to establish a supervised pretrial release program and if they do so, then the court may require supervision or monitoring of a defendant who is awaiting trial to ensure public safety, protection of victims and witnesses, and compliance with other conditions of release. It also adds a section addressing a "Pretrial Supervision Fee" to allow the court, as opposed to the county, to impose a fee of no more than \$2.50 per day, plus actual costs of electronic monitoring and/or drug and alcohol testing (if required) for those on a pretrial release program. The fees would be distributed to the counties to be used exclusively to cover the costs of the pretrial services. Ms. Thomas stated Idaho statutes don't currently identify provisions for pretrial requirements, but some counties have created their own pretrial supervision services. Those programs vary based on what the offender needs and others base services on what the county can afford. Fees imposed by a county on the basis of its authority under I.C. § 31-870 are not financial obligations of the state courts and then distributed to the county, but rather they are obligations owed directly to the county. In order to collect unpaid fees, a county must use its authority to collect fees as it would collect property tax, or the county must obtain a civil judgement through a small claims process. The purpose of this bill is to provide legal authority for the courts to impose and collect the pretrial supervision fees and if still owing at the time of judgement, then the remaining fees would be added to the criminal judgement. Then the process of collecting financial obligations to the courts in a criminal case could then be used.

**Chairman Luker** called a recess of the Committee at 3:30 p.m.

**Chairman Luker** resumed the meeting at 4:36 p.m.

In answer to questions from the Committee, **Ms. Thomas** stated any pretrial fees submitted to the court system prior to judgement would be paid for this purpose. After sentencing, any money paid would go toward the total court costs and applied via the court's priority of payments. She also clarified counties will not be forced to provide pretrial services if they are not doing so already. It is at the discretion of the counties. If a person is acquitted of charges, they are still responsible for paying their pretrial supervision fees. This is not unlike the need to pay attorney fees or other costs associated with waging a defense. She explained the process for obtaining a bail bond and while some parts of the country have gotten rid of commercial bonds, this bill does not do that. She stated bail bondsmen do not make sure people comply with the conditions of release, they only ensure that a person appears in court.

**Lance Giles**, on behalf of the Idaho Bail Coalition and **Rich Hahn** representing the American Bail Coalition spoke **in opposition** to **S 1300**. They stated this was not developed with consultation with the bail industry and it is not necessary. Idaho counties have been doing this for 15 years and it's been working fine. The Idaho Bail Act already takes into account public safety of victims and witnesses and pre-trial supervision is already a condition of release, and is already provided. They stated this is an attempt to move away from the bail system to tax-payer supported pretrial release and program supervision system operated by the state and counties.

**Seth Grigg**, Idaho Association of Counties (IAC) spoke **in support** of **S 1300**. He reiterated the pretrial justice system has been in place for 15 years, so this isn't a new function in 30 counties. Regardless, the bail industry is still thriving in Idaho. IAC worked with the courts on the terms of the legislation and how the fees are to be paid. Many counties providing pretrial programs don't charge a set fee. In answer to questions from the Committee, Mr. Grigg stated member counties of IAC voted to support this bill but Ada County is not a member, so he does not know their position. He clarified this bill establishes reimbursement for actual supervision up to \$2.50 per day and counties may have the service providers who administer compliance tests or monitoring devices bill separately for these services. While the counties have not had a problem collecting these fees in the past, there may be in the future if they are unable to do so through Odyssey. Therefore they may need to establish their own systems for collecting. He stated he did not believe counties would rush to charge for, or increase their supervision fees just because the legislation would allow charging up to \$2.50 per day.

**MOTION:** **Rep. Gannon** made a motion to send **S 1300** to General Orders.

Speaking to the motion, **Rep. Gannon** stated there should be a way for people to get their pretrial supervision fees refunded if a person is mistakenly charged and they are acquitted or the case is dismissed.

**SUBSTITUTE MOTION:** **Rep. Wintrow** made a substitute motion to send **S 1300** to the floor with a **DO PASS** recommendation.

Speaking to the substitute motion, **Rep. Wintrow** stated this bill is trying to provide a way for counties to charge for services and get paid.

