

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Monday, February 29, 2016
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow
- ABSENT/
EXCUSED:** Representative(s) Malek
- GUESTS:** The sign in sheet will be retained in the committee secretary's office until the end of the session. Following the end of the session, the sign in sheet will be filed with the minutes in the Legislative Services Library.
- Chairman Wills** called the meeting to order at 1:33 PM.
- H 505:** **Rep. Chaney** requested **H 505** be held in committee due to necessary changes.
- MOTION:** **Rep. Kerby** made a motion to **HOLD H 505** in committee. **Motion carried by voice vote.**
- RS 24620C1:** **Rep. Chaney** presented **RS 24620C1**. This legislation has the same affect as **H 505**, however some terms have been modified per the request of the courts and removes the use of "consensual" throughout the bill.
- MOTION:** **Rep. Luker** made a motion to introduce **RS 24620C1**. **Motion carried by voice vote.**
- H 522:** **Rep. Moyle** presented **H 522**. The Department of Health and Welfare is the sole authority on the topic of foster care. Judges should have more impact in these cases and should be listening to the guardian ad litem and the foster parents because they are familiar with the children and understand their needs. Presently, these cases are determined by the Department of Health and Welfare who discuss the plan with the prosecutor and move forward. The judges are extremely limited on what they can do in these cases. The intent of this legislation is to create the opportunity to hear from the foster parent or the guardian ad litem, and to provide the judge with a voice in each case. It is imperative the system be reformed in order to make the child's best interest paramount. There is more work to be done, and future legislation can be expected.
- Rep. Perry** presented **H 522**. There are systemic problems from intake to exit in the foster care system. Efforts were made to ensure there would be no loss of Title IV-E funding or overloading of the courts. This is an issue the public has been highly engaged in and is requesting be reformed. While it may be working for the department, it is clearly not working for others involved and especially not for the children. Research has proven children abruptly removed from their homes are so traumatized they have changes in hormone levels similar to that of combat veterans. What is done in CPS cases matters to these children for the rest of their lives. The lack of policy is the major contributing factor to the issues which prompted this legislation.

Specifically this bill seeks to set standards by increasing the role of the courts in the child protection process and to temper what is perceived to be as the department's sole authority in this process. It adds the court as a consentor to adoptions. This is imperative because often the individuals who could consent are no longer able to do so because their parental rights have been terminated. It sets parameters and expectations regarding the role of family members who may be potential adoptive or permanent placements for the children. This section is being amended to require a family member to respond to the notification within 60 days. This is imperative because too often the family member waits until the process has substantially progressed to respond. It makes changes to concurrent planning arrangements which are plans created and run concurrently to prevent halting the process and beginning again if the primary plan fails. This legislation will require if the primary plan fails, and the secondary plan moves into primary status, another secondary plan be created.

It allows foster parents to be heard at hearings. It adds judicial approval throughout the process. It seeks to stop child removals from foster homes for arbitrary or punitive reasons. This creates a requirement for when a child has been placed in a home for longer than six months, they are not removed simply for the purpose of a placement scheme. Specific parameters have been set to determine when a child should be moved from one foster home to another. If the reason does not fall within those parameters, judicial review of the reason is required.

Renee Swanson testified in support of H 522. She was a foster parent and is now the mother of her adopted son. He was in the system for three and a half years before they were able to successfully adopt him due to issues with the adoption, including being informed in the middle of the process he was no longer eligible for adoption and later being informed he was again. He struggles with detachment disorders due to his time in the system. She fostered more than twenty four children over the course of nine years and she saw them moved multiple times and moved due to becoming too attached to their foster families. Foster children deserve a quick response from the system. There needs to be more judicial control over these children as well as a primary plan and a contingency plan.

In response to a question from the committee, **Ms. Swanson** stated a reason frequently given for removal of children from her home was the child was becoming too attached to her.

Sharmaine Tosagy, Danielle Chigbrow, Michelle Alden, Jeff Roberts, testified in support of H 522. They provided information about their experience and their children's experience with the foster care system. Their children have been traumatized by their time in the system and continue to struggle today with a wide range of issues, including detachment disorders. Ms. Tosagy indicated she had an interest in adopting one of the children in her care but was never approached and was informed there was a adoptive family and the child was removed. Mr. Roberts indicated his now adopted children were removed from his home in the middle of the adoption process to be placed with a family member who did not indicate affirmatively she was interested in adopting when she was notified. His children were with her for only three months before she returned them to the system. His children are still struggling from the damage caused by being so abruptly removed from their home of two years.

Merritt Dublin testified in support of H 522. She is a former foster parent and now advocates for the parents and children in the foster care system. It is imperative people understand this bill is not about foster parent's rights, it is about the rights of foster children. Permanent placement decisions are insulated and are not subject to review. Idaho State Law is not consistent with Federal Law and should be revised because this is in the best interest of the child. The permanent placement preference is a cookie cutter response. Federal guidance regarding "relative placements" emphasizes early engagement of relatives for foster care for better outcomes for children, not permanent placement in lieu of attachments to foster care-givers. The term "placement" refers to foster care. All research and policy on "kinship care" refers to kingship foster care, which makes sense given the studies and the reasons the outcomes for children placed in foster care with relatives would be better. Federal policy states relative engagement must be early and late coming relatives may not be considered due to the child's attachments to current caregivers.

In response to a question from the committee, **Ms. Dublin** explained passage of this bill would change how a guardian ad litem and the courts may approach a case when a guardian ad litem disagrees a change by the department is in the child's best interest. Now the courts may listen to the guardian ad litem and make a decision in counter to the department. The department's current practice is not consistent with Federal Law, which could mean lose of federal funding. Every child placed in foster care is entitled to a guardian ad litem but does not necessarily receive one. The courts are not able to listen and make a determination in these cases due to IDHW v Hays in 2002. This case determined because IDHW must consent to an adoption as the appointed guardian of a foster child, only the Department has the authority to decide who will adopt the child. From this case, IDHW is considered to be the sole authority in placement decisions and judicial review of those decisions has been interpreted as only the right to review the case and not make changes.

Tom Turco, Chairman, Region 4 Idaho Department of Health and Welfare Keep Children Safe Panel testified in support of H 522. The Panel believe this legislation is in the best interest of the children because it requires early involvement of family members and preventing abrupt removal.

Brian McCauley testified in support of H 522. It may be argued these issues are an insignificant portion of the total quantity of cases the Department reviews each year, but there are no insignificant children. (See Attachment 1).

Joshua Wickard, testified in opposition to H 522. As an attorney representing parents in child protection cases, his primary goal is reunification. This legislation may change the playing field for parents who are striving to correct the issue. The parents may feel they now have to battle a foster parent who may appear to be a more suitable placement. Foster parents have an immeasurable impact in a child protection case.

In response to a question from the committee, **Mr. Wickard** explained foster parents are given the opportunity to share with the court their view and update the court about how the child is doing. Foster parents do have a voice in the judicial process and are very much a part of the court proceedings and cases. Foster parents are invited to every court hearing and are always given the opportunity to speak.

In response to a question from the committee, **Mr. Wickard** explained multiple moves is very difficult for the child and the parent must deal with the ramifications of their child being moved multiple times. In order to keep children in a safe and stable environment while the parents are working to address the issue, another bill is needed to address the removal process, the number of moves and funding for the Department of Health and Welfare. Abrupt removal and multiple moves are minor issues requiring greater analysis to better understand. This is similar to a child being in day care and the parent not liking something said by the child care provider, the parent has the right to remove the child from day care. In this case, the vested parent is the Department of Health and Welfare acting in the best interest of the child. Potentially, broadening the court's ability to review removals, moves and other circumstances surrounding the child's foster care placement, could be a good thing. However, more time is needed and all of the major stakeholders need to be included in the conversation to determine if that should be done and what the format would look like to do so. It is unclear how the change would affect the number of hearings or time spent on a particular case. The stakeholders need more time to review.

Russ Barron, Deputy Director, Department of Health and Welfare, testified on **H 522**. He cannot support the bill but does not oppose it. It is important to bring in all of the major stakeholders to discuss what is happening and how to correct it. An interim committee would be a good step. There are approximately 2,400 children served in Idaho's foster care system every year and approximately 70% are eventually reunited with their parents. The child's average length of stay is seven months.

In response to a question from the committee, **Mr. Barron** explained the bill would not affect Federal Funding. However, if the courts did not consider the Department's preferences when making their decision, federal funding could be lost. There may be additional costs due to additional hearings. The Department of Health and Welfare can do better. Taking too long or not taking enough time to achieve permanency can cause issues, further review is needed.

The committee recessed at 3:41 PM.

The committee resumed at 3:51 PM.

Miren Unsworth, Deputy Administrator, Department of Health and Welfare, testified **in opposition to H 522**. The Child Protective Act provides a legal framework for the state to intervene and address cases of child abuse, neglect, and abandonment. The Act specifies it is the policy of the State of Idaho to seek to preserve, protect, enhance and reunite the family relationship to the fullest extent possible. Thus, the Department of Health and Welfare's primary focus is to reunite children with their parents and families whenever it is safely possible and appropriate, but this is not at all costs and in all cases. In 2015, 214 children were adopted from foster care, 36 of those children spent more than six months with a non-relative foster family before transitioning to a relative pre-adoptive placement. It is these children this legislation seeks to address and this is an area the Department of Health and Welfare needs to give more time, attention, and evaluation. The Department has specific concerns about the legislation. It could place out of state relatives at a distinct disadvantage because the process of terminating parental rights can take up to 12 months. Because the goal is reunification the child needs to be near the parent in order to attempt reunification, which means the child is placed with a non-relative foster family. Because the process can take up to 12 months, the child would have been placed with a foster family for six months, and the bill states a relative placement would not be considered after the child has been placed for six months with a non relative foster care family. The additional hearings required may result in delays. The Department of Health and Welfare does recognize there is a need to formulize notice regarding moves and transition plans for children.

The requirement in this rule for an alternative plan is in line with current practice. Adoption of this legislation would result in a shift in notice of placements and placement changes as well as training for adopting new policies.

In response to questions from the committee, **Ms. Unsworth** explained all known relatives must be notified within 30 days of the child entering foster care. It can take time to find the relatives and conduct a diligent relative search, especially if there are unresolved paternity questions or the relative is out of state. The notification requirement of 30 days is the current practice. The current procedure is in the Department's standards and policy, and is a federal requirement, but it is not a rule.

In response to questions from the committee, **Ms. Unsworth** explained children can be moved from one foster home to another for a variety of reasons. The reasons outlined in the bill for moving a foster child, are the same considerations the Department would have for deciding to move a child. A child becoming too attached should never be a reason for removing a child. The notification process should be reviewed and tightened. A placement change takes place through a case worker in consultation with their supervisor. Removal due to safety concerns has a very specific process. If the decision is to make a determination about a permanent placement of a child, there is a specific process involving multiple individuals including a social worker, a supervisor, a chief, guardian ad litem and any other individuals who have been around the child.

In response to a questions from the committee, **Ms. Unsworth** explained the Department has a continuous quality improvement system which involves reviewing 210 randomly selected cases, one of the factors considered is placement stability. The Department has a foster parent conflict resolution process that begins at the supervisor level. It is unclear whether those voicing concerns were aware of the resolution process, as it would have likely resolved the issue. The reviewing party is not independent and is usually reviewed at the program manager level or the division administrator level.

In response to a question from the committee, **Ms. Unsworth** explained within the State of Idaho a relative home study can be completed within 90 days and the Department is confident they can meet the deadline. Because the Interstate Compact for the Placement of Children is not enforceable, the Department cannot guarantee home studies out of state will be conducted within 60 days. The identification of a concurrent goal is consistent with current practice.

Holly Koole Rebholtz, IPAA, testified **in opposition to H 522**. The Idaho Prosecuting Attorneys Association has concerns about the procedural issues for prosecutors.

Galen Fields, Child Protection Prosecutor, Ada County, testified **in opposition to H 522**. The overall goal of reviewing how placement decisions should be made is a good goal and has the support of the Idaho Prosecuting Attorneys Association, Ada County and Twin Falls Prosecuting Attorneys Offices. One concern is the fiscal impact on the county offices, the courts, the Department, the Public Defenders Offices, and perhaps the CASA program due to increased litigation. There is concern about the Federal Funding for foster care under the Social Security Act, being tied to an agency making placement decisions. Increased litigation could include foster parents litigating against the system or against other foster parents. It is unclear if the foster parents would be entitled to attorneys or are entitled to a public defender at county expense and whether there will be a discovery process. This litigation is likely to have the consequence of delaying permanency for the child. Absence of reference to the implications of the Indian Child Welfare Act which has its own priority of placement.

In response to questions from the committee, **Ms. Fields** explained the deadline for the family to respond could prove to be very difficult for her office. There are things which could be changed in the handling of temporary moves at the Department's administrative level, it is not necessary to involve the courts. It is unclear what the recourse would be if the child is placed in a home over the objection of the Department and something goes wrong. It is unclear if both the Department and the Court need to consent to adoption and one does not, who will have the priority.

Rep. Trujillo stated these time lines seem fair when compared to the 10 days a biological father has to respond to a paternity suit.

In response to a question from the committee, **Ms. Fields** explained it is common when a case is headed toward the termination of parental rights and the work is being done to identify family members who can foster or adopt. The 30 day window of time from when the child is removed from the home to when relatives have been notified will pass before the parent can present their case for maintaining parental rights and custody. Between the permanency hearing and a termination hearing the parents will begin attempting to negotiate their children's placement. Within the Child Protective Act the rules of evidence only apply at the adjudicatory hearing, and the termination of parental rights hearing. In that sense, foster parents could come and speak as they already do. The language does not foreclose their right to bring an attorney. It is unclear if the foster parents attorney would have the right to discovery.

Sherrie Davis, testified in support of H 522. She was prompted to become a foster parent after working in the juvenile courts and she has fostered 63 children since becoming a foster parent in December of 2008. One child she cared for was sixteen with an infant and only spoke Spanish. She was informed by the Department they would be seeking to place her with a Spanish speaking family since Ms. Davis did not speak Spanish. The afternoon she was informed the Department had found a placement was the same day the Department intended to pick the child up and deliver her to her new placement. She chose to deliver the child personally hoping to have an opportunity to apprise the family of some issues the child had. This opportunity was not provided and shortly after she was placed with the family they kicked her out because of the issues. Shortly after, Ms. Davis was contacted about a placement for a Spanish speaking child with an infant, it was the same girl. She supports the Department completely in their efforts for reunification but there are issues which should not be overlooked. Due to lack of follow up from the Department, Ms. Davis spends personal time and money to fly to Mexico to follow up on a child who was deported to Mexico. She understands the Supreme Court decision could not be overturned, but she expects to be heard. She has attended numerous meetings and provided feedback about changes the Department could make to improve and nothing has been done to correct the issues. She questions whether the major issues can be resolved, when simple things have yet to be corrected.

In response to a question from the committee, **Deena Layne**, Deputy Legal Council, Idaho Supreme Court, explained it appears with the passage of this bill there is a point after the adjudicatory hearing where more hearings would need to take place, in addition to the hearings the Courts are already required to hold. This new requirement could have an impact on the timeliness of permanency hearings.

In response to a question from the committee, **Judge Barry Wood**, Senior District Judge, Idaho Supreme Court, stated in attempting to determine if the courts have the capacity for an increase in hearings it is important to note different areas would be impacted differently depending on the number of the hearings. Hearings are what the Courts do, the question should be how it would impact the requirement to meet the time lines. If the legislature determines this should move forward because it is good policy, the Courts will do what they need to do meet the requirements. If it is determined more resources are needed to meet the requirements, then that information will be presented to the legislature.

In response to a question from the committee, **Ms. Dublin** stated she was surprised it was the understanding of some, that foster parents are receiving notifications and being allowed to express their view. It is important to note if the child is no longer in their home the foster parent is no longer considered to be the child's foster parent and they will not receive notice of the hearing. When foster parents are invited to the hearing, the Judge will ask if they would like to share any information and ask them a few specific questions. The Prosecutors Office and the Department of Health and Welfare take the position the foster parents are not entitled to any information about the hearing, which makes it impossible for the foster parent to participate and provide input if they don't know the reason for the hearing. Excluded from the definition of a permanency hearing under federal law is a hearing held without the participation of a foster parent. Guardian ad litem's have volunteer attorneys and foster parents are not coming forward with attorneys, they are coming forward and asking to be heard, this bill will not add additional costs.

Corinne Larsen, testified in support of **H 522**. In Alaska the courts rely on the testimony of the guardian ad litem and foster parents, and the Judge had the power to determine the actions the Department would take. In Idaho, during her time as a foster parent there were several instances where supervised visits were unsupervised and the children were hurt. When she raised the issue with the Department of Health and Welfare the response she received was the children would be removed from her home the next day. She reached out to the guardian ad litem and the children were returned with the understanding her family would adopt. They began the process and then the children were removed from her home. The guardian ad litem was left out of all of the decisions. When the case came before a Judge who appeared to agree with her family, the Department chose to have the case go before a different Judge who made the decision to remove the children.

In response to a question from the committee, **Mr. Barron** explained the budget is tight for staff to supervise visits, however, they do make sure the visits are staffed. The ratio for case worker to case load is estimated at 12-15 cases to 1 worker. The Department needs to own up to whatever mistakes it has done and improvements it needs to do.

RS 24613:

Rep. Perry stated it has been said foster parents in Idaho have no rights, it is imperative to note, this bill is not addressing foster parents rights, beyond having a voice in the court room. This bill is about how the children are handled when they are in foster care. Children want to be with their parents above all else, of course they do. Everyone knows there are problems, they have had years to make changes, but no one has proposed any solutions. No rules have been proposed to make changes. The changes in this bill are in regard to policy, and the clearer the policy the less there is to fight over. This bill slows the process and attempts to help the children in the system. It needs to be determined why there is a disconnect between what the Department says should be happening and what everyone else says is actually happening. It needs to be determined why what is said to foster parents is not noted in the case files. This will be a continuing process. **RS 24613** will exempt the Indian Child Welfare Act, and the case plan is removed from going to the foster parents.

Rep. Perry requested **H 522** be held in committee and **RS 24613** be introduced and sent to the Second Reading Calendar.

MOTION: **Rep. Trujillo** made a motion to **HOLD H 522** in committee.

In response to a question from the committee, **Rep. Perry** explained there are a number of formal hearings already in place including: shelter care, adjudicatory, case plan and permanency at six months and twelve months, review, annual permanency, termination of parental rights, appeals by any aggrieved parties, motions and stays.

VOTE ON MOTION: **Motion carried by voice vote.**

MOTION: **Rep. Trujillo** made a motion introduce **RS 24613** and recommend it be sent directly to the Second Reading Calendar. Roll call vote was requested. **Motion carried by a vote of 16 AYE, 0 NAY, 1 EXCUSED. Rep. Malek was excused. Rep. Perry** will sponsor the bill on the floor.

H 523: **Rep. Perry** presented **H 523**. This bill invites the Department of Health and Welfare to come before the germane committee with an update on Idaho's foster care system.

MOTION: **Rep. Dayley** made a motion to send **H 523** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Perry** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 5:43 PM.

Representative Wills
Chair

Katie Butcher
Secretary