

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Wednesday, February 29, 2012
- TIME:** 1:30 p.m. or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
- ABSENT/  
EXCUSED:** Reps. Burgoyne and Ellsworth
- GUESTS:** Michael J. Kane, Idaho Sheriff's Association (ISA) & Appriss; Robert L. Aldridge, Trust Estate Professionals, Inc.; Olivia Craven & Molly Vaughn, Parole Commission; George Guitierrez, Crime Victims Compensation Program; Devan Hunt, Advocates Against Family Violence; Laurie Nolan, Ada County Prosecutor's Office; Kurt Holzer, Idaho Trial Lawyer's Association (ITLA); Woody Richards, Attorney/Lobbyist; Vaughn Killeen, Idaho Sheriff's Association; Kent Day, Liberty Mutual; Paul Jagosh, Idaho Fraternal Order of Police, Jerry Russell & Bill Flink, Idaho State Police (ISP); Angela Richards, Richards Law Office
- Chairman Wills** called the meeting to order at 2:37 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes from the February 23, 2012 meeting. **Motion was carried by voice vote.**
- SCR 122:** **Vice Chairman Luker** presented **SCR 122**. He stated that this is the concurrent resolution rejecting subsections 91 and 92 of the POST pending rules.
- MOTION:** **Rep. Killen** made a motion to send **SCR 122** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.**
- S 1324:** **Sen. Corder** presented **S 1324**. He said there is a duty to provide access to government for all people, which includes access to the courts. This bill makes an inflationary adjustment to Idaho Code § 12-120(1). This section of Idaho code grants attorney's fees to the prevailing party of a civil action and has not been adjusted since the current \$25,000 was adopted in 1986. Based on inflation, that figure should now be \$51,000 and the \$35,000 proposal brings us to 1995 inflationary rates. This amount is appropriate because it will provide people with a reasonable expectation that they will receive attorney's fees if their claim is justified. He explained that the amount of a claim can rise as a case progresses and under the current statute, the claimant would have to reduce their claim to have a reasonable expectation of fees. Also, if their offer is within 95% of the ultimate award or if both parties are acting reasonably, no attorney's fees may be awarded.
- MOTION:** **Rep. Killen** made a motion to send **S 1324** to the floor. **Motion was carried by voice vote.** **Rep. Smith** will sponsor the bill on the floor.
- H 595:** **Michael J. Kane** presented **H 595**. He explained this bill, formerly **S 1263**, passed unanimously last week and **H 595** is a replica of **S 1263**, but needs to begin in the House because it is a fee bill. This bill is supported by the Idaho Association of Counties, state prosecutors, Domestic Violence council, Mothers Against Drunk Driving (MADD), and Advocates Against Family Violence. The Victim Notification System (VINE) allows for real time notification to victims when there is a change in status of offenders. This bill proposes a \$10.00 fee upon conviction of a misdemeanor or felony. Any excess funds at the end of the fiscal year will go to the Victim Restitution Fund.

In response to committee questions, **Mr. Kane** explained that misdemeanors and felonies are being increased by the same amount because they didn't want to overburden felony offenders as they already pay a considerable amount more than the misdemeanor offender. Additionally, the Victims Rights Amendment mandates that the offender pay restitution to the victim.

**VOTE ON THE MOTION:**

**Motion was carried by voice vote. Chairman Wills and Vice Chairman Luker** will sponsor the bill on the floor.

**S 1233:**

**Robert L. Aldridge** presented **S 1233**. He said the foundation of the bill is two-fold. He explained that the creation of the guardianship was established in 1972 under the Uniform Probate Code in Idaho, however, guardianship termination is less clear. This bill amends Idaho Code § 15-5-210 and § 15-2-212 to add the provision in existing in § 15-5-212A, enacted in 2007. He said there is a tendency for those who are seeking reappointment as a guardian to be poor at self-assessment and in reality remain unfit. The purpose of this bill is to require a high-standard for overturning a stable guardianship. The "clear and convincing" standard of proof would require the movant to show a substantial change in circumstances in order to begin the process of guardianship of their child/children. All parties in support of this bill are in favor of using the "clear and convincing" standard of review.

In response to committee questions, **Mr. Aldridge** said that if the "clear and convincing" standard were to change, it would overburden the courts because courts have seen a huge increase in parents returning to court trying to seek guardianship of their children. **Mr. Aldridge** stated **S 1233** is supported by Trust Estate Professionals Inc. (TEPI), representatives from a large number of stakeholders, and family law sections and he can bring documentation of their support if the committee requests it. In regards to the different types of guardians, he said these are most often close family members such as grandparents and aunts/uncles. A guardian may also be a sibling or non-family member.

**MOTION:**

**Rep. Perry** made a motion to hold **S 1233** in committee.

**Mr. Aldridge** stated that the modification of the purpose of the co-guardian provision (§ 5, subpart a) is to prevent re-litigation of the same question, therefore, there needs to be a material change of the co-guardian's circumstances allowing the court to reexamine the guardianship. In regards to the "clear and convincing evidence" standard of review, **Mr. Aldridge** said there is no standard of review under the existing probate code. The courts have been using the language out of § 212A as the standard, this bill will codify current practice.

**Mr. Aldridge** next explained the difference between a guardian ad litem and a guardian. Under the probate code, a guardian ad litem is an attorney appointed to represent the ward, makes decisions for the ward, and must continually monitor the guardianship.

**Vice Chairman Luker** commented about the burden of proof and "substantial and material change." He said a guardianship is not established by a "clear and convincing" standard, which is a much higher standard than "preponderance of the evidence." A guardianship should be established and dissolved by the same standard.

**SUBSTITUTE MOTION:**

**Vice Chairman Luker** made a substitute motion to send **S 1233** to General Orders with the following committee amendments: 1) remove "clear and convincing" from page 1, line 38 and page 2, line 8. 2) strike the word "substantial" from the phrase "substantial and material" on page 2, lines 1 and 9.

**Mr. Aldridge** explained that the standard should be high on the front end because we don't want to wait until child is damaged before we establish a guardianship. He provided several examples of damage to children with physical and psychological abuse he has witnessed as a guardian ad litem. He said there may be some instances where this heightened standard of proof will make it more difficult for the parents to regain guardianship but the courts are always looking for family unification when it can be done.

In support of the substitute motion, **Rep. Sims** made a comment that she has experience with the establishment and dissolution of a guardianship, and believes the clear and convincing evidence is necessary.

**Mr. Aldridge** explained that once the standard is outlined (or deleted) in the statute, you cannot use a heightened standard, that would be a violation of the statute. Also, the current practice would be codified only if **S 1233** is passed as written.

**AMENDED  
SUBSTITUTE  
MOTION:**

**Rep. Jaquet** made an amended substitute motion to hold **S 1233** in committee for a time certain allowing the bill sponsor to provide information to the committee from supporting parties.

**Vice Chairman Luker** clarified for the committee that the standard of review will be "preponderance of the evidence" if not specified in the statute.

**VOTE ON THE  
AMENDED  
SUBSTITUTE  
MOTION:**

**Motion was carried by voice vote. S 1233** will be held in committee for a time certain and will go before the committee on Monday, March 5, 2012.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 3:41 p.m.

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Representative Wills  
Chair

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Stephanie Nemore  
Secretary