

MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Thursday, March 13, 2014
- TIME:** 1:30 PM or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo
- ABSENT/
EXCUSED:** Representative(s) Perry
- GUESTS:** Ray Stark, Boise Metro Chamber; John Eaton, Realtors; Brett DeLange, Idaho Attorney General's Office; Michael Henderson, Supreme Court; Bob Aldridge, TEPI; Mike Brassey, Idaho Bankers Association
- Chairman Wills** called the meeting to order at 1:36 PM.
- MOTION:** **Rep. Meline** made a motion to approve the minutes of February 27, 2014. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 3, 2014. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 5, 2014. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 7, 2014. **Motion carried by voice vote.**
- S 1248:** **Robert Aldridge**, representing the Trust and Estate Professionals of Idaho, presented to the committee **S 1248**. He said this bill is concerned with the testamentary appointment, through a will, of a guardian for a minor or developmentally disabled child of the decedent. The ability of a parent to appoint a guardian for a minor or developmentally disabled child has been in the Idaho Probate Code for many years. This procedure provides an inexpensive and quick way to get a guardian in place for a minor or developmentally disabled child if the parent dies. He said a question not answered in the current code is how to proceed if the nominated guardian does not, or cannot, accept the nomination. Normally, the will making the nomination would have a priority list of additional nominations, but the Idaho Probate Code does not provide any guidance about the use of those additional nominations.
- Mr. Aldridge** said this bill provides a clear solution to the situation by providing a method, paralleling the one used for the first named nominee to be guardian. It also validates the use of a priority list of nominees in the will. Since it is essential a guardian be put in place as quickly as possible, the bill imposes a thirty day time limit and also describes other situations in which the next named guardian could proceed, such as the death or declination to act or ceasing to act of the proposed guardian. It also preserves and clarifies the right of a minor, if age 14 or more, to object to the appointment and the effect of such an objection. Basically, the next nominee then can accept appointment, but the minor still has the right of objection.
- MOTION:** **Rep. Bateman** made a motion to send **S 1248** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.

S 1249: **Robert Aldridge**, representing the Trust and Estate Professionals of Idaho, presented to the committee **S 1249**. He said this bill concerns the time limits under the Idaho Probate Code within which certain actions may be brought. Summary Administration under Section 15-3-1205, Idaho Code, and the Small Estate Affidavit under Section 15-3-1201, Idaho Code, have for many years been thought by the practicing bar and by courts to be exempt from the three year limitation on general probate proceedings under Section 12-3-108, Idaho Code. This has allowed those two procedures to be an easy, efficient, and an inexpensive way to pass property to the correct heirs if a standard probate is barred by the three year limitation. He explained recently some courts have held to the contrary, and, in some districts, judges in the same district have ruled differently on that question. This has lead to confusion and to arbitrary denial of the procedures in cases where they should be allowed. There are very limited and expensive alternatives if summary administration cannot be used. This bill eliminates that confusion by clearly stating the two procedures are not subject to the three year limitation.

MOTION: **Rep. Nielsen** made a motion to send **S 1249** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Horman** will sponsor the bill on the floor.

S 1374aa: **Senator Lodge** presented to the committee **S 1374aa**. She said although information from the U.S. Immigration and Custom Enforcement Agency declares every job taken by an illegal worker is a job taken from a lawful U.S. worker; however, the truth is, farmers cannot get enough laborers to take on seasonal work in our Idaho agricultural industry. Farmers across the nation, as well as Idaho, are suffering crops losses because there are not enough laborers to work and harvest crops. Even though there are people seeking work, they are not taking field positions. Idaho agriculture needs a stable supply of workers.

Sen. Lodge said this legislation will allow inmate laborers to work for private employers in the production, harvesting and processing of perishable Idaho agricultural food products. Inmates must be lower risk and volunteer for the work. The use of inmate labor cannot result in the displacement of employed workers within the local region in which the agriculture work is being performed. All monies derived by the inmates would be placed in the Correctional Industries Betterment Account and deductions would be made from the inmates pay to offset the transportation to work, the security that must surround them, and other costs associated with the program. Deductions will also be made to satisfy court ordered restitution, fines, and legal judgements, such as child support. Remaining funds would be placed within a reentry fund and the inmates personal commissary fund. Ninety-five percent of the inmates will return to the communities. The opportunity to have restitution and fines paid before release will give the inmate a better chance for reentry into society. She said work experience will help them get a future job and the money will help pay for their keep. The Justice Reinvestment project has brought to our attention, recidivism and the problem it proposes to the State of Idaho. Fifty-three percent of those in our prison system return within a three year period of time. This bill can change and better their lives.

MOTION: **Rep. Trujillo** made a motion to send **S 1374aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bolz** will sponsor the bill on the floor.

S 1353: **Judge Jack Varin** presented to the committee **S 1353**. He said he is helping the National Campaign to Reform State Juvenile Justice Systems. Working with a group of stakeholders, they have gleaned the unintended consequence of a juvenile court record is hampering youthful offenders obtain jobs, go to college, and join the military. They identified several long term projects to help address this concern: strengthening Idaho's diversion program; addressing expungement; and sealing of juvenile court records. This year they identified a need to clarify the courts authority to dismiss an information 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 authorized problem solving court.

Judge Varin said before filing a juvenile petition a prosecutor can decide to divert a juvenile case. If diverted, the case would be handled through some sort of community program such as an Accountability Board or Youth Court. There would be no public court record. If a case is filed, the judge can grant an informal adjustment. Because the case is filed, there is a public court record that is noted in the repository. In granting an informal adjustment, the judge may require something as simple as an apology, community service, or to complete a community program. The judge can also require a full probation with strict terms and conditions including suspended detention time. The practice varies around the state as to whether the case is eventually dismissed or not.

Judge Varin said this legislation specifically clarifies a case can be dismissed upon successful completion of the informal adjustment. A dismissal is a termination of the case, thus starting the time for the youthful offender, if appropriate, to have the case expunged. Upon expungement, the case is actually sealed and placed in a separate file system. The court can order other agencies to "expunge" their record as well. The offender, by statute, can report he has had no such case. Expungement takes a separate proceeding. Currently, adult Problem Solving Court participants can have their cases dismissed, but the same provision was not provided in the juvenile system. Dismissal of the case creates a good incentive to participate and successfully complete the Problem Solving Court program.

MOTION: **Rep. Nielsen** made a motion to send **S 1353** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.

S 1375: **Michael Henderson**, Idaho Supreme Court Legal Counsel, presented to the committee **S 1375**. He said this bill has been recommended by the Supreme Court to correct and improve Idaho Code §19-2604. This statute allows certain persons to apply to the court to have their criminal convictions set aside or, in some cases, to have a felony conviction reduced to a misdemeanor. Subsection (1) of the statute, as it is now written, applies to defendants who were placed on probation and not found to have committed a violation of the terms of probation. It also applies to persons who successfully complete a drug court or mental health court program, and who are not found to have committed any probation violations after completing the program. In order to be eligible for relief under the statute, these persons must show: (1) that there is no longer cause for continuing the period of probation; and (2) that granting relief would be compatible with the public interest. Even where these showings are made, the decision to set aside a conviction or to reduce a felony conviction to a misdemeanor is within the discretion of the court.

Mr. Henderson said one of the issues that gave rise to this bill involved the requirement a defendant show "there is no longer cause for continuing the period of probation." For many years, courts have granted relief under the statute to persons who successfully completed probation with no probation violations and who have been productive citizens for quite some time. Last year, the Supreme Court pointed out in *State v. Guess*, a person in that position may not be eligible for relief if the language of the statute is read literally. The requirement the individual show that "there is no longer cause for continuing the period of probation" seems to imply an application to have a conviction set aside or reduced can be made only if that person is still on probation. This would mean a person who is still on probation could obtain relief under the statute, while a person who has actually completed probation with no probation violations could not do so. The statute would now provide the person seeking to have a conviction set aside or reduced would have to show "there is no longer cause for continuing the period of probation should the defendant be on probation at the time of the application." So if the person seeking relief had completed probation, this showing would not have to be made.

Mr. Henderson said the bill also allows some persons to seek relief who cannot do so now because of the technical wording of the statute. These include: persons who are sentenced to only pay a fine or court costs, and do not receive a suspended sentence; persons who are convicted of a felony but who are not required to serve a term in the custody of the Board of Correction because they are only sentenced to period of a year or less in the county jail; and defendants who plead guilty and who then successfully complete a drug court or mental health court program before sentencing. The bill also removes the language requiring the court to find relief "be compatible with the public interest," and requires instead a finding that good cause has been shown for granting relief. The "compatible with the public interest" language has caused some confusion as to whether it requires a defendant to show relief would actually serve some public interest, or that it simply wouldn't be contrary to the public interest. The "good cause" standard is the one most often used to guide a court's exercise of discretion, and would allow a court to take any possible violation of the public interest into account.

Mr. Henderson said the new subsection (5) would ensure a violation of the terms of an agreement of supervision with the Board of Correction would not by itself preclude relief. The defendant would be ineligible for relief only upon a finding of a probation violation by the court.

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

MOTION: **Rep. Malek** made a motion to send **S 1375** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Nielsen and McDonald** requested they be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

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

S 1354aa: **Mike Reynoldson**, Government Affairs Manager for Micron Technology, presented to the committee **S 1354aa** which prevents 'bad faith' assertions of patent infringement in the State of Idaho. He said Micron Technology is very dependent on Research and Development. They are the global leaders in the number of patents they hold. Innovation is the key to their success. Annually, they spend approximately \$1.5 billion in research and development. This 'bad faith' patent assertion bill is one of many reforms needed. Typical 'bad faith' activities come through the use of vague, threatening letters to innocent businesses. Threats of patent infringement are made and the business is asked to pay for a license in order to avoid patent litigation which is expensive and time consuming. He said the bill does not prevent 'good faith' patent assertion and even gives some guidelines to what that looks like. This, in no way prevents anyone's ability to pursue 'good faith'

infringement. Other states have successfully put these types of statutes in place. It sends the right message to patent trolls, along with a message to Congress. It will give pause to those who engage in 'bad faith' activity before sending their threatening letters to Idaho.

Amy Lombardo, an attorney with Parsons, Behle & Latimer, said because patent trolls cast a wide net, any business can become a victim. She said the bill adds a new chapter to the Idaho Consumer Protection Act, then detailed the bill for the committee.

Mike Brassey, representing the Idaho Bankers Association, testified **in support of S 1354aa**. He said this is a real problem for businesses. This legislation requires people to tell the business the details of the claim so a determination can be made if legal counsel is needed.

John Eaton, the Government Affairs Director with the Idaho Realtors Association, testified **in support of S 1354aa**. He said realtors are often hit by these patent trolls. It is sometimes cheaper to pay the request than it is to litigate.

Jay Larsen, President and CEO of the Idaho Technology Council, testified **in support of S 1354aa**. He said his membership is excited about this legislation because ideas are the lifeline of companies. This is a pathway to help deal with some bad citizens.

In response to a question, **Ms. Lombardo** said there are no criminal provisions in this legislation.

MOTION: **Rep. Sims** made a motion to send **S 1354aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Malek and Sims** will sponsor the bill on the floor.

S 1240aa: **Rep. Luker** presented **S 1240aa** to the committee which clarifies that DNA samples may be collected only upon the conviction or guilty plea to a felony or attempted felony, or which a warrant obtained through a finding of probable cause. He said our laws allow the DNA collection upon conviction of a felony crime. Recently the U.S. Supreme Court decided DNA collection can be taken upon arrest. That raises a concern with the Idaho Constitution of how far the collection of evidence should go without a warrant.

MOTION: **Rep. Nielsen** made a motion to send **S 1240aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:51 PM.

Representative Wills
Chair

Francoise Cleveland
Secretary