

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 18, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
	Introduction of Senate Page Libby Blattner, Meridian, Idaho	
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Gubernatorial Reappointment of Monty Prow as the Director of the Department of Juvenile Corrections to serve a term commencing January 2, 2023 and will serve at the pleasure of the Governor.	Monty Prow
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Gubernatorial Reappointment of Colonel Kedrick Wills of Meridian, ID as Director of the Idaho State Police to serve a term commencing January 2, 2023 and will serve at the pleasure of the Governor.	Colonel Kedrick Wills
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Gubernatorial Appointment of Bryan Nickels as Chief Administrative Hearing Officer to serve a term commencing September 6, 2022 and will serve at the pleasure of the Governor.	Bryan Nickels
<u>05-0103-2201</u>	Rules of the Custody Review Board (ZBR Chapter Rewrite) - Proposed Rule	Monty Prow, Director, Idaho Department of Juvenile Corrections
<u>21-0101-2201</u>	Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure - Proposed Rule	Mark Tschampl, Director, Chief Administrator, Idaho Department of Veterans Services
<u>11-1101-2201</u>	Rules of the Idaho Peace Officer Standards and Training Council - Proposed Rule	Brad Johnson, Chief Administrator, Peace Officer Standards and Training Council
<u>11-1003-2201</u>	Rules Governing the Sex Offender Registry - Proposed Rule	Amy Campbell, Presenter, Sex Offender Registry

***Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)***

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 18, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

**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.

INTRODUCTION: **Introduction of Senate Page**, Libby Blattner from Kuna, Idaho. **Chairman Lakey** introduced the new Senate Page, and asked her to tell the Committee about herself. **Libby** shared that she attended Meridian High School and that she always had an interest in a career in politics, possibly a political pollster. Her future plans included going to the University of Idaho majoring in economics with a minor in statistics. After college graduation she would like to move to Washington, DC and work for a political polling firm. Libby enjoyed skiing, showing steers and Future Farmers of America (FFA). She recently competed in the National Contest for public speaking in the FFA program. **Chairman Lakey** added Libby's grandfather was retired Senator Bert Brackett.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment** of Monty Prow of Meridian, Idaho, as Director of the Department of Juvenile Corrections (DOJC), to serve a term commencing January 2, 2023 and will serve at the pleasure of the Governor. **Director Prow** stated he had spent over 21 years in the Department of Juvenile Corrections in various capacities. He credited much of the success of the DOJC to the people he worked with on a regular basis. Their efforts in the last four years have been focused on two primary objectives. The first objective was prevention and intervention resources in the communities to reduce the need to commit youth into custody by developing ways government could help youth to develop behaviors necessary to become productive citizens and avoid incarceration. The second objective was if a youth did get committed into custody, they tried to ensure the youth received appropriate amount of treatment to develop behaviors necessary to become productive citizens in as short amount of time as possible.

DISCUSSION: **Senator Ricks** asked what kinds of programs were making recidivism rates drop. **Director Prow** responded by listing five things that research had proven to be effective. Those included: therapy programs, education, skills building, counseling and family engagement. Currently much effort was being expended on family engagement since kids change dramatically when they leave custody of the Department of Juvenile Corrections.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment** of Colonel Kedrick Wills of Meridian, Idaho, as Director of the Idaho State Police (ISP), to serve a term commencing January 2, 2023 and will serve at the pleasure of the Governor. **Colonel Wills** explained he had been with the ISP for 27 years and had served in various positions in several Idaho locations. He stated he was passionate about his family, about the relationships with his employees and the relationships they had with the public. **Colonel Wills** went on to explain how hard ISP had worked in the past few years to improve working relationships with the public. He stated ISP had a team of amazing people working for them. They were concerned about keeping their ISP family healthy in every aspect of their lives including physical, mental and emotional health. There was much emphasis placed on helping each employee take care of themselves for a lifetime.

DISCUSSION: **Senator Anthon** questioned if there were enough officers for the growing State of Idaho. **Colonel Wills** responded that there were not enough officers and not enough officers applying for open positions. He stated that Governor Little was supporting an increase in personnel to help fight the increasing fentanyl issue in Idaho. He added that low application numbers was a national problem. Appreciation for all the efforts extended by the ISP was expressed by Senators Anthon, Wintrow, Foreman and Chairman Lakey.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment** of Bryan Nickels of Boise, Idaho, as Chief Administrative Hearing Officer, to serve a term commencing September 6, 2022 and will serve at the pleasure of the Governor. **Mr. Nickels** gave a brief description of his background, including having been surrounded by people who were public service minded individuals. He had practiced law for 21 years and spent the last 15 years working for a local hospital in medical indigency proceedings, and felt very comfortable with administrative law. **Mr. Nickels** stated he felt he was a good match for this position because he had started two law firms on his own in challenging circumstances. In addition to those experiences, he said two things that attracted him to this position was the need to have unbiased presiding officers and to have people feel like they can participate fully in the system. He felt his experience provided that for him.

DISCUSSION: **Senator Lee** asked if there were any unexpected needs that had arisen. **Mr. Nickels** responded that the one surprise they have had is the case count. The numbers were much higher than anticipated. The numbers have varied greatly after talking with the department directors about possible needs.

Senator Ruchti asked what experience Mr. Nickels had that he could draw on in this new position. **Mr. Nickels** said that his time working in the hospital medical indigency area was good training for his current position.

Chairman Lakey asked what challenges Mr. Nickels saw in setting up this new office that he would like to remedy. **Mr. Nickels** commented there were two major concerns. The first was to make the process more predictable so that practitioners can focus on what's going on and not be worrying about the process. The second was to emphasize and provide necessary training so that hearing officers would not have bias or any appearance of bias. There was a code of conduct that will be used in regulating bias concerns

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

DOCKET NO. 05-0103-2201 **Rules Relating to the Custody Review Board (ZBR Chapter Rewrite) - Proposed Rule.** **Monty Prow**, Director, Idaho Department of Juvenile Corrections, stated that the biggest change in this rule reflects the legislative change from last year relating to time in custody, and one or more case managers felt the juvenile needs more time in custody beyond 18 months.

MOTION: **Senator Wintrow** moved to approve **Docket No. 05-0103-2201**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 21-0101-2201 **Rules Relating to Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure - Proposed Rule.** **Tracy Schaner**, Deputy Chief Administrator, Idaho Division of Veterans Services, stated that this pending rule clarifies the rights of a resident regarding notification of transfers or discharges from the Veterans Homes, and the rights of an applicant regarding notification of a denial of an application for residency. This change makes it possible to follow exactly what is in statute for unclaimed property. The rule has no fiscal impact on the State general fund.

MOTION: **Chairman Lakey** moved to approve **Docket No. 21-0101-2201**. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 11-1101-2201 **Rules Relating to the Idaho Peace Officer Standards and Training Council (POST) - Proposed Rule.** **Brad Johnson**, Chief Administrator, Peace Officer Standards and Training Council, indicated these changes were small corrections to the more substantial changes made last year. The first puts back in the requirements for detention officers which was left out. The second lists the requirement that you must have advanced certification as a misdemeanor probation officer, not just police experience to be a certified probation officer.

MOTION: **Senator Lee** moved to approve **Docket No. 11-1101-2201**. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 11-1003-2201 **Rules Relating to Governing the Sex Offender Registry - Proposed Rule.** **Amy Campbell**, Presenter, Sex Offender Registry, noted the first substantive change was as follows: The ISP Sex Offender Registry received notification of a registered offender's death by many means including notification from the Vital Statistics Department of Health and Welfare, a report from a sworn officer or county corner or a certified death certificate. Adding the language found in Section 012.06a ensured that the registry had reliable data sources regarding deceased offenders to expunge them from the registry. The second change was the addition of the sentence to Section 012.06a "Any periods of supervised release, probation, or parole in Section 18-8310(1)(a), Idaho Code, means those periods resulting from the underlying conviction requiring registration." This clarified that the unrevoked supervision, probation or parole must be from the offense or offenses that required the subject to register as a sex offender, and not just any supervision or probation for any other offense. The third change was adding the words "or official pardoning body" to Section 012.06b.

MOTION: **Senator Wintrow** moved to approve **Docket No. 11-1003-2201**. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:32 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 23, 2023

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SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Gubernatorial Reappointment of Monty Prow as Director of the Department of Juvenile Corrections to serve a term commencing January 2, 2023 and will serve at the pleasure of the Governor.	
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Gubernatorial Reappointment of Colonel Kedrick Wills to serve as Director of the Idaho State Police commencing January 2, 2023 and will serve at the pleasure of the Governor.	
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Gubernatorial Appointment of Bryan Nickels as Chief Administrative Hearing Officer to serve a term commencing September 6, 2022 and will serve at the pleasure of the Governor.	
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Gubernatorial Reappointment of Ashley Dowell as Director of the Commission of Pardons and Parole for a term commencing January 2, 2023 and will serve at the pleasure of the Governor.	Ashley Dowell
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Gubernatorial Reappointment of Erick Fredericksen as State Appellate Public Defender for a term commencing August 1, 2022 to expire August 1, 2026.	Eric Fredericksen
<u>11-0702-2201</u>	Rules Governing Safety Glazing Material (Chapter Repeal) - Proposed Rule	Bill Gardiner, Lt. Colonel, Idaho State Police
<u>57-0101-2201</u>	Rules of the Sexual Offender Management Board (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule	Nancy Volle, Program Manager, Sexual Offender Management Board
<u>11-1001-2201</u>	Rules Governing Idaho Public Safety and Security Information System (Fee Rule) - Proposed Rule	Leila McNeill, Bureau Chief, Criminal Investigation, Idaho State Police

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COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 23, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Vander Feer (substitute - Hart), Hartgen, Wintrow, and Ruchti

ABSENT/ EXCUSED:

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.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Anthon** moved to send the Gubernatorial Reappointment of Monty Prow as Director of the Department of Juvenile Corrections (DOJC) to the floor with a recommendation that he be confirmed by the Senate. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial Reappointment of Colonel Kedrick Wills to serve as Director of the Idaho State Police to the floor with a recommendation that he be confirmed by the Senate. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL VOTE: **Senator Lee** moved to send the Gubernatorial Appointment of Bryan Nickels to serve as Chief Administrative Hearing Officer to the floor with a recommendation that he be confirmed by the Senate. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment** of Ashley Dowell of Nampa, Idaho as Director of the Board of Pardons and Parole for a term commencing January 2, 2023 and will serve at the pleasure of the Governor.

DISCUSSION: **Senators Wintrow, Anthon, Lee, Ruchti, Vice Chairman Foreman, and Chairman Lakey** asked questions from Director Dowell. **Senator Wintrow** began asking what made her a good match for this position. **Director Dowell** stated that her experience included working for the Department of Corrections, she was a therapist by trade, and had previously worked in prison administration. This position required a problem solver and someone who liked to make things better and those were challenges Director Dowell enjoyed. **Director Dowell** said there was not easy solutions for not using prisons as treatment or mental health facilities. She explained that early intervention was key, education was vital, and a balance between treatment and accountability were all necessary to help keep prisons open for use by those who need them for rehabilitation. **Director Dowell** added the Department of Corrections had made great strides in the ways it prepared people for reentry and were critical for their success. These included: educational programs, job training, expanded community reentry centers, community connection, and employment upon their release. A question was asked about the perception of felony probation as it related to keeping offenders out of prison but still keeping communities safe. **Director Dowell** stated that her department trusted the probation and parole officers taking care of their people to make good decisions. She said they did their best to get those

who need treatment into the appropriate facility while balancing the safety needs of the community. Victim's input was discussed. **Director Dowell** explained there were victims of record or people who felt victimized who are not victims of record. There is an important distinction between the two. Victims of record were given three ways to get information to the Commission. They could write a letter, testify in person, or testify via WebEx. Most importantly, the Commission took the victim's input very seriously. The challenge was to reach a balance between having a period of time in prison on supervision and being released without any supervision. **Director Dowell** added that prison funding was not a factor when decisions on pardons and parole were being made. She concluded by adding that her department worked closely with prosecutors' offices to obtain current victim contact information.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment** of Eric Fredericksen of Boise, Idaho as State Appellate Public Defender for a term commencing August 1, 2022 to expire August 1, 2026. **Mr. Fredericksen** introduced himself and said he had wanted to be a public defender since he graduated from law school and had been lucky enough for that to have happened.

DISCUSSION: **Senator Wintrow** asked if Mr. Fredericksen would share a few of the things that he had improved since he became the State Appellate Public Defender. **Mr. Fredericksen** responded that he quickly learned that keeping his staff and those he worked with happy was the key to a successful office. That included raising salaries and allowing flexible schedules for family time for his staff. **Senator Anthon** questioned Mr. Fredericksen's assessment of the changes being made to Idaho's Public Defense System. **Mr. Fredericksen** said that since the Supreme Court had stated that the State had the obligation to provide the rights of counsel to its citizens, then the State should have some control over the providing of the Sixth Amendment protections. He added he was pleased with the direction the changes were going.

PASS THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Foreman.

DOCKET NO. 11-0702-2201 **Rules Relating to Governing Safety Glazing Material (Chapter Repeal) - Proposed Rule.** **Bill Gardner**, Lt. Colonel, Idaho State Police (ISP) indicated that 99 percent of **Docket No. 11-0702-2201** is in statute and they were asking to repeal the rules governing safety glazing materials. **Lt. Colonel Gardner** stated that there were some clean up changes. In addition, legislation was being processed which stated that plate glass could not act as a windshield. If that legislation should pass, the rule would be entirely removed.

MOTION: **Chairman Lakey** moved to hold **Docket No. 11-0702-2201** subject to call of the chair. **Senator Anthon** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Foreman** asked to have **Docket No. 11-1001-2201** presented by Leila McNeill be heard before **Docket No. 57-0101-2201** presented by Nancy Volle.

**DOCKET NO.
11-1001-2201**

Rules Governing Idaho Public Safety and Security Information System (Fee Rule) - Proposed Rule. **Leila McNeill**, Bureau Chief, Criminal Investigation, Idaho State Police (ISP), explained that the Idaho Public Safety and Security Information System was commonly referred to as ILETS. It was a telecommunication network that connected all Idaho law enforcement together. It played a vital role in connecting Idaho to other states criminal history information and to the FBI National Crime Information Center. **Chief McNeill** discussed that the ILETS Dedicated fund was designed to have the costs of the system paid by the users. Without passing on a fee increase to them, the ILETS fund would not be able to continue to sustain itself. ILETS fees have remained stable for community users but rising costs have increased and those costs have been absorbed by using the fund reserve. The fee structure used had been to charge the larger agencies the most so that the smaller agencies could all afford to use the services. The smallest agencies make up about two-thirds of the ILETS users. Larger agencies were seeing a large increase, the smaller agencies were seeing a 100 percent increase in their fees.

DISCUSSION:

Senator Lee questioned why negotiated rule making was not done. **Chief McNeill** responded that it had been and was not sure why the records did not reflect that. She volunteered to provide evidence to show that it had been completed. **Senator Lee** commented that she understood the fee increases and the demands did not seem unreasonable. Her biggest concern was that nothing had changed since 2014 and then this huge increase all at once. **Chief McNeill** stated there was a discussion in their meetings but the decision was made to make the increase and get it done.

MOTION:

Chairman Lakey moved to approve **Docket No. 11-1001-2201**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

The general consensus from the Committee seemed to be that ILETS was a vital part of the Idaho State Police Department and funding was required to keep it viable. No one wanted to have fees raised, particularly in rural communities and especially in such large amounts, but the Committee felt the increase was needed. The Committee agreed that smaller fee increases more frequently would have been a better option than such a large increase after such a long time with no increase.

**DOCKET NO.
57-0101-2201**

Rules of the Sexual Offender Management Board (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. **Nancy Volle**, Program Manager, Sexual Offender Management Board, explained that this rule chapter was on the schedule to be repealed and replaced during this Legislative session. The rule moves all fee information under the same rule, removes the description of the level of discipline and information about how to file a complaint against a provider. Such information will be located on a website. The pending fee rule does not create any new regulatory measures, and there will be no impact on the general fund as a result of the rule making. Negotiated rule making was carried out.

DISCUSSION:

Senator Wintrow asked if Ms. Volle would go over the high level changes in her docket. She explained that many of the changes were repetitions and duplications that were found elsewhere in the docket or in Idaho Code. **Ms. Volle** explained that the level of changes Senator Wintrow questioned were made at a level where Ms. Volle was not involved. **Senator Anthon** questioned the information relating to disciplinary actions taken. **Ms. Volle** assured him that their standards would still have the detailed information portion where the board may deny, suspend, revoke, restrict or otherwise monitor certification. Their standards would be found on their new website. She stated there was no change in this docket that would provide the board with any more power or

authority than they currently had. The area of concern just eliminated some of the language from the rules to try to shorten it and make it more user friendly.

MOTION: **Senator Wintrow** moved to approve **Docket No. 57-0101-2201**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Foreman passed the gavel back to Chairman Lakey.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:35 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 25, 2023

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SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Gubernatorial Reappointment of Ashley Dowell as the Director of the Department of Pardons and Parole to serve a term commencing January 2, 2023 and will serve at the pleasure of the Governor.	
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Gubernatorial Reappointment of Eric Fredericksen as the State Appellate Public Defender for a term commencing August 1, 2022 and to expire August 1, 2026.	
<u>RS 29927C2</u>	Regarding Vehicle Window Safety Glazing & Window Tint Standards	Lt. Colonel Bill Gardiner, Deputy Director, Idaho State Police
<u>RS 29956C1</u>	Relating to edits to the newly-established Office of Administrative Hearings (OAH) unit	Bryan Nickels
<u>RS 29959C1</u>	Relating to Pardons & Parole Commission's Authority to Commute or Pardon a Sentence of Death or Life in Prison	Ashley Dowell, Executive Director, Idaho Commission of Pardons and Parole
<u>RS 30003C3</u>	This legislation amends Idaho's law regarding marriage licensing. Currently, record of a marriage is the marriage license and return certificate filed by the county recorder. This legislation eliminates the requirement for a marriage license and replaces it with the recording of a marriage certificate with the county recorder.	Senator Herndon
<u>RS 30036</u>	Allowing the Court to adopt a rule that satisfies a signature requirement and allows new attorneys to take their oaths and be sworn in via a remote process.	Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts
<u>RS 30037</u>	Provides that the Court may issue a subpoena to an interpreter, but no longer requires a subpoena to be served upon every appointed interpreter.	Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts
PRESENTATION:	Office of the State Appellate Public Defender & Idaho Criminal Justice Commission (ICJC) - 2023 Update	Eric Fredericksen, Director, Idaho State Appellate Public Defender

PRESENTATION: Idaho Department of Juvenile Corrections -
2023 Update

Monty Prow, Director,
Idaho Department of
Juvenile Corrections

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Vander Feer (Hart)

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 25, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Vander Feer (substitute - Hart), Hartgen, Wintrow, and Ruchti

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.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Wintrow** moved to send the Gubernatorial reappointment of Ashley Dowell as the Director of the Department of Pardons and Parole to the floor with a recommendation that she be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial reappointment of Eric Fredericksen as the State Appellate Public Defender to the floor with a recommendation that he be confirmed by the Senate. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

RS 29927C2 **Regarding Vehicle Window Safety Glazing & Window Tint Standards. Lt. Colonel Bill Gardner**, Idaho State Police, stated he had two recommendations for the changes in the legislation. The first being that using plate glass as a windshield was not allowed. The second change was a result of a grandfather clause from 1992 that issued a card allowing anyone carrying it to drive a car with a windshield tint not in compliance with the statute. Those cards were only good for one year and were very rare now. ISP felt these changes would streamline this legislation.

MOTION: **Senator Ricks** moved to send **RS 29927C2** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 29956C1 **Relating to Edits to the Newly-established Office of Administrative Hearings (OAH) Unit. Bryan Nickels** explained there were four substantive changes in the legislation. The first change clarified the setting of the salary of the chief administrative hearing officer. Second, the Office of Administrative Hearings would be included in the department of self-governing agencies. In addition, the OAH would be allowed to use counsel other than just the attorney general's office, and all employees in OAH would be non-classified employees. The third change allowed them to have the ability to represent themselves in certain capacities and consult with and review legal issues with family members. The OAH employees would now be treated at the same level as the judges. The fourth change related to transparency. The records that came into the OAH office when the cases were assigned would retain the character they had upon arrival.

DISCUSSION: **Chairman Lakey** asked for clarification on who was restricted on practicing other types of law when employed by the Office of Administrative Hearings. He questioned if it was full time or part time employees. **Mr. Nickels** responded that signing up to be in the contractor pool, they were prohibited from engaging in any other practice of law. The statute provided a waiver so these people could request to be allowed to continue to do other outside work for various reasons. Currently, all who had requested a waiver had been granted one.

MOTION: **Chairman Lakey** moved to send **RS 29956C1** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 29959C1 **Relating to Pardons & Parole Commission's Authority to Commute or Pardon a Sentence of Death or Life in Prison.** **Ashley Dowell**, Executive Director, Idaho Commission of Pardons and Parole, explained this legislation clarified language that was already existing in Idaho statute. It was directly related to the Idaho Supreme Court's decision that was raised as one of its death row prisoner's requested his sentence be commuted from death to life without parole. The Commission recommended that request to the Governor and he chose not to do that. This pointed out a concern with the way the statute was written specifically as to whether or not the Commission retained their constitutional authority to issue commutations or pardons. This legislation does not change the commissioners or the governor's processes in any way.

MOTION: **Senator Lee** moved to send **RS 29959C1** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

RS 30003C3 **This Legislation Amends Idaho's Law Regarding Marriage Licensing.** **Senator Herndon** clarified this legislation did not change anything about the qualifications of who marries in the State of Idaho. It removed the requirement to obtain a license from the county clerk. Instead, the two qualified individuals to the marriage contract would locate an officiant who performed the ceremony/solemnization, and then the officiant transmitted fees and a marriage certificate to the county recorder who filed the certificate locally and submitted a copy of the marriage certificate to the state's vital statistics bureau. The result of the legislation was that the two qualified persons to the marriage contract would no longer obtain a license from the county clerk, and the marriage license itself would be eliminated from Idaho Code with the marriage certificate being the proof of the marriage, as it actually was already in Idaho Code.

DISCUSSION: **Senator Wintrow** stated her concern was regarding whether gay couples would still be allowed to get married. **Senator Herndon** assured her that the judiciary would continue to use the same interpretations of law that they were currently using. **Senator Ruchti** questioned why it was better to make these changes to this law. **Senator Herndon** responded that there was a duplication of duties and this exempts the use of a recorder in the marriage process. It removes a chapter of Idaho Code. Many people do not like the idea of government involvement in their lives, and these changes will simplify Idahoan's lives by not being required to have a marriage license. **Senator Wintrow** expressed concerns over age requirements being met and incestuous marriage issues. **Senator Herndon** explained that if any marriage violates that section of Idaho law, it was void.

MOTION: **Vice Chairman Foreman** moved to send **RS 30003C3** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 30036 **Allowing the Court to Adopt a Rule that Satisfies a Signature Requirement and Allows New Attorneys to take their Oaths and be Sworn in via a Remote Process.** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, explained the difficulties involved with having these required processes happen in Boise. This fix would insert language into the legislation in accordance with court rule that allowed the signature requirement on a separate page that could then be inserted into the role of attorneys and to create a process whereby the swearing in could occur remotely.

DISCUSSION: **Senator Lee** questioned why this legislation would not be clarified in statute rather than in individual courts. **Mr. Spillman** stated that since there were many ways to do the process, it seemed prudent to let each court work with their clerks to make it the easiest for them.

MOTION: **Senator Hartgen** moved to send **RS 30036** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

RS 30037 **Provide that the Court may issue a subpoena to an Interpreter, but no longer requires a Subpoena to be served upon every Appointed Interpreter.** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, explained that if parties to cases can not hear, speak, or are unable to understand or speak the English language, the court was required to appoint a qualified interpreter for that person. Statute currently required every one of those interpreters be served with a subpoena, not just the necessary ones. Determination of the need for a subpoena was made by the court or the parties may request one.

MOTION: **Senator Ruchti** moved to send **RS 30037** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Eric Frederickson, Director, Office of the State Appellate Public Defender, 2023 Update.** **Director Frederickson** said the Public Defender's Office was created to handle the extraordinary burden that would come to the counties for litigation in the appellate courts and capital litigation cases. Along with the organization of the State Appellate Public Defender's Office in 1998 came the vision of the Capital Crimes Defense Fund (CCDF). It was basically an insurance fund to cover the costs of capital cases. The office had 25 full time employees with plans to ask for an additional employee in 2023. **Director Frederickson** explained their appellate unit was the largest part of the office. They handled all statewide felony appeals, all appeals in misdemeanors and juvenile cases from the district court. The 2020 legislation allowed them to handle habeas corpus appeals and post-conviction appeals. There was a difference in the terminology when one talked about caseload vs. workload. Caseload measured the number of cases opened in a given fiscal year. Workload measured how big the cases were and the resources it took to cover those cases. He indicated there are 32 active first degree murder cases and four death penalty cases. They were required to budget out approximately 18 months to have the necessary funds available to support these cases. Three of the four death penalty cases will go to trial in the first year unless they are settled within this fiscal year. Two of those three cases will be tried at the same time. The expenses for that particular time period will be high, therefore, the high supplemental budget request. **Director Frederickson** stated this quote summarized his feelings about Public Defense service. "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." (see Attachment 1)

PRESENTATION: **Eric Frederickson, Director, Idaho Criminal Justice Commission (ICJC), 2023 Update.** **Director Frederickson** shared that as he traveled around he had seen how unique Idaho was. Many states did not have a Criminal Justice Commission but had created one based on what they had seen and heard about Idaho's program. The vision of the program was to have a safer Idaho through collaboration with groups from all different walks of life. ICJC had reached out to individual criminal justice agency directors asking what their critical issues were. When they were identified statewide, they would be addressed by the Commission. **Director Frederickson** explained that communicating and cooperating were what made the ICJC work effectively. The Director commented on Subcommittee work and the importance they played. He asked Ashley Dowell, Director of the Commission of Pardons and Parole to speak on the INSIGHT Subcommittee. For further information relating to Director Frederickson's presentation (see Attachment 2).

Ashley Dowell, described that INSIGHT was born as the Criminal Justice Integrated Data Systems. The goal was to take four executive branch agencies, other criminal justice stakeholders, combine it into a data warehouse and identify it. The next step was to help policy makers make better, more well informed decisions as a result of the information gleaned from the warehouse. The name was changed to INSIGHT to better reflect the purpose and humanize the project. Due to covid interruptions, the project was just getting off the ground and had only a few data runs. **Ms. Dowell** remarked there was a lot of interest in what INSIGHT could be used for. The more data input into the system the better the outcomes would be.

DISCUSSION: **Senator Anthon** asked if the Criminal Justice Commission was collaborating with the Idaho Crimes against Children group. He expressed that in small rural Idaho towns there was an increase in predatory crimes against children. **Mr. Frederickson** responded that there was someone from the Attorney General's Office who sits on the Commission and there were discussions relating to crimes against children. There were some upcoming conversations that were to address some of those issues.

PRESENTATION: **Monty Prow, Director, Office of the Department of Juvenile Corrections, 2023 Update.** **Director Prow** updated the Committee on the Juvenile Justice System in Idaho. He indicated that his presentation would be in two parts. The first part would include information relating to the Juvenile Justice System in Idaho. The second half of his presentation would be a video taken inside one of the State facilities. **Director Prow** stated that in 1995 the Juvenile Corrections Act was born, and it focused on two major initiatives. The first was that all juvenile systems be focused on three principles of the balanced approach accountability community protection programs being developed. The second was legislative intent that supported counties with prevention intervention resources that ideally lead to diversion from a formal juvenile justice system to major initiatives (see Attachment 3). The video portion of Director Prow's presentation was filmed at the Juvenile Corrections Center in St. Anthony, Idaho. It followed a typical day spent at the Center and reflected the services offered and the caring staff employed there. One parent commented that the centers were not jails. They were very good programs. It was like the best home away from home one could have. **Chairman Lakey** questioned if there was tracking between overlapping juvenile and adult recidivism rates. **Director Prow** answered that the numbers were in the low double digits. He stated they were very encouraged by the low numbers. **Senator Ricks** asked how long the average length of stays the kids had in the Centers. **Director Prow** emphasized that research had shown that the shorter the length of time the better it was for the kids, but they kept them

as long as their treatment required. Treatment lengths varied depending on their individual needs.


ADJOURNMENT: There being no further business, **Chairman Lakey** adjourned the meeting at 2:55 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Attachment 1
1-25-23

Office of The State Appellate Public Defender



I.C. § 19-868: Statement of Legislative Intent in creating the SAPD: The cost of legal representation for indigent defendants on appeal “is an extraordinary burden on the counties....”

- ▶ to reduce that burden
- ▶ to provide competent counsel
- ▶ avoid paying high hourly rates to independent counsel

Capital Crimes Defense Fund

- ▶ Created in 1998 by I.C. § 19-863A
- ▶ CCDF acts like an insurance program
 - ▶ Counties pay an annual premium based upon population
 - ▶ The counties pay a \$10K deductible per case, then the fund covers the additional defense costs
- ▶ As of December 2016, all 44 counties participate
- ▶ CCDF is managed by a 7 member Board of Directors elected by the counties
- ▶ Counties that participate in the fund also receive the services of the SAPD as defined in I.C. § 19-868, et. seq.

The Right To Counsel



- ▶ The right to effective assistance of counsel in an appeal of right from a felony conviction is guaranteed by the United States and Idaho Constitutions.
- ▶ The right to counsel in a post-conviction action is provided by Idaho statute and is discretionary in felony cases and mandatory in capital cases.

SAPD Staff

▶ **Administrative**

- ▶ Eric D. Fredericksen, State Appellate Public Defender, 1 office administrator

▶ **Capital Litigation Unit**

- ▶ 2 lead attorneys (1 is Chief of CLU), 1 staff attorney, 1 mitigation specialist, 1 investigator, 1 support staff

▶ **Appellate Unit**

- ▶ 1 Chief of AU, 12 staff attorneys, 3 support staff, 1 receptionist

- ▶ Total: 25 Full-Time Employees, 1 Part-Time Employee

Appellate Unit Case Types

▶ Direct Appeals

- ▶ An appeal from the felony conviction itself or grant of motion in a felony, misdemeanor (2020), and juvenile (2020) case on appeal by the State of Idaho
- ▶ Review of what occurred in court, on the record
- ▶ Reviewing whether the district court did its job consistently with the law
- ▶ Review of some unpreserved Constitutional violations

▶ Habeas Corpus Appeals

- ▶ Generally limited to claims regarding conditions of confinement
- ▶ Some claims regarding parole processes

▶ Post-Conviction Appeals I.C. §19-4901, et. seq.

- ▶ Civil Action in which the former defendant sues the State asserting specific errors
- ▶ Allows the petitioner to provide evidence of things that occurred out of court and off the record
- ▶ Proper vehicle to raise claims of Ineffective Assistance of Counsel

Appellate Unit

Caseload vs. Workload

▶ **Caseload** measures the number of **cases opened** by the SAPD within a given fiscal year. The opened date is the date the Notice of Appeal is filed.

- ▶ FY2019: 600
- ▶ FY2020: 618
- ▶ FY2021: 435
- ▶ FY2022: 568

▶ **Workload** measures the average weighted value of case **work handled** by an Appellate Unit attorney.

- ▶ FY2019: 51.81
- ▶ FY2020: 58.08
- ▶ FY2021: 43.30
- ▶ FY2022: 36.56

Capital Unit Case Types

- ▶ **Post-Conviction Proceedings in District Court**
 - ▶ Filing of Petition for Relief
 - ▶ Investigation
 - ▶ Summary Dismissal Proceedings
 - ▶ Evidentiary Hearings
- ▶ **Consolidated Appeal**
 - ▶ Includes both the Direct Appeal and the Post-Conviction Appeal
- ▶ **Interlocutory Appeals in Post-Conviction**

Active Death Penalty Litigation - Idaho

- ▶ SAPD has 6 active cases in its Capital Litigation Unit:
 - ▶ Timothy Dunlap – Petition for Writ of Certiorari filed
 - ▶ Erick Virgil Hall (Hall II) – On appeal.
 - ▶ Jonathan David Renfro – Death Verdict 11/6/17. In discovery phase before evidentiary hearing.
 - ▶ *Shinn v. Ramirez*, 142 S.Ct. 1718 (2022) – Hairston, Row, and Creech
- ▶ 32 active First Degree Murder cases in 13 counties in Idaho's district courts.
- ▶ Death Notice filed in 4 cases.

FY2023 Supplemental and FY2024 Budget

Total Budget Request - \$3,670,400

Governor Recommendation - \$3,768,500

FY2024 Line Items - \$152,600

1. New Capital Litigation Attorney - \$130,000
2. DHR Consolidation - \$22,600

FY2023 Supplementals -

1. ITS Increases Storage Capacity - \$67,500
2. Capital Cases and Evidentiary Hearing Costs - \$1,309,400
 - a. *Renfro v. State of Idaho* evidentiary hearing - \$98,000
 - b. New capital cases - \$1,211,400

Commissions and Committees

- Idaho Criminal Justice Commission
- Public Defense Commission
- Idaho Grant Council
- Idaho Criminal Rules Committee
- Idaho Rules of Evidence Committee
- Idaho Appellate Rules Committee
- Idaho Criminal Jury Instructions Committee



“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”

Griffin v. Illinois, 351 U.S. 12 (1956)

Attachment 2
1-25-23

The background features a gradient from red at the top to dark blue at the bottom. On the left side, there are several circular patterns, some resembling gauges or scales with numerical markings (e.g., 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260). There are also some faint circular arrows and lines scattered across the background.

IDAHO CRIMINAL JUSTICE COMMISSION

LEGISLATIVE UPDATE 2023

Executive Order 2020-20

BRAD LITTLE
GOVERNOR



WHEREAS, it is in the best interest of the citizens of the State of Idaho that government promote efficiency and effectiveness of the criminal justice system and, where possible, encourage dialogue among the respective branches of government to achieve this effectiveness and efficiency...

VISION

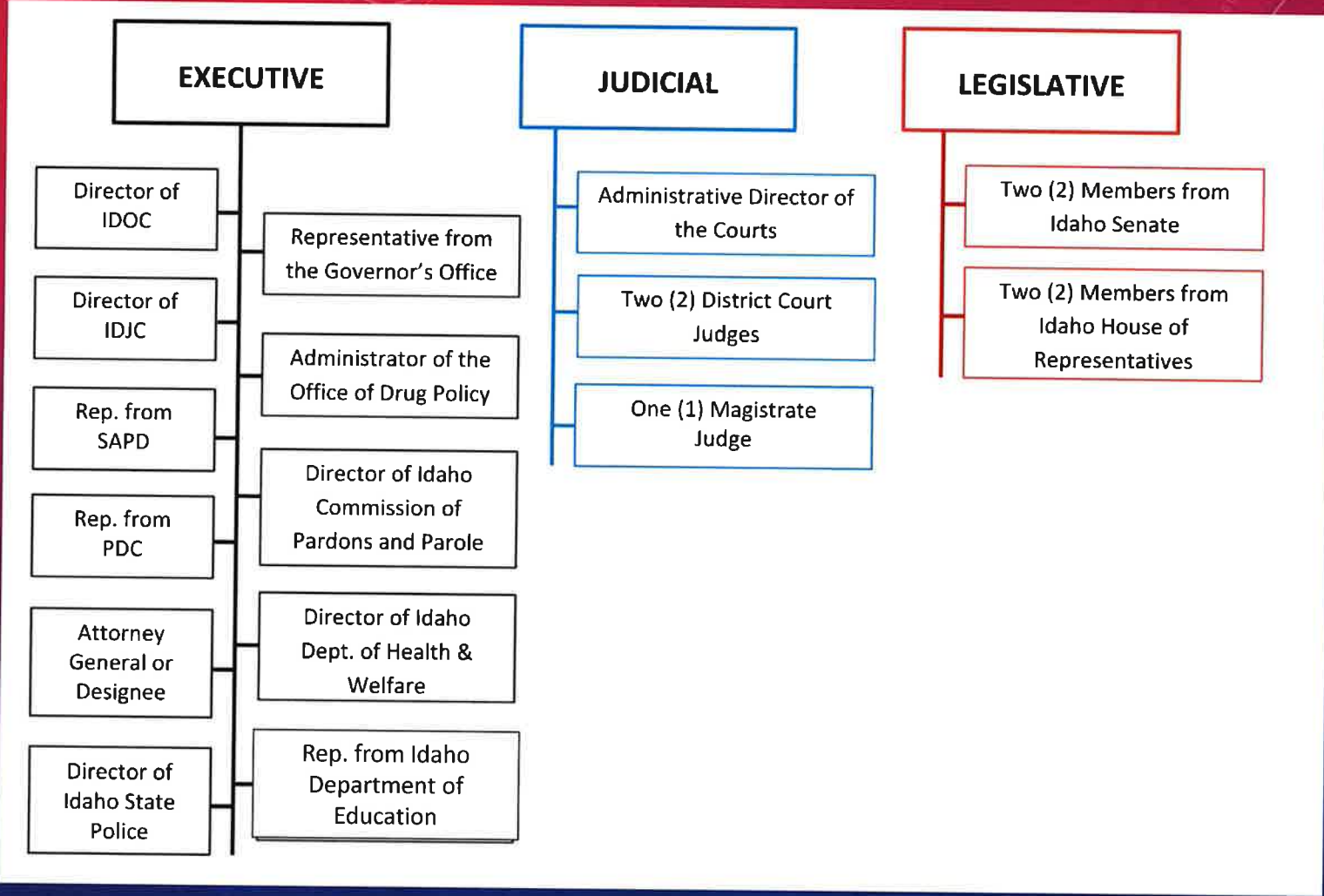
- Collaborating For a Safer Idaho

MISSION

- The Idaho Criminal Justice Commission is committed to collaboration to address important criminal justice issues and challenges by developing and proposing **balanced solutions**, which are **cost effective** and based on “best” practices to **achieve a safer Idaho**.

VALUES

- We are **committed** to learning and enhancing our understanding.
- We **communicate** honestly.
- We **encourage** open dialogue and feedback.
- We are **flexible** and innovative.
- We **keep** our commitments.
- We **respect** all contributions.
- We are **sensitive** to the unique perception and needs of others.



COUNTIES

One (1) Representative from Idaho Prosecuting Attorney's Association

One (1) Representative from Idaho Sheriff's Association

CITIES


One (1) Representative from Idaho Chiefs of Police Association

OTHER STAKEHOLDERS

Three (3) Citizens with Consideration Given to those with Experience/Education Related to the Mission of the Idaho Criminal Justice Commission, and/or those Representing Tribal or other Underrepresented Communities in Idaho

The U.S. Attorney for the District of Idaho

WHEREAS, communication and cooperation among the various facets of the community of criminal justice professionals is of utmost importance in promoting efficiency and effectiveness...

The background features a vertical gradient from red at the top to dark blue at the bottom. On the left side, there are faint, semi-transparent circular patterns and a scale with numerical markings from 150 to 260. The scale is oriented vertically and includes tick marks. The text is centered on the right side of the image.

IDAHO CRIMINAL JUSTICE COMMISSION STRATEGIC PLAN FOR THE STATE OF IDAHO

COMBATING CRIME AND PROTECTING CITIZENS

GOAL - Reduce victimization and recidivism in the state of Idaho

Objective 1: Identify and establish subcommittees relating to accountability, prevention, education, and recidivism reduction.

Objective 2: Strengthen knowledge base in Idaho by enhancing data collection abilities and sharing capabilities

PROVIDING POLICY MAKERS AND CRIMINAL JUSTICE DECISION MAKERS WITH ACCURATE INFORMATION

GOAL - Advance delivery of justice through effective interventions by proposing balanced solutions, which are cost effective and based on best practices

Objective 1 - Determine reasonable expectation of community needs and services based on resources

Objective 2 - Promote standards and equity

Objective 3 - Reduce criminogenic risk factors through the expanded use of risk assessments, policies and programming

Objective 4 - Ongoing assessment of problem solving courts and other community-based sentencing alternatives

Objective 5 - Examine emerging issues

PROMOTING EFFICIENCY AND EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM

GOAL - Promote well-informed policy decisions

Objective 1 - Identify strategies to promote efficiencies and effectiveness in the criminal justice system

Objective 2 - Continue presentations and training on trends, best practices and priority issues

Objective 3 - Create and implement data sharing mechanisms and agreements among stakeholder agencies

Objective 4 - Maintain awareness of substance abuse trends and priority issues

Objective 5 – Identify sustainable funding for priorities in ICJC's strategic plan

SUBCOMMITTEE WORK

MENTAL HEALTH AND SUBSTANCE ABUSE

INSIGHT

HUMAN TRAFFICKING

GRANT REVIEW COUNCIL

MISSING AND MURDERED INDIGENOUS PERSONS

SEX CRIMES/OFFENSE

INSIGHT

- In 2020, the Idaho Legislature passed the I.C. 19-4801-4804:
 - The Criminal Justice Integrated Data System Act
 - A centralized data repository to maintain and link data across separate entities – to aid in evaluating the effectiveness of the criminal justice system and enable data-driven, cost-saving decision making.
 - Began meeting in December of 2020.

HUMAN TRAFFICKING

- Committee's Focus
 - Gaps in Enforcement
 - Detection
 - Support Systems for Victims
- Drafted Amended Language for I.C. 18-8601-8603 (Passed 2019)
- Created Safe Harbor Provision for victims of human trafficking I.C. 18-8606 (Passed 2019)

SEX OFFENSE/CRIMES

- Statutes were reviewed, proposed changes include:
 - Removal of unconstitutional statutes:
 - Adultery, fornication and infamous crimes against nature.
 - Creation of new statutes to address sexual abuse of animals and human remains.
 - Additions to criminal statutes to include foreign convictions.
 - Amendments to timeframes for mailed registration notices.

Idaho Criminal Justice Commission

Collaborating For A Safer Idaho

<http://icjc.idaho.gov/>

Attachment 3
1-25-23



Idaho Department of Juvenile Corrections

Monty Prow, Director

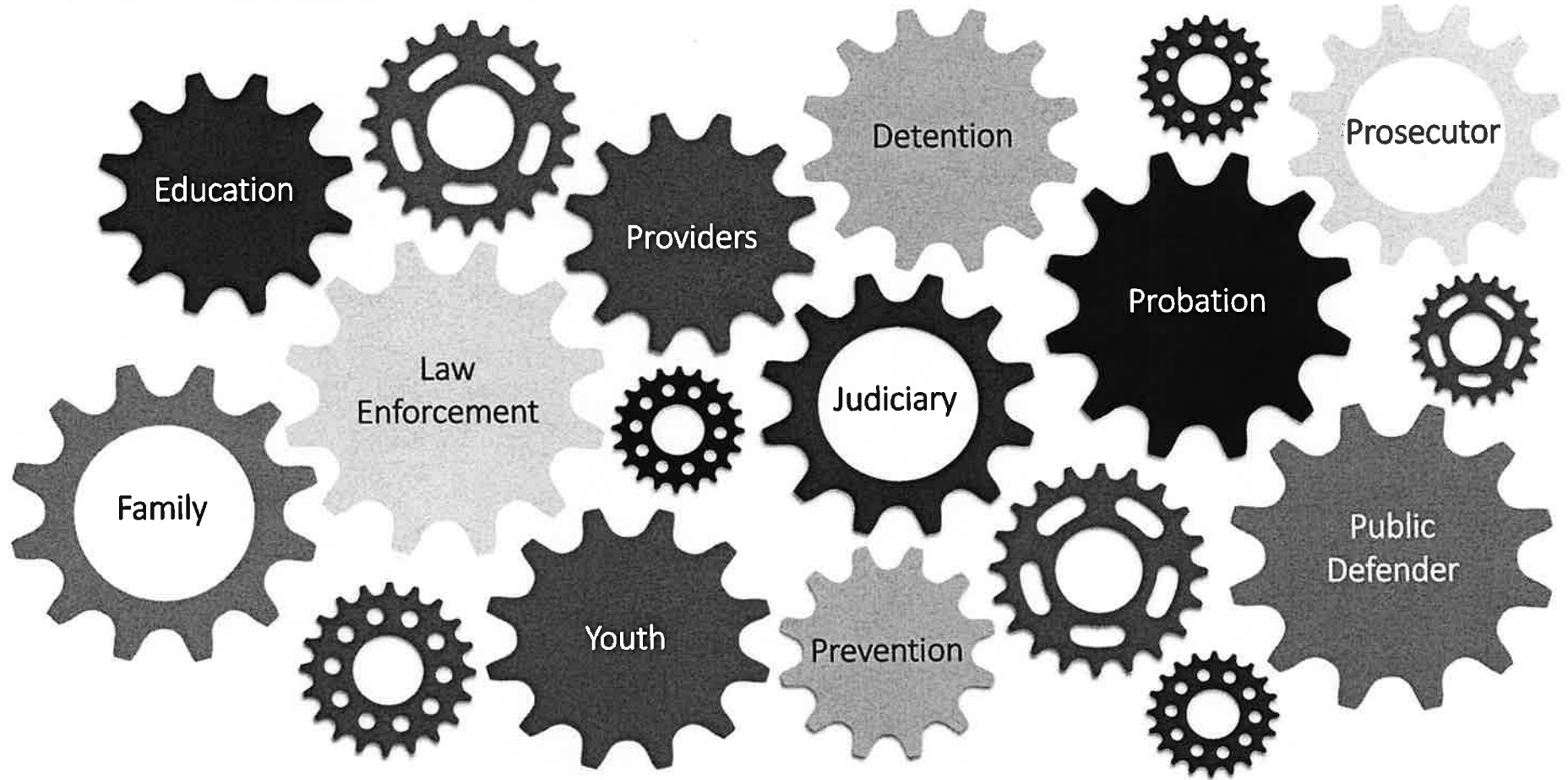
Mission: To develop productive citizens in active partnership with communities.

Statutory Authority and Intent

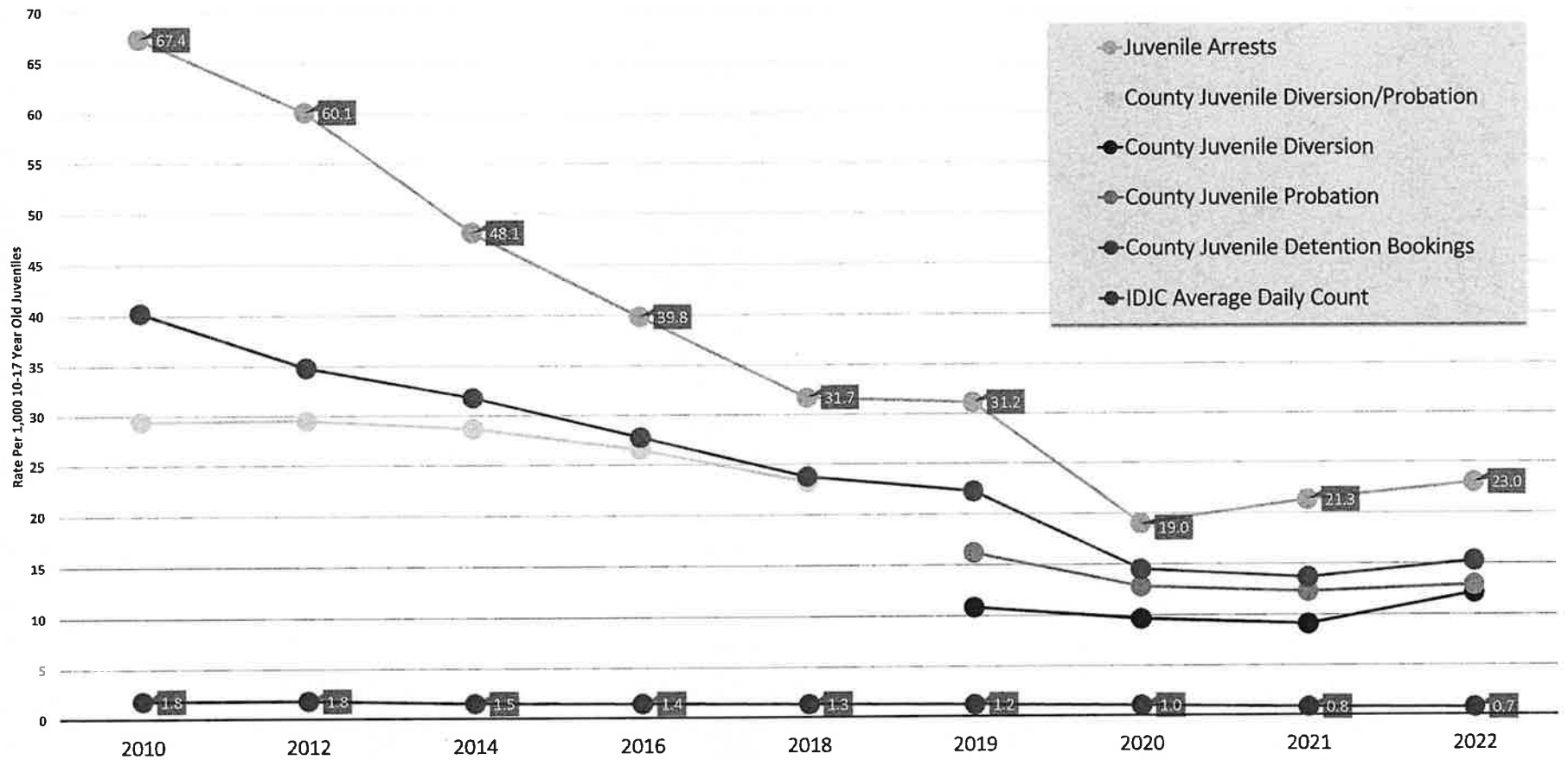
IDJC statutory authority is found in Title 20, Chapter 5, Idaho Code

It is the policy of the state of Idaho that the juvenile corrections system will be based on the following principles: **accountability, community protection, and competency development**...the legislature finds that the juvenile corrections system should encompass the following aspects: diversion, day treatment, community programs, observation and assessment programs, probation services, secure facilities, aftercare, and **assistance to counties for juvenile offenders not committed to the custody of the department of juvenile corrections.**

Idaho Juvenile Justice Collaboration



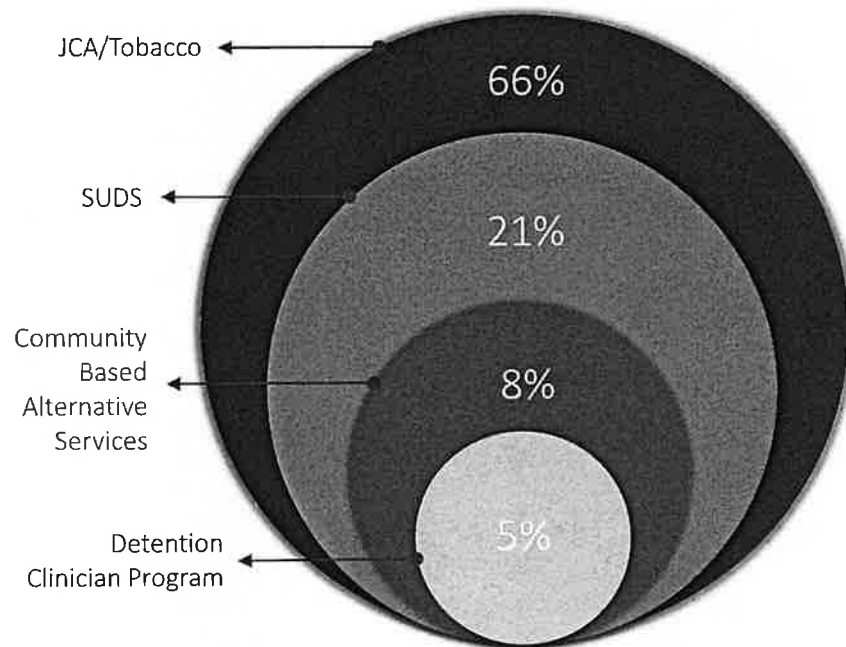
Idaho Juvenile Justice By The Numbers



Data compiled from: US Census; County Juvenile Justice Reports; ISP; IDJC Data Systems

Community Pass-Through

22% of the Department's budget*



These funds are distributed to counties and local communities to support effective programming and reintegration initiatives, which results in fewer commitments.

*22% includes federal funds; this graphic represents general and dedicated funds only.

JCA/Tobacco

Funds: Juvenile justice programs and services in the county.

Substance Use Disorder Services

Funds: Substance Use Disorder treatment and services in the county.

Youth served: 1,058

Success Rate: 99%

Community Based Alternative Services

Funds: Mental health treatment, commitment prevention services, behavioral health addiction treatment, etc. in the county.

Youth served: 595

Success Rate: 97%

Detention Clinician Program

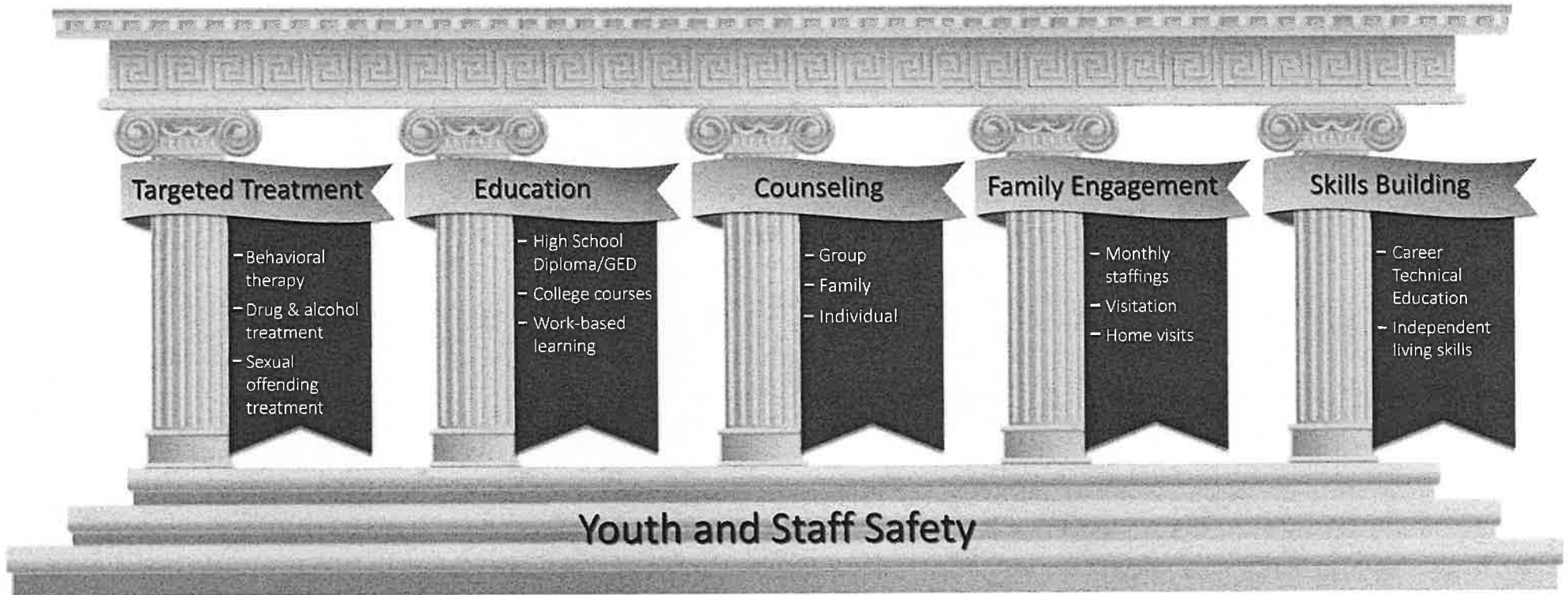
Funds: Clinician positions in Idaho's county-operated juvenile detention centers.

Youth served: 1,278

Critical elements to these incentive programs include:

- Collaboration with courts, county, state, families, and service providers
- Evidence-based approaches, matching appropriate services to needs

Five Pillars of Developing Productive Citizens



Each pillar is complementary of one another

Positive Youth Outcomes

72% of youth are successful citizens upon release

83% of eligible youth received a High School Diploma or a GED

73% of youth are positively engaged in the community

253 hours of community service & service learning hours earned per youth

Education Scores
- 93% increase in math
- 91% increase in reading



Looking Forward



Education/skill building to continue and enhance employability



Behavioral Health Council Initiatives

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 30, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>RS 30012</u>	This legislation would provide for consistency in collecting court fees to be sent to the State each month.	Senator Hartgen
<u>RS 30082</u>	This legislation would allow the venue change filing fee to be paid to and retained by the original court and to be paid at the same time the motion for change is filed.	Senator Hartgen
<u>S 1022</u>	MOTOR VEHICLES - Amends existing law to revise a provision regarding standards for windshields and windows of motor vehicles and to remove provisions regarding violations and compliance.	Lt.Colonel Bill Gardiner, Deputy Director, Idaho State Police
<u>S 1024</u>	COMMUTATIONS AND PARDONS - Amends existing law to revise a provision regarding commutations and pardons for offenses punishable by death or life imprisonment and to provide for conspiracies to commit certain offenses.	Ashley Dowell, Executive Director, Pardons and Parole Commission
<u>S 1027</u>	WITNESSES - Amends existing law to revise a provision regarding serving interpreters with a subpoena.	Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey	Sen Hart
Vice Chairman Foreman	Sen Hartgen
Sen Lee	Sen Wintrow
Sen Anthon	Sen Ruchti
Sen Ricks	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 30, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Ricks, Hart, Hartgen, Wintrow, and Ruchti

**ABSENT/
EXCUSED:** Anthon

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 & Rules Committee (Committee) to order at 1:30 p.m.

RS 30012 **Monthly Court Fee Collections. Senator Hartgen**, the sponsor of the RS stated she had this proposal brought to her by county clerks that wanted to make consistent the collection and processing of fees. Clerks have had to process fees in the Odyssey system within five days of collection, and it was their hope to have this changed to the fifteenth of every month.

MOTION: **Vice Chairman Foreman** moved to send **RS 30012** to print. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

RS 30082 **Venue Change Filing Fees. Senator Hartgen** explained that this legislation would update the process for the payment of fees for changing court venues. The \$29 filing fee would remain with the original court and the paperwork would be transferred via the Odyssey system to the new venue. The county clerks had the flexibility to set up the process in their individual counties.

MOTION: **Senator Lee** moved to send **RS 30082** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

S 1022 **Windshield and Window Standards for Motor Vehicles. Lt. Colonel Bill Gardiner**, Deputy Director, Idaho State Police (ISP), explained this bill would seek to modify § 49-944 of Idaho Code by incorporating federal motor vehicle safety standards for windshields and windows. The present section of Code, which was added in 1992, established the State's requirements for these standards. Research provided showed there were few cars still in compliance with older legislation requirements. This bill was introduced to streamline this section and create uniformity.

DISCUSSION: **Vice Chairman Foreman** voiced concern over the possibility of the State, by attempting to simplify its own Code, becoming beholden to any changes that could be made in the future to Federal code. **Lt. Colonel Gardiner** shared the concern of potential federal overreach, but was confident the way the bill had been written only covered windshields and windows. **Vice Chairman Foreman** followed up by asking if there was an alternative to fully-incorporating federal code and, instead, if ISP could write their own version to avoid making the State vulnerable to any changes that could be made at the federal level. **Lt. Colonel Gardiner** responded that, since vehicles sold in the United States had to be manufactured in accordance with federal code, it was the belief of ISP that incorporating that portion of federal code would make sense and offer greater protection to Idaho citizens. They would only be subjected to inspection of the level of tint on their windows and not the

build quality of the vehicle's components. **Senator Wintrow** asked a clarifying question about the intent of ISP to create redundancy with federal code because the judgement of tint, windows, and windshields by troopers would also apply to interstate travellers. **Lt. Colonel Gardiner** agreed, stating that the language ensured consumers would be confident their windshields and windows would be legal, and the same for any motorists stopped by a trooper. **Senator Ricks** asked Lt. Colonel Gardiner if there were any provisions in the proposed legislation that would address any aftermarket changes to windshields and windows. **Lt. Colonel Gardiner** responded saying this legislation would actually simplify that process, because the make of the windshield would not matter, only if it was under 30 percent tint. **Senator Ricks** followed up by clarifying that the consumer would not have to worry about adhering to federal code because it was applied uniformly. **Senator Hart** asked if the current code was more simple or if it would be in the event the proposal was codified. **Lt. Colonel Gardiner** stated that, by pulling the rule and putting it into Code, it would be easier for Idahoans to read and access. **Senator Hart** followed up by asking how a citizen could find digital and physical copies of the Code. **Lt. Colonel Gardiner** specified that, by entering the specific code section into a search engine, one could find what they were looking for. **Chairman Lakey** asked if the relevant section of federal code was already present in the rule and if it would be adequately cited in Code. **Lt. Colonel Gardiner** confirmed that reference was already in the rule and would be applied to Code, should the legislation pass.

MOTION:

A Roll Call vote was requested by **Vice Chairman Foreman**. **Senator Wintrow** moved to send **S 1022** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion **passed 5-3**, with **Chairman Lakey, Senator Lee, Senator Anthon, Senator Hartgen, Senator Wintrow, and Senator Ruchti** voting Aye and **Vice Chairman Foreman, Senator Ricks, and Senator Hart** voting Nay.

S 1024

Commutations and Pardons for Death or Life Sentences. Ashley Dowell, Executive Director, Pardons and Parole Commission. **Director Dowell** began her presentation by declaring the intention for creating **S 1024** was in response to a case in 2021 where an inmate, Mr. Pazuello, requested his death sentence be commuted to a life sentence, which was later granted by the Pardons and Parole Commission. It was overturned by the Governor, leading to Supreme Court intervention. After the Supreme Court confirmed the Governor had the authority to make such a decision, the Pardons and Parole Commission decided to draft this legislation, and added clarifying language in Code that specified the authority of the Governor in instances like the one involving Mr. Pazuello.

DISCUSSION:

Chairman Lakey began discussion by clarifying that this bill would not establish any new authority, rather it would simply clarify the status quo in Code. **Director Dowell** confirmed that was all the legislation would do. **Senator Ricks** asked if there was a need for this bill if it was already determined the Governor had this authority. **Director Dowell** responded this would not only clean up language but create the time frame of 30 days within which the Governor had to potentially overturn a recommendation from the Pardons and Parole Commission. **Senator Wintrow** observed that the responsibilities seemed fairly clear, but was wondering if part of the inspiration for this legislation was the Supreme Court asking for the responsibilities of the Executive Branch and the Pardons and Parole Commission to be clarified. **Director Dowell** confirmed that the fact that the Supreme Court had to intervene made them realize it would behoove the Commission to get the responsibilities of each party codified to avoid any future conflicts. **Vice Chairman Foreman** observed this legislation would do little to change Code and questioned the necessity of this change being made. **Director Dowell** responded by stating the intent of the language is necessary to avoid any future legal complications should the Executive Branch seek to overturn a recommendation made by the Pardons and Parole Commission. **Senator Hart** inquired if the Pardons and Parole Commission worked with the Governor's Office on this proposal. **Director Dowell**

confirmed that her Commission did work with the Governor's Office and that this bill got their approval.

MOTION: **Senator Lee** moved to send **S 1024** to the floor with a **do pass** recommendation. **Senator Ruchti** seconded the motion. The motion carried by **voice vote**.

S 1027 **Subpoena Service and Interpreters.** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, declared the intent of this legislation was to save the State time and money. Current law stated any individual with difficulty hearing, speaking, reading, or understanding English that had received a subpoena would result in a court-assigned interpreter being subpoenaed as well. The aim of this legislation was to serve a subpoena to an interpreter only if needed, as the act of serving someone is costly and time-consuming.

DISCUSSION: **Senator Ricks** expressed his support for the legislation, noting that court-assigned interpreters have a financial incentive to attend proceedings, even if not required. He supports the legislation for the cost savings it would offer the State.

MOTION: **Senator Ricks** moved to send **S 1027** to the floor with a **do pass** recommendation. **Vice Chairman Foreman** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:12 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 01, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>RS 30160</u>	Relating to Rental Fees	Senator Rabe
INTRODUCTION:	Introduction of Participating Judges	Honorable Juneal Kerrick, Senior District Judge, Administrative Office of the Courts
PRESENTATION:	The Courts and the Counties: A Partnership	Honorable Dane Watkins, Jr., Administrative District Judge, 7th Judicial District
PRESENTATION:	Cybersecurity and the Courts	Honorable Eric Wildman, Administrative District Judge, 5th Judicial District
PRESENTATION:	The Work of a District Judge	Honorable John Judge, Administrative District Judge, 2nd Judicial District

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey	Sen Hart
Vice Chairman Foreman	Sen Hartgen
Sen Lee	Sen Wintrow
Sen Anthon	Sen Ruchti
Sen Ricks	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 01, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

**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 & Rules Committee (Committee) to order at 1:30 p.m.

RS 30160 **Relating to Rental Fees. Senator Rabe** explained this legislation was drafted to make rental fees more reasonable, including those for late rent payments. **RS 30160** was created with the intention of establishing best practices for landlords and property managers in State Code to increase consumer protections, and improve transparency. Landlords would not be able to charge fees that exceeded what was enumerated in the rental agreement, and would be limited to fees that were reasonable.

DISCUSSION: **Chairman Lakey** noted similarities between this proposal and one introduced in the past, and inquired about the status of a consensus between stakeholder groups. **Senator Rabe** identified the Idaho Apartment Association, the National Association for Property Managers, and the Idaho REALTORS as being in favor of the proposal. **Vice Chairman Foreman** posed a question of whether it was the State's responsibility to tell a landlord or property manager their rental agreements were not reasonable when there had already been an agreement. **Senator Rabe** noted the elimination of a requirement that property managers must be required to be licensed realtors in 2016, and the unintended consequences had on the industry, so now they have taken steps to try and eliminate bad actors. She also noted it was not the government bringing this proposal, rather it was the industry by way of the legislative process. **Vice Chairman Foreman** expressed some concerns with the proposal, mainly that there were already legal mechanisms in place for this purpose. He noted, however, that the intent was good and wanted to express appreciation for the proposal. **Senator Rabe** responded by citing an Idaho Asset Building Network survey that identified at least 30 non-profits engaged in housing issues in Idaho, most of whom concluded that the exploitation of renters was their greatest concern, and how a print hearing would be appropriate so the Committee could receive input from them. **Senator Wintrow** expressed her desire to get this proposal a print hearing so the Committee can learn from landlords and other stakeholders the experiences and conversations they had that resulted in their desire to find a legislative solution to these problems. **Senator Lee** also communicated a desire to hear from landlords about their challenges, and why existing contract law had not done enough for both landlords and tenants. **Senator Hart** opened his comments by stating he would support the bill getting a print hearing. He followed up with a story about a personal experience of renting out an office space owned by a known party that ended up turning ownership over to someone new that issued a five-day eviction notice. He noted that, had protections not been in Statute, he would have not gotten the eviction changed to the statutory

30 days. **Senator Anthon** stated that he was hesitant when discussing proposals that could increase government involvement, but would support giving the bill a print hearing. He then posed a question about how the bill, if signed into law, could negatively affect existing rental agreements.

MOTION: **Senator Wintrow** moved to send **RS 30160** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Foreman** asked to be recorded as voting nay.

PRESENTATION: Introduction of Participating Judges. **Honorable Juneal Kerrick**, Senior District Judge, Administrative Office of the Courts. **Judge Kerrick** introduced herself and her fellow judges.

PRESENTATION: The Courts and the Counties: A Partnership. **Honorable Dane Watkins, Jr.**, Administrative District Judge, 7th Judicial District, began his presentation by crediting the collaboration between many parties for the efficiency of the judicial system in Idaho, and how he hoped to make Idahoans proud of the effective use of their tax dollars. He noted that, during the height of the Pandemic and with the help of the Supreme Court, everyone was able to work cooperatively and conduct over 42,000 hearings.

DISCUSSION: **Chairman Lakey** inquired about "shared employees" that work for both a county and the State, and what the Judge's thoughts were on that process. **Judge Watkins** responded by outlining the practice used in 7th Judicial District. Counties within the District shared costs for services, but not all districts did the same. In his district, the State performed a lot of the management duties, while many employees worked for their county too. **Senator Ricks** asked about the current workload in the 7th Judicial District and to what extent remote proceedings had continued following the Pandemic. **Judge Watkins** responded by commending platforms like Zoom for streamlining the legal process, and cited many conversations with judges and attorneys that praise it for expediting proceedings and saving money. He did say there were hearings that were better suited for a courtroom. He spoke to the nature of modern cases becoming increasingly complex, and required much more resources. **Senator Ruchti** inquired what elements of the legal process he believed virtual platforms were best suited for. **Judge Watkins** replied witness testimony, efficiency, and cost savings. **Senator Ruchti** followed up with a question about how a jury would come into play. **Judge Watkins** told the Committee that Bonneville County was selected for a pilot program for jury selection had proven to be modern and efficient. **Senator Hart** asked if the Judge could explain the difference in responsibilities between the Chief Justice of the Supreme Court and his role. **Judge Watkins** spoke to there being some similarities, but the scope of his being limited to the 7th District.

PRESENTATION: Cybersecurity and the Courts. **Honorable Eric Wildman**, Administrative District Judge from the 5th Judicial District. **Judge Wildman** began by speaking to the importance of cybersecurity and the courts since, in October 2018, the Courts transitioned to a paperless, electronic filing and case management system that was hosted in each of Idaho's 44 counties. In 2021, the Twin Falls County network was compromised by a cyber attack by way of ransomware originating out of Russia that warranted physically disconnecting anything connected to the Network. While working to recover from the attack, his District received laptops and support staff from the Supreme Court to assist as they tried to resume operations. The significance of the attack resulted in Judge Wildman having to issue an administrative order at the beginning of August that would limit court operations to emergency matters and hearings. This order remained in place until the 19th of August, when new servers were installed and the network was restored. However, the ability to access records was lost for around five months. The Supreme Court had been working with a third party consultant to implement best practices and find long-term technology solutions that harden cybersecurity in each of the 44 counties

in Idaho. As a part of its FY24 budget request, the Supreme Court had requested short-term funds to integrate more robust cybersecurity software [Odyssey] to protect its case management systems.

DISCUSSION: **Senator Ricks** asked where the bulk of the cybersecurity responsibilities would lie should the Supreme Court integrate a new, more secure case management software. **Judge Wildman** outlined the organizational structure of this proposal. The Chief Security Officer and their staff within the Supreme Court being responsible for the bulk of the administrative work, while any county personnel would serve in a supporting role. **Senator Ricks** followed up with a clarifying question about the storage of information and whether it would be on the local servers or on the Cloud. **Judge Wildman** confirmed the data storage would be on the Cloud. **Judge Wildman** noted the decision was due to technological improvements they had seen over those years with the Odyssey system, and how a lot of the capabilities they were hoping for were not available at the time. **Chairman Lakey** asked about the nature of ransomware attacks, and how a resolution was reached and how to trust the agitator(s) did not leak sensitive information that was extracted. **Judge Wildman** explained that the nature of those conversations were between the agitator(s), the County, their insurance carrier, and attorneys. **Senator Ricks** asked if, like most government agencies in the State, the Supreme Court's technology services were administered by legislative services and the Department of Administration or if it was done internally. **Judge Wildman** expressed that it was his understanding that technology oversight was handled by the Supreme Court and not another government entity.

PRESENTATION: The Work of a District Judge. **Honorable John Judge**, Administrative District Judge from the 2nd Judicial District, described his position as one that required them to serve as an arbiter of facts and law that worked to resolve disputes in accordance with ethical requirements established in Idaho Code. He continued to say there were plenty of misconceptions about judges, and that they must make decisions in accordance with law and fact, rather than what was or was not popular. As of late, his case load has largely consisted of felony, criminal cases involving drugs; civil cases over \$10,000; some property rights work; review of administrative procedures; helping other judges; and more. The work of a judge, he said, was to ensure access to justice, and that it was fair and efficient for the people. It was a challenging role, but rewarding to know that their work had helped people.

DISCUSSION: **Senator Lee** asked Judge Judge to explain the independence of the judiciary and what accountability for them looked like. **Judge Judge** explained that they were held accountable in many ways, including, federal law, peers, checks-and-balances with other branches of government, the Judicial Council, and more. **Senator Wintrow**, followed up on the checks-and-balances portion of the Judge's previous response, and the best qualities a voter should look for in a candidate for judge. **Judge Judge** replied, in terms of being a good judge, a lot of the qualities one should look for were personal, such as: being considerate, a good listener, and understanding. **Chairman Lakey**, continuing the discussion of independence of the judiciary, asked if the Judge had any concerns about judicial activism spreading into the judiciary in an increasingly political climate. **Judge Judge** admitted that it could be challenging, particularly because of the pressure the public put on justices and juries, especially in high-profile cases like the one in Moscow. He also said that this problem was not exclusive to the judicial branch, and that it was affecting the other branches as well. The Judge stressed the importance of judges continuing to act impartially and on evidence to maintain the integrity of the courts.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:48 p.m.

Senator Lakey
Committee Chairman

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 06, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of January 18, 2023 Minutes	Senator Wintrow
MINUTES APPROVAL:	Approval of January 23, 2023 Minutes	Senator Hartgen
<u>RS 29994</u>	Relating to Providing Notification of Parents/Guardians of their Legal Rights with Respect to Child Protection Investigations	Senator Herndon
<u>RS 30187</u>	Relating to Legislation to Clarify Outfitters and Guides Liability Provisions	Aaron Lieberman, Executive Director, Idaho Outfitters & Guides Association
<u>S 1029</u>	JUVENILE PROCEEDINGS - Amends and adds to existing law to prohibit a child protection investigation based on a child's immunization status and to provide that a court shall not grant an order terminating a parent and child relationship based on a child's immunization status.	Senator Lenney
<u>S 1034</u>	COURT FEES - Amends existing law to revise deadlines for the transmission of certain court fees to the state treasurer.	Senator Hartgen
<u>S 1035</u>	COURT FEES - Amends existing law to revise a provision regarding the payment of a fee to change court venue.	Senator Hartgen
DISCUSSION:	Input from Committee Relating to JFAC Funding Requests	

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey	Sen Hart
Vice Chairman Foreman	Sen Hartgen
Sen Lee	Sen Wintrow
Sen Anthon	Sen Ruchti
Sen Ricks	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 06, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Wintrow** moved that the Committee accept the minutes from the January 18, 2023 meeting. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Hartgen** moved that the Committee accept the minutes from the January 23, 2023 meeting. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 29994 **Parent/Guardian Notification & Child Protection Investigations. Senator Herndon** stated this legislation was drafted with the intent to modify the Child Protective Act in Idaho Code. If passed, this bill would have the Department issue notice to any parent or guardian of a child involved in a Child Protective Service (CPS) referral within 72 hours of first contact. Also included in this legislation was the inclusion of parental rights, such as the ability to refuse to answer questions of a department worker; the right to consult an attorney and have one present during an investigation; the right to refuse entry to home or on real property by a department worker; and they could reject the questioning of any minor in their home or on their property by a department worker, unless there was a warrant or court order issued. This proposal was drafted using H 170 from the 2019 Legislative Session as inspiration. **Senator Herndon** also said that the State had already started informing parents of their constitutional rights in the event of a CPS referral situation. He noted how the previous version of this bill from 2019 received opposition from the Fraternal Order of Police and how, due to some changes that were made to the language, they had taken a neutral position on **RS 29994**.

DISCUSSION: **Vice Chairman Foreman** indicated his support for the proposal, stating that he thought the intent to codify the process for those investigations was a good thing. **Senator Herndon** responded by commenting on the importance of helping parents not feel overwhelmed at a stressful time with law enforcement and CPS workers present. **Senator Wintrow** asked if there were any specific concerns the Department of Health & Welfare communicated to the Sponsor while he had been working on this legislation. **Senator Herndon** responded by saying the Department did not have any concerns as they worked on the bill, and he incorporated language from the Director with regard to the full spectrum of legal rights for parents.

MOTION: **Senator Hart** moved that **RS 29994** be sent to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

- RS 30187** **Outfitters & Guides Liability Provisions.** **Aaron Lieberman**, Executive Director, Idaho Outfitters & Guides Association, introduced **RS 30187** by stating that it intended to accomplish three things: 1) have clarified some liability protections outfitters and guides have unless they acted in a negligent or reckless way, 2) note that written liability waivers were enforceable, and 3) acknowledge that there were *inherent* risks associated with those activities.
- DISCUSSION:** **Senator Wintrow** began discussion by asking Director Lieberman if there were more substantive changes that might come during a full hearing. **Director Lieberman** responded with an example of language that would be struck from Code, including a rule requiring guides must be "clean and well-mannered, with a visible desire to please..." Noting that he was not an attorney that works with case law, he questioned the ability to enforce that rule and thought it prudent to clean up that section of rule. He indicated the remaining changes would include such types of clean up language as these.
- MOTION:** **Senator Lee** moved that **RS 30187** be sent to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
- S 1029** **Juvenile Proceedings, Immunizations and Parent/Child Relationships.** **Senator Lenney** explained this legislation was addressing the Child Protective Act section of Code. Some of the changes found in this bill include making any attempt to initiate a CPS referral based on immunization status prohibited, and the Court could not grant an order to terminate a parent/guardian and child relationship based on immunization status. **Senator Lenney** cited several instances in other states where issues like this have come up and how contentious they became. It was his hope the State of Idaho could get ahead of any problems like those.
- DISCUSSION:** **Senator Wintrow** asked the Sponsor if there had been any cases in Idaho where the government had attempted to take children away from their family due to their vaccination status. **Senator Lenney** responded by stating that Idaho's Code was "vaccine agnostic". He continued stating that a spokesperson for the Department of Health & Welfare told the press that there might have been CPS referral cases where vaccine status had been included in their reports. **Vice Chairman Foreman** asked the Sponsor if there were any codified protections in Idaho with respect to the issue or if it was ultimately left to the individual judge to decide on a case-by-case basis. **Senator Lenney** indicated that his interpretation was that it would be left up to the judge's discretion. He also stated the legislation was an attempt to solidify parental rights and codify other elements of the CPS referral process.
- TESTIMONY:** **S 1029** had three people register to testify, all of whom were supportive of the legislation. **Jackie Davidson**, Boise, Idaho, stated that as a parent and a grandparent she wanted to have her parental rights protected. She indicated that she believed there were not cases of children being removed from their families due to vaccination status in Idaho, but that she felt this legislation would effectively preempt that from ever happening. **Doris Phillips**, Boise, Idaho, cautioned against any action that would result in the separation of a child from their family. She had seen first hand how traumatizing that could be on both sides. **Ms. Phillips** also warned against suggesting youth taking untested vaccines, and urged the Committee to act to protect children. **Tiffany Kreck**, Maine, who acts as a director of an advocacy program, said her organization had noticed an increasing number of instances across the country where vaccine status had become a point of contention in family court cases. She further cautioned that in Maine, they thought they were safe from instances of children being taken from their parents in such a manner until it was too late, and urged Idahoans take action.
- MOTION:** **Vice Chairman Foreman** moved to send **S 1029** to the Senate floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

S 1034 **Court Fee Transmission to the State Treasurer.** **Senator Hartgen** had agreed to carry this legislation for a number of county clerks who were hoping to make the schedule to which they pay fees to the State Treasurer consistent throughout the State. The payment date would be the 15th of the month. At present, several were to be paid by the 5th and others on the 15th. Those involved in the payment process were asking for the date to be made consistent so there would be no question on payment due dates.

MOTION: **Vice Chairman Foreman** moved to send **S 1034** to the Senate floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

S 1035 **Fees for Court Venue Changes.** **Senator Hartgen** proposed legislation which would allow a venue change to retain the \$29 fee with the original county and transfer the necessary documents using the Odyssey system.

MOTION: **Senator Ricks** moved to send **S 1035** to the Senate floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

JFAC DISCUSSION: **Chairman Lakey** began the JFAC discussion by asking the Committee if there were any priorities they wanted him to present before JFAC. **Senator Anthon** stressed the importance of competitive compensation for state police and judges to keep and attract talent, acknowledging the Legislature had done good work in this area, but there remained more to do. **Vice Chairman Foreman** expressed his desire for the State to explore a program that reimburses counties for accommodating state prisoners. **Senator Lee** reiterated the concern Senator Anthon expressed about judges in Idaho not being competitively compensated for their work. She also suggested the Committee urge JFAC to give further financial support to the P.O.S.T program and ensure it was fully funded so more people could get certified. **Senator Hartgen** raised a concern about Idaho's incarceration rates, and suggested JFAC explore creating better funding diversion programs to improve quality of life and ease tax burdens. **Senator Hart** echoed some of the same sentiments as Senator Hartgen, identifying housing, transportation, and work placement programs as good areas to focus on.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:38 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 08, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>RS 30016C1</u>	Relating to Reducing and Discouraging the use of Electronic Devices while Driving	Senator Hartgen, Presented by Mike Pohanka
<u>RS 30257</u>	Relating to Address Confidentiality for Judicial Officers	Jason Slade Spillman, Legal Counsel, Administrative Office of the Courts
HEARING	Joint Printing Committee Recommendation Relating to Session Laws	Jennifer Novak, Secretary, Idaho State Senate
<u>S 1039</u>	PROPERTY - Adds to existing law to provide that fees imposed on residential tenants shall be reasonable and to prohibit certain fees, fines, assessments, interests, and other costs.	Senator Rabe

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 08, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 1:30 p.m.

RS 30016C1 **Electronic Devices and Driving.** **Mike Pohanka** outlined his years of service as a chaplain for Idaho State Police and the Jerome County Sheriff's Department, where he often assisted with death notifications. He said the genesis for this legislation came from that service, where most of the notifications he worked on were for vehicular accidents. This bill would amend State code to upgrade instances of aggravated, distracted driving to a felony upon conviction. Those kinds of incidents result in permanent disability and/or disfigurement of the victim. This legislation was crafted after consultation with police chiefs, sheriffs, and prosecuting attorneys, all of whom agreed that legislative action was needed to address instances of distracted driving that resulted in severe injury.

DISCUSSION: **Vice Chairman Foreman** expressed some concerns about the proposal. He stated that, while not felonies, there were already laws in place regarding incidents that resulted from distracted driving, and wondered if upgrading the charges to felonies would be enough to create societal change. He was also concerned about the potential for a significant increase in the number of felony cases in Idaho. **Mr. Pohanka** replied, indicating that he believed the potential for time in county jail and/or a fine would discourage people driving on roadways in Idaho from operating handheld devices while driving. **Vice Chairman Foreman** followed up by asking if there were any suggestions for non-government solutions to discourage distracted driving. **Mr. Pohanka** declared that action needs to be taken, because the amount of suffering that has happened due to distracted driving is unacceptable. **Senator Hart** inquired about possible alternatives, like community service, because of the challenges that could occur in a jail environment placing people who did not have bad intentions with people who did. **Mr. Pohanka** responded by saying they would be amenable to exploring those options. **Senator Hart** followed up by asking if a community service provision should have been included in the legislation or if it should be amended to include that option. **Mr. Pohanka** agreed with including that option.

MOTION: **Senator Anthon** moved to send **RS 30016C1** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

- RS 30257** **Judicial Officers, Confidentiality.** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, spoke to the inspiration for the legislation being a result of an observed uptick in violence against and harassment of judges across the nation. This bill would amend State Code by having the specific address and phone number for candidates for judge positions exempted from their declaration of candidacy, instead just showing their county of residence to confirm they were running in the appropriate jurisdiction. He wanted to reinforce the intent of the legislation was to ensure the integrity and impartiality of the judicial system in Idaho.
- MOTION:** **Senator Anthon** moved to send **RS 30257** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.
- HEARING:** **Joint Printing Committee Recommendation, Session Laws.** **Jennifer Novak**, Secretary of the Idaho State Senate, presented a proposal on behalf of the Joint Printing Committee, which would have limited the number of Idaho Session Laws to 90 copies each. This proposal was deemed prudent given how much digital access of bills, laws, and historical records had improved over the last few years. Giving context, **Secretary Novak** said that, excluding the copies made at the request of agencies and other groups that would have paid to secure copies, over \$2,600 was paid for printing, \$962 of which was from the Senate. She continued to explain that the State had done great work having physical copies of session laws digitally uploaded, with records dating back to 1945 being accessible online. The next project the Joint Printing Committee had identified was to perform the same digital conversion for journals, since those, in digital form, date back only to 1998 (see Attachment 1).
- MOTION:** **Senator Anthon** moved that the report be sent to the Senate Floor with a **recommendation it be adopted**. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.
- S 1039** **Relating to Rental Fees.** **Senator Rabe** explained **S 1039** was created with the intention of establishing best practices for landlords and property managers in State code to increase consumer protections, and improve transparency. Landlords would not be able to charge fees that exceed what is enumerated in the rental agreement, unless the tenant(s) were provided 30 or more days written notice, and any fees such as late payments had to be reasonable. **Senator Rabe** expressed a concern that Idaho Code contained protections for those with mortgages and storage facilities but not renters. She finished her main presentation by highlighting the bipartisan coalition that had worked on the legislation, including Senators Ricks and Trakel, and Representatives Hill and Erickson.
- DISCUSSION:** **Chairman Lakey** then asked if Senator Rabe had any amendments she was considering addressing, and if the **14th Order** might have been the next step for the bill. **Senator Rabe** concurred, noting that a question from Senator Anthon during the print hearing prompted her to explore having language added that would state the legislation would have no retroactive application to current rental agreements, and that no agreements signed before July 1st, 2023 would be affected. She continued to say she would be open to amending **S 1039** in the **14th Order**, if it was the will of the Committee. **Vice Chairman Foreman** asked what the need was for the State to have an increased role in private agreements. **Senator Rabe** said the challenge both landlords and tenants had observed was a lack of case law and provisions in State code that would have helped landlords determine what a reasonable level of fee was. She noted that this legislation was intended to offer guidance to judges that worked in small claims or eviction courts.

TESTIMONY: The Committee received verbal testimony from five members of the public, all of whom spoke in support of the bill being passed. **Spencer Henderson** with the Southwest Idaho Chapter of the National Association of Residential Property Managers said that the lack of guidelines for rental agreement and fee structure practices had led to a rise in predatory behavior by bad actors that hurts the housing industry. His group supported the legislation for that reason. **Cassandra Swanson** with Paramount Property Management and also the Southwest Idaho Chapter of the National Association of Residential Property Managers said that she believed this legislation would help strike a balance between protection of rental property and offer consumer protections to people. **Katie McInally** spoke on behalf of Evan Stewart with Jesse Tree in support of **S 1039**. She said her organization had identified over 3,000 evictions had been filed over the last three years, with average rents up 40%, a figure that doubled the national average. She urged the Committee to advance the legislation to offer protections to renters at a time they were most vulnerable. **Kendra Knighten** with the Idaho Asset Building Network wanted to address Idaho's shortage of affordable and available homes. She cited a study her group performed that showed a need for 24,000 more units across the state. In addition to referencing the figures mentioned in previous testimony highlighting the struggles of renters, she said this legislation would go a long way to helping ensure some stability for families during a volatile time for the housing market. **Doug Taylor** representing the Idaho Apartment Association, spoke to the need for a regulatory framework that would guide the decisions of good landlords and prevent the few bad actors from taking advantage of renters. See written testimony provided by Kathy Griesmyer (see Attachment 2) and written testimony provided by Evan Stewart (see Attachment 3).

MOTION: **Senator Lee** moved to send **S 1039** to the **14th Order** for possible amendment. **Senator Wintrow** seconded the motion. **Chairman Lakey** and Senators **Lee, Anthon, Ricks, Hart, Hartgen, Wintrow,** and **Ruchti** voted in favor of the motion, with **Vice Chairman Foreman** recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:45 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary



Idaho State Senate

CAPITOL BUILDING
P.O. BOX 83720
BOISE, IDAHO 83720-0081

January 31, 2023

To: Senate Judiciary and Rules Committee
House Judiciary, Rules, and Administration 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 90 copies given the accessibility and decrease in expenditures associated with online access. The 2022 publishing price was \$2,600 in legislative expenditures.

The Joint Printing Committee also requests that the Secretary of the Senate and the Chief Clerk of the House of Representatives be allotted the time to continue to process, review, and upload historic Session Law volumes and Journals to the legislative website during the next two legislative interims.

The Joint Printing Committee,

/s/ Senators Lakey and Wintrow
/s/ Representatives Skaug and Gannon
/s/ Secretary Novak
/s/ Chief Clerk McGinnis

cc: President Pro Tem Winder
Speaker Moyle

Sharon Pennington

From: Kathy Griesmyer <kgriesmyer@cityofboise.org>
Sent: Tuesday, February 7, 2023 4:25 PM
To: Senator Todd Lakey; Senator Dan Foreman; Senator Abby Lee; Senator Kelly Anthon; Senator Doug Ricks; Senator Phil Hart; Senator Linda Wright Hartgen; Senator Melissa Wintrow; Senator James Ruchti
Cc: Sharon Pennington
Subject: Support SB 1039 City of Boise testimony
Attachments: SB 1039 letter of support.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Members of the Senate Judiciary and Rules Committee –

Attached and below, please find the City of Boise’s testimony outlining our support of SB 1039 regarding rental fee protections. If you have any questions about our position on this bill, please don’t hesitate to contact me at 208-890-3800. Thank you.

Testimony of Kathy Griesmyer
Support SB 1039: Rental Fees Protections
Before Senate Judiciary and Rules Committee
February 08, 2023

As the Government Affairs Director for the City of Boise, I write to you today in support of SB 1039, which ensures that late fees assessed by a landlord to a renter remain reasonable and in line with the agreed upon rate outlined in a formal lease.

The protections outlined in SB 1039 are long over-due. At a time when rent costs continue to explode and the Boise rental market remains extremely competitive (Boise has a less than 2% vacancy rate currently; a healthy vacancy rate for a community should be between 5-8%), surprise fees – whether it be late fees, renewal fees, payment processing fees, etc. – can significantly impact a renter's ability to remain within their housing budget and ultimately housed in an affordable unit.

For context, in 2021, the City of Boise conducted a housing needs analysis for our community that looked at what tools the city could develop to help address the lack of affordable housing for our residents. As a part of that research, we found that the average rent in Boise is roughly \$1,400 for an apartment that's less than 900 square feet. And while rent increases shot up nearly 20% since 2019, wages only increased roughly 8%. Even across the state, Idaho rents have grown two times faster than renters' household incomes. As a result, many families are struggling to absorb significant rent increases, and with the potential for fees to be imposed at rates higher than delineated in lease agreements, fees can be the final piece that jeopardizes housing stability for many working families and their children.

Enacting additional statewide, uniform tenant protections regarding fees is a reasonable measure that the Legislature can take to ensure no Idahoan loses access to affordable housing. For these reasons, we encourage your "yes" vote on SB 1039 and respectfully ask that you move this bill

forward with a do-pass recommendation. If you have any questions about our position, please do not hesitate to reach me at kgriesmyer@cityofboise.org or at 208-890-3800. Thank you.



Kathy Griesmyer
Government Affairs Director
Office of the Mayor
Office: (208) 972-8522
Cell: (208) 890-3800
kgriesmyer@cityofboise.org
cityofboise.org

Creating a city for everyone.

My name is Evan Stewart and I am the Program Director at Jesse Tree, a non profit, based in the Treasure Valley that serves residents at risk of eviction and homelessness by providing case management and emergency rental assistance.

We have seen an unprecedented rise in eviction filings in the Treasure Valley at approximately 3000 over the past 3 years, a 40% rent increase which is double the national average, and more and more people struggling, living paycheck to paycheck, who work hard to pay their bills and rent on time. Consequently, emergencies, injuries, and hardships happen on a daily basis. If rent can't be paid on time, tenants are faced with compounding fees that may or may not be considered reasonable, which make it difficult to catch up.

My team and I have reviewed thousands of lease agreements and ledgers, many of which have inconsistencies in terms of fees and amounts listed on the lease and what is actually on the ledgers. It is also very common to see late fees that should be considered unreasonable, stacking up to hundreds of dollars over the actual rent amount and even in some cases thousands of dollars over.

In our state, it is already a somewhat unregulated industry with few tenant protections. There are many great property management companies out there that follow the rules but unfortunately we see there are plenty of others that try to take advantage of their tenants with exorbitant fees.

I support S Bill 1039 and I hope this can be a step in the right direction for additional tenant protections in our state.

Thank you for your time.

A handwritten signature in blue ink, appearing to read "E. Stewart". The signature is fluid and cursive, with a large initial "E" and a long, sweeping tail.

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 13, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>RS 30125C1</u>	Relating to the Ability of Public and Private Entities to Impose a Requirement that Individuals receive a Coronavirus Vaccination	Senator Adams
<u>RS 30196</u>	Relating to Child Abuse Cases against a Governmental Entity or its Employee in the State of Idaho	Senator Ruchti
<u>RS 30275</u>	Relating to Law Enforcement being allowed to destroy Computers and Associated Equipment used in the Commission of Crimes against Children	Senator Okuniewicz
<u>RS 30294</u>	Relating to Bringing Transparency and Clarity to the Rental Application Process for Residential Rentals	Senator Ruchti
<u>S 1051</u>	OUTFITTERS AND GUIDES - Amends existing law to revise provisions regarding the liability of outfitters and guides.	Senator Lakey
<u>RS 30348</u>	Relating to the Uniform Partition of Heirs Property Act	David Jensen, Attorney, Parsons, Behle & Latimer
<u>RS 30349</u>	Relating to the Uniform Electronic Wills Act	David Jensen, Attorney, Parsons, Behle, & Latimer

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey	Sen Hart
Vice Chairman Foreman	Sen Hartgen
Sen Lee	Sen Wintrow
Sen Anthon	Sen Ruchti
Sen Ricks	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 13, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 1:30 p.m.

RS 30125C1: **Relating to the Ability of Public and Private Entities to Impose a Requirement that Individuals receive a Coronavirus Vaccination. Senator Ben Adams** explained that this legislation was similar to legislation passed by both houses in the 2022 session. The primary change was an adjustment made from a criminal penalty to a civil penalty with a dollar amount for statutory damages. This bill would not have a one-year sunset clause and would be the prerogative of the state of Idaho. **Senator Adams** added that this legislation ensured the people of Idaho would not be discriminated against if they have or have not had the coronavirus vaccine. The same applies to Idaho businesses.

MOTION: **Senator Ricks** moved to send **RS 30125C1** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 30196 **Relating to Child Abuse Cases against a Governmental Entity or its Employee in the State of Idaho. Senator Ruchti** stated this legislation would extend the amount of time a minor who is a victim of sex abuse had to file an at work claim notice against the government for those cases where the government or its employee caused the abuse. He explained that when a claim for an injury against the government was made, there was a separate set of statutes that applied and required certain information provided within a specified amount of time. Failure to comply would result in the claim being dismissed permanently. This legislation would change claims against the government for child sex abuse cases and the amount of time those claims had to be brought. **Chairman Lakey** asked if the legislation would modify the Idaho Tort Claims Act as it applied to other governmental entities. **Senator Ruchti** responded that it did. He added that for children the statute was being modified allowing children to have six years from the date the claim arose or 180 days after the child turned 18, whichever was earlier. It was basically a statute of limitations change.

MOTION: **Senator Foreman** moved to send **RS 30196** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

RS 30275 **Relating to Law Enforcement being allowed to destroy Computers and Associated Equipment used in the Commission of Crimes against Children.** **Senator Okuniewicz** explained this legislation dealt with asset forfeiture related to crimes against children. It was very similar to drug crime forfeitures but with a focus on crimes against children. **Senator Foreman** questioned if there was input from the Attorney General's office. **Senator Okuniewicz** responded that they were in favor of the bill. He stated that the police departments were required to find storage for the devices used in these types of crimes. When the crime had been served, the items were purged and returned to the convicted criminals. This resulted in costs to taxpayers and extra efforts for the police departments.

MOTION: **Senator Lee** moved to send **RS 30275** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 30294 **Relating to bringing Transparency and Clarity to the Rental Application Process for Residential Rentals.** **Senator Ruchti** introduced **RS 30294** by explaining two aspects of the process. One was the discussions that happened or the information that was given to the renter before the renter entered into the contract with the landlord. The other was this only applied to rental companies, and to landlords that charge an application fee. **Senator Ruchti** stated not only did this bill provide transparency for consumers, but it forces everyone to meet and gather the information they need so a family could look at what their options were and what they could afford. Landlords were well served to make sure their tenants know what was expected of them so they did not get candidates for their rentals that cannot afford to pay.

MOTION: **Senator Wintrow** moved to send **RS 30294** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

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

S 1051 **Outfitters and Guides.** Amends existing law to revise provisions regarding the liability of outfitters and guides. **Chairman Lakey** introduced **S 1051** by sharing what a good place Idaho was for outdoor activities. Idaho's wilderness was what Idaho was known for. We do these things and go these places because that was part of the fun, but they did come with inherent risks. If you choose to engage in these activities, you should be responsible for the choices you made. Liability protection was provided because of the nature of the activities and the protections must be provided or these companies would go out of business. This legislation would make two code sections, the ski resorts section and the outfitters and guides section, more equal. Both involve inherently dangerous and discretionary activities where operators should be protected and participants should accept the risks. The bill protects those outfitters and guides that meet licensing requirements. Those who did not, did not receive the protection, and they must be participating in the scope of their employment to be covered. There was still liability for negligent, reckless, or intentional conduct, and there was no duty to eliminate, alter or control the inherent risky nature of the activity. This bill clarified that waiver and enforceability applied here.

TESTIMONY: **Jeff Bitton**, President, Idaho Outfitters and Guides Association, testified in support of **S 1051**.

Aaron Lieberman, Executive Director, Idaho Outfitters and Guides Association, voiced his support for the legislation and highlighted that the purpose of this bill. He clarified that outfitters and guides, like other comparable industries in Idaho, notably ski areas, had certain protection under law from claims against liability unless they were reckless or negligent. The policy of the State of Idaho, as with similar industries, was liability releases were enforceable. There were risks inherent to the activities provided that cannot be controlled, lessened or eliminated. **Senator Ricks** asked for examples of activities where incidents occurred where inherent risks arose. **Mr. Lieberman** shared some examples. He identified situations where negligence had taken place, reckless or not, were things they could not control were more numerous than the things they could. **Mr. Lieberman** reiterated that the goal of this legislation was to hold the guides and outfitters responsible for the things they could control. They did not feel it was appropriate to be held responsible for the things they cannot control. **Senator Anthon** was concerned that the scope of the legislation was going further than intended. **Mr. Lieberman** assured him that the language in the bill would not be a carte blanche excuse for engaging in recklessness.

Leah Corrigan attorney, Victor, Idaho, testified in support of **S 1051**. She stated this legislation made clear that liability waivers were meant to be enforceable just as they were for other businesses in Idaho. It also clarified that these outdoor activities were not without inherent risks and that by participating, one agreed to assume the risk involved. **Senator Ruchti** declared Rule 39(H) indicating that he practiced this type of law. He stated his concern being this legislation would eliminate, alter, control or lessen the risks inherent with the activity over which there was no control. **Ms. Corrigan** explained that after significant research where states had similar case law, an inherent risk was a question for a jury. The result was that outfitters were not required to do what was impossible or uncontrollable to eliminate risks that could be eliminated. **Senator Wintrow** questioned which negligence claims could be waived. **Ms. Corrigan** stated that in Idaho any industry other than Idaho Outfitters and Guides could sign a liability waiver waiving the right to sue if negligence occurred. This legislation asks that waivers be enforceable to the same extent they were in other industries.

Leslie Frazee, CBIZ Insurance Service, Lewiston, Idaho, representing the recreation insurance industry sector testified in favor of **S 1051**. **Ms. Frazee** stated it was the industry standard to allow activity releases. The recreation industry was at a disadvantage when an application was presented to an underwriter without a release. The insurance companies would not underwrite an account without a release or waiver. **Ms. Frazee** indicated she had seen a 175 percent increase in rates since 2016. The options for insurance coverage for outfitters and guides were very limited. Passing of this legislation would improve the enforceability of the liability release and would help slow and stabilize the rate of premium increases and improve the availability to outfitters and guides for insurance.

Erik Weiseth, Managing Partner, Orange Torpedo Trips, McCall, Idaho, testified in favor of **S 1051** (see Attachment 1).

Kenneth Long, representing Cascade Raft and Kayak, spoke in support of **S 1051**. **Mr. Long** explained that this was a family owned business, and he was a second generation outfitter and would love to have his children and grandchildren be third and fourth generation outfitters.

Caitlin O'Brien, Attorney, Smith Malek, Dalton Gardens, Idaho, spoke in favor of **S 1051**. **Ms. O'Brien** explained that this legislation was not asking to remove all liability on outfitters. It was about basic negligence or simple errors. She stated that this would level the playing field with other like industries in the state.

Chris Gerono, representing Boise River Guides, Boise, Idaho, spoke in favor of **S 1051**.

TESTIMONY:

Wyatt Johnson, member, Idaho Trial Lawyers Association, Meridian, Idaho, spoke against **S 1051**. **Mr. Johnson** testified that he and his organization did not believe this bill would do what the authors and supporters said it would. He stated that the bill took away the rules that govern the outfitters and guides. He believed the waivers removed all negligence and it was a get out of jail free card.

Chairman Lakey closed the discussion by reminding the Committee that there were inherently dangerous aspects to activities involving guides and outfitters. This legislation was only effective as to negligence. It was not effective as to gross negligence and the subsets of reckless and intentional. The choice to participate in these activities and the waivers they sign was theirs.

MOTION:

Senator Lee moved to send **S 1051** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**. **Senator Ruchti** and **Senator Wintrow** asked to be recorded as voting nay.

Senator Ruchti voiced concern that this legislation would open doors for people to waive reckless behavior, get injured, and go to court to be compensated for it. The court would then have to tell them no because they waived this reckless behavior.

PASSED THE GAVEL:

Vice Chairman Foreman passed the gavel back to Chairman Lakey.

RS 30348

Relating to the Uniform Partition of Heirs Property Act.

RS 30349

Relating to the Uniform Electronic Wills Act.

Senator Ricks moved to send **RS 30348** and **30349** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:00 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary



Orange Torpedo Trips

America's Unique River Adventures

I am writing this letter in support of Senate Bill 1051 which would provide important recreational liability reform.

Mr. Chairman

My name is Erik Weiseth and I live in McCall Idaho. I am the managing partner of Orange Torpedo Trips out of Riggins Idaho, a small business guiding people on single day and overnight rafting and river based adventure trips on Idaho's public lands. I am also the VP of board of the Idaho Outfitters and Guides Association and I'm a member of the Idaho Outfitters and Guides Licensing Board. I am here to testify in support of Senate bill 1051.

As Idahoans we all know one of the great treasures of Idaho is our incredible outdoor destinations. These outdoor places are important for us as people; plenty of documentation exists showing the physical and mental health benefits of spending time recreating outdoors but they are also a vital vector point for an enormous and essential economic driver for the rural communities of Idaho. Outdoor recreation is a lifeblood for rural communities.

For the general public to fully experience many of these outdoor places they need guides and outfitters to help them. My guests come from all over the globe to Idaho to experience our amazing wild places. When they come I pay local vendors to support these trips, they pay local hotels, eat in local restaurants, shop at local stores. They book with us because they lack the skills and/or equipment to enjoy these resources of Idaho, but they do want to experience them. So without a thriving guide industry the state would not be able capitalize on the significant economic driver which is outdoor recreation as these people would not come to the state. Unfortunately, this vital industry is under threat.



Orange Torpedo Trips America's Unique River Adventures

Our activities, by their very nature, are full of inherent risk. As guides and outfitters we exist as risk managers, working to mitigate risk but acknowledging we can never fully eliminate it, as that is ultimately impossible in the places we operate because the risks are truly inherent. You can never fully remove the risk of floating on a boat through rapids. You can never promise a tree will not fall randomly and injure someone on a hunt, you can never completely eliminate the risk of avalanches or weather related issues in the mountains. These risks are built into going to these places. In reality, it is the inherent risk, the "wild" of the places we operate which is a big part of what makes them special. One of the core tools we use to communicate these risks in our waivers. We are able to inform our guests of the inherent risks they will be taking on and what will be expected of them as part of their participation. This is typically not the only time we do this but it is the time where guests can expressly agree and where they can see the risks more completely laid out. Our guests understand when signing these that they are an agreement required for participation in the activity. The state should also recognize this. Our guests are choosing an adventure, not a fully controlled, artificial, theme park ride. The state should appreciate and officially recognize this reality as well.

Unfortunately the current legal landscape, and the lack of recognition of this inherent risk, and the lack of solid language supporting the validity of waivers, in Idaho leads to an incentive structure for parties to bring suits against outfitters in the expectation of settlements, **I have lived through this and it is sad and hard.** This is contributing to an exodus of insurance providers for the outdoor industry. The number of insurance providers for the river industry has essentially dwindled (from my understanding) to two providers. As the competition of providers has dwindled, the costs of insurance have sky rocketed (I know ours has) at the same time food, gas and labor costs have sky rocketed. Our cost increases far out strip our abilities to raise our rates and it **is** putting providers out of business.

Passing this legislation will have a direct impact on this trend and will help ensure that outfitting in Idaho is a long-term viable industry; just by simply acknowledging the reality of inherent risk and clarifying the validity of waivers, a reality those signing them already believe exists. Passing this legislation will help ensure an industry uniquely suited to supporting rural communities in sustainable ways remains viable into the future. Help ensure the state of Idaho



Orange Torpedo Trips

America's Unique River Adventures

can continue to capitalize on our amazing outdoor recreation resources into the future by supporting Senate Bill 1051.

Mr. Chairman I am happy to take any questions.

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 15, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>RS 30194</u>	Relating to a Language Correction pertaining to the Sex Offender Register and Rulemaking authority	Ashley Dowell, Executive Director, Idaho Commission of Pardons and Parole
<u>RS 30366</u>	Relating to the Notification of Parents or Guardians of their Legal Rights with Respect to Child Protection Investigations	Senator Herndon
INTRODUCTION:	Introduction of Magistrate Judges	Judge Bryan Murray, Senior Magistrate Judge, Bannock County
PRESENTATION:	The Role and Work of Magistrate Judges	Honorable Jill Jurries, Magistrate Judge, 4th Judicial District
PRESENTATION:	Technology - Access to Justice	Honorable David Hooste, Magistrate Judge, 6th Judicial District
PRESENTATION:	Judicial Safety and Security	Honorable Cleve B. Colson, Magistrate Judge, 7th Judicial District
PRESENTATION:	Senate Page Graduation of Libby Blattner, Kuna, Idaho	

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey	Sen Hart
Vice Chairman Foreman	Sen Hartgen
Sen Lee	Sen Wintrow
Sen Anthon	Sen Ruchti
Sen Ricks	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 15, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

ABSENT/ EXCUSED: Chairman Lakey

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: **Vice Chairman Foreman** called the meeting of the Senate Judiciary & Rules Committee (Committee) to order at 1:30 p.m.

RS 30194 **Sex Offender Registry and Rulemaking Authority. Ashley Dowell**, Executive Director of the Idaho Commission of Pardons and Parole, announced the intent of **RS 30194** was to clean up language in State Code that became confusing following the passage of a bill that pertained to the sex offender registry. The previous legislation was crafted to have "crimes against nature" removed from Code, since it was declared unconstitutional. Criminal justice groups were concerned the language became misleading, so the goal was to ensure no one was accidentally removed from the registry.

DISCUSSION: **Senator Wintrow** spoke to her past involvement with the Criminal Justice Commission and observed this could have been an oversight. She urged the bill's support so the language could be cleaned up and no problems would arise.

MOTION: **Senator Wintrow** moved to send **RS 30194** to print. Seconded by **Senator Ricks**. The motion carried by **voice vote**.

RS 30366 **Notification of Parents/Guardians in Child Protection Investigations. Senator Herndon** clarified that **RS 30366** was intended to replace **S 1050**, which the Committee had taken up previously. He noted that there was only one change made to the previous proposal. The change allowed the Department of Health & Welfare to determine how they notified parents/guardians of their rights in the event of a Child Protective Services investigation.

DISCUSSION: **Senator Ricks** asked if the legislation was necessary since the Department already developed pamphlets to let parents/guardians in those situations know their rights. **Senator Herndon** responded that the intent was to codify those notices so the practice would have continuity.

MOTION: **Senator Hart** moved to send **RS 30366** to print. Seconded by **Senator Anthon**. The motion carried by **voice vote**.

AT EASE: **Vice Chairman Foreman** called the Committee at ease for an indefinite amount of time. The Magistrate Judges were presenting in the House Judiciary and Rules Committee at the same time as the Senate Committee. As soon as one judge finished his presentation there, he would present to the Senate Committee. This accommodated the judges not having to travel to Boise twice for their presentations. Judge Bryan Murray was coordinating the presentations in both committees.

Vice Chairman Foreman asked to have the Page Graduation while the Committee was at ease for the Magistrate Judge Presentations.

PAGE GRADUATION: **Senate Page Graduation. Libby Blattner** spoke fondly of her time spent serving as a page in the Idaho Legislature. She said her plan after the school year concluded was to attend the University of Idaho and work towards a career in political polling. She said it was her hope that her journey would bring her back to the Capitol because the people, issues, and learning experiences was great.

INTRODUCTION: Introduction of Magistrate Judges. Judge Bryan Murray, Senior Magistrate Judge, Bannock County, expressed his thanks to the Committee for hosting himself and his fellow magistrate judges. Judge Murray stressed the importance of the opportunity to explain the role of magistrates, as they were on the front lines in communities and served as the "emergency room" of local judicial systems. Along with him were judges Jurries, Hooste, and Colson to present on different issues affecting magistrates.

PRESENTATION: The Role and Work of Magistrate Judges. Judge Jill Jurries, Magistrate Judge, 4th Judicial District, began her presentation by recounting her time spent as a Senate Page from Washington County 30 years ago. She said that experience inspired her to get involved. **Judge Jurries** explained that many magistrate judges have specialized different areas such as family law, protection orders, and probate matters. While those judges were very multifaceted, only the divorce and probate judges could hear civil cases valued over \$10,000, and those were two of the most common cases that came before magistrates. She went on to explain that there were a total of 101 magistrate judges assigned across Idaho's 44 counties. **Judge Jurries** described the disparity in workload between rural and urban judicial districts. The rural ones required a judge to be on the clock 24/7, while those in urban districts were able to rotate responsibilities in the event late warrants required urgent responses. These judges would often spend their free time teaching law, mentoring younger judges, or would get involved in youth programs. One of the greatest challenges in this work was dealing with situations with potential harm to self or others. Some of the other challenges discussed were those of compensation and staffing. She said the Idaho Constitution restricted the payment of judges if they had rulings pending for longer than 30 days. For staffing, unlike district court judges, magistrate judges did not have support staff to assist with research, writing, or case preparation. **Judge Jurries** wanted to leave on the note of welcoming collaboration, because magistrate judges strive to be effective leaders and innovators to better Idaho courts.

DISCUSSION: Senator Lee asked Judge Jurries if she had any recommendations for ways the Legislature could help magistrates. **Judge Jurries** observed the impact population growth had on the judicial system. She said it would be helpful if there were more magistrates and if they had support staff, as both of those additions would greatly expedite the legal process. She concluded her response by stating they would be grateful for any support the Legislature would offer. **Senator Ruchti** shared his belief that any support for magistrates that might get them more staff would be great.

PRESENTATION: Technology - Access to Justice. Judge David Hooste, Magistrate Judge, 6th Judicial District, set the tone for his presentation by stating that technological improvements increase access to justice. While there would still be times where hearings were more prudent, like presentations from sworn witnesses, since the judicial system has had greater technological immersion, failure-to-appear rates have dropped and the courts have had greater access to specialized attorneys, subject matter experts, and interpreters, the last of which had been sorely lacking in Idaho. He also hailed the Odyssey software system, which had done a tremendous job of streamlining case management and data transfer between counties. All of these improvements had made the judicial system more efficient. Increased efficiency led to greater cost-savings, which got passed on to counties and taxpayers. **Judge Hooste** concluded his remarks by commending the technological

improvements that had been made in the judicial system for improved access, increased transparency, and strengthened confidence in the courts across Idaho.

DISCUSSION: **Senator Anthon** asked the Judge if there were any stipulations for having remote hearings conducted and if there had been any appeal issues that resulted from the use of remote hearings. **Judge Hooste** stated the use of remote hearings were left to the discretion of the presiding judge. To his knowledge there had not been any appeal issues that stemmed from the use of remote hearings in Idaho. **Senator Lee** asked if judges in rural districts had to look out of county or even state to find qualified employees and if that was a cause for concern. **Judge Hooste** said that, even during the pandemic years, he would see a lot of the same attorneys from the surrounding area. Given his district's location in the southeastern part of the state, he would see some people from Logan, Utah, but most of the attorneys with whom he would work and the hiring of personnel would be done in a radius of a couple hours of driving. **Vice Chairman Foreman** expressed his concern at the 24/7 nature of a judge's work, and how they might be affected by increasing workloads. **Judge Hooste** explained the challenges of being a rural judge, like his being the only seated judge chambered in Oneida County. He continued to express the call-to-service that drove all judges to pursue their roles, and how the long hours had been worth it because they were able to help their communities. **Senator Hart** asked what suggestions the Judge had for the legislature to help younger people that were incarcerated to pursue skilled trades or advanced degree programs. **Judge Hooste** acknowledged the challenge of reducing recidivism and helping incarcerated youth reintegrate, but admitted it would be a task for a body outside the judiciary.

PRESENTATION: Judicial Safety & Security. **Judge Cleve B. Colson**, Magistrate Judge, 7th Judicial District stressed that the most critical thing for the judicial system was that it was independent, impartial, and made up of competent individuals. He continued to say that confidence in that system would erode if the perception changed to the point that judges were not seen in that way. **Judge Colson** presented some examples of challenges he had personally been dealing with, where he was doxxed, which resulted in threats coming in over text, calls, and social media to influence his decision-making. An individual stalked them and approached the Judge at his son's baseball practices. He said those challenges were the kind of things that can affect the ability of a judge to act impartially in the administration of justice, and prevention measures were needed. He then expressed his support for current legislation that would censor the home address and phone number for judges as a means of protecting them, their families, and the integrity of the judicial system.

DISCUSSION: **Vice Chairman Foreman** stated that, as a nation, we could not allow attacks on our republic to continue, and that he was glad the Legislature has taken steps to prevent such problems from happening. **Senator Lee** noted that judges in rural, more tight-knit communities might have a harder time being protected through that legislation and if the Judge thought they would receive adequate protection. **Judge Colson** stated his belief that there was no "magic wand" solution, but that the proposed legislation would be a great first step. **Senator Lee** followed up by asking about the challenge of judges balancing the thoughts and values of their communities with being independent, and if a judge should reflect the values of the communities they served. **Judge Colson** concurred, saying there was great value to having judges that were representative of the communities they serve, and that the fact they were elected meant they had to earn the support of their constituents to uphold the law as they saw appropriate.

ADJOURNED: There being no further business at this time, **Vice Chairman Foreman** adjourned the meeting at 2:52 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 20, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
INTRODUCTION:	Introduction of Senate Page Bridger Benson, Nampa, Idaho	
MINUTES APPROVAL:	Approval of January 25, 2023 Minutes	Senator Wintrow
MINUTES APPROVAL:	Approval of January 30, 2023 Minutes	Senator Foreman
MINUTES APPROVAL:	Approval of February 1, 2023 Minutes	Senator Ricks
MINUTES APPROVAL:	Approval of February 6, 2023 Minutes	Senator Hartgen
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Appointment of Benjamin Andersen to the State Public Defense Commission to serve a term commencing January 24, 2023 and expiring July 1, 2024.	Benjamin Andersen
<u>RS 30395</u>	Relating to removal of a sunset on the ability of the occupational licensing review committee's ability to function and reduce the burden of unnecessary governmental regulation	Senator Lakey
<u>S 1059</u>	ADDRESS CONFIDENTIALITY FOR JUDICIAL OFFICERS - Amends and adds to existing law to provide address confidentiality for judicial officers.	Jason Spillman, Legal Counsel, Administrative Office of the Courts
<u>S 1090</u>	UNIFORM PARTITION OF HEIRS PROPERTY ACT - Adds to existing law to provide for the partition of heirs property in certain instances.	David Jensen, Attorney, Parsons, Behle & Latimer
<u>S 1092</u>	UNIFORM ELECTRONIC WILLS ACT - Adds to existing law to provide for the execution of an electronic will.	David Jensen, Attorney, Parsons, Behle & Latimer
<u>S 1106</u>	JUVENILE PROCEEDINGS - Adds to existing law to provide rights of parents, guardians, and others during child protection investigations.	Senator Herndon

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Hart

Sen Hartgen

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Sen Lee
Sen Anthon
Sen Ricks

Sen Wintrow
Sen Ruchti

Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 20, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 1:30 p.m.

INTRODUCTION: **Chairman Lakey** introduced the new page, Bridger Benson, from Nampa. **Bridger** stated that he became interested in being a page because of the American Legion, their Boys State Program, and their Oratorical Contest program. **Bridger** continued that he was interested in attending law school and felt this program would be a step on that path and would give him a good opportunity to learn more about politics and government.

MINUTES APPROVAL: **Senator Wintrow** moved to approve the minutes of January 25, 2023. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

Senator Foreman moved to approve the minutes of January 30, 2023. **Senator Hart** seconded the motion. The motion carried by **voice vote**.

Senator Ricks moved to hold the minutes of February 1, 2023 until the next meeting. **Senator Hart** seconded the motion. The motion carried by **voice vote**.

Senator Hartgen moved to approve the minutes of February 6, 2023. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Appointment of Benjamin Andersen** to the State Public Defense Commission to serve a term commencing January 24, 2023 and expiring July 1, 2024. **Mr. Andersen** explained he was the chief public defender for Twin Falls County and managed about 20 overflow contracts to help deal with the case load. **Mr. Andersen** said he enjoyed his work and tried to help find ways to humanize public defenders and help people recognize their worth. He continued by sharing the perspective he had developed of public defender positions over the last 20 years. He stated he valued the legal system, the jury system, the work the prosecutors did, and the work that needed to be done to make sure that the Constitutional rights of all Idahoans were protected, and the Commission met its charge to ensure that.

DISCUSSION:

Senator Anthon asked why public defender's positions cannot be filled. **Mr. Andersen** responded that this was not particular to the Twin Falls area but it seemed to be a nationwide concern. In their area, private attorneys had taken some of their cases to reduce the numbers the public defenders were trying to handle. **Senator Wintrow** questioned what roles Mr. Andersen viewed as being most important in his role as a commissioner. **Mr. Andersen** said he believed making sure the minimum standards were met throughout Idaho so that everyone was given the constitutional right to counsel and providing training or support from the Commission when and where it was needed were very important. He continued by explaining how important it was for people to have trust and confidence in their public defenders. One way to help make that possible was to have small enough case loads to give the public defenders the necessary time to spend with their clients to build those relationships and create trust and confidence.

Chairman Lakey announced there would be some switching of Agenda items to accommodate the presenter's schedules.

S 1106

JUVENILE PROCEEDINGS - Adds to existing law to provide rights of parents, guardians and others during child protection investigations. **Senator Herndon** explained this legislation would add a notification requirement to the statute, which is currently not there. It would inform parents, guardians and those who have custody of minor children that they were the subject of a Child Protective Service investigation. These were cases where there had been a report of child abandonment, neglect or abuse and they would have 72 hours from the first contact to be notified by the Department of Health and Welfare of their legal rights. The legislation provided that Health and Welfare would determine the format for the notification. The information would include what to expect in the investigation, called a comprehensive safety assessment, and would involve all the children living in the home not just the child about which the report was made. If a social worker came and wanted to talk to parents, their goal was to gain consent and most parents were willing to give consent. This legislation was trying to empower parents so they did not feel run over by the process and that they did have some control. By equipping parents with knowledge of their rights, they were more likely to cooperate with the department (see Attachment 1). **Senator Herndon** indicated that both the Fraternal Order of Police and Director Jeppeson of the Department of Health and Welfare were comfortable with this legislation.

DISCUSSION:

Senator Lee was concerned about what would happen if the department did not end up complying with the statute being added through this legislation. **Senator Herndon** explained there would be no remedy for parents to bring the department into compliance. Parents would have to file civil litigation and attempt resolution through that. He also clarified that the police departments were not responsible for delivering the information to the parents. That responsibility belonged with the Department of Health and Welfare.

TESTIMONY: **Joe Evans**, on behalf of members of his family, spoke in support of **S 1106**. **Mr. Evans** explained that his brother was a young, single, white, stay at home father with a learning disability and on social security. Several "busy bodies" felt he was not qualified to be a parent and reports to CPS were filed. The pamphlet that Health and Welfare was now using would have made his brother much better prepared to deal with the situation he was placed in. **Mr. Evans** believed his brother was subjected to trauma, family trauma, separation and anxiety resulting from the way CPS handled situations relating to his brother's children. Those same children were now struggling with their own parenting struggles as a result of the traumas they experienced as children. **Mr. Evans** also felt strongly that unsubstantiated reports were problematic without some sort of mandatory minimum reporting requirements. He stated people who lack the ability to make those determinations should not be allowed to file reports.

MOTION: **Vice Chairman Foreman** moved to send **S 1106** to the floor with a **do pass** recommendation. **Senator Hart** seconded the motion.

DISCUSSION: **Senators Wintrow, Lee, Foreman, Ricks, Hartgen** and **Hart** all had questions concerning the legislation proposed by Senator Herndon. There was a suggestion made that the Child Protection Oversight Committee should be consulted about the language used in **S 1106**. **Senator Lee** was concerned about the use of the word "unsubstantiated" meaning something did not happen when in reality something did happen just not to the level of a Child Protection Act violation. **Senator Foreman** was very anxious to educate parents about the rights they had to help them through the process they were going to experience. One of the main concerns relating to **S 1106** was subsection 5 and the affect it may have on the future and how more government may be added through litigation. **Senator Herndon** stated that subsection 5 was only an enforcement mechanism for placing the information into the parent's hands about their legal rights within 72 hours of the first contact in an investigation. It did not have anything to do with what the results of the investigation were. **Senator Herndon** assured the Committee that "unsubstantiated" did not mean there was not abuse, maltreatment or neglect. It means the department was not able to substantiate the origins of the report they were investigating.

Chairman Lakey summarized stating, the language gave parents, guardians or other persons having legal custody of the child, standing to challenge a violation of the provisions this section provided for. It stated that the Department of Health and Welfare were required to notify parents, guardians or persons that they have certain legal rights and those were included in said section. All this section did is provide for the fact that the department, if they contact a parent directly and in person, was going to have to provide a notification of their rights. If they threw all these in the garbage and never gave these to the parents, then the parents under subsection 5, would not have to come back to the legislature. They could go to a court, file a lawsuit at their own expense, and they could claim the Department was violating the new section of **S 1106**, 16-1648 by not informing parents of their rights in the CPS investigations.

Senator Lee questioned how the legislation might affect constitutional rights. **Senator Herndon** explained these rights were already possessed by parents. CPS investigations in the Ninth Circuit were strongly in favor of child protection but they also protect the Fourth and Sixth Amendments. This legislation allowed the department to determine how to get their work done and protect the children while also respecting the existing constitutional rights of the parents.

VOICE VOTE: A voice vote was called. Those voting aye for a **do pass** vote were **Chairman Lakey, Vice Chairman Foreman, Senators Ricks and Hart**. Those voting nay were **Senators Lee, Hartgen, Wintrow, and Ruchti**. A tie vote was called. The motion failed to pass.

MOTION: **Vice Chairman Foreman** moved to send **S 1106** to the **14th Order of Business** for possible amendment. **Senator Hart** seconded the motion. A roll call vote was called. Those voting aye were **Chairman Lakey, Vice Chairman Foreman, Senators Ricks, and Hart**. Those voting nay were **Senators Lee, Hartgen, Wintrow, and Ruchti**. The vote was a tie and motion failed.

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

RS 30395 **Relating to the removal of a sunset on the ability of the Occupational Licensing Review Committee's ability to function and reduce the burden of unnecessary governmental regulation.** **Chairman Lakey** explained this legislation was a print bill to be heard in the Commerce and Human Resources Committee. A committee had been established to review new potential licensing regulation as it came forward, made sure it fit the criteria in the statute, and then made a non-binding recommendation to the legislature. The legislation removed a sunset on the Committee. The bill changed the review of existing regulation to a ten year time frame rather than a five year.

MOTION: **Senator Lee** moved to send **RS 30395** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

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

S 1059 **ADDRESS CONFIDENTIALITY FOR JUDICIAL OFFICERS - Amends and adds to existing law to provide confidentiality for judicial officers.** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, introduced **S 1059** stating the legislation created a new section to provide protection or address confidentiality for judicial officers. It mirrors the provisions similar to protections for law enforcement officers. **Mr. Spillman** gave some background issues happening throughout the country. Judge Cleve Colson, Magistrate Judge, from Blackfoot, Idaho had experienced someone obtaining his personal information, doxing him and trying to exert influence through intimidation over his decision in one of his cases. **Mr. Spillman** explained this legislation had two purposes. The first purpose was to ensure that the judges and their families should not have to fear for their own safety or the safety of their families. The second purpose was litigants should not have to worry that somehow the judge they were standing in front of was being intimidated or influenced by the other party. The process will work much like the requests which come from law enforcement to shield their addresses and telephone numbers from disclosure. It required an application from the judicial officer and payment of a fee to the agency providing the confidentiality service. There were two parts that were different than law enforcement. Judges were elected officials and the public had a right to know that said officials reside in the jurisdiction for which they were elected. The public agency shielding their information will be allowed to redact the specifics of the address but if someone asks if someone resides in a specific county, the public agency had to verify that. The second part that differs from law enforcement was the declarations of candidacy that were filed with the Secretary of State. There had been language added that excluded that information if the application had been filed and the fee paid to the agency providing the confidentiality service. **Chairman Lakey** questioned why the courts wanted an immunity provision in this legislation. **Mr. Spillman** responded that the immunity clause was a complete mirror provision that was provided in Title 19, Chapter 58 for the law enforcement process. It was in the bill because it was in the law enforcement bill that was granted by the legislature to them. **Mr. Spillman** said they assumed Chapter 58 was enacted to provide immunity to public agencies that were fulfilling this statutorily created duty. He commented

that if an honest mistake was made and the information was released, those involved would not be held civilly liable.

MOTION: **Senator Hartgen** moved to send **S 1059** to the floor with a **do pass** recommendation. **Senator Foreman** seconded the motion.

DISCUSSION: **Senator Ruchti** had a concern with the immunity from liability provision. He did not feel it was appropriate for the Court system to ask for immunity in this situation since the Idaho Tort Claims Act protected governmental agencies in many ways. If something happened to a judge and a person displayed reckless behavior in disclosing the information, that judge and/or his family would have no recourse under the Tort Claims Act, which already provided protections.

SUBSTITUTE MOTION: **Senator Ruchti** moved to send **S 1059** to the **14th order of Business** for possible amendment. **Senator Wintrow** seconded the motion. The motion failed.

ORIGINAL MOTION: The motion to send **S 1059** to the floor with a **do pass** recommendation passed by **voice vote**. **Senator Ruchti** requested to be recorded as voting nay.

Chairman Lakey indicated that **S 1090** and **S 1092** would be heard on Wednesday, March 1, 2023.

ADJOURNED: There being no further business, **Chairman Lakey** adjourned the Committee at 3:00 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

CONTACT INFORMATION

Social Worker

Name: _____

Phone: _____

Supervisor

Name: _____

Phone: _____

Field Office

Address: _____

Phone: _____

WHAT ARE MY RIGHTS?

- To know what was reported
- To request referrals and services
- To obtain a copy of your records
- To appeal a substantiated decision
- To obtain an attorney
- To refuse to talk to Child and Family Services

DO I NEED AN ATTORNEY?

You can contact an attorney at anytime. However, a safety assessment is not a criminal investigation. If court intervention is needed, the court will notify you of the steps to obtain an attorney.

HELPFUL RESOURCES

Benefit Programs (SNAP, Medicaid, etc.) 1-877-456-1233	Child Support 1-800-356-9868
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2-1-1 Idaho CareLine 2-1-1 or 1-800-926-2588 Visit 211.idaho.gov	Report Child Abuse or Neglect 1-855-552-5437 or 1-208-334-5437 (Treasure Valley)
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Idaho Department of Health and Welfare
healthandwelfare.idaho.gov

Live Better Idaho

livebetteridaho.org

(state and community services and resources)

LOCAL CFS OFFICE LOCATIONS

Boise

1720 Westgate Dr.
Boise, ID 83704
P: 208-334-6800

Caldwell

3402 Franklin Rd.
Caldwell, ID 83605
P: 208-455-7000

Coeur d'Alene

1250 ironwood Dr.
Coeur d'Alene, ID
P: 208-769-1515

Idaho Falls

150 Shoup Ave.
Idaho Falls, ID 83402
P: 208-528-5900

Lewiston

1118 F St.
Lewiston, ID 83501
P: 208-799-4360

Pocatello

1070 Hilina Rd.
Pocatello, ID 83201
P: 208-239-6200

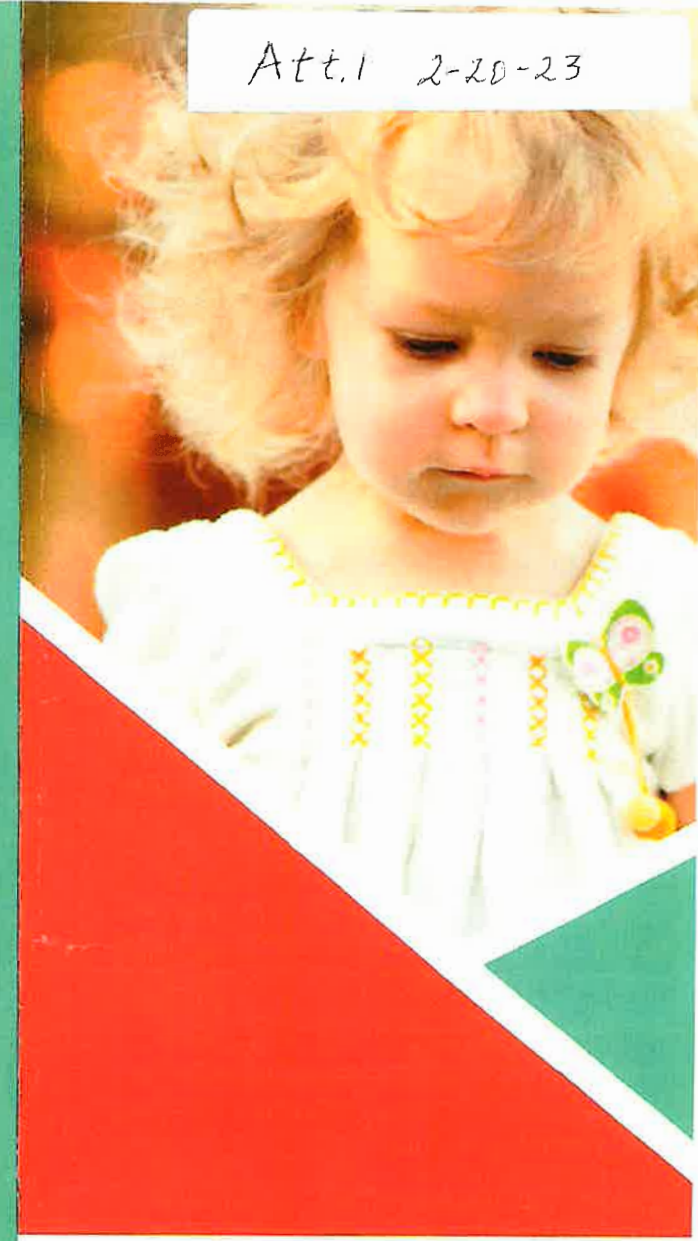
Twin Falls

601 Pole Line Rd.
Twin Falls, ID 83301
P: 208-734-4000

Rev. 11/2019

HW 2216

Att. 1 2-20-23



CHILD AND FAMILY SERVICES

A PARENT'S GUIDE TO ASSESSMENTS OF
ABUSE, NEGLECT, OR ABANDONMENT



IDAHO DEPARTMENT OF
HEALTH & WELFARE

HOW CAN I HELP?

Child and Family Services (CFS) understands this is a stressful time for you and your family. Please stay calm and do your best to cooperate, accurately describe the facts, and share your concerns. You can ask as many questions as you need to.



WHAT IS THE PROCESS?

A social worker will conduct an assessment to ensure your child is safe. This includes making home visits, conducting interviews, and gathering information to make a safety decision.

Child interviews occur at the school, daycare, hospital, police station, Health and Welfare, a child advocacy center, or at home.

The social worker will speak to people who have first-hand knowledge of your family such as friends, neighbors, teachers, counselors, doctors, and relatives.

After the social worker completes the safety assessment, you will be contacted about the results and will have the opportunity to discuss any questions you have.

If abuse or neglect occurred, you could be placed on the Idaho Child Abuse and Neglect Registry for a substantiated incident. You have the right to appeal the decision within 28 days as well as receive a copy of your records. You can request a copy of your records at <http://publicrecordsrequest.dhw.idaho.gov/> or by contacting your local office.

WHY IS THIS HAPPENING?

There has been a report of potential abuse, neglect, or abandonment of a child. Idaho law requires anyone who believes a child is being abused, neglected, or abandoned to report it within 24 hours. The identity of the person who made the report is confidential, but you have a right to know what was reported.

WILL MY CHILD BE REMOVED?

Children are only removed in the most serious situations. Social workers cannot remove children. In order for children to be removed from their home, a police officer must declare children to be in imminent danger, or a judge can sign an order to remove children.

If this happens, a civil, not criminal, court process begins with the primary goal of reunifying children with their parents.

We believe children should be with their parents. If abuse or neglect has happened, the social worker will help your family make a plan to keep everyone safe.

DO I HAVE TO TALK TO THE SOCIAL WORKER?

No. You can refuse entry into your home and access to your children. But if the safety of your children cannot be determined, the social worker may request assistance from the police or seek a court order.

You are encouraged to voluntarily talk with the social worker to help understand what led to the referral and to tell your side of the story.

The goal is to resolve these matters as soon as possible and minimize involvement with your family.

CAN THE SOCIAL WORKER TALK TO MY CHILD?

Yes. The social worker is required to see and speak to all children who live in your home, including children in shared custody situations. The social worker is required to contact you immediately, or as soon as possible, after interviewing your children.

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 22, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of Minutes of February 1, 2023	Senator Hart
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Appointment of Benjamin Andersen to the State Public Defense Commission to serve a term commencing January 24, 2023 and expiring July 1, 2024.	
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Reappointment of Shelly Parker to the Commission on Pardons and Parole to serve a term commencing January 1, 2023 and expiring January 1, 2026.	Shelly Parker
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Reappointment of Scott Smith to the Commission of Pardons and Parole for a term commencing January 1, 2023 and expiring January 1, 2026.	Scott Smith
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Reappointment of Terry Kirkham to the Commission on Pardons and Parole to serve a term commencing January 1, 2023 and expiring January 1, 2026.	Terry Kirkham
<u>RS 30382</u>	Relating to providing flexibility in a fee advisory committee to ensure representation of its service area.	Sarah Bettwieser, Representing Idaho Fire Chiefs Association
<u>S 1090</u>	UNIFORM PARTITION OF HEIRS PROPERTY ACT - Adds to existing law to provide for the partition of heirs property in certain instances.	David Jensen, Attorney, Parsons, Behle & Latimer
<u>S 1092</u>	UNIFORM ELECTRONIC WILLS ACT - Adds to existing law to provide for the execution of an electronic will.	David Jensen, Attorney, Parsons, Behle, & Latimer
<u>S 1105</u>	SEX OFFENDER REGISTRATION - Amends existing law to revise provisions regarding applicability.	Ashley Dowell, Executive Director, Idaho Commission of Pardons and Parole
<u>S 1086</u>	TORT CLAIMS AGAINST GOVERNMENTAL ENTITIES - Amends existing law to provide for a time for filing claims by a minor in a child abuse case.	Senator Ruchti

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 22, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Ricks, Hart, Hartgen, Wintrow, and Ruchti

ABSENT/ EXCUSED: Senator Anthon

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 & Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Hart** moved that the Committee accept the minutes of the February 1, 2023 meeting. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial Appointment of Benjamin Anderson to the State Public Defense Commission to the floor with a recommendation that he be confirmed by the Senate. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

Chairman Lakey explained that he would be taking the Gubernatorial Appointments out of order. Mr. Kirkham would be first since he was participating virtually.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Reappointment of Commissioner Terry Kirkham** to the Commission on Pardons and Parole (Commission) to serve a term commencing January 1, 2023 and expiring January 1, 2026. **Commissioner Kirkham** introduced himself as a longtime, 28 year servant in the Idaho Department of Corrections prior to his appointment to the Commission. During that time, he said he served as a warden, chief of probation & parole, deputy chief of probation & parole, district manager, and community work center manager.

DISCUSSION: **Senator Lee** asked Commissioner Kirkham how he thought the legislature could best support the Commission and if they would have any requests of the Legislature. **Commissioner Kirkham** responded by thanking the Legislature for its record of support for the Commission, particularly for financial resources that were used to purchase updated computer and information systems. As for requests, he said there were not any specific items they needed. He stressed the importance of committing ongoing resources within communities and the work of the Department of Corrections in addressing mental health and fentanyl related issues. **Senator Wintrow** asked what qualities he believed lend themselves well to service in a role on the Commission. **Mr. Kirkham** highlighted the importance of impartiality, listening, and an eagerness to help people.

**GUBERNATORIAL
REAPPOINTMENT:**

Committee Consideration of the Reappointment of Shelly Parker to the Commission on Pardons and Parole (Commission) to serve a term commencing January 1, 2023 and expiring January 1, 2026. **Commissioner Parker** said she had spent 30 years in the Ada County Prosecutor's Office Victim Witness Unit. During that time, she served as an administrator, coordinator, and pre-sentence investigator. In addition to those roles, she also did work with the National Crisis Response Team following 9/11, worked at shelters in Louisiana following Hurricane Katrina, and had served on numerous boards and committees.

DISCUSSION:

Chairman Lakey asked Commissioner Parker if she thought victims were appropriately considered in the legal process. **Commissioner Parker** stated her belief they were adequately considered and well-handled. She demonstrated her belief that she had the unique skill to, and passion for, caring for victims, and to make sure they were treated with respect, notified in a timely manner, and felt like their voices were heard. **Senator Wintrow** asked what Commissioner Parker thought was needed for someone to be successful in that role. **Commissioner Parker** claimed it required a well-rounded person, because the role had become increasingly difficult and everyone had to work well together to make sure parolees became successful. She said there was also a difficult balance to strike with regard to making sure support was delivered to parolees, but to also make sure more victims were not created. **Senator Wintrow** followed up with a question about how community reintroduction efforts could become more successful. **Commissioner Parker** said the State had several great programs in place, but areas that could have used some more improvement were focused on the identification of domestic violence and anger management issues, and more programming that could address them.

**GUBERNATORIAL
REAPPOINTMENT:**

Committee Consideration of the Reappointment of Scott Smith to the Commission on Pardons and Parole (Commission) to serve a term commencing January 1, 2023 and expiring January 1, 2026. **Commissioner Smith** said he spent over 30 years as an FBI agent, with 10 of those years overseas prior to his two years served on the Commission.

DISCUSSION:

Senator Wintrow asked what was needed for someone to successfully serve on the Commission. **Commissioner Smith** said it required an ability to find ways to collect information and address every parolee's unique circumstances, because no two would be the same. **Senator Wintrow** followed up by asking what the working dynamic was between the Commission and its Executive Director, and how the Executive Director would set them up for success. **Commissioner Smith** stated that the quarterly trainings allowed both parties to discuss and identify solutions to any potential problems as they pursued continued compliance with statutory guidelines. **Senator Hart** asked if there were any suggestions for how the Legislature could combat rising incarceration rates. **Commissioner Smith** said that, after the experiences he had overseas, it was his belief Idaho had done a fantastic job with the services and support it provided.

RS 30382

Fee Advisory Committee Flexibility. **Sarah Bettwieser**, who represented the Idaho Fire Chiefs' Association, said the RS was created so fire districts would have been able to create impact fee advisory committees to support planning efforts. Due to the complex, multi jurisdictional makeup of fire districts, **Ms. Bettwieser** said these committees would make fire district planning efforts more organized and representative of their unique districts.

MOTION:

Senator Ricks moved that **RS 30382** be sent to print. **Senator Hart** seconded the motion. The motion carried by **voice vote**.

S 1090

Partition of Heirs. David Jensen, attorney with Parsons, Behle, & Latimer, presented **S 1090**, the Uniform Petition of Heirs Property Act. **Mr. Jensen** stated the legislation was crafted to grant more tools to heirs that were in the process of dividing inherited properties, and afforded lower-to-middle class families greater opportunities to maximize the potential of generational wealth-generating assets. He said that the legal system would only support the division of the property that would grant each heir an equal percentage over which they would gain full ownership or selling the property at a public auction, where the profits would be equally distributed. To remedy those problems, **S 1090** would grant co-tenants the ability to sell their share in the property while not forcing the others to do the same. Laws similar to this have been enacted in 22 other states, including neighbors Montana, Nevada, and Utah.

DISCUSSION:

Chairman Lakey asked if partition would occur before or after probate. **Mr. Jensen** confirmed that partition would occur post probate, since the heirs would not own the property until after the transfer was completed. **Senator Ruchti** asked Mr. Jensen how, under current law, the process would work in the event not all heirs were able to come to an agreement on what to do with the property. **Mr. Jensen** said that, in the event it was a house or something else that could not be divided into parts of ownership, that would trigger a public auction, after which the heirs would receive their shares. He continued to say that a part of what made those situations challenging was that the Courts would hold hearings to determine the property's value, often below market rate before the bidding process would begin. **Chairman Lakey** asked if Courts were equipped to weigh in at times an heir with a greater share of an asset attempted to initiate a partition-by-sale against the wishes of the other heirs. **Mr. Jensen** said the language in **S 1090** could compel heirs to come to an agreement since it could prevent an artificial advantage from being created. **Senator Lee** asked what circumstances in scenarios like that could compel heirs to come to an agreement on what should happen with their property. **Mr. Jensen** said it would be advantageous to families to have agreed to a sale so they could reap the benefits of a market rate sale, rather than risking it going to auction and selling for less. **Senator Wintrow** asked what the inspiration for these kind of laws was. **Mr. Jensen** said it was to reduce or eliminate conflict and help lower-to-middle class families hold onto or maximize their earning potential from generational assets. **Senator Wintrow** followed up by asking what the motivation was for an attorney to sponsor the bill. **Mr. Jensen** said that, while he does not practice in probate, estate planning, or anything similar, he liked the idea of helping out, and making the process less cumbersome for "the little guy". **Senator Ruchti** asked what legal representation arrangements would look like during intra-family disputes. **Mr. Jensen** said that the party that filed the petition would need their own attorney for the filing and representation, while the others would have joint or separate attorneys. **Senator Hart** asked if the bill was a product of the National Conference of State Legislators. **Mr. Jensen** said the inspiration came from the National Conference of Commissioners on Uniform State Laws (Commission). **Senator Hart** followed up and asked if those two groups were affiliated. **Mr. Jensen** confirmed they were not. **Senator Hart** again followed-up, asking if there was an umbrella organization the National Conference of Commissioners on Uniform State Laws belonged to. **Mr. Jensen** said there was not, but that each state had its own representation on the Commission, and that bills like this often were the product of their annual meetings. **Chairman Lakey** asked who represented Idaho on the Commission. **Mr. Jensen** said that, in addition to himself, Idaho was represented by Dale Higer, Mike Brassey, Bart Davis, and Rex Blackburn.

TESTIMONY:

Robert Aldridge, an attorney from Boise, said that infighting was a common occurrence during matters of inheritance, and it was at times like that where outside money would be able to come in and exacerbate the problem. He continued to say that **S 1090** was important because it would make things more fair and add clarity to existing state law. **Senator Ricks** asked if the increase in outside influence and money would negate the need for the proposed legislation. **Mr. Aldridge** said it would not because the bidding process often resulted in properties selling for less than their value. **Senator Ricks** stated that he had observed cash sales of properties at auction that would go above market value. **Senator Wintrow** then asked if those situations were a non-issue in the event estate planning was included as a provision in a will. **Mr. Aldridge** said that there may have been instances where an attorney would have made an oversight in advising their clients on those issues, and there had been an increase in complications that had resulted from people creating their own wills online. **Chairman Lakey** asked why someone that requested a partition would not be able to buy a greater share in the property and if that was something the Courts could arrange. **Mr. Aldridge** said that was not possible under current laws, and that the property had been divided among heirs or sold at public auction and that the Courts had no other authority in those scenarios. **Chairman Lakey** followed up and asked if there were options in current Statute other than auctions. **Mr. Aldridge** said that heirs were able to buy out each others shares and to partition property, but that option was often complicated due to the potential for local zoning regulations having the possibility to prevent them from doing what they wished with their share of the property. **Mr. Jensen** returned to provide some additional clarity to the Committee. He said that the power heirs had at present was to petition for a percentage share of the property or partition and sell it. He added they could, if determined that public auction or sealed bids were a better course of action for co-tenants or heirs, but that heirs coming to an agreement to sell the property on the open market was often the best solution. **Senator Wintrow** asked if the Commission had identified any drawbacks to those practices. **Mr. Jensen** said they had not observed any, and that **S 1090** would add greater flexibility and options for heirs during those challenging times. **Senator Lee** stated that she appreciated the intent, but feared that it could result in unnecessary complexity. **Senator Wintrow** noted personal experience with these issues, and that she could see the benefit to expanded options for those families. **Senator Lee** added an additional concern that the legislation could result in an increased workload for the already overburdened Courts.

MOTION:

Senator Ruchti moved to send **S 1090** to the floor with a **do pass** recommendation. **Vice Chairman Foreman** seconded the motion. The roll call vote resulted in a 4-4 tie. The motion failed. The bill was held in Committee.

S 1092

Electronic Wills. **David Jensen**, attorney with Parsons, Behle, & Latimer, presented **S 1092**, which sought to modernize the processes in which wills could be created and stored by bringing estate planning into the digital age. **Mr. Jensen** explained under current law a will was only valid in physical (i.e. paper) form. If passed, the bill would allow for the online execution of wills while preserving legal standards. He added that there would be an interstate recognition of electronic wills using digital notarizing processes, but only if the person was physically located in another state at the time of the wills creation. He concluded by saying that the content of wills would not have to comply with any special requirements and that this process would rely on technology set up in accordance with the National Notarization Act.

DISCUSSION:

Chairman Lakey asked if an electronic will's execution and treatment would be different than physical ones. **Mr. Jensen** said that, like a résumé, whether it was in digital or paper form, content was unaffected, and the requirements for establishing one would remain unchanged. **Senator Ricks** asked where electronic wills would be housed. **Mr. Jensen** said that it would depend on what group created the will, but that a notary would have record of its creation, and those that create electronic wills would have the ability to also have physical, backup copies made. **Senator Ricks** followed up by asking if someone were to pass and the last copy of their electronic will was kept in a place nobody could access what would happen. **Mr. Jensen** likened that scenario to that of an instance where a paper will was lost, and that it was the responsibility of the creator to let family know how to find it. **Senator Hart** asked if there was an online database where digital wills could be stored. **Mr. Jensen** confirmed his understanding that was the case. **Senator Hart** followed up by asking how one could find evidence of digital wills having been tampered with. **Mr. Jensen** said that you would likely need to check with the notary if they would have the ability to identify evidence of tampering from the original version they notarized previously. **Senator Hart** responded with an inquiry about how the digital notarization process worked. **Mr. Jensen** said that notaries would have an online authorization system that had to be approved by the Secretary of State that would affix the personal notarization stamp to the document(s). **Senator Lee** asked if that process would be similar to homebuying, which, post-COVID, was something that could be done almost fully remote using services like DocuSign. **Mr. Jensen** confirmed the process would look similar, with the addition that the process would be more enhanced, since there was the additional requirement of affixing signatures from witnesses, added security features, and having a digital record created. **Senator Wintrow** asked if witnesses signing those documents digitally had to be done at the same time or if it could happen separately. **Mr. Jensen** said he believed it could happen at the same time. **Senator Ricks** stated that he had concerns about the potential for a select few companies that specialized in those digital services to greatly benefit from the legislation, but that he would still support its passage. He also cautioned that this process could change in the future to include a subscription model.

TESTIMONY:

Robert Aldridge, an attorney from Boise, noted there was a committee that was created to review modernization processes like this. He noted that a lot of services had transitioned to fully-digital platforms, and that he would personally advise clients to maintain digital copies on hard drives or thumb drives so there was a backup in the event the primary copy was lost, corrupted, or even tampered with. He continued to say that **S 1092** would have retroactive application to 2020. **Mr. Aldridge** concluded his testimony by saying that 10 states had already enacted similar legislation and the list had been growing. **Francoise Cleveland**, Associate State Director of Advocacy for AARP Idaho, indicated her organization's support for **S 1092**, stating that it would offer an important legal tool for home-bound or mobility-impaired persons by allowing them greater access to creating wills. She said that this legislation was especially needed because a 2021 study found a 27 percent decrease in estate planning documents made by people 55 and older between 2019 and 2021.

MOTION:

Senator Wintrow moved to send **S 1092** to the floor with a **do pass** recommendation. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

S 1105

Sex Offender Registry

S 1086

Tort Claims, Government Entities

S 1105 and **S 1086** were held in Committee due to a lack of time.

ADJOURNED:

There being no further business, **Chairman Lakey** adjourned the meeting at 3:00 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 27, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Reappointment of Shelly Parker to the Commission on Pardons and Parole to serve a term commencing January 1, 2023 and expiring January 1, 2026.	
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Reappointment of Scott Smith to the Commission on Pardons and Parole for a term commencing January 1, 2023 and expiring January 1, 2026.	
GUBERNATORIAL APPOINTMENT VOTE:	Vote on the Reappointment of Terry Kirkham to the Commission on Pardons and Parole to serve a term commencing January 1, 2023 and expiring January 1, 2026.	
<u>RS 30425</u>	Relating to Decisions on Receiving Coronavirus Vaccinations	Senator Adams
<u>S 1105</u>	SEX OFFENDER REGISTRATION - Amends existing law to revise provisions regarding applicability.	Ashley Dowell, Executive Director, Idaho Commission of Pardons and Parole
<u>H 66</u>	CRIME - Adds to existing law to provide that reporting child abuse, abandonment, or neglect falsely or in bad faith is a misdemeanor.	Senator Herndon
<u>S 1023</u>	OFFICE OF ADMINISTRATIVE HEARINGS - Amends existing law to revise provisions regarding the Office of Administrative Hearings and its officers.	Bryan Nickels, Office of Administrative Hearings
<u>H 52</u>	GRAND JURIES - Amends existing law to revise a provision regarding who may be present at sessions of a grand jury.	Jason Spillman, Legal Counsel, Administrative Office of the Courts

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 27, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 2:15 p.m.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Wintrow** moved to send the Gubernatorial Reappointment of Shelly Parker to the Commission of Pardons and Parole to the floor with a recommendation that she be confirmed by the Senate. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Anthon** moved to send the Gubernatorial Reappointment of Scott Smith to the Commission of Pardons and Parole to the floor with the recommendation that he be confirmed by the Senate. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial Reappointment of Terry Kirkham to the Commission of Pardons and Parole to the floor with the recommendation that he be confirmed by the Senate. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

S 1105 **Chairman Lakey** announced that Senator Adams was not in attendance and the Committee would move on with **S 1105**.

S 1105, Sex Offender Registration, Revision. **Ashley Dowell**, Executive Director, Idaho Commission of Pardons and Parole, announced the intent of **S 1105** was to clean up language in State Code that became confusing following the passage of a bill that pertained to the sex offender registry. The previous legislation was crafted to have "crimes against nature" removed from Code, since it was declared unconstitutional. Criminal justice groups were concerned the language became misleading, so the goal was to ensure no one was accidentally removed from the registry.

MOTION: **Senator Ricks** moved to send **S 1105** to the floor with a **do pass** recommendation. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

Child Abuse, False Reports. **Senator Herndon** said the aim of the legislation was to amend the Child Protection Act section of Idaho Code to have false Child Protective Services (CPS) claims or reports upgraded to a misdemeanor with the potential for up to a \$1,000 fine and/or three months in county custody. Currently, Idaho Code would allow a parent to seek criminal damages for false claims only if they knew the person who made the report. The anonymity required in the CPS reporting process needed to be dealt with and to accomplish this, the legislation would have provisions added to the perjury section of Code. To relieve concerns, he said there would be an immunity provision for people who could have submitted reports using false information, because they did not act in malice. **Senator Herndon** said that 29 states attached criminal penalties to such offenses, and suggested Idaho do the same by passing this legislation. The ultimate goal of this legislation, he said, was to reduce persistent, bad-faith actions that consume CPS resources, preventing them from going after people who were actually putting children in harm's way. He concluded by stating that he included written testimony from a social worker in the Committee's materials (see Attachment 1).

DISCUSSION:

Senator Lee asked what the burden of proof would look like if bad faith actions in a CPS case were shifted from a civil to criminal standard. **Senator Herndon** said he consulted with prosecutors on the language, and it was their understanding that the changes to Code that would have come with this legislation's passage would effectively allow them to litigate in those circumstances, and that events like pattern reports that were proven false would establish grounds for criminal prosecution. **Senator Anthon** inquired about how they decided on three months and/or \$1,000 fine if those acts were made misdemeanors. **Senator Herndon** said that a lot of the other states that have codified a similar punishment opted for a six-month duration, but he thought that was too aggressive, and a three-month period was sufficient. **Senator Wintrow** asked if Senator Herndon had supporting materials from the Attorney General on the proposal. **Senator Herndon** said he did not, but he worked with their office while crafting the legislation. **Senator Wintrow** followed up by asking how the prosecution would be able to prove a report was made in bad faith. **Senator Herndon** said it was circumstantial, but that the process would involve evidence collection, usually based on repeat behavior of false report submissions. **Senator Anthon** expressed that prosecutors were already adequately empowered under Code to go after offenders like these, and that the legislation might be unnecessary, or could even reduce the sentencing for them.

TESTIMONY:

Ronald (Scot) Allen from Horseshoe Bend testified in favor of **H 66**. He said he was a father of nine and the victim of over 10 false reports to CPS. The false reporting put him and his family through a great deal of emotional and financial challenges, and it was his belief **H 66** would give victims and social workers alike protections from the abuses of the reporting system. **Mr. Allen** mentioned that one of the social workers he interfaced with was also a victim of false reports. **Senator Anthon** asked if Mr. Allen knew who it was that submitted all the false reports. **Mr. Allen** said that he did not know, since the reporting system involved reporter anonymity. **Senator Lee** asked if Mr. Allen had any conversations with his county prosecutor. **Mr. Allen** said that he had not, but that he had spoken to all the CPS personnel he could, but he kept hitting dead ends. **Senator Lee** followed up to ask if he thought **H 66** would help in his situation since reporters would still be anonymous, and suggested he get in contact with his prosecutor. **Mr. Allen** said that he had been advised to get representation and bring a civil case to a judge and that, in extreme circumstances like his, there should have been legal ramifications on the books for anyone who was found to have deliberately and repeatedly filed malicious CPS reports. He also said he included a written statement for the Committee (see Attachment 2).

Devin Miller spoke in favor of **H 66**, and urged the Committee to help Idaho follow the lead of the 29 other states that had codified more aggressive penalties for false CPS reports.

Alicia Abbot from Sandpoint, Idaho did not testify, but registered as being against the bill.

MOTION: **Vice Chairman Foreman** moved to send **H 66** to the floor with a **do pass** recommendation. **Senator Hart** seconded the motion. **Chairman Lakey** called for a roll call vote. **Senators Anthon, Ricks, Hart, Vice Chairman Foreman** and **Chairman Lakey** voted aye. **Senators Lee, Hartgen, Wintrow, and Ruchti** voted nay. The motion carried.

RS 30425 **Coronavirus Vaccinations.**

MOTION: **Senator Anthon** moved that **RS 30425** be sent to print. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

S 1023 **Office of Administrative Hearings**

H 52 **Grand Juries**

S 1023 and **H 52** were held due to lack of time.

ADJOURNED: There being no further business, **Chairman Lakey** adjourned the meeting at 3:00 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

Good morning Scott,

I was unable to move my appointments around, I am sorry; I wrote this out. I wish I had more time to prepare. I hope it helps. Please let me know if there is anything more I can do to assist with this.

I wish I had more time to prepare a statement. This is an issue that child protection struggles with. Erroneous reports take away from real concerns. The Department of Health and Welfare has been overwhelmed with reports that are called in do to vindictive reasons. There are families that do not live the others do, so they get reported as being neglectful. Society seem to think that if my neighbor does not do what I want, I need to call child protection as a way to get revenge. A child protection report once assigned can take several hours to investigate. Law enforcement has to be coordinated with. This is a good practice, but when a report is erroneous it is a HUGE waste of resources. I am not sure about the monetary cost, as I did not have the time to investigate.

I also think about the impact on families when there are false reports made. Each child in a home has to be interviewed when a report is made. This can be scary for children. Parents get scared because child protection has been misrepresented as people who want to take their children. Their fear causes them to not want to cooperate. That leads to more time and resources spent on gathering the information.

As a parent I was a victim of false reporting. I had to take time off work to meet with the worker. My children were irritated because of being pulled out of class. It disrupted everyone's routine and caused my children to not trust the system. This hurt me the most. Licensed social Workers should be someone a child thinks of as a safe person to talk to, but when there are false reports it does the opposite.

I do understand the importance of mandated reporters. I do not want to have anything that stops people from calling in abuse, neglect or abandonment. I hope there is a way to stop the vindictive false reporting.

I wish that I had more time to discuss the impact of false reporting. I would like to talk more about this as I have several examples of how false reporting has made things worse for the families I work with.

Cynthia Coleman

Licensed Social Worker

Family and Children Services

515 M 16th Street

Payette, ID 83661

Phone 208-590-8010

FAX 208-642-7082

I am Scot Allen. I have 9 kids and In the last 2 years my family has been a target for false and malicious cps reporting. It all started after a custody case.

This has been so destructive to our family.

We have received about 10 calls in the last 2 years. This is only the ones we know about. There were 3 that I just recently found out about.

My wife and kids have so much anxiety about going to work and school. This has greatly impacted my wife's job as a teacher and how people treat our family.

The process alone has become our punishment.

We are punished when we are constantly looking out our window to see if a social worker will be driving up our drive way. My kids are scared that someone will have them taken from us.

Is that really what you want Idaho to be.

State resources being used to knowingly harass law abiding families like mine.

There are Simple solutions like passing this bill can go a long way to protecting the CPS system, workers, resources and the good families in Idaho.

One of the reports were so malicious that they said my oldest who is in a permanent home was locked in the basement and pregnant when She doesn't even live at my house for over a year.

Right now, my only option to find out who is doing this is to spend thousands of dollars I don't have and hope the person gave their name. civil is not enough for families that are targeted.

there is already a law against false reporting should that not cover this as well. He is correct. It should but it does not.

There should be a law that criminalizes knowingly false reporting so that way families like mine don't see the state as against the family but protecting the good families and the freedom to simply raise kids here in Idaho.

To me there needs to be protections in place so that way the system is not abused. Please pass this.

Thank you.

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, March 01, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1023</u>	OFFICE OF ADMINISTRATIVE HEARINGS - Amends existing law to revise provisions regarding the Office of Administrative Hearings and its officers.	Brian Nickels, Office of Administrative Hearings
<u>H 52</u>	GRAND JURIES - Amends existing law to revise a provision regarding who may be present at sessions of a grand jury.	Jason Spillman, Legal Counsel, Administrative Office of the Courts
<u>S 1087</u>	CRIMINAL FORFEITURE - Adds to existing law to provide for criminal forfeiture for certain crimes against children and vulnerable adults.	Senator Okuniewicz
<u>S 1058</u>	MOTOR VEHICLES - Amends and adds to existing law to provide for the crimes of aggravated driving while reckless and aggravated driving while distracted.	Senator Hartgen
<u>S 1086</u>	TORT CLAIMS AGAINST GOVERNMENTAL ENTITIES - Amends existing law to provide for a time for filing claims by a minor in a child abuse case.	Senator Ruchti

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 01, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Hart, Hartgen, Wintrow, and Ruchti

ABSENT/ EXCUSED: Senator Ricks

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.

S 1023 **OFFICE OF ADMINISTRATIVE HEARINGS (OAH), Brian Nickels**, Office of Administrative Hearings, stated there were four substantive changes being offered in **S 1023**. They included the following: 1) It included the Office of Administrative Hearings in the self-governing agencies list, and it updated the statute outlining non-classified employees to include personnel which was similar to other lawyer type agencies. This would permit OAH employees to use outside counsel which would give them more independence. 2) It clarified the salary of the Chief Administrative Hearing Officer. 3) This legislation would allow judges and hearing officers to represent themselves if need be and additionally work with family members if there's a need to review or draft a document. It would not permit hearing officers to act as lawyers, but would allow those same sorts of lawyering activities that judges were permitted to do. 4) A new public records exemption would be added that would exempt any writings, drafts, notes or working memoranda related to decision making in any proceeding before the OAH. Records that come in and out of OAH would remain in the same character.

DISCUSSION: **Senator Hart** asked what type of records would be included in the exemption. **Mr. Nickels** stated that first drafts of decisions, notes taken by officers in evaluating evidence, and notes from discussions with witness used to create a final order to go to the agency head. This legislation was being requested to clear up those questions relating to concluding a hearing and issuing either a preliminary or a recommended decision to an agency head.

TESTIMONY: **Ken Burgess**, Veritas Advisors, speaking on behalf of the Idaho Press Club First Amendment Committee. **Mr. Burgess** stated that the Idaho Press Club had no basic issue with the legislation. The one concern they expressed related to the records exemption regarding the term "any writings" being overly broad. There had been discussions among Betsy Russell, President of the Association, Mr. Nichols, and some Committee members about a possible amendment. The proposed amendment was to replace the term "any writings" with an amendment that read on the first line any "pre-deal writings, drafts or notes." And then on line 42, relating to decision making in any "specific proceeding." **Mr. Nichols** responded by explaining why they felt the term "any writings" was more appropriate for the legislation language. Pre-decisional was an undefined term that discussed items open for public consideration. That could lead to ambiguity that "any writings" does not. The other concern was that OAH's work continues after the decisions were made. **Mr. Nickels** explained that they continued to monitor their decisions to see if reversals

were made at any stage of the process. He stated that the core of his concern was one of his statutory charges was to ensure the decisional independence of his hearing officers. He did not want a public records request to be made and it appear that he was attempting to influence the selection of a hearing officer. Such a situation was banned by statute, but it would not preclude someone from trying to appear to make a disqualification request based on those post decisional writings.

MOTION: **Senator Lee** moved to send **S 1023** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

H 52 **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, explained **H 52** was a court defect bill relating to grand jury proceedings. Those allowed to attend such proceedings were limited to the jurors themselves, witnesses that were called, interpreters that were required and prosecutors that were present to participate in the process. There were two additional potential people who may have needed to participate in the proceedings. The first was a person who must be designated to report the proceedings after the guilty party had been indicted by a grand jury. The other person that may have needed to participate was a support person for a child witness as they were testifying. **H 52** would add these two positions to those who were able to attend grand jury proceedings.

MOTION: **Senator Anthon** moved to send **H52** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1087 **Senator Doug Okuniewicz** stated that **S 1087** would require that any individual convicted, or who plead guilty to any crimes against children, made the property and the assets they may have employed or garnered as a result of a sale to forfeit, in the same way that drug laws do. This legislation was supported by the Fraternal Order of Police (see Attachment 1). The Idaho Prosecutors Association was consulted and the Attorney General's Office worked closely with the creators of this bill.

DISCUSSION: **Senator Foreman** stated he was troubled by the asset forfeiture aspect of the legislation. He commented he had heard from numerous constituents suggesting that the criminal and the crime need to be separated from personal property. **Senator Foreman** was uncomfortable with someone having to prove their innocence in order to retain their property.

TESTIMONY: **Neil Uhrig**, Detective, Post Falls Police Department. **Mr. Uhrig** operated the only full service digital forensics lab in North Idaho and much of his work involved child pornography and child exploitation. Under current Idaho law when an offender is prosecuted, the digital devices they used to commit the crime were taken as evidence but must be forensically wiped and returned to them at the conclusion of their sentence. **S 1087** provided a mechanism for forfeiture of these devices, making it so computers are not returned to child molesters. This legislation used the criminal forfeiture process. The person had to be convicted. If an offender was found not guilty, they got their property back. Under this bill, digital devices containing child pornography would be destroyed after court proceedings were concluded. This bill contained language that safeguarded the rights of third party owners. The language provided a way for them to be heard in court and to recover property or the value of the property.

DISCUSSION: **Senator Wintrow** asked several questions relating to property ownership and the relationship to the crimes. There was a detailed discussion with several different scenarios given. The common consensus was that many of the decisions would be based on the judge's discretion because of the variables involved.

MOTION: **Senator Anthon** moved to send **S 1087** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

DISCUSSION: **Senator Foreman** stated that he would vote no on **S 1087**. He suggested it would be better to return the property and keep it separate from the crime so that would not create a burden on innocent people. **Senator Ruchti** said he had always been critical of civil forfeiture processes. He mentioned that rarely law enforcement had been accused of realizing that it was a cash cow for them because they could keep or sell the property and use the proceeds to help with budgets. He said he would not be supporting the bill. **Senator Ricks** stated that he was not sure how he was going to vote. He had a concern about what would happen if the person was exonerated or the charges were dropped and the computer equipment had already been destroyed. Would there be a way to reimburse the victim? **Mr. Uhrig** responded that he had not considered that scenario.

Senator Okuniewicz closed by stating that the legislation contained provisions on how someone who had a right to the property had to be given notice and time to respond to make their claim. They had to establish ownership to have the ability to acquire that property.

Chairman Lakey commented that the Committee should keep in mind that there was a difference between civil and criminal forfeiture. This legislation required a conviction where the civil forfeiture did not. **Senator Lee** added that these kind of crimes were difficult to convict because they were crimes against children. She would like to send a message that the tools people use to commit these horrible crimes against the most vulnerable were not going to be preserved and returned back upon release from prison. **Senator Hart** stated he was not ready to vote on **S 1087**. **Senator Wintrow** added she does not want to harm any victims in the process unintentionally. **Senator Lakey** added he felt the criminal forfeiture process worked and he would support the motion.

ROLL CALL VOTE: A roll call vote to send **S 1087** to the floor with a **do pass** recommendation carried by **voice vote**. **Vice Chairman Foreman**, and **Senators Hart** and **Ruchti** voted nay.

1058 **Senator Linda Hartgen** explained that Idaho had many instances of people using handheld devices which were already illegal, resulting in reckless and distracted driving. This bill tried to get some justice and compensation for the victims of the crimes. Two specific crimes were addressed. One was reckless driving, describing the person deliberately being a jerk in their car, and the other was distracted, where the driver was intentionally doing something that takes their attention from the road. In both instances, when the driver caused a collision, it was not an accident. It was important to give law enforcement officers the tools to use when the incidents happened. The officer can cite, the prosecutor can play down, and the judge had the final discretion when he made his decision.

TESTIMONY: **Mike Pohanka** stated, aggravated driving while reckless, was any person causing great bodily harm, permanent disability or permanent disfigurement to any person other than himself was committing a violation of the provision and was guilty of a felony upon conviction. The same was true for aggravated driving while distracted. **Mr. Pohanka** said deputies, troopers and officers should be able to cite for a felony conviction any time an individual was using their handheld device to video. He shared his experience with Sergeant Wendler after he had been hit by a young lady recording him at the scene of a traffic accident. Sergeant Wendler only lived because there were EMS people there who could give CPR and knew how to take care of him until he was life flighted to Idaho Falls. The National Safety Council found a percentage of drivers manipulating handheld devices while driving had increased 127 percent from 2012 to 2001. **Mr. Pohanka** emphasized that he wanted to do everything he could to try and prevent deaths and needless injuries. He stated motorists needed to be accountable for their actions. Driving was a privilege, not a right.

Senator Wintrow asked the definition of aggravated driving while reckless versus distracted. **Chairman Lakey** explained distracted driving was operating a motor vehicle while using an electronic device. Reckless driving was being in physical control of a vehicle on public or private property, open to public use, carelessly, heedlessly or without due caution, driving any speed to endanger any person or property.

Michael Wendler, former Idaho State Trooper, stated he was the officer Mr. Pohanka spoke about. He shared how difficult his experience was for both him and his family. **Mr. Wendler** stated that most ISP troopers had an experience where the outcomes were less than desirable. He told of an incident he investigated. There were serious injuries to the young lady and she remained paralyzed for life. When Mr. Wendler talked to the perpetrator of the crash, his biggest concern was when he would get his cell phone back. He never questioned what happened to the young woman. **Mr. Wendler** explained all he could do was write a citation for careless driving. He was strongly in favor of **S 1058** in the hope that it would give officers more tools for these kinds of circumstances that would ultimately help the involved victims.

Ron Nate, Idaho Freedom Foundation, said **S 1058** would substantially increase the penalties for the crimes of reckless driving. Currently, a misdemeanor and distracted driving, were an infraction. The increased penalties would only occur when they contributed to an accident causing great bodily harm, permanent disability or permanent disfigurement to any other person. **Mr. Nate** stated that this legislation could be creating even more victims if the law was applied to the maximum in each case. It took a minor infraction and turned it into a felony and there was no clear requirement to prove the electronic device caused the accident or that the driver intended to cause harm. If someone died in an accident and they were reckless driving or using a device, this legislation would classify it as manslaughter. Inattentive driving was not addressed in the legislation. **Mr. Nate** believed there was too much sentencing disparity in **S 1058**.

Lori Solders, Idaho Coalition for Motorcycle Safety, testified they were in support of this bill. The distracted driving bill previously passed was not strong enough to get people off their phones. Their organization wanted to help do whatever it took to get people off their phones and pay attention when they drive. **Ms. Solders** commented, driving was a privilege not a right.

Senator Hartgen concluded by mentioning the letter from the Idaho Fraternal Order of Police supporting this legislation (see Attachment 2). Meetings were held with the prosecutors and area sheriffs and they were all in favor of **S 1058**. She clarified that manslaughter charges were not new and have nothing to do with this bill. She stated the judge had total discretion on what could and could not be done for both of these two different crimes.

Senator Ruchti declared Rule 39(H). He questioned the provision in the legislation stating one could use evidence of a guilty plea in a civil cause of action. He felt certain that would come up in some cases. **Senator Foreman** added the penalties in the legislation were far too severe. Severe penalties did not seem to be a deterrent to cause people to quit doing what they were not supposed to do. He suggested that prevention was what we want, not retribution or penalties or ruining someone else's life by putting them in prison. The only way to prevention was to educate society so they recognized and internalized the need to stop doing what they were doing. **Senator Wintrow** said she wanted to find the right balance so she could make the right decision. She had real concerns about adding a felony charge to this legislation. **Senator Hart** commented that possibly this bill would be better if more time was spent working on it. **Chairman Lakey** agreed there were hard decisions to be made and felt a little more time was a good choice.

MOTION: **Chairman Lakey** called for a motion. Senator Hart moved to hold **S 1058** in Committee. **Senator Foreman** seconded the motion. **Chairman Lakey** called for a **roll call vote**. **Chairman Lakey, Vice Chairman Foreman, Senators Hart, Wintrow** and **Ruchti** voted aye. **Senator Lee, Anthon** and **Hartgen** voted nay. The motion carried 5 to 3 and **S 1058** was held in Committee.

Chairman Lakey announced that **S 1086** would be heard in the next meeting on March 6, 2023.

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

Senator Lakey
Chair

Sharon Pennington
Secretary



IDAHO

FRATERNAL ORDER

OF POLICE

P.O. Box 1053
Blackfoot, ID 83221

Bryan Lovell
President
BryanLFOP@Gmail.com

March 1st, 2023

RE: Supporting Senate Bill 1087 Criminal Forfeiture

The sexual exploitation and victimization of children falls in the most serious categories of offenses handled by Law Enforcement. It's one area where Idaho's Law Enforcement can be proactive in seeking out those responsible through task force groups like the Internet Crimes Against Children Task Force.

These are delicate cases that require an intricate amount of detailed work to collect the evidence and identify victims to free them from these types of crimes. Most of this work centers around technology and electronic devices with complicated and infinite layers of data for investigators to sift through and make certain it is not re-released to victimize children all over again. In some cases, the perpetrators are found to engage in this criminal behavior for financial gain that not only increases their technical resources to conceal it from Law Enforcement but contributes to their overall lifestyle on the backs of victimized children.

The Idaho Fraternal Order of Police have taken a strong position of support on any measure that brings these types of criminals to justice and protects our children. Accountability from the suspects will never heal the victims and families affected by these actions, but it greatly affects their ability to create new victims. When criminals are caught building assets on the backs of child victims to further criminal enterprises they should be prevented from benefiting from those assets in the future.

The members of the Idaho FOP appreciate your hard work and the opportunity to be a resource for our citizen legislators to make informed decisions. We humbly ask you to support Senate Bill 1087.

Bryan Lovell
President, Idaho FOP

Att. 2 3-1-23



P.O. Box 1053
Blackfoot, ID 83221

IDAHO

FRATERNAL ORDER

OF POLICE

Bryan Lovell
President
BryanLFOP@Gmail.com

March 1, 2023

RE: Support of Senate bill 1058

The Idaho Fraternal Order of Police supports Senate bill 1058 as we believe it is important to hold drivers accountable for recklessness that results in great bodily harm to another person. This bill would make it a felony to cause serious injury to another while driving recklessly or in a distracted manner, which we believe is wholly appropriate.

Law Enforcement Officers throughout the state respond regularly to serious injury crashes that leave victims wheel chair bound and doomed to a life of pain and disability. Treatment for these injuries can leave victims liable for medical and living expenses not easily recoverable through the misdemeanor restitution process.

For example, one of our "brothers in blue" was run over by a distracted driver on their cell phone. This brave officer suffered debilitating injuries that changed his life, and by extension his family's life, forever. The driver was charged with a misdemeanor, the only appropriate charge based upon current law. While we agree that merely driving distracted or recklessly only warrants misdemeanor charges, behavior that resulted in a serious injury warrants a higher penalty.

The Idaho Fraternal Order of police is made up of over 2500 law enforcement professionals from across this great state and we are proud to support this legislation.

Idaho Fraternal Order of Police

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Wednesday, March 08, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approve the Minutes of February 8, 2023	Senator Foreman
MINUTES APPROVAL:	Approve the Minutes of February 15, 2023	Senator Lee
<u>RS 30495</u>	Relating to Judicial Salaries	Jason Spillman, Legal Counsel, Administrative Office of the Courts
<u>RS 30574</u>	Relating to Removing Judge's Incentive to Resign Early in Exchange for Plan B Senior Judge Status	Senator Lee
<u>RS 30576</u>	Relating to the Definition of a Motor Vehicle	Senator Anthon
<u>S 1118</u>	DEBTORS - Amends existing law to increase the value of the homestead that is exempt from debt collection.	Senator Anthon
<u>S 1130</u>	CORONAVIRUS - Adds to existing law to establish the Coronavirus Stop Act to prohibit certain actions related to coronavirus.	Senator Adams
<u>H 149</u>	CRIMINAL HISTORY RECORDS - Amends existing law to provide that criminal history records shall be shielded from disclosure under certain circumstances.	Senator Lent

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 08, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 3:00 p.m.

MINUTES APPROVAL: **Vice Chairman Foreman** moved to approve the minutes of February 8, 2023. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Lee** moved to approve the minutes of February 15, 2023. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

RS 30495 **Related to Judicial Salaries.** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, presented **RS 30495** as a bill that was aimed to address the competitive disadvantage Idaho judges faced in terms of compensation. **Mr. Spillman** said Idaho judges were paid less than their peers in neighboring states, with salaries and benefits that lagged far behind the national average which caused many to become private sector attorneys. The bill language had raises for appeals, district, and magistrate judges of 7.5, 7.8, and 8.5 percent, respectively. Supreme Court justices were to receive a 7 percent raise as well.

MOTION: **Senator Anthon** moved to send **RS 30495** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1130 **Coronavirus Stop Act.** **Senator Adams** presented **S 1130** as a slight modification to the Coronavirus Pause Act from the 2022 Legislative Session. He said the primary intent of the bill was to ensure no individuals were treated differently or discriminated against as a result of their vaccination status. The bill included the codification of a past executive order that established vaccination status guidelines for employees of State entities, but the change was the expansion of those guidelines to private businesses in Idaho. **Senator Adams** said exemption language was added that enabled people that had to travel to other states or countries for work that required vaccines to enter contractual agreements to increase transparency in employment and prevent coercion. The largest change was the transition of penalties under the new section of Code to civil rather than criminal.

TESTIMONY: **Liza Leonard** represented Ball Ventures and spoke in opposition to the bill. She said **S 1130** was an anti-business bill that had the ability to expand government overreach by the addition of language that took away the flexibility of private employers to deny employment to people due to their vaccination status. She said that would further complicate at-will employment matters in the State of Idaho, and that vaccine requirements were no different than other medical screening and testing requirements that many employers already utilized. She said people with reservations about a company's vaccine requirements could find employment elsewhere, and that the free market would have taken care of them.

DISCUSSION: **Senator Hartgen** asked if the legislation had any affect on the medical sector, as they had to adhere to federal regulations that included vaccines. **Senator Adams** said private entities that received Medicare and Medicaid funds were exempt from the requirements of his bill.

Senator Wintrow asked if the bill created a protected class for non-vaccinated persons. **Senator Adams** said that was not the case. He said the intent of the bill was to prevent division in the State of Idaho and to benefit its citizens.

Senator Ricks expressed support for the business community and recognized the divisive nature of the issue of employer-mandated vaccines versus bodily autonomy. He said he was supportive of the legislation because it enhanced what was already in State Code.

Senator Ruchti spoke from the perspective of a small business owner, and how many in similar situations did not have the flexibility larger businesses had during the pandemic to ensure employee safety in instances where some were medically-vulnerable. He said the bill created government overreach and he would vote against the bill.

Vice Chairman Foreman expressed his sensitivity to any government overreach, but the decisions an individual made for their health were more important than any decisions a business or government could have made. He said it was the responsibility of government to protect individuals from danger, and he thought the bill was good.

MOTION: **Vice Chairman Foreman** moved to send **S 1130** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

RS 30574 **Related to Judge Resignations.** **Senator Lee** said the bill was tailored to district judges, appellate court judges, and Supreme Court justices. **RS 30574** had the ability to remove the 'Plan B' incentive in the event any judge did not complete the term for which they were elected.

MOTION: **Senator Ricks** moved to send **RS 30574** to print. **Vice Chairman Foreman** seconded the motion. The motion carried by **voice vote**.

RS 30576 **Related to Motor Vehicle Definition.** **Senator Anthon** said the inspiration for the bill was to stop a trend of conflicting results in case law that resulted from language surrounding exemptions for debtors that surrendered property to their creditors. The bill cleaned up language and added a new definition of motor vehicle.

MOTION: **Senator Lee** moved to send **RS 30576** to print. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

S 1118

Homestead Exemption, Debt Collectors. **Senator Anthon** said **S 1118** was a housekeeping bill that updated the dollar amount of the homestead exemption for debtors from \$175,000 to \$250,000. In the event a creditor collected, the exemption was the dollar value of the homestead the owner was able to keep. This figure had not been updated in six years, and **Senator Anthon** said the new exemption figure was more representative of current real estate market conditions in Idaho. He acknowledged banks and creditors were not in favor of the legislation, but that Idaho Legislature had decided in the past to provide protections for debtors in its bankruptcy code, and it deserved an update.

TESTIMONY:

Trent Wright spoke in opposition to the bill because it had potential to adversely impact a lender's ability to collect on judgements. **Mr. Wright** said that the current level of \$175,000 made it more likely a lien was fully-enforced and the likelihood of surviving a bankruptcy. If the level was raised to \$250,000, he feared it would become more challenging to initiate a sale and that bankruptcy attorneys would petition for the prioritization of non-mortgage liens. He said Idaho's exemption per homestead greatly exceeded those in Utah (\$84,000), Wyoming (\$40,000), and Oregon (\$50,000).

DISCUSSION:

Senator Ruchti asked for additional details about the sale process in instances where collections resulted in a home sale. **Senator Anthon** said owners were not required to sell or vacate the home, and they were allowed to keep the equity in the home if the value did not exceed a statutory limit. He said those owners were also allowed to take the equity they had to reinvest in a new property, and there was nothing in Code about forced sales.

MOTION:

Vice Chairman Foreman moved that **S 1118** be sent to the floor with a **do pass** recommendation. **Senator Ruchti** seconded the motion. The motion carried by **voice vote**. **Senator Hartgen** and **Senator Wintrow** voted nay.

H 149

Criminal Records, Disclosure. **Senator Lent** said **H 149** was crafted after three years of work with stakeholders in the judicial sector and law enforcement and accommodated many of their requests that included: protection of rulemaking for the courts, single offense limit for prosecutors, defined offenses that were eligible to be sealed, prevention of the preparation of petitions from public defenders, petition objection notices for prosecutors, and record visibility for prosecutors. **Senator Lent** said that for individuals, one time, committed a non-violent and non-sexual crime, **H 149** could help them petition for their criminal record to be sealed or expunged if there was no repeat offense during a five-year period after all conditions of their penalty were met. **Senator Lent** said 42 other states had similar rules in place, and this legislation was a good step to reduce recidivism and help one-time offenders gain greater access to housing, employment, and increased earning potential, having cited a study performed in Michigan. He clarified that, for those that had their record sealed and reoffended afterwards they would have their record reopened and the recent offense would have showed up as a second offense.

TESTIMONY:

Jodi Peterson-Stigers, testified on behalf of Interfaith Sanctuary Homeless Shelter in support of **H 149**. She said existing language in Code made it more difficult for people that committed a misdemeanor to get housing and good-paying jobs, which had led to prolonged experiences of homelessness or at shelters, both of which were big financial burdens to Idaho communities. She said this was a great step in the right direction to help people who knew they did wrong and wanted to get their lives back on the right track.

Stephanie Taylor-Thompson from Idaho Falls testified in favor of the legislation. She had been pardoned in Idaho and Montana, but was still unable to pass background checks. She had three college degrees and was working on a Masters, but her record prevented her from furthering her education or obtaining

licensing. In her work with Idaho Department of Corrections she helped serve many people that had the potential to get better employment opportunities, secure housing, and better provide for their families.

Erin Aboud spoke in support of **H 149**. She said there had been many obstacles placed in her way as she attempted to secure housing, employment, and assist with her son's education since the events of 2011 that gave her a criminal record but also led to her sobriety. She said she was only qualified to live in neighborhoods that had felon-friendly or private landlords. Her wish was to find solid employment to create financial stability and access benefits to take care of herself and her son, but the only jobs available for ex-felons paid minimum wage, offered little-to-no benefits, and surrounded her with the people she wished to stay away from.

Paul Riggins, a criminal defense lawyer from Boise and member of the Idaho Association of Criminal Defense Lawyers, was the last to testify and spoke in support. He said that people, especially when young, were prone to mistakes, and were capable of change, and many did not deserve to have their mistakes follow them forever. He said it was his belief most applications would not require a hearing, and the proposed fiscal impact was too high. For those that had drug charges, he said Idaho required the completion of a treatment program, and he assured those were not likely to remain in possession, sale, or distribution of drugs.

MOTION: **Vice Chairman Foreman** moved that **H 149** be sent to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:54 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Friday, March 10, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1148</u>	STATE JUDICIARY - Amends existing law to revise provisions regarding membership of and appointments to the judicial council, to revise a provision regarding a duty of the judicial council, to provide for certain duties of the judicial council, and to provide for nonpartisan ballots for the election of judges of the court of appeals.	Senator Lee
<u>11-0702-2201</u>	Rules Governing Safety Glazing Material (Chapter Repeal) - Proposed Rule	Senator Lakey

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 10, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 1:00 p.m.

S 1148 **STATE JUDICIARY. Senator Abby Lee** stated there was a similar bill last year that the Governor vetoed. A working group was organized during the legislative interim comprised of three legislators, three people appointed by the Governor and three people selected by the Judiciary. This bill represented about 90 percent of the agreement on the project they were assigned. **Senator Lee** explained the first change related to the judicial council membership. The current structure required the State Bar Board of Commissioners to nominate a district judge, a non- public employee attorney, and a non-public employed attorney. The proposed Judicial Council membership had the Supreme Court send a nominee, a district judge and a magistrate judge straight to the Senate. The Supreme Court would still nominate three names for a district judge, three names for a magistrate judge, whomever they chose. The Governor needed to select one person from that list. The new plan allowed the public defenders or public prosecutors to be considered for one of those positions. Two of the individuals could not be from the same area of practice. Three of those individuals would be nominated by the State Bar and then selected by the Governor and begin serving immediately on the Judicial Council. **Senator Lee** continued that this new legislation also added one more public member so that there was a balance of power between the public members and the attorneys. The Chief Justice of the Idaho Supreme Court remained the chair of this Committee. The members changed from seven to nine members and the terms of service changed from six years to four years. The new bill allowed for a staggering of new appointments. If a new confirmation was made before July 1, 2023, the term of service would go from six years to four years. **Senator Lee** discussed some of the differences between the current Judicial Selection Process and the proposed Judicial Selection Process. The current selection process required the Governor to choose a judge from the list of names submitted by the Judicial Council. The Council also determined a failed search if there were not enough applicants. The proposed selection process allowed a list of names submitted to the Governor for his consideration. If he was not satisfied with the list, a second could be initiated. The second list could be submitted along with the original list of names. The Judicial Council also determined a failed search if an appropriate applicant was not found. **Senator Lee** stated she saw significant improvement on the surveys. Currently, surveys were sent to all Bar members requesting feedback. The public was also allowed to submit anonymous comments. The Council used those comments as part of their deliberation in choosing finalists. The Governor was allowed to see them; the applicant was not. The proposed survey process would continue to

send all Bar members requests for feedback and comments about the applicants. The public also submitted comments. The comments were still confidential to the candidates but they could still see them just not know who wrote them. If a candidate recognized himself in the comments, he may choose to withdraw from the process. A new concept that was added to this proposal was the fact that our Constitution required our judges to be elected. There was a clear incumbency advantage. This proposal would say that third judicial district court judges would have two names, choose one, and then those who were unopposed would just have that name (see Attachment 1). **Senator Lee** responded to Chairman Lakey that the type of people wanted for the Judicial Council membership they were interested in, were regular people because they were looking at selection versus election.

DISCUSSION: **Senator Hart** asked if the elections for judges were going to be in May. He also asked if there were any discussion about changing it to November. **Senator Lee** said there had been no discussion of a ballot. **Senator Ruchti** commented he was part of the working group who participated on the committee last summer. He stated he saw a few differences which were discussed that the committee felt were better than what were in **S 1148**. One of the things the committee felt was important was that not all of the nominees ran through the same person. In the bill now you will see, other than the chief justice who automatically served every one else in some way, was touched by the Governor. The bill encouraged the Idaho State Bar to nominate, then send that name directly to the Senate. The thinking was to separate it out, because you could have one person picking every one and they could really stack the deck, giving no diversity of thought. The surveys were pretty close to what the committee discussed. The lawyers filled out the surveys when a potential applicant was getting ready to be chosen. They were filled out online and questions related to characteristics such as wisdom, intelligence, hard work, and similar characteristics were asked. The fear was that if one had a bad experience and was specific about it, the candidate may figure out who filled out the questionnaire. That may result in attorneys not being forthright or even being willing to fill out the questionnaire. The last difference was the committee wanted to have no more than four nominees to be from any political party. The legislature seemed to feel five was more appropriate.

TESTIMONY: **Kim Wickstrom**, Ada County State Committee Woman, explained her position and her responsibilities. She stated that part of her job was to stay in contact with the county voters and help them understand the processes through the legislative session. People wanted to know who to vote for when voting happens. She stated that Idaho was a representative form of government and officials were elected to do the heavy lifting on things. It made her question under the current law, who was appointing the judges and were they accountable to the people of Idaho. She did research and found that under current law the State Bar seemed to dominate the process of appointing judges. If that was the case, where was their accountability to the people of Idaho. **S 1148** transferred much of the power to the elected officials to our Governor and our senators, which was where it should be. They could be kept accountable with our voting. **S 1148** was a good bill.

Barrett Tetlow, Eagle, Idaho, stated **S 1148** was mild but necessary overdue reform. He added that according to the Idaho Constitution, judges were to be elected by the people. When there was a vacancy, selecting a replacement should be done by the people who were elected and accountable to the people. This bill required the Governor and the Senate, who were elected and accountable to the people, to be involved in the process of selecting judges.

Kristoffer Sperry, Meridian, Idaho, State Bar Member, commented that this was about the power of appointment and the transparency of the process. He believed the responsibility should stay with elected members of our government and not private entities.

Ken McClure, attorney at Givens Pursley, on behalf of the Idaho Liability Reform Coalition. Their concern was about accountability and transparency. The Constitution said judges were elected. In Idaho they were currently being selected and there was a need for the process to be evaluated. **Mr. McClure** shared the view that something as important as a Judiciary needed to have some public ownership and there needed to be accountability to someone for it. He spoke very positively about **H 1148** and stated that there was a very useful function to have quality control here and the Judicial Council does. The accountability of having the Governor more involved in the "who" was actually accountable to the people, will improve the relatively closed system now being used.

Senator Lee concluded stating the solution was really about the accountability and transparency that had been mentioned so many times during the discussion. There were some things missing including the judicial salaries, but the legislation was the light touch that would hopefully have more individuals willing to apply for the positions as they opened or became vacant.

MOTION: **Senator Ricks** moved to send **S 1148** to the floor with a **do pass** recommendation. **Senator Foreman** seconded the motion.

DISCUSSION: **Senator Hartgen** stated that this was a much better bill than last year and she would be voting for it. She added that Idaho had many wonderful judges who were appointed, stood for reelection and found many legislators that had been appointed and then were reelected.

Senator Ruchti said he would be voting against **S 1148** since it was not what the committee decided on. He added that as a member of the Bar, he had a vested interest in making sure that really good judges served because they serve our clients and they maintain the system of a fair judicial system. He had always felt it was appropriate that the Bar play a significant role in the judicial system process. He also felt the Governor appreciated the role they had been taking.

Senator Hart said he would be voting for **S 1148**. He was very pleased with the legislation and the changes that were made.

Chairman Lakey thanked Senator Lee for her hard work in getting the legislation to this point. She had to work with the committee and try to manage both sides of the rotunda and the Governor to get to this point with **S 1148**. A lot of time, patience and effort were required.

MOTION VOTE: **Senator Lakey** said that a motion was made by **Senator Ricks** to send **S 1148** to the floor with a **do pass** recommendation. The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** were recorded as voting nay.

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

DOCKET NO. 11-0702-2201 **Rules Governing Safety Glazing Material (Chapter Repeal) - Proposed Rule.** **Chairman Lakey** stated the presentation for this by the Idaho State Police (ISP) essentially repealed the section in its entirety. The vote was held because the window glazing bill was presented on the floor and the outcome was important. The bill was amended to take out the reference to the CFR and it passed. **Senator Wintrow** questioned if Idaho State Police were comfortable with these changes. **Chairman Lakey** indicated they were supportive of the amendment and this rule approval.

MOTION: **Senator Lee** moved to approve **Docket No. 11-0702-2201**. **Senator Ricks** seconded the motion. The motion was approved by **voice vote**.

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

Chairman Lakey announced to the Committee there would be a meeting on Friday, March 17, 2023 at 1:00 p.m. The focus would be on **H 71**.

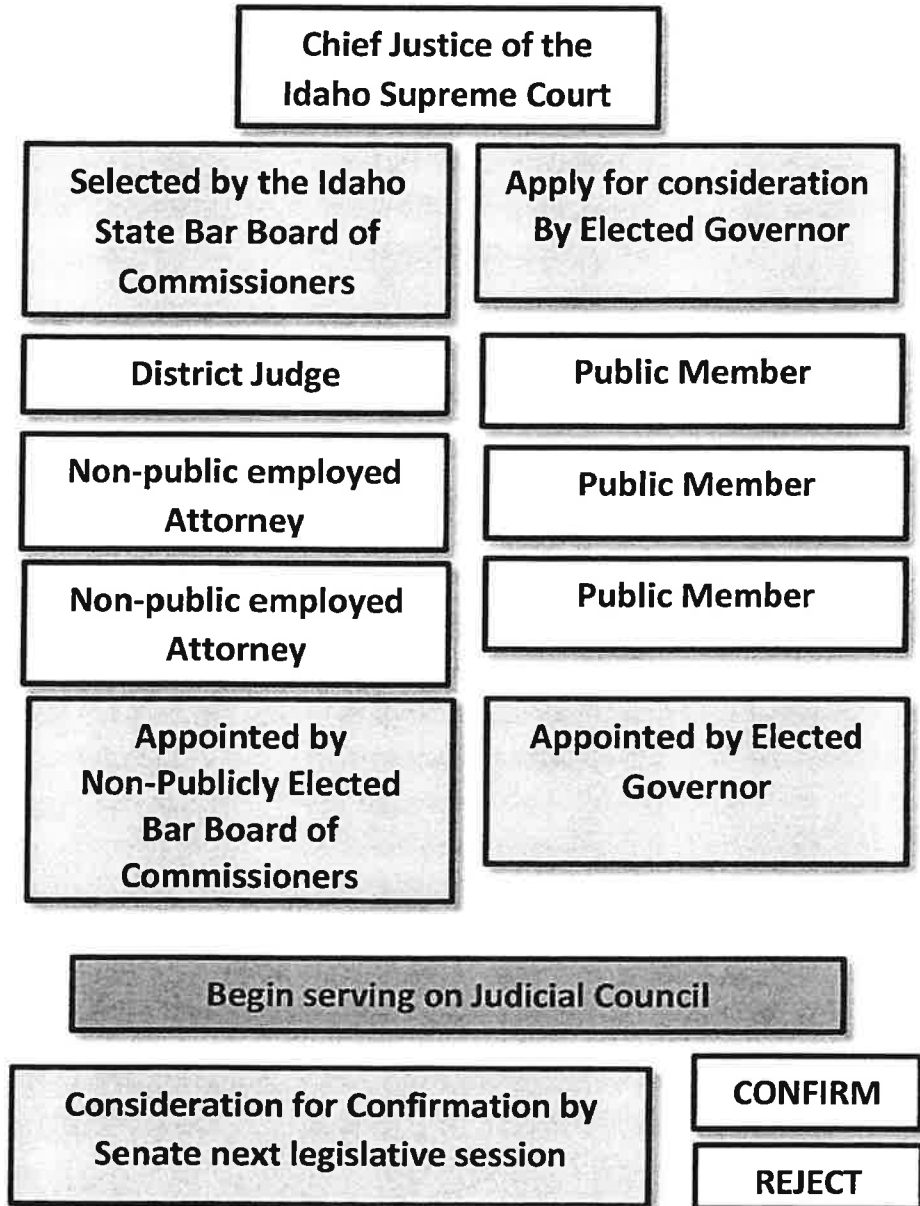
ADJOURNED: There being no further business, **Chairman Lakey** adjourned the meeting at 1:45 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

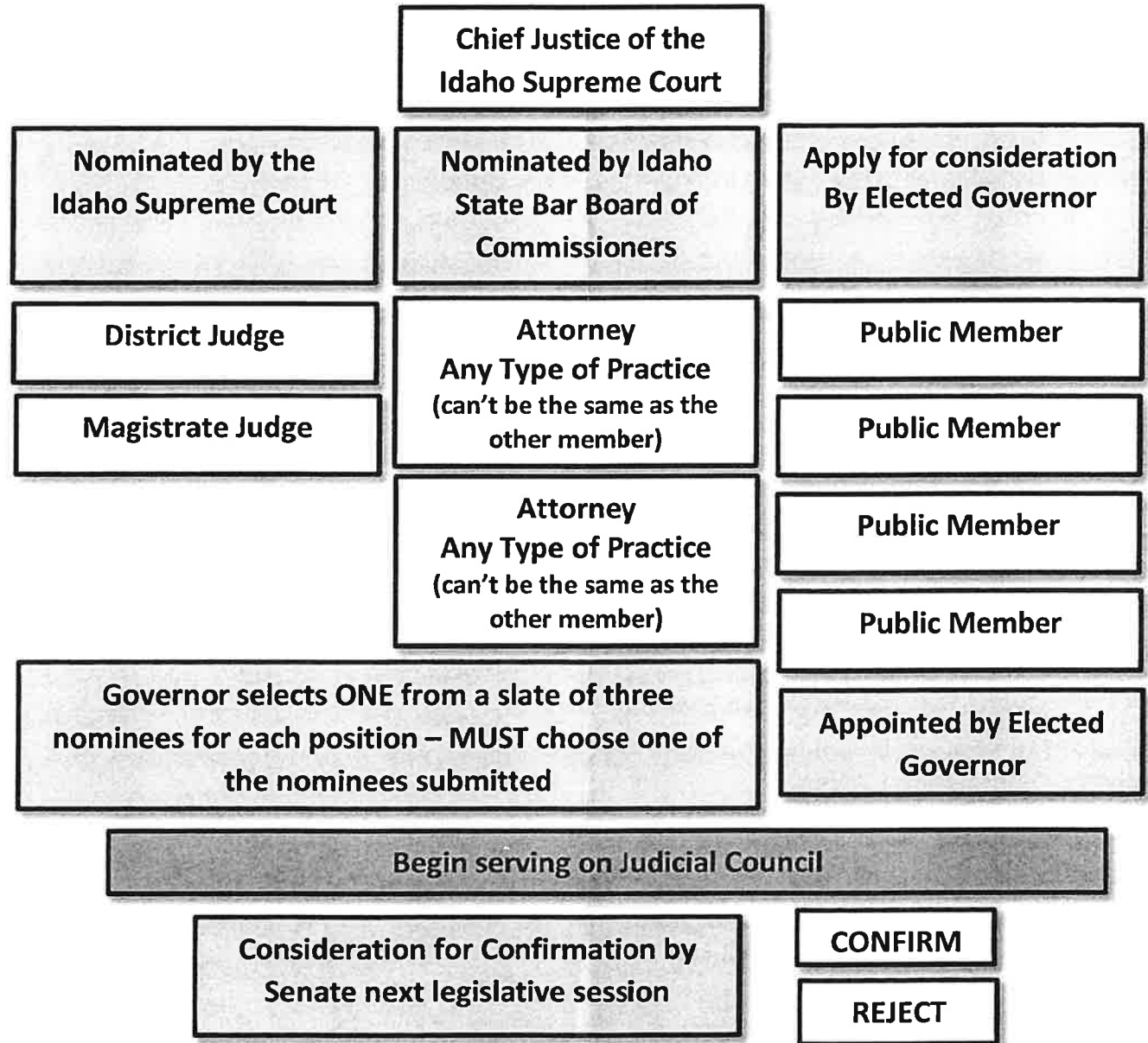
Current Judicial Council Membership (7)

Term: 6 years



Proposed Judicial Council Membership (9)

Term: 4 years (members confirmed by July 1, 2023 retain 6 year terms)



Current Judicial Selection Process

Governor's Choice:

Governor must choose a judge from the list of names submitted by the Judicial Council. The Judicial Council can also determine a failed search if they do not have enough applicants.

Surveys:

Surveys are sent to all Bar members requesting feedback and comments about applicants. The public is also allowed to submit comments. The comments are most often anonymous. *The Judicial Council uses anonymous and confidential comments as part of their deliberation in choosing judicial finalists.*

Comments are also provided to the Governor's office.

The applicant is not allowed to see the comments.

Finalists:

A list of at least **two**, but no more than four names is submitted to the Governor.

Proposed Judicial Selection Process

Governor's Choice:

The Judicial Council submits a list of names to the Governor for consideration. If the Governor is not satisfied with the first list of candidates, a second process may be initiated. This second list of names may be submitted along with the original list of nominees. The Judicial Council can also determine a failed search if they do not have enough applicants or if they want to re-do a search.

Surveys:

Surveys are still sent to all Bar members requesting feedback and comments about applicants. The public is also allowed to submit comments. **The applicant may request copies of any comments prior to the interview.** Such comments are still confidential, but the applicant has time to prepare a response or withdraw their name from consideration prior to the interview. The Judicial Council may not consider any information not provided to the applicant.

Finalists:

A list of at least **three**, but no more than four names is submitted to the Governor.

11

WASHINGTON COUNTY

STATE OF IDAHO

MAY 17, 2022

SAMPLE NONPARTISAN BALLOT

15

21

INSTRUCTIONS TO VOTER

To vote, fill in the oval (●) next to the candidate of your choice.

To vote a "Write-in", fill in the oval next to the blank write-in line and write the name of your choice on the blank write-in line.

If you make a mistake, request a new ballot from an election worker.



NONPARTISAN BALLOT

40

Official Judicial Nominating Election Ballot

41

42

JUSTICE OF THE SUPREME COURT

43

TO SUCCEED JUSTICE

Colleen D. Zahn
(Vote for One)

Colleen D. Zahn

TO SUCCEED JUSTICE

Robyn M. Brody
(Vote for One)

Robyn Brody

JUDGE OF THE COURT OF APPEALS

TO SUCCEED JUDGE

Molly J. Huskey
(Vote for One)

Molly J. Huskey

54

THIRD JUDICIAL DISTRICT COURT JUDGES

TO SUCCEED JUDGE

Thomas W. Whitney
(Vote for One)

Shari Dodge

Thomas W. Whitney

61

THIRD JUDICIAL DISTRICT COURT JUDGES

TO SUCCEED JUDGE

Andrea L. Courtney
(Vote for One)

Andrea L. Courtney

TO SUCCEED JUDGE

Davis Frederick VanderVelde
(Vote for One)

Davis F. VanderVelde

TO SUCCEED JUDGE

Gene A. Petty
(Vote for One)

Gene A. Petty

Att. 1(c) 3-10-23

NOTE: The order of the candidates on this sample ballot may not necessarily reflect the rotation in your precinct on election day.

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Monday, March 13, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1156</u>	JUDGES - Amends existing law to revise a provision regarding the salaries of judges.	Jason Spillman, Legal Counsel, Administrative Office of the Courts
<u>S 1158</u>	JUDGMENTS IN CIVIL ACTIONS - Amends existing law to revise an exemption regarding motor vehicles and to define a term.	Senator Anthon
<u>H 186</u>	METHODS OF EXECUTION - Amends existing law to provide for execution by firing squad and to provide for certain requirements prior to an execution.	Senator Ricks
<u>H 187</u>	HEALTH - Repeals and adds to existing law to provide authority to administer CPR or use an automated external defibrillator and to provide legal immunity.	Rep. Ehlers

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 13, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 1:00 p.m. **Chairman Lakey** announced **H 187** would be heard first and then return to the agenda as listed.

H 187 **HEALTH - Repeals and adds to existing law to provide authority to administer CPR or use an automated external defibrillator and to provide legal immunity.** **Representative Ehlers** explained the first part of this legislation repealed existing regulations to incentivize more businesses to have Automated External Defibrillators (AED's) in the workplace. The second part was the addition of Good Samaritan language for immunity into State code to protect those using an AED in an emergency situation.

DISCUSSION: **Senator Wintrow** asked if the numerous regulations **H 187** proposed to repeal were included in the bill's language. **Representative Ehlers** confirmed they were.

Senator Ricks asked what the reasoning was for the drafting of the bill. **Representative Ehlers** said he previously worked for a company that worked with software and technology associated with AED's, and that exposure made him aware of the improvements made to the operability of those devices. That paired with the rise in heart problems in the United States, with over 360,000 cases of sudden cardiac arrest per year, was his inspiration.

TESTIMONY: **Erin Bennett**, Government Relations Director with the American Heart Association, testified in support of **H 187**. **Ms. Bennett** said that, for every minute that passed without treatment, someone's likelihood of survival would drop by 10 percent as a result of a cardiac event. She said that was an important consideration for rural Idaho, where emergency response times were 30 minutes or more. **Ms. Bennett** said she had worked with the Department of Education on rules that would require CPR and first aid training as a requirement for high school graduation.

MOTION: **Senator Ricks** moved to send **H 187** to the floor with a **do pass** recommendation. **Senator Ruchti** seconded the motion. The motion carried by **voice vote**.

S 1156 **JUDGES - Amends existing law to revise a provision regarding the salaries of judges. Jason Spillman**, Legal Counsel, Administrative Office of the Courts, presented **S 1156** as a bill aimed to address the competitive disadvantage Idaho judges faced in terms of compensation. **Mr. Spillman** said Idaho judges were paid less than their peers in neighboring states, with salaries and benefits that lagged far behind the national average which caused many to become private sector attorneys. The bill language included raises for appeals, district, and magistrate judges of 7.5, 7.8, and 8.5 percent, respectively. Supreme Court justices were to receive a 7 percent raise as well.

MOTION: **Senator Ruchti** moved to send **S 1156** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

S 1158 **JUDGEMENTS IN CIVIL ACTIONS - Amends existing law to revise an exemption regarding motor vehicles and to define a term. Senator Anthon** said the inspiration for the bill was to stop a trend of conflicting results in case law that resulted from language surrounding exemptions for debtors that surrendered property to their creditors. The bill cleaned up language and added a new definition of motor vehicle. **Senator Anthon** asked the Committee to send **S 1158** to the **14th Order** of business for possible amendment.

DISCUSSION: **Senator Wintrow** asked for an example of vehicles being involved in collection situations and what was involved with the exemption. **Senator Anthon** said the Courts had determined a debtor that was in possession of an inoperable motor vehicle at the time of collection would lose it. That same practice was extended to those that were not licensed or registered, which inspired the legislation. A goal of the legislation was to protect debtors from losing their vehicles in those instances with an update to the definition in State Code.

MOTION: **Senator Ruchti** moved to send **S 1158** to the **14th Order** of business for possible amendment. Seconded by **Senator Hart**. The motion carried by **voice vote**.

H 186 **METHODS OF EXECUTION - Amends existing law to provide for execution by firing squad and to provide for certain requirements prior to an execution. Senator Ricks** said the intent for **H 186** was to amend State Code to add the firing squad as an alternative for lethal injection in the event supplies were unavailable for an execution within five days after the issuance of a death warrant. He said that Idaho had eight inmates on death row, with the potential for several more as a result of the high-profile incidents in Moscow and Rexburg, which made this legislation necessary if Idaho were to satisfy its constitutional and humane responsibility to have an alternative available. **Senator Ricks** said he spoke with the Director of the Department of Corrections, who said they were willing and able to carry out that responsibility if the legislation passed. He said the only additional cost to the State would be the creation of a facility for witnesses to attend, which was a constitutional obligation. **LaMont Anderson** with the Attorney General's Office took Senator Ricks' place to provide additional details and respond to questions.

DISCUSSION: **LaMont Anderson**, Lead Deputy Attorney General for the Capital Litigation Unit, said death penalty opponents had pressured drug manufacturers to not supply the materials needed to perform executions in states where it was legal, and that has handicapped Idaho's ability to carry any out. He said the primary mode of Capital Punishment in Idaho was hanging until 1978, at which point it was changed to lethal injection. In 1982, firing squad was added as an alternative, until a U.S. Supreme Court decision brought that practice to a halt in 2009.

Senator Anthon asked what methods of execution were legal, per the Court's determination. **Mr. Anderson** said it was his understanding that lethal injection, firing squad, and electrocution were the legal methods, and there had been conversations about an adjustment to the blend of drugs administered in a lethal

injection.

Senator Wintrow asked if the performance of a firing squad execution was considered humane. **Mr. Anderson** cited a majority opinion from *Glossip v. Gross* that determined the firing squad method was relatively quick and painless, and an expert declaration from a case in 1983 supported that.

Senator Ruchti asked if there were any other states that were limited in their ability to perform lethal injection executions due to an inability to access the necessary drugs. **Mr. Anderson** said Texas could be in that position soon, but he was unaware of any other states that could be in the same situation.

TESTIMONY: **Randy Gardner**, brother of Ronnie Lee Gardner, the last person in the United States to be executed by firing squad, testified that such a form of death is cruel and unusual punishment. **Mr. Gardner** explained the inhumanity that surrounded the proceeding, the trauma involved with the cleanup and the fallout from being involved in any way with taking the life of another person. He pleaded with the Committee to not let the firing squad be the form of death penalty used in Idaho.

TESTIMONY: Johnathan Baldauf, Colton Bennett, Amy Dundon, Randy Gardner, Mary Ruckh, Juandalynn Taylor, and Frank Thompson testified in **opposition** to **H 186**. The group expressed concern about the legal justification for the legality of firing squad executions. A 50-year court case in California over a forced firing squad execution on an inmate that did not consent raised their question of whether that response was a determination of that method of execution being cruel and unusual. Per case law, the original case that supported the use of firing squad executions came in 1878 in the then-Utah Territory. It was said at that time, when methods like hanging were used and now considered unethical, perhaps that same approach should have been taken during the review of firing squad executions, due to its cruel nature and the carnage left behind. Another consideration that was mentioned was the emotional impact on the emotional health of the Department of Corrections personnel that would be assigned that responsibility. They suggested that, since the Attorney General asked for the firing squad method to be discontinued in 2009, Idaho should continue to follow that recommendation.

MOTION: **Senator Foreman** moved that **H 186** be held in Committee subject to call of the chair. **Senator Ruchti** seconded the motion.

SUBSTITUTE MOTION: **Senator Lee** made a substitute motion to send **H 186** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. A roll call vote was taken. **Senators Lee, Anthon, Ricks, Hart, and Chairman Lakey** voted aye. **Senators Hartgen, Wintrow, Ruchti, and Vice Chairman Foreman** voted nay. The motion carried and **H 186** was sent to the floor with a **do pass** recommendation.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:08 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Wednesday, March 15, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval for Minutes of February 13, 2023	Senator Hart
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Reappointment of Brian Marx of Boise, Idaho to the Sexual Offender Management Board for a term commencing January 1, 2023 and expiring January 1, 2026.	Brian Marx
<u>S 1157</u>	JUDGES - Amends existing law to revise provisions regarding judges' retirements and to provide that certain judges shall not be eligible to serve as a senior judge and may not elect to receive retirement compensation.	Senator Lee
<u>H 236</u>	STATE PUBLIC DEFENDER ACT - Amends, repeals, and adds to existing law to establish the State Public Defender Act.	Rep. Weber

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 15, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 1:00 p.m.

MINUTES APPROVAL: **Senator Hart** moved to approve the minutes of February 13, 2023. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT: **Committee Consideration of the Gubernatorial Reappointment of Brian Marx** to the Sexual Offender Management Board. **Mr. Marx** asked the Committee to approve his request for reappointment. **Senator Wintrow** asked what personal skills or experience would make him a good match for this position. **Mr. Marx** responded he had been a criminal defense lawyer for 15 years, a felony trial lawyer since December of 2010, and handled many cases including sex offenses. He added he had a good knowledge of how the Board worked from his prior experience. **Senator Hart** inquired how the board was comprised and some typical issues they dealt with. **Mr. Marx** listed the board composition and explained one of their upcoming projects was working on coming up with a tiered registry system. **Chairman Lakey** thanked Mr. Marx for his service and indicated the vote would be taken at the next meeting.

S 1157 **JUDGES - Amends existing law to revise provisions regarding judges' retirements and to provide that certain judges shall not be eligible to serve as a senior judge and may not elect to receive retirement compensation.** **Chairman Lakey** asked those who would be testifying to limit their comments to 2 minutes to allow others to testify. He reminded the group that when they testify, they go through the chair when they ask and answer questions.

Senator Lee stated Plan B was an alternative retirement system for judges not including magistrates. It applied to Supreme Court Justices, appellate judges and all district judges. Plan B created an incentive for justices and judges to retire early. She added there was a challenge to recruit and retain new district judges. The courts had said that salary was part of the issue. Judges were being incentivized financially to leave their jobs early which caused them to be lost at the best, brightest and most experienced time in their careers. If they did not take Plan B and continued to work, they retired at 75 percent. If they became a senior judge, but under Plan B, they got 75 percent of their salary from work, at least 60 days, 75 percent of their salary, and then their retirement continued to accrue. It would make no sense to stay on the bench. The Plan B proposal encouraged judges to complete their elected term. In return they were considered eligible for Plan B. The statute did not guarantee that any judge would get to be a senior judge. Much of the statutes were looked at prospectively and some of the guarantees were promises that could not be kept. **Senator Lee**

added that she felt removing the Plan B provision if judges did not complete their term would incentivize judges to stay on the bench, and it would encourage the positions to be opened when there were vacancies.

Senator Hart asked if there was a choice in a retirement path. **Senator Lee** responded that the senior judge route to retirement was to retire, but they could work at least 60 days a year and get 75 percent of their annual salary. The Plan B Retirement option enabled those who may not be eligible for full retirement to quit, become a senior judge and take the Plan B status and work at least 60 days a year. This Plan B program increased the burden for the legislature to continue funding the judges retirement system.

Senator Foreman added he had a concern that Plan B may be moving the goalposts on people who had been employed for many years, had a retirement plan, and may be planning on modifying it slightly. He questioned if there was any plan to grandfather people into the Plan B option. **Senator Lee** stated that there were two issues related to grandfathering. The first being there would need to be agreement that this was a perpetual right that the Legislature could not take away. Second, it would be almost a 20 year time frame to get this removed or changed. The courts needed district judges immediately. With Plan B the judges get the 87 ½ percent and get to stay on the bench doing the work they love. **Senator Foreman** asked Senator Lee if she would be opposed to sending this legislation to the **14th Order**. She responded that she would respect whatever the Committee wanted to do.

TESTIMONY:

Chief Justice Bevin, Executive Head of Idaho's Judicial Branch. **Justice Bevin** stated that **S 1157** changes were unprecedented. State retirement systems had historically been changed prospectively. When changes were made prospectively, the changes took effect for judges taking the bench after the changes took place. **S 1157** did the opposite. The concern was that the judges took the bench with an expectation that the financial plan they made while making the decision to become a judge cannot be reduced during their time of service. Their expectations were that their assurances would be honored by the commitment of the State of Idaho back to them. **Senator Lakey** reiterated that the justices main concern was related to the prospective nature of the change.

Judge David Gratton, Idaho Court of Appeals. **Mr. Gratton** said he was at the end of his 15 years of service, and he felt the changes in Plan B should be made prospectively. He had relied on the track record of the Judiciary in making the changes prospectively. **Senator Wintrow** asked if Judge Gratton saw Plan B having a negative impact on hiring more judges. **Judge Gratton** responded he felt it would have a negative impact. The people who would be hired as a judge were typically those with successful practices and would take a financial hit. He also indicated that if there was a pattern of not following through on promises made, it would be problematic.

Judge Cynthia Wallace, District Judge, Fourth Judicial District, stated she was opposed to **S 1157**. She felt this legislation would negatively affect her as well as every other district and appellate judge who took the bench under the current Judges Retirement Fund. If the Legislature chose to amend the retirement program of district and appellate judges, the bill should be applied prospectively so it did not impact the current agreement. **Judge Wallace** added that the mindset when she went into public service was always, you are not going to make the money you would make in private practice, but the government will take care of you through your retirement. She relied on that and always believed in it.

Judge Michael Reardon, District Judge, Fourth Judicial District, stated he was appointed as a magistrate the end of 2004 and took office as a district judge in 2015. He had applied for and been approved for Plan B. His retirement target date was October 1st. **Judge Reardon** said his priorities had changed and he would like to retire with Plan B because it would give him a chance to continue serving and still spend more time with his family. He felt this legislation should be made prospectively.

Judge Cindy Meyer, Administrative District Judge, First Judicial District, said she was opposed to **S 1157** added that she left a fairly lucrative practice because she wanted to be a judge. She looked at the salary and the benefits and recognized that the health and retirement benefits were good. She had relied on it and looked forward to it. If the legislation were approved, she asked to have it go through prospectively.

Senator Lee assured the Committee that she would be happy to do their will. She reminded the Committee that almost every judge was selected for Plan B, but there were no guarantees. It was discretionary.

Chairman Lakey asked Senator Lee to describe what was broken with the current program. **Senator Lee** said there were two problems. The system had been created as a financial incentive to leave their term early. There was an expectation the voters had that one would complete their term. If one does not want to complete the term, then retire. An additional incentive was added for an incomplete term by adding the additional 12 ½ percent pay incentive.

MOTION: **Senator Anthon** moved to send **S 1157** to the **14th Order** of business for Possible Amendment. **Senator Foreman** seconded the motion.

A discussion was held among the Committee members relating to support of the motion to send the legislation to the **14th Order**. Those reasons included; a separation of powers issue; losing Plan B may cause a need for more judgeships to cover the same amount of work; it was very difficult for judges to return to private legal practice; and, salaries high enough to retain the judges.

MOTION VOTE: All in favor of sending **S 1157** to the **14th Order of Business** for Possible Amendment, indicate by saying aye. Motion carried by **voice vote**.

H 236 **STATE PUBLIC DEFENDER ACT - Amends, repeals, and adds to existing law to establish the State Public Defender Act.** **Representative Jon Weber** introduced **H 236** and explained it removed the responsibility and the liability of public defense from the counties and moved it to the State. It eliminated the Public Defense Commission and established a State Public Defense Office. It outlined the process of appointing a state public defender and the accompanying duties and it established seven public defense offices one in each judicial district. It outlined the process to appoint a district public defender and the required duties. The last major responsibility was the appropriation of a one time money of \$4,467 million dedicated to the transition from a public defense commission to establish the State Public Defender Office.

Senator Foreman asked Representative Weber if he could clarify a bit about a lack of political independence with this legislation and a lack of proper funding. **Representative Weber** explained that \$36 million was from the counties that they currently spend across the state on public defense. The other \$12 million was what the State added to the Public Defense Commission. The \$48 million was the amount nine months into the fiscal year so adding another three month amount would make the budget approximately \$62-\$63 million. The State was growing so they would need to go through the JFAC process to receive added funds as they were needed. Regarding the political independence concern, the Governor did appoint the State Public Defender. To help weaken the political independence they had created a seven member board, one member from each district, who would come up with a list of 3-5 names to recommend to the Governor to make that recommendation. Once the appointment was made the meetings would not be held often. **Senator Foreman** questioned if there were other states using a similar system that had worked well. **Representative Weber** responded there were none similar to what was being proposed by **H 236**. **Senator Hart** asked if our system was broken. **Representative Weber** explained there were a lot of good things happening in public defense, but there were areas that needed help. He added they were going to take all the good things and build upon them. **Senator Hart** questioned the funding source. **Representative Weber** stated the \$48 million is firm for public defense for on-going funding every year. Additional funding will have to be added through the legislative JFAC process.

TESTIMONY:

Leo Morales, Executive Director, ACLU of Idaho, spoke in opposition to **H 236**. **Mr. Morales** commented that he would be very short because he had submitted a multi-page document written testimony that outlined their concerns and recommendations regarding **H 236** (see Attachment 1).

Chairman Lakey asked if the existing rules relating to capital qualifications stayed in place for another 18 months. **Mr. Morales** responded that it was unclear in the legislation and they wanted to make sure that it was clearly expressed in the bill and not accidentally removed.

Seth Grigg, Executive Director, Association of Counties, spoke in support of **H 236**. **Mr. Grigg** explained that this legislation was a result of a collaborative effort of the Governor's Office, Representatives Weber and Cannon, county commissioners and public defenders. This legislation looked very different than the original draft. **Mr. Grigg** gave a few comments relating to the funding for the new Public Defender Act. The \$36 million figure was guaranteed in statute. That amount came from historical data up through the year 2021. The \$12 million funds were appropriated by the Legislature for the Public Defense Commission to operate that were passed through to counties. **Mr. Grigg** noted that the expenses for Public Defense were basically unknown and the legislature would need to appropriate additional funds as needed in the long term.

Eliza Massof, attorney, whose clientele consisted primarily of lower salaried individuals who were charged with first degree murder when the state was seeking the death penalty. She spoke in opposition to **H 236**. Ms. Massof felt very strongly that the Governor had too much power because his position enabled him to make so many political appointments. She was convinced that passage of **H 236** would give far too much power to the Executive branch to the point where people would be afraid to testify without fear of job termination. **Ms. Massof** stated this legislation was missing several key components. She asked to slow the process down and get the legislation right the first time.

Aaron Bazolli, Chief Public Defender, Canyon County, spoke in support of **H 236**. **Mr. Bazolli** stated he was going to comment on some questions people were asking relating to the legislation. **Mr. Bazolli** said relating to capital defense, there was not anything in the statute, but there was a suggestion that they would be appointed to the team, which was an American Bar Association standard in capital defense crimes. The structure including more than 300 full time county employees wondering where they were going to be, what they were going to be doing, and were they going to be state employees. It appeared they were going to be state employees. This was going to be a massive undertaking that someone was going to have to address. After studying every state and the structure of their public defense commission, **Mr. Bazolli** had seen the same problems. If it was not properly funded, given enough attorneys, enough funds to handle proper case load and resources, it did not matter who you had, where you had them, who ran it, it was going to fail. This legislation needed to be passed now so that for the next 18 months work could be done in all of these areas before the State took over.

Representative David Cannon, Public Defender. **Representative Cannon** spoke in favor of **H 236**. He stated that when H 735 was passed there was not a clear path on how it was going to take public defense from the counties and give it to the state. No one seemed to know what to do with contract public defenders versus full time public defenders. A one size fits all approach seldom works for most communities. **H 236** was written so it protected the status quo as everyone began this new type of organization. **Representative Cannon** was concerned about the amount of undue political influence but he felt this bill had provided a fair amount of insulation and protection against undue influence of the Executive branch.

MOTION: **Senator Foreman** moved to hold **H 236** in Committee subject to the Call of the Chair.

SUBSTITUTE MOTION: **Senator Lee** proposed a Substitute Motion and moved to send **H 236** to the floor with a **do pass** recommendation. **Senator Hartgen** seconded the motion.

DISCUSSION: **Senator Wintrow** commented the Constitution stated that there was an obligation to protect the Sixth Amendment rights and people would hold the Legislature accountable for that. **Senator Ricks** added that the time that would be available to work on fine tuning the process would be very helpful. Both **Senator Wintrow** and **Senator Ricks** supported the Substitute Motion.

Senator Hart stated he would not support the **do pass** motion because he did not feel there had been enough testimony heard and the legislation had been too rushed. **Senator Foreman** said he would not support the substitute motion because he felt the State would have too much control over the system. He thought that the system would be better managed and operated by the people who developed it.

MOTION VOTE: **Chairman Lakey** concluded it was the State's constitutional obligation for public defense. He said **H 236** was a good compromise because there would be a State office and there would be local people doing work on the ground level. He would support the Substitute Motion. We have a Substitute Motion from **Senator Lee** to send **H 236** to the floor with a **do pass** recommendation. The motion carried by **voice vote**. **Senators Hart** and **Foreman** both asked to be recorded as voted nay.

ADJOURNED: There being no further business, **Chairman Lakey** adjourned the meeting at 2:15 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary



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Mr. Chairman and Members of the Committee:

The American Civil Liberties Union of Idaho and the American Civil Liberties Union (collectively, "ACLU") submit the following comments regarding House Bill 236, the "State Public Defender Act."

The Statement of Purpose describes this bill as a response to the Idaho Supreme Court's holding that the state remains liable for inadequate provision of public defense in this state under the Sixth Amendment of the US Constitution, and as a means to "affect" the class action lawsuit that resulted in that ruling before it is "scheduled to go to trial early next year." The ACLU represents, and has represented, the class of indigent defendants in Idaho who have for many years been prosecuting the *Tucker v. State of Idaho* case to which the Statement of Purpose refers. Much to the ACLU's disappointment, the terms of the bill, as currently drafted, fall far short of establishing a system that can meet constitutional muster or that will avoid a trial in that case, and will only perpetuate the systemic problems underlying the claims in that litigation. The ACLU's principle concerns regarding the bill are set forth below:

1. The Bill Fails to Secure Defender INDEPENDENCE (19-6004(4), (6) & (7), 19-6007, 19-5904 and 19-847(6) & (7))

Ensuring that public defense is independent from judicial and political influence is paramount to achieve a constitutional system. Political and judicial independence is the very first among the American Bar Association's TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, the most authoritative national standard on such systems. The Sixth Amendment Center, which the Idaho Legislature has invited to advise it several times over the past decade during the Legislature's work to remedy Idaho's public defense system, states that "Independence of the defense function is the first of the ABA Principles because without it, most of the other ABA Principles are unobtainable." Sixth Amendment Center, "The preeminent need for independence of the defense function," <https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/the-preeminent-need-for-independence-of-the-defense-function-aba-principle-1/>.

To mitigate independence concerns related to the governor's selection of the state public defender, governor's appointees to the role should serve for a renewable term of five years, rather than four as the bill currently provides, so that they are not destined to come and go at the whim of each newly elected governor. Again, a similar arrangement for hiring the State Appellate Public Defender should be put in place.

The use of a panel of district magistrate commissioners selected by the governor to nominate for the governor a slate of candidates for the State Public Defender position is also problematic and creates independence concerns. These same independence concerns are raised by the bill's process for hiring District Public Defenders, which empowers the district magistrates commission to hire District Public Defenders, with only permissive input from the State Public Defender. Both of these provisions are contrary to the Sixth Amendment's mandate that the



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public defense function, including the selection of defense counsel, be free from political influence.

To maximize independence, as the Sixth Amendment requires, district magistrate commissioners should be removed from both processes. District bar associations should instead each select a private criminal defense lawyer to serve on a body to select a shortlist from which the governor will select the State Public Defender and should also assist the State Public Defender in selecting District Public Defenders.

The bill's grant of authority to the governor to remove a State Public Defender for, among other reasons, "good cause shown," fails to provide the State Public Defender with due process or a hearing. This again infringes on the constitutionally mandated independence that the public defense function must have, and should be changed.

While American Bar Association standards referenced in the bill require that individual defenders' independence from political and judicial influence must be protected, the bill does not expressly make clear that county commissioners, prosecutors and judges should play no role whatsoever in the selection, oversight, financing or otherwise of public defense services. This is particularly important where, unless the bill is changed, contracts with public defenders in numerous counties who are not employed by the state may remain in place for six years.

2. The Bill Fails to Mandate the STANDARDS to be Maintained (19-6005(1), (4), (5), (7), (8) & (9))

The bill authorizes the State Public Defender to implement the American Bar Association's most current maximum attorney caseload standards for effective representation, but it does not make clear that those limits are not to be exceeded. That is not enough in our view to assure that every indigent defendant's case receives adequate attention and representation. The legislature should make clear that Idaho's indigent defenders are not to take on cases that exceed workload capacities prescribed by the ABA by reference to national workload limits, including the numerical caseload limits adopted by the National Advisory Commission on Criminal Justice Standards and Goals (NAC) until the ABA replaces those. The bill should also make clear that the State Public Defender has the "responsibility," and not just the "power," to implement, monitor compliance with, and enforce those national workload standards.

Moreover, while mandating compliance with the ABA's caseload standards for employed full-time front-line defenders who have neither supervisory and administrative responsibilities or private law practices on the side is a positive step, many public defenders have either or both, particularly if they are providing public defense pursuant to contract or have significant management responsibility in institutional public defense offices. For this reason, the bill should make clear that caseload standards must be adjusted - at least for defenders who devote less than all of their work time to the representation of indigent defendants - based on the extent of non-direct client workload responsibilities of individual attorneys providing public defense. The bill



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should also require that workload and caseload standards be monitored and reported, and that compliance be enforced by the State Public Defender.

While the bill's express recognition of the most current ABA standards for the provision of public defense in Idaho, generally, is an excellent step in the right direction, its failure to be specific in some respects about what minimum standards of defense service the State Public Defender is statutorily obligated to provide leaves open too much room for the perpetuation of systemic failure. The bill should make clear, for example, that the state must ensure that defenders have time and private space for confidential client meetings, represent each client throughout all proceedings in their case, and receive regular reviews and supervision to assure compliance with applicable indigent defense standards. The bill should also make clear that it is the State Public Defender's responsibility to monitor and enforce compliance with all of the standards adopted for public defense in Idaho, and not just within the State Public Defender's power to do so.

3. The Bill Fails to Assure Capable Experienced LEADERSHIP (19-6004(2) & (8), 19-850A and 19-5904)

The bill establishes a new role of "State Public Defender" to head the "Office of State Public Defender" and oversee the delivery of public defense services state-wide. In spite of this immense and critical responsibility to meet constitutional expectations, the bill sets inadequate minimum qualification requirements for the role. To assure competency and capability at this senior leadership level, the bill should require at least seven years of criminal defense practice experience, at least five years of effective leadership and personnel management experience, and a demonstrated longstanding commitment to high quality public defense consistent with national standards.

While the bill provides that compensation is to be set by the governor, it does not – but should – also make clear that such compensation should be consistent with amounts paid to other state employed attorneys of similar experience, stature, and responsibility.

Notably, the bill perpetuates similarly inadequate qualification standards for the State Appellate Public Defender. These too should be adjusted upward to ensure that only highly qualified candidates are hired after the conclusion of the term of the incumbent in that role.

4. The Bill Fails to Prescribe Hiring and Supervision of Necessary Non-Lawyer SUPPORT (19-6006)

As it is widely known that the availability of social workers for indigent defendants can both aide in the provision of public defense by attorneys and significantly decrease the cost of such defense, social workers should be added to the list of non-lawyer personnel to be employed in the district public defense offices of the State Public Defender.

And while the bill provides that each District Public Defender is to supervise and assure compliance by defending attorneys in that district, it should also make clear that each district



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must also employ such investigators, social workers, paralegals, and other support staff and assistants as are currently deemed necessary by national standards for the delivery of effective public defense, and that they too must be supervised by the District Public Defender.

5. The Bill Fails to Address County Defense-by-CONTRACT Problems (19-6005(1) and 19-6019(2))

The bill allows the contracted-for public defense approach used by some counties to remain in place for years without otherwise addressing the flaws thereof that are inconsistent with ABA standards (e.g., lack of workload controls, inadequate access to investigation and expert resources, economic disincentives or incentives to effective representation). Solutions include (i) shortening the current 6-year sunset provision; and/or (ii) otherwise implementing reforms/controls to address these defects.

The bill also fails to eliminate contractual arrangements that effectively work around the existing state ban on fixed fee contracts. To reinforce the defender’s primary obligation to his or her client, the bill provision that currently prohibits a pricing structure with a “single fixed fee for the services of the defending attorney and client-related expenses” should be revised to expressly prohibit a “fixed fee either for the services of the defending attorney over any length of time or for client- or case-related expenses of any kind.”

6. The Bill Fails to Define PARITY Between Defenders and Prosecutors

The bill should contain express provisions to ensure that the state public defender—and attorneys employed by that office— have access to similar investigative, expert, and other support as is available to state prosecutors and are paid salaries that are commensurate with the amounts paid to other state employees (e.g., prosecutors) with similar experience, stature and responsibility.

The bill should also make clear that the legal services provided by public defenders to indigent persons accused of crime must be commensurate with those available to nonindigent persons.

7. The Bill Fails to Clearly Mandate the Availability of TRAINING and Compliance Requirements (19-6005(5))

While the bill empowers the State Public Defender to provide case type specific training and continuing legal education to public defenders, it fails to mandate such training or monitoring to assure defenders have appropriate skills, training, and experience to handle assigned cases and are in compliance with specified and clear standards. Stronger language is needed to ensure training is readily available to defending attorneys and is supportive of their compliance with the relevant standards.

8. The Bill Fails to Ensure Continuation of CAPITAL DEFENSE Qualifications (19-6008(4) and 19-5905(2))

The bill would rescind capital defense qualifications, which are currently provided in PDC administrative rules, in 2024, without providing any certainty regarding their



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replacement/retention. The administrative rules for capital defense qualifications should be expressly retained in the bill until such time as they are rescinded, replaced, or reaffirmed by the State Public Defender. It also appears that the bill would essentially sunset State Appellate Public Defender services for capital crimes along with the discontinuation of the Capital Crimes Defense Fund. This may be an unintended result of the current draft bill, but if not, it is incredibly problematic.

9. The Bill Continues to Shift the Cost of Public Defense to Indigent Defendants (19-6011(7) and 20-514(4) & (7))

The bill includes provisions making convicted indigent defendants (and the families of juvenile defendants) liable for reimbursement of the costs of their defense, whether they are found guilty or accepted a plea deal. While relief may be had if such liability would cause “manifest hardship,” these reimbursement provisions should simply be eliminated entirely as illogical (by definition, such persons are indigent) and overreaching (defendants accept plea deals for many reasons unrelated to guilt or innocence, and such deals actually relieve the state of significant indigent defense costs).

10. The Bill Fails to Provide Adequate FUNDING for a State-Wide Public Defense System

Finally, while the funding mechanism for the new model of public defense is laid out in different legislation, this bill’s Statement of Purpose states that \$48 million is to be made available annually to fund public defense across the state beginning in FY25. Given recognized national standards for the provision of constitutionally effective public defense, and the bill’s mandate that they be met, this level of public defense funding is already inadequate. The now outdated information we have on the current system suggests that a constitutionally adequate system would cost twice that, absent some effort to decriminalize minor offenses. Without adequate funding, this “new model” for public defense in Idaho is doomed to failure, this legislative effort will end up being a missed opportunity, and ACLU and its *Tucker* indigent defendants plaintiff class will be forced to continue to seek vindication of their Sixth Amendment right to counsel in Idaho through the courts.

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Friday, March 17, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>H 71</u>	CHILD PROTECTION ACT - Amends existing law to revise provisions regarding the crime of genital mutilation of a child.	Senator Den Hartog

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 17, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 1:05 p.m.

Chairman Lakey shared that the Committee had received hundreds of e-mails on **H 71** and he appreciated their interest in this important issue. He explained the hearing was to be carried out with a high level of decorum and respect to those who were participating. He said the Committee room was no place for high school sporting event behavior, and no intimidation or attempts to influence or distract people that testified was not acceptable. **Chairman Lakey** asked those testified to share their own opinions and not attack the opinions of others.

H 71

CHILD PROTECTION ACT. Senator Den Hartog explained to the Committee what this legislation did. She enumerated the following elements of the bill: 1) Established protections for children under the age of 18 from irreversible pharmaceutical and surgical interventions for the purpose of altering the appearance of a child's sex. 2) Prevented the off-label use of puberty blockers and cross sex hormones for the purpose of treating gender dysphoria 3) Prevented the removal of healthy organs and body tissues 4) Did not prevent the use of puberty blockers for early on-set puberty 5) Did not prevent medical treatment for medically verifiable genetic disorders of sex development, intersex disorders, or other issues for which the medications were authorized. The main reasons for the passage of this bill were the potential for lifelong sterility and sexual dysfunction and a lack of research that demonstrated the long term effects of puberty blockers, cross-sex hormones, and their safety in use for gender dysphoria treatment. **Senator Den Hartog** explained there was a piece of Code in **H 71**, established by a bill that passed a few years ago, that addressed female genital mutilation. After discussion, it was decided the idea to combine those two types of legislation together was not the right course of action. She suggested sending **H 71** to the 14 Order for possible amendment. The reason for this suggestion was to have that section of Code left alone. The female genital mutilation bill also prohibited travel across state lines, but the amendment aimed to separate that, and it would only relate to female genital mutilation. **Senator Den Hartog** added she had visited with a physician about the legislation and his concern was about the long term efficacy of the use of puberty blockers and cross-sex hormones and a lack of understanding about the long term health implications of their use. He indicated the United States medical community did not seem willing to self regulate in this space, but acknowledge that could be done through the State licensing process or legislatively. That was part of the reason **H 71** was introduced and brought before the Committee.

Senator Wintrow asked Senator Den Hartog how she thought this legislation might impact Idaho's parental control of their children. **Senator Den Hartog** responded that she was concerned about the way parents and their children were counseled through this process, and what kind of help they received from the medical community. The other consideration was the long term impacts of what was done. Those decisions were major and 18 years old did not mean they were capable of making such life-changing choices. She stated gender dysphoria was not new. This legislation did not include withholding therapy, counseling services or issues related to anxiety or depression. The bill suggested the State did not see the type of treatment discussed as appropriate for those under the age of 18.

TESTIMONY:

Terri Pickens spoke in opposition to **H 71**, and said it marginalized the LGBT community, of which her daughter was a part. She said legislative proposals like that hurt children, and those choices were better left to families and not a committee.

William Malone, an Endocrinologist, expressed his neutrality on the bill. He said the effects of puberty blockers were not reversible, most of those that used them became sterile, and there were no proven benefits to mental health or reduction of suicidal ideation.

Gretchen Rauer spoke in opposition to **H 71** on behalf of her transgender daughter. She said there was a lot of anti-trans legislation the Legislature worked on that greatly affected her daughter's well-being. She expressed concern that minors were able to, with parental consent, receive cosmetic surgery, piercings, and tattoos, but there was a line drawn when it came to their well-being.

Bill Burleigh shared that he used to be transgender, and he reverted after seven years as a woman. He shared his concern that people received gender-affirming care in cases where they really needed mental health therapy.

Kara Saperston, a Pediatric Urologist, urged the Committee to not pass **H 71** and pass a different bill that prevented surgical treatments for gender dysphoria in people under the age of 18. She said, if the patient received hormone treatments after they began puberty, their bodies had the ability to produce the hormones they were born with again once hormone treatment concluded.

Christian Welp said biological sex was a gift from God. He said biological sex and gender were inseparable, and people were graced once they accepted their identity.

Roman Heuterman spoke in opposition to the bill. **Roman** said it was not illegal to be transgender in Idaho, and it was a family's choice to decide what treatments were best for their circumstances.

Dr. Scott French, an Emergency Room physician, spoke in favor of the bill. He cited the high rate of suicides and suicide attempts among LGBT youth, and **H 71** protected them from treatments that had the ability to worsen their conditions.

Robin Sautter testified against the bill. **Robin** said **H 71** removed valuable treatment options for medical providers, and legislative actions like this contributed to the shortage of medical providers in Idaho.

Craig Campbell said society placed many restrictions on what minors could or could not do. He said that, if that was already the case, there was nothing wrong with the prohibition of treatment options that were irreversible when they were too young to make those decisions.

Lora Volkert urged the Committee to "Choose Lives over Lies". She said **H 71** was

bad policy, and gender-affirming care made a positive difference in the lives of transgender youth.

Blaine Conzatti, President, Idaho Family Policy Center, said his interactions with medical professionals convinced him that the treatments barred in **H 71** were not helpful for children. He said the solution for children that suffered from gender dysphoria ought to receive mental treatment rather than medical treatment.

Mia Hoetker urged the Committee to vote against **H 71**, as it was a violation of 32-1011, Idaho Code, that gave parents the ultimate authority to determine appropriate treatment for minors in their custody. She said those treatments saved the lives of people she knew, and asked the Committee to consider that as they made their decision.

Peggy McFarland said she was a counselor that worked with youth, particularly on the matter of gender dysphoria. She asked the Committee to pass **H 71**, and noted that there was a 19 percent increase in suicide within 15 years of transition.

Lynn Thomson spoke in opposition to the bill. **Lynn** described the challenges of life growing up as a trans youth in Idaho and how, after visits with many different medical professionals that were unsuccessful, gender-affirming care made life better.

Katherine Aberle, a Board-certified Surgeon, asked the Committee to pass **H 71**. She said surgical treatment, puberty blockers, or cross-sex hormones did not solve the root problems of gender dysphoria.

Jessica Duvall, American Pediatricians of Idaho, said people in her profession never recommended treatments that they did not think would help, and gender-affirming care was only recommended to families when it was needed. She urged a "no" vote on **H 71** and emphasized that most kids were told gender-affirming care was not recommended for them.

Nicole Trakel spoke in favor of **H 71**. She said children ought to be allowed to be kids and have the time to figure out who they truly were. She said it was best for them to wait for adulthood to make a life-altering decision.

Neil Ragan, Family Doctor, spoke in opposition to the legislation. He said there were more transgender adults in his care than children, and expressed his wish that those people were able to receive treatment when they were younger rather than wait and struggle for years before they could.

Rodney Storey, Physician, stressed the danger and consequences of the medications and surgeries **H 71** addressed. He said the risk of depression, bone density issues, cancer, and more were dramatically increased in those that received those treatments.

Cole Krout spoke against **H 71**, and said the physical and social transitions that came with treatment saved lives. Cole said it was incredibly difficult to grow up in Idaho, but transition helped make it easier.

Jon Lyons asked the Committee to advance **H 71** because of the harmful side effects of the mentioned medical and surgical treatments. He said minors did not have a full understanding of the long term consequences, and they needed protection.

Chelsea Gaona-Lincoln spoke in opposition to **H 71**, and claimed it was an act of government overreach. She said the bill removed the ability for families to decide for themselves what treatment was appropriate, and that Idaho attempted to legislate transgendered people out of existence.

DISCUSSION: **Senator Den Hartog** reminded the Committee that the legislation did not preclude those children from therapy, and recognized how important that treatment was. It did state that life-altering decisions required one to wait until the age of 18. Another concern was that many of these therapies were off-label treatments. Medicine was an art and many of the treatments were left up to the discretion of the physicians. **Senator Den Hartog** restated her original request to send the legislation to the 14th order for possible amendment to separate it from the female gender mutilation statute and leave it as it was when it was passed, and add a new section to do as **H 71** proposed.

MOTION: **Vice Chairman Foreman** stated his concern that gender-changing drugs were too easy to obtain and they caused irreversible harm. There was currently no science-based standard of care, and he felt the State had to take steps to regulate this area of medicine. **Vice Chairman Foreman** moved to send **H 71** to the 14th order for possible amendment. **Senator Anthon** seconded the motion.

SUBSTITUTE MOTION: **Senator Wintrow** made a substitute motion to hold **H 71** in Committee. **Senator Ruchti** seconded the motion.

DISCUSSION: **Chairman Lakey** stated the substitute motion would be discussed first. **Senator Wintrow** explained she felt the evidence provided by several physicians was quite convincing that puberty blockers were reversible and not harmful. She appreciated the peer review information that was provided and the fact that no surgeries would be performed under 18 years of age. She added that her motivation to hold this bill in Committee was because it was about parent care and control. **Senator Wintrow** did not believe it was the place of the State to interfere with family relationships. **Vice Chairman Foreman** stated there was plenty of reason for the State of Idaho to step in and protect the public and regulate what was happening in this area of medicine. **Senator Hartgen** explained that parental rights were high on her list. It was important for us to choose what we would support and what we would not support. She stated she would like to see many things taken out of this legislation and only leave the surgery part in it. She will supported sending **H 71** to the 14th Order for possible amendment. **Senator Ruchti** stated he did not think Idaho should be doing this legislation. He believed individualism was an Idaho trait. He felt it was unfair and unwise to put prohibitions on requirements for medical care. Once they were put in code, they were hard to remove. He believed the government should stay out of these decisions and let the patient, parents, and doctors develop the right course of action for them. **Senator Anthon** supported sending the legislation to the 14th Order. He did not feel the bill would work as it was written and there were more concerns than just parental rights issues. **Senator Lee** added that she was anxious to see the legislation separated from the female genital mutilation section of code. She commented that there were things that she both agreed and disagreed with. She stated these were issues that were not going to go away and needed to be dealt with. **Senator Lee** supported sending **H 71** to the 14 Order in order to have further conversation. **Senator Ricks** added that he would also be supporting the motion to send **H 71** to the 14th Order and he wanted to give the full Senate an opportunity to weigh in on the legislation. He stated this was a very hard decision for families and especially for such young people. There were strong arguments which supported each side of this issue. **Chairman Lakey** said he would support the original motion to send **H 71** to the 14th Order. He agreed there was a need to take the legislation out of the female genital mutilation statute and possibly correct some inaccurate statements. He added the "do no harm" statement can be taken both ways and it complicates an even more difficult issue.

SUBSTITUTE MOTION VOTE: **Chairman Lakey** asked for a vote on the substitute motion to hold **H 71** in Committee. The nays carried the vote. The substitute motion failed.

ORIGINAL MOTION VOTE: **Chairman Lakey** asked for a vote on the original motion to send **H 71** to the 14th Order for possible amendment. The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** asked to be recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:40 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Monday, March 20, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Minutes of February 20, 2023	Senator Ruchti
MINUTES APPROVAL:	Minutes of February 22, 2023	Senator Hartgen
MINUTES APPROVAL:	Minutes of February 27, 2023	Senator Anthon
MINUTES APPROVAL:	Minutes of March 1, 2023	Senator Ricks
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Reappointment of Angela Barkell to the State Public Defense Commission for a term commencing July 1, 2020 and expiring July 1, 2023.	Angela Barkell
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Reappointment of Eric Fredericksen to the State Public Defense Commission to serve a term commencing July 1, 2020 and expiring July 1, 2023.	Eric Fredericksen, Idaho State Appellate Public Defender
GUBERNATORIAL REAPPOINTMENT:	Committee Consideration of the Reappointment of Paula Garay to the Sexual Offender Management Board for a term commencing January 1, 2023 and to expire January 1, 2026.	Paula Garay
GUBERNATORIAL APPOINTMENT:	Committee Consideration of the Judicial Council Appointment of Keely E. Duke to serve on the Judicial Council for a five-year term commencing July 1, 2022 to expire on June 30, 2027.	Keely Duke
<u>RS 30628</u>	Concurrent Resolution relating to Income Tax Administrative Rules to be sent to Print in Senate Judiciary & Rules and referred back to Senate Local Government and Taxation	Senator Ricks
<u>H 117</u>	SEXUAL OFFENDER REGISTRATION - Amends existing law to revise a provision regarding release from registration requirements.	Eric Fredericksen, Idaho State Appellate Public Defender
<u>H 262</u>	JUVENILE CORRECTIONS ACT - Amends existing law to revise provisions regarding expungement of juvenile records.	Senator Lent
<u>RS 30739</u>	Relating to Idaho law regarding the use of liquor licenses.	Senator Anthon

***Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)***

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 20, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 1:00 p.m.

MINUTES APPROVAL: **Senator Ruchti** moved to approve the Minutes of February 20, 2023. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Hartgen** moved to approve the Minutes of February 22, 2023. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Anthon** moved to approve the Minutes of February 27, 2023. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Ricks** moved to approve the Minutes of March 1, 2023. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

Chairman Lakey indicated that due to scheduling issues the Gubernatorial Reappointments would be taken out of order.

GUBERNATORIAL REAPPOINTMENT: **Reappointment of Eric Fredericksen to the State Public Defense Commission** to serve a term commencing July 1, 2020 and expiring July 1, 2023. **Mr. Fredericksen** informed the Committee that he sat as the Vice Chair on the Public Defense Commission, and had served on the Commission for the last seven years.

DISCUSSION: **Senator Anthon** remarked that Mr. Fredericksen was perhaps the most confirmed person by the Idaho State Senate, and that he was well-vetted.

GUBERNATORIAL APPOINTMENT: **Appointment of Keely Duke to the Judicial Council** to serve a term commencing July 1, 2022 and expiring June 30, 2027. **Ms. Duke** informed the Committee that she was nominated by the State Bar to the Judicial Council for a vacant position as a result of the prior nominee's failed confirmation. She highlighted her 23-year career as an attorney, which included the representation of businesses small and large, and medical practitioners. She said she previously served as President of the State Bar, on the State Defense Association for Idaho, and President of the Idaho chapter of the Federal Bar Association. **Ms. Duke** said, at present, she served on the Board of Directors for U.S. Law. She said she operated her own firm with nine trial attorneys that represented clients in every corner of the State.

DISCUSSION:

Senator Anthon asked Ms. Duke to describe the political nature of the Judicial Council, and how politics should affect appointments. **Ms. Duke** said politics had no place in the process, but recognized that it played a role since elected officials determined appointments. She said another element of the position that was seen as political was the role of Judicial Council members in the selection of replacements when someone left a position mid term. Ms. Duke concluded with a statement about the strength of her convictions, and how she had no problem telling others on the Council, if she were confirmed, when she disagreed with their opinions, even if it was unpopular.

Senator Lee asked for confirmation that Ms. Duke already served on the Judicial Council. **Ms. Duke** confirmed she had been since she was recommended by the Bar. **Senator Lee** noted there were a multitude of great candidates for positions on the Council in the past that did not get confirmed, and asked what was needed to ensure candidates did not feel discouraged from applying or reapplying. **Ms. Duke** stated her belief that people were left behind, even if there was disagreement over the failure of certain candidates advancement in the appointment process. She then described an ideal candidate for the Council as one that was highly competent, had a clean record, maintained a good temperament in the Courtroom, and showed clients respect. **Senator Lee** asked if Ms. Duke thought the Judicial Council was better-suited for the judge selection process than the electorate. **Ms. Duke** said she did not believe the Council were better for judge selection. She said she believed the appropriate role for the Council was to fill vacancies when needed, but the Constitution ultimately determined the electorate made the ultimate decision about who they wanted at the conclusion of each term.

Senator Ruchti commended Ms. Duke's reputation as an attorney and the degree of respect she commanded in the legal community as a result of her qualifications and success.

Senator Wintrow asked Ms. Duke what criteria or requirements the Judicial Council established for the review of potential appointees to refer to the Governor. **Ms. Duke** referred her response to Senator Anthon's question, where the Council looked for in candidates, subject-matter competency, understanding of law and its application, a high degree of professionalism, and the ability to make a stand against popular opinions when they know it was wrong.

Senator Hart asked what the role of the Senate was in the appointment process, and how Ms. Duke saw it. **Ms. Duke** said the role of the Committee was not to simply rubber stamp an appointment, because they had the authority to decide if it was worthy of consideration from the full Senate, which an appointment also had to clear.

**GUBERNATORIAL
REAPPOINTMENT:**

Reappointment of Angela Barkell to the State Public Defense Commission to serve a term commencing January 1, 2020 and expiring July 1, 2023. **Ms. Barkell** said she was appointed to the Office of the Clerk at the District Court in Owyhee County in 2013, and had served on the Public Defense Commission since May, 2019.

DISCUSSION: **Senator Wintrow** commended Ms. Barkell for her professionalism and work ethic. She then asked if there was anything else the Committee should know as they considered the reappointment. **Ms. Barkell** emphasized how great a learning experience her service on the Commission was, and that Idaho counties had fantastic judges with plenty of experience.

Senator Ricks asked why Ms. Barkell's reappointment consideration came so late in the term. **Kathleen Elliott**, Public Defense Commission, reported Ms. Barkell was confirmed in 2019, and the hearing took place in 2020.

GUBERNATORIAL REAPPOINTMENT: **Reappointment of Paula Garay to the Sexual Offender Management Board** to serve a term commencing January 1, 2023 and expiring January 1, 2026. **Ms. Garay** said her service began in 2011 when the Board was first established. She said her work in that area began in 2000, when she worked at a residential treatment center in Mountain Home, ID. After that, she transitioned to work at a private practice in 2015 that primarily served adolescents with sexual behavior issues.

RS 30628 **Income Tax Administrative Rules.** **Senator Ricks** said **RS 30628** was a rejection of rules in the Senate Local Government & Taxation committee. He said the desire was to have the bill introduced and then referred to that committee.

MOTION: **Vice Chairman Foreman** moved to send **RS 30628** to print. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

H 117 **SEXUAL OFFENDER REGISTRATION - Amends existing law to revise a provision regarding release from registration requirements.** **Eric Fredericksen**, Idaho State Appellate Public Defender, said **H 117** offered a non-substantive change to State Code to clarify the terms of supervised probation for offenses that required sex offender registration.

DISCUSSION: **Chairman Lakey** asked if the requirement those people completed all mandatory conditions remained in the proposed rewrite of that section of Code. **Mr. Fredericksen** confirmed offenses still required registration.

Senator Ricks asked for a high-level overview of that process of registration and supervised probation. **Mr. Fredericksen** said an individual's attempt for removal of registration status required Board approval. In order to achieve that goal, the individual was required to complete all terms of their supervised probationary period. He said the legislation was introduced because there was concern that a non-registered offense under all the terms of existing Code before its amendment, such as a drug offense, had potential for the unintended removal of people from the registry.

Senator Wintrow said she wanted to ensure the legislation was aimed to address the offense(s) that resulted in placement of people on the registry and not anything else.

MOTION: **Senator Wintrow** moved to send **H 117** to the floor with a **do pass** recommendation. **Vice Chairman Foreman** seconded the motion. The motion carried by **voice vote**.

H 262

JUVENILE CORRECTIONS ACT - Amends existing law to revise provisions regarding expungement of juvenile records. Representative Handy said H 262 adjusted the duration of the display of juvenile offenses on a criminal record prior to an expungement request. He said the current duration of five years was a long time, and the bill changed the requirements to the date the offender turned 18 or completed their time in a juvenile detention facility. **Representative Handy** stated his belief that many youth with great potential had their aspirations dashed because their juvenile record prevented them from access to career opportunities.

MOTION: **Senator Ricks** moved to send **H 262** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

DISCUSSION: **Senator Ricks** said it was appropriate that youth with juvenile records had an opportunity to improve themselves after their detention period and did not have past mistakes affect the rest of their lives.

VOICE VOTE: The motion carried by **voice vote**.

RS 30739 **Regarding Liquor Licenses. Senator Anthon** said **RS 30739** tried to address a couple of issues in Idaho related to liquor licenses. He said there was a provision of State Code that required business owners that acquired a liquor license to sell liquor almost immediately after acquisition. **Senator Anthon** declared a Rule 39(H) and cited an example where the City of Rupert acquired a building that contained a bar that held a liquor license to carry out its economic development objectives, but was forced by Code to sell liquor because they had to purchase the liquor license. He said **RS 30739** established a three-year window for local units of government to hold a liquor license to carry out economic development activities. Another part of Code that the bill would change was a reduction in the frequency in which special liquor license holders had to purchase liquor.

MOTION: **Vice Chairman Foreman** moved to send **RS 30739** to print. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:43 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Wednesday, March 22, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of the Minutes of March 6, 2023	Senator Lee
MINUTES APPROVAL:	Approval of the Minutes of March 8, 2023	Senator Foreman
GUBERNATORIAL REAPPOINTMENT VOTE:	Vote on the Reappointment of Brian Marx to the Sexual Offender Management Board for a term commencing January 1, 2023 expiring January 1, 2026	
GUBERNATORIAL REAPPOINTMENT VOTE:	Vote on the Reappointment of Angela Barkell to the State Public Defense Commission for a term commencing July 1, 2020 expiring July 1, 2023	
GUBERNATORIAL REAPPOINTMENT VOTE:	Vote on the Reappointment of Eric Fredericksen to the State Public Defense Commission to serve a term commencing July 1, 2020 expiring July 1, 2023	
GUBERNATORIAL REAPPOINTMENT VOTE:	Vote on the Reappointment of Paula Garay to the Sexual Offender Management Board for a term commencing January 1, 2023 expiring January 1, 2026	
JUDICIAL COUNCIL APPOINTMENT VOTE:	Vote on the Judicial Council Appointment of Keely E. Duke to serve on the Judicial Council for a five-year term commencing July 1, 2022 expiring June 30, 2027	
<u>RS 30689</u>	Concurrent Resolution stating Legislative Findings and Approving Fee Rules of the Idaho State Police/ Idaho Public Safety and Security Information Systems and the Sexual Offender Management Board Reviewed by the Senate Judiciary and Rules Committee Senate Page Graduation of Bridger Benson, Nampa, Idaho	Senator Lakey

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey	Sen Hart
Vice Chairman Foreman	Sen Hartgen
Sen Lee	Sen Wintrow
Sen Anthon	Sen Ruchti
Sen Ricks	

COMMITTEE SECRETARY

Sharon Pennington
Room: WW48
Phone: 332-1317
Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 22, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Ricks, Hart, Hartgen, and Ruchti

ABSENT/ EXCUSED: Senators Anthon and Wintrow

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 & Rules Committee (Committee) to order at 1:20 p.m.

Chairman Lakey indicated that Senator Hartgen needed to attend the Resources Committee meeting so the agenda would be changing to accommodate that.

MINUTES APPROVAL: **Senator Lee** moved to approve the minutes of March 6, 2023. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

Senator Foreman moved to approve the minutes of March 8, 2023. **Senator Ruchti** seconded the motion. The motion carried by **voice vote**.

JUDICIAL COUNCIL APPOINTMENT VOTE: **Vote on the Judicial Council Appointment of Keely E. Duke.** **Chairman Lakey** began by declaring Rule 39(H) indicating he sat on the State Insurance Fund Board and Ms. Duke was legal council on a contract basis to that board. He stated that last year the nomination for this position was rejected and one of the main reasons was because they were working on the Judicial Council restructuring. Ms. Duke had been called to fill the remainder of that term. There had been much discussion about moving the goalposts with respect to Judicial Council processes. He added that in his opinion, Ms. Duke was put forward under the current rules. The new ones did not take affect until next year. **Chairman Lakey** mentioned that Ms. Duke provided the balance between the plaintiffs bar and the defense bar that they were looking for. She also respected the election process. He stated he would support her for this appointment. **Senator Lee** said she would not support Ms. Duke in her nomination. She felt it was important that the change to not having the bar directly send someone to the Judicial Council should begin immediately. The lack of more information on the candidate's application was a disappointment to her. She added that she did not feel this was a continuation of an appointment not confirmed from last year, this was a new term.

MOTION: **Senator Lee** moved to send the nomination of Keely E. Duke to the floor with a recommendation that she not be appointed to the Judicial Council. **Senator Foreman** seconded the motion.

DISCUSSION: **Senator Hart** stated that in light of the legislation passed by this Committee, he felt it would be good to leave the position vacant. He supported Senator Lee's motion. **Senator Ruchti** expressed how impressed he was with Ms. Duke's abilities as an attorney. He indicated that he felt she was well respected by both bars and felt she was an excellent candidate. He stated she would bring the balance to the Council they were looking for, but now they seemed to be looking for other issues to be concerned with.

MOTION VOTE: **Chairman Lakey** stated a motion was made to send the nomination of Keely E. Duke to the floor with a recommendation that she not be appointed to the Judicial Council. The motion carried by **voice vote**. **Chairman Lakey** and **Senator Ruchti** asked to be recorded voting nay.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial Reappointment of Brian Marx to the Sexual Offender Management Board to the floor with a recommendation that he be confirmed by the Senate. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Ricks** moved to send the Gubernatorial Reappointment of Angela Barkell to the State Public Defense Commission to the floor with a recommendation that she be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial Reappointment of Eric Fredericksen to the State Public Defense Commission to the floor with a recommendation that he be confirmed by the Senate. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial Reappointment of Paula Garay to the Sexual Offender Management Board to the floor with a recommendation that she be confirmed by the Senate. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

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

RS 30689 **Vice Chairman Foreman** indicated that Chairman Lakey would present the resolution confirming the Legislative Rules.

Chairman Lakey stated this Unanimous Consent Resolution confirmed the rules for the Idaho State Police Public Safety and Security Information Systems and the Sexual Offender Management Board indicating that the Senate Judiciary and Rules Committee reviewed them and none were rejected.

MOTION: **Senator Lee** moved to send **RS 30689** to print. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business, **Chairman Lakey** adjourned the meeting at 1:45 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Friday, March 24, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approval of Minutes of March 13, 2023	Senator Hartgen
<u>RS 30755</u>	Legislation states findings and approves fee rules of the Idaho Department of Fish and Game, the Idaho Department of Lands, and the Idaho Department of Water Resources/Idaho Water Resource Board. These rules were reviewed by the Senate Resources and Environment Committee and the House Resources and Conservation Committee with an exception.	Senator Burtenshaw
<u>H 341</u>	CRIMES AND PUNISHMENT - Amends, repeals, and adds to existing law to revise a provision regarding interstate trafficking in prostitution, to provide for the crime of receiving proceeds of illegal sexual activity, and to provide for human trafficking victim protection.	Senator Lee

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 24, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Hart, Hartgen, Wintrow, and Ruchti

ABSENT/ EXCUSED: Senator Ricks

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 1:00 p.m.

MINUTES APPROVAL: **Senator Hartgen** moved to approve the minutes of March 13, 2023. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

RS 30755 **Relating to Legislation of Findings and Approving Fee Rules Reviewed by the Senate Resources and Environment Committee. Senator Burtenshaw** asked to have **RS 30755** sent to print.

MOTION: **Senator Anthon** moved to send **RS 30755** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

H 341 **CRIMES AND PUNISHMENT - Senator Lee** asked that **H 341** be sent to the 14th Order of business for possible amendment. She indicated this legislation was important and needed to be passed but there were needed changes. **Senator Lee** introduced Lt. Kimball and asked him give an overview of human trafficking in Idaho.

TESTIMONY: **Lieutenant Jason Kimball**, Nampa Police Department, talked about human trafficking and what it looked like in Idaho (see Attachment 1). **Lt. Kimball** explained that most human trafficking is occurring online. He pointed out that the numbers given on the attachment were very conservative because law enforcement had limited access to dark web websites that cannot be researched. The time frame for the data collected was approximately six weeks from when their study was done. There was also a segment of about a 100 known brick and mortar sex trafficking locations. Many of them have licenses for massage therapists when they are working in sex trade. There were immigrants that come from foreign countries and were forced to participate in these operations. The attachment provided more information for localized areas. **Lt. Kimball** stated there were also illicit sex trade locations. They were located through undercover research done together with the task force on human trafficking. During the past five years, seven of these locations were shut down in the City of Nampa. The people who work there came from other states or countries and were forced to stay on the premises. They must have an escort to leave and were not allowed to even go for a walk unaccompanied.

Chairman Lakey asked if those people were prosecuted for human trafficking. **Lt. Kimball** responded that they were not. He stated that, in the past, the cases were taken to the prosecutors, they were told those cases were extremely hard to charge because of the Idaho code – the reason for the legislation being discussed. He added they wanted to make changes with **H 341** which would change their approach and give victims the support and find the justice they needed.

Jennifer Zelinski, Executive Director, Idaho Anti-Trafficking Coalition, stated **HB 341** fails to protect victims from being convicted of prostitution. She spoke passionately about the many ways people were treated and it was labeled as prostitution, yet so many times it was sex trafficking. To fight human trafficking, the demand to target traffickers must be addressed. Using the prostitution statute does not recognize any form of victimization and fails to address the exploitation of sexual activity, labor acts and services. Prostitution was through means of consent, Human trafficking was through means of non-consent, force or abuse, coercion, or blackmail. There needs to be a human trafficking statute that specifically address that crime and all crimes related to it. Using the prostitution statute to address human trafficking would take Idaho back 20+ years. Idaho could start on the right foot by creating its own statute for human trafficking.

Chad Benson, Detective, City of Nampa, said he had been able to work many regular types of cases as a detective and for the past two years he had been able to work human trafficking cases. He had removed people from trap houses, pulled victims out of familial trafficking situations, and participated in multi-agency operations where the approach had been victim centered. He had helped with reunification of families who had been a part of sex trafficking in one way or another and helped stop a Mexican cartel trying to establish a territory in Nampa. All of the efforts were focused on helping the victims survive sex trafficking. **Det. Benson** stated the one thing he had never seen was one person prosecuted for the sex trafficking crimes they committed. The Legislation being discussed in **H 341** would eliminate the problems with State code that have caused these people to not have to pay for their crimes. The victims do not have to be identified as a prostitute. They were not choosing, they were being forced into commercial sex trade. This legislation gave tools to those who needed them to hold those accountable who were trafficking these victims and moved forward with remedying the problem.

Monica Martinez, Victim Advocate/Case Manager, Idaho Anti-Trafficking Coalition, testified against **H 341**. **Ms. Martinez** stated her opposition was due to the strong belief that no human trafficking effort or victim protection law should be added to a prostitution statute that we know will directly hurt victims. She would like to bring awareness and education on this matter and how society perceive and treat victims. In Idaho, children were being arrested for prostitution and there were no mandate systems to protect them. This legislation would hold accountability, but at the expense of victims, because how we label them was how we treated them. If this was the starting point, then we have a chance to do it right. **Ms. Martinez** encouraged the Committee to read the human trafficking statute and implement training mandated, victim centered approaches, responses, and increase mandatory minimums for all trafficking offenses.

Jeff Nye, Chief, Criminal Law Division, Idaho Attorney General's Office, testified in support of **H 341**. **Mr. Nye** stated he would be answering questions that had been asked rather than giving prepared remarks. Regarding Senator Ruchti's question on protecting victims - subsection three was written because the authors did not want victims to be targeted. It specified who was to be completely excepted out of it. Senator Wintrow's question, relating to enacting this legislation rather than focusing on the human trafficking statute. After significant investigation, it was found the first step should be to have a good pimping statute. Human trafficking always required some form of force or coercion and it could be difficult to prove. One should be able to prove that there was some illegal sexual activity and some one else financially benefitted from it. You could still go after the people benefitting from that conduct. **Senator Wintrow** asked if victims were arrested for crimes in the example he referenced of a recent "sting." He responded they were and had learned from their mistake. **Senator Wintrow** asked how this language was chosen over another. **Mr.**

Nye responded it was used because it was to mirror the language that was used in subsection one to make it absolutely clear who was being referred to.

Senator Lee reminded the Committee that law enforcement needed this tool to be able to get to other tools that were taking a long time. Human traffickers were not being convicted in Idaho. This legislation would help to make that possible. There could still be work done on more complete legislation, but this would be a good first step and could help with the problem in the interim. It was a significant improvement to the policy to say these individuals shall not be criminally liable. The next step would be to have the Idaho Criminal Justice Commission work with the Attorney General's Office on amendments. **Senator Lee** asked to send **H 341** to the **14th Order** of Business for possible amendment. **Chairman Lakey** asked to have the mandatory minimum on line 20 on page one left in. **Senator Lee** agreed.

MOTION: **Vice Chairman Foreman** moved to send **H 341** to the **14th Order** of Business for possible amendment. **Senator Anthon** seconded the motion.

Senator Wintrow shared her experience on the Criminal Justice Commission and the many things she learned. One of the important lessons was, it was important to get the bad guy. But first and foremost, the victim's safety and their experience must be a top priority and then build the laws around that. It would require all to listen to what they said and how they felt. **Senator Wintrow** asked everyone to come together and center on the victim.

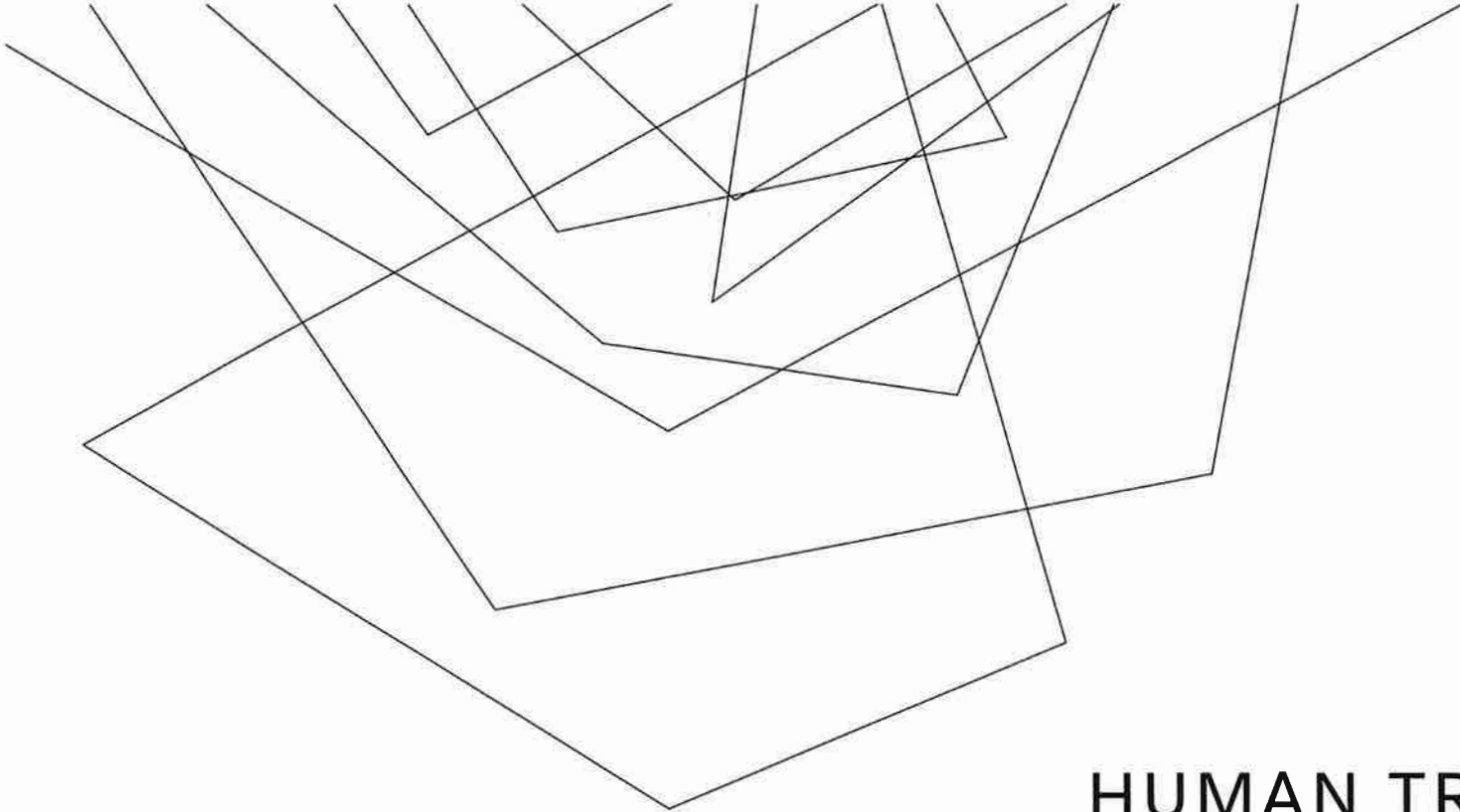
MOTION VOTE: **Chairman Lakey** expressed that there was a balance that he felt needed to be reached. It was very important to be aware of the victim and their needs and make that a priority. It was also necessary to put the bad guys in jail. If they were not in jail, more people were going to get hurt. He does not see **H 341** hurting any one. Discussions with the prosecutors revealed they had become concerned that many of the sex trafficking cases were not getting tried. It doesn't appear past changes had the desired effect. There needs to be more done. All in favor of supporting the motion to send **H 341** to the **14th Order** of business for possible amendment, please say aye. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:45 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Att. 1
3-24-23



HUMAN TRAFFICKING IN IDAHO

Lt. Jason Kimball from Nampa Police Department

WHY ARE WE HERE?

- According to a law enforcement resource website:
 - **7,586 ads of sex for sale populated on websites that specifically cater to paying for sex in the state of Idaho, within the last six weeks.**
 - **Those ads are coming from 1,967 profiles.**
 - **Out of 1,967 profiles, 252 are suspected juveniles.**
 - **There are 100 suspected illicit massage parlors operating in Idaho.**



HUMAN TRAFFICKING STATISTICS IN IDAHO

2023 – Where It's being Advertised

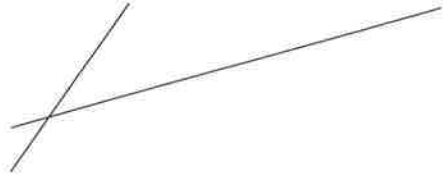
- **Boise Area – 4,200 ads**
- **Twin Falls Area – 1,000 ads**
- **Idaho Falls Area – 283 ads**
- **Pocatello – 81 ads**
- **Coeur d' Alene – 6 ads**

2022 – Totals for the year

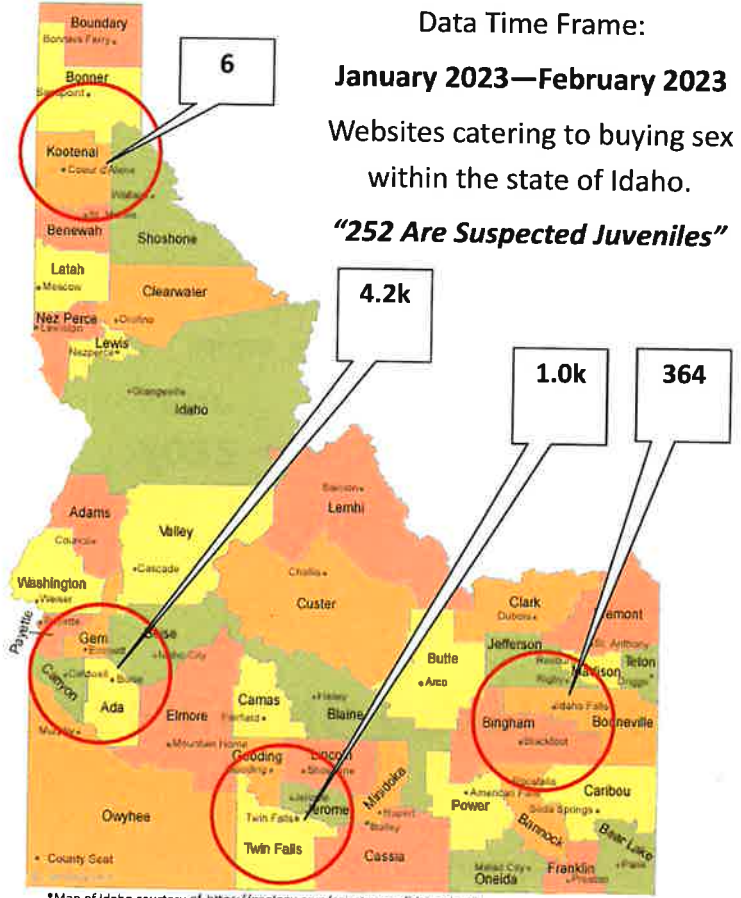
- **Idaho 42,200**
 - **Boise 17,700**
 - **Twin Falls 5,000**
 - **Pocatello 2,800**
 - **Idaho falls 2,200**
 - **Coeur d' Alene 25**
- **Profiles – 9,949**
- **Spam – 3,300**

Examples of Websites

- Adult Look
- Adult Search
- Mega Personal
- One Backpage
- Private Delights
- Sip Sap
- Skip the Games

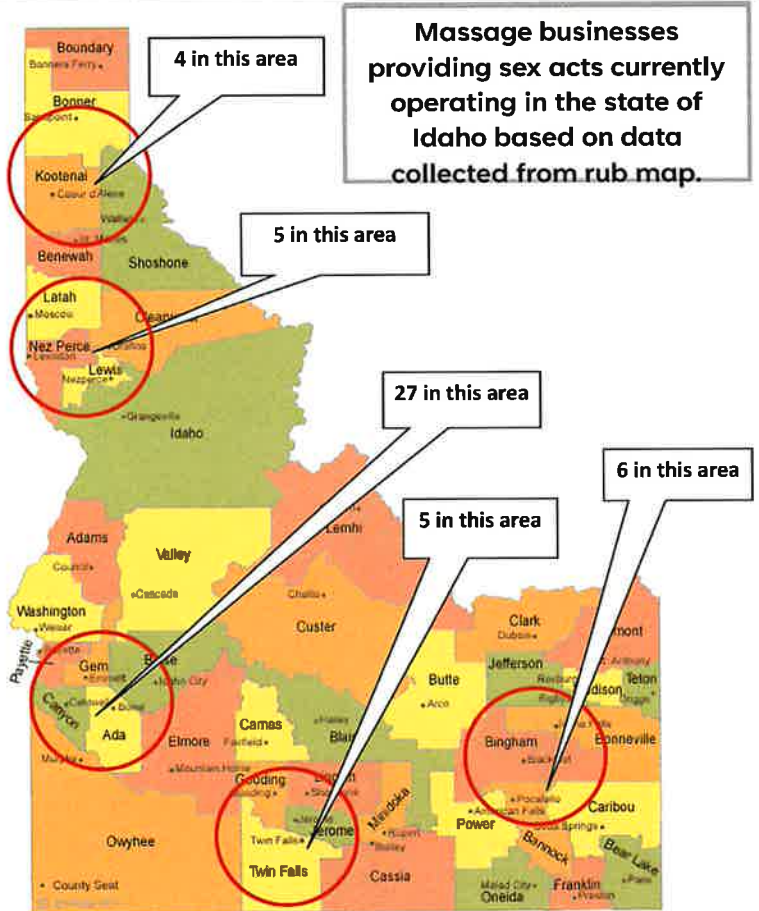


Human Trafficking

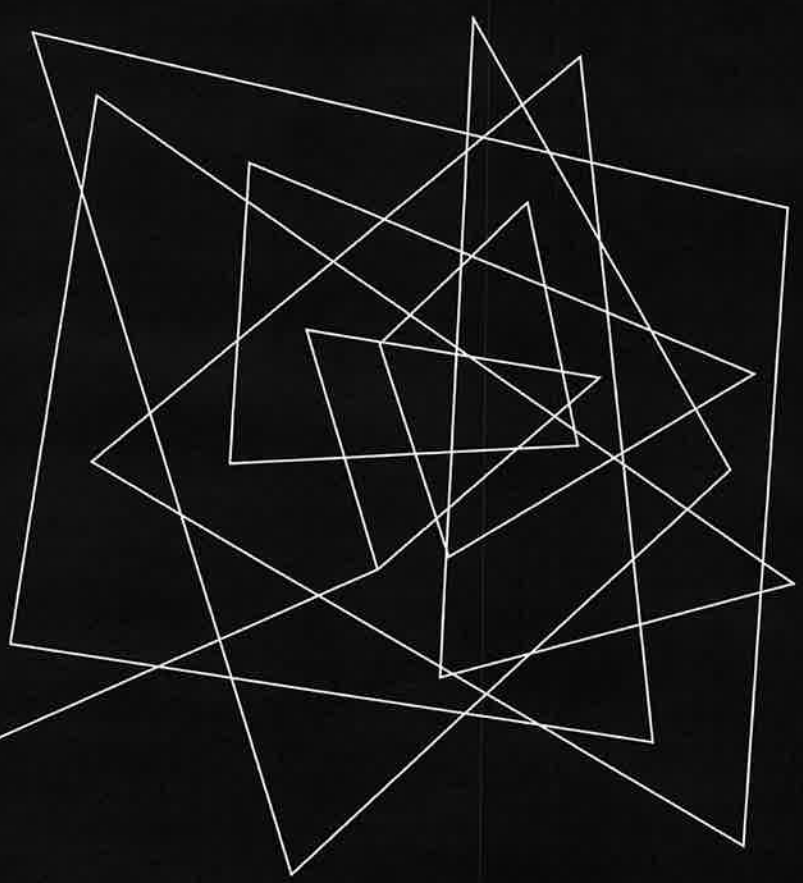


* Map of Idaho courtesy of <https://geology.com/county-map/idaho.shtml> from Google Images.
* Data source: Spotlight

Human Trafficking

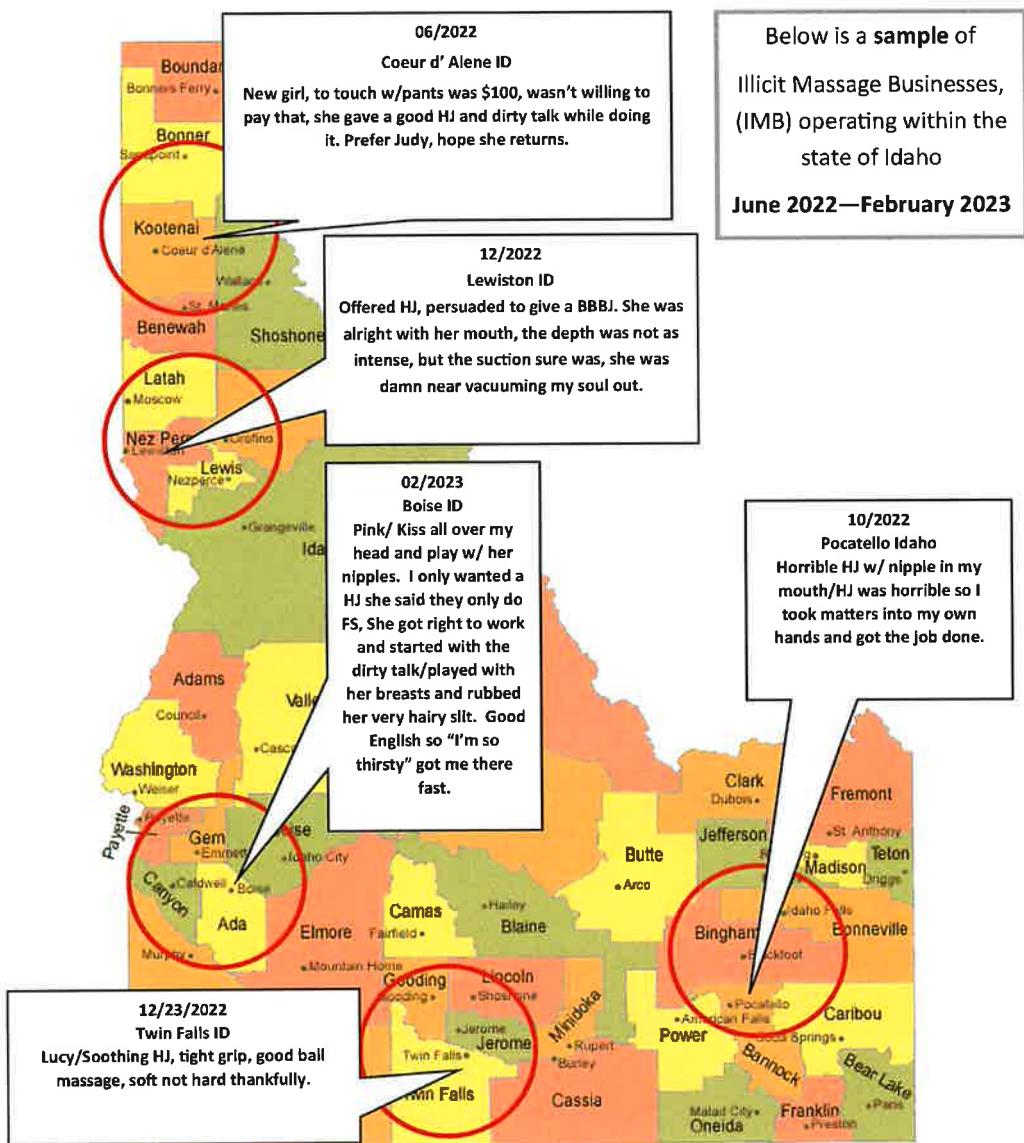


*Map of Idaho courtesy of <https://geology.com/county-map/idaho.shtml> from Google Images.
 *Data source-Rub Maps



CONTENT WARNING: GRAPHIC LANGUAGE

These are real reviews about real massage parlors.



NAMPA PD HUMAN TRAFFICKING REPORTS

	2018	2019	2020	2021	2022
Assisting/Promoting Prostitution	-	2	-	1	1
Human Trafficking – Commercial Sex Acts	1	-	4	23	47
Human Trafficking – Servitude	-	1	-	2	1
Prostitution	2	13	-	6	2

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Monday, March 27, 2023

For members of the public to observe the meeting, please click on the following link:
<https://www.idahoptv.org/shows/idahoinsession/ww54/>

SUBJECT	DESCRIPTION	PRESENTER
<u>H 348</u>	JUDGES - Amends existing law to revise provisions regarding the salaries of judges.	Senator Lakey

Public Testimony Will Be Taken by Registering Through the Following Link:
[Register to Testify](#)

If you have written testimony, please provide a copy to the committee secretary.

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Foreman

Sen Lee

Sen Anthon

Sen Ricks

Sen Hart

Sen Hartgen

Sen Wintrow

Sen Ruchti

COMMITTEE SECRETARY

Sharon Pennington

Room: WW48

Phone: 332-1317

Email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 27, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Hart, Hartgen, Wintrow, and Ruchti

ABSENT/ EXCUSED: Senators Anthon, and Ricks

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 & Rules Committee (Committee) to order at 1:00 p.m.

H 348 **Judicial Salaries.** **Senator Lakey** said **H 348** was a new attempt to adjust the salaries of judges, since **S 1156** failed on the House side. He said this version increased the annual salary of a Justice of the Supreme Court by 3 percent, to a total of \$165,212. The bill amended State Code to reduce the salary difference between Supreme Court Justices and Court of Appeals Judges from \$10,000 to \$8,000, which resulted in a 4.5 percent salary increase. **Senator Lakey** said the salary difference between Court of Appeals and District Judges remained \$6,000, which resulted in a 4.7 percent salary increase for District Judges. He said the final change was a reduced salary difference between District and Magistrate Judges from \$12,000 to \$8,000, which resulted in a 8.2 percent increase for Magistrate Judges.

DISCUSSION: **Senator Ruchti** expressed his dislike for the differential between district and magistrate court judge salaries because he believed district courts had more complex responsibilities. **Senator Lakey** said he tended to agree with that opinion.

Senator Lee said she preferred a solution that included a \$6,000 differential between the different courts for consistency and avoided any discrediting of a court's work.

Senator Lakey acknowledged the scope of magistrate judges included probate and family law, both of which often had significant financial and asset implications. He also noted the proposed salary adjustments from both bills.

Senator Wintrow asked if the last bill, **S 1156**, included a 7 percent salary increase for all the different courts. **Chairman Lakey** said it was not 7 percent, but it was close.

MOTION: **Senator Lee** moved to send **H 348** to the floor with a **do pass** recommendation. **Senator Hartgen** seconded the motion.

DISCUSSION: **Senator Wintrow** said she was unable to support the motion because she agreed with the changes proposed in **S 1156**, which failed, and she was not ready to support the new changes.

Chairman Lakey said his feelings mirrored Senator Wintrow's.

MOTION VOTE: The motion carried by **voice vote**. **Vice Chairman Foreman** and **Senator Wintrow** asked to be recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:11 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary