

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, March 05, 2014
TIME: 1:30 PM or Upon Adjournment
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo
ABSENT/EXCUSED: Representative(s) Nielsen
GUESTS: Paul McPherson, CARES Clinic; Bob Aldridge, TEPI; Kristen Atwood, ISA; Holly Koole, IPAA; Kaley Sparling, parent; Rebecca Lovelace, NFJC, Idaho Coalition; Adrean Cavener, American Heart Association; Senator Patti Anne Lodge; David High, retired; Sean Schapach, Intern; Don Hudson, Lincoln County; Brent Reinke, Idaho Department of Correction; Molly Kalzmarek, St. Lukes CARES/Idaho Network of CAC's

Chairman Wills called the meeting to order at 1:32 PM.

Chairman Wills turned the gavel over to **Vice Chairman Luker**.

S 1357: **Rep. Wills** presented to the committee **S 1357** which will increase public safety and contain the cost of corrections. The bill addresses three challenges facing Idaho's criminal justice commission: recidivism, inefficient use of prison space, and insufficient oversight of recidivism reduction investments. By the year 2019, the growth in the prison population is projected to increase by 16%. He said the objectives in this bill are estimated to avert nearly all of this growth and reduce recidivism by 15%. This will save the state of Idaho up to \$288 million and enable the state to reinvest \$33 million in probation and parole officer training, community treatment, and quality assurance measures. The fiscal impact of implementing these recommendations is \$2 million from the General Fund and \$299,999 in dedicated funds for 2015.

Rep. Wills said this process took longer than anticipated because it was made clear they wanted every group involved to have a voice in the bill so, when presented, it would be with a united front. All three branches of government support this bill. Written using statistical data, this bill's primary goal is to get rid of the revolving door of recidivism to a large degree in the next few years. That has been a huge toll on the Idaho economy for a number of years.

In response to a question, **Rep. Wills** said, as they are currently, the Department of Health and Welfare would be in charge of mental health. The Department will have to pick up the costs from indigents but it should not significantly impact their budget. These costs will not be taken out of the General Fund.

Holly Koole, of the Idaho Prosecuting Attorneys Association, testified **in support** of **S 1357**. In response to a question, Ms. Koole said this bill would not change sentencing practices in Idaho.

David High testified in support of **S 1357**. He said this legislation shores up the probation and parole service. It clarifies the legislative intent in regard to decisions made by the Parole Commission on granting parole. The required annual reports on parole decisions are an important way of monitoring the goal of protecting society from the most violent and high-risk offenders. This bill references swift, certain, and graduated sanctions and rewards for parolees. He explained, it provides a variety of interim sanctions that recognize the mistake and provide for a punishment, but would allow for a parolee to stay out prison. This takes into consideration that prison is the most expensive option for a offender. This is a great first step in reforming our criminal justice system.

Brent Reinke, Director of the Department of Correction, testified in support of **S 1357**. The Department of Correction supports this legislation for three main reasons. It strengthens supervision, tailors sanctions, and assesses and provides outcome data. The resulting data points from the reporting requirements will measure successes. This will be very educational and help to improve the Department of Correction's relationship with the courts, the Governor's office, the Budget Office, and the Idaho Legislature. There will be both cost saving and cost avoidance. The Department of Correction will make sure the requirements within this legislation are met in a timely fashion.

MOTION: **Rep. Bateman** made a motion to send **S 1357** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wills** will sponsor the bill on the floor.

Vice Chairman Luker turned the gavel over to **Chairman Wills**.

S 1221aa: **Sen. Guthrie** presented to the committee **S 1221aa**, which recognizes Child Advocacy Centers as part of the interagency multidisciplinary team and as a provider of child forensic interviews. The multidisciplinary team includes law enforcement, Department of Health and Welfare, Child Protection Risk Assessment, Prosecuting Attorney offices, and other health professionals. The most important change to the code is allowing Child Advocacy Centers to conduct interviews. Because these centers receive funding from other avenues, like Medicaid, insurance, grants, health care organizations, and local entities, no funding is being requested.

Sen. Guthrie said, one in four girls and one in six boys are sexually abused before they are 18 years old. Child Advocacy Centers provide a child friendly setting where interviews, examinations, and counseling take place. They make the kids feel at ease. This helps law enforcement because the more reliable and defensible the testimony is, the more likely they are to get a good outcome in court. The follow-up counseling is a real benefit to the children to help them adjust to life after a traumatic event. This bill simply puts into Code a practice that has been in place in Idaho's communities for some time. He said the two main advantages to having these Advocacy Centers in Code are to provide better opportunities for federal funding and to create more stead in the prosecution process in case the validity of the testimony is called into question.

In response to a question, **Sen. Guthrie** said the six centers in the state are locally operated, but there is a national organization which recognizes their certification and level of counseling training.

Rep. Luker said he was struggling with the idea of putting these Centers into Code because he believes this will lead to the request of state monies for the Centers. The Centers are functioning well the way they are now and there doesn't seem to be a need for change.

MOTION: **Rep. Malek** made a motion to send **S 1221aa** to the floor with a **DO PASS** recommendation.

In response to a question, **Sen. Guthrie** said the state is only recognizing Child Advocacy Centers' involvement in the multidisciplinary team.

Paul McPherson, a physician with St Luke's Children's Hospital and Director of the CARES program with the Child Abuse Unit, testified **in support of S 1221aa**. The Idaho network of Idaho Child Advocacy Centers provide training for social workers and the multidisciplinary team as currently defined in Idaho Code. He detailed examples of child abuse and neglect in Boise and how he has become involved in the evaluation of child abuse and neglect. He said children who have been abused and neglected are at high risk for both short and long term medical and mental health conditions. Certain therapy models, such as trauma focus cognitive behavior therapy, have been shown in both short and long term studies to mitigate some of those effects. The Child Advocacy Centers provides training to those multidisciplinary partners at no cost both in terms of interviewing and medical evaluations. Child Advocacy Centers are accredited by the National Children's Alliance which require the achievement of certain standards. He explained he does not foresee any state oversight because it would call into question the Child Advocacy Centers' objective evaluation of child abuse and neglect cases.

Kaley Sparling testified **in support of S 1221aa**, speaking on behalf of parents of abused children. These Centers are a glimmer of light and hope for the parents and children. They help protect the children and give an age appropriate place for interviews. She said without the language recognizing the Centers in Code, defense attorneys could bring this up in court to the detriment of the case.

VOTE ON MOTION:

Motion carried by voice vote. Reps. Luker, Sims, and McMillan requested they be recorded as voting **NAY**. **Rep. Packer** will sponsor the bill on the floor.

Chairman Wills turned the gavel over to **Vice Chairman Luker**.

S 1246:

Robert Aldridge, of the Trust and Estate Professionals of Idaho, presented to the committee **S 1246**. He said this is a housekeeping bill to remove incorrect terms in the Idaho Probate Code. As changes have been made to the Idaho Probate Code, some cross-references that should have been deleted or modified have been missed. This has caused confusion for individuals who find the incorrect cross-references and think they still exist in the Idaho Probate Code. He said this bill corrects two areas. First, this bill deletes references to the "family allowance", which was eliminated from the Idaho Probate Code several years ago. Second, the time period for presentation of certain claims in probate was changed in the Uniform Probate Code from two years to three years, but the reference to that time period in this code section was not properly changed.

MOTION:

Rep. Sims made a motion to send **S 1246** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Sims** will sponsor the bill on the floor.

S 1247aa:

Robert Aldridge, of the Trust and Estate Professionals of Idaho, presented to the committee **S 1247aa**, which concerns when and how a guardianship, especially of a minor, can be terminated or modified. He said the existing Idaho Probate Code does not have provisions for the termination of the guardianship of minors if the termination is not because of death, resignation or removal of the existing guardian, or because of the minor marrying, dying, being adopted, or becoming of age.

Mr. Aldridge said a guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority. This termination does not affect liability for prior acts, nor obligation to account for funds and assets of the ward. Resignation of a guardian does not terminate the guardianship until the court has approved it. A testamentary appointment, under an informally probated will, terminates if the will is later denied probate in a formal proceeding. In a guardianship or conservatorship proceeding, it also includes any governmental agency paying or planning to pay benefits to the ward or protected person and any public or charitable agency that regularly concerns itself with methods for preventing unnecessary or overly intrusive court intervention in the affairs of persons for whom protective orders may be sought and that seeks to participate in the proceedings.

Mr. Aldridge said the court can modify the type of appointment, or the powers of the guardian if the prior appointment is either excessive or insufficient, or if the capacity of the ward to pay for support, care, education, health, and welfare has changed sufficiently. This gives the court the flexibility to tailor the guardianship to the actual needs of the ward as those needs change over time. The court, before terminating a guardianship, must make sure appropriate protections are in place to protect the rights of the ward. This might involve the creation of protected accounts, or verification of where the ward is living, etc.

Mr. Aldridge said the burden is on the existing guardian to show the ward's best interests require the guardianship to be continued, otherwise the guardianship will be terminated. This makes a more level playing field for parents who have lost the custody of their child, to regain the custody, and makes the presumption in favor of family reunification. The term "best interests" is well understood by attorneys and by courts and has a long history of its meaning and application.

MOTION:

Rep. Dayley made a motion to send **S 1247aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Dayley** will sponsor the bill on the floor.

S1340:

Robert Aldridge, of the Trust and Estate Professionals of Idaho and the Quality of Life Coalition, presented to the committee **S 1340**. This bill relates to automated external defibrillators (AED), which are portable devices that check heart rhythms. If needed, an AED can also send an electric shock to the heart to try to restore a normal rhythm. Immediate treatment with an AED can be lifesaving. AEDs not only come with instructions, but will also give voice prompts to let the operator know if and when to send a shock to the heart. The AED will not allow a shock to be sent if it is not appropriate to do so. The National Institute of Health states on its website that: "Automated external defibrillators (AEDs) are safe to use. There are no reports of AEDs harming bystanders or users. Also, there are no reports of AEDs delivering inappropriate shocks."

Mr. Aldridge said when Section 5-337, Idaho Code, was passed in 1999, AEDs were relatively new and much less automated, and potentially might be mishandled in use. For caution, the statute required a physician to prescribe, be involved in, and supervise the training, notification, maintenance, and guidelines for use of the device. None of that has turned out to be needed. The physician language in the statute has been mostly ignored. The Red Cross and the Heart Association do the training, and the manufacturer provides the maintenance schedules and guidelines. There is no other requirement in other law, national or local, that requires a prescription for the AED or physician oversight of training or maintenance. AEDs are widely available for purchase, including for home use. This bill simply removes the physician requirements from the statute.

Mr. Aldridge said the language on limitation of liability for writing a prescription still retains the reference to a physician since some existing AEDs may have been placed with a prescription. The passage of this bill will create a statutory method in tune with actual practice and with the level of safety of AED's. Since there is no need to involve a physician, it will eliminate potential expense. The bill still requires training, maintenance, and notification of the appropriate agency so they know where the AED is when they respond to an emergency. The training also makes staff or volunteers aware of where the AED is and how to use it.

MOTION: **Rep. Trujillo** made a motion to send **S 1340** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Trujillo** will sponsor the bill on the floor.

Vice Chairman Luker turned the gavel over to **Chairman Wills**.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the February 19, 2014, meeting. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:56 PM.

Representative Wills
Chair

Francoise Cleveland
Secretary