

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 12, 2012

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**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.

Chairman Darrington called the meeting to order at 1:33 p.m. and asked if there were minutes to be approved.

MOTION **Senator Mortimer** moved, seconded by **Senator Bock**, to approve the minutes of **February 29, 2012**, as written. The motion carried by **voice vote**.

RS 21421C1 **Relating to Certificates of Insurance**, with a letter of unanimous consent request from the Commerce and Human Resources Committee to print the RS.

MOTION **Vice Chairman Vick** moved, seconded by **Senator Nuxoll**, to print **RS 21421C1**. The motion carried by **voice vote**.

S 1380 **Relating to Child Custody. Robert L. Aldridge**, explained that he sent this new bill out for comments to the Family Law section and the Court system for approval. He did not receive anything from Family Law, but did receive a memorandum from the Supreme Court summarizing the comments they had received from one of their judges. He reviewed to the committee the bill and two possible amendments based on these comments. The bill is based on the Best Practices in addition to the requirements of the Servicemembers Civil Relief Act (SCRA) and in this case related to deployment situations. The bill first requires that the court determine if the Act applies and then act accordingly. The Department of Defense has a list of Best Practices which it believes states should enact to give additional protection to service members, especially when on deployment, and they are as follows:

1. This bill provides protection in the new statute requiring that any modification while the service member is deployed can only be a temporary order and expires on the completion of deployment.
2. The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined.
3. Allow expedited hearings upon the request of a service member.
4. Let the court use electronic testimony when the service member is unavailable.

Mr. Aldridge said there were two alternate amendments that were written to address the comments from the court. The first amendment would continue with Section 1, (a) "...the order or decree shall expire [ten days after notification to the court, and to all persons entitled to notice in the action, of the deployed servicemember's completion of deployment unless the court finds that resumption of the custody order in effect prior to the entry of the temporary order is no longer in the child's best interest.]" The other amendment is more lengthy and adds ["...that the court may thereafter conduct an expedited or emergency hearing for resolution of the child's custody within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child if the order expires."]

Mark San Souci, Department of Defense Regional Liaison for the Northwest, said he had provided Bob with the statutes from Alaska, Oregon and Washington and he appreciated his work on the bill. They were satisfied with the re-write.

MOTION **Senator Mortimer** moved, seconded by **Senator Nuxoll**, to send **S 1380** to the **14th Order** for Amendment. The motion carried by **voice vote**.

Chairman Darrington explained that the next bill, H 595, was identical word for word of the same bill that was passed previously, went to the floor of the Senate, went to the House, and for reasons beyond any of our control, was re-written word for word, given a House number and is back before us. There is nothing different about it.

H 595 **Relating to the State Victim Notification Fund.** **Michael J. Kane**, representing the Idaho Sheriffs Association, was here to discuss the bill, but there was no need as a motion was made after the Chairman's comments.

MOTION **Senator Davis** moved, seconded by **Senator Lodge**, to send **H 595** to the floor with a **do pass** recommendation. The motion carried by **voice vote**. **Vice Chairman Vick** voted no.

H 448 **Relating to Fees; Peace Officers Standards and Training (POST) Purposes.** **William L. Flink**, POST Administrator, explained that POST is responsible for the minimum employment and training standards for nearly 5,700 law enforcement personnel serving the criminal justice system in Idaho. The officers serve nearly 200 state, county and municipal agencies. H 448 amends Idaho Code, § 31-3201B, to increase the POST fee (charged to any individual found guilty of a felony, misdemeanor, or traffic, conservation or ordinance violation) from \$10.00 to \$15.00. The fee amounts to approximately 72% of POST's total revenue, and the fee is in its third year of declining revenue. The POST fee has not been modified since July 1, 2005. The Consumer Price Index (CPI) has risen 16.4% since 2005. POST expenses are adversely affected by the rising CPI. Mr. Flink said the proposed fee increase of \$5.00 (which would provide \$3 for maintenance to bring funding up to sustain existing expenses and needs; and \$2 for growth in operations through 2017) is projected to generate between \$1,056,000 to \$1,139,530 allowing a modest growth of \$325,000 to \$475,000 for POST to take forward to 2017.

Mr. Flink outlined the importance of approving this legislation.

1. to ensure that public safety officers receive the necessary training to perform their responsibilities;
2. to provide adequate resources to maintain state-of-the-art classrooms;
3. to maintain and replace required equipment and training materials;
4. to allow POST to meet the minimum requirements identified through job task analyses; and

5. to adequately fund POST'S office of Professional Responsibility, and remain vigilant against acts or allegations of unethical or criminal violations within the criminal justice profession.

Chairman Darrington asked what the agencies were expected to pay for use of the POST academy. **Mr. Flink** said the basic training classes were paid by POST, and self-pay training was about \$4,700. **Senator Nuxoll** asked if crimes were going down, or if there were more officers that caused this revenue situation. **Mr. Flink** said the statistics show that most agencies are stagnant in the hiring practices. He said they are faced with approximately 83,000 fines lower than in 2009. **Vice Chairman Vick** said a county with a high turnover rate might use the service more than some other county which could cause an increased costs. **Mr. Flink** said while that is true, mostly the turnover rate is the smaller agencies. **Chairman Darrington** asked if law enforcement agencies could hire an uncertified officer and they then had 12 months to certify. **Mr. Flink** said that was true. **Senator Mortimer** asked if there was a reason why the city and county agencies were not participating in the cost. **Mr. Flink** said that the turnover problems were the smaller agencies that did not have a lot of funding. POST does pay for their basic training, but do not pay fees for their ongoing in-service training requirements that they must attend and complete every two years.

Chris Goetz, Sheriff of Clearwater County, explained, as a small agency, they are in favor of the bill. They depend on POST education and currently have 3 deputies in training at the Academy. They have to hire part time employees to cover some shifts and those employees have full time jobs. He stated that if the fee increase doesn't pass, it would mean cancelling academy classes and increasing the time of getting instructors certified which are both negatives. Sheriff Goetz said POST plays a big role in training peace officers in Idaho and are very good at it. They rely on them; he urged the committee to support this increase.

Mike Kane, representing the Idaho Sheriffs Association; **Jeff Lavey**, Meridian Police and Idaho Chiefs of Police Association; **Justin Ruen**, Association of Idaho Cities; and **Chief Dave Moore**, Blackfoot Police and Vice Chair of POST Council, all spoke in favor of the bill. They all expressed the needed training provided to officers in Idaho by POST and that it must be centralized. **Mr. Kane** said when he was in POST Council, they had "law week" where they spent the week learning Idaho criminal law and how to testify in court. The amount of information that is imposed on these new officers is incredible. The more training, the less lawsuits will be seen in cities and counties. It is important that this bill is passed to stabilize the funding for POST.

Chairman Darrington added that liability is very real to cities and counties and all police agencies and training through POST will establish the do's and don'ts for an officer with regard to the status of liability, or the lack there of. **Mr. Flink** spoke on the subject of liability. A police officer has the right to take a person's liberty away which will sometimes cause liability. The use of force, responding to emergency pursuits, or emergency services also creates liability. They have tried to limit the liability facing the cities, counties, and state officers. This state is unique in that police training is allowed within one year of hiring. They have been striving to create a standardized curriculum for all programs over the last year and a half. If they can't find some relief for fiscal problems, their programs would suffer and would have a 'cause and effect' on the officers that are serving the public. **Vice Chairman Vick** asked if they could carry forward funds from year to year. **Mr. Flink** said if they had money under a million dollars, they could carry it, over a million it would go back to the general fund. At this time, they do maintain \$500,000 in the budget line in order to fund themselves for the first couple of months of the fiscal year. **Vice Chairman Vick** expressed concern over the number of fees put on top of fines. **Mr. Flink** said

that in this state the criminal pays for the law enforcement services. He believes that it is better to assess a fee against a criminal than to tax the average citizen.

MOTION **Senator Davis** moved, seconded by **Senator LeFavour**, to send **H 448** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 532 **Relating to the Peace Officer Standards and Training Council. Sharon K. Lamm** explained this bill adds Idaho Code § 19-5118 to allow the POST Council the legal authority to collect, deposit and spend fees for dormitory room usage, for training other than basic training, and for the use of POST facilities and training equipment by non-law enforcement institutions. This proposed legislation is basically a housekeeping item for POST Council. The fees have been collected and spent for sometime, so this will give the Council authority to continue to do so legally.

MOTION **Senator Lodge** moved, seconded by **Senator Mortimer**, to send **H 532** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 2:35 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary