

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 06, 2013

TIME: 2:00 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 2:03 p.m. and asked the secretary to call the roll.

RS 22199 **Relating to Criminal Procedure - Intern Nate Cucou** said he was a third year student at the University of Idaho College of Law. As an intern of Senator Bart Davis, he will be presenting this legislation. He has been working with the prosecutors association, judiciary and others to put together a method to provide additional relief to individuals who cleaned up their life and were striving to be a productive member of society. The legislation allows an individual to apply for relief from a district court after being discharged from probation, but there are limited instances in which this can occur. If less than five years have passed since the discharge from probation, and he or she is petitioning the district court from relief of a felony conviction, the application may be granted only if the court finds the relief is appropriate and the required elements are met under 19-2604 (3) (d) including a prosecuting attorney's stipulation to reduction. If five years or more have elapsed since the discharge from probation and the individual is petitioning the district court for relief, with the exception of the crimes listed under (3) (c) (i), the decision as to whether to grant the application will be in the discretion of the court only, not requiring the prosecuting attorney stipulation. In essence, this bill helps individuals that have tripped up along the way, cleaned up their lives, and are now trying to be productive members of society, but having difficulty because of the felony conviction.

Senator Nuxoll asked for an explanation of relief. **Mr. Cucou** answered it is providing that an individual may petition the court for a reduction from a felony to a misdemeanor. The exception are those crimes listed at the end of the bill. **Chairman Lodge** asked if this had been done in other states. **Mr. Cucou** did not know, but deferred to Senator Davis for the answer. **Senator Davis** answered yes, and additionally some district judges in Idaho believe that within their powers they have the authority to do this today. Other judges say there is no statute that says they have that authority. **Senator Bock** questioned how the variables work and also the general grant of authority to reduce the felony to a misdemeanor, but with exceptions. **Mr. Cucou** said that (3) (a) was not a general grant, but provides the opportunity to petition the court. The actual power or ability to grant comes later in (3) (b) if less than five years have elapsed, and in (3) (c) if at least five years have elapsed. The prosecutor stipulation, in addition to the requirements under (d) all have to be met. He stated if more than five years have passed, no prosecutor stipulation is required; it's in the courts discretion with the exception of the listed offenses which are considered more egregious offenses and would require a prosecutor's stipulation. **Senator Werk** noted that rape was not in the list of crimes and he wondered why. **Mr. Cucou** deferred to Senator Davis. **Senator Davis** directed Senator Werk to page 3, Subpart (4) the sex crimes including rape

are mentioned. The prosecuting attorneys association raised similar questions and they looked at subpart (4) and were confident that sex crimes were included in that section.

Senator Davis gave some examples to further clarify the workings of the bill. **Senator Bock** suggested some changes to the draft by moving (d) to be included in (a) and then have the exceptions be (b) and (c). He thought perhaps that would be easier to follow. **Senator Davis** said the stakeholders, including the judiciary, and the prosecuting attorneys association, were involved and had confidence in the structure of the bill. **Senator Werk** asked about the thought process in putting the intermediate step between the judge making the decision of going to the prosecuting attorney since that may be a different attorney than had prosecuted in the first place. **Mr. Cucou** said it may be a competing interest in who makes that ultimate decision. **Senator Davis** commented that the judiciary and prosecutors were all in modest discomfort, but this is a beginning. **Senator Lakey** commented that initially three parties were involved; the individual who is represented by counsel, the judge who is the arbiter, and the people in the state of Idaho who are represented by the prosecutor. He asked if there was a notice process in the bill where the prosecutor gets notified and has the opportunity to participate. **Mr. Cucou** said there was not.

MOTION: **Senator Hagedorn** moved to print **RS 22199**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

S 1109 **Relating to Annuity Contracts - Senator Bart Davis** explained this bill deals with the exemption statutes as they apply to judgment collections and when a debtor is allowed to retain the asset. This exemption deals with annuities and there are two components. One may put assets into an annuity and then doesn't pay their obligations. The burden of proof is quite high. An easier burden is to ask if they want to provide an exemption of everything in the annuity. There are extenuating circumstances where an annuity provides a stream of revenue that is needed for an individual. In between the good example and the bad example is the problem faced now. Bankruptcy trustees or creditors have a high burden if their only remedy is the fraudulent conveyance statutes. **Senator Davis** then said they grabbed this language from the state of Tennessee, but it is an inadequate remedy. After this was printed, the industry contacted him and the result of that communication is that this bill is not right as it is. He asked the committee if the bill should be sent to the 14th Order in hopes that the industry will come forth. The downside would be that the committee would not have the opportunity to hear the corrected bill.

Chairman Lodge asked the senator if holding the bill in committee would be a solution. **Senator Davis** responded that he would prefer that.

MOTION: **Senator Hagedorn** moved to hold **S 1109** in committee to the call of the Chair. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:50 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary