

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, March 12, 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 asked the secretary to call the roll.

**H 464**

**Relating to Juvenile Proceedings - Representative Christy Perry** explained that the intent of this legislation is to require that a peace officer must consult with the Idaho Department of Health and Welfare's Child Protection Division before declaring a child in imminent danger and taking them into state care. The purpose is to avoid taking children into state care unless it is absolutely necessary by providing consultation and education to the peace officer before action is taken. This decreases unnecessary trauma to the child and expense to the State. **Senator Bock** asked is it possible for an officer to reach someone at the Department 24/7. **Representative Perry** answered that the Department has a centralized child intake system. **Senator Bock** said assuming this consult is made between the Department and the officer on the scene, how is the Department going to know exactly what is going on for an imminent danger situation and be able to make a recommendation to take further steps. How much time would elapse between the time that the decision is made and when the proper action would be taken? **Representative Perry** explained the bill allows the peace officer or another representative of that agency to call the Department. The Department has guidelines of what constitutes imminent danger, and they might have a family history in their database to assist in the decision to take the child out of the family. The Department may respond that they will send out a social worker to the scene.

**Senator Hagedorn** stated he was trying to understand what the legislation is trying to fix. Are we targeting the real issue by having the peace officers calling someone who knows the definition of imminent danger? **Representative Perry** replied the Department has statistics that show many children were taken into child protection that did not need to be placed under protection. If the children are being reunited with their families within two to three weeks should the officers have ever taken the children out of the home or could they have found a family member quicker or put a safety plan in place? The purpose of the legislation is to place that consult call to see if the imminent danger really fits one of the definitions. The bill is geared toward consulting with the Department so that they don't take children out of the home that do not need to be taken. **Senator Hagedorn** asked on line 24, page 1, the bill states the child can only be held for a maximum of 48 hours. Is there some consult that happens during that 48 hour period. What purpose does the consult up-front between the peace officer and the Department afford versus the 48 hour period? **Representative Perry** explained once the child is declared in imminent danger that action sets into motion a series of judicial procedures that must occur, and a child can be gone four to five days before they get a shelter care hearing.

The procedure laid out in this legislation asked for the consult of the situation with the Department and in that process it might be determined that the child should not enter the system. **Senator Werk** asked how is a call from a dispatcher going to achieve any realistic opportunity for a review of the situation when it comes to an officer being on scene identifying what they perceive as imminent danger to the child. How will this scenario provide any meaningful feedback? **Representative Perry** stated the OPE report reflected that a large number of children in the juvenile justice system have had child protection services in their backgrounds. A Portland State University social service report reflected the trauma of the removal of the child and the child protective process on the child. There were probably 300 children that were taken into the system last year that should not have been taken. By the dispatcher making the call to the Department many of these cases might have different outcomes because the Department may have records on the family and how to proceed. The Department has very clear guidelines that are standardized across the State. **Senator Werk** responded that he believes this is a training and guidelines issue; not a phone call issue. **Senator Lakey** stated that he has handled many of these cases as a prosecutor; and he never had concern with how law enforcement handled an imminent danger case. What does the word "consult" mean. **Senator Lakey** believes that the law enforcement individual on the scene of a domestic dispute should have the final call because they are there. What if the individual on the phone from the Department says they should not take the child.

**Representative Perry** answered that the definition of consult means placing a phone call and presenting the facts of the child's situation. Nobody wants to take away the ultimate authority of the police officer on the scene even after the consult, if the officer determines that the child needs protection there is nothing in this legislation that would preclude that action. **Senator Davis** stated Ms. Perry had referenced the Director Sharon Harrigfeld, of Juvenile Corrections, in the presentation of the bill. Had Director Harrigfeld found value in the bill; does that mean her Department supports the bill? **Representative Perry** answered Director Harrigfeld relayed to her that she could not testify on this legislation because it did not affect their Department directly. Director Harrigfeld does support the bill. **Senator Davis** asked if this legislation fails is law enforcement precluded from making a consult phone call to the Department. **Representative Perry** responded that there is nothing in statute that would hinder them from making the consult call. **Senator Bock** said this legislation directs the enforcement agency to make the phone call to consult. If this bill passed what would be the consequences if the officer does not consult. **Representative Perry** said that under this legislation the law enforcement officer is directed to make the call to the Department.

**Michael Kane** - representing the Sheriffs Association, stated there is nothing in this bill that gives the Department veto power over the ability to declare a child in imminent danger. The officers know what to do, most of them have been doing this work for decades and are quite capable of understanding what the law is and applying it appropriately. It seems logical to the Association, for the officer at the scene to contact the 24/7 hotline. There is nothing in the bill that prevents an officer from doing his duty while waiting for a ruling from the Department nor is there anything that says they must wait until the Department arrives at the scene. A simple consult call to the Department asking do you know this family, have you dealt with them before and what information do you have that would dissuade us from removing the child from this family situation? **Senator Werk** stated the officers on the scene always have the option to call the Department. **Mr. Kane** responded that some of the officers are not using the 24/7 hotline as added support for their decisions concerning child endangerment.

**Holly Koole** - representing the Idaho Prosecuting Attorneys Association (IPAA), stated that the Association is not in support of this bill. **Galan Carlson**, Deputy Prosecuting Attorney for Ada County, currently the supervisor of the Child Protection Unit, spoke in opposition of this bill (see Attachment 1) He had concerns about the word consult and how meaningful a phone call would be to a Department employee who is not on the scene. What type of information would be shared? In this scenario it might make an officer, who does not regularly deal with the Child Protective Act, hesitate at the scene and question their good faith judgment. Declarations of imminent danger are made during dynamic situations. Law enforcement on scene are usually dealing with more factors than just the removal of the child, such as domestic violence, the presence of drugs, suicidal parents, and unsanitary homes; they need to be able to make good faith decisions quickly.

**Rob Luce** - , Department of Health and Welfare, stated that the Department has the resources to handle these calls from the officers and that 80 percent of the 24/7 calls are answered live and they have no intention to overrule law enforcement.

**Sean Stace** - Fraternal Order of Police, spoke in opposition of this bill stating that he has been a law enforcement officer for over 14 years and is assigned as a special victims unit detective investigating child abuse. This legislation requires law enforcement to consult call, and he already follows this procedure in imminent danger cases. When he is in the middle of a case and removing a child from a dangerous situation he has no time to call the Department. There is no way of sheltering a child in this situation without calling the Department. **Mr. Stace** asked that the procedures he is currently following in these cases remain in the same order. This bill will only make a law enforcement officer's job more difficult because most of them are not comfortable in these child endangerment investigations, and they are hesitant to know how to proceed. This legislation will impede them from doing their job.

**Jean Fisher** - Deputy Prosecutor Ada County, represents children sexual assault and domestic violence, spoke in opposition to the bill, stating that she believes the system is not broken. It will add a layer that is more complicated. Law enforcement by and large gets it right. These are complicated cases as the child protection case moves forward, and at the same time the criminal cases of the adults involved are also moving forward. If the law enforcement officer is relying on the Department to advise them in these cases that will affect the cases.

**Representative Perry** stated if this bill is not the solution she will come back next year with a better solution. She believes there needs to be some changes in this entire process and it will affect the agencies. If someone on the Committee would like to make a motion to hold **H 464** in Committee she would accept that decision.

**MOTION:**

**Senator Nuxoll** moved to hold **H 464** in Committee. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**H 542**

**Relating to the Idaho Public Defense Act Relating to Bonds - Representative Bolz** stated **H 542** is the result of the Public Defender Reform Interim Committee that was appointed last session. This legislation is the beginning of the process of the Idaho Public Defender System and the compliance with the system under the United States Constitution, Article 1, Section 13 of the Idaho Constitution. Public defense is a state requirement, and Idaho chose to give this responsibility to the counties. There are currently seven public defender offices in the State of Idaho providing services to eight different counties. The counties are footing the bill for this system in the amount of \$22 million. The Association of Idaho Counties has assured him that the counties do not want to take these funds away. The bill establishes the State Public Defense Commission within the department of self-governing agencies. The Commission is to consist of seven members who are appointed by the Governor. The Commission does not receive any honorarium but would receive expenses for their time. The powers and duties

of the Commission would be to make recommendations to the Legislature for legislation on Public Defense System issues including but not limited to: court requirements for contracts; qualifications and experience standards; enforcement mechanisms; funding issues dealing with training; data collection, recording efforts and conflict cases. The Commission is to hire an executive director and others but this legislation only authorizes a 1.5 FTE. The county commissioners of each county shall provide for public defense in one of the following ways: to establish and maintain a public defender office; to join one or two more counties together, must be in same judicial district; contract with existing office of public defenders; or contract with a defending attorney.

**MOTION:** **Senator Mortimer** moved to send **H 542** to the floor with a do pass recommendation. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**H 562** **Relating to Bonds - Brian Kane**, Office of the Attorney General (OAG), explained this legislation will remove three statutes from the books. Sections 1, 2, and 3 remove the requirement that the Attorney General deliver opinions to local city and county housing authorities, as well as, universities within the State. Their office has nothing to do with the bond issue for these entities, but they are brought before their office to deliver an opinion on a process that their Office knows nothing about. By having the OAG deliver an opinion it confuses the issue of the independence of these bodies. Section 4 is an addition which allows the delegation of authority with regard to bonding. Once an entity has gone through all of the legal steps necessary to issue a bond they can then delegate authority to an individual within the board to take the bonds to market. The number one reason for delegation of authority is important because at this point in time bond markets have become much more dynamic entities. This authority will allow entities to enter the market at the most advantageous time for them which will result in savings based on interest rates if they get into the market at the opportune time. **Senator Lakey** gave a brief comment in support of the motion. There are two layers of lawyers looking at the bond issuance in addition to the Attorney General. There is local counsel for these particular entities, and they typically hire outside special bond counsel that does nothing but this type of work. **Senator Lakey** believes that this is a good bill.

**MOTION:** **Senator Bock** moved to send **H 562** to the floor with a do pass recommendation. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**PRESENTATION:** **Chairman Lodge** introduced Sheriff Paul Wilde who is the President of the Sheriffs Association. **Chairman Lodge** said that Sheriff Wilde was going to give the Committee a presentation today but because of time constraints has offered to send a copy of his presentation to all the members on the Committee.

**MOTION:** **Senator Davis** moved to approve the Minutes of February 17, 2014. Seconded by **Senator Bock**. The motion carried by **voice vote**.

**MOTION:** **Vice Chairman Vick** moved to approve the Minutes of February 19, 2014. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:01 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary