

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 25, 2013
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk
ABSENT/ EXCUSED:

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

CONVENED: **Chairman Lodge** called the meeting to order at 1:30 p.m. and asked the secretary to call the roll.

RS 22051 **Relating to Child Custody; during deployment - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc. (TEPI), explained he was presenting this legislation for Mark San Souci, Regional Director for Pacific Northwest with the Department of Defense. Last year, Mr. San Souci presented a bill which was modified and sent out for comments. This bill is a result of those comments and modifications. The new section is created to place some specific and special circumstances when one of the parents in a custody case is deployed. Certain protections are already in federal law under the Servicemembers Civil Relief Act and the court must determine if the Act applies. The list of Best Practices include these substantive points:

1. No permanent orders altering existing custody arrangements should be entered while the custodial servicemember is unavailable due to military service. This provides protection in 1(a) by requiring that any modification while the servicemember is deployed can only be a temporary order during the deployment expiring 60 days after completion of deployment with notification to the courts and interested persons that it has ended.
2. The custody order in place before the absence of a military parent should be reinstated within a set time upon their return.
3. A servicemember with visitation rights should be allowed to petition the court to allow those visitation rights to be delegated to a third person during the servicemember's absence.
4. States frequently include: (1) allowing expedited hearings upon the request of a servicemember, and (2) allowing the court to use electronic testimony when the servicemember is unavailable.

Senator Davis asked if this new section applies if a petition for modification is filed at anytime during the point of deployment. **Mr. Aldridge** said yes. **Senator Davis** asked if the court is precluded from entering any change in a custody order that is more than a temporary order. **Mr. Aldridge** said yes. **Senator Davis** then asked if there is a pending petition for modification of child custody prior to the date of deployment would this Act impact the court's review and determination of what is in the best interest of the child. **Mr. Aldridge** said his understanding was that this only applies to orders while they are subject to the Act. They don't have to actually be deployed at that time.

Senator Davis clarified that the court's only power is to enter a temporary order which will automatically expire after the sum of two events: (1) 60 days plus (2) notice to the court that they are home. **Mr. Aldridge** said when the temporary order expires, the order prior to the temporary order would be effective.

MOTION:

Senator Hagedorn moved to print **RS 22051**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

RS 22087

Relating to Prostitution: property subject to forfeiture - Sara Thomas, State Appellate Public Defender, said she was here on behalf of the Idaho Criminal Justice Commission. **Ms. Thomas** explained that this legislation was a supplement to S 1060, the human trafficking statute that was proposed earlier. These are procedures on how innocent third parties could be protected, outlining the process for forfeiture as well as what would happen to those funds. These statutes were actually modelled on criminal forfeiture statutes from the Uniformed Controlled Substances Act. **Ms. Thomas** said this was done because the courts have previously interpreted this language so they had some guidance on how this process would work. She walked the committee through each section of the proposed legislation.

Section 1 - Defines what property is subject to forfeiture, both real and personal

Section 2 - Covers written inventory sent to Idaho State Police within five days of seizure

Section 3 - Addresses the rebuttable presumption, which is the standard to be met for forfeiture

Section 4 - Preservation of property, warrant of seizure and protective orders

Section 5 - Deals with innocent third parties and the process of notification

Section 6 - Deals with innocent third parties regarding personal property

Section 7 - Deals with innocent third parties regarding real property

Section 8 - Deals with proportionality; shall not be unfairly disproportionate

Section 9 - Authority of the Attorney General and appropriate prosecuting attorney

Section 10 - Limitation of third party rights to the process outlined in the statute

Section 11 - Addresses jurisdiction by the Idaho courts

Section 12 - Addresses disposition of property

Section 13 - Forfeiture of substitute property

Section 14 - Addresses the statutory construction of the statutes

Senator Bock said he had concerns about forfeitures and asked why this was needed for this particular crime. **Ms. Thomas** stated this was designed to take the profit away from people who are selling women and children. The procurement statute applies to anyone who is inducing an adult into prostitution or someone who uses a person under the age of 18 for prostitution. It addresses the people who are profiting from and encouraging them into this profession.

Senator Bock said he could understand the forfeiture statutes as they related to drug trafficking. He asked what the criteria was for establishing a relationship between this crime and the property forfeited. **Ms. Thomas** explained in S 1060, under the proposed statute 18-5612, it says any property constituting or derived from the proceeds the person attained directly or indirectly as a result of the violation, or any part of the person's property used or intended to be used, in any manner or part to commit or to facilitate the commission of such violation.

Senator Bock asked about a situation where the judge has the authority to designate a portion of the property to be seized or forfeited. He asked how a judge would deal with an office in a major office building that was being used for so called 'marketing.' **Ms. Thomas** said the forfeiture would be dependent on whether or not they owned the building or were leasing a portion of the building. An innocent third party owner could appear and none of it would be forfeited. **Senator Bock** asked how a car would be treated if it had been involved unbeknownst to a spouse and the spouse was potentially deprived of a vehicle to go to work or to take the children to school. He thought giving the prosecutor the discretion to decide the remedies was not fair. **Ms. Thomas** stated that the innocent spouse would have the same protections as any other innocent party.

Senator Davis asked what "...a separate Part II forfeiture request..." was referring to in Section 3, line 27. **Ms. Thomas** explained that it refers to Part II of the Criminal Information or Indictment. She said it is the same process used for felony driving under the influence charges. Part II outlines prior convictions; this separate Part II wouldn't go to the jury, but would be dealt with after the jury decides on the criminal charge. **Senator Davis** asked if the court was troubled that the legislation would be setting rules of procedure. **Ms. Thomas** noted that there were representatives from the court on the Criminal Justice Commission who having seen the legislation, did not raise any concerns. **Senator Davis** noted that under Section 6, (3) (b), the owners or claimant may prove his right, title or interest was created without any knowledge or reason to believe that the property had been used, or was intended to be used, for the purpose alleged. However, romanette (i) says "In the event of such proof, the court shall order that portion or interest released..." He reiterated Senator Bock's concerns about fairness. **Senator Davis** continued that romanette (ii) discusses what occurs if the amount due to such person was less than the value of the property. He asked if there should be evidences the court has to make a finding of forfeiture to somebody before it is ordered sold. He did not see that in the statute. **Ms. Thomas** stated that Section 18-5609 required the court to make the finding that the property was used in violation of the relevant provision of the chapter. The judge has to make the proportionality analysis. **Senator Davis** suggested that structurally romanette (ii) may need to be worded differently, and it also is not a subpart of romanette (i). He then directed Ms. Thomas to page 6, lines 28 and 29 and noted that there were many similar statutes. He asked what the court was supposed to do with so many statutes saying that the proceeding will have priority over other civil cases. **Ms. Thomas** answered that without a statute that lays out the priority of cases, the court would do its best to get it in as soon as possible.

Senator Werk asked to better understand procurement. **Ms. Thomas** stated that the Criminal Justice Commission did not want to apply forfeiture to the person obtaining the services of a prostitute. Rather, it was looking at the people who were selling the girls. The Idaho Supreme Court has defined procurement as: "the procurement of the prostitution statute is meant to punish those who entice or compel others to act as a prostitute, while the prostitution statute is meant to punish those who are engaging in the prostitution." This forfeiture statute would apply to the pimps, not the johns.

Senator Lakey asked about the implications on real property. He noted that on page 7, line 23, it appeared the court may be making a determination to divide a parcel of land. **Ms. Thomas** said there were provisions where the property could be divided. **Senator Lakey** asked how that would affect local ordinances on minimum parcel size, setbacks and building permits. He gave an example of an 80 acre farm with a house on it. **Ms. Thomas** said the legislation addresses those situations by allowing for forfeiture of substitute property when the property is being commingled with other property that cannot be divided without difficulty. The entire property may have to be sold with a return of that portion of the proceeds not subject to forfeiture to the defendant.

Senator Vick asked if there was a determination that only 25 percent of the value of the property came from the illegal activity and the innocent third party had a 75 percent interest in it, could the house be sold whereby the innocent spouse was out on the street. **Ms. Thomas** recognized that this could happen if the property was forfeited and that was the only way to get the value out of it. The prosecutor has the discretion not to do that. **Senator Lakey** noted that Ms. Thomas had referred to a section regarding commingled property, but he didn't think that applied when the issue was a single parcel of real estate. **Ms. Thomas** believed that the property would be tied together or commingled from the beginning, although not necessarily like the commingling of funds by putting them into the same bank account. In this circumstance it would be difficult to separate it out or divide it. **Senator Lakey** raised the issue of having a smaller portion of the property involved in criminal activity and is commingled with the remainder of the property. He questioned how a single parcel of real estate could be divided by forfeiture from the remainder of property. It doesn't appear to meet the commingling test. **Ms. Thomas** agreed to review the questions from Senators Davis and Lakey.

Senator Bock asked that Ms. Thomas look at the fact that the legislation says property subject to criminal forfeiture in this chapter includes all of chapter 56. He wanted to know if this was limited to trafficking of minors. **Ms. Thomas** stated that the forfeiture legislation is for both minors and adults. The procurement statute relates to adults and the inducing statute applies to those under the age of 18. **Senator Bock** asked if the forfeiture statutes apply if someone is a pimp for adult prostitutes. **Ms. Thomas** stated yes, it would apply.

MOTION: **Senator Davis** moved to print **RS 22087**. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

GUB APPT: **Elizabeth "Liz" Susan Chavez** was appointed to the Judicial Council (Council). **Ms. Chavez** said she was a lifelong resident of Idaho, lives in Lewiston and was a former middle school social studies teacher. She has also served two terms in the House of Representatives and was very aware of the role of the Judiciary branch of government. As a citizen member of the Council, she has been pleased to see the work of the Idaho Judiciary and Council regarding transparency, fairness for all parties, the time required in being prepared for court and the on-going professional performance evaluation. She explained that as a Council they receive updates about what is happening in the judiciary in other states; everything from misconduct on the bench, to discussing cases with other elected officials in a hallway or social setting. She feels confident that the majority of the members of the Idaho judiciary are of sterling quality and conduct themselves professionally. When dealing with criticism or a complaint of the judiciary or an individual judge, it is her responsibility to read the material and, from the facts, determine if the criticism has merit. Lastly, she is given the opportunity for a challenging role as she continues in public service.

Senator Davis asked if she believes it is important for the Council in these judicial proceedings to maintain confidentiality. He asked further why and when does she think it is appropriate for the discipline to become public. **Ms. Chavez** said that confidentiality is extremely important because the complainant needs to have their privacy protected and not every complaint has a basis for merit. If the Council determines that the complaint has merit, there could be a private reprimand to a judge. In her experience, if the reprimand is private, the judge can take advantage of the mediation, mentoring and the support system meant to encourage the judges so some complaints go no further. **Senator Davis** asked if there are moments of partisanship or if the Council members work together independent of any political belief. **Ms. Chavez** said she had no idea what parties make up the Council and she doesn't care. She believes they would always only look at problems as Idaho issues.

GUB APPT:

Elisha D. Figueroa appointed as Administrator of the Office of Drug Policy. Her family was with her and she introduced her husband and three children. **Ms. Figueroa** said it was a great privilege to be able to serve the state in this capacity. She has worked at the community level in Meridian to address substance abuse issues by engaging passionate community leaders and implementing innovative, sustainable prevention strategies. She directed a Coalition from 2008 to 2012, and they were able to bring together people from all sectors of the community; law enforcement, educators, business people, youth and parents. She mentioned her predecessor, Debbie Field, who had formed the state prevention planning committee which brought interested folks to the table to work on prevention efforts. They have gone a step further and identified the three main substance abuse issues they are facing in Idaho according to the data. They are: underage drinking, marijuana use, and prescription drug abuse. They have reached out not only to different occupational experiences, but people that live in different communities of the state.

Senator Hagedorn asked if the city won any particular awards while she was in Meridian. **Ms. Figueroa** said they won a national award from the National Prevention partnerships, for bringing people together and setting a good example. They also won the Northwest Alcohol Conference Award and awards from the Meridian School District. **Senator Davis** asked what successes were brought about in this fairly new office and what confidence can Idaho have that the money spent and will be spent hit some of the targets that are important to you and the members of this committee. **Ms. Figueroa** said it is important to ensure that they make a difference and are able to measure it. She began in April 2012 and the goal for this year was to lay the foundation to build upon. They are trying to identify the strategies that are going to be most effective in Idaho and also at the local level. They have assigned measurable goals with baseline data, and they have set a deadline of two years to reach those goals. **Ms. Figueroa** said she has been traveling around the state and medical marijuana is a huge issue right now. **Senator Davis** asked if the methadone media project had been a measurable benefit to the office. **Ms. Figueroa** said she had confidence in this program.

ADJOURNED:

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

Senator Lodge
Chairman

Leigh Hinds
Secretary