AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
3:30 P.M.
Room EW42
Wednesday, January 09, 2019

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<tr>
<th>SUBJECT</th>
<th>DESCRIPTION</th>
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<td>Organizational Meeting</td>
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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 Dayley        Rep Ehardt        Rep Troy
Vice Chairman Chaney   Rep Scott         Rep Young
Rep Kerby             Rep Goesling       Rep Gannon
Rep Amador            Rep Hartgen       Rep McCrostie
Rep Zito              Rep Marshall       Rep Wintrow
Rep Zollinger         Rep Ricks         Rep Davis

COMMITTEE SECRETARY
Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov
DATE: Wednesday, January 09, 2019
TIME: 3:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis
ABSENT/EXCUSED: None
GUESTS: None

Chairman Dayley called the meeting to order at 3:48 p.m.

Chairman Dayley welcomed the committee. He asked committee members and the secretary to introduce themselves.

Chairman Dayley covered committee procedures and preferred practices.


Vice Chairman Chaney explained Administrative Rules will be reviewed by the full committee.

Rep. Gannon asked if the committee can only address changes in the rules that are being proposed, or if it can make changes to other sections of the rules as well.

Chairman Dayley explained the Legislature has discretion to propose changes to any Administrative Rule, but recommends the committee stay focused on the rules and changes being presented. Changes to other sections, or rules by the Legislature is allowed through other established legislative process and procedures.

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

________________________________________  ______________________________________
Representative Dayley                           Wendy Carver-Herbert
Chair                                            Secretary
### AGENDA

**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

1:30 P.M.
Room EW42
Tuesday, January 15, 2019

<table>
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<tr>
<th>SUBJECT</th>
<th>DESCRIPTION</th>
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<tr>
<td>Docket No. 11-0301-1801</td>
<td>Alcohol Testing</td>
<td>Major Charles Spencer, Idaho State Police</td>
</tr>
<tr>
<td>Docket No. 61-0102-1801</td>
<td>Uniform Data Reporting &amp; Forms for Annual Reports</td>
<td>Kathleen Elliott</td>
</tr>
<tr>
<td>Docket No. 61-0103-1801</td>
<td>Contracts &amp; Requirements Between Counties and Private Attorneys to Provide Indigent Defense Services</td>
<td>Kathleen Elliott</td>
</tr>
<tr>
<td>Docket No. 61-0104-1801</td>
<td>Procedures &amp; Forms for Application &amp; Dispersement of Indigent Defense Grants</td>
<td>Kathleen Elliott</td>
</tr>
<tr>
<td>Docket No. 61-0108-1801</td>
<td>Rules Definition: Administration of Indigent Defense Delivery System</td>
<td>Kathleen Elliott</td>
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</tbody>
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*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 Dayley | Rep Ehardt | Rep Troy |
| Vice Chairman Chaney | Rep Scott | Rep Young |
| Rep Kerby | Rep Goesling | Rep Gannon |
| Rep Amador | Rep Hartgen | Rep McCrostie |
| Rep Zito | Rep Marshall | Rep Wintrow |
| Rep Zollinger | Rep Ricks | Rep Davis |

### COMMITTEE SECRETARY

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

DA

MOTION:

ABSENT/

TIME:

GUESTS:

EXCUSED:

MEMBERS:

PLACE:

1-30 P.M.

Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Winrow, Davis

Representative Troy

Charlie Spencer, ISP; Jesse Taylor, IAIL; Amaia Griggs, ASUI; Kathleen Elliott, Darrell Bolz, Nichole Devaney, Brianne McCoy, PDC; Kelly R Aberasturi, Owyhee County; Eric Fredericksen, SAPD; Jared Larsen, Governor's Office; Jay Shaw, Admin. Rules; Kathy Griesmyer, ACLU; Andrew Masser, IACDL

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

Rep. McCrostie made a motion to approve the minutes of the January 9, 2019 meeting. Motion carried by voice vote.

Chairman Dayley turned the gavel over to Vice Chairman Chaney for presentation of administrative rules.

Major Charles Spencer, Idaho State Police (ISP) presented the docket. This temporary rule change updates the incorporation by reference to the newest NHTSA conforming products list (CPL) posted in the federal register. The November 2017 revision of the CPL shows all the evidentiary breath testing instruments in Idaho are approved for use on the NHTSA conforming products list. Because this temporary rule change was necessary during the legislative moratorium period, ISP will go through the proposed rule making process after the end of this legislative session and come back next year to complete the process.

Rep. Amador made a motion to approve Docket No. 11-0301-1801. Motion carried by voice vote.

Kathleen Elliott, Executive Director, State Public Defense Commission (PDC) presented an overview of the Commission. The purpose of the PDC is to administer funds to the counties, who provide indigent defense services; improve the level of indigent defense services; and improve the standards for defense attorneys statewide. In 2017, the PDC was asked by legislators and stakeholders to gather Idaho specific data on defense attorney workloads across the state. This work was done by BSU's Idaho Policy Institute and included review of other such studies, interviews with experts, and quantitative and qualitative data gathered through actual time tracking of defending attorneys. It also gathered data on their perceptions of whether they had adequate time to serve clients. According to Ms. Elliott, more than 10,000 cases were tracked. Input was also gathered from experienced public and private Idaho defense attorneys. The culmination of that work resulted in the 2018 Idaho Public Defense Workload Study (See Attachment).
Based on questions from the Committee, Ms. Elliott stated there has been robust discussion about whether indigent defense should be handled at the state or local jurisdiction levels. The goal of the PDC is to collect relevant data that isn't a burden to attorneys and counties. The Commission is not currently looking at data around individuals receiving indigent defense assistance, but have the assets to support their own defense. She also explained the workload study only includes the hours for defenders. The pending rule incorporating the workload standards also provides a relief clause for attorneys and counties who exceed the workload standards for justifiable cause. She emphasized the Standards for Defending Attorneys and the maximum caseloads are a starting place and it will be continuously looked at and revised as necessary, but it takes into account the Idaho-specific legal environment.

**DOCKET NO. 61-0102-1801:** Kathleen Elliott, Executive Director, State Public Defense Commission presented the docket, which makes technical changes, addresses mandatory continuing education, and clarifies reporting procedures particularly as they relate to protecting attorney-client confidentiality.

**MOTION:** Rep. Zollinger made a motion to approve Docket No. 61-0102-1801. Motion carried by voice vote.

**DOCKET NO. 61-0103-1801:** Kathleen Elliott, Executive Director, State Public Defense Commission presented the docket. This section of rule pertains to model contracts and core requirements for contracts between counties and private attorneys for providing indigent defense services. In answer to a question from the Committee, Ms. Elliott explained the rule requires that contracts be in writing, but allows counties the right to build their own contracts if they choose to do so.

**MOTION:** Rep. McCrostie made a motion to approve Docket No. 61-0103-1801. Motion carried by voice vote.

**DOCKET NO. 61-0104-1801:** Kathleen Elliott, Executive Director, State Public Defense Commission presented the docket. This rule establishes the original procedures and forms for the application and disbursement of indigent defense grants. There are no changes to the pending rule and it is being adopted as originally proposed.

**MOTION:** Rep. Gannon made a motion to approve Docket No. 61-0104-1801. Motion carried by voice vote.

**DOCKET NO. 61-0108-1801:** Kathleen Elliott, Executive Director, State Public Defense Commission presented the docket. This rule amends standards for defending attorneys. The standards include maximum caseloads for defending attorney's, and are based on the 2018 Idaho Public Defense Workload Study. However, if the proposed Idaho standards should sunset in 2020, it refers to the use of national caseload limits from the American Bar Association's National Advisory Committee (NAC).

In answer to questions from the Committee, Ms. Elliott stated $3.6 million is requested to solely support compliance with the standards and is supported by the Governor. Based on comments and questions from several Committee members, Ms. Elliott emphasized the rule has a mechanism for relief if a defender or county nears, or exceeds the maximum caseload requirement and the PDC assist counties with recruitment, funds and training when more defense attorneys are needed. There also are extraordinary litigation funds available for extreme cases. Defenders can attest to the need for providing the level of constitutionally required representation.

**ORIGINAL MOTION:** Rep. Amador made a motion to approve Docket No. 61-0108-1801.
Speaking to the motion, Rep. Amador stated the Commission did exactly what it was asked to do by developing Idaho-specific standards based on Idaho-specific data and should be allowed to move forward.

The committee recessed at 3:21 p.m. and reconvened at 3:26 p.m.

Kelly Aberasturi, Owyhee County Commissioner spoke as a neutral party, but described the difficult situation his county is in with respect to providing public defense. The Public Defense Commission has supported his county and been responsive to all their requests.

Kathy Griesmyer, Policy Director, ACLU-Idaho spoke in opposition to the workload standards stated in section III, subsection C and incorporated by reference in Docket No. 61-0108-1801. She said the ACLU supports the idea of workload standards; however, the proposed workload maximums are too high and will perpetuate excessively high caseloads for defending attorneys. She recommended removing the Idaho-based workload standards in subsection C and rely on subsection B, which refers to the use of standards established by the National Advisory Committee (NAC).

Andrew Masser, Idaho Association of Criminal Defense Lawyers spoke in support of the pending rule and its standards for defending attorneys. He stated caseload standards are critical and the standards are not just a cookie cutter approach. It is just the beginning of public defense reform in Idaho and this is the first step.

Rep. Marshall made a substitute motion to approve Docket No. 61-0108-1801, with the exception of Section III, Subsection B and Subsection C.

Speaking to the motion, Rep. Marshall said he didn't want to discount the work of the Commission, but he is concerned about including caseload numbers in the rule.

Rep. McCrostie made an amended substitute motion to approve Docket No. 61-0108-1801, with the exception of Section III, Subsection C.

Speaking to the amended substitute motion, Rep. McCrostie said he is concerned that the caseload standards do not allow for any time off for vacations or personal time, so they may not be an accurate reflection of time needed to manage cases. He supports the removal of Subsection C. However, he is concerned that removing Subsection B removes all references to caseload standards, which should still be included.

Reps. Zollinger, Amador and Hartgen spoke in opposition to the amended substitute motion. Rep. Zollinger stated his concern that the NAC standards were developed in the 1970s, and the legal environment has significantly changed with the use of technology for research. All supported the position that the Idaho standards are well researched, and Idaho may lead the country in its effort to establish Idaho-specific data and standards.

Vice Chairman Chaney called for a vote on the amended substitute motion to approve Docket No. 61-0108-1801, with the exception of Section III, Subsection C.

Motion failed by voice vote.

Vice Chairman Chaney called for a vote on the substitute motion to approve Docket No. 61-0108-1801, with the exception of Section III, Subsection B and Subsection C. Motion failed by voice vote.

Vice Chairman Chaney called for a vote on the original motion to approve Docket No. 61-0108-1801. Motion carried by voice vote. Reps. Marshall and Goesling requested they be recorded as voting NAY.
ADJOURN: There being no further business to come before the committee, the meeting was adjourned 4:14 p.m.

__________________________________________  ______________________________________
Representative Chaney  Wendy Carver-Herbert
Vice Chair  Secretary
IDAHO PUBLIC DEFENSE WORKLOAD STUDY 2018

IDAHO POLICY INSTITUTE

BOISE STATE UNIVERSITY
Many states have conducted workload studies for the purpose of developing caseload standards that are tailored to their own legal environments. This report is the culmination of a year-long study of the workload associated with providing public defense in Idaho. The study tracked how much time Idaho attorneys spend on specific tasks associated with indigent defense cases as well as attorneys’ perceptions of the average amount of time specific tasks and cases require for adequate and effective defense. This is the first time Idaho-specific data regarding indigent defense workloads across the state has been collected and analyzed. This report does not prescribe indigent defense workload standards; rather, the information presented here, and the data supporting it, is intended to inform future discussions and decisions made concerning caseload guidelines for Idaho’s public defense system.
INTRODUCTION

Under the 6th Amendment to the U.S. Constitution, the accused have the right to have a lawyer advocate for their stated interests. In cases where the accused cannot afford to hire private counsel, the state is obliged under the 14th Amendment to provide effective representation at all critical stages of a criminal or delinquency proceeding in which a person may potentially lose his liberty.\(^1\) Although the U.S. Supreme Court has never been asked to clarify whether a state may constitutionally pass on that obligation to local governments, the state remains responsible for ensuring that local governments meet the parameters of 6th Amendment case law. Idaho does not have a statewide public defense system, rather indigent defense is primarily managed at the county level by appointed defense attorneys.\(^2\) Oftentimes, states have codified commissions to help advise the public defense system, despite jurisdictional level of management.

In 2014, the Idaho Legislature passed House Bill 542, creating the Idaho Public Defense Commission (PDC), and House Bill 634, providing funds for the commission to begin its work. Per Idaho Code 19-850, the PDC has been tasked with the responsibility of promulgating administrative rules related to Idaho’s public defense system, including:

- Training and continuing legal education for defending attorneys,
- Uniform data reporting requirements and model forms,
- Model contracts for counties and defending attorneys,
- Administration of appropriated funds for counties’ delivery of indigent services,
- Standards for defending attorneys, and
- Procedures for oversight, implementation, enforcement and modification of indigent defense standards.

In 2017, the PDC created the first set of standards for indigent defense attorneys. To promulgate additional rules, the PDC recognized a need for additional Idaho-specific data beyond the annual reports public defenders submit to the PDC. Thus, in 2017 the PDC contracted with Boise State University’s Idaho Policy Institute (IPI) to conduct a study designed to investigate public defense attorney workloads. The goal of the study was to provide a body of Idaho specific data and information to the PDC to inform their recommendations concerning caseload guidelines and future workload standards for Idaho’s public defense system. IPI’s research team designed and implemented the study. This report to the PDC documents the study’s methodology and the research team’s findings.
STUDY DESIGN

As academic researchers, IPI designed this research methodology to ensure reliable and accurate findings based on the specific nature and limitations of this particular study. The research design for this study was informed by thorough review of other workload studies, consultation with national experts and academics, and review of relevant literature, which is provided in Appendix A as a bibliography. Although past studies were consulted, this study was designed and implemented specifically for Idaho and the unique characteristics of its public defense system.

PUBLIC DEFENSE IN IDAHO

As mentioned, Idaho does not have a statewide public defense system; rather indigent defense is managed at the county level. Of Idaho’s 44 counties, 32 counties contract out to private attorneys to provide public defense services. The remaining twelve counties have institutional offices where the public defense attorneys are county employees. Figure 1 maps the provision of indigent defense in Idaho. Whether a county contracts for services or has an institutional office, each county also works with conflict attorneys who provide public defense, via a contractual relationship, when institutional or contract attorneys have a conflict of interest. Counties in Idaho with the highest population are the counties with institutional office. These counties can be considered more urban, whereas the remaining counties with contract attorneys have a smaller population and, thus, are more rural. As may be expected, counties with higher populations also have a higher annual caseload than more rural counties.

Figure 1: Provision of Indigent Defense Services
With public defense management in the control of the counties, there has not been a consistent, statewide method in place to capture attorney workload; beyond the annual report counties are statutorily required to submit to the PDC. Most counties have not implemented a method for tracking attorneys’ time. Therefore, although the number of cases an individual attorney carries each year is known, neither the total time, nor the type of time the attorney spends on each of those cases, is known. In addition, until this study, data on the perception of attorneys regarding their workload, perception of time needed to deliver defense, and available resources was not available.

To help address the gaps in knowledge outlined above, the research design process for this project included developing specific research questions. The research questions outlined to guide this study included:

- **How are Idaho’s public defense attorneys currently spending their time on cases?**
- **How do public defense attorneys perceive they are spending their time on cases?**
- **How do public defense attorneys perceive the sufficiency of the time they spend on cases?**
- **What do public defense experts in Idaho perceive to be an acceptable standard for specified case loads?**

Taking into consideration funding and time constraints, the research team then determined the methodologies best suitable for addressing those questions. Therefore, a mixed methods approach was employed in order to provide the most robust picture; the quantitative data informs the “how,” the qualitative data informs the “why.” Without both, future decision-making around workload standards would be of limited utility. The quantitative components of this project – the Time Tracking and certain aspects of the Time Sufficiency Survey – illustrate how attorneys may be spending their time and how they perceive time should be spent. Meanwhile, the qualitative aspects of this project – sections of the Time Sufficiency Survey and the Delphi process – provide the narrative behind the numbers, thus revealing the contributing factors to specific numeric outputs of both measured and perceived time. Both components are necessary for the PDC to understand how attorneys are spending their time and why, thus enabling future recommendation and decisions to informed by Idaho-specific workload data.

In addition to providing qualitative information regarding the public defense system in Idaho, this study engaged stakeholders whom the results may directly impact. In order to safeguard the integrity of this study, this was imperative as it gave attorneys agency and built trust for the policy-making process that may be impacted by the study’s results. Therefore, the engagement of and the contributions from Idaho attorneys in this study were both critical. Over 150 attorneys provided their insight, experience and expertise throughout the course of the project.
The detailed methodology outlined below was determined to be best suited to the state of Idaho, and the consequential resources and limitations, as well as the stated goals of the project: to provide Idaho-specific data for use in future efforts to set workload standards for the Idaho public defense system.

The study was divided into four main components, listed below and depicted in Figure 2:

1) Time Tracking by public defense attorneys
2) Time Sufficiency Survey of public defense attorneys
3) Delphi Panel comprised of defense experts
4) Final Report

Figure 2: Flow of Idaho Public Defense Workload Study
DATA MANAGEMENT
The aforementioned methodologies were each carried out and raw data was collected. After the raw data was collected it was cleaned before it was analyzed. Cleaning the data is a necessary part of the research process as it enables the research team to detect and correct or remove any corrupt or inaccurate (incomplete, incorrect, inaccurate, irrelevant) parts of the data. Since this research is human subjects research, cleaning the data before analysis also ensured that any identifying information of study respondents was removed, helping to reduce potential bias in the analysis. It is important to note; a release of any raw data runs the risk that the data will be misinterpreted and/or taken out of context and utilized to answer questions outside the scope of the study and to target study respondents. Therefore, IPI has taken great care in managing the data.

Once the data was collected it was stored in password-protected, cloud-based, server-backed, collection software. Once the raw data was extracted from the software it was stored on the cloud in a password protected, server-backed, shared drive only accessible by the research team.

PARTICIPANT PROTECTION AND PRIVACY
It is of utmost importance in human subjects research to protect the privacy of those participating in a study. There were a number of protocols the IPI research team put in place for this particular research project. First, participants were informed that their participation was voluntary and they were also informed of the nature of the study and its purpose: to help provide Idaho-specific data that would be used to inform future public defense workload standards in Idaho. Participants consented to participate, and participants were permitted to drop out of the study for any reason, at any time.

To protect the privacy of study participants during data collection, participants were able to select where and when to participate in the web-based Time Tracking and survey portions of the study. This allowed them to enter data at work or at another location of their convenience. Because collection was done via web-based platforms, participants could enter data via a computer, tablet or smart phone.

As indicated in the Institutional Review Board applications for this study, the research team acknowledged certain risks to the participants including loss of confidentiality and identifiable links to individual participants. These risks were mitigated by only allowing the research team to have access to the raw data and, when applicable, de-identified raw data.
CONFLICTS OF INTEREST
As indicated in the Institutional Review Board application and to the Office of Sponsored Research at Boise State University, none of the research team members on this project had any relationship or equity interest with any institutions or sponsors related to this research that might present or appear to present a conflict of interest with regard to the outcome of the research. IPI has a commitment to provide sound, objective research for Idaho decision makers. Therefore, all data collection, analysis, and presentation is done with the utmost integrity.

DEFINITIONS
Before addressing each of the three main components of the methodology it is important to provide definitions of words/phrases utilized in describing the methodology.

CASE TYPES
The level of analysis used consistently throughout the study occurs at the “case” level. For this study, a “case” refers to a single indictment, although there could be more than one charge. Idaho defense attorneys participating in this study were asked to report and comment on a total of nine case types. The cases types were chosen with consideration for the legal landscape of Idaho. The case types included in this study (and their working definitions) are outlined in Appendix B.

CASE TASKS
The time dedicated to a case was then broken down into specific case tasks. Like the Missouri study, this research was focused on tasks performed by attorneys themselves (as opposed to support staff that their office may retain) and thus the aspects of an attorney’s work life that are most affected by caseloads. Additionally, since caseload standards will affect the work of attorneys and the breadth of their workload, it is logical to focus on tasks performed regularly and [almost] exclusively by attorneys. The 17 case tasks, and their definitions, as used throughout this case study are outlined in Appendix C.
RESEARCH METHODS

As mentioned, there were four main components to this study. The first three relate to the gathering and analysis of data and the final component is the presentation of the data in this report.

PART 1: TIME TRACKING

Time Tracking provided empirical data regarding the current public defense environment in Idaho workload related to specific case types. This data was then used to estimate the time spent on specific tasks as well as the overall length of time from intake to disposition for certain case types. Time Tracking is a tool that has been used in several other workload case studies and is an alternate way to gather information on the activity of attorneys, rather than relying on administrative data. Although administrative data from court systems and public defense offices offer accurate data for studies, studies utilizing only administrative data lack a powerful component that could later impact any enacted change: attorney participation. By asking attorneys to participate in Time Tracking, attorneys were encouraged to engage in the process of assessing their caseloads and work expectations. It is important to note that Time Tracking is a snapshot; it captures activity within a clearly defined window of time and cannot be assumed to represent how the public defense environment in Idaho is, every season of the year, year after year.

As stated, studies across the country have used a number of Time Tracking methodologies to establish the time attorneys spend on cases. This study used a 12-week Time Tracking period. For cases where intake and disposition happened within the study period the actual time on a case was calculated. Estimates on case length were made for cases where intake and/or disposition occurred outside the Time Tracking period.

This study sought to determine the average amount of time, from intake to disposition, spent on public defense cases in Idaho. Therefore, the research only engaged Idaho public defense attorneys as participants throughout the study.

ATTORNEY RECRUITMENT

Prior to this study, the PDC contacted attorneys throughout the state to inform them of the study and encourage participation in all aspects of the research. These contacts were made via letters sent via email to attorneys and during open meetings that the PDC held across the state. Before the Time Tracking component of the study began, the PDC contacted every public defense attorney in Idaho via email and requested their participation. The PDC also created a page on the PDC’s website to provide general information, answers to frequently asked questions, and the contact information of IPI so public defense attorneys, as well as the public as a whole, were informed of the study and knew how to contact the research team.
Once the study commenced, the IPI research team requested the PDC no longer be in one-on-one communication with Idaho public defense attorneys about the research project as such communication could unduly influence participation. However, the PDC did proceed to provide broadcast communication to attorneys to encourage participation. Additional encouragement for participation included a weekly drawing for legal text books. Attorneys who consistently tracked for all 12 weeks were entered into a drawing to win a trip to a public defense conference.

To recruit attorneys for each phase of the study, IPI utilized a Idaho public defense roster, provided by the PDC. At the time of the research, the roster contained a list of 290 attorneys. Although all attorneys were encouraged to participate in the study and utilize defenderData, some attorneys chose to use their own Time Tracking software while some opted out of the study.

Attorneys who opted to use defenderData were provided with a login ID and a password by JusticeWorks. After logging in, the program presented attorneys with a form, requesting their consent to have their information recorded, which they were required to sign before entering any information. Attorney data was provided to IPI by JusticeWorks in the form of reports gleaned from defenderData.

**ATTORNEY ENROLLMENT**

Email invitations were sent by IPI directly to attorneys to enroll them in the Time Tracking portion of the study. Prior to this study, most public defense attorneys did not consistently use a program to track the time they spent on cases. Therefore, in order to ensure consistency in collection of the data, it was determined that a software program would need to be provided to all of the state’s public defense attorneys. Attorneys were provided with free access to JusticeWorks’ defenderData software, a web-based, full-featured case management system designed and built exclusively for indigent defense and tailored specifically by JusticeWorks for use in Idaho. Table 1 shows the types of cases that were tracked and the task codes utilized when entering time spent on a case.
### Table 1: Case Types and Case Tasks Codes for Time Tracking

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<tr>
<th><strong>Case Types</strong></th>
<th><strong>Case Tasks</strong></th>
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<tr>
<td>APP Appeal</td>
<td>ADM Administrative</td>
</tr>
<tr>
<td>BEC Status Offenses (ARY/CHINS)</td>
<td>CC Client Contact</td>
</tr>
<tr>
<td>CCV Community Corrections Violation</td>
<td>CLR Clerical</td>
</tr>
<tr>
<td>CHI Child Rep Dependency</td>
<td>CT Court</td>
</tr>
<tr>
<td>CMT Civil Commitment/ITA</td>
<td>DD Drafting Documents</td>
</tr>
<tr>
<td>CTO Contempt - Other</td>
<td>DSC Discovery</td>
</tr>
<tr>
<td>FEL Felony</td>
<td>INV Investigation</td>
</tr>
<tr>
<td>INF Infraction</td>
<td>LR Legal Research</td>
</tr>
<tr>
<td>JPV Juvenile Probation Violation</td>
<td>LV Leave</td>
</tr>
<tr>
<td>JVL Juvenile</td>
<td>MG Management</td>
</tr>
<tr>
<td>MIS Misdemeanor</td>
<td>NG Negotiation</td>
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<tr>
<td>NON Non Charge Representation</td>
<td>SS Social Services</td>
</tr>
<tr>
<td>OTR Other</td>
<td>TP Trial Prep</td>
</tr>
<tr>
<td>PAR Parent Rep Dependency</td>
<td>TRN Training</td>
</tr>
<tr>
<td>PRP Personal Restraint Petition</td>
<td>TRV Travel</td>
</tr>
<tr>
<td>PV Probation Violation</td>
<td>CTPSC Problem-Solving Court (In-Court)</td>
</tr>
<tr>
<td>SUP Child Support Contempt</td>
<td>STPSC Problem-Solving Court (Staffing)</td>
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DATA COLLECTION

To prepare for data collection, attorneys using defenderData were asked to participate in a one hour training webinar. Two such webinars were held on March 30th, 2017, and April 4th, 2017. Each webinar was recorded and made available to attorneys who had been unable to participate live. These webinars included information about the defenderData program, including the login and data entry processes. Below, Figures 3 and 4 provide screen shots of the case entry and time entry features of the program. In addition, a user guide was created for attorneys and made available on the PDC website.

Figure 3: Case Entry Page in defenderData

Figure 4: Time Entry Page in defenderData
The Time Tracking section of the study took place in 2017, from April 24th to July 15th. During each week of Time Tracking, IPI received reports from JusticeWorks. If inconsistencies were detected in the data, IPI contacted the person who entered the data. After the 12 weeks of Time Tracking, JusticeWorks exported data for IPI. After cleaning the data, 10,170 eligible cases tracked by 138 attorneys representing 27 counties remained for use in calculating the descriptive statistics for use in the final workload study report.\textsuperscript{17,18}

**Group 1**
Cases in this group were opened and disposed during the 12 weeks of Time Tracking.

**Group 2**
Cases in Group 2 opened before Time Tracking and were disposed during Time Tracking. Time for cases in Group 2 was estimated by first calculating the actual time spent each week on the case during Time Tracking. This number was then added to the average time spent each week during Time Tracking multiplied by the weeks the case was open outside of Time Tracking.

**Group 3**
Cases in Group 3 made up the vast majority of cases in Time Tracking. These were cases that were not disposed during Time Tracking. They could have been opened either before or during the study. Time for Group 3 was estimated by first calculating the actual time spent each week on the case during Time Tracking. This number was then added to the average time spent each week during Time Tracking multiplied by the median weeks cases of the same type were open in Groups 1 and 2. However, if the time tracked on a case was longer than the median calculation, then the actual weeks outside of Time Tracking were used as the multiplier. This methodology was recommended by the Texas study which also tracked time for a 12-week period. If the average length of time public defense cases take to dispose in Idaho was available, that data could be used as the multiplier rather than the median. While the time would still an estimate, it would lead to a more precise estimate of averages times. Although that data was not available for calculation in this study, the Idaho Supreme Court is actively working to produce that data for the PDC.
RESULTS AND ANALYSIS

Each case was individually calculated based on their associated Group, as depicted in Figure 5, then descriptive statistics (distribution, central tendency, and dispersion) for each case type were calculated.

Figure 5: Calculation of Time for Each Group Type

GROUP 1
GROUP 2
GROUP 3

est: ave time/week + actual time on case
est: ave time/week + actual time on case + est: ave time/week

Before | Time Tracking 12 weeks | After

Figure 6 demonstrates the distribution of Groups for each case type. As mentioned, for each of the case types, Group 3 comprises the vast majority of cases.

Figure 6: Percentage of Time Tracking Cases by Group Type
Table 2 outlines the estimated average time in hours that each case type took to dispose according to the data analyzed from Time Tracking. Felonies and Misdemeanors made up the majority of cases tracked during Time Tracking, which is reflective of Idaho’s overall indigent defense case load. The standard deviation for each case type is also provided.

Table 2: Estimated Average Time per Case Type

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Total Cases</th>
<th>Estimated Average Time to Complete Case (hrs)</th>
<th>Standard Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony</td>
<td>3336</td>
<td>3.8</td>
<td>10.6</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>4213</td>
<td>2.2</td>
<td>10</td>
</tr>
<tr>
<td>Appeal</td>
<td>9</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Juvenile</td>
<td>1118</td>
<td>2.6</td>
<td>7.7</td>
</tr>
<tr>
<td>Probation Violation</td>
<td>633</td>
<td>2.2</td>
<td>6.4</td>
</tr>
<tr>
<td>Family</td>
<td>546</td>
<td>3.4</td>
<td>8.2</td>
</tr>
<tr>
<td>Contempt</td>
<td>48</td>
<td>4</td>
<td>8.3</td>
</tr>
<tr>
<td>Other</td>
<td>267</td>
<td>2.8</td>
<td>6.4</td>
</tr>
</tbody>
</table>

*Average time for appeal cases could not be calculated since only 9 appeal cases were recorded in Time Tracking and none of them were closed during the 12 week tracking period.

**TIME TRACKING LIMITATIONS**

Prior to this study, few public defense attorneys in Idaho were required to track how they spend their time on cases. Although training was provided for the Time Tracking portion of the study, one must recognize this was a new practice for attorneys, which may have limited their ability to accurately track their time.

A word of caution when interpreting the results: the aggregated data reported in this analysis present an overall average (mean) per case, as depicted in Figure 7. However, the mean alone does not provide enough information about the data. If the data were normally distributed and the distribution clustered around the mean, then presenting the mean in isolation would probably be sufficient. 19 This data is not normally distributed or clustered around the mean, as indicated by another measure, standard deviation, which is necessary to fully interpret the story of the data. Standard deviation measures the dispersion of a set of data from its mean. The more spread apart the data, the higher the standard deviation. When there is a higher standard deviation relative to the mean one should also consult the range and distribution of data (see Appendix D).

To complement the quantitative results of the Time Tracking portion of the study, and better inform what was causing the large variation of time spent on cases within each case type, a survey...
was used to gather more qualitative information about public defense attorneys and their perceptions of time necessary for specific tasks and for different types of cases.

**PART 2: TIME SUFFICIENCY SURVEY**

The Time Sufficiency Survey was used as a tool to gather both quantitative and qualitative data from public defense attorneys across Idaho. Previous studies from other states seeking to inform caseload standards surveyed defense attorneys to inquire how much time they perceived certain cases and tasks require for adequate defense to occur (See Appendix A – Bibliography). The Time Sufficiency Survey for this study was structured similarly to previous studies and acted as a way for attorneys to provide their insight on a number of matters: concepts of sufficient time, the availability of resources, and what effective counsel looks like in action.

The survey used in this project asked participating attorneys to select a numeric value for how much time, in their opinion, an attorney ought to spend on specific indigent defense case types in order to provide a client adequate and effective defense. The survey also asked attorneys to provide their perception of the average time required to complete specific tasks, if the task occurred, within certain case types. Attorneys were also provided an opportunity to explain their answers. This mixed methods approach adds great value to this research project as the survey connects the amount of time with the rationale of a practicing attorney who can provide valuable insight into their job and their experiences.

**ATTORNEY RECRUITMENT AND ENROLLMENT**

The Time Sufficiency Survey was sent via email to the entire roster of current Idaho defense attorneys. The survey was sent directly to the attorneys, which provided each attorney with a unique link to the survey. The email also served as informed consent; by linking to the survey, attorneys consented to participate.

**DATA COLLECTION**

The survey was created and distributed via Qualtrics, a web-based survey software program. The survey remained in the field for just over two weeks after which the raw data was exported for cleaning (a process described in Time Tracking above) and analysis in IBM’s SPSS, a statistical analysis software program. Attorneys were able to take the survey once, and they could choose to complete the survey either from a computer, smartphone, or tablet. The survey collected demographic information, attorneys’ perceptions about time spent on specific tasks and specific cases, and provided space for open-ended comments. The survey implemented a logic feature that enabled attorneys to only answer questions regarding the types of cases they currently handled as part of their regular workload. This logic was built in to direct attorneys to more accurately estimate the time required for cases most familiar to them. Therefore, only portions of the total number of participating attorneys provided estimates of time for each case type, as illustrated in Appendix E.
RESULTS AND ANALYSIS

The response rate for the survey was 34%. Demographic information was collected to indicate if respondents were representative of Idaho public defense attorneys. Analysis of the survey results showed 97 attorneys participated in the survey, and represented 29 of Idaho’s 44 counties. On average, attorneys practiced defense law for 12 years (the minimum time recorded was 1 year and the maximum was 38 years) and when asked to estimate what percentage of their workload was dedicated to Indigent Defense Cases, on average of 93% of an attorneys workload was dedicated to Indigent Defense. Therefore, attorneys who chose to participate in this portion of the study had multiple years of experience practicing defense law and, at the time of the Time Sufficiency Survey, a significant portion of their workload was dedicated to indigent defense cases.

The Time Sufficiency Survey offered attorneys the opportunity to provide any additional comments they had regarding the survey through an open-ended comment box. During analysis, the comments made by the participating attorneys were reviewed and organized into reoccurring themes that described the content of comments and/or were specific points of reference for attorneys. Some comments addressed more than one theme and therefore were attributed to more than one theme. The comments were organized into these themes to analyze what are perceived to be the greatest issues and concerns for Idaho defense attorneys. The nine themes that the research team identified from the Time Sufficiency Survey comments are outlined in Table 3.
Table 3: Thematic Comments and Definitions

<table>
<thead>
<tr>
<th>Theme</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney Resources</td>
<td>The expertise and experience that an attorney has for a particular type of case and/or area of law. Additionally, the office resources available to an attorney and the extent of their travel. Whether an office is public or private has a bearing here.</td>
</tr>
<tr>
<td>Client Needs</td>
<td>The needs of a client which can be impacted by a variety of things. E.g. their cognitive capabilities, their emotional state, their physical state, and their demands.</td>
</tr>
<tr>
<td>Evidence Available</td>
<td>The amount of legitimate evidence involved in a case.</td>
</tr>
<tr>
<td>Mental Illness</td>
<td>The mental wellbeing / mental health of a client.</td>
</tr>
<tr>
<td>No Gradation</td>
<td>The lack of gradation amongst offense types within the same classification of a case.</td>
</tr>
<tr>
<td>Case Characteristics</td>
<td>The multitude of characteristics that form and impact an entire case / anything that contributes to the situating of a case.</td>
</tr>
<tr>
<td>Problem-solving Court</td>
<td>Interaction with Problem-solving Court during a case.</td>
</tr>
<tr>
<td>State Prosecutor</td>
<td>The prosecutor assigned to the case.</td>
</tr>
<tr>
<td>Trial Vs. Plea</td>
<td>Whether a case goes to trial or not.</td>
</tr>
</tbody>
</table>
A total of 40 attorneys chose to provide us with comments during the Time Sufficiency Survey. The table below shows the distribution of comment content across the nine identified themes.

**Figure 7: Distribution of Time Sufficiency Survey Comments**

<table>
<thead>
<tr>
<th>Theme</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney Resources</td>
<td>1</td>
</tr>
<tr>
<td>Clients’ Needs</td>
<td>6</td>
</tr>
<tr>
<td>Evidence Available</td>
<td>4</td>
</tr>
<tr>
<td>Mental Illness</td>
<td>2</td>
</tr>
<tr>
<td>No Gradation</td>
<td>1</td>
</tr>
<tr>
<td>Case Characteristics</td>
<td>16</td>
</tr>
<tr>
<td>Problem-Solving Court</td>
<td>6</td>
</tr>
<tr>
<td>State Prosecutor</td>
<td>2</td>
</tr>
<tr>
<td>Trial vs. Plea</td>
<td>6</td>
</tr>
</tbody>
</table>

After analysis of the Time Sufficiency Survey results, the research was finalized by assembling a panel of expert defense attorneys across Idaho.

**QUOTES FROM TIME SUFFICIENCY SURVEY RESPONDENTS**

“Time required on a particular category of tasks seems to depend and vary widely based on the needs of a particular case”

“Law cases just don’t fit a template. Everyone is different with different demands and time needs”

“To try to represent a client properly it just takes as much time as it takes”
PART 3: DELPHI PANEL

The Delphi method, developed by the RAND Corporation, is an iterative decision-making process that integrates the opinions of a group of very knowledgeable and respected experts within a certain field. The Delphi method has been used in several caseload studies across the US to guide experts through a process that gradually leads the participants to a consensus regarding the time that is needed to provide an adequate defense to clients, for each case type and case task.

The Delphi method designed for this project consisted of three stages: two online surveys distributed via Qualtrics, the web-based survey software program also utilized in the Time Sufficiency Survey, and one interactive group discussion session hosted via ZOOM, a cloud platform for video and audio conferencing, chat and webinars that can be accessed across mobile, desktop, laptop and room conferencing systems.

ATTORNEY RECRUITMENT

In order to select a panel of defense experts for this study, IPI received lists of experienced public and private Idaho attorneys from the ACLU of Idaho and the Idaho Public Defense Commission. As a result, 62 attorneys were invited via email to participate as part of the Delphi Panel. The invited attorneys represented all judicial districts, both urban and rural counties, and provided a nearly equal mix of private and public defenders.

DELPHI ROUND 1

The first stage of the Delphi process was an online survey. An email was sent to the Delphi panel members with a link to the survey. The email also served as informed consent for panelists, by clicking the link to the survey attorneys consented to participate in the entire Delphi process. Of the 62 attorneys invited to participate in Delphi Round 1, 16 attorneys responded.

Similar to the Time Sufficiency Survey, the first Delphi survey asked for the input of the Delphi panel members on the time they perceived was needed to perform certain tasks, within certain case types (See definitions in Appendices B and C). The survey also asked Delphi members to estimate the percent of cases in which the task should occur. In order to provide qualitative data to support the quantitative data collected in the Time Sufficiency Survey, respondents were able to expand upon their time recommendations, add details to their responses, and offer any further comments they had regarding the survey via open ended comment sections.
DELPHI ROUND 2

Again, 62 attorneys were invited to participate via email, and 15 attorneys responded to participate in Delphi Round 2. The second survey that was sent out to the Delphi panel members aggregated the results of the first Delphi survey and displayed the range of results, and the average response given for each question. Respondents were encouraged to review responses from Delphi Round 1 and then offer their re-estimations for time needed for each case task, within each case type. This process guided Delphi members to a consensus regarding time needed for case tasks. Tables 4 and 5 outline the results and the breakdown of responses to each case task within each case type from Time Sufficiency and Delphi Rounds 1 and 2 for Felonies and Misdemeanors. See Appendix F for a complete presentation of the remaining case types.

Table 4: Felony Case Task Averages

<table>
<thead>
<tr>
<th>FELONY</th>
<th>Time Sufficiency</th>
<th>Delphi Round 1</th>
<th>Delphi Round 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negotiation</td>
<td>2.43</td>
<td>1.41</td>
<td>1.29</td>
</tr>
<tr>
<td>Social Services</td>
<td>0.59</td>
<td>1.3</td>
<td>1.47</td>
</tr>
<tr>
<td>Travel</td>
<td>1.21</td>
<td>5.03</td>
<td>3.36</td>
</tr>
<tr>
<td>Client Contact</td>
<td>3.86</td>
<td>6.25</td>
<td>7.13</td>
</tr>
<tr>
<td>Discovery</td>
<td>3.37</td>
<td>4.15</td>
<td>4.32</td>
</tr>
<tr>
<td>Administrative</td>
<td>1.17</td>
<td>1.37</td>
<td>0.72</td>
</tr>
<tr>
<td>Investigation</td>
<td>2.97</td>
<td>5.65</td>
<td>6.86</td>
</tr>
<tr>
<td>Legal Research</td>
<td>9.05</td>
<td>7.1</td>
<td>8.93</td>
</tr>
<tr>
<td>Trial Prep</td>
<td>4.5</td>
<td>16.7</td>
<td>17.14</td>
</tr>
<tr>
<td>Clerical</td>
<td>1.13</td>
<td>2.25</td>
<td>2.36</td>
</tr>
<tr>
<td>Court</td>
<td>5.1</td>
<td>9.15</td>
<td>9.29</td>
</tr>
<tr>
<td>Drafting Documents</td>
<td>3.14</td>
<td>3.75</td>
<td>4.32</td>
</tr>
<tr>
<td>Problem-Solving Court (in Court)</td>
<td>4.5</td>
<td>17.4</td>
<td>12.7</td>
</tr>
<tr>
<td>Problem-Solving Court (Staffing)</td>
<td>4.41</td>
<td>12.6</td>
<td>18.7</td>
</tr>
</tbody>
</table>
## Table 5: Misdemeanor Case Task Averages

<table>
<thead>
<tr>
<th>Misdemeanor</th>
<th>Average perceived time required to complete task (hrs)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Time Sufficiency</td>
</tr>
<tr>
<td>Negotiation</td>
<td>1.12</td>
</tr>
<tr>
<td>Social Services</td>
<td>0.49</td>
</tr>
<tr>
<td>Travel</td>
<td>0.92</td>
</tr>
<tr>
<td>Client Contact</td>
<td>1.7</td>
</tr>
<tr>
<td>Discovery</td>
<td>1.37</td>
</tr>
<tr>
<td>Administrative</td>
<td>0.99</td>
</tr>
<tr>
<td>Investigation</td>
<td>1.25</td>
</tr>
<tr>
<td>Legal Research</td>
<td>1.23</td>
</tr>
<tr>
<td>Trial Prep</td>
<td>4.82</td>
</tr>
<tr>
<td>Clerical</td>
<td>0.79</td>
</tr>
<tr>
<td>Court</td>
<td>2.28</td>
</tr>
<tr>
<td>Drafting Documents</td>
<td>1.5</td>
</tr>
<tr>
<td>Problem-Solving Court (in Court)</td>
<td>0.93</td>
</tr>
<tr>
<td>Problem-Solving Court (Staffing)</td>
<td>0.79</td>
</tr>
</tbody>
</table>
DELPHI ROUND 3

After the completion of Delphi Round 1 and Delphi Round 2, Delphi panelists were invited to an interactive online conference session that would allow deeper discussion into the answers that were recorded from both Delphi Rounds. Attorneys were asked to discuss the data from the Time Sufficiency Survey, and discuss differences, inconsistencies and themes in the data. The Delphi Panel also allowed attorneys the freedom to provide any feedback concerning the project as a whole, and or the larger legal environment in Idaho.

The Delphi Round 3 web conference was hosted through the online conference platform, ZOOM, and took place on Tuesday 29th August, MST 9am – 11am. Of the 62 attorneys invited to participate, 12 attorneys attended the call and provided their input. After the web conference was finished, first the conference recording was transcribed, and then the data was coded in a qualitative analysis software program, Nvivo. At the end of Delphi Round 3, there were 10 identified comment themes. The nine previously identified themes from the Time Sufficiency Survey and the addition of a new theme, State Appellate Court that arose during Delphi Rounds 2 and 3. Figure 8 depicts the overall thematic distribution of comments from Time Sufficiency and Delphi.

Figure 8: Distribution of All Comments
RESULTS AND ANALYSIS

Table 4 provides a complete summary of the estimated total time necessary to dispose cases from each round of the study.

Table 4: Summary of Estimated Total Case Time

<table>
<thead>
<tr>
<th>SUMMARY OF ESTIMATED TIME BY CASE TYPE</th>
<th>Time Tracking Survey</th>
<th>Time Sufficiency Survey</th>
<th>Total time needed to complete case when all task averages are compiled (hrs)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony</td>
<td>3.8</td>
<td>14.77</td>
<td>38.52 64.11 67.19</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>2.2</td>
<td>5.42</td>
<td>18.46 31.97 21.95</td>
</tr>
<tr>
<td>Appeal</td>
<td>*</td>
<td>25.02</td>
<td>34.96 48.05 46.81</td>
</tr>
<tr>
<td>Juvenile</td>
<td>2.6</td>
<td>3.72</td>
<td>14.06 24.7 17.47</td>
</tr>
<tr>
<td>Family</td>
<td>3.4</td>
<td>11.74</td>
<td>23.79 23.75 27.41</td>
</tr>
<tr>
<td>Contempt</td>
<td>4</td>
<td>3.48</td>
<td>11.32 17.42 15.53</td>
</tr>
<tr>
<td>Other</td>
<td>2.8</td>
<td>3.46</td>
<td>10.39 11.25 9.67</td>
</tr>
<tr>
<td>Probation Violation</td>
<td>2.2</td>
<td>3.6</td>
<td>13.11 13.77 10.37</td>
</tr>
</tbody>
</table>

*Not all tasks occur in 100% of cases, therefore these numbers likely represent an overestimate of time

As Table 4 demonstrates, there is a wide range in perceived time cases require. As discussed previously, the ranges in recorded time for each case type during Time Tracking was considerable. There are a number of possible reasons for these variations as discussed below.

TIME SUFFICIENCY AND DELPHI PANEL LIMITATIONS

The participants in the Delphi Panel were expert defense attorneys. A Delphi-type panel analysis is designed to inform specific sets of recommendations rather than just aggregating data. As with any other analysis with small, non-representative samples, it can be prone to outliers, meaning that one or two respondents can affect the averages in ways that may not represent the entire panel. Therefore, the focus of the data from the Delphi panel should be on the qualitative data rather than the aggregated reports. For example, the Delphi panel was comprised of expert public defenders. As such, they are more experienced attorneys who may be handling more complex, and time-consuming cases than the average Idaho public defense attorney and, thus, their perception of time needed for specific cases and specific tasks may be impacted.

The Delphi process did not ask participants to estimate total time necessary to dispose cases; attorneys were requested to estimate the necessary time of each task and percentage of cases those tasks occur. It was anticipated that overall time required for cases would be discussed in detail during Delphi Round 3. However, during Round 3 attorneys tended to focus in on specific tasks. Therefore, the only calculation provided for total required time for cases from the Delphi
process is a sum of the average estimated time of each task for each case type. Since all cases do not include all tasks this is most likely an overestimate of total time perceived necessary for each case type.

For the Time Sufficiency Survey and Delphi Panel portions of the study it is important to note issues associated with recalling time spent, which attorneys most likely did to inform their responses. In each of these components of the study, attorneys were asked to use their past experiences to recall the average amount of time an attorney should spend on specific cases and specific tasks, thus providing an estimate. Previous research has indicated that when people are asked to estimate time dedicated to activities, they tend to overestimate.\(^{32,33,34}\) Attorneys’ work is not always conducive to the linear flow of time and, in fact, their work tasks are often overlapping, intertwined and crisscrossing in nature, which offers an additional complication to the collection of recollection of time.\(^{35}\)

Finally, participation in this study was voluntary. Therefore, the resulting data collected may be impacted by selection bias of the respondents. This bias may include unwillingness to participate due to a perception that engagement in the study would take too much effort, a lack of understanding of the context of the study, or an unwillingness to share sensitive information.
CONCLUSION

As stated previously, the level of analysis used consistently throughout the study occurs at the “case” level. Recognizing that every case is different, and therefore time spent on a specific case type will vary, it is necessary to average the data. However, to ensure that the variation in individual cases is represented, the final analysis and this report includes not only the average but also the standard deviation, the range, and the minimum and the maximum indicated through data collected during Time Tracking. Despite this challenge, measuring time at the “case” level was essential because the report will be informing future caseload standards for the state of Idaho.

Results of the study indicate the wide range of time it not only takes for an attorney to defend a case, as indicated by the Time Tracking portion of the study, but also the wide range in opinion of the time needed for specific case types and specific tasks. Some of this range can be explained by the varying characteristics of cases. Essentially, each and every case an attorney handles is different in nature, even if it is the same case type. Thus, not all misdemeanors are the same just as not all felony cases are the same. Therefore, one cannot expect all cases of the same type to take the same amount of time. This study captures the work demands made of an Idaho defense attorney: each case demands an approach that is individualized, thorough and reactive to the entire situation surrounding a case. The qualitative components to this report indicate that attorneys are eager to preserve the ability to tailor their work to the needs of their clients and to uphold their oath under law. As the PDC and the state of Idaho move forward to set additional standards for indigent defense it is imperative this is kept in mind as they seek to provide effective representation for clients, empower and protect attorneys, and, finally, not overburden the system in both expense and expectation.
Magistrate judges assign the vast majority of Idaho’s public defense cases to the state’s public defense attorneys. These attorneys may be part of a countywide office, may be a contract attorney for counties without an office, or may be a conflict attorney. Conflict attorneys handled cases where contract or in-house attorneys have a conflict of interest.


Of these twelve counties eight have independent institutional offices (Ada, Bannock, Bonner, Bonneville, Canyon, Gooding, Kootenai and Twin Falls) while four have joint institutional offices (Minidoka and Cassia Counties share an institutional office and Power and Oneida Counties share an institutional office).

Idaho Code 19-864 requires all defending attorneys to submit an annual report by November 1 of each year to the board of county commissioners, the corresponding administrative district judge and the PDC.

The research team collaborated with the PDC and Justice Works select the case types based on recommendations and the limitations of the software employed for this study.

*Endnotes*

1 U.S. Constitution amend. VI, U.S. Constitution amend. XIV.

2 Magistrate judges assign the vast majority of Idaho’s public defense cases to the state’s public defense attorneys. These attorneys may be part of a countywide office, may be a contract attorney for counties without an office, or may be a conflict attorney. Conflict attorneys handled cases where contract or in-house attorneys have a conflict of interest.


4 Adams County, Bear Lake County, Benewah County, Bingham County, Blaine County, Boise County, Boundary County, Butte County, Camas County, Caribou County, Clark County, Clearwater County, Custer County, Elmore County, Franklin County, Fremont County, Gem County, Idaho County, Jefferson County, Jerome County, Latah County, Lemhi County, Lewis County, Lincoln County, Madison County, Nez Perce County, Owyhee County, Payette County, Shoshone County, Teton County, Valley County, and Washington County.

5 Of these twelve counties eight have independent institutional offices (Ada, Bannock, Bonner, Bonneville, Canyon, Gooding, Kootenai and Twin Falls) while four have joint institutional offices (Minidoka and Cassia Counties share an institutional office and Power and Oneida Counties share an institutional office).

6 Idaho Code 19-864 requires all defending attorneys to submit an annual report by November 1 of each year to the board of county commissioners, the corresponding administrative district judge and the PDC.

7 The research team collaborated with the PDC and Justice Works select the case types based on recommendations and the limitations of the software employed for this study.


9 Not all Idaho indigent defense attorneys operate out of a county office that retains support staff. There were a number of conflict attorneys and contract attorneys participating in this study who have no access to support staff. Any contribution that support staff might have to an attorney’s workload was accounted for by asking Idaho indigent defense attorneys to detail any additional support they had access to (this information was gathered during the Time Sufficiency Survey).

10 The case tasks chosen for the purpose of this study were shaped by both the legal landscape of Idaho and council from the PDC and Justice Works.

Due to the constraints of this study, 12 weeks was selected as an appropriate length for Time Tracking. Other studies with similar constraints tracked time for 12 weeks, see: Carmichael, D., Clemens, A., Marchbanks, III, M., P., & Wood, S. (2015). *Guidelines for Indigent Defense Caseloads: A report to the Texas Indigent Defense Commission*. Public Policy Research Institute, Texas A&M University.

Half of the attorneys in Ada County’s office selected to participate in the study and were contacted by IPI. All of Canyon County’s public defenders utilized the county’s in-house software. An additional 11 attorneys selected to utilize their own time tracking methodology. However, due inconsistencies in tracking time and reporting, the Time Tracking data collected outside of defenderData was unable to be utilized in the study.

Measures of central tendency (arithmetic mean, median, mode, standard deviation, etc.) are important tools for presenting data in an aggregated form. Together, measures of central tendency present a well-rounded picture of the data. However, when used in isolation, those same measures can distort the data and provide information that can be misleading. This report relies primarily on two measures: (1) mean, and (2) standard deviation.

At the time of the survey, 290 attorneys were on the public defense roster. Although all attorneys surveyed provided indigent defense, some also provided private defense. This was due to the nature of Idaho’s Public Defense system, which utilizes contract and conflict attorneys, in addition to salaried defense attorneys in institutional offices.

The Time Sufficiency Survey was in the field from August 1st, 2017 until August 16th, 2017. During the time that the survey was in the field, IPI sent three email reminders to attorneys to encourage their participation. On August 11th, the PDC sent an email to attorneys to remind attorneys of the active survey and to encourage their participation.

Accuracy to recall time spent on a task is reduced the further in the past a task occurred.

A total of 298 emails were sent. 6 emails were duplicates and 6 emails bounced. This reduced our sample population to 286. 2 attorneys formally declined to participate, 27 attorneys only provided partial responses, and 2 attorneys started the survey and did not proceed: these responses were therefore excluded from data analysis to preserve the validity of the analysis. This resulted in 97 usable responses for analysis. We therefore had a response rate of 34%.


The minimum was 5 percent, and the maximum was 100 percentage. The standard deviation was 18.49.


Other workload studies implementing the Delphi method hosted an in-person meeting for the final group discussion. An online live discussion was chosen for the Idaho study due to time (length of study and availability of attorneys) and financial constraints.
5 responses were partial and immediately excluded from analysis. Additionally, it is important to note that of the remaining 11 responses, not every participating attorney provided responses to every question for analysis but attorneys did progress through the entire survey (and therefore not excluded as a ‘partial’ response).

1 attorney opted out of the survey and was therefore excluded from analysis. An additional 5 attorneys only provided partial response and were therefore excluded from analysis. A total of 9 attorney responses were viable and used for analysis.

The guidance offered in the Delphi method minimizes bias from outside the panel because the information used for guidance is generated by the Delphi members themselves. This iterative process allows for the interaction of experts to produce results that are well-rooted within the community and legal environment of Idaho.


Although breaking down the workweek into specific tasks (microbehaviors) has been beneficial in some studies (see Pentland, W. E., Lawton, M. P., Harvey, A. S., & McColl, M. A. (Eds.). (2002). *Time use research in the social sciences*. Boston: Springer; p. 58), other studies have indicated that by doing so, the accumulation of tasks has led to workers reporting work weeks of over 168 hours (see Robinson, J. P., Martin, S., Glorieux, I., & Minnen, J. (2011). *The overestimated workweek revisited*. Monthly Labor Review, 134(6)).

Participants are also more inclined to give “socially desirable responses” (Robinson, J. P., Martin, S., Glorieux, I., & Minnen, J. (2011). *The overestimated workweek revisited*. Monthly Labor Review, 134(6): p. 45). Meaning, that participants are aware of the social implications of how they record their time.Inferring an awareness of participants to the social, political and economic environment in which they are operating (reporting). This bias must be considered.

APPENDIX A: BIBLIOGRAPHY


**APPENDIX B: CASE TYPES AND DEFINITIONS**

<table>
<thead>
<tr>
<th>Case Type Name</th>
<th>Including</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Felony</td>
<td></td>
<td>Representing an individual in a criminal case where possible imprisonment exceeds 1 year.</td>
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<tr>
<td>Misdemeanor</td>
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<td>Representing a minor wrongdoing. An individual in a criminal case where possible confinement is 1 year or less.</td>
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<td>Appeal</td>
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<td>Seeking review of a decision from a higher court.</td>
</tr>
<tr>
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<td>Juvenile</td>
<td>Representing a child* charged with a criminal law violation.</td>
</tr>
<tr>
<td>Juvenile</td>
<td>Juvenile Probation Violation</td>
<td>Representing a child accused of violating their terms of violation.</td>
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<tr>
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<td>Status Offense</td>
<td>Representing a child in a &quot;child in need of supervision&quot; case.</td>
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<td>Child Rep. Dependency</td>
<td>Representing an individual accused of violating their terms of violation.</td>
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<td>Family</td>
<td>Parent Rep. Dependency</td>
<td>Representing a parent in a civil action related to a child.</td>
</tr>
<tr>
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<td>Child Support Contempt</td>
<td>Representing an individual charged with contempt in court relating to a failure to pay child support.</td>
</tr>
<tr>
<td>Contempt</td>
<td></td>
<td>Representing an individual held in contempt of court.</td>
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<td>Other</td>
<td>Other</td>
<td>Cases that do not fit into the other defined categories.</td>
</tr>
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<td>Civil Commitment</td>
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<td></td>
<td>Infraction</td>
<td>Representing an individual in a criminal case where no sentence of incarceration is possible.</td>
</tr>
<tr>
<td></td>
<td>Non-charge Representation</td>
<td>Representing an individual who has not been charged with a criminal or civil law violation.</td>
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*In accordance with Idaho law (Idaho Statute 16-1602-10), a child is an individual under the age of 18.*
## APPENDIX C: CASE TASKS AND DEFINITIONS

<table>
<thead>
<tr>
<th>Case Task Name</th>
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<tbody>
<tr>
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<td>Conducting tasks necessary for running an office. E.g. time keeping, billing, and docket management tasks.</td>
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<td>Client Contact</td>
<td>Communicating (consulting and interviewing) with clients, in-person, on the phone or via written correspondence.</td>
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<tr>
<td>Clerical</td>
<td>Processing non case-related or non case-specific paperwork.</td>
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<tr>
<td>Court</td>
<td>Time spent in court.</td>
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<td>Drafting Documents</td>
<td>Attorney time dedicated to actually drafting, typing or reviewing legal documents including motions and briefs.</td>
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<td>Discovery</td>
<td>Time spent processing prosecution’s disclosure, requesting, acquiring and reviewing records.</td>
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<tr>
<td>Investigation</td>
<td>Time spent investigating facts/preparing for and conducting depositions or witness interviews/consulting any experts including testimony preparation.</td>
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<td>Legal Research</td>
<td>Case related legal research for arguments, motions or briefs / research into alternative sentencing resources, e.g., treatment programs.</td>
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<td>Leave</td>
<td>Vacation time/sick time.</td>
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<td>Management</td>
<td>Time spent by chief defenders managing attorneys or attorneys managing staff.</td>
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<td>Negotiation</td>
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<td>Social Services</td>
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<td>Training</td>
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## APPENDIX D: TIME TRACKING DESCRIPTIVE STATISTICS

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### Appeal - N/A not enough data

### Juvenile

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APPENDIX E: TIME SUFFICIENCY SURVEY
ATTORNEY EXPERTISE BY CASE TYPE

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<tr>
<th>Case Type</th>
<th>Felony</th>
<th>Misdemeanor</th>
<th>Appeal</th>
<th>Juvenile</th>
<th>Probation Violations</th>
<th>Family</th>
<th>Contempt</th>
<th>Other</th>
</tr>
</thead>
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<tr>
<td>No. of Attorneys</td>
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<td>61</td>
<td>23</td>
<td>26</td>
<td>80</td>
<td>28</td>
<td>34</td>
<td>27</td>
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<td>Percentage of Total N</td>
<td>72.16%</td>
<td>62.89%</td>
<td>23.71%</td>
<td>26.80%</td>
<td>82.47%</td>
<td>28.87%</td>
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Total N: 97
## APPENDIX F: CASE TASK AVERAGES

### APPEAL

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### JUVENILE

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This report was prepared by the Idaho Policy Institute at Boise State University.

ipi.boisestate.edu

REPORT AUTHORS

VANESSA CROSSGROVE FRY, Assistant Director
SALLY SARGEANT-HU, Research Associate
LANTZ MCGINNIS-BROWN, Graduate Research Assistant
GREG HILL, Director
AGENDA

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

1:30 P.M.
Room EW42
Thursday, January 17, 2019

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<tr>
<th>SUBJECT</th>
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<tr>
<td>RS26427C1</td>
<td>Developmental disability defendant, required evaluation process</td>
<td>Blake Brumfield, Dept. of Health &amp; Welfare</td>
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<tr>
<td>RS26516</td>
<td>Technical change to &quot;cooling off&quot; period in divorce cases</td>
<td>Jason Slade Spillman, Administrative Office of the Courts/Idaho Supreme Court</td>
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<td>RS26517</td>
<td>Terminology changes relating to alcohol/substance abuse / DUI</td>
<td>Jason Slade Spillman</td>
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<tr>
<td>RS26518</td>
<td>Transcription of oral statements relating to search warrants</td>
<td>Jason Slade Spillman</td>
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<tr>
<td>RS26519</td>
<td>Updates terminology relating to sexual offender registration</td>
<td>Jason Slade Spillman</td>
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<tr>
<td>RS26559</td>
<td>Rule 76, House Committee on Ethics</td>
<td>Rep. Dayley</td>
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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 Dayley
Vice Chairman Chaney
Rep Kerby
Rep Amador
Rep Zito
Rep Zollinger
Rep Ehardt
Rep Scott
Rep Goesling
Rep Hartgen
Rep Marshall
Rep Ricks

Rep Troy
Rep Young
Rep Gannon
Rep McCrostie
Rep Wintrow
Rep Davis

COMMITTEE SECRETARY

Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov
Chairman Dayley called the meeting to order at 1:31 p.m.

Chairman Dayley reviewed committee procedures for RS introduction hearings.

RS 26427C1: Blake Brumfield, Program Manager of the Developmental Disability Crisis Prevention and Court Services program in the Division of Family & Community Services presented the RS. This proposed legislation requires the use of a specially trained three-member developmental disability team comprised of a social worker, psychologist and physician when evaluating developmentally disabled defendants. This can result in better outcomes by arriving at a more accurate opinion on competency to stand trial. The proposed bill was shared with and supported by a broad range of stakeholders.

MOTION: Rep. McCrostie made a motion to introduce RS 26427C1. Motion carried by voice vote.

RS 26516: Jason Spillman, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented RS 26516. It along with 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 changes the "cooling off" period prior to final decree in divorce proceedings from twenty (20) days to twenty-one (21). This is consistent with ongoing efforts to standardize the filing periods across the Courts to seven (7) day increments.

MOTION: Rep. Wintrow made a motion to introduce RS 26516. Motion carried by voice vote.

RS 26517: Jason Spillman, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented RS 26517, which proposes to amend a DUI penalty bill. This respectively replaces the terms "alcohol evaluation facility" and "substance abuse" with the terms "substance use disorders service provider" and "substance abuse disorder". The terms are no longer used and the revisions conform with language used by the Department of Health and Welfare.

MOTION: Rep. Kerby made a motion to introduce RS 26517. Motion carried by voice vote.

RS 26518: Jason Spillman, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented RS 26518. It pertains to section I.C. §19-4404, which requires oral statements for obtainment of search warrants to be recorded and transcribed. However, transcribed statements are rarely used and it results in extensive cost to the counties. This amends the code to ensure preservation of the recordings, but allows for transcription "if requested".
MOTION: Rep. Davis made a motion to introduce RS 26518. Motion carried by voice vote.

RS 26519: Jason Spillman, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented RS 26519, which removes references to the term "sexual" from sex offender registration statutes relating to the crime of forcible penetration by use of a foreign object. The word "sexual" was removed in 2018 from I.C. §18-6608, which governs crimes of forcible penetration by use of a foreign object. This change aligns the language in that statute.

MOTION: Rep. Chaney made a motion to introduce RS 26519. Motion carried by voice vote.

Chairman Dayley turned the gavel over to Vice Chairman Chaney.

RS 26559: Rep. Dayley presented the RS 26559. The Legislature didn't have an ethics rule before 1990, and it was last amended in 2013. With the adoption of the Respectful Workplace policies, the Speaker asked the Chief Clerk of the House to review the Ethics Committee rule to see if anything needed to be done to support the new policies. At the same time, it opened the opportunity to look at the rule to determine if anything else needed to be updated or changed. The proposed resolution repeals and replaces House Rule 76, and more specifically supports the workplace policy, and includes several other key provisions that update the rule. The selection process of the committee has not changed. He provided an example of the type of technical changes that were made in the rule.

MOTION: Rep. Gannon made a motion to introduce RS 26559. Motion carried by voice vote.

Vice Chairman Chaney turned the gavel over to Chairman Dayley.

Chairman Dayley thanked the committee for their diligence in preparing for the meeting and asked for feedback on the electronic committee format.

Comments from the committee included positive support for receiving documents ahead of time in OneDrive to review and prepare for the meeting; a request to see a version of the proposed House Resolution that highlights what was repealed or changed; and desired capability to digitally write on the electronic documents since they are replacing the paper versions. Chairman Dayley stated we would look into the requests and get back with the Committee at a later date.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 1:55 p.m.
### AGENDA
**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**
1:30 P.M.
Room EW42
Monday, January 21, 2019

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<td>Presentation / Committee Informational Briefing:</td>
<td>Paul Headlee and Jared Hoskins, LSO / Budget &amp; Policy Analysis</td>
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<td>Legislative Budget Book: Department of Corrections, Public Defense Commission and Idaho Courts</td>
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<td>HR 1</td>
<td>Rule 76, House Committee on Ethics</td>
<td>Rep. Dayley</td>
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**COMMITTEE MEMBERS**
- Chairman Dayley
- Vice Chairman Chaney
- Rep Kerby
- Rep Amador
- Rep Zito
- Rep Zollinger

- Rep Ehardt
- Rep Scott
- Rep Goesling
- Rep Hartgen
- Rep Marshall
- Rep Ricks

- Rep Troy
- Rep Young
- Rep Gannon
- Rep McCrostie
- Rep Wintrow
- Rep Davis

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

**HOUSE JUDICARY, RULES & ADMINISTRATION COMMITTEE**

<table>
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<td>MEMBERS:</td>
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<td>Representative Kerby</td>
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<td>GUESTS:</td>
<td>Barry Wood, Idaho Supreme Court; Rep. Pricilla Giddings</td>
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**Chairman Dayley** called the meeting to order at 1:32 p.m.

**Chairman Dayley** reviewed options for using the electronic committee folders.

**Paul Headlee**, Division Manager, Legislative Services Office (LSO)/Budget and Policy Analysis, presented to the Committee a state level overview and detailed how the state's budget is built. He said the Budget Analysis office is neutral and lays out the Governor's budget on one side and the agency's budget on the other side. He also reviewed the Governor's recommendations and said the Joint Finance and Appropriations Committee (JFAC) looks at a three-year window against six decision making benchmarks.

In answer to committee questions regarding citizen involvement in the budget process, **Mr. Headlee** stated the LSO Audit Division works with agencies who take public comment to ensure funds are being spent according to statute. He further explained that the stabilization funds were invested by the State Treasurer's office.

**Jared Hoskins**, Principal Analyst, LSO / Budget and Policy Analysis, stated there are seven agencies assigned to Law and Justice, but due to time constraints he only presented a budget overview of the Courts; Department of Corrections and Public Defense Commission. In answering Committee questions, Mr. Hoskins reviewed the timeline and process for developing and refining the budget. He described how and when requests come in from the agencies and when the Governor provides his budget recommendations. He said not all line items requested from the agencies are recommended by the Governor.

**Chairman Dayley** reiterated to the Committee that the Budget Office is available any time to answer questions. The Speaker has asked the Committee's to review germane agency budgets so they are more informed when they are presented on the Floor of the House. In answer to a question from the Committee, Chairman Dayley said a budget bill can be amended just like any other bill, but the process is a little different.

**Chairman Dayley** turned the gavel over to **Vice Chairman Chaney**.
Chairman Dayley presented HR 1 and reviewed the history of how Rule 76 came to be. Prior to 1990 when the rule was implemented, the only source for dealing with ethics matters in the Senate and House was the Idaho Constitution under Article III, section 11. This is an open ended process that says a member could be expelled for good cause upon two-thirds majority vote. He stated Rule 76 was last updated in 2013. He explained the adoption of the Legislature's Respectful Workplace policy prompted the need for a process to refer and manage complaints that came through the Respectful Workplace process to the Ethics Committee. As a result, the Chief Clerk of the House was charged with the responsibility to see if anything needed to be done to support the new policy and identify anything else that needed to be updated or changed. Chairman Dayley said phase one and two of the Ethics Committee selection process was not changed, and the Ethics Committee for this Legislative session was established by the twelfth day, as required.

Concerns were expressed by committee members regarding the recordkeeping and storage of complaints brought before the Ethics Committee and if those complaints could be used for political purposes. Chairman Dayley explained that the Chief Clerk of the House contacted several other states to see how their legislatures addressed ethics and Respectful Workplace violations. Carrie Maulin, Chief Clerk of the House, answered questions saying the Respectful Workplace policy provides for recordkeeping which is retained in a personnel file. If a Respectful Workplace claim were moved to the Ethics Committee, the Ethics Committee could establish a schedule for records retention.

In answer to committee questions, Chairman Dayley stated the Respectful Workplace policy covers more than legislators, but currently there is not a clearly defined way in Rule 76 to accept and address Respectful Workplace complaints against legislators. This is why the ability to forward complaints to the Ethics Committee needed to be established. He said the Ethics Committee can establish rules of how the committee operates, independent of the Respectful Workplace Policy Committee.

In answer to committee questions regarding funds available for managing Ethics Committee claims, Chairman Dayley said it is within the legislative appropriations for the Speaker to request those funds and to have those funds available for Committee purposes.

More concerns by the committee were raised regarding the Ethics Committee being able to initiate a complaint and also being able to judge the complaint and provide a punishment, if necessary. Concerns were also raised regarding the complainant being able to know who lodged a complaint against them, and what notification is given to the Speaker about a complaint sent to the Ethics Committee. Ms. Maulin said the language in the rule was chosen to reflect civil procedures, not criminal procedures.

Rep. Zollinger made a motion to HOLD HR 1 for time certain, February 5, 2019.

Rep. Giddings reviewed several of her concerns with the legislation, including the vagueness of language for a complex issue, and asked if this rule was compared and standardized with the Senate’s rule. She also addressed how the rule does not reference the procedure if the Ethics Committee violates the process and how this rule seems to consolidate power and gives the Ethics Committee the ability to be the enforcement arm of the legislature. She also stated concerns with the ability of the Committee to make a public statement, but the accused being retained under strict confidentiality. She spoke in support of the motion to hold the resolution for further review.
In closing, Chairman Dayley said the Committee brought forward good points. The current Ethics Committee rule is in place, and if a Respectful Workplace complaint came through, it would go through the Speaker, who would refer it to the Ethics Committee. He said this is not a perfect process and they may not have the ability to create a perfect rule, but it is a place to start. He did speak in support of holding the resolution for further review.

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

Vice Chairman Chaney turned the gavel over to Chairman Dayley.

Chairman Dayley requested those who would like to review the legislation and provide further comment to let him know.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:55 p.m.

__________________________________________  ________________________________________
Representative Dayley                        Wendy Carver-Herbert
Chair                                          Secretary
**AGENDA**

**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

1:30 P.M.
Room EW42
Wednesday, January 23, 2019

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<td>Courts 101 Presentation</td>
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<td>Developmental disability defendant, required evaluation process</td>
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<td>Technical change to &quot;cooling off&quot; period in divorce cases</td>
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<td>H 33</td>
<td>Transcription of oral statements relating to search warrants</td>
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<td>H 34</td>
<td>Terminology updates / sexual offender registration</td>
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**COMMITTEE MEMBERS**

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<td>Rep Ricks</td>
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<td>Rep Davis</td>
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**COMMITTEE SECRETARY**

Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, January 23, 2019
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Thea)
ABSENT/EXCUSED: Representative Gannon
GUESTS: Sara Thomas, Barry Wood, Jason Spillman, Idaho Supreme Court; Blake Brumfield, Miren Unsworth, Cam Gilliland, Department of Health & Welfare; Kathleen Elliott, Nichole Devaney, Public Defense Commission; Tony Geddes, ALPD; Jared Larsen, Governor's Office

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

MOTION: Rep. Marshall made a motion to approve the minutes of the January 17, 2019 meeting. Motion carried by voice vote.

Chairman Dayley thanked the Committee for their questions and concerns on HR 1 and he will work informally with members to address changes.

RS 26453: Kathleen Elliott, Executive Director, Public Defense Commission, presented the RS which changes the terms "grant" to "financial assistance" and "application" to "compliance proposal". It will have no financial impact and will not alter the budget or procedures for distributing funds for indigent defense. It was requested by the counties as a way to assure funding so they can provide constitutionally required indigent defense services.

MOTION: Rep. Chaney made a motion to introduce RS 26453. Motion carried by voice vote.

RS 26490C1: Chairman Dayley said RS 26490C1 was withdrawn from the Committee by the sponsor.

Sara Thomas, Administrative Director of the Courts. Provided an overview of the Idaho Court system by outlining the responsibilities and differences of the various court systems.

H 30: Blake Brumfield, Program Manager of Developmental Disability Crisis Prevention and Court services, Department of Health and Welfare presented H 30. This bill establishes a procedure for evaluating defendants suspected of having developmental disabilities through the appropriate and safe setting needed to determine whether they can stand trial. It requires evaluation by a multi-disciplinary team of experts who are appointed by the Department of Health and Welfare. Mr. Brumfield provided an example of a case where a defendant was not properly evaluated and was placed in a situation where he was a serious risk to others. The bill intends to minimize this type of situation from happening. The bill was reviewed by key stakeholders with no major objections.

In response to a question from the Committee, Mr. Brumfield stated the Disability Rights of Idaho Group had some initial concern with the definition of developmental disability in the bill, but once they found out it was already defined in existing law, they withdrew their opposition.
MOTION: Rep. Ricks made a motion to send H 30 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Ricks will sponsor the bill on the floor.

H 31: Jason Spillman, Legal Counsel, Administrative Office of the Courts, presented H 31. This bill, along with the following three bills, are generally defined as defects bills, and they propose to fix those defects in various ways. This bill is the Court's effort to resolve the confusing time periods used throughout the court system by setting time frames in seven (7) day increments. This changes the "cooling off" period prior to final decree in divorce cases from twenty (20) days, to twenty-one (21) days.

MOTION: Rep. McCrostie made a motion to send H 31 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. McCrostie will sponsor the bill on the floor.

H 32: Jason Spillman, Legal Counsel, Administrative Office of the Courts, presented H 32 which updates terminology used under the DUI statute. This respectively replaces the terms "alcohol evaluation facility" and "substance abuse" with the terms "substance use disorders service provider" and "substance abuse disorder". The terms are no longer used and the revisions conform with language used by the Department of Health and Welfare.

MOTION: Rep. McCrostie made a motion to send H 32 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Davis will sponsor the bill on the floor.

H 33: Jason Spillman, Legal Counsel, Administrative Office of the Courts, presented H 33 relating to oral statements for obtainment of search warrants. Producing a written affidavit isn't always practical due to time frames, such as emergencies or late night obtainments. Therefore, oral affidavits are used, but they still require that the oral statement be transcribed. The written statements are seldom used and are costly. This amends the law to provide for transcription, only if requested.

MOTION: Rep. Hartgen made a motion to send H 33 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Hartgen will sponsor the bill on the floor.

H 34: Jason Spillman, Legal Counsel, Administrative Office of the Courts, presented H 34. Last year the statute dealing with forcible penetration by use of a foreign object was changed by removing the word "sexual" from its context. This bill removes references to the term "sexual" from the sex offender registration statutes as they relate to the crime of forcible penetration by use of a foreign object.

MOTION: Rep. Scott made a motion to send H 34 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Scott will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 2:20 p.m.

______________________________________________
Representative Dayley
Chair

______________________________________________
Wendy Carver-Herbert
Secretary
## AMENDED AGENDA #1

### HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**1:30 P.M.**  
**Room EW42**  
**Tuesday, January 29, 2019**

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<thead>
<tr>
<th>SUBJECT</th>
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<tbody>
<tr>
<td></td>
<td>Administrative Office of the Courts</td>
<td>Senior Judge Barry Wood, Administrative Office of the Courts</td>
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<td></td>
<td>Pre-trial Justice</td>
<td>Judge James Cawthon, 4th Judicial District</td>
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<td></td>
<td>Civil Protection Orders/Related Orders</td>
<td>Judge Jayme Sullivan, 3rd Judicial District</td>
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<td></td>
<td>Impact of Amended Penalty Provisions</td>
<td>Judge Victoria Olds, 2nd Judicial District</td>
</tr>
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<td></td>
<td>Guardianship and Monitoring Program and Achievements</td>
<td>Judge David Kress, 6th Judicial District</td>
</tr>
<tr>
<td><strong>RS26569</strong></td>
<td>Firearms / Sexual Battery / Minors</td>
<td>Representative Wintrow</td>
</tr>
</tbody>
</table>

*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 Dayley**  
- **Vice Chairman Chaney**  
- **Rep Kerby**  
- **Rep Amador**  
- **Rep Zito**  
- **Rep Zollinger**

### COMMITTEE SECRETARY

- **Wendy Carver-Herbert**  
- **Room: EW56**  
- **Phone: 332-1127**  
- **email: hjud@house.idaho.gov**
DATE: Tuesday, January 29, 2019
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Winrow, Davis
ABSENT/EXCUSED: Representative McCrostie
GUESTS: Vicki Olds, Jim Cawthon, David Kress, Jayme Sullivan, Barry Wood, Idaho Courts; Brianna McCoy, Kathleen J. Elliott, PDC; Jared Larsen, Governor's Office; Holly Koole Rebholtz, IPAA

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

MOTION: Rep. Marshall made a motion to approve the minutes of the January 23, 2019 meeting. Motion carried by voice vote.

H 43: Kathleen Elliott, Executive Director, State Public Defense Commission presented H 43, which changes the terms "grant" to "financial assistance" and "application" to "compliance proposal." There is no fiscal impact and it does not alter the procedures for distributing funds. It only clarifies the terminology for ensuring funds for the provision of indigent defense services are available to the counties. In answer to a question from the Committee, Ms. Elliott clarified that compliance with standards and procedures has always been required and this bill only creates a fair name for the funds.

MOTION: Rep. Chaney made a motion to send H 43 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Gannon will sponsor the bill on the floor.

Barry Wood, Senior District Judge, Deputy Administrator of the Courts, Idaho Supreme Court introduced the panel of judges. He clarified the difference between Magistrate and District judges. Magistrate Judges hear a wide variety of topics.

James Cawthon, Magistrate Judge, Fourth Judicial District presented information about pre-trial justice. Pre-trial justice is the period of time in a criminal case from the time of arrest, to charges being filed, to the point of disposition. It is a judge’s responsibility to balance the need for community safety, while also ensuring the constitutional rights of the accused. Forty counties now provide representation at the initial arraignment, which improves the quality of justice. In answer to questions from the Committee, Judge Cawthon said there is room for statutory modification to improve pre-trial processes for defendants with little financial means, but it requires a balance between state and local jurisdictions. He also explained that the Idaho Criminal Justice Commission and Idaho Supreme Court have been looking at ways to apply fair financial restitution and cost reimbursement, but it is challenging.
Jayme Sullivan, Magistrate Judge, Third Judicial District presented on civil protection orders. She stated the courts take the protection of individuals and families very seriously. She explained the difference between the four statutes that address protection orders. They include action for protection, stalking, malicious harassment and telephone harassment. I.C. § 18-7907, the action for protection, no longer requires a person to have a domestic relationship in order to file a protection order. As a result, the numbers have increased from 4,500 filings in 2015, to just under 8,000 filings in 2018. Judge Sullivan said the expansion of the telephone harassment provision is resulting in a very wide range of complaints that may be going beyond the original intent of the law. Feuding neighbors or teenagers voicing spats through social media are two examples. In answer to questions from the Committee, Judge Sullivan explained the requirement for a hearing to meet the provision of the telephone harassment statute is a significant weight on the courts. She also explained that civil protection orders are not a criminal charge. It would be reflected in the Court’s Odyssey system if a case is dismissed, but a person could petition to have the record sealed.

Victoria Olds, Magistrate Judge, Second Judicial District presented information on the impact of amended penalty provisions such as driving without privileges, invalid driver’s license, tax intercept for delinquent debts owed to the courts and cash bail forfeitures. There has been an impact on collections. Judge Olds suggested these are examples of things the legislature could look at to encourage people to pay their infractions.

David Kress, Magistrate Judge, Sixth Judicial District presented an update on Idaho’s guardianship and monitoring program. He explained the funding to support these programs is making a difference. For example, monitoring by the courts of guardianship showed a 23 percent improvement in 2016. The monitors are finding problems that the courts are able to address more effectively. The monitors are finding good things as well. The overall goal is to move people to a family decision making model. The biggest need is the lack of guardians across the state.

RS 26569: Rep. Wintrow introduced RS 26569, which adds sexual battery of a minor child sixteen or seventeen years of age to I.C. § 18-310. This statute lists all felony crimes that disqualify a convicted felon from owning a firearm. After extensive research and consultation with the Attorney General, Rep. Wintrow stated that leaving this segment of the population out of the statute was an inadvertent mistake.

MOTION: Rep. Chaney made a motion to introduce RS 26569. Motion carried by voice vote.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:06 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary
**AMENDED AGENDA #1**

**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

1:30 P.M.
Room EW42
Thursday, January 31, 2019

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<tr>
<th>SUBJECT</th>
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<tr>
<td>RS26670</td>
<td>DUI Diversion Program</td>
<td>Rep. Ryan Kerby</td>
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*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 Dayley
- Vice Chairman Chaney
- Rep Kerby
- Rep Amador
- Rep Zito
- Rep Zollinger
- Rep Ehardt
- Rep Scott
- Rep Goesling
- Rep Hartgen
- Rep Marshall
- Rep Ricks

**COMMITTEE SECRETARY**

- Wendy Carver-Herbert
- Room: EW56
- Phone: 332-1127
- email: hjud@house.idaho.gov
Ministers
House Judiciary, Rules & Administration Committee

Date: Thursday, January 31, 2019
Time: 1:30 P.M.
Place: Room EW42
Members: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis
Absent/Excused: Representatives Amador, Troy, Zollinger
Guests: Jared Larsen, Governor's Office

Chairman Dayley called the meeting to order at 1:30 p.m.
Chairman Dayley reviewed the purpose of RS print hearings.

Motion: Rep. Marshall made a motion to approve the minutes of the January 21, 2019 meeting. Motion carried by voice vote.

RS 26556: Rep. Smith presented RS 26556, which adds new sections to Idaho Code Chapter 3, Title 5 and Chapter 70, Title 18. The purpose of the new sections provide legal immunity from civil liability and prosecution for first responders who provide certain aid to distressed dogs or cats in vehicles. The proposed bill defines who first responders are. Nineteen states and the District of Columbia have similar laws, but the definitions of who can render aid varies.

Motion: Rep. Chaney made a motion to introduce RS 26556.

In response to questions and comments from the Committee, Rep. Smith said she would be open to including other types of animals and situations where aid could be provided but for now the proposed legislation only includes dogs and cats in vehicles. Rep. Wintrow stated she supported the motion to introduce the RS and if the bill is passed it could be expanded in the future after further research and consultation with stakeholders. She said she consulted with the Attorney General's office and was told there are not any laws on the books that would provide immunity to first responders if they rendered aid to dogs and cats in cars. Rep. Scott recommend not expanding the RS beyond its current scope because it could tread into territory of entry without warrant.

Vote on Motion: Chairman Dayley called for a vote on the motion. Motion carried by voice vote.

RS 26670: Rep. Kerby presented RS 26670, which creates an optional diversion program that prosecuting attorneys may use in cases involving first time DUI offenders. He stated the goal is to make highways safer, get people out of the habit of driving under the influence, and reduce the amount of resources dedicated to this issue. He explained the first offense is a misdemeanor. The proposed bill allows a path to having that removed through several accountability measures that include installation of an ignition interlock device for 12 months; four days of labor detail or other approved community service; and 24 hours of education such as alcohol counseling. The case is dismissed if all requirements are completed successfully. Rep. Kerby clarified the RS provides a three strikes approach where the first offense is counted if it is followed by additional DUI offenses. The third offense will be charged as a felony as it is under the current law.
MOTION: Rep. Gannon made a motion to introduce RS 26670. Motion carried by voice vote.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 1:51 p.m.

_________________________ __________________________
Representative Dayley   Wendy Carver-Herbert
Chair                   Secretary
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<tr>
<td>RS26685</td>
<td>Drug Trafficking / Mandatory Minimum Sentencing</td>
<td>Representative Rubel &amp; Representative Zollinger</td>
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<td>Administrative Office of the Courts Introduction</td>
<td>Barry Wood, Senior Judge, Administrative Office of the Courts</td>
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<td>Need for Additional Judges in the Fourth Judicial District</td>
<td>Judge Melissa Moody, Fourth Judicial District</td>
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<td>Court Reporters</td>
<td>Judge Eric Wildman, Fifth Judicial District</td>
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<td>Problem-solving Courts</td>
<td>Judge Jeff Brudie, Second Judicial District</td>
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<td>Odyssey: Wave 3 Implementation &amp; Future of Buildout</td>
<td>Judge Mitchell Brown, Sixth Judicial District</td>
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<tr>
<td>RS26665</td>
<td>Marriage age</td>
<td>Representative Wintrow</td>
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*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.*
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 05, 2019
TIME: 1:30 P.M.
PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

ABSENT/ EXCUSED: None

GUESTS: Doug Taylor, ISC District 3; Paul Riggins, Idaho Association Criminal Defense Lawyers; Tony Geddes, Ada P17; Jesse Taylor, ABC; Nicole Fitzgerald, Idaho Council on DV; Kellie Lavrgne, Shoshone County Crisis & Resource Center; Chauntelle Lieske, Safe Passage; Rebecca James, Boundary Co. Victim Services; Debra Jacobs; Jennifer Zielinski; Emerald Douthit; Jaime Hansen, Family Advocates

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


Chairman Dayley explained the role of legislators is to be cognizant of policy impacts on germane agency budgets so he will provide a review before the Joint Finance-Appropriation Committee on February 13, 2019. He requested that Committee members let him know if there are any budgetary matters to be addressed before JFAC. In answer to questions from the Committee, Chairman Dayley clarified the RS introduction hearings are to answer questions regarding the SOP, Fiscal Notes or technical corrections that my need to be made in the RS, but substantive matters are discussed when it comes before the Committee as a bill.

RS 26685: Rep. Rubel and Rep. Zollinger presented RS 26685. A similar bill was introduced and passed by the House last year. It revises mandatory sentences for certain drug trafficking substances, removes the word "mandatory" from this section of code, and gives judges the latitude to impose sentences, including mandatory sentences under certain circumstances. In answer to questions from the Committee, Rep. Rubel clarified there are still cases where minimum sentences must be used. Removing the word "mandatory" creates an escape hatch for judges to use discretion.

Rep. Marshall stated he is concerned about the direction of where criminal code is going, particularly around the use of certain language of attainder. Regarding this RS, he stated the use of the words "is guilty" is concerning since it is not the Legislature’s role to pronounce guilt. Rep. Rubel responded that this may be a far broader issue with the entire criminal code, so it may not make sense to address it in just this proposed legislation. She said this RS has been vetted extensively and would like to move forward with the RS as is. Rep. Zollinger concurred and suggested a sub-committee or working group could be formed to address a clean up of the entire criminal code to address Rep. Marshall’s concerns.

MOTION: Rep. McCrostie made a motion to introduce RS 26685. Motion carried by voice vote.

Barry Wood, Senior Judge, Administrative Office of the Courts introduced the panel of District Judges and Administrative District Judges.
Melissa Moody, Administrative District Judge, Fourth Judicial District presented a case for funding two Magistrate Judges and one District Judge in Ada County. She stated defendants have the right to be listened to, respected and have the court process explained, but this isn't possible with heavy caseloads. For example, there are 900 cases and trials backed up in the Family Law division and it can take 10 months for contested cases to be heard. The last judge requested for Ada County was in 2012.

Eric Wildman, Administrative District Judge, Fifth Judicial District, spoke about the importance of official court reporters and the difficulty in filling these positions. Verbatim transcripts of court proceedings are required and failure to keep an accurate record is a risk to due process. He stated positions are difficult to fill. They are filling the gaps with recorders from other districts or freelance contractors at a reduced rate, but there is a lack of funding to pay for travel per diem. Thirteen court reporters will retire in the next five years, and an additional 15 will retire in the following five years. He explained the difficulty with using only audio recordings. The failure of a recording can result in retrial. Higher compensation and travel per diems are needed to attract the highly skilled court reporters. The courts are also creating a work force development program.

Jeff Brudie, District Judge, Second Judicial District, provided an overview of the problem-solving courts which can be effective in identifying people who can be treated and rehabilitated to avoid prison sentences. It's a team approach that involves a district manager, court coordinators, treatment providers, prosecuting and defense attorneys and probation officers. The problem-solving courts are volunteer positions. They get started based on a judge's interest. Problem-solving courts often operate before or after normal business hours, and is in addition to regular caseloads. He stated the recidivism rates for those going through the drug problem-solving courts is lower when compared to the rider program or probation.

Mitchell Brown, Administrative District Judge, Sixth Judicial District, provided an overview and update on the iCourt project, better known as Odyssey. He stated it is quick and easy to access to iCourt records across counties, for any case at any time. Attorneys can also file electronically to meet timelines. The final process of the buildout is to implement an upgrade in late 2019 and early 2020 to enhance performance and improve usability. There are plans to implement modules that will make jury selection more manageable; streamline the access to data; improve case load management; and upgrade the public portal. In answer to questions from the Committee, Judge Brown stated Odyssey needed to be implemented because the previous system was obsolete. The vendor contract ensures all upgrades to the system will be available free of charge. The vendor works with 13 other states covering 40% of the courts in the U.S. and is very reputable.

In answer to questions from the Committee, Judge Brudie stated there are six Veteran problem-solving courts in the state and expansion would need more funding and judges who are interested in taking them on. Judge Wood further explained he did not immediately know the amount of funding that would be needed to expand the number of Veteran courts because it involves a broad range of stakeholders including support from the counties. Judge Brudie explained there is backlog in the mental health courts. Defendants qualify for mental health problem-solving courts based on five specific diagnoses. If they don't qualify for mental health court, they end up in other courts and often end up in prison.
**RS 26665:** Rep. Wintrow presented RS 26665, which deals with raising the marriage age to prevent forced or coerced marriage. The RS came about as a result of her work on the human trafficking subcommittee under the Criminal Justice Commission. This proposed legislation aligns with Idaho’s statutory rape laws and closes a loophole. It permits minors to marry only if they consent to do so, have permission from parents or legal guardian, and a review by the court.

**MOTION:** Rep. Davis made a motion to introduce RS 26665. Motion carried by voice vote.

**HR 1:** Chairman Dayley stated HR 1 was held in Committee for a time certain of February 5, 2019 to allow time for comment and input from members who voiced concerns during the public hearing on January 21, 2019. He will bring back a new RS before the committee on Thursday, February 7, 2019.

**MOTION:** Rep. Chaney made a motion to postpone consideration of HR 1 for a time certain of February 7, 2019. Motion carried by voice vote.

**ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 3:05 p.m.
### AGENDA

#### HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

1:30 P.M.  
Room EW42  
**Thursday, February 07, 2019**

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<tr>
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<tbody>
<tr>
<td>RS26623</td>
<td>Wage Claims / Time Period</td>
<td>Representative Erpelding</td>
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<tr>
<td>RS26490C2</td>
<td>Children / Genital Mutilation</td>
<td>Representative Troy &amp; Representative Giddings</td>
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<tr>
<td>RS26508</td>
<td>Peace Officers / Arrest Without Warrant / Schools</td>
<td>Representative Goesling</td>
</tr>
<tr>
<td>RS26649C1</td>
<td>Sexual Assault Evidence Kits</td>
<td>Representative Wintrow</td>
</tr>
<tr>
<td>RS26709</td>
<td>Crimes, Murder, Rape / Fees</td>
<td>Representative Troy</td>
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<tr>
<td>RS26766</td>
<td>Pretrial Risk Assessment Algorithms</td>
<td>Representative Chaney</td>
</tr>
<tr>
<td>RS26773</td>
<td>Rule 76 / Ethics Rule</td>
<td>Representative Dayley</td>
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<tr>
<td>HR 1</td>
<td>Rule 76 / Ethics Rule</td>
<td>Representative Dayley</td>
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#### COMMITTEE MEMBERS

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<thead>
<tr>
<th>Chairman Dayley</th>
<th>Rep Ehardt</th>
<th>Rep Troy</th>
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<tr>
<td>Vice Chairman Chaney</td>
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<td>Rep Young</td>
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<td>Rep Amador</td>
<td>Rep Hartgen</td>
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<td>Rep Zito</td>
<td>Rep Marshall</td>
<td>Rep Wintrow</td>
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<td>Rep Zollinger</td>
<td>Rep Ricks</td>
<td>Rep Davis</td>
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#### COMMITTEE SECRETARY

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<tr>
<th>Wendy Carver-Herbert</th>
<th>Room: EW56</th>
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<tbody>
<tr>
<td>Phone: 332-1127</td>
<td>email: <a href="mailto:hjud@house.idaho.gov">hjud@house.idaho.gov</a></td>
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</table>
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, February 07, 2019
TIME: 1:30 P.M.
PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

ABSENT/EXCUSED: None

GUESTS: Jason Hudson, AFL-CIO; Jesse Taylor, ABC; Quinn Perry, Idaho School Boards Association; Matt Compton, IEA; Gloria Totoricaguena, Idaho Policy Counseling; Jared Larsen, Governor's Office; Adam Matthews; Cody Ricks, Ricks' Disability; Rep. Pricilla Giddings

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

RS 26623: Rep. Erpelding presented RS 26623, proposed legislation extending the time in which a claim for unpaid wages could by made to the Department of Labor (DOL) or in District Court from six months to 12 months. According to the DOL, there are two times when people typically notice a wage shortage: the Monday after pay day and after filing taxes. The six month statute of limitations does not allow enough time for the problem to be identified.

MOTION: Rep. Wintrow made a motion to introduce RS 26623. Motion carried by voice vote.

RS 26490C2: Reps. Troy and Giddings presented RS 26490C2. The proposed legislation explains the state's responsibility to outlaw female genital mutilation (FGM). Twenty-eight states have anti-FGM laws, but Idaho is not one of them. There are about 560 girls at risk in the state of Idaho.

Rep. Marshall raised the issue of language use in defining law, stating the law should define the crime and punishment, but not presume guilt. The words, "shall be guilty" in line 16 of the RS are concerning. He is open to pursuing a bigger initiative to address this issue throughout Idaho Code and will vote to introduce the RS.

MOTION: Rep. Ehardt made a motion to introduce RS 26490C2. Motion carried by voice vote.

RS 26508: Rep. Goesling presented RS 26508. The proposed legislation allows law enforcement to take a suspect into custody to evaluate their ability to carry out their threat of violence to a school, even if the suspect is not on school property. In answer to questions from the Committee, Rep. Goesling explained that the law passed last year allowed law enforcement to respond whether the threat is made on or off school property, but they can only hold the suspect if the officer witnesses the threat. Under current law, the suspect can be cited for a misdemeanor for making a threat, but law enforcement is unable hold the suspect until further evaluation of risk can be assessed.

MOTION: Rep. Gannon made a motion to introduce RS 26508.
In answer to questions from the committee, Rep. Goesling stated the Idaho Association of School Administrators brought the request for the proposed bill forward, and it is supported by the Idaho Sheriff's Association, Fraternal Order of Police, Idaho Office of School Safety and Security, Idaho School Board Association, Idaho Prosecutors Association, Idaho Education Association, Moscow Chief of Police and Sheriff of Latah County. He was unable to answer the question about where in code domestic violence is defined, or why the change in wording in line 23 occurred, which changed the wording from "domestic assault or battery" to "domestic violence," and will provide the answer at the bill hearing.

**SUBSTITUTE MOTION:** Rep. Zollinger made a substitute motion to return RS 26508 to the sponsor until there is an answer to the question about why the words were changed in line 23 from "domestic assault or battery" to "domestic violence."

Speaking to the original motion, Rep. McCrostie said he supports the original motion because the reference on line 23 aligns with the title of Idaho Code § 18-918. This title change is not the substantive part of the bill, the substantive section of RS 26508 is on lines 25 to 27.

**ROLL CALL VOTE ON SUBSTITUTE MOTION:** Vice Chairman Chaney called for a roll call vote on the substitute motion to return RS 26508 to the sponsor. Motion failed by a vote of 4 AYE and 14 NAY. Voting in favor of the substitute motion: Reps. Zito, Zollinger, Ehardt and Scott. Voting in opposition to the motion: Reps. Chaney, Kerby, Amador, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Winrow, Davis and Dayley.

**VOTE ON ORIGINAL MOTION:** Vice Chairman Chaney called for a vote on the original motion to introduce RS 26508. Motion carried by voice vote. Reps. Zito and Zollinger requested to be recorded as voting Nay.

Vice Chairman Chaney turned the gavel over to Chairman Dayley.

**RS 26649C1:** Rep. Winrow presented RS 26649C1. The proposed legislation regarding the processing of sexual assault evidence kits. Current law says all kits are processed unless the victim says they don't want it processed, or there's no evidence to charge. The proposed legislation requires all sexual assault evidence kits to be tested unless there is no evidence that a crime occurred, even if the victim chooses not to prosecute. Processing all kits allows scientific data to go into a tracking mechanism that is available to law enforcement for tracking possible connections to other crimes. The victim always retains the right to choose whether to prosecute. In answer to a question from the Committee, Rep. Winrow stated all information is removed from the database if it is determined that no crime was committed.

**MOTION:** Rep. McCrostie made a motion to introduce RS 26649C1. Motion carried by voice vote.

**RS 26709:** Rep. Troy presented RS 26709. In 1992 Idaho code enacted a fine of up to $5,000 for certain crimes of violence, separate from other criminal penalties. This legislation requests the list of crimes be expanded to include attempted murder and attempted rape. Often these fines are used for counseling for victims.

**MOTION:** Rep. Hartgen made a motion to introduce RS 26709. Motion carried by voice vote.
RS 26766: Rep. Chaney presented RS 26766, describing how predictive algorithmic risk assessment tools for pretrial release and sentencing decisions can be used. He explained these tools use an algorithm to determine a person’s likelihood of recidivism in the future and can be held in jail or face penalties based on the predictive information provided by these tools. Only the vendors know what data is used or how the algorithms are created. In some states criminal defendants have been unable to get information about what data is used to determine their sentences because the companies that own these tools have argued that information is a trade secret. According to the data, minorities are being electronically discriminated against. The accuracy of these systems is 56% to 65%, but the rate of error is biased against minorities. The proposed legislation addresses the pretrial use of these tools only and requires non-biased, fully transparent systems to be used.

In answer to questions from the Committee, Rep. Chaney stated the technology is being used in Ada County, but not at the State level, so no Idaho specific demographic data is available. The proposed legislation lists requirements to meet the approved standards for bodies using these tools. With regard to free from bias for protected versus all classes, Rep. Chaney stated the very nature of the tools use some biases, whether the defendant lives in the community or has previous convictions could be taken into consideration.

MOTION: Rep. Gannon made a motion to introduce RS 26766. Motion carried by voice vote.

Chairman Dayley turned the gavel over to Vice Chairman Chaney.

RS 26773: Chairman Dayley presented RS 26773, stating the legislation was drafted after a review of the minutes, follow-up with the individuals who voiced concerns, visits with former ethics committee members, and consultation with the Attorney General’s office and Chief Clerk of the House. He also addressed questions from the Committee regarding the Respectful Workplace Policy.

MOTION: Rep. Amador made a motion to introduce RS 26773.

Speaking to the motion, Rep. Amador stated that he, Reps. Troy, and Dayley worked on the Respectful Workplace Policy and encouraged members to talk with them about its purpose.

In answer to questions from the Committee, Chairman Dayley clarified the Respectful Workplace Policy Committee was put in place by the Legislative Council. Members of the Council are nominated and elected by the Senate and House membership. He explained the difference between a democracy and representative government and stated the Legislative Council operates under the same representative government principles as the rest of government. The Ethics Committee is designed to investigate matters brought forward in a way that preserves the privacy of all parties, but if the matter requires action, a recommendation would be made to the full House and would require a two-thirds vote.

Concerns about the Respectful Workplace Policy by some Committee members included: there is no process for the body of the House to provide input into the creation of the policy; it creates another level of bureaucracy; the policy language is very general and doesn’t clearly state what constitutes a violation; the role of a Committee is not to make policy; and issues can be leaked to the press.

Speaking to the motion, Rep. Young stated she would not vote in favor of introducing the proposed legislation because it doesn’t provide a clear definition for what constitutes an ethics violation, and it could be used as a political weapon.
ROLL CALL VOTE: Vice Chairman Chaney requested a roll call vote on the motion to introduce RS 26773. Motion carried by a vote of 9 AYE, 3 Nay 6 Absent/Excused. Voting in favor of the motion: Reps. Chaney, Amador, Zollinger, Hartgen, Ricks, Troy, Gannon, Wintrow and Dayley. Voting in opposition to the motion: Reps. Zito, Scott, and Young. Reps. Kerby, Ehardt, Goesling, Marshall, McCrostie and Davis were Absent/Excused.

HR 1: HR 1 Repeals and replaces Rule 76, the House Ethics Committee, which was held for time certain, February 7, 2019.

MOTION: Rep. Amador made a motion to HOLD HR 1 in Committee. Motion carried by voice vote.

Vice Chairman Chaney handed the gavel over to Chairman Dayley.

Chairman Dayley reminded the Committee to make sure Fiscal Notes are accurate and detailed.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:09 p.m.
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.
RS 26706: Jeremy Pisca, on behalf of the Idaho Humane Society, presented RS 26706. This proposed legislation proposes to remedy the penalty portion of the dangerous dog law that was overhauled in 2016. Misdemeanor penalties were inadvertently dropped from the code. Cases are not being prosecuted as a result.

MOTION: Rep. Hartgen made a motion to introduce RS 26706. Motion carried by voice vote.

RS 26728: Paul Smith, Executive Director of the Idaho Apartment Association presented RS 26728. The proposed legislation increases tenant protection for personal property left behind; gives tenants alternatives to litigation in certain circumstances; and enables tenants to serve landlords a notice, and if the violation isn’t cured within three days, tenants can deduct the cost of remedying the problem from their rent, or get out of their lease. Some domestic violence protections are added, which allow tenants to get out of their lease or get their locks changed. The proposed legislation also reduces tenant costs for being evicted. Mr. Smith stated the proposed legislation also provides clearer rules for landlords regarding abandoned property, three day notices and deposit refunds. It also requires landlords to hold security deposit money in trust. Additionally, the eviction process is expedited into one lawsuit instead of two, which will reduce costs and length of time for evictions.

In answer to questions from the Committee, Mr. Smith explained that under current law, an order of restitution is needed first in an eviction, and a second lawsuit is needed to seek monetary damages. This proposed legislation will combine these two legal processes into one. Under the proposed legislation, landlords can store and dispose of abandoned property rather than law enforcement.

MOTION: Rep. Scott made a motion to introduce RS 26728. Motion carried by voice vote.

RS 26749: Rep. Ehardt presented RS 26749. The proposed legislation was written to protect first amendment rights of authors and journalists by preventing them from being pulled into foreign courts for libel. Journalists have been pulled into courts because litigants are shopping states without laws in place to prevent such actions. The proposed legislation is commonly referred to as Rachel's Law and has passed in 11 states with bipartisan support.

MOTION: Rep. Zollinger made a motion to introduce RS 26749. Motion carried by voice vote.
RS 26850: Rep. Gannon presented RS 26850. The proposed legislation allows persons convicted of possessing less than a half (1/2) ounce of marijuana to reduce their misdemeanor charge to an infraction if they voluntarily complete four hours of court approved drug/alcohol eduction, and pay a fine of $250, or complete eight hours of court approved community service.

In answer to questions from the Committee, Rep. Troy clarified industrial hemp is removed from the schedule of illegal substances. Rep. Zollinger explained several places in code need cleaned up if the industrial hemp bill passes, also applying to RS 26850 if it were to become law.

MOTION: Rep. Wintrow made a motion to introduce RS 26850. Motion carried by voice vote.

HR 2: Chairman Dayley explained HR 2 has outstanding questions concerning Rule 76 which deserve additional vetting. He requested a motion to hold the bill in Committee.

MOTION: Rep. Chaney made a motion to HOLD HR 2 in Committee. Motion carried by voice vote.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 2:04 p.m.
AMENDED AGENDA #1
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Wednesday, February 13, 2019

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<tr>
<td></td>
<td>State Appellate Public Defender’s Office Update</td>
<td>Eric Fredericksen, State Appellate Public Defender’s Office</td>
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<td></td>
<td>Annual Report of Sexual Assault Evidence Kit Tracking</td>
<td>Matthew Gamette, Idaho State Police Forensic Services</td>
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<td>H 116</td>
<td>Sexual Assault Evidence Kits</td>
<td>Representative Wintrow</td>
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<td>H 117</td>
<td>Crime Victims / Fees</td>
<td>Representative Troy</td>
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<tr>
<td>H 114</td>
<td>Children / Genital Mutilation</td>
<td>Representative Giddings, Representative Troy</td>
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*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 Dayley | Rep Ehardt | Rep Troy |
Vice Chairman Chaney | Rep Scott | Rep Young |
Rep Kerby | Rep Goesling | Rep Gannon |
Rep Amador | Rep Hartgen | Rep McCroastie |
Rep Zito | Rep Marshall | Rep Wintrow |
Rep Zollinger | Rep Ricks | Rep Davis |

COMMITTEE SECRETARY
Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov
DATE: Wednesday, February 13, 2019
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis
ABSENT/EXCUSED: Representative McCrostie
GUESTS: Charlie Spencer, Christina Straub, Anne Wardle, Idaho State Police; Lori Burrelle, Diane Jensen, SW ID Chapter of National Org. for Women; Mark Estess, Idaho Chiefs of Police; Annie Hightower, IDASDV; Nicole Fitzgerald, Council on Domestic Violence; Pro-Life; Joshua Wickard, PD; Jean Fisher, ISAKI; Tony Lawson, Idaho Hospital Association; Jared Larsen, Governor's Office; Beatrice Black

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

Eric Fredericksen, State Appellate Public Defender (SAPD) presented an update. The SAPD provides appellate representation to indigent defendants who have been convicted of a felony in district court. The SAPD also provides appellate representation to petitioners in state felony post-conviction and habeas cases. In capital cases, where a defendant has been sentenced to death, the SAPD provides district court representation for post-conviction proceedings, as well as representation on appeal. This provides relief to the counties through the Capital Crimes Defense Fund. Mr. Fredericksen explained attorneys are evaluated on workloads to determine how busy they are and they are busier than usual, but SAPD contracts out if needed. Today, there are 30 active first degree murder cases in Idaho, which is similar to last year. Of those 30 cases there are six death notices. In answer to a question from the Committee, he stated the average length of time a capital death case is in his office is 14 years.

Matthew Gamette, Laboratory Assistant Director, Idaho State Police (ISP) Forensic Services presented an update on the processing and tracking of sexual assault evidence kits. ISP Forensic Services operates three labs, but only the Meridian, Idaho lab processes DNA. Idaho is the first state in the country to put a fully functional tracking system on line to track sexual assault evidence kits and is shared free of charge with any state that wants to implement the tracking system. Six hundred and forty kits are appropriated. However, 689 kits have been submitted. The numbers differ because law enforcement may have previously taken the kits, but held them for further investigation, or at the request of the victim. In answer to a question from the Committee, Mr. Gamette stated tracking is important because there should be accountability for every kit that is collected. Tracking and accountability was established with previous legislation and many states are interested.

H 116: Rep. Wintrow, presented H 116. This legislation relates to the processing of sexual assault evidence kits and asks hospitals to enter the data when it is collected. There has been confusion in the past about whether to process the kits, or not if the victim chooses to not pursue prosecution. This bill clarifies this, and evidence kits will be processed in all cases unless the accusation is unfounded. If the charge is unfounded, the data will be removed from the database.
Annie Hightower, Director for Idaho Coalition Against Sexual and Domestic Violence; Beatrice Black, Women's and Children's Alliance; Jean Fisher, Ada County Prosecutor's Office and Lori Burelle on behalf of the Southwest Chapter of the National Organization for Women spoke in support of H 116. They explained the process for writing this bill has been very collaborative and victims’ rights have always been at the center. Ms. Hightower stated this bill will help establish trust between victims and law enforcement; confirm a suspect's identity in some cases; help enhance public safety; and confirm case specific information in some cases. Sexual assault is a very complicated topic and this is a positive step forward to support victims and helps them gain some sense of healing. Ms. Fisher stated this bill would remove the subjective nature of deciding what to do with the evidence kits once they are collected.

**MOTION:** Rep. Kerby made a motion to send H 116 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Wintrow will sponsor the bill on the floor.

**H 117:** Rep. Troy, presented H 117. The law currently allows a fine of up to $5,000 for certain crimes of violence and is separate from criminal penalties and restitution. If the fines are recovered, families often use the funds for victim counseling and other treatments. This bill adds the crimes of attempted strangulation and attempted rape, which are currently eligible for up to $2,500 and this bill increases the amount to $5,000. These crimes are traumatic and have lasting impacts on victims. In answer to questions from the Committee, Rep. Troy stated the bill is different from the Crime Victims Compensation Act and victims can collect from both. She said this bill does not address increasing the maximum fine above $5,000, but it could be looked at in the future.

**MOTION:** Rep. Gannon made a motion to send H 117 to the floor with a DO PASS recommendation.

In answer to questions from the Committee, Rep. Troy explained the crimes listed in the bill are when a person is convicted of attempted acts. Rep. Troy yielded to Rep. Chaney who explained I.C. §18-306 is the statue dealing with certain attempted crimes and it provides a definition and conviction of attempted felonies.

Speaking to the motion, Reps. Zollinger, Ehardt, Young and Marshall stated they were concerned attempted rape and attempted murder are not clearly defined and the bill should state that the fines apply "upon conviction" of attempted murder and rape. Rep. Chaney explained the definition of attempts is based on the qualifying language of paragraph one of Section 1 of I.C. §19-5307 where it is defined with the language that states, “defendant found guilty of any felony listed in subsections 2 and 3 of this section.” Therefore, this addresses the concerns being raised. He said the bill is just raising the ceiling of the fine from $2,500 to $5,000. Reps. Gannon, Kerby and Chairman Dayley concurred with Rep. Chaney.

**MOTION:** Rep. Goesling made a motion to call for previous question.


Rep. Troy requested a motion to hold the bill in committee until she could have more time to address the questions from the Committee.

**MOTION WITHDRAWN:** Rep. Gannon made a motion to withdraw his motion to send H 117 to the floor with a DO PASS recommendation.

SUBSTITUTE MOTION: Rep. Wintrow made a substitute motion to send H 117 to the floor with a DO PASS recommendation.

Speaking to the motion, Rep. Wintrow stated that amending legislation on the fly is a very serious issue and was concerned the bill could get delayed.

In answer to questions from the Committee, Rep. Troy stated a retired judge from the Idaho court of appeals reviewed the legislation and she is confident in her opinion. Reps. Marshall and Young stated the explanation provided by Rep. Chaney addressed their concerns and would vote in favor of the substitute motion.

VOTE ON SUBSTITUTE MOTION: Chairman Dayley called for a vote on the substitute motion. Motion carried by voice vote. Rep. Zollinger requested he be recorded as voting NAY. Rep. Troy will sponsor the bill on the floor.

