

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Thursday, March 15, 2018

**TIME:** 1:30 pm OR Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Luker** called the meeting to order at 1:32 p.m.

**MOTION:** **Rep. Chaney** made a motion to approve the minutes of the February 9, 2018; February 13, 2018; February 19, 2018; February 21, 2018; and February 23, 2018 meetings.  
**Motion carried by voice vote.**

**S 1225:** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, Idaho Supreme Court presented **S 1225**, this bill corrects a defect in the law. Current law allows judgement creditors to obtain a renewed judgement in order to extend the time period to collect. The current statute also permits the judgment creditor to establish a lien against the debtor's property by recording the renewed judgment. However, the issuance of a renewed judgement and the lack of language specifying that the original lien may be continued, creates potential ambiguity between the collection priorities of the original lien, a lien subsequently created by a different judgment creditor, and the lien established by the recording of a renewed judgment. This legislation resolves the ambiguity and allows the lien established by the recording of the original judgment to maintain its priority over a lien subsequently created by a different judgment creditor.

**MOTION:** **Rep. Chaney** made a motion to send **S 1225** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

**S 1341:** **Rep. Perry** presented **S 1341** which improves foster care and child protective services in Idaho. It reflects recommendations and information gathered from a two-year Interim Foster Care Committee, as well as information from three reports on at-risk and foster care children in Idaho. This bill is a first step to begin providing more structure and oversight to cases and issues in the complex system. This legislation is designed to do the following things: Preserve sibling connections in foster care; strengthen support services for newly reunified families in foster care; establish a system for increased accountability for child welfare outcomes through citizen review panels; enhance procedures that guide investigations of suspected child abuse and neglect; establish an oversight committee to begin to bring a system's perspective to multi-faceted and disparate child protection efforts; and specifically clarify the process and standard for contesting foster care and permanency placement. Rep. Perry commended Idaho Department of Health and Welfare for the high level of support on this initiative. She stated many of the outcomes have yet to come to light in the public and legislature, but many things have been done to move things forward in a positive way. Primary focus has been on improvements in internal processes and the creation of an independent and objective, external review process through the citizen review panels that will be established in all seven public health districts and align with Idaho's judicial districts.

Additionally, a Legislative review panel will be formed to review reports from the citizen review panels and the annual report from the Department of Health and Welfare. In answer to questions from the Committee, Rep. Perry stated all health districts were included in discussions about the changes to current law and will be responsible for putting the citizen review panels together for their respective districts. She clarified that this bill codifies the process for establishing the citizen review panels and the panel's responsibilities. Due to the sensitive nature of the information discussed by the citizen review panels, it is the intent to shield aspects of the reports detailing specific cases from public disclosure. In answer to a question about possible unintended consequence and conflict with another piece of legislation that requires Department of Health and Welfare meetings to be open to the public. **Chairman Luker** stated since the citizen review panels are not a decision making body they would differ from Committees that fall under the public disclosure law.

**Sen. Lee, Christine Triddens**, Idaho Voices for Children and **Robert Ball**, Idaho Youth Ranch spoke in support of **S 1341**. They spoke to the importance of addressing sibling relationships and providing support programs for reuniting families. They addressed the topic of trauma and Mr. Ball stated that childhood trauma brought on by abuse, neglect, abandonment, parental addiction and more may be the most significant public health issue of today. If untreated, it can impact a person throughout their lives. In answer to questions from the Committee, Mr. Ball stated agencies are getting better at identifying trauma earlier so it can be addressed. **Chairman Luker** stated he worked on the Interim Committee for this initiative and it is a good bill.

**Ivy Smith, Chalyce Hurt and Beth Horton**, spoke in support of **S 1341** and shared their stories as former foster children. They spoke to the critical need to maintain sibling relationships. Siblings are often split up in foster care and have no means of communication with each other. This compounds the trauma and the ability to rebound when reunited is diminished. Ms. Horton spoke about trauma and PTSD is frequently a long-term impact on children in and after foster care. She spoke about the need for children affected by parents with opioid addictions to receive a high level of therapy and support beyond foster care.

**MOTION:** **Rep. Amador** made a motion to send **S 1341** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**S 1298:** **Sen. Burgoyne** presented **S 1298**. He stated this legislation modernizes the system for public criminal background checks with the goals of increasing public safety and eliminating costs for repeated background checks for licensed positions, particularly sensitive positions such as child care workers, teachers, foster parents, licensees and others. At the same time it has been strengthened to protect the rights of individuals who are subject to background checks: After not making it through the legislative process in 2015, this bill is back at the behest of the Executive Branch and others who see an important need for it, but it has been extensively rewritten so it could more clearly state what it does and does not do. Current law requires some people holding positions of trust in the public or private sectors to have fingerprint-based criminal background checks before they are hired, appointed or licensed. Once a pre-hiring or pre-licensing background check is completed, the fingerprints are destroyed and future criminal activity remains unknown, unless the person is re-fingerprinted for an additional background check. This can be costly. This bill allows such authorities to receive ongoing updates of future criminal charges and convictions. Sen. Burgoyne stated the bill also provides protection to those who are fingerprinted for these purposes by granting rights such as: all criminal updates must be kept confidential; they must receive notification of any criminal history updates; they must have an opportunity to respond to such updates; their fingerprints shall be removed from the system and destroyed, free of charge, when they no longer hold a position or license subject to background checks, or the authority opts out of receiving updates; and they will be

notified of all rights granted by this legislation. This program is referred to as the "Rap Back Services". He explained several state agencies support this bill and will testify, but the Idaho Department of Health and Welfare, Idaho Department of Correction and City of Coeur D'Alene are unable to attend this hearing, but have stated their support for **S 1298**. In answer to questions from the Committee, Sen. Burgoyne stated current background checks include both charges and convictions and employees and authorizing agencies already have access to the level of information in the initial background checks. Additionally, this legislation does not contradict any current law regarding criminal background checks.

**Dawn Peck** Criminal Identification Bureau Chief, Idaho State Police testified in support of **S 1298**. She stated the National Child Care Protection Act, requires centers and programs to be subject to background checks. Currently the only organizations authorized to participate in Rap Back are organizations outlined in this federal law. In Idaho, certain entities go through federal background checks and others go through the cities. If there is a city or county ordinance authorized by the FBI they can enroll those finger prints. In answer to questions from the Committee, Ms. Peck stated there are rails in the bill that safeguard individuals who shouldn't be in the system as there must be a biometric match before the system will trigger a match. Individuals are notified of a match and the responsible agency must share a copy of the background record. Individuals can challenge this by providing new fingerprints. It's believed there is no additional cost to implement the program because information is already in the system and only requires a programming change to share the information with entities that have opted in.

**Susan Odom**, Associate Executive Director, Idaho State Board of Nursing, **Mike Kane**, representing Idaho Sheriff's Association, **Ann Lawler**, Idaho State Board of Medicine and **Tom Shaner**, Idaho Tax Commission spoke in support of **S 1298**. They each stated their agencies all require criminal background checks for employees and some of them are federally mandated to do so. They each have different recheck requirements, but the Rap Back system would be a cost savings. More importantly, it would provide real time insight that could help protect the public when a person is in a position of trust. They stated there are personnel systems in place to ensure due diligence is completed before taking permanent action on continued employment. In cases of licensing, a person may have their license suspended pending the outcome of a criminal case to ensure protection of patients or clients.

**Sen. Burgoyne** closed his remarks by stating he understands the perceived intrusiveness of criminal background checks, but they don't just happen. Individuals who hold sensitive positions of trust knowingly participate in background checks as they are required to do so for so many positions. This bill provides a good balance between the need for privacy and the need for public safety.

**MOTION:** **Rep. Zollinger** made a motion to **HOLD S 1298** in committee.

Speaking to the motion, **Rep. Zollinger** stated he is concerned about several things, but the lack of due process if an employer takes action against an individual based on charges being filed is problematic. He stated there are criminal procedures in place for a purpose and they need to run their course.

**SUBSTITUTE MOTION:** **Rep. Wintrow** made a substitute motion to send **S 1298** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Wintrow** stated background checks are done as a normal course of business and it is a good balance of meeting business needs, the rights of employees and it provides information that may be important for public safety. Based on her experiences at the University, she believe most businesses don't decide to fire someone without due process. It might be a matter of suspending someone, if charges are filed and public safety is at risk, but businesses are not going to fire someone without due process.

**Rep. Amador** and **Rep. McDonald** spoke in support of the substitute motion. They stated a certain level of trust is placed in people in some positions and the solution isn't to watch the newspaper to see if a crime is committed, especially when it comes to protecting children. They stated employers have a right to ask about criminal history in these types of positions and it's doing nothing more than that. It was explained that as consumers, people give their fingerprints away everyday to access their mobile phones. The companies that have this data are commercial entities. Therefore, protecting privacy is not a good excuse for not doing something to protect children and vulnerable individuals.

**Rep. Perry** spoke in opposition to the substitute motion. She stated the bill is incredibly broad because the legislation does not spelled out how the notification process should work and a formal challenge shall not preclude any entity from taking adverse action against the employee or licensee.

**ROLL CALL VOTE ON SUBSTITUTE MOTION:** **Rep. Perry** requested a roll call vote on the substitute motion for **S 1298**. **The motion failed by a vote of 5 AYE, 10 NAY, 2 Absent/Excused. Voting in favor** of the substitute motion: **Reps. McDonald, Amador, Gannon, McCrostie, Wintrow. Voting in opposition** to the motion: **Reps. Perry, Dayley, Kerby, Nate, Chaney, Hanks, Zito, Zollinger, Ehardt, and Chairman Luker. Vice Chairman Malek and Rep. Cheatham** were absent/excused.

**VOTE ON ORIGINAL MOTION:** **Chairman Luker** called for a vote on the original motion to **HOLD S 1298** in committee. **Motion carried by voice vote. Reps. McDonald, Amador, Gannon, McCrostie, Wintrow** requested to be recorded as voting **NAY**.

**S 1314aa:** **Rep. Zito** and **Sen. Burgoyne** presented **S 1314aa**. This legislation corrects oversights in Idaho law that permits the expungement of fingerprint and criminal history records in certain cases. However, it doesn't allow expungement if a case is dismissed by prosecutors for lack of evidence, or dismissals by courts because the state's case lacks the probable cause necessary to proceed to trial. Furthermore, expungement is limited to the fingerprint and criminal history records in official law enforcement databases. Such records in the courts' publicly available online database cannot be expunged. This legislation amends the statute to correct these oversights. **Rep. Zito** stated she became aware of the need for this legislation from a constituent in her district, who even with an attorney's help, could not have dismissed charges removed from her record.

**Dawn Peck**, Criminal Identification Bureau Chief, Idaho State Police (ISP) was called to answer questions from the Committee by stating if the State expunges a record, then it will be expunged at the federal level as well. **Ms. Peck** stated her department is neutral on this bill. She reviewed the details of the current fiscal note and stated there would be an impact to her agency of nearly \$280,000, which is not reflected in the fiscal note. She said it is not an easy process to remove records if all charges are dismissed because it would take a full-time person on her team to remove records. Due to the complexity of some cases it may also require the assistance from the Attorney General's office to provide a professional level of research to determine which cases will qualify. She stated the fiscal note calculations were not brought up in the Senate hearing.

**Andrew Masser**, on behalf of the Idaho Criminal Defense Lawyers, spoke in support of **S 1314aa**. He reiterated some of what was explained by the Sponsors and provided examples of cases that might be dismissed because of lack of evidence and may never have the opportunity to win an acquittal to be expunged. This bill does not impact the internal databases for law enforcement and the courts, it only affects the large criminal databases of the FBI, Idaho State Police and sealing the court records. He spoke to the fiscal note impact discussed by **Ms. Peck**, and according to his determination of the number of cases affected, there would be much less of an impact to the state.

**MOTION:** **Rep. Chaney** made a motion to send **S 1314aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Zito** will sponsor the bill on the floor.

**S 1245aa:** **Rep. Smith** and **Sen. Nye** presented **S 1245aa**. This bill provides immunity from civil liability and criminal prosecution when someone provides aid to another person in a locked motor vehicle and they believe in good faith that the individual is in imminent danger of dying, or could suffer serious bodily harm. It is known as the good samaritan bill. She said the statistics she found on the issue are for children, but there are others who may need aid. She stated six Idaho children have died in cars between 1990 and 2016. Cars can quickly heat up to dangerous levels and Utah, Oregon and Texas have has passed similar laws. In answer to questions from the Committee, Rep. Smith stated insurance companies have only been included informally in discussions about the bill. She clarified that a current law to provide aid to someone in a vehicle only applies to accidents on the side of the road.

**MOTION:** **Rep. Cheatham** made a motion to send **S 1245aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Smith** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the Committee, the meeting adjourned at 5:14 p.m.

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Representative Luker  
Chair

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Wendy Carver-Herbert  
Secretary