

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 22, 2013

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

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Senators Davis, Mortimer, Nuxoll, Hagedorn and Lakey

**ABSENT/ EXCUSED:** Vice Chairman Vick, Senators Bock and Werk

**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 meeting to order at 1:35 p.m. and asked the secretary to call the roll.

**RS 22081** **Relating to Mandatory Income Withholding for Child Support - Kandace Yearsley**, Department of Health and Welfare, advised that this legislation approves the income withholding form under the Social Security Act and mandated by the Administration of Health and Human Services. This federal mandate requires states to utilize the approved Income Withholding for Support form in all IV-D child support cases and in non-IV-D child support cases with child support orders initially issued in the state. The rule also requires states to administer all withholding payments through the State Disbursement Unit. In school year 2012 the child support program contributed more than \$198 million of which over \$97 million came through income withholding system.

**MOTION:** **Senator Davis** moved to print **RS 22081**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**S 1059** **Relating to the Control of Venereal Diseases - Shane Evans**, Education, Treatment and Reentry Chief, Department of Correction, (IDOC) explained this bill is to update the venereal disease examination and testing process of Idaho's incarcerated population from a mandatory to opt-in testing upon release. These modifications are based on medical best practices and a fiscally responsible approach to the testing. **Mr. Evans** distributed charts inclusive of years 2010-2012 (Attachment 1) to give the Committee a sense of the current population over the last several years with the current status of venereal disease and/or HIV. Idaho has a very small percentage on the intake testing of these identifiable diseases. The inmates identified with any of these diseases then receive comprehensive treatment while in custody. **Mr. Evans** belongs to a national correctional health group and of these health authorities they determined that only two other states in the country's correction system include an intake as well as outtake testing program. A standard has been adopted for the frequency of positive testing and the ongoing medical care they receive. This opt-in adjustment to this code meets the best practices as it relates to personal health care and does not pose any public health concern.

**Senator Davis** asked if the department has an affirmative duty to proceed with the treatment before an inmate is released or if the test is administered and they are released, does the department still have a duty post-released to provide the treatment.

**Mr. Evans** advised the opt-out testing is one of their concerns with the language as it was written. The timing of testing and return of the results is a duty of the state to be liable for that treatment on release. When they reviewed the legislation they found that the practices across the nation were not in alignment with the language intent for the mandatory release testing.

**Senator Davis** stated if they did not include the language in 39-604, as written, can you compel an inmate to do what this statute currently provides? **Mr. Evans** replied he believed that they would not have the authority to compel them to seek treatment. There are federal protections where they can refuse care.

**Senator Mortimer** stated that there seems to be some inherent liability in releasing an inmate that does not want the test and has an infection. **Mr. Evans** said they test every inmate that comes into their system. They identify any emerging issues that they have and treat them aggressively while they are in the correctional facility. An inmate's normal stay is usually 28 months so they have time to identify, treat and stabilize whatever ailment may show up on intake. Those that are not captured during intake would be HIV which may emerge while the inmate is in the facility. If an inmate refuses testing or treatment, they make notifications to Idaho Public Health Association. **Senator Mortimer** asked if IDOC has the right to test inmates who are incarcerated for any of these diseases. **Mr. Evans** replied that most of the inmate population is fairly compliant and welcoming of any intake blood tests. If they believe that an inmate is a health risk, they will quarantine them.

**Senator Mortimer** asked if there been cases where the state has been held liable for infectious diseases that an inmate has contracted while being incarcerated.

**Senator Hagedorn** asked why this legislation was being modified. **Mr. Evans** advised that they had formed a legislative committee to thoroughly review all current statutes for compliance. The committee came across this legislation and wanted to make sure that they were not putting the state in jeopardy. They sought national information and decided to bring this legislation forward.

**Senator Davis** asked if he believed that the language that is proposed in this bill would limit the duty to treat and provide care after an inmate is released. **Mr. Evans** answered yes he believed that would be true. **Senator Davis** stated he does not see language in the bill that stipulates there is no duty to provide treatment after release. **Mark Kubinski**, Attorney General, Idaho Department of Corrections, answered that language is not expressly contained in this statute. Once the offender is discharged from IDOC custody there would be no continuing jurisdiction over that offender.

**MOTION:** **Senator Mortimer** moved to send **S 1059** to the 14th Order for Amendment. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:00 p.m.

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Senator Lodge  
Chairman

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Leigh Hinds  
Secretary