

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, February 26, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

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 of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Jordan** moved to approve the minutes of February 23, 2016. **Senator Nonini** seconded the motion. The motion passed by **voice vote**.

S 1351 **Senator Bert Brackett** stated that this legislation adds "community service projects" to the list of possible opportunities for which persons being confined in a county jail may be required to perform labor. Currently those persons may be required to perform labor on federal, state or other governmental projects. This bill amends Idaho Code to add "community service projects" such as maintenance or clean up of elderly or disabled homeowners' property within the county. Commissioners were told by their county attorneys that it was not allowed under Idaho Code.

Senator Jordan asked where in the statute community projects were defined. She added that inmates should not be working in areas where children may be involved. **Senator Brackett** turned the question to Michael Kane, Idaho Sheriffs Association. **Mr. Kane** stated that there wasn't a definition in statute. He assured her that people who were "Hard-Timers" would not be taken out of the jail and sent to work in sensitive environments. The Sheriff's Inmate Labor Detail is a program where people volunteer rather than spend time in jail. A county community service coordinator is assigned to work with those people who are providing community service. Coordinators would be able to match the right prisoner to the right task.

Commissioner Wes Wootan, Elmore County, stated that county lawyers were telling the county that they can't let the inmates serve the public. This service is not for people who can afford to take care of their own property. It is for those who are not able to perform certain tasks themselves.

Dan Blocksom, Analyst, Idaho Association of Counties, indicated that counties do not have an official position, but he expects that they will be supporting it.

MOTION: **Senator Burgoyne** moved to send **S 1351** to the floor with a **do pass** recommendation. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

S 1327

Michael Henderson, Legal Counsel with the Idaho Supreme Court, stated that this bill addresses a defect in the law under article V, section 25, of the Idaho Constitution relating to the abuse and neglect of a vulnerable adult. The offense is a felony if the abuse or neglect is likely to produce great bodily harm or death; otherwise, it is a misdemeanor. The statute defines "neglect" as a failure of a caretaker to provide certain basic needs "in such manner as to jeopardize the life, health and safety of the vulnerable adult." The conjunction "and" means that proving neglect requires showing that the life of the vulnerable adult was jeopardized, in addition to his or her health or safety. This bill would correct the statute, allowing consideration of each qualifier on its own merit by changing "and" to "or." This legislation will cover most of the cases of neglect of the vulnerable adults that come before the courts.

Senator Burgoyne brought up his concern with the term "neglect" in the context of subsection 1 and stated that there needs to be a clear definition of what conditions would result in a misdemeanor or a felony in terms of the definition of "neglect."

MOTION:

Senator Anthon moved to send **S 1327** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1328

Mr. Henderson introduced Senior Judge Lynn Krogh, and stated that Judge Krogh would present **S 1328**.

Lynn Krogh, Magistrate Judge, stated that this bill would make the following improvements to the Child Protective Act: 1.) Clarify the possible outcomes at shelter care hearings. 2.) Clarify the procedure for redispotion hearings. 3.) Promote education stability for children in foster care by requiring the Department of Health and Welfare (DHW) to report and the court to inquire about efforts to maintain foster children in the same school. 4.) Address concerns about treatment of children in foster care with psychotropic drugs by requiring DHW to report and the court to inquire when foster children are receiving treatment with psychotropic drugs. 5.) Promote connections between siblings, requiring DHW to report and the court to inquire about efforts to place siblings in the same foster home, or efforts for visitation among siblings in different foster placements, unless joint placement or visitation is not in the best interest of one or more of the siblings. 6.) Clarify that DHW is to prepare a transition plan for assisting the youth with the transition to successful adulthood beginning at age 14. 7.) Require DHW to inform foster youth about their rights. 8.) Provide for the court to ask foster youth about their desires regarding permanency. 9.) Promote outcomes for foster youth 16 and older who have a permanency goal of another permanent planned living arrangement by encouraging enrichment activities and clarifying DHW's duty to make efforts to finalize a more permanent goal for youth. 10.) Avoid disruptions in child protection cases and placement of Indian children by requiring DHW to report and the court to make findings about DHW's efforts to identify Indian children as early as possible in a child protection case. 11.) Amend the definition of a protective order to clarify that protective orders are not limited to orders issued prior to an adjudicatory hearing.

Judge Krogh stated that the proposed amendments were drafted by the Child Protection Committee (CPC), established in 1998. The CPC represents a broad range of parties involved in the placement of children in foster care. The proposed amendments were designed to implement practices that are in the best interests of the children involved. The first three sections of the handout she distributed address information that DHW is to provide to the courts, inquiries that the courts are to make regarding child protection cases and findings that the court are required to make (see attachment 1). The handout lists the issue, the hearings at which these changes are made and whether the change is to document, to make an inquiry or to make a finding. The fourth section addresses miscellaneous issues that will make the bill clear.

Judge Krogh indicated that a big issue is psychotropic medications given to foster children. Forty-three percent of foster kids in Idaho are being treated with psychotropic medications, compared to 14 percent of children generally. There is no information to support the conclusion that there are mental health issues in foster children at four times the rate of children in general in Idaho. Drugs are often prescribed by those who do not specialize in the treatment of mental health disorders. These drugs may be prescribed even though the effects on children are unknown, and the drugs are sometimes being prescribed for purposes other than those indicated on the label. Anti-psychotics are the most commonly prescribed and are often given to kids who are not diagnosed with a psychotic disorder; the medication is perceived as working because it has a chemical restraint (see attachment 1). The CPC's proposal to help address this problem is that at every review and permanency hearing, DHW will report if a child is being prescribed psychotropic meds, and if so, what, how much and by whom. To help the Committee understand the reasoning behind this legislation, Judge Krogh explained the procedure used to analyze the drug prescription situation and to direct a remedy when a problem is found. She then gave an overview of the process in a child protection case (see attachment 2).

Judge Krogh went on to indicate that part of the reason for the changes being requested is a result of federal legislation that includes the Sex Trafficking and Strengthening Families Act and the Fostering Connections Act. The changes, identified as a result of the federal laws, fall into the following specific categories: 1.) Transition to Successful Adulthood (from the Sex Trafficking Act). 2.) Youth's rights (from the Sex Trafficking Act). 3.) Youth's desires as to permanency (from the Sex Trafficking Act). 4.) Another Planned Permanent Living Arrangement (APPLA) (from the Sex Trafficking Act). 5.) Siblings (from the Foster Connections Act). 6.) Educational Stability (from the Fostering Connections Act) (see attachment 1).

Senator Davis, Senator Johnson, Judge Krogh and Michael Henderson discussed the definition of "reasonable and prudent parent standard," the consistency of the language throughout all of the legislation being proposed and the appropriate path to follow to ensure consistencies.

The Bureau of Indian Affairs (BIA) has adopted new guidelines for implementing the Indian Child Welfare Act. The only change the CPC is proposing to the Idaho statute is to require the court, at every hearing, to inquire about the child's possible Indian status.

Other items included in this legislation relate to shelter care and distinguishing between a status hearing, a review hearing and a re-disposition hearing (see attachment 1).

Senator Lee and **Judge Krogh** discussed who has the final authority to determine what is appropriate medical treatment for a child in foster care. **Judge Krogh** indicated that ultimately the court has both the duty and the responsibility to do what is in the best interest of the child. When a child is placed in foster care, they are given several different kinds of tests, and the courts are made aware of their circumstances.

Senator Nonini asked if the foster parents initiate taking the child to the doctor or if the DHW makes that decision. **Judge Krogh** stated that in her experience it starts with the DHW. When children enter foster care, they get a health and developmental needs assessment. The DHW has the information necessary to make that determination.

Senator Davis stated that there were some minor grammatical or structural differences between **S 1253** and **S 1328** and that the Code Commission compilers could make those consistency adjustments. The Committee has to decide whether there are basic differences in the definitions even though they are the same in respect to purpose; the language doesn't read as such. His recommendation was to make those few changes and send the bill to the House.

Senator Lee asked what the DHW's response would be regarding the phrase "the court shall make an inquiry." **Chairman Lodge** asked Miren Unsworth, DHW, to respond. **Ms. Unsworth** stated that if a conflict about a medication arose, the judge would probably reschedule another hearing and invite a medical provider to participate in that hearing. The DHW generally complies when a judge issues an order. **Senator Davis** asked what was meant by "generally." **Ms. Unsworth** stated that the DHW may appeal a court order if they see sufficient need.

Senator Nonini asked what kind of relationship DHW had with the courts. **Ms. Unsworth** stated that the current legislation was a result of that relationship in which much positive collaboration had taken place.

MOTION: **Senator Johnson** moved to send **S 1328** to the amending order. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

S 1352 **Mr. Henderson** explained that this bill would correct an omission in the statutes relating to guardianships. It will provide that a person interested in the welfare of a ward, or a ward who is at least 14, may petition the court for modification or termination of the guardianship on the grounds that such would be in the best interest of the ward. **S 1352** would fill a gap in the Idaho Code and provide guidance to all persons concerned in a guardianship.

MOTION: **Senator Lee** moved that **S 1352** be sent to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 461 **Senior District Judge Barry Wood**, Idaho Supreme Court, stated that this bill will amend two statutes under Idaho Code known as the "surcharge bill." This amendment seeks to direct the 80 percent now going to the Court's drug court fund into the General Fund. Section 2 of the bill provides that the drug court fund will no longer receive those surcharge monies. It is part of a larger piece of legislation that will restore funding to the drug court fund that was readjusted in the 2008, 2009 and 2010 recession. It will redirect the surcharge monies to the General Fund in return for another action from JFAC with respect to the drug court fund.

MOTION: **Senator Anthon** moved that **H 461** be sent to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1343

Kanoa Noi, Intern, explained that this bill is an amendment to Idaho Code § 20-229B and responds to a position of the Justice Reinvestment Initiative (JRI) that the Commission of Pardons and Parole hearing officer would have a more consistent sentencing guideline when the conditions of parole are violated by a parolee. The current guidelines call for a 90-day incarceration period for the first parole violation and a 180-day incarceration period for the second violation. Not addressed is the occurrence of a parole violation characterized by the parolee committing a new felony, a violent sexual crime or a violent misdemeanor. This bill allows the hearing officer to make a case-by-case adjudication of the individual and possibly determine if they should be incarcerated for a longer period of time.

Senator Davis shared a concern about the public policy of this bill. He questioned the dropping of the word "conviction," and suggested addressing the conduct of the violator. He was concerned that the hearing officer would be able to make a determination without there having been a formal adjudication of the violation. **Mr. Noi** explained that due process is followed. **Senator Davis** expressed further concerns regarding clarity in the language of the bill. **Senator Anthon** and **Senator Lee** also questioned some aspects of the bill.

MOTION: **Senator Nonini** moved to hold **S 1343** until Monday, February 29, 2016. **Senator Nonini** withdrew his first motion and moved that **S 1343** be held to be heard at the call of the Chair. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:15 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Asst. Secretary