

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 26, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: None

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 1:30 p.m. and requested the Committee Secretary take a silent roll.

RS 22962 **Relating to Dairy Products**, a unanimous consent request received from the Agricultural Committee to print **RS 22962**.

RS 22940 **Relating to Education**, a unanimous consent request received from the Education Committee to print **RS 22940**.

RS 22995 **Relating to Water Quality**, a unanimous consent request from the Resources and Environment Committee to print **RS 22995**.

MOTION: **Senator Werk** moved to print **RS 22962**, **RS 22940** and **RS 22995**. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

PASS THE GAVEL: Chairman Lodge passed the gavel to Vice Chairman Vick.

RS 22999 **Relating to the Correctional Industries Act:** **Chairman Lodge** stated that this is the same RS that had been before the Committee previously for agricultural inmate labor. There are some changes to be made in how the Department of Corrections sets up some of the different areas. The former RS would have been fine except that there would have been some amendments done to it next year, so she had sent it up to be re-printed so that everything would be in alignment with what will be done with it in future years. Other than that the RS is the very same, which will give the Department of Corrections the ability to have inmates work for private employers in the production, harvesting and processing of agricultural food products.

MOTION: **Senator Bock** moved to print **RS 22999**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASS THE GAVEL: Vice Chairman Vick passed the gavel back to Chairman Lodge.

RS 22948 **Relating to Suspension of Judgement and Sentence:** **Michael Henderson**, Legal Council for the Idaho Supreme Court, said this RS has been recommended by the Idaho Supreme Court and they are requesting that it be printed. This bill would amend Idaho Code that is currently in place. Last year there was an amendment to the statute, and this legislation represents less significant but still important amendments. This section allows a court to set aside a conviction or guilty plea, or in the case of a felony conviction, to reduce it to a misdemeanor in certain circumstances.

The amendments for this RS mainly deal with Subsection 1 of the statute, looking at those individuals who have been put on probation and never violated the terms of their probation. This amendment allows for the court, where a defendant has received a suspended sentence or withheld judgement, to set aside the plea of guilty or conviction (or reduce it to a misdemeanor if it's a felony). In order to obtain this relief the defendant must show: first that the court did not find that the defendant had violated the terms or conditions of probation during any of the period of probation; second, that there's no longer cause for continuing the period of probation; and third, that granting the relief would be compatible with the public interest. The granting of such relief is always up to the court's discretion.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION: **Senator Mortimer** moved to print **RS 22948**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 422 **Relating to Uniform Controlled Substances: Captain Charlie Spencer**, stated that the legislation amends and clarifies Idaho Code relating to the number of persons required, from the Idaho State Police (ISP), to witness the destruction of drugs. This portion of the Code was in place in 1971 and provided for the oversight of the destruction of drugs which falls under the direction of the Director of the ISP. In 1971, Forensic Services fell under the direction of the Idaho Department of Health and Welfare (H&W). At that time, H&W, the Board of Pharmacy and the Idaho Department of Law Enforcement (DLE) were required to witness the destruction of drugs. In 1988, Forensic Services was transferred and fell under the direction of the DLE. The law still required the Board of Pharmacy, Forensics and DLE (now ISP) to witness the destruction of drugs.

Captain Spencer noted that with the two bodies being governed by the ISP, it's an unnecessary duplication of efforts to continue to have both as witnesses, and the ISP is requesting that Forensic Services no longer be required to provide representation. Excluding forensics will not adversely impact the integrity of the drug destruction process, and this legislation has gained the support of Forensic Services and the Board of Pharmacy.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 2).

Senator Mortimer wanted to know if there is much interaction between the ISP and the Board of Pharmacy. **Captain Spencer** responded that the ISP communicates with the Board of Pharmacy on a regular basis, especially when it comes to the destruction of drugs. **Senator Mortimer** voiced the concern that a close relationship between the two could be viewed as too close and something illegal could result from it, so by taking the third party out of all of this, there may be issues such as illegal actions. **Captain Spencer** answered that drugs are seized throughout the year and there is a whole process that they are required to go through before the drugs are destroyed, so the removal of the third party does not impact the process or its integrity.

Senator Werk wanted to be clear that with these substances there is a complete chain of custody in place, with full documentation for who handled the drugs (when, why, etc.) before they are destroyed. **Captain Spencer** stated that was absolutely correct, and there are witnesses throughout the chain of custody from start to finish to prevent any problems along the way.

MOTION: **Senator Hagedorn** moved to send **H 422** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**. Senator Hagedorn will carry **H 422** to the floor.

S 1353 **Relating to the Juvenile Corrections Act: Judge Jack Varin**, retired Magistrate Judge, stated that he was given an exciting opportunity as he retired from the courts. He had been approached by a national organization to become a consultant for them to help improve the juvenile justice system in Idaho. The organization is the National Campaign to Reform State Juvenile Justice Systems and is funded by several large foundations.

Judge Varin went on to say that in working with a group of stakeholders, they've been able to see a trend in the consequences of a juvenile court record, which prevents those youthful offenders from obtaining jobs, going to college, and joining the military. There have been several areas identified to help address this concern: strengthening Idaho's diversion program, addressing expungement, and sealing court records. These are long-term projects that hopefully can be worked on in the coming year with the idea to be able to prepare legislation, if required, for the next session.

This year they identified the need to clarify the court's authority to dismiss an informal adjustment when granted by a judge and to provide the court with authority to dismiss a juvenile offender's case upon completion of a juvenile drug court, mental health court or other types of corrective court situations.

Judge Varin stated that he has worked with another judge, a prosecutor and a public defender from Ada County in drafting this legislation. It has been given to the judges and prosecutors association, and they have addressed some of the comments received.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 3).

Senator Lakey had a question on the section in the legislation regarding discharge following completion of one of the problem-solving courts and wanted to know how many times a juvenile could go to one of these types of courts, or was there a limit to the number of times they could ask for a dismissal. **Judge Varin** said that it would not be any different from the adult side of the world, and it would be a discretionary opportunity as long as the person showed a willingness and ability to complete the program as outlined.

Senator Davis wanted to know if page 2, Section 2, lines 26-38, which totaled 121 words, was meant to be one sentence. **Judge Varin** responded that yes it is, and it mirrors the adult statute.

Vice Chairman Vick had a follow-up to Senator Lakey's question; for a situation where there is someone who has had their charges dismissed, their records expunged, does the judge still have access to that information to know that there's been a prior history if the juvenile re-offends? **Judge Varin** explained that if the case is dismissed it's still part of the public record, but when a case is expunged it cannot be brought back since it basically is erased. The only way the case could be brought back is through a court-ordered process.

MOTION: **Senator Bock** moved to send **S 1353** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**. Senator Werk will carry **S 1353** to the floor.

PRESENTATION: Successes of the Idaho State Police (ISP): Colonel Ralph W. Powell began the presentation by giving a brief overview of the ISP and noted that they had celebrated their 75th Anniversary on February 20th in the Capitol Rotunda. Colonel Powell mentioned that the ISP headquarters is in Meridian, and the State is divided into six districts that have patrol and investigation operations in each. He then went on to detail for the Committee the different ISP programs which work to support their mission of "providing public safety across the state of Idaho through law enforcement excellence".

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 4).

DISCUSSION: Senator Davis in good fun, wanted to know with Idaho Falls being mentioned so many times throughout the presentation, does that mean they are part of the problem or part of the solution. **Colonel Powell** asked if he could defer to Captain Spencer to provide that exact information later. **Senator Davis**, more seriously, thanked Colonel Powell and the others in attendance for their service, especially in the work they do around the Capitol during the Legislative Session. **Colonel Powell** thanked Senator Davis for his kind words.

Senator Hagedorn also wanted to thank the ISP for the help locally and throughout the State. He was curious as to how the ISP handles drugs, specifically marijuana traveling through Idaho to and from states where the sale of the drug is now legal. **Colonel Powell** answered that it is a problem. He emphasized that the ISP has noticed a definite correlation between those bordering states, where medicinal and or recreational use is now legal, and the trafficking of marijuana in Idaho.

Senator Hagedorn commented that during the presentation, it seemed as though there were a number of different databases for the various ISP programs. He wanted to know if these were all backed up outside the Treasure Valley in case there is a security breach so that the information can still be accessed. **Colonel Powell** stated that was an excellent point and some systems are already in place, and others are in the process of being worked on to ensure the information is being securely backed up.

Chairman Lodge was curious as to the cost to train one of the officers involved in the ISP's K9 program. **Colonel Powell** said he would defer that question to **Captain Spencer** who stated that to totally train and equip their K9 officers, it costs them \$10,000 per officer, which includes an 8-week training course for the officer, safeguards for the dog in the vehicle, food, water and other items needed.

Chairman Lodge asked the Committee members if any of them had been able to see K9 Bingo in action. She then requested that perhaps they can see him in the Committee before the Legislative Session ends. **Colonel Powell** responded that it would certainly be possible for Bingo to make an appearance before the Committee. He also wanted to make it clear that the ISP has been able to make use of various funds and grants to make the K9 program possible.

Senator Nuxoll wanted to know if the cost included the purchase of the dog itself. **Colonel Powell** responded that no, it just covers the training. **Senator Nuxoll** asked to know the cost of the dog. **Colonel Powell** answered that the cost of the dog is roughly around \$2,000.

PRESENTATION: Understanding Idaho Trial Lawyers Association: Barbara Jorden, Executive Director, Idaho Trial Lawyers Association (ITLA), stated that this was the first time the ITLA had asked to make a presentation before the Committee about who they are and what they do. The ITLA and its members are a presence during the Legislative Session since they are called upon to testify before various committees. She stated that the ITLA is a statewide association of lawyers of various types (mostly plaintiff's lawyers, but others as well).

Ms. Jorden noted that the ITLA is a non-partisan group, but the membership does mirror that of state political trends, with mostly republicans, but they do not support one party over another. One of the main purposes of the ITLA is to provide support and services for its membership. They offer helps that especially benefit lawyers in smaller communities and allow for the sharing of ideas among members. The ITLA also provides opportunities for continued education for its membership who are required to have so much continuing legal education. There are also seminars held to update the attorneys on any changes that may have taken place with the most recent Legislative Session.

What may not be as well known is that the ITLA is very focused on giving back to the community and encourages their members to get involved and serve, whether it's through pro-bono efforts or working with other groups in need. **Ms. Jorden** provided the Committee with a handout and spoke about the Street Law Clinic which began in 2013. This program has been modeled after one that Utah has implemented, and even though it's only been in operation for 13 months, they have served over 225 clients. The Street Law Clinic was started for those who don't understand the law, who just have some questions, or can't afford a lawyer. They are able to meet with law students who have been trained in how to help them and answer their questions. There are things that have been requested in the clinic that they are not allowed or able to help with, but for the most part they have been able to direct its users to the next step that needs to be taken.

The Street Law Clinic (open the 2nd Monday of each month) has been so successful that a second group has been started to focus on family law issues; The Family Law Clinic is now open the 4th Monday of each month. In January and February of this year, the University of Idaho College of Law Boise Program offered a tax conflict service, and the ITLA had helped them in finding a place to practice.

Ms. Jorden stated that the Committee is probably most aware of the ITLA and its membership's involvement in their efforts to help make good laws for the State. She reminded the Committee that the ITLA serves a niche and fits into that niche through the 7th Amendment of the U.S. Constitution, as well as code written into the State's Constitution that allows for the same right. She stated that she hopes that ITLA can be seen as a reference and resource to the legislators if they have questions. Even though they are serious people doing serious work, they also like to have fun, and she gave several examples of fun events put on for the membership. She then referenced the ITLA's website (ITLA.org) and noted some of the helpful features.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 5).

DISCUSSION: **Senator Werk** commented that he was excited to hear about the clinics being offered by the ITLA to help ordinary citizens with some of their legal needs and questions. He requested that the links for the information be emailed to the Committee members so they could then share them with their constituents. **Ms. Jorden** responded she would be happy to do that.

Senator Davis noted that he understands that Ms. Jorden needs to be sensitive to privilege, but wanted to know if the ITLA had considered tabulating over time the various types of issues that are being addressed at and through the clinics to see if it is actually helping the citizens. He also wanted to correct the fact that the ITLA has not only been before committees to lobby against legislation but also for it as well.

Senator Hagedorn wanted to know if there was some reason why the ITLA has not picked Senator Davis to "roast" yet. **Ms. Jorden** stated she wasn't sure if the ITLA would be able to convince him to participate in the event, but they would certainly consider the idea.

MINUTES APPROVAL: **Vice Chairman Vick** moved to approve the February 5, 2014 Minutes as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Davis** moved to approve the February 7, 2014 Minutes as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Bock** moved to approve the February 10, 2014 Minutes as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED There being no further business before the Committee, **Chairman Lodge** adjourned the meeting at 2:46 p.m.

Senator Lodge
Chair

Carol Deis
Secretary

Linda Harrison
Assistant Secretary