

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, January 31, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Davis, Nuxoll, Hagedorn, Bock and Werk

ABSENT/ EXCUSED: Mortimer and Lakey

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 1:32 p.m. and asked the secretary to call the roll.

MINUTES: **Chairman Lodge** stated that the Minutes of January 17, 2014 would be held until Monday, February 3, 2014 for the assigned Senators to make the motion.

S 1240 **Relating to the Idaho DNA Database Act of 1996 - Senator Rice** explained this bill inserts a clause into Section 19-5506 stating that absent a warrant authorizing DNA collection based upon probable cause, no individual shall be required to provide a DNA sample unless the individual has been convicted of, or pleads guilty to, any felony crime, or the attempt to commit any felony crime. This is a reference back to the existing statute in Section 19-5506 that allows collection of a DNA sample and placing that information in the database upon conviction of felony crimes or attempts to commit felony crimes.

In recent U.S. Supreme Court decision *Maryland v King*, there was a challenge to taking DNA as an arrest procedure. The Court in a five to four decision held that taking and analyzing a cheek swab of the arrestee's DNA is like fingerprinting and photographing, a legitimate police booking procedures that is reasonable under the Fourth Amendment. The Fourth Amendment and similar protections in Idaho's Constitution allow that privacy of an individual is listed ahead of privacy of our property. There is nothing more invasive then violating the privacy of our person and DNA sampling is an invasion for an investigative purpose.

This bill is about protecting the Fourth Amendment rights against unreasonable searches of individuals. If you do not have probable cause particularized we are not doing an investigative search of the individual's DNA.

Senator Hagedorn stated in the processing of an arrested person wouldn't the fingerprinting and photographing of the arrested person, prior to a conviction, fall under the same logic as this DNA sampling. **Senator Rice** explained there is a difference. First, if a person is photographed that is their outward appearance; that is what everyone can see when you walk down the street. Second, fingerprints are visible when an individual holds up their hand, their fingerprints are in plain view. No one looking at an individual can see their DNA. It has to be revealed by a scientific laboratory analysis.

Senator Hagedorn asked when we arrest an individual, before they are found guilty of any crime, and the fingerprints are taken, the arresting authority can use those fingerprints to assess if they were found at another crime scene. Would this be the same as taking DNA and looking for the DNA at another crime scene. **Senator Rice** clarified the difference is that the primary purpose for fingerprinting is to match up a person with their prior record, not to match them up with other crimes. In fingerprinting they are matching up a person's identity; actual identity based on prior record not on comparing that information to other crimes. The DNA sample is not used to compare against records identity it is used to compare against closed or cold cases.

Senator Werk asked absent the changes to Section 19-5506 in **S 1240** then law enforcement agencies around the State would be free to collect DNA samples upon any type of arrest. **Senator Rice** answered that is correct. If there is no prohibition, then the booking procedures are left to each agency.

Senator Davis asked if an individual is being investigated for an offense, as part of an investigation, could the law enforcement agency compel the individual to provide a DNA sample. **Senator Rice** answered they could take a sample if they arrest or had probable cause and a warrant. This legislation prohibits collecting DNA as a booking procedure. If there is an arrest and the arrestor has probable cause that the person committed the crime and DNA evidence were a factor in the case the arresting authority would be able to take a DNA sample on a finding of probable cause with a warrant. The arresting authority could not take a DNA sample just because they arrested an individual. **Senator Davis** asked for clarification concerning a person who has been convicted of or pleads guilty to a felony. Can a law enforcement agency collect a DNA sample and retain it for subsequent investigations independent of the offense that they have been convicted for. In the event, that the law enforcement agency does not have a DNA sample and there is some investigation concerning the arrestee the agency must obtain from a magistrate judge an order making a determination that probable cause exists, prior to requesting the DNA collection. **Senator Rice** answered that the law enforcement agency could request or the arrestee could volunteer, but they could not require the DNA. If they go to the magistrate and get an order they can require the DNA sample. **Senator Davis** asked if the law enforcement agency has an order from the magistrate judge to collect the DNA sample from the arrestee and no charges are brought is the agency allowed to take that collection of DNA and put it in the DNA database for subsequent investigations? **Senator Rice** answered the law enforcement agency could put it in the database for subsequent investigations because they obtained it pursuant to a warrant and probable cause.

Senator Hagedorn stated under Section 19-5506, DNA collection is restricted to a felony. **Senator Rice** explained this is part of the existing statute that was collected on those felonies, but it is only on conviction in Idaho. This bill creates an exception to those convictions in Idaho it does not go back and restate whether the Idaho statute applies or does not apply to people convicted in other states.

MOTION: **Senator Werk** moved that **S 1240** be referred to the 14th Order for amendment. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:10 p.m.

Senator Lodge
Chair

Carol Deis
Secretary