H 114: Rep. Giddings presented H 114, which makes female genital mutilation (FGM) of a minor a felony. The Federal court case last fall put the responsibility of outlawing this practice back on the states. She stated she worked with several Deputies in the Attorney General's office to get their opinions. This legislation increases the statute of limitations to three years from the date the offense is reported by the victim to law enforcement for ritualized abuse of children and FGM. Under current law the statute of limitation is five years from the date of the act. This is impractical because many children are very young when the offense is committed. Rep. Giddings also stated she looked into the questions from the Committee regarding the language that states "shall be guilty of a felony." This language is used in several Idaho criminal codes and suggested it could be addressed as a broader clean up. She explained several states have stronger FGM laws that prevent people from taking girls out of state or the country. FGM is different from male circumcision because there are no benefits and it can have long term physical and mental health complications. FGM is considered an international health crisis by the World Health Organization.

In answer to a question from the Committee, Rep. Giddings said they would get clarification from the Attorney General on whether this legislation would prohibit surgeries in U.S. hospitals, by licensed doctors to alter the genitalia of healthy intersex babies at the request of parents.

Pro Life spoke in support of the bill.

Rep. Marshall said he remains concerned about the language that pronounces guilt. Chairman Dayley said he and Rep. Marshall have spoken about this and he supports a comprehensive review to address this concern.

MOTION: Rep. Kerby made a motion to send H 114 to the floor with a DO PASS recommendation. Motion carried by voice. Reps. Giddings and Troy will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:26 p.m.
AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
Upon Adjournment
Room EW42
Friday, February 15, 2019

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<th>SUBJECT</th>
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<tr>
<td><strong>H 137</strong></td>
<td>Dangerous Dogs</td>
<td>Jeremy Pisca, Idaho Humane Society</td>
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<tr>
<td><strong>H 79</strong></td>
<td>Legal Immunity / Dogs, Cats / Vehicles</td>
<td>Representative Smith</td>
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*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 Dayley
- Vice Chairman Chaney
- Rep Kerby
- Rep Amador
- Rep Zito
- Rep Zollinger
- Rep Ehardt
- Rep Scott
- Rep Goesling
- Rep Hartgen
- Rep Marshall
- Rep Ricks
- Rep Troy
- Rep Young
- Rep Gannon
- Rep McCrostie
- Rep Wintrow
- Rep Davis

**COMMITTEE SECRETARY**
- Wendy Carver-Herbert
  - Room: EW56
  - Phone: 332-1127
  - email: hjud@house.idaho.gov
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Friday, February 15, 2019
TIME: Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Winrow, Davis

ABSENT/EXCUSED: Representative Troy
GUESTS: Jeremy Pisca, Jeff Rosenthal, Idaho Humane Society; Rob Shoplock, PFFI

Chairman Dayley called the meeting to order at 12:41 p.m.

MOTION: Rep Marshall made a motion to approve the minutes of the February 5, 2019 meeting. Motion carried by voice vote.

H 137: Jeremy Pisca, representing the Idaho Humane Society, presented H 137 by stating the legislation corrects some enforcement errors that were inadvertently left out of the dangerous dog law that was passed in 2016. Mr. Pisca yielded his time to Dr. Jeff Rosenthal, Chief Executive Officer of the Idaho Humane Society. The Idaho Humane Society provides animal control services for Ada County and is called out when a dog attacks. Current law allows great discretion on how to deal with an offending dog, but the law ceased to be a criminal offense for owning such a dog, and is not being prosecuted. Dr. Rosenthal stated this bill restores the misdemeanor charge. He outlined the changes in the law, stating the definition for serious injury on page two of the bill was modified. However, he requested the bill be sent to the amending order to correct an error in the new definition because the term "significant injury" should be "serious injury." The definition was modified at the request of prosecutors because it requires a medical professional to testify and often requires access to medical records. He said the section allowing certain persons to file a petition to declare a dog dangerous or at-risk was removed because anyone can sign a misdemeanor complaint.

MOTION: Rep. Winrow made a motion to send H 137 to General Orders.

In answer to questions from the Committee, Dr. Rosenthal explained the courts have discretion to practice general reasonableness in judgement if a provoked dog attacks, or is protecting property. This didn't exist in previous law. Some Committee members stated concerns that the language of the bill doesn't preclude dog owners or keepers who have no prior knowledge of a dog's propensity to inflict injury from prosecution under a criminal misdemeanor charge.

VOTE ON MOTION: Chairman Dayley called for vote on the motion to send H 137 to General Orders. Motion carried by voice vote. Representative Moyle will sponsor the bill on the floor.

H 79: Rep. Smith presented H 79, which provides immunity to first responders who rescue distressed dogs or cats from vehicles. The definition for a first responder is clearly defined in the bill. She explained how quickly a car can reach dangerous temperatures and stated the number of emergency calls received last year by law enforcement in the cities represented by Committee members. The proposed legislation was taken to the Idaho Sheriff's Association and it was unanimously supported.
Rob Shoplock, Executive Vice President of the Professional Fire Fighters of Idaho spoke in support of H 79. He explained first responders often respond to calls for distressed dogs and use their lock out kit and they do it because it's the humane thing to do.

In answer to questions from the Committee, Mr. Shoplock stated using lock out kits typically do not cause damage to cars and only recalled one time where additional steps were needed to restore a vehicle to its original condition. He explained animals are rescued from locations other than cars, most notably when a owner dies and an animal needs to be secured, but it's usually done at a family's request. He said animal rescue is discussed greatly among his group. Response time can range from two minutes to twenty minutes and after making a determination of the animal's condition they will proceed with rescue. They respond just as they would to rescue a dog caught on the ice.

**MOTION:** Rep. Wintrow made a motion to send H 79 to the floor with a DO PASS recommendation.

Speaking in opposition to the legislation, Reps. Marshall, Ricks and Ehardt stated concerns about increased costs to local and county jurisdictions due to increased rescue call outs, liability and expense for damaged vehicles, no recourse for car owners, and the good samaritan law offers some coverage.

Reps. Amador and Wintrow spoke in support of H 79. They said they didn't believe the bill would cause a mass uprising in calls to law enforcement, and it would discourage citizens from taking measures into their own hands.

In answer to questions from the Committee, Rep. Smith said the bill declared an emergency so it would go into effect immediately upon passage and approval. This would cover the early months of summer, rather than go into effect in July.


**ADJOURN:** There being no further business to come before the Committee, the meeting was adjourned at 1:34 p.m.
AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Tuesday, February 19, 2019

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<tr>
<td>H 115</td>
<td>Peace Officers / Arrest Without Warrant / School Violence</td>
<td>Representative Goesling</td>
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<td>H 78</td>
<td>DUI Criminal Diversion Program</td>
<td>Representative Kerby</td>
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<tr>
<td>H 118</td>
<td>Pretrial Risk Algorithms</td>
<td>Representative Chaney</td>
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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 Dayley          Rep Ehardt        Rep Troy
Vice Chairman Chaney    Rep Scott         Rep Young
Rep Kerby              Rep Goesling       Rep Gannon
Rep Amador             Rep Hartgen        Rep McCrostie
Rep Zito               Rep Marshall       Rep Wintrow
Rep Zollinger          Rep Ricks         Rep Davis

COMMITTEE SECRETARY
Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
e-mail: hjud@house.idaho.gov
MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 19, 2019
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis
ABSENT/EXCUSED: Representative Ricks

GUESTS: Michael Ekstrand; Kathy Griesmyer, ACLU Idaho; Gloria Totoricaguena, Idaho Policy; David Gomez, Meridian Police; Stu Hobson, Nampa Police; Paul Stark, Matt Compton, IEA; Tom Arkoosh, Mark Manweiler, Justine Parker, Elisa Massoth, IACDL; Kathy Goldman; Jared Larsen, Governor's Office; Jeff Clayton, Jesse Taylor, ABC; Mike Munger, IOSSS; Miron Aburusa, MADD; Kenden Poole, CILM; Greg Bailey, Moscow School District 28; Holly Koole Rebholtz, IPAA; Sara Thomas, Barry Wood, ISC; Quinn Perry, ISBA; Kody Aldrich, ACSO; Travis Engle, Daren Ward, Canyon County Sheriff; Mike Kane, ISA

Chairman Dayley called the meeting to order at 1:32 p.m.
Chairman Dayley clarified the use of call for previous question and general orders.

H 115: Rep. Goesling presented H 115. This bill is important for protecting the state's most important asset, its children. He yielded his time to Quinn Perry, Dr. Greg Bailey, David Gomez and Stu Hobson.

Quinn Perry, Policy Director, Idaho School Boards Association (ISBA). The ISBA had a resolution to support the change in statute and they worked with stakeholders across the state to draft this legislation. The bill makes it possible to treat a threat on a school as seriously as domestic violence, assault and stalking.

Dr. Greg Bailey, Director of Moscow School District, shared the story that was the impetus for this legislation. Last year a 26-year-old man made a social media threat to two Moscow schools. Law enforcement had no way of detaining him because there were no weapons in the home and law enforcement did not witness any wrong doing. This caused chaos and panic throughout the district, including parents wanting to police the schools, calls for arming teachers and high absentee rates. He said it inhibited the positive learning environment that students deserve to have.

David Gomez, Mountain View High School Resource Officer, Meridian Police Department, said there currently are six misdemeanor crimes that allow an arrest when the crime is not committed in the presence of law enforcement. This bill would add school threats to the list of misdemeanor crimes that would allow law enforcement to make an arrest. Officer Gomez said this will allow law enforcement to take a suspect into custody so they can be evaluated and begin receiving mental health treatment if necessary. In answer to questions from the Committee, Officer Gomez explained it is not always the most expedient to secure an arrest warrant. Warrants take time and require specific types of information that may not be easily available initially. This bill would allow law enforcement to assess the situation and take action if they believe there is probable cause and the suspect poses a credible risk to public safety.
Stu Hobson, Ridgeview High School Resource Officer, Nampa Police Department stated this bill provides law enforcement another tool in their tool belt to protect kids. This can help parents feel more secure in sending their kids to school. It also helps smaller communities that don't have as many resources. It allows their law enforcement to take action if warranted.

Paul Stark, Idaho Education Association, spoke in support of H 115. He said this bill has the support of the Idaho Sheriff's Association. He explained there is a difference between a search warrant and an arrest warrant. Coming into a person's home is a different portion of the Fourth Amendment. The supreme court has weighed in on warrantless arrests and it does pass Constitutional scrutiny under the Fourth Amendment. If a person is arrested on a warrantless arrest, it is speedily brought before a judge who rules whether the probable cause determination is warranted.

Rep. Marshall stated this bill clearly defines what threats are under Idaho Code §18-3302i and what arises to the threat of a misdemeanor and felony. If there is probable cause that a felony or misdemeanor exists, it gives police the authority to make a quick arrest.

Rep. Goesling requested that H 115 be sent to General Orders with the following correction: the statute written as "18-902" on line 22 should be written as "18-901".

MOTION: Rep. Gannon made a motion to send H 115 to General Orders with a Committee amendment to change the statute written as "18-902" on line 22 to "18-901".

Rep. Marshall said the word "arrested" on line 21 of the bill is inappropriate and suggested it be deleted. Rep. Goesling stated he was not prepared to know whether it would change the substance of the bill. Rep. Chaney suggested it be drafted as a separate amendment.

VOTE ON MOTION: Chairman Dayley called for vote on the motion. Motion carried by voice vote.

Rep. Zollinger requested to recorded as voting NAY. Rep. Goesling will sponsor the bill on the floor.

H 78: Rep. Kerby presented H 78. He explained the goal of the bill is to change people's behavior on their time and money. The Statement of Purpose and Financial Note describe the bill. The program is completely voluntary. He stated the Fiscal Note was done by the LSO budgeting office and some people say this is high, which indicates the usage is very high the first year. He speculates the numbers won't be that high in the first year because it will take some time to catch on. He stated there is a lot of good data to support this program, and according to MADD, recidivism rates decreased by 63% in states with similar programs. Rep. Kerby outlined the specifics of the bill and the amendments as they are incorporated in Draft Bill DRELB342 (Attachment 1). He explained he was asked if he would incorporate amendments brought forward by the Transportation Committee Chairman regarding restoring driving privileges as outlined in RS 26864 (Attachment 2). He requested the bill be sent to General Orders with these recommended Committee amendments.

MOTION: Rep Chaney made a motion to send H 78 to General Orders with Committee amendments consistent with RS 26864 and Draft Bill DRELB342.

Miron Aburusa Mothers Against Drunk Drivers of Southwest Idaho; Kenden Poole, CIIM; Elisa Massoth, Idaho Association of Criminal Defense Lawyers; and Michael Kane, Idaho Sheriff's Association, spoke in support of H 78. Their comments included: it helps reduce recidivism; it helps people who live in areas where no public transportation is available; it allows people to take proactive steps to keep their driver's license.
Holly Koole Rebholtz, Idaho Prosecuting Attorneys Association spoke in opposition to H 78. She stated the association supported the bill last year, but they oppose this bill because it does not require offenders to enter a guilty plea. She stated Oregon's original DUI diversion program did not require a guilty plea and it caused many legal issues that the Legislature needed to amend the law.

Speaking in opposition to the motion, Rep. Marshall stated almost all prosecutors across the state are against this and he doesn't think it bodes well for the program. He questioned who enforces the provisions of the bill and stated the Problem Solving Courts already have an interlock program. In response to Rep. Marshall's comments, Rep. Kerby stated prosecutors across the state are taking a variety of positions and not everyone understands it. He reiterated that a prosecuting attorney doesn't have to use the program. It is optional.

Reps. Wintrow and Gannon spoke in support of the motion. Rep. Gannon stated persons charged with a DUI and low access to financial means still need to go to work. This is good for people who are motivated.

VOTE ON MOTION:

Chairman Dayley called for a vote on the motion to send H 78 to General Orders with Committee amendments. Motion carried by voice vote. Rep. Marshall requested to be recorded as voting NAY. Rep. Kerby will sponsor the bill on the floor.

Chairman Dayley called a recess of the Committee at 3:25 p.m.

Chairman Dayley reconvened the meeting at 3:33 p.m.

H 118:

Rep. Chaney presented H 118. He explained he was requesting the bill be sent to the amending order so it can incorporate amendments as written in Draft Bill DRRCB243 (Attachment 3). He described the risk assessment algorithms as a computer suggesting to a judge what kind of sentence a person should receive based on a prediction of how that person will behave. This bill does not seek to remove the tool, the purpose of the bill is to remove the ability to conceal errors and retain a defendant's Constitutional rights. He stated this is essentially a civil rights bill because when these systems error, they error against minorities. There has been no standard or transparency. He explained there have been problems in other states. When the systems are challenged, the vendor refuses to hand over information on the basis of the algorithms being a trade secret. He said these tools should be objective and should be free of bias. The bill only relates to pretrial conditions.

In answer to questions from the Committee, Rep. Chaney said he was not aware that the Ada County system was an actuarial-based program and not based on algorithms. He explained the state is not getting ahead of itself with this legislation because the Courts like uniformity, but there are any number of programs that could be used and applied differently.

Michael Ekstrand, Boise State University Computer Science Professor testified on behalf of himself and not the university. He spoke in support of the bill. He said there are ways to use data to improve outcomes, but it needs to be done carefully. This bill requires the tools be built very carefully and provides the ability to check the work of the vendors to insure the tools behave as advertised. This bill brings many good tools. Validating the system is good and it is not a one and done initiative. Validation needs to be contextual and take Idaho specific conditions into consideration to ensure they do not produce undue bias into Idaho's justice system.

MOTION:

Rep. Ehardt made a motion to send H 118 to General Orders with Committee amendments consistent with Draft Bill DRRCB243.
Mark Manweiler and Tom Arkoosh Idaho Association of Criminal Defense Attorney’s testified in opposition to H 118. They stated there is agreement that racial bias is a bad thing, but this bill is a solution that is in search of a problem. All of the data being spoken about are national studies and situations. This is just one of many tools judges use to make decisions on sentences. Mr. Manweiler said he is concerned that the bill doesn't clearly say who is going to validate it, or who will pay for the validation.

**SUBSTITUTE MOTION:**


Speaking to the motion, Rep. Marshall said it would be virtually impossible that any computer could be free of bias and he would rather trust judges and humans. He stated he would actually support the idea of outlawing these systems all together. He is concerned about the use of artificial intelligence and the impact on due process.

Kathy Griesmyer ACLU Idaho spoke in support of H 118. She spoke about the inherent racial bias, error rates and lack of transparency of these systems. Even though Idaho is not racially diverse, blacks and Hispanics are incarcerated at a higher rate. She stated that the ACLU has sued the Idaho Department of Health and Welfare for their use of an algorithm-based tool and it was found to be unconstitutional. An Idaho specific tool is now being evaluated for the Department. She said she shared this story as a point of comparison that if these tools aren't built correctly they can be problematic. She said improvements have been made in the bill and it is good that the tools will need to be revalidated. She said a negative aspect of the bill is it doesn't require a report on the rate of false positives. In answer to questions from the Committee, Ms. Griesmyer said they don't see a risk of lawsuits on the court algorithm programs at this point, but they are tracking cases across the country where algorithms are being challenged for lack of transparency. She said if they had a choice they wouldn't want these tools used in Idaho. However, based on their experience with similar tools, having some sideboards is beneficial.

Jeff Clayton, American Bail Coalition, spoke in support of H 118. He said this is one of the hottest topics in pretrial justice right now and if it is dealt with today, or in the future, it is coming down the path. There are three or four people who are building these and they are being built the same way.

Michael Kane, Idaho Sheriff's Association spoke in support of H 118. This is not a finding of guilt. It is only information that helps judges determine whether defendants can be let out of jail pending trial. He said Rep. Chaney is addressing their concerns about not restricting the Ada County system with an amendment. He said it is not a perfect bill and there are tweaks to be made, but they are committed to keep working on it.

Rep. Chaney closed the debate by saying Idaho is not ahead of itself on this issue. There are 30+ counties using a system and not all are using the Ada County system. He said the technology is here now and the state needs to see what is inside the black box to ensure it acts appropriately.

Speaking to the substitute motion, Rep Wintrow said it would be beneficial to bring together a working group to find the best solution. Rep. Gannon said it would be better to consider this bill in conjunction with what's coming down the pike.

**AMENDED SUBSTITUTE MOTION:**

Rep. Zollinger made an amended substitute motion to send the H 118 to General Orders.

Rep. Chaney said he supports the amended substitute motion and would work with anyone on the Committee who would like to have input into the amendment.

There being no further business to come before the Committee, the meeting adjourned at 5:21 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary
LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

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AN ACT
RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO CODE, TO PROVIDE THAT CERTAIN INFORMATION SHALL BE GIVEN AT THE TIME OF EVIDENTIAL TESTING FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES, TO PROVIDE THAT PERSONS PARTICIPATING IN A DIVERSION PROGRAM MAY BE ELIGIBLE FOR CERTAIN DRIVING PRIVILEGES, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8002A, IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTAIN INFORMATION GIVEN TO PERSONS UNDERGOING EVIDENTIAL TESTING FOR ALCOHOL, DRUGS, OR OTHER INTOXICATING SUBSTANCES, TO PROVIDE FOR DRIVING PRIVILEGES IN A DIVERSION PROGRAM, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8005, IDAHO CODE, TO REVISE PROVISIONS REGARDING PENALTIES; AMENDING SECTION 18-8008, IDAHO CODE, TO REVISE THE DEFINITION OF IGNITION INTERLOCK SYSTEM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-3010, IDAHO CODE, TO PROVIDE THAT A PROSECUTING ATTORNEY WHO ESTABLISHES A DIVERSION PROGRAM MAY USE CERTAIN MONEYS; AMENDING SECTION 12-103, IDAHO CODE, TO PROVIDE THAT CERTAIN MISDEMEANOR CASES SHALL BE REFILLED NO LATER THAN TWO YEARS AFTER DISMISSAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 13-3506, IDAHO CODE, TO PROVIDE THAT DISMISSED MISDEMEANOR CASES MAY BE REFILLED UNDER CERTAIN CIRCUMSTANCES; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3507, IDAHO CODE, TO DEFINE A TERM AND TO PROVIDE LEGISLATIVE INTENT; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3508, IDAHO CODE, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR A DIVERSION PROGRAM; AMENDING CHAPTER 35, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3509, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING DIVERSION PROGRAMS; AND AMENDING SECTION 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS PARTICIPATING IN DIVERSION PROGRAMS MAY BE REQUIRED TO PERFORM CERTAIN LABOR.

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

SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or was in actual physical control of a motor vehicle in violation of the provisions of section 18-8004 or 18-8006, Idaho Code.

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(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete evidentiary testing:
   (a) He is subject to a civil penalty of two hundred fifty dollars ($250) for refusing to take the test;
   (b) He is subject to mandatory installation of a state-approved ignition interlock system, at his expense, on all of the motor vehicles operated by him for a period to end one (1) year following the end of the suspension period;
   (c) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to or complete evidentiary testing;
   (d) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty and shall order the required installation of a state-approved ignition interlock system on all motor vehicles operated by him and his driver's license will be suspended absolutely for one (1) year if this is his first refusal and two (2) years if this is his second refusal within ten (10) years;
   (e) Provided however, if he is admitted to a program solving court and has served at least forty-five (45) days of an absolute suspension of driving privileges, then he may be eligible for a restricted permit for the purpose of getting to and from work, school, or an alcohol treatment program, but only if a state-approved ignition interlock system has been installed, at his expense, on all motor vehicles operated by him; and
   (f) Provided however, if he is admitted to a diversion program pursuant to section 19-3509, Idaho Code, then he may be eligible for a restricted permit for the purpose of getting to and from work, school, medical appointments, or a treatment program;
   (g) After submitting to evidentiary testing, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) If the motorist refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) of this section:
   (a) He shall be fined a civil penalty of two hundred fifty dollars ($250);
   (b) The court shall direct the installation, at his expense, of a state-approved ignition interlock system meeting the requirements set forth in section 18-8008, Idaho Code, on all motor vehicles operated by him for a period of one (1) year following the end of the suspension period;
   (c) A written request may be made within seven (7) calendar days for a hearing before the court; if requested, the hearing must be held within thirty (30) days of the date of service unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to or complete evidentiary testing, and the burden of proof shall be upon the defendant; the court shall sustain
a two hundred fifty dollar ($250) civil penalty immediately, suspend
all the defendant's driving privileges immediately for one (1) year for
a first refusal and two (2) years for a second refusal within ten (10)
years and direct the installation, at his expense, of a state-approved
ignition interlock system meeting the requirements set forth in section
18-8008, Idaho Code, on all motor vehicles operated by him for a period
to end one (1) year following the end of the suspension period, unless it
finds that the peace officer did not have legal cause to stop and request
him to take the test or that the request violated his civil rights;
(d) If a hearing is not requested by written notice to the court con-
cerned within seven (7) calendar days, upon receipt of a sworn statement
by the peace officer of the circumstances of the refusal, the court
shall sustain a two hundred fifty dollar ($250) civil penalty, suspend
the defendant's driving privileges for one (1) year for a first refusal
and two (2) years for a second refusal within ten (10) years, during
which time he shall have absolutely no driving privileges of any kind,
and direct the installation of a state-approved ignition interlock
system, at his expense, meeting the requirements set forth in section
18-8008, Idaho Code, on all motor vehicles operated by him for a period
to end one (1) year following the end of the suspension period;
(e) Notwithstanding the provisions of paragraphs (c) and (d) of this
subsection, if the defendant is enrolled in and is a participant in good
standing in a drug court or mental health court approved by the supreme
court drug court and mental health court coordinating committee under
the provisions of chapter 56, title 19, Idaho Code, or other similar
problem solving court utilizing community-based sentencing alterna-
tives, then the defendant shall be eligible for restricted noncommer-
cial driving privileges for the purpose of getting to and from work,
school or an alcohol treatment program, which may be granted by the pre-
oding judge of the drug court or mental health court or other similar
problem solving court, provided that the defendant has served a period
of absolute suspension of driving privileges of at least forty-five
(45) days, that a state-approved ignition interlock system meeting the
requirements set forth in section 18-8008, Idaho Code, is installed,
at his expense, on all motor vehicles operated by him for a period to
end one (1) year following the end of the suspension period and that the
defendant has shown proof of financial responsibility as defined and
in the amounts specified in section 49-117, Idaho Code, provided that
the restricted noncommercial driving privileges and the requirement
of a state-approved ignition interlock system may be continued if the
defendant successfully completes the drug court, mental health court or
other similar problem solving court, and that the court may revoke such
privileges for failure to comply with the terms of probation or with the
terms and conditions of the drug court, mental health court or other
similar problem solving court program; and
(f) Notwithstanding the provisions of paragraphs (c) and (d) of this
subsection, if a person is a participant in good standing in a diver-
sion program pursuant to section 19-3509, Idaho Code, then the person
may be eligible for restricted noncommercial driving privileges for the
purpose of getting to and from work, school, medical appointments, or a
treatment program, which privileges may be granted by the administrator of the diversion program, and

(g) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) Any sustained sanction under this section or section 18-8002A, Idaho Code, shall be a sanction separate and apart from any other sanction imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense pursuant to this chapter and may be appealed to the district court.

(6) No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer in the manner described in this section and section 18-8002A, Idaho Code; provided that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care.

(a) This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(b) A peace officer is empowered to order an individual authorized in section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer has probable cause to believe that the suspect has committed any of the following offenses:

(i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substances as provided in section 18-8006, Idaho Code;

(ii) Vehicular manslaughter as provided in subsection (3)(a), (b) and (c) of section 18-4006, Idaho Code;

(iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035, Idaho Code; or

(iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.

(c) Nothing herein shall limit the discretion of the hospital administration to designate the qualified hospital employee responsible to withdraw the blood sample.

(d) The law enforcement agency that requests or orders withdrawal of the blood sample shall pay the reasonable costs to withdraw such blood
sample, perform laboratory analysis, preserve evidentiary test results, and testify in judicial proceedings. The court may order restitution pursuant to the provisions of section 18-8003(2), Idaho Code.

(e) The withdrawal of the blood sample may be delayed or terminated if:

(i) In the reasonable judgment of the hospital personnel, withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or

(ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(7) "Actual physical control" as used in this section and section 18-8002A, Idaho Code, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(8) Any written notice required by this section shall be effective upon mailing.

(9) For the purposes of this section and section 18-8002A, Idaho Code, "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (10) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(10) A person who submits to a breath test for alcohol concentration, as defined in subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was driving under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report the facts upon which that belief is based.

(11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred. If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the imposition, unless this period has been extended by the court for good cause shown, the prosecuting attorney representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest may be assessed against any person who fails to pay the civil penalty.

(12) Upon motion of the person required to install an ignition interlock device pursuant to subsection (4)(b) of this section, a court in its discretion may relieve the person from the installation of the device where the court finds it clear and convincing that the person will not present a danger to the public or that there are exceptional or mitigating circumstances demonstrating that installation of the device is unnecessary or unwarranted. Financial hardship, standing alone, is not an exceptional or mitigating circumstance.
(13) A court may determine that an offender is eligible to utilize available funds from the court interlock device and electronic monitoring device fund, as outlined in section 18-8010, Idaho Code, for the installation and operation of an ignition interlock device, based on evidence of financial hardship.

(14) As used in this section, "at his expense" includes the cost of obtaining, installing, using and maintaining an ignition interlock system.

SECTION 2. That Section 18-8002A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:

(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.

(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(c) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(d) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or per sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(f) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.
(g) "Hearing request" means a request for an administrative hearing on
the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for
concentration of alcohol or for the presence of drugs or other intoxicating
substances is requested, the person shall be informed that if the person re-
fuses to submit to or fails to complete evidentiary testing, or if the per-
son submits to and completes evidentiary testing and the test results indi-
cate an alcohol concentration or the presence of drugs or other intoxicating
substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,
the person shall be informed substantially as follows (but need not be in-
formed verbatim):

If you refuse to submit to or if you fail to complete and pass eviden-
tiary testing for alcohol or other intoxicating substances:

(a) The peace officer will issue a notice of suspension and you will be
required to install, at your expense, a state-approved ignition inter-
lock system on all motor vehicles you operate for a period to end one (1)
year following the end of the suspension period;

(b) You have the right to request a hearing within seven (7) days of the
notice of suspension of your driver's license to show cause why you re-
fused to submit to or to complete and pass evidentiary testing and why
your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not
request a hearing before the court or do not prevail at the hearing, your
driver's license will be suspended and you will be required to install,
at your expense, a state-approved ignition interlock system on all mo-
tor vehicles you operate for a period to end one (1) year following the
end of the suspension period. The suspension will be for one (1) year if
this is your first refusal. The suspension will be for two (2) years if
this is your second refusal within ten (10) years. You will not be able
to obtain a temporary restricted license during that period;

(d) If you complete evidentiary testing and fail the testing and do not
request a hearing before the department or do not prevail at the hear-
ing, your driver's license will be suspended and you will be required to
install, at your expense, a state-approved ignition interlock system on
all motor vehicles you operate for a period to end one (1) year following
the end of the suspension period. This suspension will be for ninety
(90) days if this is your first failure of evidentiary testing, but you
may request restricted noncommercial vehicle driving privileges after
the first thirty (30) days. The suspension will be for one (1) year
if this is your second failure of evidentiary testing within five (5)
years. You will not be able to obtain a temporary restricted license
during that period;

(e) However, if you are admitted to a problem solving court program and
have served at least forty-five (45) days of an absolute suspension of
driving privileges, you may be eligible for a restricted permit for the
purpose of getting to and from work, school or an alcohol treatment pro-
gram, but only if you install, at your expense, a state-approved igni-
tion interlock system on all motor vehicles you operate; and

(f) However, if you are admitted to a diversion program under section
19-3509, Idaho Code, you may be eligible for a restricted permit for the
purpose of getting to and from work, school, medical appointments, or a treatment program; and

(g) After submitting to evidentiary testing, you may, when practicable, at your own expense, have additional tests made by a person of your own choosing.

(3) Rulemaking authority of the Idaho state police. The Idaho state police may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

(a) What testing is required to complete evidentiary testing under this section; and

(b) What calibration or checking of testing equipment must be performed to comply with the department's requirements. Any rules of the Idaho state police shall be in accordance with the following: a test for alcohol concentration in breath as defined in section 18-8004, Idaho Code, and subsection (1)(c) of this section will be valid for the purposes of this section if the breath alcohol testing instrument was approved for testing by the Idaho state police in accordance with section 18-8004, Idaho Code, at any time within ninety (90) days before the evidentiary testing. A test for alcohol concentration in blood or urine as defined in section 18-8004, Idaho Code, that is reported by the Idaho state police or by any laboratory approved by the Idaho state police to perform this test will be valid for the purposes of this section.

(4) Suspension and ignition interlock system.

(a) Upon receipt of the sworn statement of a peace officer that there existed legal cause to believe a person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances and that the person submitted to a test and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall suspend the person's driver's license, driver's permit, driving privileges or nonresident driving privileges:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely no driving privileges of any kind. Restricted noncommercial vehicle driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (9) of this section.

(ii) For a period of one (1) year for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years. No driving privileges of any kind shall be granted during the suspension imposed pursuant to this subsection subpar

The department shall also direct the installation, at the offender's expense, of a state-approved ignition interlock system meeting the requirements of section 18-8008, Idaho Code, on all motor vehicles operated by the offender for a period to end one (1) year following the end of the suspension period.

The person may request an administrative hearing on the suspension as provided in subsection (7) of this section. Any right to contest the
suspension shall be waived if a hearing is not requested as therein pro-
vided.
(b) The suspension shall become effective thirty (30) days after ser-
vice upon the person of the notice of suspension and notice of the re-
quirement to install, at his expense, a state-approved ignition inter-
lock system for a period to end one (1) year following the end of the sus-
pension period. The notice shall be in a form provided by the department
and shall state:
(i) The reason and statutory grounds for the suspension and the
requirement to install the ignition interlock system;
(ii) The effective date of the suspension and the requirement to
install the ignition interlock system;
(iii) The suspension periods to which the person may be subject as
provided in paragraph (a) of this subsection;
(iv) The procedures for obtaining restricted noncommercial vehi-
cle driving privileges;
(v) The rights of the person to request an administrative hear-
ing on the suspension and that, if an administrative hearing is not
requested within seven (7) days of service of the notice of suspen-
sion and notice of the requirement to install the ignition inter-
lock system, the right to contest the suspension shall be waived;
(vi) The procedures for obtaining an administrative hearing on
the suspension;
(vii) The right to judicial review of the hearing officer's deci-
sion on the suspension and the procedures for seeking such review.
(c) Notwithstanding the provisions of paragraph (a)(i) and (ii) of
this subsection, a person who is enrolled in and is a participant in
good standing in a drug court or mental health court approved by the
supreme court drug court and mental health court coordinating com-
mittee under the provisions of chapter 56, title 19, Idaho Code, or other
similar problem solving court utilizing community-based sentencing
alternatives shall be eligible for restricted noncommercial driving
privileges for the purpose of getting to and from work, school or an al-
cohol treatment program, which may be granted by the presiding judge of
the drug court or mental health court or other similar problem solving
court, provided that the offender has served a period of absolute sus-
pension of driving privileges of at least forty-five (45) days, that a
state-approved ignition interlock system is installed, at his expense,
on all motor vehicles operated by him for a period to end one (1) year
following the end of the suspension period and that the offender has
shown proof of financial responsibility as defined and in the amounts
specified in section 49-117, Idaho Code, provided that the restricted
noncommercial driving privileges may be continued if the offender
successfully completes the drug court, mental health court or other
similar problem solving court, and that the court may revoke such privi-
leges for failure to comply with the terms of probation or with the terms
and conditions of the drug court, mental health court or other similar
problem solving court program.
(d) Notwithstanding the provisions of paragraph (a)(i) and (ii) of
this subsection, a person who is enrolled in and is a participant in
good standing in a diversion program pursuant to section 19-3509, Idaho
Code, or be eligible for restricted noncommercial driving privileges
for the purpose of getting to and from work, school, medical appoint-
ments, or a treatment program, which privileges may be granted by the
administrator of the diversion program.

(5) Service of suspension and ignition interlock system by peace of-
icer or the department. If the driver submits to evidentiary testing af-
after the information in subsection (2) of this section has been provided and
the results of the test indicate an alcohol concentration or the presence
of drugs or other intoxicating substances in violation of the provisions of
section 18-8004, 18-8004C or 18-8006, Idaho Code:

(a) The peace officer shall, acting on behalf of the department, serve
the person with a notice of suspension and notice of the requirement to
install, at his expense, a state-approved ignition interlock system for
a period to end one (1) year following the end of the suspension period
in the form and containing the information required under subsection
(4) of this section. The department may serve the person with a notice
of suspension and the requirement to install the ignition interlock
system if the peace officer failed to do so or failed to include the date
of service as provided in subsection (4) (b) of this section.

(b) Within five (5) business days following service of a notice of sus-
pension and notice of the requirement to install the ignition interlock
system, the peace officer shall forward to the department a copy of the
completed notice of suspension and notice of the requirement to install
the ignition interlock system form upon which the date of service upon
the driver shall be clearly indicated, a certified copy or duplicate
original of the results of all tests for alcohol concentration, as shown
by analysis of breath administered at the direction of the peace offi-
cer, and a sworn statement of the officer, which may incorporate any
arrest or incident reports relevant to the arrest and evidentiary test-
ing setting forth:

(i) The identity of the person;
(ii) Stating the officer's legal cause to stop the person;
(iii) Stating the officer's legal cause to believe that the person
had been driving or was in actual physical control of a motor
vehicle while under the influence of alcohol, drugs or other in-
toxicating substances in violation of the provisions of section
18-8004, 18-8004C or 18-8006, Idaho Code;
(iv) That the person was advised of the consequences of taking and
failing the evidentiary test as provided in subsection (2) of this
section;
(v) That the person was lawfully arrested;
(vi) That the person was tested for alcohol concentration, drugs
or other intoxicating substances as provided in this chapter, and
that the results of the test indicated an alcohol concentration or
the presence of drugs or other intoxicating substances in viola-
tion of the provisions of section 18-8004, 18-8004C or 18-8006,
Idaho Code.

If an evidentiary test of blood or urine was administered rather than
a breath test, the peace officer or the department shall serve the no-
tice of suspension once the results are received. The sworn statement
required in this subsection shall be made on forms in accordance with
rules adopted by the department.
(c) The department may serve the person with a notice of suspension if
the peace officer failed to issue the notice of suspension or failed to
include the date of service as provided in subsection (4)(b) of this
section.
(6) Additional tests. After submitting to evidentiary testing at the
request of the peace officer, the person may, when practicable, at his own
expense, have additional tests for alcohol concentration or for the presence
of drugs or other intoxicating substances made by a person of his own choos-
ing. The person's failure or inability to obtain additional tests shall not
preclude admission of the results of evidentiary tests administered at the
direction of the peace officer unless additional testing was denied by the
peace officer.
(7) Administrative hearing on suspension. A person who has been served
with a notice of suspension and notice of the requirement to install the igni-
tion interlock system after submitting to an evidentiary test may request
an administrative hearing on the suspension before a hearing officer design-
nated by the department. The hearing may be held only on the suspension and
not on the requirement to install an ignition interlock system. The request
for hearing shall be in writing and must be received by the department within
seven (7) calendar days of the date of service upon the person of the notice
of suspension and notice of the requirement to install the ignition inter-
lock system and shall include what issue or issues shall be raised at the
hearing. The date on which the hearing request was received shall be noted
on the face of the request.
If a hearing is requested, the hearing shall be held within twenty (20)
days of the date the hearing request was received by the department unless
this period is, for good cause shown, extended by the hearing officer for a
ten (10) day period. Such extension shall not operate as a stay of the sus-
pension, notwithstanding an extension of the hearing date beyond such thirty
(30) day period. Written notice of the date and time of the hearing shall
be sent to the party requesting the hearing at least seven (7) days prior to
the scheduled hearing date. The department may conduct all hearings by tele-
phone if each participant in the hearing has an opportunity to participate in
the entire proceeding while it is taking place.
The hearing shall be recorded. The sworn statement of the arresting of-
cifer, and the copy of the notice of suspension and the notice of the require-
ment to install the ignition interlock system issued by the officer shall
be admissible at the hearing without further evidentiary foundation. The
results of any tests for alcohol concentration or the presence of drugs or
other intoxicating substances by analysis of blood, urine or breath adminis-
tered at the direction of the peace officer and the records relating to cal-
ibration, certification, approval or quality control pertaining to equip-
ment utilized to perform the tests shall be admissible as provided in section
18-8004(4), Idaho Code. The arresting officer shall not be required to par-
ticipate unless directed to do so by a subpoena issued by the hearing offi-
cer.
The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:
   (a) The peace officer did not have legal cause to stop the person; or
   (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
   (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
   (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
   (e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

If the hearing officer finds that the person has not met his burden of proof, he shall suspend the suspension. The hearing officer shall make findings of fact and conclusions of law and shall enter an order vacating or sustaining the suspension. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted.

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension and the requirement to install the ignition interlock system required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension shall run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary.

(8) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code. Upon motion of the person required to install an ignition interlock device pursuant to subsection (4)(a) of this section, a court in its discretion may relieve the person from the installation of the device where the court finds it clear and convincing that the person will not present a danger to the public or that there are exceptional or mitigating circumstances demonstrating that installation of the device is unnecessary or unwarranted. Financial hardship, standing alone, is not an exceptional or
mitigating circumstance. A court may determine that an offender is eligible
to utilize available funds from the court interlock device and electronic
monitoring device fund, as outlined in section 18-8010, Idaho Code, for the
installation and operation of an ignition interlock device, based on evi-
dence of financial hardship.

(9) Restricted noncommercial vehicle driving privileges. A person
served with a notice of suspension for ninety (90) days pursuant to this
section may apply to the department for restricted noncommercial vehicle
driving privileges, to become effective after the thirty (30) day absolute
suspension has been completed. The request may be made at any time after ser-
vice of the notice of suspension. Restricted noncommercial vehicle driving
privileges will be issued for the person to travel to and from work and for
work purposes not involving operation of a commercial vehicle, to attend an
alternative high school, work on a GED, for postsecondary education, or to
meet the medical needs of the person or his family if the person is eligible
for restricted noncommercial vehicle driving privileges. Any person whose
driving privileges are suspended under the provisions of this chapter may be
granted privileges to drive a noncommercial vehicle but shall not be granted
privileges to operate a commercial motor vehicle.

(10) As used in this section, "at his expense," "at your expense" and "at
the offender's expense" include the cost of obtaining, installing, using and
maintaining an ignition interlock system.

(11) Rules. The department may adopt rules under the provisions of
chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-
sions of this section.

SECTION 3. That Section 18-8005, Idaho Code, be, and the same is hereby
amended to read as follows:

18-8005. PENALTIES. (1) Any person who pleads guilty to or is found
guilty of a violation of the provisions of section 18-8004(1)(a), Idaho
Code, for the first time is guilty of a misdemeanor; and, except as provided
in section 18-8004C, Idaho Code:

(a) May be sentenced to jail for a term not to exceed six (6) months;
(b) May be fined an amount not to exceed one thousand dollars ($1,000);
(c) Shall be advised by the court in writing at the time of sentencing
of the penalties that will be imposed for subsequent violations of the
provisions of section 18-8004, Idaho Code, which advice shall be signed
by the defendant, and a copy retained by the court and another copy re-
tained by the prosecuting attorney;
(d) Shall have his driving privileges suspended by the court for a pe-
period of thirty (30) days, which shall not be reduced and during which
thirty (30) day period absolutely no driving privileges of any kind may
be granted. After the thirty (30) day period of absolute suspension of
driving privileges has passed, the defendant shall have driving privi-
leges suspended by the court for an additional period of at least sixty
(60) days, not to exceed one hundred fifty (150) days, during which
the defendant may request restricted driving privileges that the court
may allow, if the defendant shows by a preponderance of the evidence
that driving privileges are necessary for his employment or for family
health needs; and
(e) Unless an exception is granted pursuant to section 18-8002(12),
Idaho Code, shall within ten (10) days following the end of the manda-
tory suspension period have a state-approved ignition interlock system
meeting the requirements of section 18-8008, Idaho Code, installed, at
his expense, on all motor vehicles operated by him for a period to end
one (1) year following the end of the suspension period. A court may
determine that an offender is eligible to utilize available funds from
the court interlock device and electronic monitoring device fund, as
outlined in section 18-8010, Idaho Code, for the installation and oper-
ation of an ignition interlock device, based on evidence of financial
hardship.
(2) Any person who pleads guilty to or is found guilty of a violation of
the provisions of section 18-8004(1)(b), Idaho Code, for the first time is
guilty of a misdemeanor and subject to:
(a) The provisions of subsection (1)(a), (b), (c) and (e) of this sec-
tion; and
(b) The provisions of section 49-335, Idaho Code.
(3) Any person who pleads guilty to or is found guilty of a violation of
the provisions of section 18-8004(1)(c), Idaho Code, for the first time is
guilty of a misdemeanor and is subject to:
(a) The provisions of subsection (1)(a), (b), (c) and (e) of this sec-
tion; and
(b) The provisions of section 49-335, Idaho Code.
(4) Any person who pleads guilty to or is found guilty of a violation of
the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previ-
ously has been found guilty of or has pled guilty to a violation of the pro-
visions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially
conforming foreign criminal violation within ten (10) years, notwithstanding
the form of the judgment(s) or withheld judgment(s), and except as pro-
vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-
cept as provided in section 18-8004C, Idaho Code:
(a) Shall be sentenced to jail for a mandatory minimum period of not
less than ten (10) days, the first forty-eight (48) hours of which must
be consecutive, and five (5) days of which must be served in jail, as re-
quired by 23 U.S.C. 164, and may be sentenced to not more than one (1)
year, provided however, that in the discretion of the sentencing judge,
the judge may authorize the defendant to be assigned to a work detail
program within the custody of the county sheriff during the period of
incarceration;
(b) May be fined an amount not to exceed two thousand dollars ($2,000);
(c) Shall be advised by the court in writing at the time of sentencing
of the penalties that will be imposed for subsequent violations of the
provisions of section 18-8004, Idaho Code, which advice shall be signed
by the defendant, and a copy retained by the court and another copy re-
tained by the prosecuting attorney;
(d) Shall surrender his driver's license or permit to the court;
(e) Shall have his driving privileges suspended by the court for an
additional mandatory minimum period of one (1) year after release from
confinement, during which one (1) year period absolutely no driving
privileges of any kind may be granted; and
(f) Shall, while operating a motor vehicle, be required to drive only
a motor vehicle equipped with a functioning ignition interlock system,
as provided in section 18-8008, Idaho Code, following the one (1) year
mandatory license suspension period.
(5) If the person has pled guilty or was found guilty for the sec-
second time within ten (10) years of a violation of the provisions of section
18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,
Idaho Code, shall apply.
(6) Except as provided in section 18-8004C, Idaho Code, any person who
pleads guilty to or is found guilty of a violation of the provisions of sec-
tion 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found
guilty of or has pled guilty to two (2) or more violations of the provisions
of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially con-
forming foreign criminal violation, or any combination thereof, or who has
completed a diversion program for driving under the influence, whether or
not the person has pled guilty or been found guilty, or any substantially
conforming foreign program, and has pled guilty or been found guilty of one
(1) or more violations of the provisions of section 18-8004(1)(a), (b), or
(c), Idaho Code, or any substantially conforming foreign criminal violation
within ten (10) years, notwithstanding the form of the judgment(s) or with-
held judgment(s), shall be guilty of a felony and:
(a) Shall be sentenced to the custody of the state board of correction
for not to exceed ten (10) years; provided that notwithstanding the
provisions of section 19-2601, Idaho Code, should the court impose any
sentence other than incarceration in the state penitentiary, the de-
fendant shall be sentenced to the county jail for a mandatory minimum
period of not less than thirty (30) days, the first forty-eight (48)
hours of which must be consecutive, and ten (10) days of which must be
served in jail, as required by 23 U.S.C. 164; and further provided that
notwithstanding the provisions of section 18-111, Idaho Code, a convic-
tion under this section shall be deemed a felony;
(b) May be fined an amount not to exceed five thousand dollars ($5,000);
(c) Shall surrender his driver's license or permit to the court;
(d) Shall have his driving privileges suspended by the court for a
mandatory minimum period of one (1) year after release from imprison-
ment, during which time he shall have absolutely no driving privileges
of any kind, and may have his driving privileges suspended by the court
for an additional period not to exceed four (4) years, during which
the defendant may request restricted driving privileges that the court
may allow if the defendant shows by a preponderance of the evidence
that driving privileges are necessary for his employment or for family
health needs; and
(e) Shall, while operating a motor vehicle, be required to drive only
a motor vehicle equipped with a functioning ignition interlock system,
as provided in section 18-8008, Idaho Code, following the mandatory one
(1) year license suspension period.
(7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)
of this section, any person who is enrolled in and is a participant in good
standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state-approved ignition interlock system is installed, at his expense, on any motor vehicles operated by the offender for a period to end one (1) year following the end of the suspension period and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.

(8) For the purpose of computation of the enhancement period in subsections (4), (6) and (9) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(9) Notwithstanding the provisions of subsections (4) and (6) of this section, any person who has pled guilty to or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C, Idaho Code, a violation of the provisions of section 18-8006, Idaho Code, a violation of the provisions of section 18-4006 3. (b), Idaho Code, notwithstanding the form of the judgment(s) or withheld judgment(s) or any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment(s) or withheld judgment(s), and within fifteen (15) years pleads guilty to or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (6) of this section.

(10) For the purpose of subsections (4), (6) and (9) of this section and the provisions of section 18-8004C, Idaho Code, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section 18-8004, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(11) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall undergo, at his own expense (or at county expense through the procedures set
forth in chapters 34 and 35, title 31, Idaho Code) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation facility approved by the Idaho department of health and welfare; provided however, if the defendant has no prior or pending charges with respect to the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the records and information required under subsection (12)(a), (b) and (c) of this section or possesses information from other reliable sources relating to the defendant's use or nonuse of alcohol or drugs which does not give the court any reason to believe that the defendant regularly abuses alcohol or drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of section 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of an alcohol evaluation with respect to a defendant's first violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or other assessment which evaluates the defendant's degree of alcohol abuse and need for alcohol treatment conducted within twelve (12) months preceding the date of the defendant's sentencing. In the event an alcohol evaluation indicates the need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for indigent defendants.

(12) At the time of sentencing, the court shall be provided with the following information:

(a) The results, if administered, of any evidentiary test for alcohol and/or drugs;
(b) A computer or teletype or other acceptable copy of the person's driving record;
(c) Information as to whether the defendant has pled guilty to or been found guilty of a violation of the provisions of section 18-8004,
18-8004C or 18-8006, Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and

d) The alcohol evaluation required in subsection (11) of this section, if any.

(13) A minor may be prosecuted for a violation of the provisions of section 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended or denied for an additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of twenty-one (21) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(14) In the event that the alcohol evaluation required in subsection (11) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence which may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which event the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation, or a comparable program. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(15) Any person who is disqualified, or whose driving privileges have been suspended, revoked or canceled under the provisions of this chapter, shall not be granted restricted driving privileges to operate a commercial motor vehicle.

(16) As used in this section, "at his expense" includes the cost of obtaining, installing, using and maintaining an ignition interlock system.

SECTION 4. That Section 18-8008, Idaho Code, be, and the same is hereby amended to read as follows:

18-8008. IGNITION INTERLOCK SYSTEMS.

(a) If a person is convicted, is found guilty, pleads guilty or receives a withheld judgment for violating any of the provisions of this chapter relating to driving under the influence and has had any or all of a sentence or fine suspended for the violation, the court shall, unless an exception is granted pursuant to section 18-8002(12), Idaho Code,
impose the sanction provided for in this section in addition to any
other penalty or fine imposed pursuant to this chapter.
(b) The court shall order the person to have a state-approved ignition
interlock system installed, at his expense, on all motor vehicles op-
erated by him. A court may determine that an offender is eligible to
utilize available funds from the court interlock device and electronic
monitoring device fund, as outlined in section 18-8010, Idaho Code, for
the installation and operation of an ignition interlock device, based
on evidence of financial hardship.
(2) The calibration setting at which the ignition interlock system will
prevent the motor vehicle from being started shall be .025.
(3) As used in this chapter, the term "ignition interlock system" means
breath alcohol ignition interlock device, including a camera, certified by
the transportation department, designed to prevent a motor vehicle from be-
ing operated by a person who has consumed an alcoholic beverage.
(4) The transportation department shall by rule provide standards for
the certification, installation, repair and removal of the devices.
(5) The court shall notify the transportation department of its order
imposing a sanction pursuant to this section. The department shall attach
or imprint a notation on the driver's license or other document granting the
person restricted driving privileges of any person restricted under this
section that the person may operate only a motor vehicle equipped with an
ignition interlock system.
(6) When a court orders a person to install and use an ignition inter-
lock system pursuant to this section, the court shall order the person to pay
the cost for obtaining, installing, utilizing and maintaining the ignition
interlock system. All fees collected pursuant to this section shall be in
addition to any other fines or penalty provided by law and shall be deposited
in the court interlock device and electronic monitoring device fund created
in section 18-8010, Idaho Code.

SECTION 5. That Section 18-8010, Idaho Code, be, and the same is hereby
amended to read as follows:

18-8010. SURCHARGE ADDED TO ALL FINES. Every person who is convicted,
found guilty, pleads guilty or receives a withheld judgment for violating
the provisions of this chapter shall be required to pay an additional fif-
teen dollars ($15.00) in addition to any other fine, penalty or costs the
court may assess. Moneys received pursuant to this section shall be remit-
ted to the county treasurer in the county where the person was adjudicated
for deposit in the "court interlock device and electronic monitoring device
fund," which is hereby created in each county. Moneys in this fund may be
utilized for the purchase of ignition interlock devices and electronic mon-
itoring devices required pursuant to sections 18-8002, 18-8002A, 18-8005,
18-8008 and 18-8008A, Idaho Code. Additionally, any moneys a court charges
a defendant for using an ignition interlock device or electronic monitoring
devices shall be placed in this fund. The court or a prosecuting attorney who
establishes a diversion program pursuant to section 19-3509, Idaho Code, may
also utilize moneys in this fund to pay for drug testing for an indigent di-
version participant or to assist an indigent defendant or indigent diversion

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participant to procure an ignition interlock device or electronic monitoring devices. The court may also utilize moneys in this fund for alcohol or drug abuse-related probation, treatment or prevention programs for adults or juveniles.

SECTION 6. That Section 19-403, Idaho Code, be, and the same is hereby amended to read as follows:

19-403. MISDEMEANORS. (1) Except as otherwise provided in subsections (2) and (3) of this section, a prosecution for any misdemeanor must be commenced by the filing of the complaint or the finding of an indictment within one (1) year after its commission.

(2) A prosecution for failure to report or failure to cause to be reported the abuse, abandonment, or neglect of a child as provided for in section 16-1605, Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within four (4) years after its commission.

(3) A prosecution for misuse of funds as provided for in section 18-5702 (1), Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission.

(4) A prosecution for a misdemeanor that was dismissed pursuant to section 19-3509, Idaho Code, must be refiled no later than two (2) years after its dismissal.

SECTION 7. That Section 19-3506, Idaho Code, be, and the same is hereby amended to read as follows:

19-3506. EFFECT OF DISMISSAL AS BAR -- DISMISSAL FOR DIVERSION PARTICIPANT. (1) An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor, except as provided in subsection (2) of this section; but it is not a bar if the offense is a felony.

(2) A prosecuting attorney may move for dismissal of a misdemeanor action, and the court may order such dismissal, if the defendant agrees to participate in a diversion program pursuant to section 19-3509, Idaho Code. The action may be refiled for failure to complete the diversion program, and speedy trial shall be calculated from the date of refiling.

SECTION 8. That Chapter 35, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-3507, Idaho Code, and to read as follows:

19-3507. DIVERSION PROGRAMS -- LEGISLATIVE INTENT. (1) For purposes of this section and sections 19-3508 and 19-3509, Idaho Code, "diversion program" means the use of local community resources, churches, substance abuse counseling, informal probation, community service work, voluntary restitution, or other available services or programs as an alternative to adjudication of a criminal case in court.

(2) It is the intent of the legislature and the policy of the state of Idaho that a diversion program should:
(a) Provide an opportunity to incorporate statistics and empirical research into decision-making in the criminal justice system in a way that saves taxpayer dollars while also reducing recidivism and enhancing public safety;
(b) Provide individuals with the opportunity to rectify criminal conduct through early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter future criminal behavior by such individuals;
(c) Provide an alternative to the imposition of criminal sanctions when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct; and
(d) Provide assistance to criminal court calendars in order to focus expenditure of criminal justice resources on matters involving serious criminality and severe correctional problems.

SECTION 9. That Chapter 35, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-3508, Idaho Code, and to read as follows:

19-3508. ELIGIBILITY FOR DIVERSION PROGRAM. A person is eligible to participate in a diversion program if:
(1) The person has been charged with driving under the influence pursuant to section 18-8004 or 18-8004A, Idaho Code;
(2) No other person is alleged to have been physically injured as a result of the conduct underlying such charge; and
(3) The person charged has not been convicted of driving under the influence or a substantially conforming foreign criminal violation within the past ten (10) years and has not previously participated in a diversion program pursuant to section 19-3509, Idaho Code.

SECTION 10. That Chapter 35, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-3509, Idaho Code, and to read as follows:

19-3509. DIVERSION PROGRAM REQUIREMENTS. (1) A prosecuting attorney may, at the prosecuting attorney's discretion, establish a diversion program and may refer a defendant eligible to participate in a diversion program pursuant to section 19-3508, Idaho Code, to such program within thirty (30) calendar days of a citation being issued or charges being filed against the defendant. Before entering an agreement to participate in the diversion program, a defendant may obtain advice from a defense attorney on the requirements and consequences of participating in the diversion program and must undergo a drug or alcohol evaluation, or both, if requested by the prosecuting attorney. The terms and conditions of the diversion program shall be set forth in a written agreement signed by the prosecuting attorney and the defendant as well as the defendant's attorney, if the defendant is represented by an attorney. If the defendant agrees to participate in the diversion program, then the prosecuting attorney shall move for dismissal of the action against the defendant pursuant to section 19-3506, Idaho Code.
(a) A diversion program may be administered by the prosecuting attorney or by the prosecuting attorney's designed. The diversion agreement shall specify the person administering the program and shall set out the requirements for successful completion of the program and the duration of the diversion agreement. The duration of the period a person is required to participate in a diversion program under this section shall be no shorter than twelve (12) months. A person participating in a diversion program for an alcohol-related charge shall be required to install and maintain, at the participant's expense, an ignition interlock system in each vehicle such person operates for the duration of the program, as further provided in subsection (5) of this section. A person participating in a diversion program for a charge unrelated to alcohol shall be required to undergo drug testing at the person's expense for at least twelve (12) months. If the person is indigent, the prosecuting attorney may order the use of moneys from the interlock device and electronic monitoring device fund created by section 18-8011, Idaho Code, to assist the person in procuring an ignition interlock device or to pay for drug testing. The participant in a diversion program must also complete at least thirty-two (32) hours of sheriff inmate labor detail or approved community service and at least twenty-four (24) hours of drug and alcohol counseling, therapy, or education from an approved provider.

(b) At the end of the diversion period, the prosecuting attorney shall determine whether the participant complied with the requirements of the diversion agreement. If the prosecuting attorney finds that the participant failed to comply with the requirements of the diversion agreement, then the prosecuting attorney may file the case pursuant to section 19-3606, Idaho Code.

(2) If a person participates in a diversion program pursuant to this section, then any statement made by the person in diversion activities or proceedings is inadmissible as substantive evidence of guilt during an adjudicative proceeding in the refilled case.

(3) The requirements for successful completion of a diversion program may include, but are not limited to:

(a) Informal supervision with the probation department;
(b) Community service work;
(c) Inmate labor detail work;
(d) A community-based diversion program;
(e) Restitution to a victim;
(f) Alcohol monitoring and testing;
(g) Individual therapy and counseling;
(h) Group therapy and counseling; and
(i) Drug monitoring and testing.

(4) The administrator of a diversion program may require payment of restitution and fees to cover the costs of the diversion program. Any moneys collected shall be reasonably related to program costs. The administrator shall assess a diversion fee of one hundred fifty-seven dollars and fifty cents ($157.50) to each diversion participant. If the participant is indigent, the diversion fee may be waived. The diversion fee shall be paid to the clerk of the district court and distributed as follows:

Friday February 15, 2019 5:49 PM
(a) Seventeen dollars and fifty cents ($17.50) to be distributed as provided in section 31-3201A(2), Idaho Code;
(b) Ten dollars ($10.00) to be distributed as provided in section 31-3201(3), Idaho Code;
(c) Ten dollars ($10.00) to be distributed as provided in section 31-3201(5), Idaho Code;
(d) Fifteen dollars ($15.00) to be distributed as provided in section 31-3201B, Idaho Code;
(e) Fifty dollars ($50.00) to be distributed as provided in section 31-3201H, Idaho Code;
(f) Fifteen dollars ($15.00) to be distributed as provided in section 31-3204, Idaho Code;
(g) Thirty-seven dollars ($37.00) to be distributed as provided in section 72-1025, Idaho Code; and
(h) Three dollars ($3.00) to be distributed as provided in section 72-1105, Idaho Code.

(5) A participant in a diversion program whose driving privileges have been suspended may be granted driving privileges by the administrator of a diversion program, in which case the participant shall be issued a restricted driving permit by the Idaho transportation department. Prior to being granted restricted driving privileges, the participant must show to the administrator proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code. If participating in the diversion program due to a charge involving alcohol, then the participant, to receive a restricted driving permit, must have an ignition interlock system as defined in section 18-8008, Idaho Code, installed in each vehicle operated by the participant and must pay an ignition interlock fee of fifteen dollars ($15.00) to be deposited in the court interlock device and electronic monitoring device fund created by section 18-8010, Idaho Code. The ignition interlock system shall be removed once the participant successfully completes diversion, provided that such removal shall not occur and the program shall not be considered successfully completed, until the administrator of the diversion program receives a declaration from the participant's ignition interlock vendor, on a form provided or approved by the administrator, certifying that none of the following incidents occurred while the system was installed in the vehicle:

(a) An attempt to start the vehicle with an alcohol concentration of 0.04 or more;
(b) Failure to take any random test;
(c) Failure to pass any random retest with an alcohol concentration of 0.025 or lower; or
(d) Failure of the participant to appear at the ignition interlock system vendor's place of business when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the system.

(c) If criminal charges against the participant are refilled pursuant to section 19-3506, Idaho Code, then an ignition interlock system installed pursuant to this section shall be removed.

SECTION 11. That Section 20-617, Idaho Code, be, and the same is hereby amended to read as follows:
20-617. LABOR OF PRISONERS ON PUBLIC WORKS. Persons confined in the county jail under a judgment of conviction, suspended sentence or withheld judgment rendered in any criminal case, either under a judgment of imprisonment or a judgment for the payment of a fine and costs, or persons participating in a diversion program pursuant to section 19-3509, Idaho Code, may be required to perform labor on federal, state or other governmental projects or community service projects.
AN ACT
RELATING TO DRIVER'S LICENSE SUSPENSIONS; AMENDING SECTION 18-8002A, IDAHO CODE, TO PROVIDE THAT UNDER SPECIFIED CONDITIONS, CERTAIN SUSPENSIONS SHALL BE VACATED AND DRIVING PRIVILEGES SHALL BE RESTORED AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 18-8002A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:
(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.
(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.
(c) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.
(d) "Director" means the director of the Idaho transportation department.
(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or per sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.
(f) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.

(g) "Hearing request" means a request for an administrative hearing on the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be informed substantially as follows (but need not be informed verbatim):

If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

(a) The peace officer will issue a notice of suspension and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period;

(b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license to show cause why you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended and you will be required to install, at your expense, a state-approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period. The suspension will be for one (1) year if this is your first refusal. The suspension will be for two (2) years if this is your second refusal within ten (10) years. You will not be able to obtain a temporary restricted license during that period;

(d) If you complete evidentiary testing and fail the testing and do not request a hearing before the department or do not prevail at the hearing, your driver's license will be suspended and you will be required to install, at your expense, a state approved ignition interlock system on all motor vehicles you operate for a period to end one (1) year following the end of the suspension period. This suspension will be for ninety (90) days if this is your first failure of evidentiary testing, but you may request restricted noncommercial vehicle driving privileges after the first thirty (30) days. The suspension will be for one (1) year if this is your second failure of evidentiary testing within five (5) years. You will not be able to obtain a temporary restricted license during that period;

(e) However, if you are admitted to a problem solving court program and have served at least forty-five (45) days of an absolute suspension of driving privileges, you may be eligible for a restricted permit for the
purpose of getting to and from work, school or an alcohol treatment pro-
gram, but only if you install, at your expense, a state-approved igni-
tion interlock system on all motor vehicles you operate; and
(f) After submitting to evidentiary testing, you may, when practica-
ble, at your own expense, have additional tests made by a person of your
own choosing.
(3) Rulemaking authority of the Idaho state police. The Idaho state po-
lice may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:
(a) What testing is required to complete evidentiary testing under this
section; and
(b) What calibration or checking of testing equipment must be performed
to comply with the department's requirements. Any rules of the Idaho
state police shall be in accordance with the following: a test for alco-
hol concentration in breath as defined in section 18-8004, Idaho Code,
and subsection (1)(e) of this section will be valid for the purposes of
this section if the breath alcohol testing instrument was approved for
testing by the Idaho state police in accordance with section 18-8004,
Idaho Code, at any time within ninety (90) days before the evidentiary
testing. A test for alcohol concentration in blood or urine as defined
in section 18-8004, Idaho Code, that is reported by the Idaho state po-
lice or by any laboratory approved by the Idaho state police to perform
this test will be valid for the purposes of this section.
(4) Suspension and ignition interlock system.
(a) Upon receipt of the sworn statement of a peace officer that there
existed legal cause to believe a person had been driving or was in actual
physical control of a motor vehicle while under the influence of alco-
hol, drugs or other intoxicating substances and that the person submit-
ted to a test and the test results indicated an alcohol concentration or
the presence of drugs or other intoxicating substances in violation of
section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall
suspend the person's driver's license, driver's permit, driving privi-
eges or nonresident driving privileges:
(i) For a period of ninety (90) days for a first failure of evi-
dentiary testing under the provisions of this section. The
first thirty (30) days of the suspension shall be absolute and the
person shall have absolutely no driving privileges of any kind.
Restricted noncommercial vehicle driving privileges applicable
during the remaining sixty (60) days of the suspension may be re-
quested as provided in subsection (9) of this section.
(ii) For a period of one (1) year for a second and any subsequent
failure of evidentiary testing under the provisions of this sec-
tion within the immediately preceding five (5) years. No driving
privileges of any kind shall be granted during the suspension im-
poused pursuant to this subsection.
The department shall also direct the installation, at the offender's
expense, of a state-approved ignition interlock system meeting the re-
quirements of section 18-8008, Idaho Code, on all motor vehicles oper-
ated by the offender for a period to end one (1) year following the end of
the suspension period.
The person may request an administrative hearing on the suspension as provided in subsection (7) of this section. Any right to contest the suspension shall be waived if a hearing is not requested as therein provided.

(b) The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension and notice of the requirement to install, at his expense, a state-approved ignition interlock system for a period to end one (1) year following the end of the suspension period. The notice shall be in a form provided by the department and shall state:

(i) The reason and statutory grounds for the suspension and the requirement to install the ignition interlock system;
(ii) The effective date of the suspension and the requirement to install the ignition interlock system;
(iii) The suspension periods to which the person may be subject as provided in paragraph (a) of this subsection;
(iv) The procedures for obtaining restricted noncommercial vehicle driving privileges;
(v) The rights of the person to request an administrative hearing on the suspension and that, if an administrative hearing is not requested within seven (7) days of service of the notice of suspension and notice of the requirement to install the ignition interlock system, the right to contest the suspension shall be waived;
(vi) The procedures for obtaining an administrative hearing on the suspension;
(vii) The right to judicial review of the hearing officer’s decision on the suspension and the procedures for seeking such review.

(c) Notwithstanding the provisions of paragraph (a)(i) and (ii) of this subsection, a person who is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state-approved ignition interlock system is installed, at his expense, on all motor vehicles operated by him for a period to end one (1) year following the end of the suspension period and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.
(5) Service of suspension and ignition interlock system by peace officer or the department. If the driver submits to evidentiary testing after the information in subsection (2) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code:

(a) The peace officer shall, acting on behalf of the department, serve the person with a notice of suspension and notice of the requirement to install, at his expense, a state-approved ignition interlock system for a period to end one (1) year following the end of the suspension period in the form and containing the information required under subsection (4) of this section. The department may serve the person with a notice of suspension and the requirement to install the ignition interlock system if the peace officer failed to do so or failed to include the date of service as provided in subsection (4)(b) of this section.

(b) Within five (5) business days following service of a notice of suspension and notice of the requirement to install the ignition interlock system, the peace officer shall forward to the department a copy of the completed notice of suspension and notice of the requirement to install the ignition interlock system form upon which the date of service upon the driver shall be clearly indicated, a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer, which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

(i) The identity of the person;
(ii) Stating the officer's legal cause to stop the person;
(iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code;
(iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (2) of this section;
(v) That the person was lawfully arrested;
(vi) That the person was tested for alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code.

If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(c) The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to
include the date of service as provided in subsection (4)(b) of this section.

(6) Additional tests. After submitting to evidentiary testing at the request of the peace officer, the person may, when practicable, at his own expense, have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his own choosing. The person's failure or inability to obtain additional tests shall not preclude admission of the results of evidentiary tests administered at the direction of the peace officer unless additional testing was denied by the peace officer.

(7) Administrative hearing on suspension. A person who has been served with a notice of suspension and notice of the requirement to install the ignition interlock system after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The hearing may be held only on the suspension and not on the requirement to install an ignition interlock system. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension and notice of the requirement to install the ignition interlock system and shall include what issue or issues shall be raised at the hearing. The date on which the hearing request was received shall be noted on the face of the request.

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for a ten (10) day period. Such extension shall not operate as a stay of the suspension, notwithstanding an extension of the hearing date beyond such thirty (30) day period. Written notice of the date and time of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all hearings by telephone if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

The hearing shall be recorded. The sworn statement of the arresting officer, and the copy of the notice of suspension and the notice of the requirement to install the ignition interlock system issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting officer shall not be required to participate unless directed to do so by a subpoena issued by the hearing officer.

The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

(a) The peace officer did not have legal cause to stop the person; or
(b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the
influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
(c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
(d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
(e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law and shall enter an order vacating or sustaining the suspension. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted.

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension and the requirement to install the ignition interlock system required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension shall run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary. If a license is suspended under this section and the criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C, or 18-8006, Idaho Code, are vacated or dismissed, then both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall also be vacated. The defendant's driving privileges shall be restored on the effective date the criminal charges are vacated or dismissed.

(8) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code. Upon motion of the person required to install an ignition interlock device pursuant to subsection (4)(a) of this section, a court in its discretion may relieve the person from the installation of the device where the court finds it clear and convincing that the person will not present a danger to the public or that there are exceptional or mitigating circumstances demonstrating that installation of the device is unnecessary or unwarranted. Financial hardship, standing alone, is not an exceptional or
mitigating circumstance. A court may determine that an offender is eligible
to utilize available funds from the court interlock device and electronic
monitoring device fund, as outlined in section 18-8010, Idaho Code, for the
installation and operation of an ignition interlock device, based on evi-
dence of financial hardship.

(9) Restricted noncommercial vehicle driving privileges. A person
served with a notice of suspension for ninety (90) days pursuant to this
section may apply to the department for restricted noncommercial vehicle
driving privileges, to become effective after the thirty (30) day absolute
suspension has been completed. The request may be made at any time after ser-
vice of the notice of suspension. Restricted noncommercial vehicle driving
privileges will be issued for the person to travel to and from work and for
work purposes not involving operation of a commercial vehicle, to attend an
alternative high school, work on a GED, for postsecondary education, or to
meet the medical needs of the person or his family if the person is eligible
for restricted noncommercial vehicle driving privileges. Any person whose
driving privileges are suspended under the provisions of this chapter may be
granted privileges to drive a noncommercial vehicle but shall not be granted
privileges to operate a commercial motor vehicle.

(10) As used in this section, "at his expense," "at your expense" and "at
the offender's expense" include the cost of obtaining, installing, using and
maintaining an ignition interlock system.

(11) Rules. The department may adopt rules under the provisions of
chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-
sions of this section.
LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

This bill draft contains confidential and privileged information exempt from disclosure under Section 74-109(1), Idaho Code. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning the Legislative Services Office at (208) 334-2475.

AN ACT
RELATING TO CRIMINAL PROCEDURE; AMENDING CHAPTER 19, TITLE 19, IDAHO CODE,
BY THE ADDITION OF A NEW SECTION 19-1910, IDAHO CODE, TO DEFINE TERMS,
to provide certain requirements and restrictions for pretrial risk as-
se ssment algorithms, and to provide that a court may consider certain
factors; and providing severability.

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

SECTION 1. That Chapter 19, Title 19, Idaho Code, be, and the same is
hereby amended by the addition thereto of a NEW SECTION, to be known and des-
ignated as Section 19-1910, Idaho Code, and to read as follows:

19-1910. PRETRIAL RISK ASSESSMENT ALGORITHMS. (1) As used in this sec-
tion:
(a) "Free of bias" means that an algorithm has been formally tested and
shown to predict successfully at the same rate for those in protected
classes as those not in protected classes and that difference in the
rate of overestimating risk for persons in any protected class is not
statistically significant from the rate of overestimating risk for
persons in other protected classes or persons who do not belong to a
protected class.
(b) "Pretrial risk assessment algorithm" means a computer program or
application that creates and scores particular factors that have been
shown to correlate with failing to appear in court or committing a new
crime while out on bail, in order to then classify a person into a par-
ticular category of risk or to make recommendations as to bail and con-
ditions of release based on such risk, whether made on an individualized
basis or based on a grid or schedule.
(c) "Protected class" means race, color, religion, sex, or national
origin.

(2) Pretrial risk assessment algorithms shall not be used in the state
of Idaho by the state or any political subdivision of the state, nor shall
any public funds be expended for their implementation, until first shown to
be free of bias against any protected class. Nothing contained in this sub-
section shall prohibit the state or a political subdivision of the state from
operating a pretrial risk assessment algorithm for the purposes of validat-
ing its bias and effectiveness, provided the risk scores generated are not
made available to the court for sentencing until the pretrial risk assess-
ment algorithm has been shown to meet the requirements of this section.

(3) The state or any political subdivision using a pretrial risk as-
se ssment algorithm must first have formally validated such assessment, in-
dependent of the programmer or vendor providing the pretrial risk assessment
algorithm, and must post a validation report on its website and make it oth-
erwise open to public inspection. The pretrial risk assessment algorithm
must be validated as free of bias no less frequently than every two (2) years.
(4) All pretrial risk assessment algorithms shall be transparent, and
all documents, records, and information used to build or validate the risk
assessment shall be open to public inspection, auditing, and testing. No
builder or user of a pretrial risk assessment algorithm may assert trade se-
cret or other protections in order to quash discovery in a criminal matter by
a party to a criminal case.
(5) Nothing in this section shall be construed as prohibiting the court
from considering previous convictions, employment history, ties to the com-
munity, and other factors required by law in setting bail provided that the
factors are considered in a manner that is neutral in their application irre-
spective of membership in a protected class.

SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
to be severable and if any provision of this act or the application of such
provision to any person or circumstance is declared invalid for any reason,
such declaration shall not affect the validity of the remaining portions of
this act.
### AGENDA

**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**  
1:30 P.M.  
Room EW42  
Thursday, February 21, 2019

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<tr>
<th>SUBJECT</th>
<th>DESCRIPTION</th>
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<tr>
<td>H 98</td>
<td>Marriage Age</td>
<td>Representative Wintrow</td>
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<tr>
<td>H 170</td>
<td>Child Protection / Notification / Waiver</td>
<td>Representative Scott</td>
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<tr>
<td>H 138</td>
<td>Forcible Entry / Unlawful Detainer</td>
<td>Paul Smith, Idaho Apartment Association</td>
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*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.*

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<tr>
<th>COMMITTEE MEMBERS</th>
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<tr>
<td>Chairman Dayley</td>
<td>Rep Ehardt</td>
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<td>Vice Chairman Chaney</td>
<td>Rep Scott</td>
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<td>Rep Kerby</td>
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MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, February 21, 2019
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

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 session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

Chairman Dayley called the meeting to order at 1:35 p.m.

MOTION: Rep. McCrostie made a motion to approve the minutes of the February 7, 2019 and February 11, 2019 meetings. Motion carried by voice vote.

Chairman Dayley stated the Committee will adjourn at 5:00 p.m. Any remaining bills or testimony will be carried over to Monday, February 25, 2019.

H 98: Rep. Wintrow presented H 98. This bill creates a minimum marriage age of 16 years old. Currently there is no marriage age minimum in Idaho. Under this legislation 16- and 17-year-olds can get married, but both parties must consent. It would also require parent or guardian permission and court approval. This bill will also align the law with Idaho’s statutory rape laws and a person age 16 or 17 years may marry a person no more than three years older. She stated the stats for young marriages are going down, but last year 75 girls and 15 boys under the age of 18 were married.

Rep. Wintrow yielded her time to Annie Hightower, Executive Director of Policy, Idaho Coalition Against Sexual and Domestic Violence. Ms. Hightower stated young women are typically at higher risk of domestic violence. There is some question about whether minors can even file for protection orders or divorce on their own, which puts them at greater risk. Child marriage has lifelong consequences including higher rates of poverty and diminished mental and physical health. In answer to a question from the Committee, Rep. Wintrow stated the statute defines a bride as a girl and groom as a boy and does not currently address same sex marriages.

Barry Wood, Senior District Judge, Idaho Supreme Court, yielded to questions from the Committee. He explained the court currently only gets involved if one of the parties is under the age of 16. It requires the court petition, medical opinion on soundness to fulfill the marriage contract, parental consent and a hearing. These cases are extraordinary rare. If one, or both parties is age 16 or 17, they seek a license through the county recorder, but it must include the consent of the parent or guardian. This legislation would require 16- and 17-year-olds to go through the court process that currently applies to minors under the age of 16 years. He said the process doesn't normally take long, assuming the medical opinion is readily available.
Jennifer Zielinski, Idaho Anti-Trafficking Coalition, Abby Barzie, Sage Griffin, Lisa Hunter and Sam Anderson spoke in support of H 98. Their comments included: Underage marriage in Idaho may help human traffickers avoid prosecution due to current laws; child marriages can have slave-like characteristics of human trafficking; this is a human rights issue; child marriages result in higher rates of divorce and domestic violence; the bill protects the child's rights; kids should be allowed to be kids and child marriage robs children of their childhood; girls are forced into situations where they are too young to understand the gravity of the decision.

In answer to questions from the Committee, Rep. Wintrow explained her initial interest in this issue was the result of her work on the human trafficking subcommittee, but her focus has evolved to looking at underage marriage and statutory rape as a child protection issue. She said this law would not be retroactive if it were passed into law.

MOTION: Rep. Troy made a motion to send H 98 to the floor with a DO PASS recommendation.

Speaking to the motion, Reps. Ehardt and Zollinger said they will support the motion, but they have more questions for the sponsor, and reserve the right to change their vote on the floor.

VOTE ON MOTION: Chairman Dayley called for a vote on the motion. Motion carried by voice vote. Rep. Wintrow will sponsor the bill on the floor.

H 170: Rep. Scott presented H 170. This bill would add a new section to Title 16, Chapter 16, which would be entitled "Notification of Rights". Under this proposed law, the Department of Health and Welfare would be required to provide a written form that states a parent's rights in a child protection investigation. She stated that each of the rights described on the form are protected under the fourth, fifth, sixth and fourteenth amendments. She reviewed the federal Child Abuse Prevention and Treatment Act, which states that all children under age 18 suspected of being abused must be reported. She explained that about 11 percent of Idaho homes are turned into the Department of Health and Welfare for investigation, but 83 percent are unfounded. She stated this notice would help parents who may be under stressed conditions to understand their rights. Rep. Scott yielded her time to Scott Herndon, District 1, who reiterated that of the 10,000 homes visited annually by Child Protective Services (CPS), 80 percent are found to be without cause. He said the purpose of the bill was not to remove any of the responsibility from CPS. It was written to prevent them from maximally invading the parent/child relationship and violating a parent's Constitutional rights.

Mr. Herndon and Rep. Scott answered questions from the Committee. Their responses included that while the fifth and sixth amendments refer to criminal cases, additional amendments apply. Mr. Herdon explained there is U.S. Supreme Court case law that states the right to remain silent applies in all civil, criminal, administrative, judicial, investigatory or adjudicatory situations. The right to remain silent is in the fourth amendment as it relates to being detained for questioning, or being seized. Rep. Scott stated this legislation is being brought forward based on many examples of case law where the Ninth Circuit Court has reinforced parental relationships. Mr. Herdon stated CPS social workers do not have the power to arrest or cite those being investigated, but under Federal law they are empowered to move a case forward. He explained law enforcement is not involved in all cases, therefore, it makes the most sense for CPS to handle the notification of rights because they are involved with cases from beginning to end. Rep. Scott reiterated that unlike Miranda Rights, no one will read the rights. They will only be given to the parent or guardian. She explained that if a CPS worker is not invited into a home,
they can still go to court and get a warrant to conduct the investigation. This bill
does not require the notice be provided in any language other than English.

**Rep. Goesling** suggested that the identification of the person presenting the
document along with a CPS phone number should be included on the form.

Robert Jones, Misty Karlfeldt, Dustin Ingram, Don Martin and Christin Jones
spoke in support of H 170. Each shared their personal stories, or stories of
those who were unable to testify in person. They stated: it is good for parents
to understand their rights; this furthers child safety; and child protective services
workers do not have proper training.

**MOTION:** Rep. Chaney made a motion to send H 170 to the floor with a DO PASS
recommendation.

Reps. Chaney, Kerby, Zito, Goesling, Ehardt and Young spoke in support of
the motion. Their comments included: it is good for people to know what their rights
are; 8,000 cases each year are unfounded; investigations can be intrusive and can
greatly impact the parent/child relationship; the process itself can be considered
abusive; and a great deal of responsibility is in the hands of CPS workers, but that
shouldn’t be granted at the expense of denying Constitutional rights.

**Rep. Davis** stated she would support sending the bill out of Committee, but
reserved the right to change her vote on the floor. She said she supports
government transparency, but she is also concerned about child safety.

Reps. Wintrow, Amador and Gannon spoke in opposition to the motion. They
stated: the 8,000 cases may actually be unsubstantiated, rather than unfounded; it
is difficult to make a decision when CPS is unable to respond to questions from the
Committee; this may be a personnel and training issue versus a systemic problem;
this could put children in abusive situations at greater risk; this could increase
the number of law enforcement calls by CPS; the Child Abuse Prevention and
Treatment Act is intended to protect the most vulnerable population in society
and this bill appears to go to greater lengths to protect parental rights over the
rights of children.

**VOTE ON MOTION:** Chairman Dayley called for a vote on the motion to send H 170 to the floor with
a DO PASS recommendation. **Motion carried by voice vote. Reps. Wintrow, Amador and Gannon** requested to be recorded as voting **NAY. Rep. Scott** will
sponsor the bill on the floor.

Chairman Dayley called a recess of the Committee at 3:46 p.m.

Chairman Dayley reconvened the meeting at 3:54 p.m.

**H 138:** Paul Smith, Executive Director of the Idaho Apartment Association presented H 138. Mr. Smith explained the process for creating the bill started 18 months ago
and involved several tenant’s groups, organizations for the disabled, legislators and
landlord’s groups. This has been an inclusive process and as a result, they have
met the concerns of many, including many of the ACLU’s issues. He said regardless
of the number of people who testify in opposition, the bill is a compromise. He
explained there are new rights for tenants. For example, if a landlord is not fixing
things, a tenant can break their lease, or fix it and deduct the cost of the repair from
their rent. Evictions can be lengthy and costly. Some people believe it is unfair from
a tenant’s perspective; however, it can be a hardship on landlords and surrounding
neighbors. Surrounding states have similar lengths of time for the eviction process.
In answer to questions from the Committee, Mr. Smith said this legislation would apply to both residential and commercial leases. He explained this bill standardizes the eviction process and provides a reasonable time frame for resolution. He said no eviction happens in Idaho without a judge signing off on it, and he has faith the courts can sort it out. As a whole, it is good public policy. He was unable to answer how a party can request a jury trial in 12 days, and stated it would be a question better addressed by an attorney or the courts.

Noel Gill, Northwest Real Estate Capital Corp.; Ian Bott, Disability Council; Shane Facer; Nick O’Bryant; Allison Brace, Intermountain Fair Housing Council; Josh Scholer, Idaho Asset Building Network; Christine Pisani, Idaho Council on Disabilities; Gail Heilman, District 19 Landlord; Patricia Young, retired Magistrate Judge; and Julianne Donnelly Tzul, International Rescue Committee, spoke in opposition to H 138. Their comments included: the bill will have a negative impact on families, low income and refugees; it will have an increasing impact on homelessness because there is not enough affordable housing for the demand; H 138 reduces time to prepare evidence from 3 weeks to 12 days; the expedited time frame will not allow tenants time to understand their rights, obtain legal council and evidence to support their cases; landlords do not always provide the reason a lease was violated when providing notice, nor does the notice itemize the charges or fines, making it difficult for tenants to prepare their cases. As a retired judge, Ms. Young stated she is concerned about the court’s ability to hear these cases in a timely manner, especially in commercial cases. Ms. Donnelly Tzul said this bill facilitates the actions of the few who are unscrupulous and will use a lease violation as a way to discriminate.


Leon Scott and Ben Widmyer spoke in support of H 138. Mr. Scott stated he has rarely had a tenant problem that he hasn’t been able to resolve through the HAP program. Eviction is always the last resort, but it is costly. This bill updates how to handle abandoned property, which is good for landlords. Mr. Widmyer said he agrees with the issues of affordable housing, but this bill does not solve the problem, or make it worse. Evictions are for people who do not follow the rules and they often can be a nuisance to other neighbors. This bill adds protections for tenants by requiring landlords to put deposits in trust. Domestic violence victims also have additional protections. In answer to questions from the Committee, Mr. Widmyer said this bill is clear and concise and puts everyone on the same page, following the same rules. He stated he is not able to recover damages very often.

ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 5:10 p.m.
AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 P.M.
Room EW42
Monday, February 25, 2019

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<td>H 70</td>
<td>Sexual Battery / Minors</td>
<td>Representative Wintrow</td>
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<tr>
<td>H 139</td>
<td>Foreign Defamation Judgements</td>
<td>Representative Ehardt</td>
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<tr>
<td>H 99</td>
<td>Drug Trafficking / Mandatory Minimum Sentencing</td>
<td>Representative Rubel &amp; Representative Zollinger</td>
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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 Dayley
Vice Chairman Chaney
Rep Kerby
Rep Amador
Rep Zito
Rep Zollinger
Rep Ehardt
Rep Scott
Rep Goesling
Rep Hartgen
Rep Marshall
Rep Troy
Rep Young
Rep Gannon
Rep McCrostie
Rep Wintrow
Rep Davis

COMMITTEE SECRETARY
Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Monday, February 25, 2019
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis
ABSENT/EXCUSED: Rep. Kirby
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 Dayley called the meeting to order at 1:33 p.m.

Chairman Dayley reviewed committee and testifying protocol. Testimonies will be limited to three minutes to include everyone who wants to testify.

H 138: Chairman Dayley returned H 138 to the committee for consideration, which was held for time certain from the meeting of February 21, 2019.

Alniah Selene expressed concern with H 138, as finding affordable housing is very difficult, and it took sixty-six days to find an apartment that was accessible and affordable. Shortening the time frame may take away abilities and freedoms of those with disabilities.

Josh Tayler, attorney, Concordia University Housing Clinic School of Law, testified in opposition to the bill. Boise has a hearing every Tuesday and Thursday with tenants and landlords. Many tenants are unaware of their rights and are not represented. Most of Idaho's over 100 thousand tenants are fine, though the industry has changed, leaving a property management company, who makes money from charges to tenants. Late fees happen too fast, with no due process.

In response to committee questions, Mr. Tayler explained people aren't aware they have a late fee, and when the next rent payment is made, the late fee is paid first, and the rest is applied to rent. Another late fee is added, and then tenants are evicted for not paying rent. This fee goes to the property management company. Sometimes landlords, rather than property management companies, will work with the tenant and let them pay the late fee in payments. The majority of law suits are from a property management company rather than the owner. Tenants get three days to pay the rent, on day four they are evicted. Many tenants are on fixed incomes, and late fees are difficult to pay.
Some committee members expressed concern that while portions of the bill may be good, as a whole the bill would not be good for tenants. Affordable housing will make it more difficult to move someone out of a unit. The three day eviction process has been in place for a long time. This legislation may mean fewer landlords put up houses for rent. The committee expressed concern about increasing rent. When there is supply and demand, rent prices go up. If someone hasn't paid rent, the judges in Ada County will ask that person to move on. From this bill there is no change in the process to evict someone who hasn't paid their rent. Commercial leases are included in H 138. A renter cannot hold a landlord hostage on rent for doing repairs. Rent cannot be withheld without good cause. A tenant will risk eviction by making a repair and a deduction from rent. A tenant has the ability to terminate the lease if repairs are not made. Tenants would need to choose between getting repairs or getting damages. Landlords can ask for both at the same time.

Robin Crisler ACLU, spoke in opposition to the bill with concerns for multi-national citizens, and used to dis-empower and dis-enfranchise people of color.

Anthony Yeuason, Boise Renters United, and Jim Baugh, Executive Director, Disability Rights of Idaho, spoke in opposition to the bill. Mr. Baugh expressed concern with the notice, due process, and short time frame. This bill allows for forcible removal by the constable, and Idaho has no constables, and gives the courts the ability to decide guilt of an unlawful detainer. Expedited eviction is only related to rent and drugs, and applies only to the plaintiff, not to the defendant.

Summer Hazen, Senior Community Manager, Greystar, and Len Galus, Regional Manager, Greystar, Global Property Management Company, oversee a portfolio of six properties, and spoke in support of this bill. It will help residents and the landlords. It is difficult for the landlords to take care of people who don't want to follow policies and this bill will protect both parties. In response to committee questions, Mr. Galus has only one or two cases per month go to court.

Annie Hightower, Idaho Coalition for Against Sexual and Domestic Violence, spoke in opposition to this bill because survivors of sexual and domestic violence are often seen as problem tenants, and do not have the capability to respond to an expedited eviction. Violation of their provisions would have an adverse effect on these survivors.

Justice Jim Jones was called by the Committee to answer questions in response to his written testimony. (Attachment) Justice Jones, said expedited eviction with damages gives one a right to a jury trial, and this legislation doesn't give time to get their case together. Damage claims are often inaccurate and an expedited process may deprive the right to a jury trial.

Kathy Griesmyer, American Civil Liberties Union (ACLU), spoke in opposition to the bill, and differed to Richard Eppink, Legal Director, ACLU. Mr. Eppink said this bill sits on the precipice of unconstitutionality, and believes it will be struck down in court due to problems with due process.

**MOTION:** Rep. Zollinger made a motion to send H 138 to the floor with a DO PASS recommendation.

Speaking to the motion, Rep. Gannon said the bill needs a lot of work and is not necessary.

**SUBSTITUTE MOTION:** Rep. Wintrow made a substitute motion to HOLD H 138 in committee.

**Rep. Chaney** spoke in support of the substitute motion.
Rep. Zollinger is sympathetic to both sides, expressing that it is not the governments role to interpret these contracts, and spoke in support of the original motion.


A roll call vote was requested on the original motion to send H 138 to the floor with a DO PASS recommendation. Motion carried by a vote of 11 AYE, 6 NAY, 1Absent/Excused. Voting in favor of the motion: Reps. Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Ricks, Troy, Young, Dayley. Voting in opposition to the motion: Reps. Chaney, Marshall, Gannon, Nash, Winthrop, Davis. Rep. Kerby was Absent/Excused. Rep. Troy will sponsor the bill on the floor.

H 70:

Rep. Winthrop presented H 70, an amendment seeking to add Sexual Battery of a Minor Child Sixteen or Seventeen Years of Age to Idaho Code, which lists all felony crimes that disqualify a convicted felon from owning a firearm. Other similar felony crimes such as Sexual Abuse of a Child under Sixteen, Sexual Exploitation of a Child, and Lewd Conduct with a Minor Child under Sixteen, are all listed as prohibitions to possession. It appears that Sexual Battery of a Minor Child Sixteen or Seventeen Years of Age was inadvertently left off the list of qualifying felony crimes in previous amendments that included other sexual battery felonies. Legislative research does not reveal any reason that previous sessions of the legislature would have failed to add it to the law. Given its serious nature, which includes registration on the Sex Offender Registry, and should be included among other similar codes to prevent a person with this felony conviction from possessing a firearm in Idaho.

Terry Deardens, Sheriff, Ada County Sheriffs Office, said this bill will add this to the provision of felon and would be included in those felons to not be able to get a concealed weapons permit. It was an oversight, and asked that it be corrected.

Motion: Rep. Goesling made a motion to send H 70 to the floor with a DO PASS recommendation. Motion carried by voice vote. Reps. Zollinger, Scott, and Zito requested to be recorded as voting NAY. Rep. Winthrop will sponsor the bill on the floor.

H 139:

Rep. Ehardt presented H 139, legislation protecting authors, journalists and speakers in Idaho from being dragged into foreign courts over frivolous libel charges in jurisdictions that do not respect, value and protect freedom of speech, and the press, as in the United States. It will provide protection from the practice of Libel Tourism, in which plaintiffs choose to file lawsuits in jurisdictions not providing the same protections of free speech as the U.S. Constitution.

Speaking in support of this bill, Steve Shirer, attorney, said this law will greatly decrease cases in foreign courts. In response to committee questions, Mr. Shirer explained how a foreign judgment can be filed with the state of Idaho. No judgements have been brought before an Idaho citizen yet.

Rep. Ehardt said sometimes policy is not clearly given, and this will make clear what Idaho wants done in this case. Idaho laws and values should be enforced in the courts.

Motion: Rep. Chaney made a motion to send H 139 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Marshall requested to be recorded as voting NAY. Rep. Ehardt will sponsor the bill on the floor.
H 99: Rep. Zollinger presented H 99, legislation changing current code pertaining to mandatory minimum sentencing provisions for trafficking in controlled substances. It provides for judicial discretion sentencing in instances where the prescribed minimum sentence would result in a manifest injustice, and where the prescribed minimum sentence is not deemed necessary for the protection of the public.

Speaking in support of H 99, Soni Starr, Kathleen Klar, Karen Lansing, David Hi, John Lynn, Kay Hass, Phil Tate, and Mary Ann Kojis, each shared a personal story about their sons who have become addicted to drugs, and received a prison sentence under the mandatory minimum sentencing.

Karen Lansing spoke in support of H 99. Ms. Lansing served on the Idaho Court of Appeals, and reviewed sentences of those who appealed, and the comments of the judges, and believes a judge is often prevented from doing what he/ she feels is the right thing because of the mandatory minimum sentencing.

Elisa Massoth, attorney, spoke in support of H 99, said the high-end trafficker would still receive the same sentencing under this bill. Research has concluded that stiffer prison sentences do not detour behavior.

Mary Ann Kojis started Starry Link, a program which takes books to inmates so they can record stories for their children, supports rehabilitation rather than mandatory minimum sentencing.

Michael Kane, Idaho Sheriff's Association, spoke in opposition to the bill. As a former drug and murder prosecutor, he heard many cases of addiction, organized crime, money over human life, to enrich themselves and harm others. Mandatory minimum laws are for traffickers, not addicts. The court can commute the sentence if needed, and put the person in county jail for a period of time. Pardon and parole can also commute sentences, if deemed necessary. It would be better to move the line and increase the amounts of drugs.

MOTION: Rep. Nash made a motion to send H 99 to the floor with a DO PASS recommendation.

MOTION: Rep. Scott made a motion to call for the previous question. Rep. Ricks said he would like to hear more testimony and have time to debate this issue.

ADJOURN: The meeting adjourned at 5:24 p.m.

Representative Dayley
Chair

Jayne Feik
Secretary
Statement of Jim Jones regarding House Bill 138
February 20, 2019
House Judiciary, Rules and Administration Committee
Hon. Thomas Dayley, Chairman

Chairman Dayley and honorable members of the Committee

I have serious concerns about the provisions of HB 138 that would: (1) expand the expedited eviction procedure to include cases where “any amount” is claimed to be due by the landlord; (2) allow the determination of damages in an expedited proceeding; (3) deny jury trial for damage issues; and (4) interfere with court scheduling by adding more expedited cases to court calendars.

Before explaining my concerns, it should be made clear that I am not speaking on behalf of the court system. I did not take senior status as a judge because I wanted to be able to speak freely on this type of issue without implicating the courts. These are strictly my own views.

The expedited eviction procedure in Idaho Code section 6-310 was enacted into law in 1974, the year after I started my law practice in Jerome. It was designed to quickly remove a tenant who was not paying rent. That is why the expedited procedure was exclusively limited to actions to recover possession of rented property. If a person was not paying rent, it would be rather apparent one way or the other. There was no need for each side to do a lot of legwork preparing to prove or disprove that single issue. Because of the limited nature of the inquiry at the trial, it was not a problem for either side to prepare within the 12-day trial setting prescribed by section 6-310(2). During my practice in Jerome in the nineteen-seventies, I represented people on both sides of the expedited procedure and it was fair to both.

From 1974 to the present, section 6-311E has prevented landlords from using the expedited procedure where damages are also being pursued. If a landlord seeks damages, that issue must be litigated in a regular civil action where both parties can seek information from the other side and have adequate time to prepare their case for trial. Damage claims are much more fact intensive than a simple eviction, do not entail the urgency of gaining possession of property, and are not subject to being fairly determined in a rushed case. There is no reason to give this particular type of damage suit priority over all other types of cases.

HB 138 repeals section 6-311E and, for the first time, allows a landlord to seek recovery of damages in the short-fuse expedited procedure, including rent claimed to be owing,
“any other amount” the landlord claims to be due, “waste” (damage to the premises) and even treble damages. This gives the landlord a powerful upper hand to obtain a recovery because he or she can line up evidence and witnesses prior to filing suit and be fully prepared for trial. The tenant would essentially be caught by surprise, having just days to try to gather witnesses and evidence.

The summons and complaint served on the defendant need not specifically identify the damages sought at the expedited hearing and the short time frame does not allow for the defendant to obtain that information from the landlord through the normal discovery rules. This poses a serious due process problem for the defendant.

The ability to use the tenant’s failure to pay “any other amount due” as a ground for initiating a quick eviction and claim for damages lends itself to abusive practices. If the lease includes provisions requiring the tenant to pay various charges--water, sewer, lawn mowing, light bulb replacement, appliance repair, etc.--failure to pay even a nominal amount could provide grounds for seeking eviction and damages, even if the validity of the charge may be in dispute. Either pay up or risk eviction.

In my recent work on landlord-tenant issues, I have learned it is not uncommon for some of the Boise area property managers to take advantage of tenants of modest means. I represented one family that was wrongfully sued for over $4,000 in alleged damages to the property they rented. The property had been in shabby condition when these folks moved in and was actually cleaner when they left. The landlord wanted them to pay for a complete painting job, new carpet, a new refrigerator, new blinds, and numerous other amounts claimed to be due under the lease or as “waste” to the property.

This family had not been evicted, but was pursued in an action for damages that went through regular court processes. That allowed the collection of an attorney fee in the amount of $1,000. The family could not afford an attorney and did not know how to defend the suit so a default judgement of more than $5,000 was entered against them. The family’s credit was damaged and their sole wage-earner’s paychecks were garnished to apply to the judgment.

We were able to get the default judgment overturned but I learned this type of abusive practice occurs more than one would think. It would certainly proliferate under the provisions on HB 138. Any landlord or property manager in his or her right mind would use this expedited eviction/collection procedure, rather than the existing procedures where the parties are on more equal legal footing.
Most landlords are reasonable and willing to work with good tenants. On the other hand, most tenants want to do the right thing. There are certainly tenants who do not and there needs to be a procedure for quickly removing them from a property. Idaho Code section 6-310, as currently written, has worked well in that regard for 45 years. It would be fair to add a provision allowing an award of attorney fees to the prevailing party in an expedited eviction. However, allowing the recovery of a range of monetary damages in a flash trial where the defending party has little chance to prepare will result in substantial injustice.

The courts have generally asserted the right to establish their own procedures, such as controlling the exchange of information in discovery proceedings and the scheduling of court proceedings. If there is a rush to use the new landlord-friendly, fast-track eviction/collection procedure, as would be expected, it could upset court scheduling of all cases. There is absolutely no valid reason to give landlord-tenant damage cases priority over all other civil cases. I am no longer on the Court, but if I were, I would be concerned with the potential disruption of court calendars. If a sizable number of cases have to be tried on a crash 12-day basis, it would certainly cause chaos.

Also troubling is the denial of a jury trial on the damage issues. Article I, section 7 of the Idaho Constitution states, “The right of trial by jury shall remain inviolate.” Where a landlord is only seeking recovery of possession of real property for failure of the tenant to pay the agreed rent, the right to jury trial might not apply. This type of case, which courts have regarded as “sounding in equity,” has not historically involved a jury trial. However, Idaho courts have upheld the right to trial by jury where damage issues are to be determined. The courts have regarded these as “actions at law,” which have historically entailed a right to jury trial. The denial of the right to jury trial on the damage issues in a combined eviction/damages suit could be violative of our Constitution.

On the positive side, Section 14 of HB 138, which gives crime victims the right to have new locks installed and to terminate a lease early in certain instances, is a good idea. It is worthy of support, but the remainder of the bill is problematic.
AMENDED AGENDA #1
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 pm or Upon Adjournment
Room EW42
Wednesday, February 27, 2019

<table>
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<tr>
<th>SUBJECT</th>
<th>DESCRIPTION</th>
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<tbody>
<tr>
<td>H 99</td>
<td>Drug Trafficking / Mandatory Minimum Sentencing</td>
<td>Representative Rubel &amp; Representative Zollinger</td>
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</table>

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 Dayley
Vice Chairman Chaney
Rep Kerby
Rep Amador
Rep Zito
Rep Zollinger

Rep Ehardt
Rep Scott
Rep Goesling
Rep Hartgen
Rep Marshall
Rep Ricks

Rep Troy
Rep Young
Rep Gannon
Rep McCrostie(Nash)
Rep Wintrow
Rep Davis

COMMITTEE SECRETARY
Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
e-mail: hjud@house.idaho.gov
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 27, 2019
TIME: 1:30 pm or Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy (Maurin), Young, Gannon, McCrostie (Nash), Wintrow, Davis

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 Legislative Services Library.

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

MOTION: Rep. Marshall made a motion to approve the minutes of February 15th, 2019. Motion carried by voice vote.

Chairman Dayley reviewed Committee and testimony procedures.

H 99: Chairman Dayley returned H 99 to the Committee for consideration, which was held for time certain from the meeting of February 25, 2019.

Rep. Rubel presented H 99. Rep. Rubel stated that 83% of those convicted of drug trafficking in Idaho do not have a violent criminal record and 42% have no prior criminal record. Most are first-time traffickers and have no previous trafficking charges. The annual fiscal cost for incarcerating these individuals is about $11.4M. If only eight of those individuals were given probation instead of serving a mandatory minimum sentence, the savings to the state would be approximately $1M. She pointed out the extreme discrepancy in the sentences of other egregious crimes versus drug trafficking. She covered the two rationales for when mandatory minimum sentences were originally put into law. In 1994 a constitutional change removed discretionary sentencing by judges due to the mandatory minimum clause. The constitutional change removed the ability to use discretionary sentencing, if the person cooperated with prosecutors and investigations. In 2018, a bill passed with a super majority out of the House, but only had an informational hearing in the Senate. Rep. Rubel discussed other significant developments, including the Justice Reinvestment Commission voted unanimously to reform mandatory minimum sentences. At the Federal level, "The First Act" scaled back mandatory minimum sentences for drug offenses.

Rep. Rubel explained the current law is a power shift from judges to prosecutors in this category of offenses. The prosecutors have the discretion in determining what charges they bring and how they plea bargain. She discussed the balance between state and federal laws. The federal laws have a safety valve so state laws are far more stringent. So, prosecutors often prefer to bring cases to the state courts because of the more stringent mandatory sentences. This in turn burdens our state funds, courts and prisons. Reform presents opportunity to shift costs away from state courts and prisons. Judges in favor of reform explain there is a manifest injustice as there are cases of first time and non-violent offenders where they are given no options in sentencing.

Rep. Rubel discussed opposition due to the belief of inconsistency in sentencing.
She stated consistency in sentencing is being used for other egregious crimes and the same consistency can be applied to drug trafficking.

**Rep. Rubel** stated the original rationale behind mandatory minimum sentencing was for deterrence. Deterrence is only one of the objectives in our criminal justice system. Locking up first-time drug offenders can turn them into long-term criminal offenders after prison terms rather giving them a chance at rehabilitation. She said national data shows that the certainty of getting caught is more effective than the severity of the punishment. Judges should be trusted to have discretion in sentencing like they do for other offenses.

In answer to questions from the Committee, **Rep. Rubel** stated there is no acceptable percentage to wrongly incarcerating someone in the hopes it will have a deterrent effect on others. With regard to abolishing mandatory minimum sentencing on all crimes, she said there is a moral distinction and difference between possession of drugs for personal use and the other egregious crimes that require mandatory minimums such as murder and repeated sexual abuse of a child.

**Judith Herman** school counselor, West Ada School District; **Scott McKay**, criminal defense attorney; and **Lynette Gillery**, testified in support of H 99. Some shared their personal stories of how current law has impacted their lives. Their comments also included: drug addiction is a national health crisis; addicts should be given a chance with education and rehabilitation instead of mandatory sentences; the goal of the law is to target large scale drug dealers, but this actually targets drug addicts.

**Joe Andreoli**, President, Fraternal Order of Police; **Kip Paperello**, narcotics detective, Ada County; **Chris Orvis**, Legislative Chairman, Fraternal Order of Police; **Scott Bandy**, Idaho Prosecuting Attorney's Association, spoke in opposition to H 99. Officer Andreoli urged the Committee to make decisions based on fact and not emotion. He shared details on the amount of drugs in possession of some defendants that were discussed in previous testimony. He stated the amounts were excessively beyond what is needed for personal use. Their comments also included: the public and judges don't always have the full story; drug cartels are set up in the states surrounding Idaho, but they are telling their people to go around Idaho because of the drug trafficking laws; drug crimes are tied to other crimes such as property crimes and violence; the weights and monetary value of drugs in possession that trigger the mandatory minimums are above what a normal addict would use; mandatory minimums are a deterrent; the drug problem solving courts are working for the low level offenders and addicts; there is little talk of the lives that are impacted by the people who are selling drugs.

**Chairman Dayley** called a recess at 3:25 p.m.

**Chairman Dayley** reconvened the meeting at 3:38 p.m.

**Fred Birnbaum**, Idaho Freedom Foundation, spoke in support of H 99. He stated this legislation does not do as much as victims hope, nor is it as dangerous as the opponents state. He said it changes the word "must" to "shall". It allows a judge's discretion in extraordinary circumstances. It is a modest and reasonable bill.

**Kieran Donahue**, Sheriff, Canyon County; and **Scott Fisher**, testified in opposition to H 99. Sheriff Donahue stated Idaho is a high intensity drug trafficking area. The state receives Federal funds for projects to address drug trafficking across the state as a result of this. There are addicts who are dealers, and dealers who are not addicts. They are businesses people. Mr. Fisher shared his personal story of loss due to drugs.

**MOTION:** **Rep. Zito** made a motion to send H 99 to the floor with a DO PASS recommendation.
Reps. Hartgen and Goesling spoke in opposition to the motion. Their comments included: crime rates are up in Idaho and the Legislature can change the minimums by raising the amounts of drugs that can be held in possession; drug charges are frequently dealt down; the drug and mental health problem solving courts give addicts an option of diversion or jail, and many of them succeed; jail can be a deterrent.

In answer to questions from the Committee, Rep. Rubel stated this bill does not decriminalize anything. This won't open the floodgate to lighter sentences for egregious drug dealers or cartels.

Reps. Wintrow and Ehardt spoke in support of the motion. Their comments included: this will not open the flood gates, but it will open a small window in cases where manifest injustice has taken place; this provides recourse; when the Founding Founders created the justice system, one of their key points was, "may a guilty man go free, rather than an innocent man go to prison".


ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 4:03 p.m.
AMENDED AGENDA #1
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 pm OR Upon Adjournment
Room EW42
Friday, March 01, 2019

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<tr>
<th>SUBJECT</th>
<th>DESCRIPTION</th>
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<tbody>
<tr>
<td>HR 3</td>
<td>Rule 41 / Pairing on Roll Call Votes</td>
<td>Representative Moyle</td>
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<tr>
<td>HR 4</td>
<td>Rule 79 / Veto Procedure After Governor's Action</td>
<td>Representative Moyle</td>
</tr>
<tr>
<td>H 209</td>
<td>Peace Officers / Arrests Without Warrant / School Violence</td>
<td>Representative Goesling</td>
</tr>
</tbody>
</table>

*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 Dayley
- Vice Chairman Chaney
- Rep Kerby
- Rep Amador
- Rep Zito
- Rep Zollinger
- Rep Ehardt
- Rep Scott
- Rep Goesling
- Rep Hartgen
- Rep Marshall
- Rep Ricks
- Rep Troy(Maurin)
- Rep Young
- Rep Gannon
- Rep McCrostie(Nash)
- Rep Wintrow
- Rep Davis

**COMMITTEE SECRETARY**
- Room: EW56
- Phone: 332-1127
- email: hjud@house.idaho.gov
MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Friday, March 01, 2019
TIME: 1:30 pm OR Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy (Maurin), Young, Gannon, McCrostie (Nash), Wintrow, Davis
ABSENT/EXCUSED: Representatives Scott, Wintrow
GUESTS: Quinn Perry, ISBA; Mike Munger, Office of School Safety

Chairman Dayley called the meeting to order at 12:41 p.m.

H 209: Rep. Goesling presented H 209, which is a rewrite bill for H 115. Rep. Goesling explained the changes, which included removing the word "arrested" from line 23 at the Committee's request. He explained a technical correction was made to line 23, which changed 19-901 to 19-902. He briefly explained this bill came about as a result of a threat made in the Moscow School district and law enforcement was unable to hold or arrest the suspect because they did not witness the action. This caused great stress on the children, parents and school district. With the addition of I.C. § 18-33021 to this section of code, an officer may make an arrest with or without warrant when someone threatens school violence.

MOTION: Rep. Chaney made a motion to send H 209 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Zito requested to be recorded as voting NAY. Rep. Goesling will sponsor the bill on the floor.

HR 3: Rep. Moyle presented HR 3, which is a rewrite of the House rule pertaining to pairing on roll call votes. This rule makes it clear and concise about how pairing works. It is easier to read and understand. In answer to a question from the Committee, Rep. Moyle stated the pair is broken if a member of the pair asks or answers a question, or debates.

MOTION: Rep. McCrostie made a motion to send HR 3 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Moyle will sponsor the bill on the floor.

HR 4: Rep. Moyle presented HR 4. This is a new rule to clarify the process for handling a Governor's veto. The process is laid out in the Constitution, but it isn't clearly provided for in House rules. The new rule states there are five actions that can be taken in addition to a vote on the question, "Shall House Bill ____ pass, the Governor's veto notwithstanding?" Rep. Moyle stated the options are to adjourn, recess, lay it on table, postpone to a time certain, or hold at the desk. He explained this will now be in the rules, so everyone plays by the same rules. In answer to questions from the Committee, Rep. Moyle explained the vote is the action to be taken unless one of the five listed motions are made. Additionally, the rule states, "House bill" because a vetoed bill goes back to the house of origin for a possible override vote. He also stated a vetoed bill cannot return to a Committee because it is not in the Constitution, and it states the question put forth by the Chair is used instead of Speaker because the rule was modeled after the Senate rule.

MOTION: Rep. Marshall made a motion to send HR 4 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Moyle will sponsor the bill on the floor.
ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 1:06 p.m.

___________________________  __________________________
Representative Dayley        Wendy Carver-Herbert
Chair                        Secretary
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<tr>
<th>SUBJECT</th>
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<tr>
<td>S 1018aa</td>
<td>Prisoners, Punishment</td>
<td>Jason Slade Spillman, Administrative Office of the Courts/Idaho Supreme Court</td>
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<tr>
<td>S 1019</td>
<td>Order of Service</td>
<td>Jason Slade Spillman</td>
</tr>
<tr>
<td>S 1021</td>
<td>Bail, Cash Deposit</td>
<td>Jason Slade Spillman</td>
</tr>
<tr>
<td>S 1022</td>
<td>Evasion of Jury Service, Repeal</td>
<td>Jason Slade Spillman</td>
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<tr>
<td>S 1042</td>
<td>Magistrates, Institute Requirement</td>
<td>Jason Slade Spillman</td>
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<tr>
<td>S 1043</td>
<td>Judges, Fourth Judicial District</td>
<td>Jason Slade Spillman</td>
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</tbody>
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COMMITTEE MEMBERS

Chairman Dayley  Rep Ehardt  Rep Troy(Maurin)
Vice Chairman Chaney  Rep Scott  Rep Young
Rep Kerby  Rep Goesling  Rep Gannon
Rep Amador  Rep Hartgen  Rep McCrostie
Rep Zito  Rep Marshall  Rep Wintrow
Rep Zollinger  Rep Ricks  Rep Davis

COMMITTEE SECRETARY

Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov
S 1018aa: Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented S 1018aa. He stated this bill and three of the following bills are part of the court's annual clean up that requires the courts to correct defects or omissions in the law. The original bill was a one word change in §18-2509, which outlined the penalty for aiding a person from escaping from a state institution. The prior version of the bill related that penalty to the entire section of code, which include several escape crimes including a felony escape, so it created the argument that this misdemeanor penalty applied to these other parts of the section. Mr. Spillman explained that instead of referencing the entire act, the bill references the correct section of code (§18-2508). S 1018aa sets forth the language of §18-2508. However, the Senate thought some of the language in §18-2508 was outdated and offensive. At the direction of the Senate, Mr. Spillman provided revised language and some of that was adopted as referenced in S 1018aa. The penalty provision, that was originally in §18-2509, was inserted into §18-2508. Therefore, the bill also repeals the penalty section of §18-2509. The Senate recommended the bill include a general misdemeanor penalty.

Rep. Marshall stated he is still concerned the Legislature declares guilt by the way this bill is drafted. He stated laws should describe what constitutes a violation and upon conviction the punishment should be applied. Then the punishment should be defined. The punishment for the crime listed in this bill is a misdemeanor.

MOTION: Rep. Goesling made a motion to send S 1018aa to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Goesling will sponsor the bill on the floor.

S 1019: Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented S 1019. According to Mr. Spillman, Section 5-508 allows the court to serve a civil summons via publication in a newspaper. Currently, the code also directs that a copy be mailed to defendants, but it confusingly requires the clerk to direct such a mailing. A judge actually orders this and not the clerk. This bill corrects the error along with other technical corrections.

MOTION: Rep. Wintrow made a motion to send S 1019 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Kerby will sponsor the bill on the floor.
S 1021: Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented S 1021, which deals with processing the debts owed to the courts in criminal cases. Mr. Spillman explained this can be satisfied through remaining cash bail monies in deposit. Section 19-2908 allows any money remaining be applied to debts owed to the court after the defendant is found guilty. However, there are two oversights in current law. This bill corrects this by allowing court debts to be paid with remaining bail monies when a judgement is withheld and also can be applied to debts resulting from civil case infractions. In answer to a question from the Committee, Mr. Spillman stated the person posting bail is notified that remaining bail monies are applied to court debts. Yielding to a follow-up question, Barry Wood, Senior Judge, Administrative Office of the Courts and Idaho Supreme Court stated, the Idaho Bail Act resulted in guidelines that state bail is placed in deposit and a party posting bail on behalf of another person must sign a notice so they are aware of the consequences for doing so.

MOTION: Rep. Kerby made a motion to send S 1021 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Kerby will sponsor the bill on the floor.

S 1022: Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented S 1022. Mr. Spillman stated this bill resolves a conflict in two penalty provisions for evading jury duty. This bill repeals § 2-217. I.C. §7-610 is the Legislature's most recent policy expression regarding the maximum penalties for juror contempt and will remain intact.

MOTION: Rep. Kerby made a motion to send S 1022 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Gannon will sponsor the bill on the floor.

S 1042: Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented S 1042. Mr. Spillman explained that current law requires new magistrate judges to attend the magistrate institute before taking the bench. These judges take the bench at different times, but the institute is only offered once a year. Therefore, this requirement is not practical. This bill amends the law to allow judges to attend the magistrate institute within one year of taking the bench. Mr. Spillman explained magistrate judges attend extensive orientation training.

MOTION: Rep. Wintrow made a motion to send S 1042 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Wintrow will sponsor the bill on the floor.

S 1043: Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts and Idaho Supreme Court presented S 1043. Mr. Spillman stated the number of district judges per district is set by statute. This bill increases the number of judges in the fourth district from 11 to 12. The judge will reside in Ada County. The last time a judge was added was in 2013. Since that time the population has increased 16 percent. Mr. Spillman stated Ada County district judges are feeling the stress of long work hours and burdensome case loads. He reviewed the fiscal note by explaining the counties are obligated to provide work space and staff support. Ada County has acknowledged the need and has agreed to absorb the cost for support. He also explained there currently is a judicial salary compensation bill that mirrors the three percent compensation increase for other state employees. If that bill passes, the fiscal note would increase by $4,000.

MOTION: Rep. Ehardt made a motion to send S 1043 to the floor with a DO PASS recommendation.
In answer to a question from the Committee, Mr. Spillman stated the return on investment for the $256,000 needed to fund the new judge and court reporter equates to an improved system for citizens who deserve to have their cases resolved in a timely, fair and efficient manner. Not providing this judgeship compromises Ada County's ability to do this. He also explained the fines and fees collected from the cases this new judge will handle will be dispersed in a myriad of ways based on the priority of payments identified by the Legislature.

VOTE ON MOTION: Chairman Dayley called for a vote on the motion to send S 1043 to the floor with a DO PASS recommendation. 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 2:03 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary
# AGENDA

**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

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<tr>
<td>S 1004</td>
<td>Idaho State Police / Blue Alert System</td>
<td>Lt. Col. Sheldon Kelly, Idaho State Police</td>
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<tr>
<td>S 1044</td>
<td>Special Proceedings / Damages</td>
<td>Barbara Jorden, Idaho Trial Lawyers Association</td>
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<td>Idaho Criminal Justice Commission Update</td>
<td>Eric Fredericksen, Idaho State Appellate Public Defender and Sara Thomas, Administrative Office of the Courts, Idaho Supreme Court</td>
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<tr>
<td>S 1005aa</td>
<td>Human Trafficking</td>
<td>Eric Fredericksen</td>
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**COMMITTEE MEMBERS**

| Chairman Dayley | Rep Ehardt | Rep Troy |
| Vice Chairman Chaney | Rep Scott | Rep Young |
| Rep Kerby | Rep Goesling | Rep Gannon |
| Rep Amador | Rep Hartgen | Rep McCrostie |
| Rep Zito | Rep Marshall | Rep Wintrow |
| Rep Zollinger | Rep Ricks | Rep Davis |

**COMMITTEE SECRETARY**

Wendy Carver-Herbert  
Room: EW56  
Phone: 332-1127  
email: hjud@house.idaho.gov
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, March 07, 2019
TIME: 1:30 pm OR Upon Adjournment
PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy (Maurin), Young, Gannon, McCrostie, Wintrow, Davis

GUESTS: Barbara Jorden, ITLA; Dena Duncan AAUW, Leila McNeil, Tanea Parmenter, ISP/BCI; Colin Nash, Senate Intern; Mary Mosley

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

S 1004: Lt. Col. Sheldon Kelley, Deputy Director, Idaho State Police presented S 1004. Lt. Col. Kelley stated the bill would establish a Blue Alert system in Idaho in accordance with the National Blue Alert Network that was established at the Federal level. The system will be integrated into the Amber Alert system and will have minimal fiscal impact. It will alert citizens, law enforcement and media when a violent offender is on the loose and poses an imminent and credible threat to law enforcement and the public. The bill details the criteria for issuing a Blue Alert. In answer to a question from the Committee, Lt. Col. Kelley said 33 states use the system and seven more are working to implement. The system will also send alerts to mobile phones similarly to Amber Alerts.

MOTION: Rep. Goesling made a motion to send S 1004 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Giddings will sponsor the bill on the floor.

S 1044: Barbara Jorden, Idaho Trial Lawyers Association presented S 1044. Last year the Legislature passed a bill to increase the limit to $35,000 for cases under the Small Lawsuit Resolution Act. The evaluation limit on claims under Section 7-1509 was inadvertently unchanged so this bill brings this section into alignment with the $35,000 limit set forth in the Act. Ms. Jorden stated this will create a smoother process for bringing small lawsuits forward.

MOTION: Rep. McCrostie made a motion to send S 1044 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. McCrostie will sponsor the bill on the floor.

Eric Fredericksen, State Appellate Public Defender and Sara Thomas, Administrative Director of the Courts presented an update on the Idaho Criminal Justice Commission (ICJC). Mr. Fredericksen provided an overview of the ICJC purpose. The Commission was created to bring together all branches of government who have with a connection to the criminal justice system so significant issues can be more effectively addressed and resolved. The vision is to create a safer Idaho. Ms. Thomas provided an overview of the subcommittees which include Mental Health; Research Alliance; Human Trafficking; Grant Review Council and Community College. She also highlighted the ICJC dashboard and Mental Health Summit that will be held this summer. Mr. Fredericksen stated the Human Trafficking subcommittee is working to address gaps in enforcement and to provide greater support for victims. In answer to questions from the Committee,
Ms. Thomas stated Commission is very open to topics and groups would like to bring issues forward. Citizens and the Legislature are welcome to attend meetings.

**S 1005aa:** Eric Fredericksen, State Appellate Public Defender presented S 1005aa. Mr. Fredericksen stated the legislative intent of the bill is to acknowledge the presence of human trafficking in Idaho. It also promotes the importance of the law enforcement community receiving training to increase awareness and response to human trafficking cases. The bill adds language identifying conduct that may be considered labor trafficking and more clearly defines sex trafficking. Mr. Frederickson explained the bill makes human trafficking its own offense and no longer requires the crime be committed in conjunction with the commission of another crime.

**MOTION:** Rep. Scott made a motion to HOLD S 1005aa in committee for time certain, March 11, 2019.

Speaking in support of the motion, Reps. Scott and Zollinger said S 1005aa is a good bill that they will vote to support, but holding the bill in Committee a few days would allow the Senate Judiciary and Rules Committee time to consider hearing additional House bills.

**SUBSTITUTE MOTION:** Rep. Chaney made a substitute motion to send S 1005aa to the floor with a DO PASS recommendation.

Speaking to the substitute motion, Rep. Chaney said it's important to keep the focus on Idahoans who are protected by this bill. It is being brought forward through a collaborative process with bipartisan support.

**AMENDED SUBSTITUTE MOTION:** Rep. Zollinger made a motion to HOLD S 1005aa in Committee for time certain March 13, 2019.

Reps. Zollinger, Zito and Scott spoke in support of the amended substitute motion because it supports the message that it's important for both bodies of the Legislature to do the will of the people.


**ROLL CALL VOTE ON SUBSTITUTE MOTION:** Chairman Dayley called for a roll call vote. Motion carried by a vote of 16 AYE, 2 Absent/Excused. Voting in favor of the motion: Reps. Chaney, Kerby, Zito, Zollinger, Ehardt, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis, Dayley. Reps. Amador and Scott were Absent/Excused. Rep. Wintrow will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 2:31 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary
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<tr>
<td>S 1119</td>
<td>Civil Actions / Order of Renewal</td>
<td>Senator Anthon</td>
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<tr>
<td>S 1117</td>
<td>Harassment / Protection Order</td>
<td>Senator Burgoyne</td>
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<tr>
<td>H 197</td>
<td>Divorce / Child Custody</td>
<td>Representative Zollinger</td>
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</table>

Testimony will be limited to three minutes per person

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 Dayley
Vice Chairman Chaney
Rep Kerby
Rep Amador
Rep Zito
Rep Zollinger
Rep Ehardt
Rep Scott
Rep Goesling
Rep Hartgen
Rep Marshall
Rep Ricks
Rep Troy
Rep Young
Rep Gannon
Rep McCrostie
Rep Wintrow
Rep Davis

COMMITTEE SECRETARY

Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
email: hjud@house.idaho.gov
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Monday, March 11, 2019
TIME: 1:30 pm OR Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Goldman)
ABSENT/EXCUSED: Representative Troy
GUESTS: Senator Jim Rice; Rob Squire, D.L. Evans Bank; Brandon Durst; Matt Byrne; David Oliphant; Dr. Jeff Brouman; Major Mark Bost, American's For Equal Shared Parenting; Regina Bost; Greg Hodger; Shantelle Olliphant; Natasha Harrington; Jayme Sullivan, AOC/ISC; Annie Hightower, ICASDV; Vince Skinner, BSU Professor; Sid Page

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

MOTION: Rep. Marshall made a motion to approve the minutes of March 1, 2019 and March 5, 2019. Motion carried by voice vote.

S 1119: Sen. Anthon presented S 1119. Sen. Anton stated this is a defect clean up bill that makes it easier to understand the law as it relates to renewal on judgements. He yielded his time to Robert Squire, Vice President, Corporate Council, D.L. Evans Bank. Mr. Squire said the purpose of the bill is to clarify existing code, but not change it. It is not clear from the current language that entry of judgment includes entry of an order renewing judgment. If the language were intended to only run from the date of entry of judgment and not entry of renewals of judgment it is unclear what rights, if any, are actually granted by renewal of judgment. He said he believes the case law supports this change. He said the bank supports this bill because it has run into an issue in another state. This is to avoid similar problems in Idaho. It is genuinely confusing to attorney's and it can be clearer to creditors.

MOTION: Rep. Zollinger made a motion to send S 1119 to the floor with a DO PASS recommendation. Speaking to the motion, Rep. Zollinger thanked the sponsor for bringing this bill forward and stated it will clarify the renewal of judgements. Motion carried by voice vote. Rep. Zollinger will sponsor the bill on the floor.

S 1117: Sen. Burgoyne presented S 1117. Sen. Burgoyne stated the legislation he drafted and was passed in 2016 was good, but it did not clearly state petitions for civil protection orders for harassment could be dismissed without hearing. This bill amends the law to more prominently state the criteria warranting the issuance of a protection order, and gives judges the authority, without hearing, to dismiss petitions that fail to state the facts sufficient to warrant a protection order. He stated it narrows the types of telephone harassment complaints that can be filed for protection orders and clarifies the intent of the law, which is to deal with serious threats and acts of violence.

MOTION: Rep. Chaney made a motion to send S 1117 to the floor with a DO PASS recommendation.

In answer to a question from the Committee, Rep. Burgoyne stated the language on line 32 of page one is from the original criminal code, which was written a long time ago and he does not know it's exact meaning.
Chairman Dayley called for a vote on the motion. Motion carried by voice vote.

Rep. Chaney will sponsor the bill on the floor.

Rep. Zollinger presented H 197. Rep. Zollinger stated that while science has shown in the past there are certain periods of a child's life when one relationship with one parent is important, new studies are showing that a child's relationship with both parents is important. Shared parenting is better for children as shown through science. He stated Arizona and Utah have adopted shared parenting laws and 20 other states are looking into it. He explained this bill is less restrictive than the Utah law and it doesn't require a specific number of days a child must spend with a parent. Rep. Zollinger stated the bill clarifies the existing guidance provided to family law judges with regards to child custody. It includes a rebuttal presumption that an award of equal, shared parenting time to each parent is in the best interests of the child. It must be based on a preponderance of evidence in accordance with the facts and it allows the judges to have discretion to make sure the best interests of the child is taken into consideration. It lists the criteria a judge can take into consideration. In reference to the fiscal note, he stated there's been no indication of a large judicial burden in Arizona and Utah. He stated the judges will need to provide written finding of fact and conclusions of law, which can eliminate confusion and protect against potential bias. Findings can be short and shouldn't be burdensome. Written findings is the same thing required of judges in many other types of cases. He said he spoke with the Attorney General's office and there aren't any constitutional issues, but there may be a potential for a constitutional challenge.


In answer to questions from the Committee, Rep. Zollinger stated he did not expect a large impact due to people wanting to re-litigate after the bill passes. The cost to the courts is not expected to be more than usual because judges are already going through the same factors in cases they review now. He explained he has been working on some version of this issue and bill since his freshman year in the legislature. This bill was brought to him late in the session this year, but it has been vetted based on hundreds of conversations with family law attorneys, judges and families.

Rep. Zollinger yielded questions from the Committee to Jerry Papin, Idaho Parents Organization and National Parents Association. Mr. Papin stated many judges are doing a good job, but people are having widely different experiences. Judges aren't using a consistent system. He explained the rights of parents in the armed services and grandparents have been discussed, and there are several issues they'd like to address, but they chose not to include them in this bill so it would be more palatable. He reiterated the bill is about ensuring the continuity of the relationship with both parents and is supported by science. He stated the bill is a starting place for judges by establishing a presumption of equal parenting; judges have to do what they do in other parts of law by providing written finding of fact and conclusions of law; and it adds language for domestic violence protections. He said the Attorney General's office comment regarding a potential constitutional challenge regards a very narrow interpretation and this bill does not change the current law with regard to right to travel.
Sen. Rice spoke in opposition to H 197. Sen. Rice stated this legislation is more restrictive than Utah and the Arizona law is similar to Idaho. He said the courts have stated it would take more judges to handle the additional burden created by this bill because it will generate fewer settlements and more trials. He explained child custody case settlements can be separated into three general categories. The first, and majority, settle through mediation. The second type of cases settle after a parenting time evaluation is completed and both parties receive a professional analysis. The third type of cases are settled by the courts, which comprises a small percentage if cases. He stated there is no bias to men or women in Idaho. There isn't a bias against servicemen and women. Judges do favor the children. In answer to questions from the Committee, Sen. Rice said he believes mediation will be less successful with this bill. He also stated the bill replaces the focus on actual parenting time versus overnights, which correlates to child support. He said he expects to see everyone who doesn't have 50/50 overnight custody back into court for reconsideration. He explained that child support is based on a formula that includes the number of overnights, respective income of parents, and a few adjustments such as cost of health insurance and who will claim the child on income tax. When you change the number of overnights, child support payouts can change.

Vince Skinner, Brandon Durst, Matt Byrne, David Olipyhant, Dr. Jeff Brouman, Major Mark Bost, Regina Bost, Natasha Harrington and Sid Page spoke in support of H 197. They each shared their personal stories. They stated: the current law does not allow for due process; it hurts relationships between children, parents, grandparents and alienates them from one side of their family tree. They stated a growing body of research supports shared parenting because it can increase the emotional security of the child and create better long-term outcomes when compared to children with only one parent. They explained their experience with the judicial process has shown bias toward one parent over another and did not ask or take any of their facts into consideration. They stated this bill is about preserving the relationship with children, not about the money – the financial cost can be extensive when fighting for more time with their children. It was explained while overnight visits are not the same as parenting time, overnight visits are just as valuable in building and nurturing relationships with children. Mr. Byrne and Mr. Oliphant stated that despite their ex's agreeing to shared time initially, the judges in their cases allowed less time with the child/children. Ms. Harrington stated that starting on equal ground is a good place to start in divorce and separation because it can remove the reason for the conflict.

Annie Hightower, Policy Director for the Idaho Coalition Against Sexual and Domestic Violence spoke in opposition to H 197. She stated she was unable to find peer reviewed articles on equal parenting time. Current law looks at what is in the best interest of the children. She said she agrees that shared parenting is good, but it should be looked at on a case by case basis and this bill strips judges of power to make decisions. In answer to questions from the Committee, Ms. Hightower said it is unclear what the preponderance of evidence is and would need to be clarified. She also responded by stating the removal of the language "relevant factors" on lines 32 and 33 of page one is concerning and would require the courts to create new case law.

In response to opposing testimony, Mr. Papin, stated family law attorneys do have an important say in this legislation, but they also have a financial stake in the game. He also explained the existing law addresses domestic violence and the bill enhances the domestic violence protections. He said there should be a presumption that shared custody is not acceptable if domestic violence is present.

**MOTION:** Rep. Marshall made a motion to send H 197 to the floor with a DO PASS recommendation.
Rep. Chaney made a substitute motion to HOLD H 197 in committee.

Speaking to the substitute motion, Rep. Chaney stated the Arizona law is almost word-for-word similar to Idaho’s law. Idaho’s current law allows for at least 35 percent custody and does take into consideration the best interests of children. He also said if judges are going to get it wrong, then it may be a matter of more education. If the bill passes, it will open the door to more re-litigation.

Reps. Ehardt, Young, Goesling, Ricks and Zito spoke in opposition to the substitute motion. Their comments included: family values mean both parents need to be involved with the children; it is important for fathers to be involved in their children’s lives, especially male children; based on the data, Idaho is not as strong on equal parenting time; this bill asks judges to approach these decisions from a basis of innocence; this is an opportunity to expect dads to step up and believe many will; the bill gives judges the freedom to make decisions and allow them to look at more equal factors; by starting in the middle, it allows a balance of justice, and then other circumstances can be taken into consideration; and it will be less likely for children to become pawns.


Reps. Amador, Hartgen, Winrow, McCrostie and Kerby spoke in support of the substitute motion. Their comments included: conceptually it is a good idea, but it would be good to hear from other individuals involved in family law; the change will spawn more litigation; judges take these matters seriously and take all information into consideration and should not be forced into a predetermined presumption; concern the fiscal note is not accurate; 80 to 90 percent of these cases get settled outside of court and get worked out; and it will open the door to re-litigation.

Chairman Dayley called for a roll call vote to HOLD H 197 in Committee.


There being no further business to come before the Committee, the meeting was adjourned at 4:49 p.m.
# AGENDA

**HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE**

1:00 P.M.
Room EW42
Wednesday, March 13, 2019

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<th>SUBJECT</th>
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<th>PRESENTER</th>
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<tbody>
<tr>
<td><strong>H 266</strong></td>
<td>Sexual Assault Evidence Kits</td>
<td>Representative Wintrow</td>
</tr>
<tr>
<td><strong>S 1134</strong></td>
<td>Master and County Jury Lists</td>
<td>Jason Slade Spillman, Idaho Administrative Office of the Courts / Idaho Supreme Court</td>
</tr>
<tr>
<td><strong>S 1093</strong></td>
<td>Pretrial Supervision Services / Fees</td>
<td>Seth Grigg, Idaho Association of Counties</td>
</tr>
<tr>
<td><strong>S 1116</strong></td>
<td>Liquor Account, Appropriation</td>
<td>Seth Grigg</td>
</tr>
<tr>
<td><strong>S 1122</strong></td>
<td>Juvenile Probation Fee</td>
<td>Seth Grigg</td>
</tr>
<tr>
<td><strong>S 1123</strong></td>
<td>Debt Owed to the Court</td>
<td>Seth Grigg</td>
</tr>
</tbody>
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*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 Dayley | Rep Ehardt | Rep Troy |
| Vice Chairman Chaney | Rep Scott | Rep Young |
| Rep Kerby | Rep Goesling | Rep Gannon |
| Rep Amador | Rep Hartgen | Rep McCrostie |
| Rep Zito | Rep Marshall | Rep Wintrow |
| Rep Zollinger | Rep Ricks | Rep Davis(Goldman) |

**COMMITTEE SECRETARY**

- Wendy Carver-Herbert
- Room: EW56
- Phone: 332-1127
- email: hjud@house.idaho.gov
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, March 13, 2019
TIME: 1:00 P.M.
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott (Paterson), Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Goldman)

ABSENT/EXCUSED: None

GUESTS: Charlie Spencer, ISP; Dawn Burns, Ada County Juvenile Court; Barry Wood, Jason Spellman; ISC, Annie Hightower, ICASDV; Katherine Kerner, St. Lukes; Darren Mitchell, Curt Crum, Boise City Police; Jeremy Chou, Givens Pursley; Nancy Volle, SOMB; Toni Lawson, Idaho Hospital Assoc.

Chairman Dayley called the meeting to order at 1:06 p.m.

H 266: Rep. Wintrow presented H 266. This legislation clarifies that when an adult victim of sexual assault comes to the hospital for an anonymous sexual assault medical forensic exam, the hospital staff will not be required to report the injury to police in order to protect the anonymity of the victim. Idaho statute 67-2919 defines conditions for the collection of an anonymous sexual assault evidence kit according to the Violence Against Women Act. Rep. Wintrow said this legislation clarifies policy for reporting injury when the adult sexual assault victim submits to collection of evidence. It protects victims’ rights. This bill provides a very narrow definition of what shall be kept anonymous. If passed, law enforcement will take custody of the evidence, but the personal information of the victim will not be reported.

MOTION: Rep. McCrostie made a motion to send H 266 to the floor with a DO PASS recommendation.

AMENDED MOTION: Rep. McCrostie amended his original motion to include H 266 be sent directly to the second reading calendar.

In answer to questions from the Committee Rep. Wintrow stated the number of sexual assaults are already being counted. She explained the sexual assault evidence kits are collected anonymously if the victim chooses because they are often traumatized and don’t know what to do at the time. This gives law enforcement a way to collect, track and preserve evidence. Every kit is numbered, the number is assigned to the victim who has the ability to track its status through the system. She stated it is very difficult for a criminal case to be prosecuted without the victim’s permission.

VOTE ON MOTION: Chairman Dayley called for a vote on the motion. Motion carried by voice vote.

Rep. Wintrow will sponsor the bill on the floor.

S 1134: Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented S 1134. This bill will permit the Supreme Court access to the data in the court's Odyssey case management system to compile and maintain a statewide master jury list. Additionally, it will direct the court to divide the list into county jury lists for use by the counties, if they opt in to do so. Juries are made up of residents in the counties where the juries serve. It amends six different statutes, but §2-206 and §2-207 are where the most substantial changes are reflected. He stated several counties have expressed an interest in the system.
In answer to questions from the Committee, Mr. Spillman explained the lists compiled by the Idaho Supreme Court through the Odyssey system are pulled from the same types of information that counties use to create their jury lists. He said the county lists will only include county residents in the county where the jury list applies. This bill allows the courts to take advantage of efficiencies already built into the Odyssey system and provide extra functionality such as text capability for jury reminders. He reiterated the program would be voluntary and counties that choose to opt-in may also opt-out in the future. He was not familiar with whether the system had the functionality to identify voter fraud.

**MOTION:** Rep. Amador made a motion to send S 1134 to the floor with a DO PASS recommendation.

Speaking to the motion, Rep. Amador stated it's not always easy to manage data at a small county level. Some counties are asking for this and as people move from county to county this system can help. It also takes advantage of a significant investment the state has already made.

Reps. Marshall and Ehardt spoke in opposition to the motion. They stated the role of assembling jury lists has long been the responsibility of the counties. They are doing a good job and there may be unknown consequences.

In answer to questions from the Committee, Mr. Spillman stated he was unable to enumerate the cost savings to counties because every county is different. Some have not had a jury trial in years and other counties are calling juries on a regular basis. It can be assumed there would be some level of cost savings for those counties. He clarified this legislation does not change the responsibilities of the county jury commissions, this merely allows them a source for pulling their jury lists. He said that jury lists compiled by the counties are currently open to the public.

Reps. Troy, Hartgen, and Zollinger spoke in support of the motion. Their comments included: this can support small counties who don't have the resources to easily compile jury list; the jury commissions for each county are still responsible for preserving the sacredness of the process; it has the potential to provide more accurate and up-to-date lists and can avoid calling jurors who are deceased; it can financially save the counties money; and it's voluntary.

**VOTE ON MOTION:** Chairman Dayley called for a vote on the motion to send S 1134 to the floor with a DO PASS recommendation. Motion carried by voice vote. Reps. Marshall and Ehardt requested to be recorded as voting NAY. Rep. Hartgen will sponsor the bill on the floor.

**S 1093:** Seth Grigg, Idaho Association of Counties presented S 1093. Many counties have established pretrial release supervision programs to monitor people on pretrial release. This legislation codifies existing pretrial release supervision programs, establishes parameters for the establishment of pretrial supervision fees, and establishes that pretrial release supervision fees are to be collected by the clerk of the court. Sometimes there are conditions such as drug/alcohol testing or monitors that are placed on defendants while they are awaiting trial. Thirty counties offer pretrial release programs. Ten counties have established pretrial release program fees. He walked through the specifics of the bill which address the priority of payments in the court’s Odyssey system and how fees will be applied. Mr. Grigg stated that defendants who are found not guilty will not be required to pay fees for their services. The legislation also allows counties the option of allowing offenders to pay the fees for services such as electronic monitors and drug or alcohol testing to the clerk of the court, or directly to the service providers.

**MOTION:** Rep. Gannon made a motion to send S 1093 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Gannon will sponsor the bill on the floor.
S 1116: Seth Grigg, Idaho Association of Counties presented S 1116. This bill corrects a technical error in the distribution language in Idaho Code §23-404. This law states how liquor funds are distributed. In 2018, the distribution to cities and counties was amended to allocate a portion of their funds to the Magistrate division of the district court. The technical error has prevented a portion of these funds from being distributed by the liquor division. It also includes an emergency clause to allow funds already dedicated to the magistrate district courts to be distributed.

MOTION: Rep. Chaney made a motion to send S 1116 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Ehardt will sponsor the bill on the floor.

S 1122: Seth Grigg, Idaho Association of Counties presented S 1122. Currently there is not a statutory fee for juvenile probation supervision, and yet they can be placed on probation for up to three years. Some counties have collected the court ordered fees through the court’s Odyssey system, but effective June 2019, Odyssey will no longer be configured to allow court ordered juvenile probation fees to be collected. As a result, the counties would be required to create new tracking and collection portals outside of Odyssey. This bill establishes a statutory juvenile probation supervision fee and it specifies that revenues from these fees are to be used exclusively for county juvenile probation services.

MOTION: Rep. Troy made a motion to send S 1122 to the floor with a DO PASS recommendation.

Dawn Burns, Director, Juvenile Court Services for Ada County, yielded to a question from the Committee. She stated when juveniles are ordered to pay for their supervision fees, it is done with the understanding that the parent or guardian is responsible for this if the juvenile is unable to pay. She explained the judge has oversight to determine what is fair and works with the juvenile to establish a plan.

VOTE ON MOTION: Chairman Dayley called for a vote on the motion. Motion carried by voice vote. Rep. Gannon will sponsor the bill on the floor.

S 1123: Seth Grigg, Idaho Association of Counties presented S 1123. Idaho law allows the Idaho Supreme Court to work with the State Tax Commission to intercept eligible state income tax returns from those owing debts to any of Idaho’s courts. The provisions do not apply to infractions or debts less than $50. This legislation amends this by allowing tax intercepts on any debts owed to the courts, including civil and juvenile debts. This change will assist the courts in collecting fines and fees that are legally owed to the courts. In answer to a question from the Committee, Mr. Grigg said there is a cost to the court, but the revenue is expected to offset the costs. He also said the Tax Commission is aware of and onboard with this legislation.

MOTION: Rep. Amador made a motion to send S 1123 to the floor with a DO PASS recommendation. 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 2:23 p.m.
AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
Upon Adjournment
Room EW42
Friday, March 15, 2019

<table>
<thead>
<tr>
<th>SUBJECT</th>
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<tbody>
<tr>
<td>S 1133</td>
<td>Criminal Justice Reinvestment Committee</td>
<td>Senator Lodge</td>
</tr>
<tr>
<td>S 1023</td>
<td>Assault &amp; Battery / Parks &amp; Rec Employees</td>
<td>Senator Johnson</td>
</tr>
<tr>
<td>S 1091aa</td>
<td>Mentally Ill / Hearing Continuance</td>
<td>Jason Slade Spillman, Administrative Office of the Courts/Idaho Supreme Court</td>
</tr>
</tbody>
</table>

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 Dayley     Rep Ehardt     Rep Troy
Vice Chairman Chaney Rep Scott(Paterson) Rep Young
Rep Kerby          Rep Goesling     Rep Gannon
Rep Amador         Rep Hartgen      Rep McCrostie
Rep Zito           Rep Marshall     Rep Wintrow
Rep Zollinger      Rep Ricks       Rep Davis(Goldman)

COMMITTEE SECRETARY
Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
e-mail: hjud@house.idaho.gov
MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Friday, March 15, 2019
TIME: Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott (Paterson), Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Goldman)
ABSENT/EXCUSED: Representatives Zollinger, Ehardt, Wintrow
GUESTS: Jason Spillman, Barry Wood, AOC/ISC

Chairman Dayley called the meeting to order at 12:42 p.m.

S 1091aa: Jason Spillman, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented S 1091aa. The commitment process of a proposed mentally ill person requires an examination and evaluation by two designated examiners and at least one must be a psychiatrist, physician, or psychologist. This legislation allows a petitioner seeking to commit a proposed mentally ill person a continuance of the commitment hearing. At times it is impossible to obtain a second designated examiner within the statutory time frames. The continuance must be based on good cause. Under current law, the petitioner is not able to file for a continuance and if the second evaluation is not completed within the statutorily required time frame, the case is dismissed even if the proposed patient still meets the criteria for commitment. This forces the petitioner to file again and the process begins all over again, delaying treatment. Mr. Spillman explained the Senate amended the amount of time for a continuance from 14 days to five days.

Chairman Dayley pointed out the Statement of Purpose (SOP) still said the continuance period was listed as 14 days. He said the Committee would work with Mr. Spillman to correct the SOP to reflect the same continuance period as reflected in the amended bill.

MOTION: Rep. Goesling made a motion to send S 1091aa to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Gannon will sponsor the bill on the floor.

S 1023: Rep. Young presented S 1023. This legislation changes the law to include certain employees of the Department of Parks and Recreation to the list of personnel covered under I.C. §18-915. This section of code relates to punishments for assault and battery and came about as a result of a constituent request.

Sen. Johnson further explained S 1023 and answered questions from the Committee. He stated the issue arose last summer when a parks employee was trying to enforce park regulations and was assaulted. The case was dismissed because parks employees are not covered under this section of Idaho code. He said Department of Water Resources employees are covered. The Director of the Department of Parks and Recreation can delegate authority to employees to enforce State and park regulations and cite non-compliance. Employees attend non-certified training at the Peace Officers Standards and Training academy. Sen. Johnson clarified this legislation covers State Parks and Recreation employees.

MOTION: Rep. McCrostie made a motion to send S 1023 to the floor with a DO PASS recommendation.
Speaking in support of the motion, Rep. Amador stated these employees are tasked with the responsibility to issue citations and they could be in danger. Rep. Paterson stated concerns about giving special protections to one class of citizens over others, especially if they don't wear a badge. Constitutionally, all rights are the same.

**VOTE ON MOTION:**
Chairman Dayley called for a vote on the motion. Motion carried by voice vote.

**S 1133:**
Sen. Lodge presented S 1133. This legislation extends the sunset from 2019 to 2023 for the Criminal Justice Reinvestment Committee. This is an interim oversight committee comprised of members from both bodies of the Legislature. It's purpose is to monitor, study and guide analysis and policy development in all aspects of the criminal justice system. Sen. Lodge stated the committee was started in 2014 and it has made good progress in gathering data and starting to understand where reinvestment is most needed, but there is more work to be done.

**MOTION:**
Rep. McCrostie made a motion to send S 1133 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. McCrostie will sponsor the bill on the floor.

**ADJOURN:**
There being no further business to come before the Committee, the meeting adjourned at 1:20 p.m.
# AMENDED AGENDA #4

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

1:30 pm or Upon Adjournment
Room EW42
Tuesday, March 19, 2019

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<tbody>
<tr>
<td>H 118aa,aaS</td>
<td>Pretrial Risk Assessment Tools</td>
<td>Representative Chaney</td>
</tr>
<tr>
<td>S 1146</td>
<td>Supreme Court Justices / Salary</td>
<td>Sara Thomas, Administrative Office of the Courts</td>
</tr>
<tr>
<td>S 1003aa</td>
<td>Human Trafficking / Diversion</td>
<td>Eric Fredericksen, Idaho Criminal Justice Commission</td>
</tr>
<tr>
<td>S 1110aa</td>
<td>Bail Enforcement Agents</td>
<td>Mike Kane, Idaho Sheriff's Association</td>
</tr>
</tbody>
</table>

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 Dayley | Rep Ehardt | Rep Troy |
| Vice Chairman Chaney | Rep Scott | Rep Young |
| Rep Kerby | Rep Goesling | Rep Gannon |
| Rep Amador | Rep Hartgen | Rep McCrostie |
| Rep Zito | Rep Marshall | Rep Wintrow |
| Rep Zollinger | Rep Ricks | Rep Davis |

COMMITTEE SECRETARY

| Wendy Carver-Herbert |
| Room: EW56 |
| Phone: 332-1127 |
| email: hjud@house.idaho.gov |
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 19, 2019
TIME: 1:30 pm or Upon Adjournment
PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

GUESTS: Eric Fredericksen, SAPD; Sara Thomas, Barry Wood, Andrea Patterson, ISC; Mike Kane, ISA; Jesse Taylor, ABC; Nicole Fitzgerald, Council on DV; Sheriff Kieran Donahue, CCSO/ISA; Melinda Merrill, Idaho Bail Coalition; Dan Kittle, Safe Harbor

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

MOTION: Rep. Marshall made a motion to approve the minutes of March 7, 2019. Motion carried by voice vote.

H 118aa,aaS: Rep. Chaney brought H 118aa,aaS before the Committee again for consideration of the Senate amendments. This clarifies grammar as brought to him by the Idaho Supreme Court so the bill clearly states what is intended. Rep. Chaney stated he requested the Senate amend the language and those changes are reflected in the amendment.

MOTION: Rep. Ehardt made a motion to concur with the amendments made in the Senate to H 118aa,aaS. Motion carried by voice vote. Rep. Chaney will sponsor the bill on the floor.

The Committee discussed protocol as it relates to Committee members voting to support a bill in Committee and then changing their votes on the floor. Chairman Dayley stated it is a member's prerogative to change their minds about a bill at any time in the process. It is recommended that members let bill sponsors and the Committee Chairman know prior to the floor vote out of courtesy and respect.

The Committee also discussed the practice of allowing non-House/Senate members, including the public, to present bills in Committee. Chairman Dayley explained it is preferred to have House and Senate sponsors present bills in Committee because it helps sponsors become more comfortable with the details to present bills on the floor. However, it is the Chairman's prerogative to allow non-legislators to present in Committee. He stated he is allowing the Senate bills to be presented by the experts because the Committee hasn't had the opportunity to hear the bills previously.


S 1146: Chairman Dayley introduced S 1146 and the presenter by stating the Committee has the unique role of reviewing and recommending judges salaries to the Legislature because the courts are an independent branch of government.
Sara Thomas, Administrative Director of the Courts presented S 1146. This bill addresses Idaho's judicial salaries. Ms. Thomas explained how the salaries are structured for the four types of judgeships. Unlike other state employees, salaries are not set through the budget process. Judge salaries are set by statute as required by the Idaho Constitution under article 5 section 17. She explained they are seeking an increase in CEC because judges make critical life affecting decisions as they relate to life, liberty, property, and Idaho's children, to name a few. She stated the judiciary wants to attract the best and brightest, but they are having difficulty filling these positions. Instead, experienced and talented attorney's choose to continue practicing law as an attorney because the opportunities for financial compensation, life balance and freedom to express opinions are greater. Compensation is one of the top reasons for discouraging candidates from applying. The judiciary worked with the chairmen of the Senate and House Judiciary committees to establish the proposed 2.95% increase.


In answer to questions from the Committee, Ms. Thomas explained the judiciary did ask for salary increases last year and will continue to do so as long as recruitment continues to be an issue. She stated, Idaho ranks 11 out of 13 when comparing compensation to judges salaries in 13 western states and is ranked 41st nationally. She also said judges are leaving early and later in their careers to go to other opportunities.

Chairman Dayley, stated it is the Committee's obligation to review the entire compensation package for judges and make recommendations to the Legislature for approval. Chairman Dayley, the Chairman of the Senate Judiciary Rules Committee and the courts are going to meet over the interim to look at all aspects of judges compensation to sort out some issues. He stated a letter formalizing this has been signed. (Attachment) The goal is to create a more orderly process for determining the judges compensation in the future.

VOTE ON MOTION: Chairman Dayley called for a vote on the motion to send S 1146 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Hartgen will sponsor the bill on the floor.

S 1003aa: Eric Fredericksen, Chairman of Human Trafficking Subcommittee, Idaho Criminal Justice Commission, presented S 1003aa. Mr. Fredericksen explained the subcommittee has evaluated statutes as they relate to human trafficking. This legislation creates "Safe Harbor Provisions" for minor aged victims of human trafficking. The subcommittee looked at data from Shared Hope International who compiles information for comparison on a state-by-state basis on how states are managing human trafficking crimes and victims. Idaho's current laws do not compare well, as they relate to prosecution and criminalization of victims involved in the commercial sex trade as a direct result of human trafficking. This, along with the assessment that Idaho does not provide a statutory avenue to specialized services for juvenile victims, is the impetus for this bill. The bill outlines a diversionary program that takes the specialized circumstances of juvenile human trafficking victims into account and it allows human trafficking victims an affirmative defense for certain crimes. In answer to questions from the Committee, Mr. Fredericksen explained the diversion programs are not yet in place, but the new statute, if approved, will make it possible to apply for Federal and private grants.
MOTION: Rep. Wintrow made a motion to send S 1003aa to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Wintrow will sponsor the bill on the floor.

S 1110aa: Mike Kane, on behalf of the Idaho Sheriff’s Association presented S 1110aa. This bill sets guidelines for the profession of bounty hunting. This bill is a compromise. It takes into account the needs of law enforcement, bail enforcement agents and department of insurance. Currently, there are no laws that regulate the profession, but this bill rectifies this. Mr. Kane outlined the requirements for being a bail enforcement agent and the penalties for not complying. He stated bail enforcement agents must carry identification and a badge. They must also notify law enforcement when a planned apprehension is scheduled. The bill also cleans up language as it relates to bail agents. In answer to questions from the Committee, Mr. Kane explained how the bill has been changed to make it more palatable to all the stakeholders. He stated this proposed law would also apply to bail enforcement agents entering the state.

MOTION: Rep. Gannon made a motion to send S 1110aa to the floor with a DO PASS recommendation.

In answer to questions from the Committee, Mr. Kane stated bail enforcement agents don’t have to carry a weapon, but can if they choose to do so. If they do, they must be in compliance with state and Federal laws.

Sheriff Kieran Donahue, Canyon County Sheriff spoke in support of S 1110aa. He shared examples of incidents involving bounty hunters that ended tragically. He stated this bill is a good collaboration of all stakeholders.

Melinda Merrill, on behalf of Triton Management / Aladdin Bail Bonds and Idaho Bail Coalition, spoke in support of S 1110aa. She stated Aladdin has a strong presence in Idaho and their agents receive training.

Jesse Taylor, American Bail Coalition, yielded to a question from the Committee. He explained extrications by out of state bail enforcement agents are handled by contacting an Idaho based bail agent who fills out the required forms such as requests for affidavits and arrest warrants.

VOTE ON MOTION: Chairman Dayley called for a vote on the motion to send S 1110aa to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Troy will sponsor the bill on the floor.

ADJOURN: There being further business to come before the committee. The meeting adjourned at 2:43 p.m.

Representative Dayley  Wendy Carver-Herbert
Chair  Secretary
March 14, 2019

President Pro Tem Brent Hill  
Idaho Legislature  
STATEHOUSE MAIL

Speaker of the House Scott Bedke  
Idaho Legislature  
STATEHOUSE MAIL

Chief Justice Roger Burdick  
Idaho Supreme Court

Re: SB 1146 (2019) and future amendments to I.C. §59-502

Dear Mr. Pro Tem Hill, Mr. Speaker Bedke, and Chief Justice Burdick,

In order to change judicial compensation, Idaho Code §59-502, Salaries of Judges, must be amended by the Legislature. For the 2019 Legislative Session it was agreed by Legislative Leadership that a Judicial CEC proposal would be negotiated by the respective Chairman of the germane committees, Chairman Lakey and Chairman Dayley, and be heard in the respective Committees. Such an agreement was negotiated which is consistent with JFAC’s CEC proposal for all other state employees, and the legislation reflecting this agreement is printed as SB 1146.

The Chairmen requested this letter of intention and willingness to discuss the “ad hoc” manner of when and how Judicial CEC is considered, as well as a general discussion regarding the impacts of judicial pay on the Judges’ Retirement Fund (JRF), which discussions would occur between the Chairmen and representatives of the Court prior to the 2020 Legislative Session. This intention and willingness is consistent with the history of cooperation and collaboration between the two branches on these subjects.

The topics we agree to discuss are:

- Whether Judicial CEC should be consistent in timing or frequency with other state employee CEC; or should some other method be explored.

- The impact of Judicial CEC on the funding and related actuarial status of the JRF.
The impact of the Plan B senior judge program on the JRF.

The actuarial status of the JRF.

In light of changing demographics being experienced in the state, the number and location of judges throughout the state.

Recruitment and retention history of judges in order to promote the mandates of the Idaho Constitution and related statutes.

All parties recognize other issues for discussion may arise.

Following the 2019 session and before the 2020 session, the Administrative Director will initiate regular meetings, at least quarterly, in order to facilitate meaningful exchanges of information.

Sincerely,

[Signature]

Senator Todd Lakey, Chairman Senate Judiciary and Rules Committee

[Signature]

Representative Tom Dayley, Chairman House Judiciary, Rules and Administration Committee

[Signature]

Sara Thomas, Administrative Director of the Courts
AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 pm OR Upon Adjournment
Room EW42
Thursday, March 21, 2019

<table>
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<tr>
<th>SUBJECT</th>
<th>DESCRIPTION</th>
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<tr>
<td>HR 5</td>
<td>House Rules / Reordering</td>
<td>Representative Moyle and Carrie Maulin, Chief Clerk of the House</td>
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<tr>
<td></td>
<td></td>
<td>Carrie Maulin</td>
</tr>
<tr>
<td></td>
<td>Review of Joint Print Committee Report</td>
<td>Carrie Maulin</td>
</tr>
<tr>
<td></td>
<td>Review of Idaho Sheriff's Association Report / County Jails / IDOC Inmates</td>
<td>Representative Dayley</td>
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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.

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<thead>
<tr>
<th>COMMITTEE MEMBERS</th>
<th>COMMITTEE SECRETARY</th>
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<tr>
<td>Chairman Dayley</td>
<td>Rep Ehardt</td>
</tr>
<tr>
<td>Vice Chairman Chaney</td>
<td>Rep Scott</td>
</tr>
<tr>
<td>Rep Kerby</td>
<td>Rep Goesling</td>
</tr>
<tr>
<td>Rep Amador</td>
<td>Rep Hartgen</td>
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<tr>
<td>Rep Zito</td>
<td>Rep Marshall</td>
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<td>Rep Zollinger</td>
<td>Rep Ricks</td>
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<td>Rep Troy</td>
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<td>Rep McCrostitie</td>
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<td>Rep Wintrow</td>
<td>Rep Davis</td>
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<td></td>
<td>Wendy Carver-Herbert</td>
</tr>
<tr>
<td></td>
<td>Room: EW56</td>
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<tr>
<td></td>
<td>Phone: 332-1127</td>
</tr>
<tr>
<td></td>
<td>email: <a href="mailto:hjud@house.idaho.gov">hjud@house.idaho.gov</a></td>
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</table>
MOTION:  Thursday, March 21, 2019
TIME:  Room EW42
PLACE:  1:30 pm OR Upon Adjournment
MEMBERS:  Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito,
Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon,
Mccrostie, Wintrow, Davis
ABSENT/EXCUSED:  Representatives Zito, Scott, Ricks, Wintrow
GUESTS:  None

Chairman Dayley called the meeting to order at 1:32 p.m.
Chairman Dayley explained the attachment for the March 19, 2019 meeting minutes. It regards compensation for judges.

MOTION:  Rep. Marshall made a motion to approve the minutes of February 13, 2019,
February 25, 2019, March 11, 2019, March 13, 2019, March 15, 2019 and March
19, 2019. Motion carried by voice vote.

HR 5:  Carrie Maulin, Chief Clerk, Idaho House of Representatives, presented HR 5.
Ms. Maulin explained this bill does not change any verbiage in the rules. With the
exception of minor clerical changes, the rules are the same as they are today. Only
the rule numbers and order in which they appear were changed. The rules have
been grouped by contiguous topics. She explained the addition of a new Rule
66, which incorporates the language regarding public information requests. This
language was separated out from current Rule 64 because the Chief Clerk does not
have any responsibility for public information requests. In answer to questions from
the Committee, Ms. Maulin stated the rules were organized based on the order of
how a legislator might use the rules. She explained masculine pronouns are used
because it is consistent with the language used in legal documents. She clarified
the fiscal note by stating the cost of the changes will be covered by the Legislative
account and will not require additional funds.

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

Carrie Maulin, Chief Clerk, Idaho House of Representatives, presented the Joint
Printing Committee Report for 2019 for the Committee’s review (Attachment
1). She provided a history of how Session Laws have been printed and provided
an overview of the Committee’s membership. In 2018, the Legislature voted to
limit the number of volumes printed to 150. The Session Laws are available on
the Legislative website. The 2019 Joint Printing Committee Report endorses
maintaining the 150 cap on printing and allows for the continued work to digitize
historic volumes of Idaho Session Laws. She stated people can request a copy of
Session Laws on a first come, first served basis, but agencies pay for their own
sets. In answer to a questions from the Committee, Ms. Maulin stated legislators,
agencies and law libraries are prioritized first. She also explained the number of
requests for printed volumes did reach the cap in 2016.

MOTION:  Rep. Chaney made a motion to send the Joint Printing Committee Report for
2019 to the floor with a recommendation it be ADOPTED. Motion carried by voice
vote. Chairman Dayley will sponsor this on the floor.
Chairman Dayley stated S 1045 is not on the agenda as originally planned because a resolution was not reached on outstanding issues.

Chairman Dayley explained the Idaho Sheriff's Association Report. This provides a review of the costs of housing Idaho Department of Corrections inmates in county jails (Attachment 2). This triennial report is required by statute.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 2:01 p.m.

___________________________  ___________________________
Representative Dayley        Wendy Carver-Herbert
Chair                        Secretary
House of Representatives
STATE OF IDAHO
CAPITOL BUILDING
P.O. BOX 83720
BOISE, ID 83720-0038

March 18, 2019

To: House Judiciary, Rules, and Administration Committee
   Senate Judiciary and Rules Committee

Pursuant to Idaho Code Section 67-509

The Joint Printing Committee recommends the continued endorsement of limiting the printing of the Idaho Session Laws to a total of 150 volumes per session, given the accessibility and decrease in expenditures associated with online access. The Committee also acknowledges there will be a significant decrease in legislative expenditures from the 2018 publishing price of $4,682 as state agencies are required to cover the cost of the volumes they order.

The Joint Printing Committee also requests that the Secretary of the Senate and the Chief Clerk of the House of Representatives be allotted time by their respective presiding officers to continue the process of scanning, reviewing, and uploading historic volumes of Idaho Session Laws to the legislative website during the next two legislative interims.

The Joint Printing Committee

/s/ Representatives Dayley and Gannon
/s/ Senators Lakey and Burgoyne
/s/ Chief Clerk Maulin
/s/ Secretary Novak

cc: Speaker Bedke
   President Pro Tem IIill
Idaho Statutes

Idaho Statutes are updated to the web July 1 following the legislative session.

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS
CHAPTER 5
ENACTMENT AND OPERATION OF LAWS
67-509. PUBLICATION OF LEGISLATIVE JOURNALS AND SESSION LAWS — DISTRIBUTION AND REPORT. (1) On the first legislative day or as soon thereafter as the speaker shall have been elected, it shall be the duty of the president of the senate and the speaker of the house of representatives each to appoint a printing committee for his body whose duties shall be, in addition to its duties prescribed by the rules of said bodies respectively, to immediately meet in joint session and to provide for the publication of the journals of the two (2) houses of the legislature. Said committee shall determine the form of the journals to be used, the size of the type, the number to be distributed to each member of the legislature and the method of distribution, the number of journals to be made available for sale through the secretary of state’s office, and the manner in which the journals are to be bound for the permanent copies of the journal. All costs incurred in publishing the journals shall be a proper charge against the legislative fund, unless an appropriation for such purpose has been made.

(2) The joint printing committee of the senate and house of representatives shall exist to print, publish, and distribute the session laws. The joint printing committee will consist of the printing committees of each house. The chairman of the respective judiciary and rules committees, or their designee, will chair their house’s printing committee and cochair the joint printing committee.

(3) Prior to the final adjournment of a regular legislative session, the joint printing committee must meet and determine the proper method of printing and preserving the session laws of that legislative session. The joint printing committee must give consideration to the cost, accessibility, and preservation of the session laws. The joint printing committee will provide sufficient physical copies of session laws.

(4) The published session laws must include the bills, concurrent resolutions, joint resolutions, petitions and memorials enacted or adopted during the legislative session. In addition, the session laws must include amendments to the constitution adopted at the preceding general election, and bills, concurrent resolutions, joint resolutions, and memorials enacted or adopted during an intervening extraordinary session of the legislature. The published session laws must include a title page, a table of contents, certificate pages, tables of amended and repealed statutes, an index of contents, and a list of each member of the senate and house of representatives.

(5) Prior to the final adjournment of a regular legislative session, the printing committee of each house must meet jointly to consider the proper method to print and preserve the session laws. The joint printing committee will prepare a brief written report of its recommendations, which written report must be delivered to the judiciary and rules committees of the senate and the house of representatives. The written report must include the projected cost to
implement its recommendation, together with a distribution list of persons that will be provided printed volume(s) of the session laws. If the written or amended report is rejected by the legislature by concurrent resolution, the joint printing committee will meet to reconsider its recommendations. If the written or amended report is not rejected, the joint printing committee will enter into an agreement(s) that is substantially consistent with its written or amended report to print, publish, and deliver the session laws, which costs will be paid from the legislative account.

History:

[(67-509) 1907, p. 327, sec. 1; am. R.C., sec. 70; reen. C.L., sec. 70; C.S., sec. 112; am. 1921, ch. 5, sec. 1, p. 6; am. 1931, ch. 8, sec. 1, p. 12; I.C.A., sec. 65-509; am. 1935, ch. 43, sec. 3, p. 79; am. 1965, ch. 17, sec. 1, p. 29; am. 1971, ch. 19, sec. 1, p. 33; am. 1977, ch. 232, sec. 1, p. 687; am. 2018, ch. 236, sec. 3, p. 555.]

How current is this law?

Search the Idaho Statutes and Constitution
LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature                              Second Regular Session - 2018

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 148

BY JUDICIARY AND RULES COMMITTEE

A CONCURRENT RESOLUTION

ENDORsing the LIMITATION OF PRINTING OF THE IDAHO SESSION LAWS TO A TOTAL OF
150 COPIES GIVEN THE ACCESSIBILITY AND DECREASE IN EXPENDITURES ASSOCI-
ATED WITH ONLINE ACCESS TO THE IDAHO SESSION LAWS.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, Section 67-904, Idaho Code, provides for the publication and
distribution of the Idaho Session Laws; and
WHEREAS, the Senate and the House of Representatives are working to im-
prove online access to past Idaho Session Laws; and
WHEREAS, the Joint Publishing Committee has considered the accessibil-
ity and decrease in expenditures associated with online access to the Idaho
Session Laws in its determination to preserve limited availability of physi-
cal copies of the Idaho Session Laws.
NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Ses-
sion of the Sixty-fourth Idaho Legislature, the Senate and the House of Rep-
resentatives concurring therein, that beginning with the First Regular Ses-
sion of the Sixty-fifth Idaho Legislature, given the accessibility and de-
crease in expenditures associated with online access to the Idaho Session
Laws, we endorse limiting printing of the Idaho Session Laws to a total of 150
copies to be distributed based on online requests for physical copies.
**Custom Printing**

126 11th Ave North | Nampa, Idaho 83687  
Office: (208) 468-0111 | www.customprintingink.com

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**Invoice**

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**BILL TO**

Legislative Services  
Research & Legislation  
P. O. Box 83720  
Boise, ID 83720-0054

**SHIP TO**

Legislative Services  
Research & Legislation  
P. O. Box 83720  
Boise, ID 83720-0054

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Invoices are due and payable in 30 days following date of invoice. A finance charge of 1.5% per month or 18% per year will be charged to past due accounts.

**TOTAL** $4,682.00
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<td>200 W Front, 1st Floor County Building Boise, ID 83702-7300</td>
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<td>8330 Meridian Hill Road Boise, ID 83706</td>
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<td>Adams County</td>
<td>Sherry Ward, Clerk PO Box 48 501 Industrial Avenue Council, ID 83612-0048</td>
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<tr>
<td>Administration, Department of</td>
<td>Diane Blume PO Box 83720 185 Building Room 100 Boise, ID 83707-0003</td>
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<tr>
<td>Aging, Idaho Office on</td>
<td>Harriet Perry PO Box 793 Boise, ID 83701 208-322-8906</td>
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<tr>
<td>Bannock County</td>
<td>Robert Powell 614 E Center 84311 Bannock County Courthouse Pocatello, ID 83201-6274</td>
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<td>Pam Wray Eicholtz, Clerk 101 N Maple, Room 205 Bingham County Courthouse Blackfoot, ID 83221-1700</td>
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<tr>
<td>Blaine County</td>
<td>John Drapa, Clerk 106 First Ave E, STE 200 Blaine County Courthouse Halsey, ID 83335-9429</td>
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<tr>
<td>Boise County</td>
<td>Mary Phaus, Clerk PO Box 1300 Boise County County Courthouse Idaho, ID 83703-0900</td>
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<tr>
<td>Boise Public Library</td>
<td>Judy Vestal, Reference 715 S Capitol Blvd Boise Public Library Boise, ID 83701</td>
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<tr>
<td>Boise State University/Albertsons Library</td>
<td>Sandra Loria Boise State University/Albertsons Library 1950 University Drive P.O. Box 46 Boise, ID 83707-0006</td>
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<tr>
<td>Bonner County</td>
<td>Michael Russell 115 S 1st Ave Bonner County Courthouse Sandpoint, ID 83864-1392</td>
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<tr>
<td>Bonneville County</td>
<td>Daniel O. Byram 605 N Capital Ave Bonneville County Courthouse Idaho Falls, ID 83402-3582</td>
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<tr>
<td>Boundary County</td>
<td>Glenda Poston, Clerk PO Box 419 6452 Kootenai Boundary County Bonners Ferry, ID 83805-0419</td>
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<tr>
<td>Buford West End Cemetery Maintenance District</td>
<td>Michelle Pelo P.O. Box 60 Burd, Idaho 83316 <a href="mailto:westendmemoraty@gmail.com">westendmemoraty@gmail.com</a> 208-545-4351</td>
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<tr>
<td>Building Safety, Division of</td>
<td>Parlee Groce 100A E Waterloover St., Suite 150 Meridian, ID 83642</td>
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<tr>
<td>Butte County</td>
<td>Shelley Shaffer, Clerk 248 W Grand Avenue Butte County Courthouse Arlee, ID 83713-0737</td>
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<tr>
<td>Camas County</td>
<td>Kent Bledgett, Clerk PO Box 450 501 Soldier Rd Fairfield, ID 83327-0450</td>
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<tr>
<td>Canyon County</td>
<td>Taryn White 1115 Albany St Room 246 Canyon County Courthouse Caldwell, ID 83605-3722</td>
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<tr>
<td>Canyon County Prosecuting Attorney</td>
<td>Linda Landis 1115 Albany St. Caldwell, ID 83605-3722</td>
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<tr>
<td>Caribou County</td>
<td>Denise Humes, Clerk Caribou County PO Box 775 County Courthouse Soda Springs, ID 83276-0775</td>
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<td>County</td>
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<td>Cassia County</td>
<td>Joseph Larsen, Clerk 1410 Overland Ave Cassia County Courthouse ^Burley, ID 83318-1862</td>
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<tr>
<td>City of Lewiston</td>
<td>Joel Plekon PO Box 817 ^Lewiston, ID 83501</td>
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<td>Kerri Elka, Clerk PO Box 205 ^Clark County Courthouse ^Dubois, ID 83423-0209</td>
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<td>Clearwater County, Orofino</td>
<td>Carrie Bird, Clerk 101 Madison Ave PO Box 368 ^Orofino, ID 83554-0586</td>
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<tr>
<td>Clearwater Memorial Public Library, Orofino</td>
<td>Center, Office of the State 370 N. Orchard, STE 110 Boise, ID 83702</td>
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<tr>
<td>Controller, Office of the State</td>
<td>Andrea Blakes 1109 N Orchard Ste 110 ^Boise, ID 83706</td>
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<tr>
<td>Correction Dept, Legal Division</td>
<td>Martin Thomas 1100 W Orchard, STE 110 ^Boise, ID 83706-2266</td>
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<tr>
<td>Custer County</td>
<td>Laura Baker PO Box 385 801 Main at ^Challis, ID 83226-0886</td>
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<tr>
<td>Dennis Daugherty</td>
<td>Susan Miller 701 East Water St Charlestown, VA 22902</td>
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<td>Dentistry, Idaho Board of</td>
<td>Caroline Kelly 1299 N Orchard, STE 110 ^Boise, ID 83705</td>
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<tr>
<td>Department of Correction, Central Records</td>
<td>Brad Hufford 4045 Guard St R1500 ^Statehouse Mall</td>
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<tr>
<td>Disaster Services</td>
<td>Jennifer Morris 650 W State St Ste. 307 ^Boise, Idaho 83702</td>
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<tr>
<td>Education, Idaho State Board of</td>
<td>Matt Freeman 208-332-1370 Ext 321570 ^Boise, Idaho 83702</td>
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<td>Education, Idaho State Board of</td>
<td>Rosalee Alonzo 1410 N Hulton ^Boise, ID 83706-1365</td>
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<tr>
<td>Education, State Department of</td>
<td>Duncan Rabb 650 W State Street 2nd Floor ^Boise, ID 83720</td>
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<tr>
<td>Elmore County</td>
<td>Barbara Steele 150 S 6th E Suite # ^Elmore County Courthouse ^Mountain Home, ID 83647-3003</td>
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<td>Engineers &amp; Land Surveyors, Board of education</td>
<td>David L. Curtis, Ext 110 1010 S Watertower St R110 ^Meridian, ID 83720-0027</td>
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<td>Environmental Quality, Division of</td>
<td>Rosalee Alonzo 1410 N Hulton ^Boise, ID 83706-1365</td>
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<td>Filer, James A</td>
<td>James Fisker 1414 Airway Ave. ^Lewiston, ID 83501</td>
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<td>Finance, Dept of</td>
<td>Nita Jensen 700 W State - 2nd Floor PO Box 83720 ^Boise, ID 83720-0231</td>
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<td>Financial Management, Idaho Division of</td>
<td>Yvonne Cendjips 304 N 8th St, Ste 325 PO Box 83720</td>
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<td>Fish &amp; Game Department (Lewiston)</td>
<td>Mark Vil, RCD 1516 State St ^Lewiston, ID 83501</td>
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<td>Shauna Gifford, Clerk 39 W Oneida ^Franklin County Courthouse ^Preston, ID 83629-1293</td>
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<td>Fremont County</td>
<td>Abbie Mace 121 W W. 1st ^Fremont County Courthouse ^St Anthony, ID 83545-2548</td>
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<td>Health Districts, South Eastern</td>
<td>Terry Cameron</td>
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<tr>
<td>Hon. Bob Novi</td>
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<tr>
<td>Hon. Brad Little</td>
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<tr>
<td>Hon. Brent Crane</td>
<td>PO Box 86</td>
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<tr>
<td>Hon. Brent Hill</td>
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<tr>
<td>Hon. Caroline Troy</td>
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<tr>
<td>Hon. Cherie Buckner-Webb</td>
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<tr>
<td>Hon. Elaine Smith</td>
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<td>2203 Mountain View Drive</td>
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<td>Hon. John McCroskie</td>
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<tr>
<td>Hon. Judy Boyle</td>
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<tr>
<td>Hon. Kathleen Sims</td>
<td>COEUR D'ALEME, ID 83816-2999</td>
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<tr>
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<tr>
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<tr>
<td>Hon. Pati Anne Lodge</td>
<td>P.O. Box 96</td>
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<td>Hon. Paul E. Shepherd</td>
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<tr>
<td>Hon. Paul Ronncll</td>
<td>512 Park Street</td>
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<td>Gem County</td>
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<td>Health &amp; Welfare, Department of</td>
<td>Rob Nowarth</td>
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<td>4303 SW Easy Street</td>
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<td>Hon. Phyllis K. Klap</td>
<td>2107 Palouse</td>
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<td>Hon. Ronald Nate</td>
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<td>Hon. Sage Olson</td>
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<tr>
<td>Hon. Shawn A. Keough</td>
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<tr>
<td>Hon. Steve Vick</td>
<td>2140 E Harney Avenue</td>
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<tr>
<td>Hon. Sue Chey</td>
<td>1304 Lincoln Avenue</td>
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<td>Hon. Thomas Dayley</td>
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<td>Hon. Tom Loertscher</td>
<td>1357 Bone Road</td>
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<td>Hon. Van Burrellow</td>
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<td>Hon. Vito Barbieri</td>
<td>564 E Prairie Avenue</td>
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<td>Kylee fallback @ doh.idaho.gov</td>
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<td>208-854-3074</td>
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<td>Human Resources, Idaho Division of</td>
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<td>Robert Adelson</td>
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<td>Human Rights, Commission on</td>
<td>Dan Wheeler</td>
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<td>Idaho Association of Counties</td>
<td>3100 S. Vista Avenue STE 200</td>
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<td>Rick Landry</td>
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<td><a href="mailto:nicklandry@Idaho.gov">nicklandry@Idaho.gov</a></td>
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<td>Idaho Industrial Commission</td>
<td>Diane Holt, Commission Secretary</td>
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<td>472 W. Washington</td>
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<td>Idaho Public Utilities Commission</td>
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<td>Idaho Secretary of State</td>
<td>Jamie Potter</td>
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<td>Idaho State Board of Education</td>
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<td>Idaho Law Library (Includes Supreme Court)</td>
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<tr>
<td>Idaho State Police</td>
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<td></td>
<td>800 Park Plaza IV</td>
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<td><a href="mailto:petty.hopke@tax.idaho.gov">petty.hopke@tax.idaho.gov</a></td>
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<tr>
<td>Idaho State Tax Commission</td>
<td>Michelle Kase</td>
</tr>
<tr>
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<td>921 S Eighth Ave, Stop B410</td>
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<tr>
<td>Idaho State University</td>
<td>Beth Downing</td>
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<td>850 S. 9th Ave.</td>
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<td>Chris Quigley</td>
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<td>Colleen Cooper Potts, Clerk</td>
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<td>Michelle Emerson, Clerk</td>
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<td>Juvenile Correction Center</td>
<td>PO Box 40</td>
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<td>Nursing, State Board of</td>
<td>Linda Cabeys, Mg Asst</td>
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<tr>
<td>Occupational License Bureau</td>
<td>Tanya Cady, Bureau Chief JF Williams Building Boise, ID 83720-0066</td>
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<td>Oneida County Pardons &amp; Parole Commission</td>
<td>Lyk Calvin, Clerk</td>
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<td>Angela Barkett</td>
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<td>Pardons &amp; Parole, Idaho Commission of</td>
<td>Mary Schoepfer</td>
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<td>Parks and Recreation, Department of</td>
<td>Dave Ricks</td>
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<td>Betty J. Drexler, Clerk</td>
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<td>Professional-Technical Education</td>
<td>Kirk C. Denis</td>
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<td>Diane Holt, Commission Secretary 472 W. Washington Statehouse Mail Boise, ID 83720-0074</td>
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<td>Mary Louise Hixson, Clerk</td>
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<td>Ron G. Crane, Treasurer</td>
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<td>University of Idaho Library, Serials Dept.</td>
<td>Stacey Anderson</td>
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<td>Jennifer Provoze</td>
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<td>University of Iowa Law Library</td>
<td>Cheryl Blaire</td>
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March 19, 2019

The Honorable Representative Thomas Dayley  
Judiciary and Rules Committee Chair  
State Capitol 700 W Jefferson  
Boise ID 83720

Subject: Report on the daily cost of inmate incarceration

Dear Representative Dayley,

As you may know, Idaho Code 20-237a requires the germane committees of the legislature to review the daily cost for housing state inmates in county jails every three years. Pursuant to this statute the Idaho Sheriffs’ Association (ISA) first reported to the Senate and House Judiciary and Rules Committees in 2001.

Sheriffs have a close working relationship with the Idaho Department of Correction (IDOC). County inmates are often in transition to becoming state inmates and there is a continual flow of inmates from jails to IDOC and to a lesser degree from IDOC to county jails. Inmate movement can sometimes be complicated and costs associated with housing inmates is always a work in progress, however the day after an order committing the inmate to IDOC is received from the judge the prisoner’s cost is charged to the state.

The Idaho Sheriffs’ Association performs many functions that the IRS has designated as “lessening the burden of government”. Some of these activities include annually inspecting Idaho jails for compliance to Idaho Jail Standards, managing the statewide VINE (victim notification) program, managing the statewide sex offender registration (Offender Watch) program, training sheriffs, staff and detention officers and coordinating with the DEA to distribute funds used to eradicate outdoor marijuana grows.

The ISA initially developed minimum jail standards in 1978. There are currently 328 recommended and mandatory jail standards reflecting best practices, statute and case law. Out of 44 counties, 36 have operational jails, 6 have closed, and one county only has a holding facility that can hold a person no longer than 4 hours. Cassia and Minidoka have consolidated their jails into one facility. Approximately 4,200 inmates are being held in county jails as of March, 2019.
The daily fee for housing a state prisoner was $35 until 1998 at which time it was increased to $40. At the same time the legislature required that hence forth the legislature would review the cost of housing state prisoners in county jails every 3 years. The next increase occurred in 2018 when the housing fee increased to $55 for the first 7 days, and $75 thereafter.

As of the earlier part of this month there were 633 state inmates in county jails. Another 336 state inmates were in county jails that were not yet eligible for transfer for various reasons including additional pending charges, jurisdictional review, appeals or court ordered hearings. The cost for housing these 336 inmates is not charged to the state.

The average daily cost per inmate, based on our latest survey of jails, is $86.55. We employ an automated cost analysis document developed by the Ada County Sheriff’s Office. It’s a fill-in document with categories such as salaries, benefits, inmate food and medical expenses, maintenance, training, inmate transport, equipment, human resource, supplies and numerous other categories. Inmate days served is added and the program calculates the entries and arrives at an inmate cost per day. These are averaged using a formula that accounts for volume.

To provide perspective, Ada is $88.16 per day, Nez Perce is $103.41 per day, Elmore is $65.55 per day and Bonneville is $75.73 per day. Cost fluctuations are due to the size of the jail and economies of scale, the extent of jail programing for inmates, salaries and benefits, and staffing levels.

Hopefully, this report has provided some insight into inmate daily costs. If you have any questions please contact me or the Association’s executive director Vaughn Killeen.

Sincerely,

Paul Wilde
Bonneville County Sheriff
Idaho Jails Standards Chair
208-529-1375
pwilde@co.bonneville.id.us

Cc: House Judiciary and Rules Committee
    ISA Board of Directors
    Vaughn Killeen

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.
MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, March 27, 2019
TIME: 1:30 pm OR Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis
ABSENT/EXCUSED: Representative Gannon
GUESTS: Andrew Masser, IACDL

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

MOTION: Rep. Marshall made a motion to approve the minutes from the February 21, 2019 and March 21, 2019 meetings. Motion carried by voice vote.

Chairman Dayley explained the motions that can be made on Senate amendments.

H 30aaS: Rep. Ricks presented the Senate amendments for H 30aaS.

MOTION: Rep. McCrostie made a motion to concur with the amendments made in the Senate to H 30aaS.

Rep. Chaney responded to questions from the committee by explaining the amendment adds an evaluation committee to the list of parties that may examine a person suspected of being mentally incapable of standing trial. In cases where the defendant is suspected of having a developmental disability, an evaluation by specially trained evaluation committee will be required.

VOTE ON MOTION: Chairman Dayley called for a vote on the motion. Motion carried by voice vote.

H 78aa,aaS: Rep. Kerby presented the Senate amendments for H 78aa,aaS. He stated the changes did not affect the functioning of the program. It more clearly describes how a person can get their driver's license back. The amendment also addressed some of the prosecuting attorneys' objections, by requiring offenders to sign a sworn affidavit that can be used as evidence of guilt if they do not successfully complete the diversion program.

In answer to a question from the Committee, Rep. Kerby stated the affidavit would be in the offender's file, but it is not a guilty plea. If the offender is involved in other pending non-criminal case proceedings, the affidavit could be accessed. He said more prosecuting attorneys would be willing to use the program as a result of the change.

Andrew Masser, IACDL spoke in support of H 78aa,aaS. In answer to a question from the Committee, Mr. Masser explained it would be the ethical duty of a defense attorney to inform their client that the affidavit could be used in other non-criminal court proceedings.

MOTION: Rep. Chaney made a motion to concur with the amendments made in the Senate to H 78aa,aaS. Motion carried by voice vote. Rep. Kerby will sponsor the bill on the floor.
Rep. Chaney presented the Senate amendments for H 137aa,aaS. He stated the changes did not change how the bill would operate once it becomes law. The changes are primarily grammatical. The amendment adds several references to Subsection 7, which lists conditions a judge can put on someone for keeping a dog if it is found to be dangerous. It adds a provision for a tattoo to be equal to an implant in identifying a dog.

MOTION: Rep. Kerby made a motion to concur with the amendments made in the Senate to H 137aa,aaS. Motion carried by voice vote. Rep. Moyle will sponsor the bill on the floor.

Chairman Dayley thanked the Page, Sawyer Greaves and Committee Secretary, Wendy Carver-Herbert.

Rep Ehardt thanked Chairman Dayley and Vice Chairman Chaney.

Chairman Dayley thanked the Committee for their hard work and due diligence. He reiterated the Committee's unique role in reviewing compensation for judges. He encouraged the Committee to review the letter of agreement with the Courts. This was discussed in a previous Committee meeting (March 19, 2019). He encouraged the Committee to let him know if there are any questions or ideas for consideration.

ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 2:00 p.m.
AGENDA
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
1:30 pm OR Upon Adjournment
Room EW42
Monday, April 01, 2019

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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 Dayley Rep Ehardt Rep Troy
Vice Chairman Chaney Rep Scott Rep Young
Rep Kerby Rep Goesling Rep Gannon
Rep Amador Rep Hartgen Rep McCrostie
Rep Zito Rep Marshall Rep Wintrow
Rep Zollinger Rep Ricks Rep Davis

COMMITTEE SECRETARY
Wendy Carver-Herbert
Room: EW56
Phone: 332-1127
e-mail: hjud@house.idaho.gov
DATE: Monday, April 01, 2019
TIME: 1:30 pm OR Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Page)
ABSENT/EXCUSED: Representatives Kerby, Zollinger, Ehardt, Hartgen, Young
GUESTS: None

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

MOTION: Rep. Marshall made a motion to approve the minutes of February 19, 2019 and March 27, 2019. Motion carried by voice vote.

MOTION: Rep. Wintrow made a motion to approve the minutes of February 27, 2019. Motion carried by voice vote.

ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 1:33 p.m.

_________________________________  ___________________________________
Representative Dayley                  Wendy Carver-Herbert
Chair                                    Secretary