**VOTE ON SUBSTITUTE MOTION:** **Chairman Luker** called for a vote on the substitute motion to send **S 1300** to the floor with a **DO PASS** recommendation. **Motion failed by voice vote.**

**VOTE ON ORIGINAL MOTION:** **Chairman Luker** called for a vote on the original motion to send **S 1300** to General Orders. **Motion carried by voice vote. Reps. Dayley, Wintrow, and Chairman Luker** requested to be recorded as voting **NAY**. **Rep. Gannon** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 5:32 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
**1:15 P.M.**  
**Room EW42**  
**Wednesday, March 21, 2018**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>SCR 148</u></a>	Limits printing of Idaho Session Laws to 150 copies each year	Rep. Lynn Luker
	Review of Joint Publishing Committee Report	Rep. 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 Luker      Rep Kerby  
Vice Chairman Malek      Rep Nate  
Rep Perry      Rep Chaney  
Rep Dayley      Rep Amador  
Rep McDonald      Rep Hanks  
Rep Cheatham      Rep Zito

Rep Zollinger  
Rep Ehardt  
Rep Gannon(17)  
Rep McCrostie  
Rep Wintrow

COMMITTEE SECRETARY

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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Wednesday, March 21, 2018

**TIME:** 1:15 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(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** Representatives Perry, Hanks, Zito, Zollinger, Ehardt, Gannon

**GUESTS:** None

**Chairman Luker** called the meeting to order at 1:19 p.m.

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the February 27, 2018 meeting.  
**Motion carried by voice vote.**

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the March 7, 2018 meeting.  
**Motion carried by voice vote.**

**MOTION:** **Rep. McCrostie** made a motion to approve the minutes of the March 13, 2018 meeting.  
**Motion carried by voice vote.**

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the March 15, 2018 meeting.  
**Motion carried by voice vote.**

**SCR 148:** **Chairman Luker** presented this Senate Concurrent Resolution, which is the annual authorization to print Idaho Session Laws. **SCR 148** limits the printing of the Session Laws to 150 copies each year. This supports decreasing costs by increasing online access. In answer to questions from the Committee, the number of copies is based on the average number of orders from the past session.

**MOTION:** **Rep. Malek** made a motion send **SCR 148** to the floor with a **DO PASS** recommendation.  
**Motion carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

**Chairman Luker** presented the Joint Publishing Committee Report for the Committee's review. In answer to questions from the Committee, the fiscal note covers the cost of printing the 2018 Session Laws. It may be different in 2019, when agencies and individuals will be responsible for paying for their own copies.

**MOTION:** **Rep. Malek** made a motion to recommend the **Joint Publishing Committee Report** be **ADOPTED. Motion carried by voice vote.**

**Chairman Luker** recognized the Committee Page, **Seth Machakos**, and thanked him for his work in this Committee.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 1:27 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary

AGENDA  
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE  
1:15 P.M.  
Room EW42  
Thursday, March 22, 2018

SUBJECT	DESCRIPTION	PRESENTER
	Approval of Minutes	

***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 Luker	Rep Kerby
Vice Chairman Malek	Rep Nate
Rep Perry	Rep Chaney
Rep Dayley	Rep Amador
Rep McDonald	Rep Hanks
Rep Cheatham	Rep Zito

Rep Zollinger
Rep Ehardt
Rep Gannon(17)
Rep McCrostie
Rep Wintrow

COMMITTEE SECRETARY

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MINUTES  
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

**DATE:** Thursday, March 22, 2018

**TIME:** 1:15 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(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Zollinger, Gannon

**GUESTS:** None

**Chairman Luker** called the meeting to order at 1:18 p.m.

**MOTION:** **Rep. Wintrow** made a motion to approve the minutes of the March 1, 2018, March 19, 2018 and March 21, 2018 meetings. **Motion carried by voice vote.**

**Chairman Luker** thanked the Committee for the valiant work they have accomplished this session. He also recognized and thanked the Committee Secretary, **Wendy Carver-Herbert** for her work in this Committee.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 1:26 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary