

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 24, 2022

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

PASSED THE GAVEL: **Chairman Lakey** passed the gavel to Vice Chairman Ricks.

DOCKET NO. 05-0000-2100 **Relating to Notice of Omnibus Rulemaking - Proposed Rule Docket Nos. 05.01.02, 05.01.03, 05.01.04 and 05.02.01.** **Monty Prow**, Director, Idaho Department of Juvenile Corrections, explained this docket was the reauthorization of existing rules from the Idaho Department of Juvenile Corrections and has been previously reviewed and approved by the Legislature. No changes are requested.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 05-0000-2100**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

INTRODUCTIONS: **Lt. Colonel Bill Gardiner, Deputy Director and Rules Review Officer, Idaho State Police**, introduced Major Russ Wheatley; Captain Brad Doty; Captain Shawn Staley; Bureau Chief Leila McNeill (remote); Amy Campbell, Sex Offender Registry Supervisor; Kathy Blades Criminal History Records Supervisor; Matthew Gammet, Director of Forensic Services; and Sergeant Jessie Avery with the Commercial Vehicle Safety Section.

DOCKET NO. 11-0000-2100: **Relating to notice of Omnibus Rulemaking - Proposed Rule Docket Nos. 11.03.01, 11.06.01, 11.07.01, 11.07.02, 11.07.03, and 11.13.01.** **Lt. Colonel Bill Gardiner**, Deputy Director and Rules Officer, stated the dockets are non-fee with no changes and relate to rules governing alcohol testing, asset forfeiture reporting, motor vehicles, and motor carrier rules.

Amy Campbell, Criminal Records Section Supervisor, Idaho State Police Sex Offender Registry, stated that **Docket No. 11.10.03** has a change in **§ 012.06a** – adding "official notification" and deleting "certified copy of a death certificate." This change would allow the Registry staff to remove a deceased offender from the Registry based on notification from other official sources, including a certified copy of a death certificate. The second change is in **§ 012.06** adding, "Pursuant to § 18-8310(1)(a), Idaho Code, any periods of supervised release, probation or parole without revocation references the offense(s) outlined in Idaho Code 18-8310(1)(d)." This is to clarify which supervised release, probation or parole would qualify an individual to be granted relief from registering as a sex offender in Idaho and clarifies that the unrevoked supervision, probation or parole must be from the offense or offenses that the subject was required to register as a sex offender.

MOTION: **Senator Lee** moved to approve **Docket 11-0000-2100**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 11-1101-2100 **Relating to Notice of Omnibus Rulemaking - Proposed Rule Docket No. 11.11.01 - Police Officers Standards & Training (POST)**. **Brad Johnson**, Administrator, POST, stated the docket contains several cleanup changes and four substantive changes. 1) The rule is being changed from a fee to non fee rule. 2) The addition of biannual minimum mandatory in-service training subjects and hours as approved by the POST Council in June 2021. They include 8 hours of firearm training, 8 hours of defensive tactics, 4 hours emergency vehicle operations and 4 hours of legal updates. 3) Additional guidance and clarification for the procedure of the decertification rules and processes. 4) Adds violation of the Controlled Substances Act while employed as an officer as grounds for mandatory decertification. It has always been a disqualifier for certification but it was discretionary for employed officers. This change would make it mandatory.

DISCUSSION: A lengthy discussion was held regarding various aspects of these rule changes/additions. **Senators Burgoyne, Lee, Anthon, Wintrow, Zito** and **Chairman Lakey** participated in the discussion. Concerns included due process for police officers, clarification made to determine whether the drug code was violated without either a charge or a conviction, and a need for a concise definition of "public safety" and positions which fall under that category. **Officer Johnson** responded to each specific concern. **Chairman Lakey** summarized the questioning stating that the rules didn't articulate the process well and the rule changes are clarifying the process. **Officer Johnson** said that was correct.

Senator Burgoyne stated that he was not comfortable with a rule that purports to set out a standard when there is not a definite definition given. **Senator Wintrow** asked if there were any organizations who came forth with concerns about the rule. **Officer Johnson** said there was an individual who represented Idaho Home School. They met with him and agreed, going forward, to work harder to address some of the home school applicant's issues. **Senator Burgoyne** stated that the language in this rule is ambiguous, and he is not comfortable with the way it is written. **Senator Zito** commented that she was uncomfortable with the rule for two reasons. The first is who can make the charge against the officer and the second is why would someone be punished for something they didn't do, if it was never proven that they did it.

MOTION: **Senator Burgoyne** moved to approve **Docket 11-1101-2100** with the exception of § 110.01.d. **Senator Thayn** seconded the motion.

SUBSTITUTE MOTION: **Senator Lee** moved to approve **Docket No. 11-1101-2100** in its entirety. **Senator Anthon** seconded the motion.

DISCUSSION: **Chairman Lakey** commented that everyone should be held to the same standard. However, the standard changes in a criminal case where you are removing someone's liberty versus a civil determination regarding employment. As other state's standards come into play, determining the standard becomes more complex. **Chairman Lakey** stated he would vote in favor of the substitute motion.

Senator Lee stated she believes there are concerns with this legislation but she is in favor of getting it approved, watching to see what happens with it, and moving forward on it again next year.

Senator Anthon said the biggest risk with this rule is the potential for a lawsuit. He agrees with Senator Lee that there needs to be something in law stating that police officers don't use drugs and they don't deal drugs. He stated that he would encourage some rewriting and clarifying language.

Senator Burgoyne stated he would vote in opposition to the motion. He commented he does not think the potential injustices or problems with the rule being interpreted more broadly than it is intended will be seen.

Senator Wintrow added she has concerns about the mandatory decertification. She said she would prefer to give the Council the discretion to make the ultimate decision.

**SUBSTITUTE
MOTION VOTE:**

The vote to approve Substitute Motion was taken and passed by **voice vote**. **Senators Burgoyne, Thayne, and Wintrow** voted in the negative and asked to be recorded as such.

**DOCKET NO.
11-0000-2100F**

Relating to Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule Docket Nos. 11.05.01 and 11.10.02. **Lt. Colonel Bill Gardiner, Idaho State Police**, explained that rules governing alcoholic beverage control and those governing a State criminal history record have no changes.

**DOCKET NO:
11-1001-2100F**

Relating to Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule Docket No. 11.10.01. **Lelia McNeill**, Bureau Chief, Criminal Investigation, Idaho State Police (ILETS), explained that ILETS accesses a wide range of information through the Nlets network. It operates as an international system and network and is the only provider of this capability in the United States. The system user/access fees paid by state users for services rendered, funds all operations of the system and network and are set by the Principal (state) membership once a year at the Nlets Annual Business Meeting. **§ 018.02a and b** change the annual access fees for county or municipal level agencies from \$5,000 annually to \$5,425. The state, federal and tribal agencies will increase from \$8,750 annually to \$9,000. These fees are required to keep Idaho a part of the Nlets network (see Attachment 1).

MOTION:

Senator Wintrow moved to approve **Docket No. 11-1001-2100F**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
50-0101-2100F**

Relating to Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule Docket No. 51.01.01 - Commission of Pardons & Parole. **Ashley Dowell, Executive Director**, stated that there was a public hearing in November to discuss the rule changes. No one attended and there were no written concerns relating to the changes. **Director Dowell** explained that the rules update statute references in the rules as the Commission now has its own chapter in Idaho Code. Changes reflect better business practices, consistent requirements for hearing attendance and notification for commutations decisions. The Commission added an extradition waiver to the conditions of parole and clarified no parole bonds were allowed. **Director Dowell** indicated that the Commission received authority for rulemaking on Foreign National Treaty requests, respites and reprieves and added processes for such petitions. They removed unnecessary or obsolete language or definitions to ensure that their rules had a net overall reduction of words.

DISCUSSION: **Senator Lee** questioned why there seemed to be additional authority given to the executive director and removed from the commissioners. **Director Dowell** responded that it is for efficiency and allowing discretion to the executive director. She indicated that these are long standing practices being formalized in the rules. **Senator Burgoyne** asked for a clarification on making appearances at parole hearings mandatory. **Director Dowell** explained that it is just to provide a consistent approach to people who are not coming to their hearings.

MOTION: **Senator Lee** moved to approve **Docket No, 50-0101-2100F**. **Senator Lodge** seconded the motion. Motion carried by **voice vote**.

DOCKET NO. 21-0000-2100F **Relating to Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule Docket Nos. 21.01.01 and 21.01.04 - Veterans Services**. **Mark Tschampl**, Chief Administrator, Idaho Department of Veterans Services. **Chief Tschampl** explained that both rule chapters being discussed had been previously reviewed and approved by the Legislature. There were no changes in 21.01.01 relating to governing admission, residency and maintenance charges in the Idaho State Veteran's Home and the Division of Services Administrative Process Procedure. There were changes made to 21.01.04 relating to the rules governing Idaho State Veteran's Cemeteries. An increase in fees from \$500 to \$700 associated with preparation of an internment site not containing a pre-placed crypt due to increased costs or materials and labor. **Chief Tschampl** stated that sections relating to burial and public behavior within cemeteries were simplified.

DISCUSSION: **Senator Lee** asked if there would be signs in the cemeteries announcing public behavior rules. **Chief Tschampl** responded that there would be.

MOTION: **Senator Lee** moved to approve **Docket No. 21-0000-2100F**. **Chairman Lakey** seconded the motion. Motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Ricks passed the gavel to Chairman Lakey.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:05 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary