

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 20, 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 meeting of the Senate Judiciary & Rules Committee (Committee) to order at 1:30 p.m. **Chairman Lakey** indicated that **RS 26694** and **RS 26880** would be moved up to the beginning of this meeting.

RS 26694 **Relating to the Re-Appointment of an Interim Committee** to continue studying the Criminal Justice System in Idaho.

MOTION: **Senator Anthon** moved to send **RS 26694** to print. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

RS 26880 **Relating to Expanding the Functionality of the Odyssey System** to permit the Supreme Court access to the data necessary to compile and maintain a statewide master jury list.

MOTION: **Senator Anthon** moved to send **RS 26880** to print. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Lee** asked to be recorded as absent on that vote and declared a possible conflict of interest pursuant to **Rule 39(H)**.

GUBERNATORIAL APPOINTMENT HEARING: **Gubernatorial Appointment** of John D. Hayden, Jr., to the State Board of Correction.

Mr. John D. Hayden, Jr., stated he is a native of Boise and has run his family distribution business for 25 years. He said he accepted a commission for four and a half years in the Marine Corps. For the past 30 years he has been in leadership and management, and gleaned motivational skills from his experience. **Mr. Hayden** believes the recidivism rate is too high, and would like to see that reduced. He is excited about starting this new aspect of his career. When the Governor called and asked him to serve the State, he saw it as an opportunity and privilege.

DISCUSSION: **Senator Grow** asked Mr. Hayden how he came to the attention of the Governor and what the process was for this position. **Mr. Hayden** stated he has known Governor Little for a long time, and their philosophies and thinking are similar.

Senator Burgoyne noted that Mr. Hayden had been a Marine for four and a half years and realized his willingness to take this position was obviously a commitment to sacrifice and public service.

VOTE ON GUBERNATORIAL RE-APPOINTMENT: **Gubernatorial Re-Appointment** of the Honorable Jeff Brudie to the Judicial Council.

MOTION: **Senator Cheatham** moved to send the Gubernatorial re-appointment of the Honorable Jeff Brudie to the Judicial Council to the floor with a recommendation that he be confirmed by the Senate. **Senator Grow** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Lee** was absent and requested it be noted.

S 1109 **Relating to Motorcycles to Provide that Law Enforcement Shall not Engage in Motorcycle Profiling and to Define the Term.**

Senator Heider stated in Idaho, no agency may engage in motorcycle profiling. The primary intent of this legislation is to help manage and improve the relationship between law enforcement and the citizens. Profiling is occurring to some degree in Idaho, and is unconstitutional. **Senator Heider** stated that this law would not change anything other than making it illegal to profile anyone. If law enforcement is not doing that at the present time, then he felt nothing needed to change either in their training or actions. He asked that the Committee move **S 1109** to the floor with a **do pass** recommendation.

DISCUSSION: **Senator Cheatham** commented on a personal experience he had when he was a police officer working patrol. He and his partner had stopped some gang members, and during the process a group of bikers stopped and stood by in support, in case there was an issue. **Senator Cheatham** stated he has never had a negative incident or experience with bikers.

Senator Grow asked what happens if someone claims they are being profiled. He questioned whether this would establish a new level of legal action for someone who feels they have been profiled, or if this is already covered under other law. **Senator Heider** responded that profiling is not allowed, and he was not sure about other coverage.

Representative Anderst, District 12, stated a large number of Idaho citizens in the motorcycle community have expressed their concern regarding a problem with motorcycle profiling. A regulation needs to be established, based on a matter of conduct, for a judge to make a determination if profiling is happening.

Senator Nye asked if there were any statistics on the number of stops that were not based on probable cause, and if there were numbers available of lawsuits or claims against law enforcement. **Representative Anderst** stated he was unaware of the specific numbers.

Senator Burgoyne inquired if legislation passes, what will happen.

Representative Anderst stated nothing needs to be done if an agency is following procedures. When someone has crossed that line, it gives the citizen a foundation to be able to go to court. **Senator Burgoyne** asked what a judge does with a statute that has no penalty provision. **Representative Anderst** replied this legislation is to protect people from illegal stops. He commented that it is his belief that the definition is not being taught in law enforcement training. It is his hope that those who have been trained will be aware that there are incidents of profiling happening, and that it will be more specifically defined.

TESTIMONY: **Mike Kane**, Idaho Sheriff's Association, went into detail regarding the history of profiling. An officer could be sued in federal court, as an individual, for violation of civil rights. They could be sued and held personally liable. He stated police officers are trained in Police Officer Standards and Training (POST), that if they profile: (1.) they could be sued, (2.) the evidence is probably going to go away if there is any, and (3.) they are going to get fired.

DISCUSSION: **Senator Burgoyne** asked if the term "arbitrary use of" resolves the problem of whether or not the arrest or stop of someone in the area riding a motorcycle, fitting the description of someone that has broken the law, is or is not profiling. **Mr. Kane** responded in the negative. He explained that federal and state courts have already decided what constitutes "probable cause."

Senator Lakey inquired if this statement in the proposed legislation accurately reflects the standard or describes what profiling is. **Mr. Kane** replied that he believed it did.

Senator Grow asked for further explanation regarding policy at the entity level versus an individual choosing to profile someone. **Mr. Kane** provided additional information regarding profiling.

Chairman Lakey asked if profiling is taught at POST. **Sheriff Kieran Donohue** stated profiling is taught at POST, and is one of the things on which they base certification of a law enforcement officer in Idaho. If a law enforcement officer were to engage in profiling they would be violating the terms and conditions of their certification by POST. If an officer is brought up on those charges, a review would be done by POST for further disciplinary action, if found guilty.

TESTIMONY: **David Deveraux**, spokesperson for the National Council of Clubs and founder of an organization called the Motorcycle Profiling Project, spoke in support of **S 1109**. He indicated that he would like to see a private cause of action added to the language of the bill .

Jacob Peter Kouts, fourth generation native to Idaho, decorated disabled combat veteran, member of the National Security Agency, Seventieth Intelligence Surveillance and Reconnaissance Agency, United States Air Force, stated he is in favor of this bill because he has been a victim of profiling by local law enforcement.

Nikki Bearss, establishment owner in Caldwell, Idaho, testified against the bill. She runs a biker-friendly establishment and the biker community is not her only clientele, but they are a valuable part of it. Her establishment is being profiled, and it is hurting her ability to make a living. She is in support of this bill.

Lane Triplet, Government Relations Officer for the Idaho Coalition for Motorcycle Safety (ICMS), spoke in support of this bill. **Mr. Triplet** stated he and the ICMS support the overwhelming body of law enforcement officers and agencies who act in a fair and responsible manner. They believe that the passage of this bill will continually remind all law enforcement officers who engage in the practice of profiling of their sworn oath when dealing with the motorcyclists of Idaho.

Thair Pond, Vietnam Combat Veteran, past President of the Meridian Kiwanis, and past president of the Idaho Disabilities Association, stated he is a business owner and a biker. He said he supports this bill and would like to see better cooperation between law enforcement and the citizens.

DISCUSSION: **Senator Heider, Vice Chairman Lee, Chairman Lakey, and Representative Anderst** discussed **S 1109** and the option of sending the legislation to the 14th Order of Business for possible amendment noting that the section does not create a private cause of action.

MOTION: **Senator Anthon** moved to send **S 1109** to the floor with a **do pass** recommendation. **Senator Cheatham** seconded the motion.

DISCUSSION: **Senator Anthon** commented that he does not believe good officers do this and to restate it in the law may be a positive step. This is illegal, and he has no problem with putting that in the statute.

Chairman Lakey stated he does not like special group protection, but looks at this as an attempt to bring people together to try to promote education. He feels removal of the private cause of action would help in that educational effort and address the concerns of law enforcement.

**SUBSTITUTE
MOTION:**

Vice Chairman Lee made a substitute motion to send **S 1109** to the 14th Order of Business for possible amendment. **Senator Nye** seconded the motion. The motion carried by **voice vote**. **Senator Burgoyne** requested that he be recorded as voting nay.

ADJOURNED:

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

Senator Lakey, Chair

Sharon Pennington, Secretary

Assisted by Carol Waldrip