

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, *ex rel.* )  
INDUSTRIAL COMMISSION, CRIME VICTIMS )  
COMPENSATION PROGRAM, )  
 )  
Plaintiff/Appellant, )  
vs. ) **Supreme Court No. 48536-2020**  
 )  
MELINDA ROSE POE, )  
 )  
Defendant/Respondent. )  
\_\_\_\_\_ )

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**APPELLANT'S BRIEF**

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Appeal from the District Court of the Third Judicial District  
of the State of Idaho, in and for Owyhee County

Honorable Senior Judge D. Duff McKee, Presiding

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## I. STATEMENT OF THE CASE

### A. Nature of the case

This is an appeal by Plaintiff/Appellant, State of Idaho, *ex rel.* Industrial Commission, Crime Victims Compensation Program, from the Memorandum Decision and Order Dismissing Appeal entered by Senior District Judge D. Duff McKee on December 1, 2020, which Order dismissed Plaintiff/Appellant's appeal of the denial of Plaintiff's Motion to Renew Restitution Order and Judgment made by Magistrate Judge Shane Darrington on July 7, 2020.

### B. Course of Proceedings

On July 27, 2005, pursuant to a request by the Owyhee County Prosecutor, Magistrate Judge Thomas J. Ryan entered an Amended Order of Restitution in this case. (R., Vol. 1, pp. 28-29.) The Defendant, Malinda Poe, was ordered, *inter alia*, to "make restitution to the Idaho Industrial Commission in the amount of Two Thousand Three Hundred Forty-Six Dollars (\$2,346.00)." That Order was later recorded by Plaintiff/Appellant as a Civil Judgment in Owyhee County on August 6, 2009, as provided by Idaho Code § 19-5305(1).

On June 24, 2010 Plaintiff/Appellant filed a Motion to Renew Restitution Order and Judgment. On July 7, 2010 Judge Dan C. Grober entered an Order Renewing Restitution Order and Judgment. (R., Vol. 1, pp. 30-31.) That Order found, *inter alia*, that a lien was properly perfected by Plaintiff's recording of the original Restitution Order and Judgment in accordance with Idaho Code § 10-1110 and that Plaintiff/Appellant had properly moved for renewal of the restitution order pursuant to Idaho Code § 10-1111. This Order was recorded by Plaintiff/Appellant as a Civil Judgment in Owyhee County on July 13, 2010.



On July 6, 2015 Plaintiff/Appellant filed its second Motion to Renew Restitution Order and Judgment. On July 14, 2015 Judge Dan C. Grober entered the second Order Renewing Restitution Order and Judgment. (R., Vol. 1, pp. 32-34.) That Order again found that the lien under Idaho Code § 10-1110 had been properly perfected by Plaintiff's recording of the renewed Restitution Order and Judgment and that Plaintiff/Appellant had properly moved for renewal of the restitution order pursuant to Idaho Code § 10-1111. That second renewal Order was recorded as a Civil Judgment in Owyhee County by Plaintiff/Appellant on August 26, 2015.

On July 2, 2020 Plaintiff/Appellant filed its third Motion to Renew Restitution Order and Judgment, along with a proposed third Order Renewing Restitution Order and Judgment. A copy of the motion was mailed to the Defendant.

On July 7, 2020 Plaintiff's counsel received an email from Jamie Eubanks, Owyhee County Deputy Court Clerk. Attached to that email was a copy of the proposed Order Renewing Restitution Order and Judgment that Plaintiff had filed in this case. On the top of the first page of that draft Order Judge Darrington had stamped: "DENIED" over his signature; below which stamp was typed: "Industrial Commission has no standing to bring this motion." (R., Vol. 1, pp. 36-37; See Copy attached as **Exhibit A.**)

On July 8, 2020 Plaintiff's counsel had his Paralegal, Colin Seele, reach out to Judge Darrington's clerk about this denial. Mr. Seele learned from Ms. Eubanks that there was a note in the file reading: "2020 WL 1467139." This was the original citation for the March 25, 2020 unpublished decision by the Idaho Court of Appeals in *State of Idaho v. Johnson*, 167 Idaho 454, 470 P.3d 1263 (Ct. App. 2020). (See copy of decision attached as **Exhibit B.**)

On July 9, after reviewing that *Johnson* decision, Plaintiff's counsel had his Paralegal email to Judge Darrington's clerk copies of the original Amended Restitution Order that had been properly obtained by the Owyhee County Prosecutor as well as the two previous renewals of that original order that had been entered based upon Plaintiff's motions filed in this case. Also attached to that email were copies of three Orders renewing restitution orders pursuant to Plaintiff's motions and entered by three different judges in the Third Judicial District on July 8, 2020, after entry of the *Johnson* decision. That email asked Judge Darrington to reconsider his denial in light of the fact that the *Johnson* decision only addressed the standing of a victim to independently bring a motion for entry of an original restitution order in a criminal case; not the request by a victim for renewal of a restitution order that had been properly obtained by a prosecutor and the civil judgment obtained by the victim's recording of that previous order. The Judge was also asked in that email to consider the attached documents which show that entry of the original Amended Restitution Order was properly requested by the Owyhee County Prosecutor, that there had been repeated renewals properly requested by the Plaintiff/Appellant's motions and entered by other Judges in this case, and that other judges in the same judicial district were continuing to renew the Commission's restitution orders in other cases that had been requested by motions filed by Plaintiff/Appellant after the *Johnson* decision was entered. This email also cited the statutory authority for Plaintiff/Appellant to bring its motion for renewal. The Judge's clerk quickly replied that she would forward that email to Judge Darrington. Within the hour, Judge Darrington's clerk sent another email to Mr. Seele that said: "Judge Darrington reviewed your email and says that if you would like to set it for hearing, with notice to all parties, you may do so."

Later that same day, July 9, 2020, Plaintiff/Appellant filed a Notice of Hearing on its Motion to Renew Restitution Order and Judgment, scheduled with Judge Darrington's clerk for July 20, 2020 at 1:30, along with a Motion Shortening Time and a proposed Order Shortening Time. Copies were also mailed to the Defendant, Malinda Poe.

On July 10, 2020, Judge Darrington's clerk emailed Plaintiff's Paralegal. Attached to that email was a copy of the proposed Order Shortening Time. On the top of the order was stamped "DENIED" over Judge Darrington's signature. Below the stamp was typed: "Criminal rules require only seven days' notice." (R., Vol. 1, pp. 38-39.)

On July 13, 2020 Plaintiff's Paralegal emailed Judge Darrington's clerk. Attached to that email was a copy of the Idaho Court of Appeals decision in *Workman v. Rich*, 162 Idaho 711, 403 P.3d 1200 (2017) for Judge Darrington to review before the upcoming hearing on Plaintiff's motion. (See copy of decision attached as **Exhibit C.**)

On July 20, 2020, a Zoom hearing was held on Plaintiff's motion. Judge Darrington and his clerk were present, along with an attorney representing the Owyhee County Prosecutor's Office, apparently at the invitation of the court. The Judge asked the prosecuting attorney if they were prepared to go forward with the hearing. The attorney replied that he did not know anything about the case and did not know why he was there. When Plaintiff's counsel attempted to address the Court, Judge Darrington interrupted and said if he wanted to hear from Plaintiff's counsel, he would let him know. The Judge said that while the Defendant had been given proper notice of the hearing, that since the Prosecutor had not been given proper notice, the matter would be continued until the Prosecutor got notice. The court then ended the hearing. (R., Vol. 1, pp. 40-41.)

On July 22, 2020 Plaintiff filed its Notice of Appeal in this matter with the District Court. (R., Vol.1, pp. 42-65.)

On August 24, 2020 Plaintiff filed Appellant's Brief with the District Court. (R., Vol. 1, pp. 71-106.)

On October 1, 2020, the District Court issued a Notice of Intent to Deem Case Submitted on Appellant's Brief. (R., Vol. 1, pp. 107-108.)

On October 22, 2020, the Owyhee County Prosecutor filed a Request for Oral Argument with the District Court. Notice of this filing was not given to Plaintiff/Appellant and Plaintiff/Appellant's legal counsel only learned that it had been filed upon receiving the Clerk's Record in this appeal. (R., Vol. 1, pp. 109-110.)

On December 1, 2020, the District Court issued its Memorandum Decision and Order Dismissing Appeal that is the subject of this Appeal by Plaintiff/Appellant Industrial Commission. (R., Vol. 1, pp. 111-120.)

On December 28, 2020, Appellant filed its Notice of Appeal to this Court. (R., Vol. 1, pp. 121-146.)

### **C. Statement of Facts**

There are no facts, other than those set out in the Course of Proceedings above, that need to be considered in this appeal, as this appeal presents only questions of law.

## II. ISSUES ON APPEAL

The issues to be decided by this Court are:

1. **When a restitution order entered in a criminal case pursuant to a request by the prosecutor has been recorded by the victim in accordance with Idaho Code § 19-5305(1), is that order entitled to be treated as a civil judgment by the victim?**
2. **When a restitution order entered in a criminal case pursuant to a request by the prosecutor has been recorded by the victim under the provisions of Idaho Code § 19-5305(1), is that victim entitled to renewal of that restitution order and the civil judgment so obtained under the provisions of Idaho Code § 10-1111?**
3. **Does a victim have standing to file a motion to renew a restitution order and the civil judgment obtained by recording that order under the provisions of Idaho Code § 10-1111?**
4. **Did the District Court err by dismissing Appellant's appeal of the Magistrate Court's denial of Appellant's Motion for Renewal of Restitution Order and Judgment?**
5. **Is the Appellant entitled to entry of its proposed Order Renewing Restitution Order and Judgment, *nunc pro tunc*, effective July 2, 2020, the date its motion and that proposed order were filed in this case?**

### III. STANDARD OF REVIEW

In an appeal from a grant of a motion to dismiss for untimely service of process, this court freely reviews the district court's rulings on questions of law. *See Herrera v. Estay*, 146 Idaho 674, 678–79, 201 P.3d 647, 651–52 (2009).

Grazer v. Jones, 154 Idaho 58, 64, 294 P.3d 184, 190 (2013)

Consequently, when reviewing a decision dismissing a case under the rule, “the appropriate standard of review is the same as that used to review an order granting summary judgment.” *Nerco Minerals Co. v. Morrison Knudsen Corp.*, 132 Idaho 531, 533, 976 P.2d 457, 459 (1999). However, “where there is no dispute as to the factual circumstances, our review consists of ascertaining the effect of applicable law on the undisputed facts.” *Martin v. Hoblit*, 133 Idaho 372, 987 P.2d 284 (1999). Citing *Regjovich v. First W. Inv., Inc.*, 134 Idaho 154, 157, 997 P.2d 615, 618 (2000).

Herrera v. Estay, 146 Idaho 674, 679, 201 P.3d 647, 652 (2009)

This Court exercises free review over issues or questions of law and matters of statutory interpretation. *Guzman v. Piercy*, 155 Idaho 928, 934, 318 P.3d 918, 924 (2014).

Western Comm. Ins. Co. v. Burks Tractor Co., Inc., 164 Idaho 215, 428 P.3d 793, 796 (2018)

### IV. ARGUMENT

#### **A. The Appellant has statutory authority to bring its Motion for Renewal of Restitution Order and Judgment in this case.**

The Idaho Industrial Commission was charged by the Idaho Legislature to administer the Crime Victims Compensation Act (Idaho Code § 72-1001, *et seq.*). That Act gave power to the Commission to determine all matters relating to claims under the Act and established the crime victims compensation account administered by the Commission.

Idaho Code § 72-1004: POWERS AND DUTIES OF COMMISSION. (1) The commission shall:

- (a) Adopt rules to implement this chapter in compliance with chapter 52, title 67, Idaho Code;
- (b) Prescribe forms for applications for compensation; and
- (c) Determine all matters relating to claims for compensation.

Idaho Code § 72-1009: CRIME VICTIMS COMPENSATION ACCOUNT. The crime victims compensation account is hereby established in the dedicated fund. Moneys shall be paid into the account as provided by law. Moneys in the account may be appropriated only for the purposes of this chapter, which shall include administrative expenses.

This account in the Crime Victims Compensation Program, administered by the Idaho Industrial Commission, is entitled to all of the rights and privileges granted to victims of crime under Idaho's criminal restitution statutes.

Idaho Code § 19-5304: RESTITUTION FOR CRIME VICTIMS — ORDERS TO BE SEPARATE — WHEN RESTITUTION IS NOT APPROPRIATE — OTHER REMEDIES — EVIDENTIARY HEARINGS — DEFINITIONS. (1) As used in this chapter:

...  
(e) "Victim" shall mean:

...  
(iii) The account established pursuant to the crime victims compensation act, chapter 10, title 72, Idaho Code, from which payment was made to or on behalf of a directly injured victim pursuant to the requirements of Idaho law as a result of the defendant's criminal conduct.

Accordingly, the Industrial Commission may record as a civil judgment any restitution order obtained on behalf of the crime victims compensation account as a victim in a criminal case and execute upon such civil judgment as any other civil plaintiff in order to reimburse that account for payments it has made to or on behalf of the directly injured victims of criminally injurious conduct in Idaho.

Idaho Code § 19-5305: COLLECTION OF JUDGMENTS. (1) After forty-two (42) days from the entry of the order of restitution or at the conclusion of a hearing to reconsider an order of restitution, whichever occurs later, an order of restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments. (Emphasis added.)

The statute governing the creation of a judgment lien in effect on July 27, 2005, when the original Amended Restitution Order was entered, reads as follows:<sup>1</sup>

Idaho Code § 10-1110: FILING TRANSCRIPT OF JUDGMENTS —LIEN ACQUIRED. A transcript or abstract of any judgment or decree of any court of this state or any court of the United States the enforcement of which has not been stayed as provided by law, if rendered within this state, certified by the clerk having custody thereof, may be recorded with the recorder of any county of this state, who shall immediately record and docket the same as by law provided, and from the

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<sup>1</sup> The text of the current Idaho Code § 10-1110 reads as follows:

A transcript or abstract of any judgment or decree of any court of this state or any court of the United States the enforcement of which has not been stayed as provided by law, if rendered within this state, certified by the clerk having custody thereof, may be recorded with the recorder of any county of this state, who shall immediately record and docket the same as by law provided, and from the time of such recording, and not before, the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien; provided that where a transcript or abstract is recorded of any judgment or decree of divorce or separate maintenance making provision for installment or periodic payment of sums for maintenance of children or alimony or allowance for wife's support, such judgment or decree shall be a lien only in an amount for payments so provided, delinquent or not made when due. The lien resulting from recording of a judgment other than for support of a child or for restitution owed to a crime victim where the order of restitution has been recorded as a judgment pursuant to section 19-5305, Idaho Code, continues ten (10) years from the date of the judgment, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law. A lien arising from the delinquency of a payment due under a judgment for support of a child issued by an Idaho court continues until ten (10) years after the death or emancipation of the last child for whom support is owed under the judgment unless the underlying judgment is renewed, is previously satisfied or the enforcement of the judgment is stayed upon an appeal as provided by law. A lien arising from an order for restitution to a crime victim where the order of restitution has been recorded as a judgment pursuant to section 19-5305, Idaho Code, continues until twenty (20) years from the date of the judgment, unless the judgment be previously satisfied, or unless the judgment is stayed or set aside. The transcript or abstract above mentioned shall contain the title of the court and cause and number of action, names of judgment creditors and debtors, time of entry and amount of judgment.

S.L. 1929, ch. 51, § 3; S.L. 1955, ch. 45, § 1; S.L. 1963, ch. 209, § 1; S.L. 1995, ch. 264, § 2; S.L. 1998, ch. 68, § 1. Amended by S.L. 2011, ch. 104, § 2, eff. March 22, 2011; S.L. 2015, ch. 139, § 1, eff. July 1, 2015; S.L. 2015, ch. 278, § 4, eff. July 1, 2015.



time of such recording, and not before, the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien; provided that where a transcript or abstract is recorded of any judgment or decree of divorce or separate maintenance making provision for installment or periodic payment of sums for maintenance of children or alimony or allowance for wife's support, such judgment or decree shall be a lien only in an amount for payments so provided, delinquent or not made when due. **The lien resulting from recording of a judgment** other than for support of a child **continues five (5) years from the date of the judgment**, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law. A lien arising from the delinquency of a payment due under a recorded judgment for support of a child after July 1, 1995, continues twenty-three (23) years from the date of judgment unless the judgment be previously satisfied or unless the enforcement of the judgment be stayed upon an appeal as provided by law. Provided, that no lien for child support shall continue more than five (5) years after the child reaches the age of majority or five (5) years after the child's death, whichever shall first occur. If the recorded judgment is for the support of more than one (1) child, the lien shall continue until five (5) years after the youngest child reaches the age of majority or five (5) years after the death of the last remaining child, whichever shall first occur. The transcript or abstract above mentioned shall contain the title of the court and cause and number of action, names of judgment creditors and debtors, time of entry, where entered in judgment book- and amount of judgment.

1998 Idaho Session Laws, Ch. 68, pp. 261-262, (S.B. 1301). Effective: July 1, 1998.

(Emphasis added.)

Restitution orders that have been previously recorded as civil judgments by the Industrial Commission's Crime Victims Compensation Program may continue to be renewed by the Commission in accordance with Idaho law.

The statute governing such renewals that was in effect at the time the Amended Restitution Order was originally entered reads as follows:<sup>2</sup>

Idaho Code § 10-1111: RENEWAL OF JUDGMENT—LIEN. Unless the judgment has been satisfied, at any time prior to the expiration of the lien created by section 10-1110, Idaho Code, or any renewal thereof, the court which entered the judgment, other than a judgment for child support, may, upon motion, renew such judgment. The renewed judgment may be recorded in the same manner as the original judgment, and the lien established thereby shall continue for five (5) years from the date of judgment.

1995 Idaho Session Laws, Ch. 264, pp. 846-848 (H.B. 63). Effective July 1, 1995.

(Emphasis added.)

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<sup>2</sup> The text of the current Idaho Code § 10-1111 reads as follows:

(1) Unless the judgment has been satisfied, at any time prior to the expiration of the lien created by section 10-1110, Idaho Code, or any renewal thereof, the court that entered the judgment, other than a judgment for child support, may, upon motion, renew such judgment by entry of an order renewing judgment. The order renewing judgment may be recorded in the same manner as the original judgment, and the lien established or continued thereby shall continue for ten (10) years from the date of the order renewing judgment. Entry of an order renewing judgment maintains both the date of the original judgment and the priority of collection thereof, and it begins anew the time limitation for an action upon a judgment set forth in section 5-215, Idaho Code.

(2) Unless the judgment has been satisfied, and prior to the expiration of the lien created in section 10-1110, Idaho Code, or any renewal thereof, a court that has entered a judgment for child support may, upon motion, renew such judgment by entry of an order renewing judgment. The entry of an order renewing judgment shall not affect the manner of enforcement of the original judgment, and the lien established or continued thereby shall continue for ten (10) years from the date of the order renewing judgment. Entry of an order renewing judgment maintains both the date of the original judgment and the priority of collection thereof, and it begins anew the time limitation for an action upon a judgment set forth in section 5-215, Idaho Code.

S.L. 1978, ch. 115, § 1; S.L. 1995, ch. 264, § 3. Amended by S.L. 2011, ch. 104, § 3, eff. March 22, 2011; S.L. 2016, ch. 269, § 1, eff. July 1, 2015; S.L. 2017, ch. 177, § 1, eff. March 27, 2017; S.L. 2018, ch. 284, § 1, eff. July 1, 2018.

**B. The Appellant has standing to bring its Motion for Renewal of Restitution Order and Judgment in this case.**

The District Court's dismissal of Appellant's appeal, as well as the magistrate's denial of the Appellant's motion to renew the restitution order and civil judgment, relied upon the misapplication of the Idaho Court of Appeals decision in *State v. Johnson*, 167 Idaho 454, 470 P.3d 1263 (Ct. App. 2020). (R. Vol. 1, pp. 113-117) (See copy of *Johnson* decision attached as **Exhibit B.**) That case only challenged the original entry of a restitution order, not the renewal of a restitution order that had been previously recorded by a victim and converted to a civil judgment under the provisions of Idaho Code § 19-5305(1). In *Johnson*, the Court of Appeals found that the original restitution order had been improperly entered by the trial court pursuant to a motion for restitution brought by a victim; not the prosecutor. Since the only parties to the original criminal case in which that motion was brought were the defendant and the State, represented by the prosecutor, the victim did not have standing, as a party, to file its independent motion for an original order of restitution.

Because the State was not seeking restitution on behalf of the crime victim and the victim did not have standing to file a restitution motion, the district court lacked authority to consider the motion. Thus, the order of restitution is vacated.

*Johnson*, 470 P.3d at 1264.

Although crime victims have a right to restitution in a criminal case, a crime victim is not a party to a criminal case and does not have an independent right to intervene in a defendant's criminal case. Because the district court's restitution order was based on a motion filed by a non-party and because there was no evidence the victim suffered any actual economic loss, the order of restitution constituted an abuse of discretion. Accordingly, the order of restitution is vacated.

*Johnson*, 470 P.3d at 1270

The Appellant is not seeking to intervene in a criminal case. Appellant is only requesting another renewal of the restitution order that was properly obtained by the Owyhee County Prosecutor along with the civil judgment it subsequently obtained by recording that order. Timely renewals of a restitution order that a victim has recorded must be requested and obtained by a victim in order to preserve the victim's right to continue to execute on that recorded restitution order "as provided by law for civil judgments" granted to victims by Idaho Code § 19-5305(1).

The District Court admits that there is nothing in the *Johnson* opinion addressing the standing of a victim to file a motion for the renewal of a properly granted restitution order and the civil judgment subsequently obtained by the victim having recorded that lawfully entered restitution order. (R., Vol. 1, p. 117, Ls. 9-11.) Nevertheless, the District Court, misconstruing *Hooper v. State*, 150 Idaho 497, 248 P.3d 748 (2011), a case where a defendant sought to obtain an order in a criminal case for recovery of money paid to the Industrial Commission under a restitution order that was revoked after his conviction was reversed, incorrectly concluded that since a victim is not a party to a criminal case they cannot have the restitution order they recorded and converted to a civil judgment under Idaho Code § 19-5305(1) renewed by the court that issued that order, as required by Idaho Code § 10-1111, because it is a criminal court and the victim is not a party in the criminal case in which the underlying restitution order was issued. (R., Vol. 1, p. 117, Ls. 13-23.)

That misinterpretation denies victims of crime the right granted by Idaho Code § 19-5305(1) to convert a criminal restitution order to a civil judgment that they may then execute

upon and which, if necessary, they may also renew as they could any other civil judgment under the provisions of Idaho Code § 10-1111.

The Amended Restitution Order entered in this case by Magistrate Judge Thomas J. Ryan on July 27, 2005, the transmittal letter of that original order to the Industrial Commission's Crime Victims Compensation Program by the Owyhee County Prosecutor and the Commission's previous letter to that prosecutor requesting that he obtain that restitution order, all show that the original Amended Restitution Order was properly requested by Matthew W. Faulks, the Owyhee County Prosecuting Attorney at the time, on behalf of the victim, the Crime Victims Compensation Account administered by the Idaho Industrial Commission. (See **Exhibit D**, attached.)

Judge McKee in his Memorandum Decision and Order Dismissing Appeal (R., Vol. 1, pp. 118-119) also cites the Idaho Court of Appeals decision in *Workman v. Rich*, 162 Idaho 711, 403 P.3d 1200 (Ct. App. 2017), as supporting his interpretation of these statutes. However, that case actually affirms the independent statutory right of victims to record their properly entered restitution orders as civil judgments and to execute upon, and if necessary renew, those restitution orders as they would be entitled to do with any other civil judgment.

In the *Workman* case, the dispute was over whether Rich, the clerk of the court, had the right to collect money from Workman's inmate account more than five years after the restitution order had been entered, since that order had not been recorded or renewed by the victim in that case. The Court found that there were actually two distinct statutory methods provided for enforcing restitution orders. Victims can independently record a restitution order and personally collect on it as they would any other civil judgment. However, whether that has happened or not,

the clerk of the court can independently collect on the restitution order directly from defendants on behalf of victims; without the need for the recording or the renewing of the restitution order and civil judgment required for victims. Only the first method requires that the order be recorded by the victim as a civil judgment and then timely renewed by the victim in order for the victim to be able to execute on and retain the ability to collect on the debt set out in the restitution order as any other civil judgment.

The magistrate court determined, and the district court agreed, that “the legislature provided two different avenues for crime victims to receive restitution from the perpetrators of crime.”

...

Rich argues that Workman’s interpretation fails to provide for these separate avenues for obtaining restitution: **allowing victims to personally collect through the use of a civil judgment** and allowing the clerk of the court to collect on the victim’s behalf. . . . We agree with the respondents and the district court.

*Workman*, 162 Idaho, at 715. (Emphasis added.)

Notwithstanding the District Court’s misinterpretation of this decision in its Memorandum Decision and Order Dismissing Appeal, the Court of Appeals in *Workman* clearly upheld the independent right of victims to record their restitution orders as civil judgments under the authority of Idaho Code § 19-5305(1) and then execute on those civil judgments as they would be able to do with any other civil judgment in order to “personally” collect the restitution sum owed to them by the defendant as set out the restitution order. Those victims also have the statutory right to have those civil judgments renewed as they could any other civil judgment under the provisions of Idaho Code § 10-1111.

A crime victim in Idaho has a constitutional right “[t]o restitution, as provided by law, from the person committing the offense that caused the victim’s loss.” Idaho Const. art. I, § 22(7). As a constitutional right, it is superior to all statutes, rules, and governmental actions. While this constitutional provision makes clear that the legislature and the judiciary can provide procedures “by law” for obtaining that restitution, it does not imply that a victim’s ability to vindicate this constitutional right is subject to the discretion of a prosecutor.

If a prosecutor is allowed to choose to not renew a civil judgment stemming from the recording of a validly entered restitution order but is free to instead let the victim’s judgment lien expire, that would deny victims their constitutional right to restitution. This concern was compounded by the Court of Appeals in *Johnson* when it found that a prosecutor should not act as the victim’s advocate but should take into account “interests outside the victim’s” when determining whether to take action with regard to restitution for a victim. *State v. Johnson*, 167 Idaho 454, 470 P.3d 1263, 1268 (Ct. App. 2020).

The fundamental concept underlying standing is ensuring that those with a “personal stake in the outcome” are the ones before the Court advocating for their own interests. See *Blankenship v. Washington Tr. Bank*, 153 Idaho 292, 295, 281 P.3d 1070, 1073 (2012) (quoting *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 72, 98 S.Ct. 2620, 2630, 57 L.Ed.2d 595, 610 (1978)). The party with the personal stake in the right to restitution and in keeping the judgment lien from expiring is the victim, not the prosecutor.

For this reason victims, including the Industrial Commission’s Crime Victims Compensation Program, should not be left to rely on the mercy of a prosecutor to renew an order

of restitution that had been recorded by them as a civil judgment. To require this would be to empower a prosecutor to make the unilateral decision that a victim's constitutional right should be ignored.

To deny victims of crime their constitutionally based statutory right to renew a civil judgment which they have obtained by recording a restitution order simply because the court that issued the restitution order on which that civil judgment is based is a criminal court; where without this statutory mechanism enabling victims the independent ability to convert restitution orders to civil judgments by recording they would not otherwise have standing, would frustrate the purpose of these provisions found in the constitution and statutes. When read in light of a victim's constitutional right to restitution, Idaho Code § 19-5305(1) and Idaho Code § 10-1111 show a clear intention by the legislature to grant victims an independent right to personally execute on, and if necessary renew, their restitution orders and the civil judgments created when they record those restitution orders, as they would be entitled to do with any other civil judgment.

Idaho Code § 11-101 provides, in pertinent part:

The party in whose favor a judgment for restitution to a victim of crime has been entered pursuant to section 19-5305, Idaho Code, may, at any time within twenty (20) years after the entry thereof, have a writ of execution issued for its enforcement, subject to the right of the court to stay execution as provided by the rules adopted by the supreme court.

It would appear that under the District Court's reading of *Johnson*, the Industrial Commission would not be able to ask for the issuance of a writ of execution as it is a non-party. Likewise, could the Industrial Commission make a motion for a debtor examination under Idaho Code §§ 11-501 and 11-502? Or a motion to hold a non-cooperative debtor in contempt under



Idaho Code § 11–508? Appellant believes that all of these are things are available to a person with a civil judgment, and Idaho Code § 19–5305(1) would appear to allow someone with an order of restitution in their favor to do the same.

There are no Idaho cases directly addressing a victim’s right to renew a restitution order recorded as a civil judgment. However, a California court of appeals case, *In re Keith C.*, 236 Cal. App. 4th 151, 186 Cal. Rptr. 3d 339 (2015), addressed a challenge to a juvenile court’s jurisdiction over its renewal of a restitution order after the juvenile had turned 21, but before the judgment had been satisfied. The court found, in light of California’s constitutional provision that, like Idaho’s constitution, grants crime victims the right to restitution: **“Courts must broadly construe statutory provisions implementing the constitutional requirement that an offender pay restitution to the victim.”** *In re Keith C.*, 236 Cal. App. 4th at 155. (Emphasis added.) Applying that standard to California’s statutes which grant victims the right to enforce restitution orders as a civil judgment, the court held:

To add a requirement that the judgment debtor be no older than 21 years at the time of issuance of the JV-790—or to accept Keith's argument that, after a ward turns 21, the court may perform only “ministerial” acts that Keith contends do not include the issuance of abstracts of judgment—not only would contravene the express intent of the Legislature that victims may enforce juvenile restitution orders in the same manner as civil judgments (see § 730.6, subs. (i) & (r); Pen. Code, § 1214, subd. (b)), but would reward defaults by juvenile offenders hoping they can escape their restitutionary obligations by “running out the clock” as they grow into adulthood.

*In re Keith C.*, 236 Cal. App. 4th 151 at 156.

Under the district court’s interpretation of *Johnson*, in Idaho the clock can apparently run out for victims unless they can get a prosecutor to file a timely motion to renew their restitution

order and civil judgment before their judgment lien expires under the provisions of Idaho Code § 10-1110 in effect at the time their original restitution order was issued. That narrow reading of Idaho's statutes governing the right of persons to renew their civil judgments does not uphold the constitutional right of victims in Idaho to restitution and contravenes the express intent of the Idaho Legislature to permit victims to treat their restitution orders as civil judgments.

If there is any doubt about whether the plain language of Idaho Code § 19-5305(1) does grant victims of crime standing to file a motion to renew their recorded restitution order as any other civil judgment under the provisions of Idaho Code § 10-1111, the legislative history of a 2015 amendment to Idaho Code § 10-1110, which establishes the time frame within which such renewals must be requested, should remove any question about a victim's standing to renew their recorded restitution orders.

In 2015 the Idaho Legislature passed House Bill (HB) 62. Section 1 of that bill amended Idaho Code § 10-1110. It was signed by the Governor and became law July 1, 2015. (2015 Idaho Sess. Laws 343. See p. 3 of **Exhibit E**, attached.) The Statement of Purpose for HB 62 reads as follows:

Idaho Code provides that when a defendant is found guilty of any crime resulting in economic loss to a victim, the court shall order the defendant to make restitution unless it finds that such an order would be inappropriate or undesirable. This order may later be recorded as a judgment and *the victim may execute on the judgment in the same manner as any other civil judgment*. However, crime victims are generally not represented by an attorney, and they may not realize that the lien arising from a judgment must be renewed every five years, or that the judgment must be executed upon within five years, unless the court grants a motion to extend that time. This bill would enable victims of crime to fully recognize their constitutional right to restitution for the harm that has been done to them by extending the five

year limitation to twenty years for victims who are seeking to recover on a judgment for restitution arising from a defendant's conviction.

RS23375 / HB62, 2015 Idaho Legislature (See p. 5 of **Exhibit E**, attached. Emphasis added.)

When this bill came up for its print hearing in the House committee, Senior District Judge Barry Wood, who was a joint sponsor of this bill, said that: "Currently there is a five year limitation for a victim to claim restitution unless the victim renews their claim. This proposed legislation would extend the time the victim has to claim restitution from five years to twenty years." (Minutes, House Judiciary, Rules and Administration Committee, January 29, 2015. See p. 7 of **Exhibit E**, attached. Emphasis added.)

When testifying at the House committee hearing on HB 62, Judge Wood said that: "The victim will continue to be allowed to renew the lien in five year increments following the initial twenty years." (Minutes, House Judiciary, Rules and Administration Committee, February 11, 2015. See p. 9 of **Exhibit E**, attached. Emphasis added.)

During testimony on HB 62 before the Senate Judiciary and Rules Committee, Judge Wood testified that:

The life of the [civil] judgment is five years. This bill stretches out the current five years to twenty. It provides a longer time to collect the restitution. Frequently the innocent victim is not represented by a lawyer and does not understand that time is a factor in collecting on the lien.

Minutes, Senate Judiciary and Rules Committee, March 6, 2015. (See p. 11 of **Exhibit E**, attached.) (Emphasis added.)

In order to execute on a civil judgment obtained by recording a restitution order, as expressly granted to a victim under the provisions of Idaho Code § 19-5305(1), a victim must be

able to timely file a motion to renew that civil judgment, as expressly granted under the provisions of Idaho Code § 10-1111. Therefore, a victim, as party plaintiff to that recorded civil judgment, must necessarily have standing to file a motion requesting that the civil judgment and the underlying restitution order on which it is founded be renewed. This is true regardless of the fact that the motion for renewal of that civil judgment must, as required by Idaho Code § 10-1111, be brought before the Court that entered the original Judgment/Restitution Order, i.e., the criminal court that entered the original restitution order. To deny standing to a victim for this limited purpose would frustrate the clear intent of the law to grant victims an independent right to convert a restitution order to a civil judgment and execute on it as they would any other civil judgment.

After this Appeal had been taken and the Record settled, the Appellant obtained records that should be brought to the attention of this Court and addressed by the Appellant. The Prosecutor of Owyhee County filed his own motion to renew the restitution order and civil judgment entered in this case on March 23, 2021. (R., Aug., pp. 1-3.) This was done months after the District Court had dismissed Appellant's appeal of the magistrate's denial of its own motion to renew the restitution order and civil judgment. The Notice of Appeal to this Court had been filed, the Record had been settled and it was just days before it was certified. There was also a Notice of Hearing on the Prosecutor's motion filed that same day which set the Prosecutor's motion for a hearing on May 10, 2021. (R., Aug., pp. 4-5.) However, since the magistrate signed the Prosecutor's proposed order only two days later, on March 25, 2021, no hearing was held on that motion. (R., Aug., pp. 6-8.) The Appellant moved to augment the Record in this appeal to ensure that this Court had a complete record of what has transpired in this matter to date.

Nevertheless, any motion for the renewal of Appellant's civil judgment under the provisions of Idaho Code § 10-1111 must have been filed before the expiration of the 5-year lien created in accordance with Idaho Code § 10-1110 by the Appellant's recording of the latest renewal of this restitution order and civil judgment. The previous renewal of this restitution order and judgment had been entered on July 14, 2015 by Judge Grober. (R., Vol. 1, pp. 32-34.) Accordingly, any motion to renew that civil judgment must have been filed on or before July 14, 2020. The Prosecutor's untimely motion was filed more than eight months after that lien had expired. Since the magistrate's order of renewal was based on the Prosecutor's untimely motion, it is void or voidable and would be unenforceable. Accordingly, the Appellant does not consider that this recent action by the Prosecutor or the magistrate judge to have mooted its appeal. Neither does the Appellant consider that this latest action, even if it were valid, to have adequately addressed the legal errors committed by the courts below or answered the underlying legal questions properly raised by this appeal.

## **V. CONCLUSION**

The District and Magistrate Judges erroneously denied Appellant's Motion for Renewal of Restitution Order and Judgment; asserting that Appellant lacked standing to bring that motion. The Industrial Commission has standing, as party plaintiff to the civil judgment it seeks to renew once more, to bring its motion to renew that civil judgment in accordance with the applicable statutes, case law and constitutional right.

For the reasons and on the grounds set forth herein, Appellant respectfully requests that this Court reverse the District Court's dismissal of its appeal of the Magistrate Court's denial of

its timely motion to renew the civil judgment and restitution order previously entered and renewed in this case and direct the entry of its proposed Order Renewing Restitution Order and Judgment filed in this matter, *nunc pro tunc*, as of July 2, 2020, the date Appellant filed its Motion to Renew Restitution Order and Judgment.

DATED this 23rd day of April 2021.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL



BLAIR D. JAYNES  
Lead Deputy Attorney General  
Idaho Industrial Commission

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of April 2021, I served a true and correct copy of the foregoing APPELLANT'S BRIEF upon the following by the method identified below and addressed to:

MALINDA ROSE POE  
2779 N. OLD STONE WAY  
MERIDIAN, ID 83646-3842

U.S. Mail

*DEFENDANT/RESPONDENT, PRO SE*



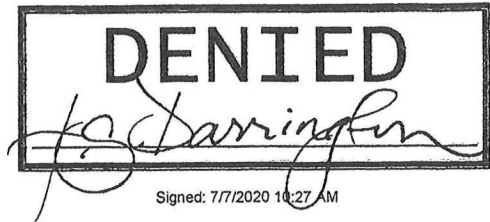
BLAIR D. JAYNES  
Lead Deputy Attorney General  
Idaho Industrial Commission

# **EXHIBIT A**

LAWRENCE G. WASDEN  
Attorney General

BLAIR D. JAYNES, ISB No. 1927  
Deputy Attorney General  
State of Idaho  
Industrial Commission  
11321 W. Chinden Blvd.  
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Attorney for Plaintiff



Industrial Commission has no standing  
to bring this motion

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE

STATE OF IDAHO, *ex rel.* )  
INDUSTRIAL COMMISSION, CRIME )  
VICTIMS COMPENSATION PROGRAM, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MALINDA ROSE POE, )  
 )  
Defendant. )

Case No. CR-2003-7539

ORDER RENEWING  
RESTITUTION ORDER  
AND JUDGMENT

WHEREAS, on July 27, 2005, and July 7, 2010, and July 14, 2015, Plaintiff received a restitution order in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Owyhee, against Malinda Rose Poe, in the amount of \$2,346.00; and

WHEREAS, a lien as expressed in Idaho Code § 10-1110 was properly perfected by recording of the Restitution Order and Judgment in the County of Owyhee, State of Idaho, on August 6, 2009, and July 13, 2010, and August 26, 2016, under instrument numbers 268908 and 271545 and 290584; and



WHEREAS, the restitution order in this matter has not been totally satisfied, as shown by Plaintiff's Motion; and

THEREFORE, the remaining balance due is \$1,225.00.

WHEREAS, Plaintiff has properly moved for renewal of restitution order pursuant to Idaho Code § 10-1111;

NOW, THEREFORE, IT IS HEREBY ORDERED that the restitution order in this case be renewed and the lien established by Idaho Code § 10-1110 shall continue pursuant to Idaho Code § 10-1111.

DATED \_\_\_\_\_

\_\_\_\_\_  
JUDGE

**NOTICE OF ENTRY**

I HEREBY CERTIFY that I served a true and correct copy of the **ORDER RENEWING RESTITUTION ORDER AND JUDGMENT** by email, or, by depositing the same in the United States mail, postage pre-paid, in an envelope addressed to:

BLAIR D. JAYNES

[Blair.Jaynes@iic.idaho.gov](mailto:Blair.Jaynes@iic.idaho.gov)

Deputy Attorney General  
State of Idaho  
Industrial Commission  
11321 W. Chinden Blvd.  
P.O. Box 83720  
Boise, Idaho 83720-0041

[Annie.Hoffmann@iic.idaho.gov](mailto:Annie.Hoffmann@iic.idaho.gov)

Malinda Rose Poe  
2779 N. Old Stone Way  
Meridian, ID 83646-3842

DATED Signed: 7/7/2020 03:19 PM \_\_\_\_\_

  
CLERK

# **EXHIBIT B**

167 Idaho 454

STATE of Idaho, Plaintiff-Respondent,

v.

Roy Cline JOHNSON, Defendant-Appellant.

Docket No. 46500

Court of Appeals of Idaho.

Filed: March 25, 2020

**Background:** Defendant was convicted in the Third Judicial District Court, Canyon County, Christopher Nye, J., of felony aggravated driving under the influence of alcohol. The District Court subsequently granted victim's motion for restitution. Defendant appealed.

**Holdings:** On denial of rehearing, the Court of Appeals, Huskey, J., held that victim lacked standing to seek restitution. Vacated.

#### 1. Criminal Law ⚖️1147

When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason.

#### 2. Criminal Law ⚖️1220

Victim, who was not a party in defendant's criminal case for felony aggravated driving under the influence of alcohol, lacked standing to intervene in the case for purposes of seeking restitution from defendant for medical bills, and therefore trial court's restitution order in favor of victim was required to be vacated. Idaho Const. art. 1, § 22; Idaho Const. art. 5, § 1; Idaho Code Ann. § 19-5304(2, 6).

#### 3. Courts ⚖️4, 11

A court's jurisdiction has two components: jurisdiction over the subject matter refers to a court's authority to exercise judicial power over a particular class or type of dispute, whereas jurisdiction over the person refers to the court's power to bring a person into its adjudicative process.

#### 4. Sentencing and Punishment ⚖️2102

A criminal trial court is without subject matter jurisdiction or authority to order restitution unless provided by statute.

#### 5. Courts ⚖️11

The establishment of a court's subject matter jurisdiction over the type of action does not automatically confer personal jurisdiction over the people before it.

#### 6. Criminal Law ⚖️98

In criminal matters, personal jurisdiction generally relates to the ability of a trial court to bring a defendant into the adjudicative process.

#### 7. Courts ⚖️11

Although a court may gain personal jurisdiction when a party appears and submits to the court's jurisdiction, a court generally lacks personal jurisdiction over individuals who are not parties, or have not been served by parties, to the action.

#### 8. Action ⚖️13

A court lacks jurisdiction to hear a case if a person does not have standing because the case or controversy requirement for judicial power cannot be satisfied. U.S. Const. art. 3, § 2, cl. 1.

#### 9. Criminal Law ⚖️633.1

Standing issues may arise when a non-party attempts to make a motion to a trial court.

#### 10. Criminal Law ⚖️1220

Crime victims are not parties to a criminal case even for the limited purpose of seeking restitution and therefore lack standing to pursue a motion independently of a party; this is premised on the policy that criminal prosecutions are public matters, sought by the State on behalf of its citizen, not contests between a defendant and a crime victim.

#### 11. Criminal Law ⚖️633.1

The inability of non-parties to intervene in a criminal case recognizes that the considerations underlying intervention in a civil case are not applicable to a criminal proceeding.

**12. Sentencing and Punishment**  $\S$ 2122

The rule that only the State may seek restitution for harm to a victim preserves the nature of criminal proceedings as a process between the State and the defendant, while protecting a crime victim's right to a restitution amount that is properly commensurable to the economic loss caused by the defendant's criminal actions. Idaho Code Ann.  $\S$  19-5304(6).

**13. Sentencing and Punishment**  $\S$ 2101, 2121, 2122

In the context of a restitution hearing, a prosecutor may seek a restitution order primarily to assist crime victims and, because restitution may fulfill deterrent or rehabilitative purposes, may additionally pursue restitution for the benefit of the State. Idaho Const. art. 1,  $\S$  22; Idaho Code Ann.  $\S$  19-5304(6); Idaho R. Prof. Conduct 3.8.

**14. Constitutional Law**  $\S$ 4626

A defendant's right to due process may be violated when a person who is a victim of the crime or who has a personal, financial, or attorney-client relationship with the victim of the crime prosecutes the criminal case. U.S. Const. Amend. 14.

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Christopher S. Nye, District Judge.

Order of restitution, vacated.

Eric D. Fredericksen, State Appellate Public Defender; Kim A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Andrew V. Wake, Deputy Attorney General, Boise, for respondent.

**SUBSTITUTE OPINION THE COURT'S  
PRIOR OPINION DATED FEBRUARY  
24, 2019, IS HEREBY WITHDRAWN**

HUSKEY, Chief Judge

Roy Cline Johnson appeals from the district court's order of restitution. Johnson argues the district court lacked the jurisdiction to grant the motion for restitution because it was filed by the crime victim, who was not a party to the defendant's criminal case. Alternatively, Johnson contends the district court

abused its discretion by ordering restitution after the statutory time expired and in determining the amount of restitution. The State responds by asserting that the district court had jurisdiction to order Johnson to pay restitution and did not abuse its discretion. Because the State was not seeking restitution on behalf of the crime victim and the victim did not have standing to file a restitution motion, the district court lacked authority to consider the motion. Thus, the order of restitution is vacated.

**I.**

**FACTUAL AND PROCEDURAL  
BACKGROUND**

The State charged Johnson with felony aggravated driving under the influence of alcohol, Idaho Code  $\S$  18-8006, after Johnson struck a pedestrian while driving under the influence, causing injuries to the victim. The district court appointed a public defender to represent Johnson in the proceedings. Pursuant to a plea agreement, Johnson pled guilty to the offense. At the sentencing hearing, the State asked the district court to reserve the issue of restitution to give it additional time to determine the victim's economic loss as medical bills were still coming in and communications with insurance companies were ongoing. The district court sentenced Johnson to a period of confinement of ten years, with three years determinate, and reserved the matter of restitution for 180 days.

During the following eight months, the victim went through a period of homelessness and was incarcerated following a conviction for felony driving under the influence. The victim retained an attorney, Jeffrey McKinnie, to assist in seeking restitution and filing a civil action against Johnson. In mid-March, McKinnie filed a motion for preparation and copy of the judgment of conviction and motion for an order of restitution in Johnson's criminal case. The motion stated that negotiation attempts to resolve the victim's outstanding medical bills with Johnson's insurance company had been unsuccessful, but McKinnie believed obtaining a copy of Johnson's judgment of conviction would substantially assist the process. McKinnie

noticed the motion for a hearing and included an affidavit from the victim stating as a result of the traumatic brain injury he incurred during the accident, he could not recall if the State had contacted him regarding restitution. McKinnie did not include Johnson or Johnson's counsel on the motion for restitution's certificate of service.

Six days later, the victim, represented by McKinnie, and Johnson formalized a civil settlement; the victim signed a release of all claims against Johnson in exchange for \$100,000, which was paid by Johnson's insurance company. In the settlement, the victim recognized the injuries he sustained from the accident may be permanent and progressive, yet he released Johnson from liability for:

any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses, compensation and all consequential damage on account of or in any way growing out of any and all known and unknown, present or future or unanticipated personal injuries and property damage resulting or to result.

McKinnie took an active part in the civil settlement and served as the notary public on the release.

Despite the civil settlement McKinnie brokered, he continued to pursue the restitution order on the victim's behalf. Neither Johnson nor the victim was transported to the scheduled restitution hearing, so the district court continued the hearing. The court directed McKinnie to prepare the appropriate transport orders. McKinnie prepared the orders and incorrectly indicated that he was the attorney for the defendant in the header and body of the documents. Like McKinnie's previous filing, he failed to include Johnson or his counsel on the certificates of service. Next, McKinnie filed a supplemental affidavit on behalf of the victim to reflect an increase in the medical costs incurred, now totaling more than \$100,000.

Approximately three weeks later, and almost two months after McKinnie filed the initial motion for preparation and copy of the judgment of conviction and motion for an

order of restitution, Johnson's court-appointed attorney filed an order to transport Johnson to the restitution hearing. However, Johnson's attorney did not have a copy of McKinnie's underlying motion and briefing related to the restitution request at that time; McKinnie provided Johnson with these documents the morning of the restitution hearing. The district court continued the hearing because the victim had not been transported.

At the next restitution hearing, Johnson, the State, the victim, and all relevant attorneys were present. At the onset, Johnson's counsel challenged the basis of the restitution hearing, objecting to the victim's standing to independently file motions within a criminal case without going through the prosecuting attorney's office. The State, in its sole moment of participation in the hearing, concurred:

There is an issue of standing as far as the victim being able to file or petition the Court for their own restitution order separate and apart from anything done through the prosecutor's office. I think if we're just addressing that point, then I think [Johnson's attorney] has a valid point.

In response, McKinnie directed the district court's attention to Idaho Code § 19-5304(6) which states:

Restitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court. Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.

The court allowed the restitution hearing to go forward.<sup>1</sup>

McKinnie presented oral argument in support of the motion for restitution, arguing: (1)

1. It is unclear from the appellate record whether the court held Idaho Code § 19-5304(6) gave the victim standing to file a restitution motion and present evidence of economic loss within a crimi-

nal case or whether the court determined the statute conferred independent judicial authority to order restitution, despite the presence of a standing issue.

the civil settlement was solely to compensate for pain, suffering, and lost wages, not for medical bills incurred as a result of the offense, and (2) I.C. § 19-5304(2) precludes the court from considering the insurance payment in the restitution award. The district court requested additional briefing from Johnson and McKinnie regarding the court's ability to consider the insurance payment to the victim and whether Johnson objected to the victim's asserted amount of economic loss. The State did not participate in the additional briefing. After consideration, the district court held the civil settlement, release, and prior insurance payments did not limit the trial court's ability to award restitution equal to the full amount of the victim's medical economic loss. The court entered a restitution order for \$101,665.64. Johnson timely appeals.

## II.

### STANDARD OF REVIEW

[1] When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. *State v. Herrera*, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018). Over questions of law, this Court exercises free review. *State v. O'Neill*, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990).

## III.

### ANALYSIS

[2, 3] Johnson argues the district court lacked jurisdiction to order restitution because neither the crime victim nor McKinnie had standing to independently file the underlying motion for restitution within Johnson's criminal case. Jurisdictional issues, such as standing, are questions of law. *Tucker v. State*, 162 Idaho 11, 17, 394 P.3d 54, 60 (2017). A court's jurisdiction has two components: jurisdiction of the subject matter of the proceeding and jurisdiction of the person. *Hanson v. State*, 121 Idaho 507, 509, 826 P.2d 468, 470 (1992). Jurisdiction over the subject

matter refers to the authority of the court to exercise judicial power over a particular class or type of dispute, *id.*, while jurisdiction over the person refers to the court's power to bring a person into its adjudicative process. *State v. Ambro*, 142 Idaho 77, 79, 123 P.3d 710, 712 (Ct. App. 2005).

[4] "A criminal trial court is without subject matter jurisdiction or authority to order restitution unless provided by statute." *State v. Jensen*, 149 Idaho 758, 760, 241 P.3d 1, 3 (Ct. App. 2010). However, I.C. § 19-5304(2) grants trial courts the power to order a defendant who is found guilty of any crime to pay restitution to the victim if there is an economic loss as a result of the crime. Therefore, by statute, criminal trial courts are cloaked with subject matter jurisdiction relative to restitution orders. *State v. Keys*, 160 Idaho 95, 97, 369 P.3d 313, 315 (Ct. App. 2016).

[5-7] However, the establishment of a court's subject matter jurisdiction over the type of action does not automatically confer personal jurisdiction over the people before it. *See Hanson*, 121 Idaho at 509, 826 P.2d at 470. In criminal matters, personal jurisdiction generally relates to the ability of a trial court to bring a defendant into the adjudicative process. Without personal jurisdiction the court has no person to which to hold accountable to for the crime alleged. *See State v. Rogers*, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004). Although a court may gain personal jurisdiction when a party appears and submits to the court's jurisdiction, *id.*, a court generally lacks personal jurisdiction over individuals who are not parties, or have not been served by parties, to the action. *Hooper v. State*, 150 Idaho 497, 500, 248 P.3d 748, 751 (2011) (holding the district court lacked personal jurisdiction over the Idaho Industrial Commission in a criminal restitution action because the Commission was never a party to the action and had not been served with a summons and complaint, or submitted to the district court's jurisdiction).

[8, 9] Similarly, a court lacks jurisdiction to hear a case if a person does not have standing because the case or controversy requirement for judicial power cannot be sat-



ified. *Martin v. Camas Cty. ex rel. Bd. Comm'rs*, 150 Idaho 508, 512, 248 P.3d 1243, 1247 (2011). Standing issues may arise when a non-party attempts to make a motion to the trial court. See *State v. Draper*, 151 Idaho 576, 597, 261 P.3d 853, 874 (2011). In *Draper*, the Idaho Supreme Court found the district court's deferment to a procedural request by the presentence investigator troubling because "as the investigator was not a party to the case, he or she has no standing to make a motion to the court. Simply put, it was not the investigator's role to request a different procedure for the [presentence investigation report]." *Id.*

[10] Under Idaho's current statutory scheme, crime victims are not parties to a criminal case even for the limited purpose of seeking restitution and therefore lack standing to pursue a motion independently of a party. The Idaho Constitution provides "every action prosecuted by the people of the state as a party, against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action." IDAHO CONST. art. V, § 1. This principle is echoed statutorily by I.C. § 19-104, which defines the State and the person charged as the only parties to criminal actions. At the core of these provisions is the belief that criminal prosecutions are public matters, sought by the State on behalf of its citizen, not contests between a defendant and a crime victim. See *State v. Gault*, 304 Conn. 330, 39 A.3d 1105, 1113 (2012).

Although the Idaho Constitution enumerates a series of rights for crime victims, including the right "to restitution, as provided by law, from the person committing the offense that caused the victim's loss," it does not confer upon a crime victim the status of a party in a criminal proceeding.<sup>2</sup> IDAHO CONST. art. I, § 22. This is true, even when the

proceeding involves a restitution order. Although restitution statutes vary from state to state, it is generally understood while crime victims are sometimes present and often represented by counsel, the government is still the only party to the case, other than the defense, and procedurally, the prosecutor requests restitution. Cortney E. Lollar, *What Is Criminal Restitution?*, 100 Iowa L. Rev. 93, 110 (2014). Idaho Code § 19-5304 does not depart from this long-standing principle. In the relevant provisions, I.C. § 19-5304 defines "victim" but does not define a crime victim as a party to the criminal proceedings, even for the limited purpose of seeking restitution.

[11] As a crime victim is not a party to a criminal case, the victim cannot intervene in a defendant's criminal proceeding because, unlike Idaho Rule of Civil Procedure 24, the Idaho Rules of Criminal Procedure do not provide a process for intervention. The inability of non-parties to intervene in a criminal case recognizes that the considerations underlying intervention in a civil case are not applicable to a criminal proceeding. See *People v. Ham*, 734 P.2d 623, 625 (Colo. 1987).

No other rule, statute, or constitutional provision allows a crime victim to independently intervene within a defendant's criminal case. The Idaho Constitution bestows a crime victim with the right "[t]o restitution, as provided by law, from the person committing the offense that caused the victim's loss." IDAHO CONST. art. I, § 22(7). However, the Idaho Constitution does not provide a right for a victim to seek restitution by independently intervening within a defendant's criminal case.<sup>3</sup>

Because the Idaho Constitution gives crime victims the right "to restitution, as provided by law," additional statutory provi-

2. Similarly, other states have repeatedly held that a crime victim is not a party to a criminal case, despite having statutory and constitutional rights. See *State v. Lorenzo*, 301 Or. App. 713, 718, 459 P.3d 268, 270 (2020) (holding although crime victim has rights protected by state constitution, none of those rights purport to make victim party to criminal actions); *Cooper v. Dist. Court*, 133 P.3d 692, 705 (Alaska Ct. App. 2006) (noting distinction between protecting crime victims' procedural rights and allowing crime victims to participate as independent parties in

criminal prosecution); *Lynn v. Reinstein*, 205 Ariz. 186, 68 P.3d 412, 415-417 (2003) (holding that even under liberal construction of state's constitution and victim rights statutes, victims are not parties to defendant's criminal case).

3. In recent legislative sessions, efforts to amend the Idaho Constitution to explicitly grant crime victims standing to assert their rights have failed. See S.J. Res. 102, 2019 Leg., 65th Sess. (2019); H.J. Res. 8, 2018 Leg., 64th Sess. (2018).

sions further define the scope of restitution. Relevant here, I.C. 19-5304(6) provides:

Restitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court. Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.

This language is unambiguous; while a crime victim may *submit* evidence to calculate possible economic losses as a result of the defendant's actions, only the parties have the right to file motions, *present* such evidence, and seek the amount of restitution submitted. Therefore, restitution sought by a motion filed by a non-party within the criminal proceeding is not a process "as provided by law." Instead, a party must file the motion for restitution for a trial court to have the authority to entertain it.

[12] The State seeking restitution on behalf of crime victims has consistently been the practice in Idaho. *See Keys*, 160 Idaho at 96, 369 P.3d at 314 (State submitted affidavit for restitution and district court ordered restitution); *State v. Cottrell*, 152 Idaho 387, 390, 271 P.3d 1243, 1246 (Ct. App. 2012) (State sought restitution and, after arguments from both parties, court ordered restitution); *State v. Hill*, 154 Idaho 206, 211, 296 P.3d 412, 417 (Ct. App. 2012) (State filed request for order of restitution and presented evidence of victim's evidentiary losses at evidentiary hearing); *State v. Gonzales*, 144 Idaho 775, 776-77, 171 P.3d 266, 267-68 (Ct. App. 2007) (State argued victim was entitled to restitution at sentencing hearing and, later, filed motion for restitution after crime victim requested restitution in victim impact statement included in presentence investigation report); *State v. Taie*, 138 Idaho 878, 879, 71 P.3d 477, 478 (Ct. App. 2003) (State requested order of restitution and presented victim's testimony of economic loss and letter from insurer to support claim). This preserves the nature of criminal proceedings as a process between the State and the defendant, while

protecting a crime victim's right to a restitution amount that is properly commensurable to the economic loss caused by the defendant's criminal actions.

[13] Allowing a non-party to intervene in a defendant's criminal proceeding would bring complicated consequences, including the potential to undermine the critical and distinct role of the prosecutor. Unlike private counsel, a prosecutor has the unique role as "a minister of justice and not simply that of an advocate." Idaho Rules of Professional Conduct, 3.8 cmt.1. While a prosecutor has a duty to communicate with the crime victim, *see* IDAHO CONST. art. I, § 22, "[t]he prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim." ABA Standard 3-1.3. In the context of a restitution hearing, a prosecutor may seek a restitution order primarily to assist crime victims. *See State v. Olpin*, 140 Idaho 377, 378, 93 P.3d 708, 709 (Ct. App. 2004). However, because restitution may fulfill deterrent or rehabilitative purposes, a prosecutor may additionally pursue restitution for the benefit of the State. *See id.* By allowing a crime victim to independently intervene in a criminal proceeding to seek restitution, any consideration of interests outside the victim's own may be subverted. The constitutional and statutory rights provided to crime victims do not mean a crime victim has the authority to usurp the prosecutor's distinct position within a criminal case. *See Lindsay R. v. Cohen*, 236 Ariz. 565, 343 P.3d 435, 437-38 (Ariz. Ct. App. 2015) (holding that allowing counsel for crime victim to file memorandums of law and conduct restitution hearing would impermissibly transform criminal sentencing function into civil damages trial).

[14] Further, allowing counsel for a crime victim to file a motion for restitution within a criminal case and present the State's case for restitution without the support of the prosecutor's office may give rise to significant conflicts of interest and due process concerns. A defendant's right to due process may be violated when a person who is a victim of the crime or who has a personal, financial, or attorney-client relationship with the victim of the crime prosecutes the crimi-



nal case. See *People v. Calderone*, 151 Misc.2d 530, 573 N.Y.S.2d 1005, 1009 (N.Y. Crim. Ct. 1991). As a result, it is generally recognized that “[a] private attorney who is paid by, or who has an attorney-client relationship with, an individual or entity that is a victim of the charged crime . . . should not be permitted to serve as prosecutor in that matter.” ABA Standard 3-2.1(c). This reflects a concern that self-serving motivations may underlie an attorney’s pursuit of both a civil settlement and a criminal restitution order to compensate a client for the same economic loss, particularly where the attorney has a financial stake in the outcome of the proceedings.

This concern is ameliorated when the State is tasked with protecting the interests of the non-party victim. Moreover, the State must weigh many factors when determining whether to pursue restitution on behalf of a crime victim. The prosecutor, as a representative of the state and the people, is fully capable of bringing to the court’s attention any and all matters that might possibly bear on a sentencing decision. See *Ham*, 734 P.2d at 626. Many of the facts in this case may explain the State’s reticence to participate in the unorthodox process and amply demonstrate why it is inappropriate for a crime victim to usurp the State’s considerations and independently intervene within a defendant’s criminal case to pursue a restitution order.

Here, McKinnie did not simply submit evidence of economic loss for the district court’s consideration as provided for by I.C. § 19-5304(2) and ask the State to pursue restitution. Instead, McKinnie presented the motion for restitution independently of the parties to the proceeding. McKinnie filed the motion for restitution and noticed the motion for hearing, but failed to provide notice to Johnson or Johnson’s counsel. McKinnie filed transport orders for Johnson and the victim, incorrectly indicating he was Johnson’s attorney, presented oral argument at the restitution hearing, and submitted post-hearing briefing in support of his motion for restitution. None of these actions were made in consultation with, or on behalf of, the prosecutor’s office. Further, McKinnie pursued restitution after brokering a civil settlement that released Johnson from any additional financial responsibility. Additionally, at the

restitution hearing, the victim, through McKinnie, conceded he had not paid any of his medical bills with the insurance settlement, the insurance company had not attempted to recover its expenses from the victim through a lien, and the insurance company had not subrogated its claims to seek reimbursement from Johnson.

Here, the crime victim did not have standing because he was not a party in Johnson’s criminal case and had no right to intervene in the proceedings. Therefore, the motion for restitution was not properly before the district court and so it was error for the district court to consider it.

The State argues I.C. § 19-5304(2) vests the trial court with jurisdictional authority to order restitution within a criminal case independent of a filing by a party and therefore, the validity of the court’s order of restitution order does not hinge on whether the crime victim had standing to file a restitution order. This is incorrect for two reasons. First, the district court’s order of restitution is discretionary; the court can determine whether to order restitution and in what amount. *State v. Weaver*, 158 Idaho 167, 170, 345 P.3d 226, 229 (Ct. App. 2014). Second, if the district court orders restitution, restitution can only be ordered “for any economic loss which the victim actually suffers.” I.C. § 19-5304. However, even if the statute was mandatory and not discretionary, in this case the district court acted solely on the motion of the non-party victim, not on its independent authority. Therefore, while I.C. § 19-5304(2) vests the trial court with subject matter jurisdiction to order restitution, the court must act “as provided by law,” which it did not do in this case.

Because the third party did not have standing to intervene, the district court also erred in finding good cause to extend the time in which the motion could be filed. Because no good cause was established by the State, the district court erred in finding the motion was timely filed.

Because there was no authority to initiate or conduct the prior restitution proceedings and we vacate the order of restitution, we do not address whether (1) the victim suffered economic loss, (2) a restitution request would be timely, (3) Johnson is precluded from

pursuing restitution in the criminal case based on the language of the civil settlement, and (4) whether restitution would be offset by the civil settlement.

#### IV.

#### CONCLUSION

Although crime victims have a right to restitution in a criminal case, a crime victim is not a party to a criminal case and does not have an independent right to intervene in a defendant's criminal case. Because the dis-

trict court's restitution order was based on a motion filed by a non-party and because there was no evidence the victim suffered any actual economic loss, the order of restitution constituted an abuse of discretion. Accordingly, the order of restitution is vacated.

Judge GRATTON and Judge  
BRAILSFORD concur.



# **EXHIBIT C**

162 Idaho 711 (Idaho App. 2017)

403 P.3d 1200

Kenneth M. WORKMAN, Plaintiff-Appellant,

v.

Christopher RICH, Clerk of the Fourth Judicial District; Idaho Department of Correction, Defendants-Respondents,

and

Unknown and Unnamed Individual of the State of Idaho, Defendant.

No. 44701

Court of Appeals of Idaho

August 31, 2017

Review Denied October 24, 2017.

2017 Opinion No. 42

[403 P.3d 1201]

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Gerald F. Schroeder, District Judge. Hon. George G. Hicks, Magistrate.

Order of the district court affirming magistrate decision to grant motion to dismiss; order of the district court affirming magistrate grant of summary judgment, *affirmed*.

Kenneth M. Workman, Boise, pro se appellant.

Jan M. Bennetts, Ada County Prosecuting Attorney; Ray J. Chacko, Deputy Prosecuting Attorney, Boise, for respondent, Christopher Rich.

Hon. Lawrence G. Wasden, Attorney General; Kristina M. Schindele, Deputy Attorney General, Boise, for respondent, Idaho Department of Correction.

## OPINION

GRATTON, Chief Judge

[162 Idaho 712] Kenneth M. Workman appeals from the district court's order affirming the magistrate's decision to

grant Christopher Rich's (Rich) motion to dismiss and the Idaho Department of Correction's (IDOC) motion for summary judgment.

## I.

### FACTUAL AND PROCEDURAL BACKGROUND

In 2001, Workman drove his vehicle off Interstate 84 and into two pickups parked on the side of the road. At the time of the crash, Workman was under the influence of heroin, methamphetamine, and THC. The owners of the pickups were standing between the vehicles at the time of the crash, and both owners suffered serious injuries. One person was thrown into the road and suffered major broken bones and a ruptured spleen. The other person was pinned between the vehicles, breaking one leg while the other leg was severed from his body. Workman was convicted of two counts of aggravated driving under the influence, Idaho Code § 18-8006, and being a persistent violator, I.C. § 19-2514, and was sentenced to two determinate life sentences. On April 28, 2003, the district court ordered Workman to pay \$32,391.44 in restitution, with interest accruing annually. The district court's order also provided that "this Order shall constitute a Civil Judgment against the defendant, KENNETH M. WORKMAN."

The IDOC began deducting funds from Workman's inmate account on September 30, 2003. These funds were sent to Rich, the clerk of the district court in which Work [403 P.3d 1202] seri

### Page 713

man was convicted, for distribution to the victims. On December 30, 2015, Workman filed a pro se complaint,[1] in which he asserted that Rich and the IDOC improperly garnished money from his inmate account in order to pay the court-ordered restitution. Rich filed a motion to dismiss and the IDOC filed a motion for summary judgment.[2] The magistrate granted Rich's and the IDOC's motions. Workman appealed to the district court, and the district court affirmed the magistrate's decision. Workman timely appeals.

## II.

### ANALYSIS

Workman argues that the restitution order entered against him has "expired, [is] unenforceable, uncollectable, and no longer still owing" because it is a civil judgment that was not renewed within five years of its entry. Workman further argues that I.C. § 19-4708 and 19-5305(2) do not apply to

his restitution order because the statutes were amended subsequent to his judgment being entered. For an appeal from the district court, sitting in its appellate capacity over a case from the magistrate division, this Court's standard of review is the same as expressed by the Idaho Supreme Court. The Supreme Court reviews the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *State v. Korn*, 148 Idaho 413, 415, 224 P.3d 480, 482 (2009). If those findings are so supported and the conclusions follow therefrom, and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Id.* Thus, the appellate courts do not review the decision of the magistrate. *State v. Trusdall*, 155 Idaho 965, 968, 318 P.3d 955, 958 (Ct.App. 2014). Rather, we are procedurally bound to affirm or reverse the decision of the district court. *Id.*

As an appellate court, we will affirm a trial court's grant of an Idaho Rule of Civil Procedure 12(b)(6) motion where the record demonstrates that there are no genuine issues of material fact and the case can be decided as a matter of law. *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 398, 987 P.2d 300, 310 (1999). When reviewing an order of the district court dismissing a case pursuant to Rule 12(b)(6), the nonmoving party is entitled to have all inferences from the record and pleadings viewed in its favor, and only then may the question be asked whether a claim for relief has been stated. *Coghlan*, 133 Idaho at 398, 987 P.2d at 310. The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims. *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995).

On appeal, we exercise free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct.App. 1986). Summary judgment is proper if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. I.R.C.P. 56(c). The movant has the burden of showing that no genuine issues of material fact exist. *Stoddart v. Pocatello Sch. Dist.* No. 25, 149 Idaho 679, 683, 239 P.3d 784, 788 (2010). The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct.App. 1994). Such an absence of evidence may be established either by an affirmative showing with the moving

[403 P.3d 1203]

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party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct.App. 2000). Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(d). *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App. 1994). Disputed facts and reasonable inferences are construed in favor of the nonmoving party. *Castorena v. Gen. Elec.*, 149 Idaho 609, 613, 238 P.3d 209, 213 (2010). This Court freely reviews issues of law. *Cole v. Kunzler*, 115 Idaho 552, 555, 768 P.2d 815, 818 (Ct.App. 1989).

#### A. Restitution Order

Workman asserts that criminal restitution orders are civil judgments subject to a collection process whereby Rich, as clerk of the district court, was required to record the restitution order as a civil judgment and continually renew it in order to collect on behalf of the victims. Because Rich did not do so, Workman argues, the judgment ordering Workman to pay restitution expired five years after the judgment was entered, on April 28, 2008.

Idaho's restitution statute directs a court to order a defendant, found guilty of any crime which results in an economic loss to the victim, to make restitution to the victim unless the court finds restitution would be inappropriate or undesirable. I.C. § 19-5304(2). The policy to fully compensate crime victims for their economic loss has long been recognized by the courts. *State v. Weaver*, 158 Idaho 167, 170, 345 P.3d 226, 229 (Ct.App. 2014). Through I.C. § 19-5305, the determination of when or how a restitution order may be enforced after it is entered has been specifically entrusted to the clerk of the district court or to the victim. Weaver, 158 Idaho at 172, 345 P.3d at 231. Idaho Code § 19-5305 provides:

(1) After forty-two (42) days from the entry of the order of restitution or at the conclusion of a hearing to reconsider an order of restitution, whichever occurs later, an order of restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments.

(2) The clerk of the district court may take action to collect on the order of restitution on behalf of the victim and, with the approval of the administrative district judge, may use the procedures set forth in section 19-4708,[3] Idaho Code,

for the collection of the restitution.

(emphasis added).

Idaho Code § 20-209H was enacted to provide for the IDOC to mandate the withdrawal of inmate-owed restitution. The law went into effect on March 1, 2015. Workman contends this statute is not applicable to him because the order for restitution became unenforceable in April 2008. Workman relies on I.C. §§ 10-1110 and 10-1111 which state that to keep a judgment an active, collectable order, the parties must file a timely motion to renew judgment within five years from the date of the entry and thereafter every five years. Workman reasons that because the judgment against him has never been renewed, all funds deducted from his inmate account after April 2008 must be returned and all future attempts to deduct funds must cease and desist.

[403 P.3d 1204] [162 Idaho 715] The magistrate court determined, and the district court agreed, that "the legislature provided two different avenues for crime victims to receive restitution from the perpetrators of the crime." First, I.C. § 19-5304(4) provides for a court order of restitution:

If a separate written order of restitution is issued, an order of restitution shall be for an amount certain and shall be due and owing at the time of sentencing or at the date the amount of restitution is determined, whichever is later. An order of restitution may provide for interest from the date of the economic loss or injury.

Payment of restitution can be pursued by a civil judgment that can be executed on or result in a lien being placed on the perpetrator's real property pursuant to I.C. § 19-5305(1). Rich argues that Workman's interpretation fails to provide for these separate avenues for obtaining restitution: allowing victims to personally collect through the use of a civil judgment and allowing the clerk of the court to collect on the victim's behalf. Therefore, Rich asserts, Workman's claim fails to give effect to all parts of I.C. § 19-5305. Similarly, the IDOC argues that Workman fails to recognize the victims and the clerk of the court have different mechanisms governed by separate and distinct processes set forth in statutes through which collection efforts may be undertaken. We agree with the respondents and the district court.

As the district court noted, the language of I.C. § 19-5305 highlighted above would not be necessary if all restitution orders were civil judgments. Unlike the requirements imposed on creditors seeking to enforce civil judgments, neither I.C. § 19-4708 nor 19-5305(2) require the clerk of the court to take any steps to execute the restitution order entered as a result of a criminal conviction. Instead, any

collection efforts by the clerk of the court are to be undertaken in the same manner or fashion as other "debts owed to courts" as provided in I.C. § 19-4708. See I.C. § 19-5305(2). This Court notes, as did the district court, that the restitution statute is silent concerning the expiration of an order of restitution, rather, stating it "shall be due and owing at the time of sentencing or at the date the amount of restitution is determined, whichever is later." I.C. § 19-5304(4). Therefore, Workman's contention that restitution orders must be collected under one civil judgment methodology is without merit.

Workman points to *State v. McCool*, 139 Idaho 804, 87 P.3d 291 (2004) in support of his contention that criminal restitution orders are civil judgments against a defendant. In *McCool*, the Idaho Supreme Court quoted I.C. § 19-5305(1) and noted that "the order of restitution provided in Idaho Code § 19-5304(2) becomes, in essence, a civil judgment for the amount of such restitution." *McCool*, 139 Idaho at 806, 87 P.3d at 293. The Court did not hold that a court order of restitution is extinguished and loses enforceability when the order is also recorded as a judgment for purposes of constituting a civil judgment, or that an order of restitution is always and solely a civil judgment.[4] Workman's argument fails to make a distinction between criminal restitution orders, that do not expire, and civil judgments, which do expire.

Workman points to *Grazer v. Jones*, 154 Idaho 58, 294 P.3d 184 (2013); *Bach v. Dawson*, 152 Idaho 237, 268 P.3d 1189 (Ct.App. 2012); and *Smith v. Smith*, 131 Idaho 800, 964 P.2d 667 (Ct.App. 1998) in support of his contention that I.C. §§ 10-1110 and 10-1111 speak to the expiration of civil orders and money judgments. However, none of these cases involve restitution or restitution orders. Workman also asserts I.C. §§ 10-1110 and 10-1111 are applicable because garnishments from inmate accounts made under I.C. § 20-209H can only be made for restitution that "is still owing." As explained above, Workman's argument that all restitution orders are solely civil judgments is without merit. We agree with the magistrate and the district court that neither I.C. §§ 10-1110 nor 10-1111 are applicable to Workman's restitution order.

[403 P.3d 1205] [162 Idaho 716] **B. Applicability of Idaho Code §§ 19-4708 and 19-5305(2)**

Workman further argues that I.C. §§ 19-4708 and 19-5305(2) do not apply to his restitution order because the statutes were amended subsequent to his judgment being entered. Generally, issues not raised below may not be considered for the first time on appeal. *Sanchez v. Arave*, 120 Idaho 321, 322, 815 P.2d 1061, 1062 (1991). Workman states that this issue was not raised before because I.C. §§ 19-4708 and 19-5305(2) were first mentioned in the motions to dismiss, not in his initial complaint. However,



that does not explain why Workman did not make an argument of the statutes' inapplicability either to the magistrate in response to the motions to dismiss or to the district court on appeal. Accordingly, this Court will not further consider this issue.

### III.

#### CONCLUSION

The magistrate's decision is supported by the applicable law. The district court's order affirming the magistrate's decision to grant Rich's motion to dismiss and the IDOC's motion for summary judgment is affirmed.

Judge GUTIERREZ and Judge Pro Tem WALTERS concur.

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#### Notes:

[1] Pro se litigants are held to the same standards as those litigants represented by counsel. *Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009). Pro se litigants are not excused from abiding by procedural rules simply because they are appearing pro se and may not be aware of the applicable rules. *Id.*

[2] The IDOC's motion was captioned as a motion to dismiss but was supported by materials outside the pleadings. "[B]ecause matters outside the pleadings were presented, the motion to dismiss was converted into a motion for summary judgment under I.R.C.P. 56(c)." *See Hauschulz v. Idaho Department of Correction*, 143 Idaho 462, 466, 147 P.3d 94, 98 (Ct.App. 2006).

[3] Idaho Code § 19-4708 states, in part:

(1) The supreme court, or the clerks of the district court with the approval of the administrative district judge, may enter into contracts in accordance with this section for collection services for debts owed to courts. The cost of collection shall be paid by the defendant as an administrative surcharge when the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section.

(2) As used in this section:

....

(c) "Debts owed to courts" means any assessment of fines, court costs, surcharges, penalties, fees, restitution, moneys expended in providing counsel and other defense services to indigent defendants or other charges which a court judgment has ordered to be paid to the court in criminal

cases, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law.

[4] The same is true of the holdings in the other cases cited by Workman, including: *State v. Straub*, 153 Idaho 882, 292 P.3d 273 (2013); *State v. Gomez*, 153 Idaho 253, 281 P.3d 90 (2012); *State v. Cottrell*, 152 Idaho 387, 271 P.3d 1243 (Ct.App. 2012); *State v. Mosqueda*, 150 Idaho 830, 252 P.3d 563 (Ct.App. 2010); *State v. Waidelich*, 140 Idaho 622, 97 P.3d 489 (Ct.App. 2004); *State v. Ferguson*, 138 Idaho 659, 67 P.3d 1271 (Ct.App. 2002).

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# **EXHIBIT D**





# IDAHO INDUSTRIAL COMMISSION

PO Box 83720  
Boise, ID 83720-0041  
(208) 334-6000 - FAX (208) 334-2321  
1-800-950-2110

COMMISSIONERS  
Thomas E. Limbaugh, Chairman  
James F. Kile  
R.D. Maynard

DIRK KEMPTHORNE, GOVERNOR

Mindy Montgomery, Director

04/29/2005

MATTHEW W FAULKS  
OWYHEE COUNTY PA OFFICE  
COURTHOUSE  
MURPHY ID 83650

Re: CV 2004001173 H Michelle Aguilera  
Criminal Case No.: CR0307539  
Alleged Offender(s): Malinda R Poe  
Case No.: CR03-07539

Dear Mr. Faulks:

To date, the Crime Victims Compensation Program has paid the following benefits on behalf of H. Michelle Aguilera:

H. Michelle Aguilera (reimbursement for payment made to Middleton Dental)	\$282.00
Middleton Dental/Meridian Dental	\$2,064.00
Victim Total	<u>\$2,346.00</u>

Restitution was ordered to the victim in the amount of \$3,035.00 for dental/bridge work and replacement of the victim's glasses. The program is requesting that the order be amended to direct a portion of the restitution payments to the program for the expenses listed above.

If you have any questions, please contact me at (208) 334-6076 or by e-mail at [ybaker@iic.state.id.us](mailto:ybaker@iic.state.id.us). Thank you.

Sincerely,

*Yvonne S. Baker*  
Yvonne S. Baker, Recovery Officer  
Crime Victims Compensation Program



MATTHEW W. FAULKS  
OWYHEE COUNTY  
PROSECUTING ATTORNEY

OWYHEE COUNTY COURTHOUSE • P.O. BOX 128 • MURPHY, IDAHO 83650 • PHONE (208) 495-1153 • FAX (208) 495-2592

July 28, 2005

Idaho Industrial Commission  
Crime victims Compensation Program  
Attn: Yvonne S. Baker  
PO Box 83720  
Boise, Idaho 83720-2321

Re: State vs. Malinda R. Poe  
Case No. CR 03-07539

Dear Yvonne:

Please find enclosed a copy of the amended Judgement on the above entitled matter.

If you should have any questions, please contact this office.

Sincerely,

Lynda Freund  
/lf  
Enc.

OWYHEE COUNTY  
JUSTICE COMMISSION  
CRIME VICTIM

2005 AUG - 1 A 11:05

FILED  
11:20 A.M. P.M.

JUL 27 2005

CHARLOTTE SHERBURN, CLERK  
DORLA STONEMAN  
Deputy Clerk

Matthew W. Faulks  
Owyhee County Prosecuting Attorney  
Owyhee County Courthouse  
P. O. Box 128  
Murphy, Idaho 83650  
Phone 208-495-1153  
Facsimile 208-495-2592

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
STATE OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE

STATE OF IDAHO,  Plaintiff,  v.  MALINDA POE,  Defendant.	Case No. CR 03-07539  <b>AMENDED ORDER OF RESTITUTION</b>
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**BASED UPON** the judgement and sentence in this case, and the expenses of the victim on this matter, and pursuant to Idaho Code, §19-5304 that the Restitution Order be amended to the following:

**IT IS HEREBY ORDERED** that the Defendant **MALINDA POE** make restitution to the Idaho Industrial Commission in the amount of Two Thousand Three Hundred Forty Six Dollars (\$2,346.00) and to Michelle Aguilera in the amount of Thirty Five Dollars (\$35.00) for the total amended amount of Two Thousand Three Hundred Eighty One Dollars said amount to be sent to the Owyhee County Magistrate Clerk for distribution to said victims at the following address:

Idaho Industrial Commission  
PO Box 83702  
Boise, Idaho 83720

Amount \$ 2,346.00

AMENDED ORDER OF RESTITUTION - PAGE 1

COPY

Michelle Aguilera  
~~Malinda Rose~~  
4601 Ashton Ave  
Caldwell, Idaho 83607

Amount \$35.00

DATED this 27<sup>th</sup> day of July 2005.

THOMAS J. RYAN

Magistrate Judge

SERVICE BY MAIL: The undersigned hereby certifies that a true copy hereof was this 28<sup>th</sup> day of July, 2005 mailed to: William Wellman, Attorney at Law, P.O. Box 453, Nampa, Idaho 83653-0453.

DORLA STONEMAN

**Instrument # 268908**

MURPHY, OWYHEE, IDAHO

8-6-2009 11:01:52 No. of Pages: 2

Recorded for : STATE OF IDAHO

CHARLOTTE SHERBURN

Ex-Officio Recorder Deputy mpeterson Fee: 0.00

Index to: ORDER

STATE OF IDAHO  
County of Owyhee

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in this office.

Date: August 6, 2009

Dorla Stoneman  
Deputy Clerk

SEARCHED  
INDEXED

# **EXHIBIT E**

## 2015 Legislation

### HOUSE BILL 62

The status of each bill, resolution, proclamation, and memorial is updated when the offices of the Secretary of the Senate and the Chief Clerk of the House publish the un-official daily journals and should not be deemed official. The official bill actions are located in the final journal, which are maintained by the offices of the Secretary of the Senate and the Chief Clerk of the House. **The daily journals are published at the end of each legislative day.**

Full Bill Information

#### Individual Links:

Bill Text

Statement of Purpose / Fiscal Note

H0062 ..... by JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

VICTIM RESTITUTION – Amends existing law to provide for liens resulting from restitution owed to a crime victim; to provide for execution on judgments for restitution owed to a crime victim and to provide for a writ of execution under certain conditions.

- 01/30 Introduced, read first time, referred to JRA for Printing
- 02/02 Reported Printed and Referred to Judiciary, Rules & Administration
- 02/12 Reported out of Committee with Do Pass Recommendation, Filed for Second Reading
- 02/13 Read second time; Filed for Third Reading
- 02/16 Read Third Time in Full – **PASSED - 69-1-0**  
**AYES** – Anderson, Anderst, Andrus, Barbieri, Bateman, Batt, Bell, Beyeler, Boyle, Burtenshaw, Chaney, Cheatham, Chew, Clow, Collins, Crane, Dayley, DeMordaunt, Dixon, Erpelding, Gannon, Gestrin, Gibbs, Harris, Hartgen, Hixon, Holtzclaw, Horman, Jordan, Kauffman, Kerby, King, Kloc, Loertscher, Luker, Malek, McCrostie, McDonald, McMillan, Mendive, Miller, Monks, Moyle, Nate, Nielsen, Packer, Palmer, Pence, Perry, Raybould, Redman, Romrell, Rubel, Rudolph, Rusche, Scott, Shepherd, Sims, Smith, Thompson, Troy, Trujillo, VanOrden, Vander Woude, Wills, Wintrow, Wood, Youngblood, Mr. Speaker  
**NAYS** – Nye  
**Absent and excused** – None  
**Floor Sponsor - Scott**  
 Title apvd - to Senate
- 02/17 Received from the House passed; filed for first reading  
 Introduced, read first time; referred to: Judiciary & Rules
- 03/09 Reported out of Committee with Do Pass Recommendation; Filed for second reading
- 03/10 Read second time; filed for Third Reading

- 03/17 Read third time in full – **PASSED - 34-0-1**  
**AYES** – Bair, Bayer, Brackett, Buckner-Webb, Burgoyne, Cameron, Davis, Guthrie, Hagedorn, Heider, Hill, Johnson, Jordan, Keough, Lacey, Lakey, Lee, Lodge, Martin, McKenzie, Mortimer, Nonini, Nuxoll, Patrick, Rice, Schmidt, Siddoway, Souza, Stennett, Thayn, Tippetts, Vick, Ward-Engelking, Winder  
**NAYS** – None  
**Absent and excused** – Den Hartog  
**Floor Sponsor - Tippetts**  
Title apvd - to House
- 03/18 Returned from Senate Passed; to JRA for Enrolling
- 03/19 Reported Enrolled; Signed by Speaker; Transmitted to Senate
- 03/20 Received from the House enrolled/signed by Speaker  
Signed by President; returned to House
- 03/23 Returned Signed by the President; Ordered Transmitted to Governor
- 03/24 Delivered to Governor at 10:17 a.m. on March 23, 2015
- 03/26 Reported Signed by Governor on March 26, 2015  
Session Law Chapter 139  
Effective: 07/01/2015

CHAPTER 139  
(H.B. No. 62)

## AN ACT

RELATING TO VICTIM RESTITUTION; AMENDING SECTION 10-1110, IDAHO CODE, TO PROVIDE FOR LIENS RESULTING FROM RESTITUTION OWED TO A CRIME VICTIM; AND AMENDING SECTION 11-101, IDAHO CODE, TO PROVIDE FOR EXECUTION ON JUDGMENTS FOR RESTITUTION OWED TO A CRIME VICTIM AND TO PROVIDE FOR A WRIT OF EXECUTION UNDER CERTAIN CONDITIONS.

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

SECTION 1. That Section 10-1110, Idaho Code, be, and the same is hereby amended to read as follows:

10-1110. FILING TRANSCRIPT OF JUDGMENTS -- LIEN ACQUIRED. A transcript or abstract of any judgment or decree of any court of this state or any court of the United States the enforcement of which has not been stayed as provided by law, if rendered within this state, certified by the clerk having custody thereof, may be recorded with the recorder of any county of this state, who shall immediately record and docket the same as by law provided, and from the time of such recording, and not before, the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien; provided that where a transcript or abstract is recorded of any judgment or decree of divorce or separate maintenance making provision for installment or periodic payment of sums for maintenance of children or alimony or allowance for wife's support, such judgment or decree shall be a lien only in an amount for payments so provided, delinquent or not made when due. The lien resulting from recording of a judgment other than for support of a child or for restitution owed to a crime victim where the order of restitution has been recorded as a judgment pursuant to section 19-5305, Idaho Code, continues five (5) years from the date of the judgment, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law. A lien arising from the delinquency of a payment due under a judgment for support of a child issued by an Idaho court continues until five (5) years after the death or emancipation of the last child for whom support is owed under the judgment unless the underlying judgment is renewed, is previously satisfied or the enforcement of the judgment is stayed upon an appeal as provided by law. A lien arising from an order for restitution to a crime victim where the order of restitution has been recorded as a judgment pursuant to section 19-5305, Idaho Code, continues until twenty (20) years from the date of the judgment, unless the judgment be previously satisfied, or unless the judgment is stayed or set aside. The transcript or abstract above mentioned shall contain the title of the court and cause and number of action, names of judgment creditors and debtors, time of entry and amount of judgment.

SECTION 2. That Section 11-101, Idaho Code, be, and the same is hereby amended to read as follows:

11-101. TIME WITHIN WHICH EXECUTION MAY ISSUE -- STAY PENDING DISPOSITION OF MOTIONS. Except as provided in section 5-245, Idaho Code, for execution on judgments for support of a child and for execution on judgments for restitution to victims of crime, the party in whose favor judgment is given may, at any time within five (5) years after the entry thereof, have a writ of execution issued for its enforcement, subject to the right of



the court to stay execution as provided by the rules adopted by the supreme court. The party in whose favor a judgment for restitution to a victim of crime has been entered pursuant to section 19-5305, Idaho Code, may, at any time within twenty (20) years after the entry thereof, have a writ of execution issued for its enforcement, subject to the right of the court to stay execution as provided by the rules adopted by the supreme court.

Approved March 26, 2015

CHAPTER 140  
(H.B. No. 90)

AN ACT

RELATING TO TRANSPARENT AND ETHICAL GOVERNMENT; REPEALING SECTIONS 9-335 THROUGH 9-352, IDAHO CODE, RELATING TO THE PUBLIC RECORDS ACT; REPEALING SECTIONS 67-2340 THROUGH 67-2347, IDAHO CODE, RELATING TO THE OPEN MEETINGS LAW; REPEALING CHAPTER 7, TITLE 59, IDAHO CODE, RELATING TO ETHICS IN GOVERNMENT; REPEALING CHAPTER 2, TITLE 59, IDAHO CODE, RELATING TO PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS; AMENDING THE IDAHO CODE, BY THE ADDITION OF A NEW TITLE 74, IDAHO CODE, RELATING TO TRANSPARENT AND ETHICAL GOVERNMENT, TO PROVIDE THE PUBLIC RECORDS ACT, TO PROVIDE FOR THE OPEN MEETINGS LAW, TO PROVIDE A RESERVED CHAPTER, TO PROVIDE THE ETHICS IN GOVERNMENT ACT AND TO PROVIDE PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS; AND PROVIDING SEVERABILITY.

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

SECTION 1. That Sections 9-335 through 9-352, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Sections 67-2340 through 67-2347, Idaho Code, be, and the same are hereby repealed.

SECTION 3. That Chapter 7, Title 59, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Chapter 2, Title 59, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That the Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW TITLE, to be known and designated as Title 74, Idaho Code, and to read as follows:

TITLE 74  
TRANSPARENT AND ETHICAL GOVERNMENT

CHAPTER 1  
PUBLIC RECORDS ACT

74-101. DEFINITIONS. As used in this chapter:

(1) "Applicant" means any person formally seeking a paid or volunteer position with a public agency. "Applicant" does not include any person seeking appointment to a position normally filled by election.

(2) "Copy" means transcribing by handwriting, photocopying, duplicating machine and reproducing by any other means so long as the public record is not altered or damaged.

(3) "Custodian" means the person having personal custody and control of the public records in question. If no such designation is made by the public agency or independent public body corporate and politic, then custodian

## **STATEMENT OF PURPOSE**

### **RS23375**

Idaho Code provides that when a defendant is found guilty of any crime resulting in economic loss to a victim, the court shall order the defendant to make restitution unless it finds that such an order would be inappropriate or undesirable. This order may later be recorded as a judgment and the victim may execute on the judgment in the same manner as any other civil judgment. However, crime victims are generally not represented by an attorney, and they may not realize that the lien arising from a judgment must be renewed every five years, or that the judgment must be executed upon within five years, unless the court grants a motion to extend that time. This bill would enable victims of crime to fully recognize their constitutional right to restitution for the harm that has been done to them by extending the five year limitation to twenty years for victims who are seeking to recover on a judgment for restitution arising from a defendant's conviction.

### **FISCAL NOTE**

None.

#### **Contact:**

Representative Richard Wills  
(208) 332-1000  
Barry Wood, Senior District Judge  
(208) 334-2246

## 2015 Committee Minutes Index

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

**DATE:** Thursday, January 29, 2015

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

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow

**ABSENT/  
EXCUSED:** Reps. Perry, Malek

**GUESTS:** Holly Koole, IPAA; Michael Henderson, Idaho Supreme Court; Barry Wood, Idaho Supreme Court; Greg Morris, ACLU; Ian H. Thomson, PDC; John Duvall, PBAI.

**Chairman Wills** called the meeting to order at 1:30 PM.

**MOTION:** **Rep. McDonald** made a motion to approve the minutes of the January 13, 2015, meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. McDonald** made a motion to approve the minutes of the January 15, 2015, meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Scott** made a motion to approve the minutes of the January 21, 2015, McDonald Subcommittee meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Nye** made a motion to approve the minutes of the January 21, 2015 meeting. **Motion carried by voice vote.**

**RS 23374:** **Michael Henderson**, Idaho Supreme Court presented **RS 23374**, Juvenile Sentencing. This proposed legislation would clarify that the courts may sentence a juvenile into the custody of the Department of Juvenile Corrections and provide that the juvenile will be on probation following their release from custody. This proposed legislation gives guidance for determining the length of the sentence, and requires a hearing within 30 days of their release in order to determine the terms and conditions of their probation.

In response to questions from the committee, **Mr. Henderson** explained that the Juvenile Justice Advisory Committee suggested this legislation based on their experiences, which have proven that this clarification is needed. He noted that giving judges the ability to determine the length of the probation following release, is especially crucial. Mr. Henderson also explained that there is no fiscal note because the practice of placing a juvenile on probation is widely followed now; however, this legislation is needed to provide the guidelines for continuing to do so.

**MOTION:** **Rep. Dayley** made a motion to introduce **RS 23374**. **Motion carried by voice vote.**



**RS 23375:** Senior District Judge, **Barry Wood**, Idaho Supreme Court presented **RS 23375**, Crime Victims. This proposed legislation would change two statutes in order to correct issues that arise when victims attempt to collect restitution. Currently there is a five year limitation for a victim to claim restitution unless the victim renews their claim. This proposed legislation would extend the time the victim has to claim restitution from five years to twenty years.

**MOTION:** **Rep. Trujillo** made a motion to introduce **RS 23375**.

In response to a question, **Mr. Wood** clarified that after the 20 years have passed, the victim would still have the opportunity to renew the claim.

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

**DATE:** Wednesday, February 11, 2015

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

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow

**ABSENT/  
EXCUSED:** None

**GUESTS:** Patti Tobias; Holly Koole Rebholtz, IPAA; Scott Brandy, IPAA; Leah Little; Vanessa Rodriguez; Bekah Serrato; George Gutierrez; Ian Thomson, IPDC; Dan Blocksom, Idaho Association of Counties.

**Chairman Wills** called the meeting to order at 1:30 PM.

**RS 23507:** **Rep. Luker** presented **RS 23507**. This proposed legislation would amend two statutes that contain variable fine amounts for infraction fines, to have fixed fine amounts.

**MOTION:** **Rep. Malek** made a motion to introduce **RS 23507**. **Motion carried by voice vote.**

**RS 23528C1:** **Rep. Luker** presented **RS 23528C1**, which would reclassify violations for minors in possession of tobacco. The proposed legislation would set a \$300 infraction fine for a first offense, and maintain a misdemeanor for subsequent offenses with an increased fine of \$300 to \$500, and reduce potential jail time from 6 months to 30 days.

In response to questions from the committee, **Rep. Luker** explained infractions require a set fine amount and the fine for underage possession of tobacco would be \$300, he was not opposed to changing the fine amount to \$17.50.

**MOTION:** **Rep. Malek** made a motion to return **RS 23528C1** to the sponsor. **Motion carried by voice vote.**

**H 61:** **Michael Henderson**, Idaho Supreme Court presented **H 61**, which would clarify the court may exercise both options, placing the juvenile in the custody of the Department and then providing that the juvenile may be on probation following the release from custody. Allowing the courts to do so, will help ensure that the juvenile makes a successful transition to the community and can be provided with supervision and services to continue to promote his rehabilitation. This legislation would also provide guidance regarding the length of the probation, which would be up to three years after the release from custody, but not past the offender's 21st birthday. It would also require a hearing within 30 days after the juvenile's release from custody to determine the terms and conditions of probation.

In response to questions from the committee, **Mr. Henderson** clarified, that as of the hearing date, the juvenile would simultaneously be in the custody of the Idaho Department of Juvenile Corrections and on probation.

**Rep. Malek** made a motion to send **H 61** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.



**H 62:**

Senior District Judge, **Barry Wood**, Idaho Supreme Court, presented **H 62**. Mr. Wood stated victims have a constitutional right to be reimbursed for economic loss; however, it is often difficult for a crime victim to collect on the judgment. This bill would extend the lien period from five years to twenty years, allowing the victim additional time to collect on the judgment. The victim will continue to be allowed to renew the lien in five year increments following the initial twenty years.

**MOTION:**

**Rep. Trujillo** made a motion to send **H 62** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nye** requested to be recorded as voting **NAY**. **Rep. Scott** will sponsor the bill on the floor.

**H 64:**

**Michael Henderson**, Idaho Supreme Court, presented **H 64**. The intent of this legislation is to provide clarity and fairness with respect to giving credit for time spent in incarceration prior to sentencing or to a revocation of probation. Presently, there is no statute that would allow the defendant to receive credit for jail time served as a condition of probation if the defendant's probation is later revoked and he is ordered to serve the suspended sentence. As a matter of fairness, and consistency with the intent of the Legislature in providing maximum periods of incarceration, the defendant should receive credit for the time served as a condition of probation. In addition, this legislation is intended to clarify that a defendant will receive credit for the time spent after service of a bench warrant for a violation of probation, or after being arrested by his probation officer for a probation violation, if his probation is subsequently revoked and he is ordered to serve the suspended sentence.

In response to questions from the committee, **Mr. Henderson** explained the difference in each district's use of credit for time served differs based on the preference of the district judge.

**Scott Bandy**, Idaho Prosecuting Attorneys Association (IPAA), stated the Department of Correction has had difficulty calculating credit for time served and distinguishing between pre-judgement incarceration and jail incarceration as a term and condition of probation. A resolution was considered to distinguish between the two at the time of disposition by the district court judge. IPAA believes the process of not being given credit for jail incarceration as a term and condition of probation has been used as a deciding point or as the benefit of the bargain for the offender to receive probation. The jail days that are ordered as a term or condition of probation are less onerous and less burdensome on the offender, allowing them to easily schedule with their probation officer around any family or work obligations and participate in custody programming. The legislation would undermine the probation officer's ability to supervise their offenders and potentially disincentivize the offender's participation and compliance with probation. In addition, it will increase the difficulty Department of Correction already has when attempting to maintain discharge at 150%, because it would consume a larger portion of the fixed sentence, resulting in longer incarceration into the indeterminate time and delayed programming.

In response to questions from the committee, **Mr. Bandy** clarified IPAA opposes this legislation. If an offender receives credit for time served it would use a large portion of their fixed sentence, requiring the offender to stay longer due to the programming they have yet to receive in the institution which is needed in order for them to qualify for release. A fixed portion of the sentence is only a portion of the total sentence and it would not be possible for an offender to have more credit than their remaining sentence. IPAA endorses giving the offender the incentive to perform in the community and believe this can be accomplished by the use of discretionary jail days at the parole officer's discretion. Discretionary jail days would no longer be a useful tool if the offender is given credit for time served.



MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, March 06, 2015

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

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza and Burgoyne

**ABSENT/ EXCUSED:** Senator Davis, with a vacancy in District 17.

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

**CONVENED:** **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:31 p.m.

**RS 23778** **Jared Larsen**, Legal Intern to Senator Davis, gave information on **RS 23778** which amends Chapter 5 of Title 45 relating to claims of lien. It excludes a trustee of a deed of trust as an owner of the property subject to the lien.

**MOTION:** **Vice Chairman Hagedorn** moved to print **RS 23778**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** **Senator Burgoyne** moved to send the gubernatorial appointment of Darrel Bolz to the State Public Defense Commission to the floor with the recommendation that he be confirmed by the Senate. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

**RS 23767** **Sandy Jones**, Idaho Commission of Pardons and Parole (Commission) explained this bill is an adjustment to the original language of the Justice Reinvestment Initiative (JRI). The Commission is to impose consequences for those who violate parole. As written, the language lengthens the time before the sanction can be imposed. It leaves more time in prison beyond the 90-180 days. This change will allow the Commission to delegate this duty to a hearing officer leading to a faster turn around time for parole violators.

**Senator Burgoyne** questioned whether the hearing officer's decision is final or if it goes before the Commission. **Ms. Jones** replied the decisions are typically final since the Commission has granted the hearing officer the authority to find the parolee guilty or not guilty of a parole violation. This legislation adds an element of specific jail time. The parolee can sign a waiver agreeing to the terms or go before the Commission. The hearing officer does not decide on the consequence, only whether the person is guilty or not guilty. The Commission makes the final decision on revocation of parole.

**Chairman Lodge** clarified the decision is appealable to the Commission. This bill helps shorten the long waiting times.

**MOTION:** **Vice Chairman Hagedorn** moved to send **RS 23767** to print. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 61

**Michael Henderson**, Legal Counsel with the Idaho Supreme Court, stated this bill is proposed by the Idaho Supreme Court and amends § 20-520 which is the sentencing section in the Juvenile Corrections Act. It provides a number of options a judge can employ when sentencing a juvenile. Subsection 1A states the court can place a juvenile on probation for up to three years but not beyond the 21st birthday. Subsection R allows the court to place the juvenile in the custody of the Department of Juvenile Corrections for an indeterminate time. The courts can offer a combination of these.

The amending language makes clear the courts can combine these options. It also provides that the period of probation can be up to three years but not beyond the defendant's 21st birthday. This bill adds flexibility for probation. It also provides that the court shall have a review hearing within 30 days following release to set the terms and conditions of probation.

**MOTION:**

**Senator Souza** moved that H 61 be sent to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 64

**Michael Henderson**, Legal Counsel with the Idaho Supreme Court, explained H 64 amends statutes addressing the credit a defendant would receive upon sentencing or revocation of probation for time previously served. When a court places a person on probation it can use jail time as a condition of probation. There is nothing in statute that states if a person violates probation and serves a sentence that credit is received for previous time served under probation. This bill provides that a defendant would receive credit for the time served as a condition of probation, ensuring that the defendant does not exceed the sentence imposed. The proposed amendments to Idaho Codes §§ 19-2603 and 20-2094A are intended to clarify that a defendant should receive credit for the time spent in jail after the service of the warrant if the probation is subsequently revoked and the defendant is ordered to serve the suspended sentence. This bill also corrects archaic language to bring it up to date for modern practice.

The fiscal impact would result from the shortened time spent in incarceration as a result of credit being given for time spent (see attachment 1).

**Vice Chairman Hagedorn** questioned the terminology of "time served" or "time spent in custody" asking if this is the same. **Mr. Henderson** answered they are equivalent terms. **Vice Chairman Hagedorn** asked if "time served" is defined in code. **Mr. Henderson** replied it is not defined, as it is a term well understood.

**MOTION:**

**Senator Johnson** moved that H 64 be sent to the floor with a **do pass** recommendation. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

 H 62

**Judge Barry Wood**, Senior District Judge, stated this bill amends Idaho Code §§ 10-1110 and 11-101 providing for liens resulting from restitution owed to a crime victim and to provide for execution of judgments for restitution owed to a crime victim.

Victims have a constitutional right to receive restitution. Forty-two days after the court orders restitution the victim can appeal. The life of the judgment is five years. This bill stretches out the current five years to twenty. It provides a longer time to collect the restitution. Frequently the innocent victim is not represented by a lawyer and does not understand that time is a factor in collecting on the lien.



**Senator Tippetts** questioned the impact of current judgements for restitution and wondered if their time would be extended. **Judge Wood** replied the time would be extended. **Senator Tippetts** questioned why these have a limit. **Judge Wood** said the original bill was not limited, but the House asked for limitation. The judgement can be renewed.

**Senator Burgoyne** stated the bill seems to come from the rationale that victims do not have representation. He asked if the court could provide a notice that sets out the process. **Judge Wood** replied the courts try not to give legal advice. The court does print brochures on procedure, and the court office puts information on the website. At the time of judgement there may be no immediate chance of recovery and the process may take a long time. There is an effort to help people collect their money.

**MOTION:**

**Senator Burgoyne** moved to send **H 64** to the floor with at **do pass** recommendation. **Senator Tippetts** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**

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

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Senator Lodge  
Chairman

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Carol Cornwall  
Committee Secretary

---

Barbara Lewis  
Assistant Secretary