

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 18, 2019

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Grow, Cheatham, Burgoyne, and Nye

ABSENT/ EXCUSED: None

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

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

INTRODUCTION OF PAGE: **Chairman Lakey** introduced Makenna Moore. **Ms. Moore** stated she is from Mountain Home, and expressed excitement in the page opportunity, her goals in education, and specifically her interest in big game management.

GUBERNATORIAL RE-APPOINTMENT HEARING: **Gubernatorial Re-appointment Hearing** of the Honorable Jeff Brudie to the Judicial Council of the Idaho State Bar.

Judge Brudie said he has been a judge for almost 18 years and was nominated by the bar last year when George Ryan retired. He stated this has been an area of interest for him for a long time and hopes that the re-appointment can be renewed for another term.

RS 26867 **Relating to Dental Therapists through the Public Health Service, Indian Health Service or for a tribe contracted to perform such services on behalf of the United States.** **Tyrel Stevenson**, Government Affairs Director, Coeur d'Alene Tribe, stated this legislation authorizes the Idaho Board of Dentistry (Board) to license mid-level dental providers who would be called dental therapists. They must have completed education and training requirements prescribed by the Board to perform a scope of procedures as set forth by the Board. They would only be allowed to work under the supervision of licensed dentists in Idaho.

MOTION: **Senator Anthon** moved to send **RS 26867** to print. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

S 1091 **Relating to Hospitalization of the Mentally Ill**, who are dangerous and meet statutory criteria for commitment. **Jason Spillman**, Legal Council, Administrative Office of the Courts, stated **S 1091** is a six word change regarding the hearing on a petition seeking commitment of a mentally ill person. Patients and their attorney can currently petition a continuance that would add the petitioner. The commitment process requires the proposed patient to be examined by two designated examiners, at least one of which must be a psychiatrist, physician, or psychologist. This amendment would also permit the petitioner to request a continuance not to exceed 14 days. This change is necessary, as at times it is impossible to obtain a second designated examiner within the statutory time frames. This legislation maintains procedural protections for the proposed patient in case a second designated examiner is unavailable. If the proposed patient still meets the

criteria, the petition is usually filed again and the process must be repeated. **Mr. Spillman** stated the petitioner is typically the prosecutor.

DISCUSSION: **Senator Anthon** asked if the holding facility is usually a hospital. **Mr. Spillman** indicated it was.

Senator Thayn was concerned about the fiscal note for the extra 14 days and requested clarification regarding who would pay for that. **Mr. Spillman** stated the county usually pays the bill for the person having symptoms.

Senator Burgoyne asked if a reasonable percentage of civil commitment petitions brought by a prosecutor are going to be granted. **Mr. Spillman** acknowledged most of those petitions are being granted. **Senator Burgoyne** asked if the amount of expenditures was going to change, based on the continuance. **Mr. Spillman** replied that during the continuance until the petition is granted, the county would no longer be responsible for the costs.

Senator Nye asked for clarification regarding the timeline. Currently the State can institutionalize anyone who may be mentally ill for up to three days; he asked if this legislation would extend that time up to fourteen days. **Mr. Spillman** verified that was correct.

MOTION: **Senator Anthon** moved to send **S 1091** to the floor with a **do pass** recommendation. **Senator Grow** seconded the motion. The motion carried by **voice vote**. **Senator Nye** requested that he be recorded as voting **nay**.

S 1093 **Relating to Pre-trial Supervision** when ordered by the court. **Seth Grigg**, Executive Director, Idaho Association of Counties, stated Idaho law allows a judge to release an individual from jail who is awaiting disposition of their case. Counties can place conditions on people being placed on pre-trial release. Idaho law will allow counties to charge fees for payment, and currently 10 counties charge \$25 to \$100 per month. Participating counties are relying on their own fee authority to collect a supervision fee, which is not ordered to be paid to the clerk of the court. These counties are relying on Odyssey to collect the fees. Odyssey will no longer be available effective June, 2019. The fee would be set by the Board of Commissioners working with the courts. There are three sections in **S 1093**: 1.) codifying what counties are doing now in establishing a pre-trial release supervision program; 2.) relating to the priority of payments and includes the collection of the pre-trial supervision fee in the property of payments; and 3.) establishing the process for determining the fee. A defendant would not be required to pay any supervision fee unless they are convicted of the offense.

DISCUSSION: **Vice Chairman Lee** referred to **S 1093** and how it currently works with regards to verbiage which states, "based on a finding of indigence or other good cause, the court may exempt the defendant from the payment of all or part of the fees authorized by this section, and no defendant shall be denied release or denied participation in a supervised pre-trial release program because of an inability to pay the fees." **Mr. Grigg** stated they wanted to make sure there was language in statute that if an individual did not have the ability to pay for these fees they could still be released on a pre-trial program.

MOTION: **Senator Nye** moved to send **S 1093** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1116

Relating to the Liquor Account, Declaring an Emergency and Providing Retroactive Application. **Mr. Grigg**, stated there was an issue with the language included in **S 1116**, related to the allocation of liquor funds to counties to pay for magistrate court related services. The largest change in this legislation is how funding is apportioned out for infraction and misdemeanor citations or filings. The current language in statute citations issued has proven to be problematic, so they are recommending that be stricken and replaced with filings initiated. **Mr. Grigg** stated that should allow the court to provide the data to the liquor division so that a distribution of these funds can be made. There is a retroactive date back to July 1, 2018, to those funds that have already been set aside and can be distributed and apportioned out to the counties.

DISCUSSION:

Senator Burgoyne asked how the population of the counties is determined. **Mr. Grigg** responded they use the census. **Senator Burgoyne** inquired what the difference was between a citations issued and a filings initiated. **Mr. Grigg** explained that there are three ways a misdemeanor can be issued and by changing the language from citations issued, to filings initiated, everything is covered.

MOTION:

Senator Burgoyne moved to send **S 1116** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Lee** declared **Senate Rule 39-H** as a possible conflict of interest pursuant to Senate Rule 39(H).

S 1122

Relating to Probation Supervision Fees for Juveniles, during the time they are on probation. **Mr. Grigg**, stated **S 1122** would put in statute what counties are currently doing and allow a judge to order juvenile probation fees to be paid. In June of this year counties will need to find an alternative collection and tracking mechanism as they will no longer be able to use Odyssey unless this legislation passes. Juveniles, as well as their families, will have to take some responsibility to pay for the supervision to hopefully rehabilitate.

DISCUSSION:

Senator Grow asked the purpose behind juvenile supervision fees. **Mr. Grigg** stated counties carry out the will of the court. If a judge places an individual on probation, he has the discretion to have them pay a probation fee or not. There is a cost of providing the service, and a fee is taken to cover the cost. **Mr. Grigg** explained that the main crux of this legislation is for counties to have the ability to continue to collect through Odyssey rather than having to create a separate system. **Chairman Lakey** commented that fees can be paid by the parents or someone else helping the young person.

Senator Thayn added that **S 1122** is not a new policy initiative, but is putting into statute an existing practice. **Mr. Grigg** confirmed that to be true.

Senator Nye asked for clarification as to how this initiative is possible if a juvenile is under 18 and lacks a legal capacity to incur debt or make a contract. **Mr. Grigg** replied often times when the disposition is rendered, parents are included and assist in the payment.

Senator Burgoyne asked if there was an inherent power of the court to assess this situation. **Mr. Grigg** stated it is within the purview of the court to order probation fees to be paid.

MOTION:

Vice Chairman Lee moved to send **S 1122** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion.

DISCUSSION:

Vice Chairman Lee commented that there has not been an issue in the past using Odyssey to pay for the supervision in attempt to rehabilitate the juveniles.

Senator Thayn stated before it goes to the floor he wanted to understand the legal rationale behind **S 1122**, and to understand the power of the court.

Senator Grow said **S 1122** talks about establishing a statutory juvenile probation supervision fee, he asked if it stated what the fee is or how it will be determined. **Mr. Grigg** replied that it would be set with the judge and still have some consistency.

VOICE VOTE: The motion to send **S 1122** to the floor with a **do pass** recommendation carried by **voice vote**. **Senator Nye** requested that he be recorded as voting nay.

S 1123 **Relating to Debts Owed to the Court**, and authorizes the Supreme Court to work with the State Tax Commission to intercept eligible state income tax returns from those owing certain debts to any of Idaho's courts. **Mr. Grigg** stated there are two deficiencies **S 1123** is proposing to remedy. Legislation from 2018 prohibited a drivers license from being suspended for nonpayment of fines and fees. This represents a problem because there is no leverage involved to incent the individuals to pay. In addition, this legislation would include the ability to intercept tax returns for individuals who are in a civil proceeding as well as a criminal proceeding. The final amendment would allow any debts owed to the court to be intercepted even if it is below \$50.

DISCUSSION: **Senator Lodge** asked how much money statewide this would be. **Mr. Grigg** said it is unknown. **Senator Lodge** asked if it is worth trying to recover. **Mr. Grigg** responded in the affirmative.

MOTION: **Senator Grow** moved to send **S 1123** to the floor with a **do pass** recommendation. **Vice Chairman Lee** seconded the motion. The motion carried by **voice vote**.

S 1119 **Relating to Order of Renewal for Judgements**, over successive periods through motion and an order of the court. **Senator Anthon** stated a money judgement in Idaho used to be enforceable for five years. If collection was unable to be made, one could go back to court for a renewal of that judgment. The legislature previously changed it to ten years. The issue being when can one execute on the judgment. This legislation specifies when you can execute on a renewal as well.

TESTIMONY: **Robert Squire**, VP Corporate Counsel, DL Evans Bank, stated he is in favor of this legislation. He explained the purpose of **S 1119** is to clarify some confusion regarding the execution on judgment statute, under the existing statute. In the past when attorneys would enter a judgment, they would enter a renewed judgement, instead of a renewal of judgement. In recent years some of the courts have cut down on that use of words, because it led to potential misinterpretation of this statute in a way that could prevent creditors, attorneys, or lay persons from fully collecting and exercising their rights and collection of judgments. This legislation is a clarification that the judgment can be collected during renewal periods, not just the initial judgement period.

DISCUSSION: **Senator Anthon** commented that this is a particular piece of Idaho Code that might be used by someone other than an attorney. This is an important clarity to make for a lay person collecting a judgment.

MOTION: **Senator Borgoyne** moved to send **S 1119** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

S 1117

Relating to Harassment Protection Orders, in Idaho outside of the domestic violence statute. **Senator Burgoyne** stated this new legislation will amend the civil protection order from S 1373 (2016), regarding some of its unintended consequences. He referred to two previous conversations last session with Magistrate Jamie Sullivan, 3rd Judicial District, regarding telephone harassment. Just using profanity is not enough to merit action. Telephoning someone with intent to terrify, threaten, or intimidate another person, or any threat to inflict injury or physical harm to the person addressed, or any member of his family would be actionable. The new language would put the court in a better position to know what is required to bring the petitions. There are some added provisions that cover verified petition as opposed to those that are supported by an affidavit. Irreparable injury will be changed in several places so that the terminology is much more specific. The court will have the ability to dismiss an insufficient petition without conducting a hearing. Upon filing of a verified petition for a protection order, the court shall hold a hearing within 14 days to determine whether the relief sought shall be granted, unless the court determines that the petition fails to state sufficient fact to warrant relief. If it is found that a protection order does not meet the requirements of **S 1117**, the judge can dismiss it. An ex parte temporary protection order may be granted to the petitioner if the court finds that present harm could result if an order is not immediately issued without prior notice to the respondent, and that respondent has intentionally engaged in the conduct described in **S 1117**. Changes were made in very close consultation with the courts. This puts the courts in the position of not having to deal with frivolous petitions.

DISCUSSION:

Senator Anthon asked for clarification on an ex parte order that continues to be reissued without having a hearing. **Senator Burgoyne** responded that reasons for additional time may be required but the court will have to make a finding that there is good cause to do this.

MOTION:

Senator Anthon moved that we send **S 1117** to the floor with a **do pass** recommendation. **Vice Chairman Lee** seconded the motion. The motion carried by **voice vote**.

DISCUSSION:

Senator Anthon commented that it would not be good for an ex parte situation to continue indefinitely. The language still remains for a full hearing which would be set for no later than 14 days after the issuance of an ex parte order.

ADJOURNMENT:

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

Senator Lakey, Chair

Sharon Pennington, Secretary

Assisted by Carol Waldrip