

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 07, 2016

TIME: 1:00 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.

MINUTES APPROVAL: **Senator Nonini** moved to approve the Minutes of February 17, 2016. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

RS 24679 **Senator Davis** stated that **RS 24679** amended Joint Rule 18 to encourage more accurate fiscal notes and statements of purpose.

MOTION: **Senator Souza** moved to send **RS 24679** to the 10th Order of Business **Senator Lee** seconded the motion. The motion passed by **voice vote**.

H 528 **Representative Melissa Wintrow** stated that **HB 528** is a collaboration of several interested stakeholders. When rape is committed, the victim experiences the trauma of the assault as well as the forensic evidence collection process. Idaho State Police Forensics Assistant Director, Matthew Gamette, called an interagency meeting to devise a plan to provide consistency in the processing of rape kits. The legislation creates a minimum standard for testing sexual assault evidence kits in the state, and it provides a reasonable time for processing. It establishes a tracking system to improve efficiency and transparency and it requires an annual report to the Legislature providing a view of how the system is working. The plan provides a clear decision making process so consistent training can be provided to law enforcement. The legislation states that all sexual assault evidence kits should be tested unless the victim expressly states that he/she does not want it tested. The other instance in which the kit would not be tested is if law enforcement determines that a crime has not been committed. The test must be conducted in 30 days and processed within 90 days. If the kit is not turned in, the county prosecutor would look at the kit and sign off on it. Idaho State Police would devise a tracking system, write the rules and determine how information would be put into a database.

Kelly Miller, Executive Director Idaho Coalition Against Sexual Violence and Domestic Violence, shared an experience of a 13-year-old girl who had been sexually assaulted and was currently addicted to meth to help dull the pain she was experiencing. Statistics show that only 15 to 30 percent of victims who are sexually assaulted report the crime to law enforcement. Three reasons for not reporting sexual assault include the individuals' coping skills, fear of future harm and the lack of trust in the criminal justice system. This bill addresses the current and future issue of backlogged evidence, offers survivors the justice they deserve and assists in holding perpetrators accountable.

Cindy Cook, representing the Sexual Assault Forensic Nurse Examiner Team (team) serving Ada County, stated that since 2001 there have been 1,592 reported sexual assaults. There were 1,274 victims who had a forensic exam and 318 who elected not to have an exam. Their team serves both St. Alphonsus and St. Lukes hospitals and any of their outreach facilities, as well as the Family Justice Center. The nurses have received specialized training and are tested on their skills (see attachment 1).

Senator Jordan asked how the nurses were able to talk to the victims about the kits and what kind of closure they could receive. **Ms. Cook** stated that they would give an explanation of the process and let the victims know that a result would not be immediate and it is a long process. They explain the investigation process and how the criminal justice system can help them. **Senator Burgoyne** asked if Ms. Cook had any perspective on how the victims feel when they find out that their rape kit hasn't been processed in time to get any results. **Ms. Cook** indicated that the timing is a very hard thing and many factors play into it. The nurses explain to the victims the benefits of having the test done and what evidence is collected, and they make the victims aware that their cases can't go far without the evidence. **Senator Souza** questioned the levels of confidentiality the victims can expect. **Ms. Cook** stated that HIPPA laws and requirements are complied with, but she indicated that at some point in the investigation the details may become public knowledge and the victim may have to testify in court.

Matthew Gamette, Assistant Director Idaho State Police Forensics Laboratory, shared a sexual assault kit with the committee. He indicated that the Idaho State Police (ISP) purchases the kits, looks at the technical requirements for them, visits with the nurses and makes sure the right kit for collection is used. For consistency, the kits are provided to all hospitals and collection entities within the State of Idaho and are free to the victims having the exam performed. There is currently no tracking mechanism for the kits. The local and county agencies collect the used kits, and when evidence is collected it is sent back to the agency that submitted it. If a kit comes into the laboratory, it gets processed. There are not piles of kits sitting in the Idaho laboratory.

According to Mr. Gamette, kit submissions have been increasing by about 28 percent per year and ISP expects that it will continue to increase. The Foresight Project in West Virginia showed that each DNA examiner can work about 59 rape cases a year. An additional two DNA staff members would be needed to process the increasing need for rape kits in a timely manner in Idaho. The cost to process each case is approximately \$3,000. With current staffing and turnaround time, it takes approximately seven months to process a non-priority DNA case. It is the desire of judges and prosecutors to see every DNA case in Idaho worked in less than 30 days. The current staff can process DNA cases in 90-120 days. They would like to hire two more staff members to speed up the processing time.

Mr. Gamette reviewed the process involved developing this legislation to address the issue of unprocessed rape kits. In June 2014, ISP sent a voluntary survey asking how many kits were in evidence collection rooms and organized a working team with individuals from varied entities involved in the evidence collection process. The working team developed a policy that included two reasons why a rape assault kit would not be submitted. The first reason is that if the victim expressly asked for it not to be processed and the second is if law enforcement determines that no crime was committed. Multiple communications were sent to communicate the policy. Once the number of kits in the field was identified, resources were secured to get those kits processed quickly and get the data into the Combined DNA Index System. ISP is not aware of any kits outside of the policy that are sitting on shelves. This legislation gives the ISP authority by statute to collect the data, promulgate rules for the collection and tell the law enforcement agencies

what the process is to accomplish those tasks. It also provides transparent public reporting on the website.

Senator Souza asked how long the samples can be held and still be viable. **Mr. Gamette** stated that if the samples are dried and protected properly, they are stable for a very long time.

Senator Johnson asked if there would ever be a circumstance where someone other than ISP would have to test the kits. **Mr. Gamette** responded that the ISP forensics laboratory, if properly staffed, would be able to test all kits in the proper amount of time. If they don't have the time to process in a timely manner, they could outsource the kits to a private laboratory but prefer not to. **Senator Johnson** asked for the definition of "health care facility." **Mr. Gamette** responded that "health care facility" is left purposely broad to cover any location where collections are taken.

Senator Johnson asked what kind of chain of custody process is in place to meet the strict standards required for evidence in court. **Mr. Gamette** stated that tracking new kits sent to the hospitals is very important. Currently ISP does not have the ability to ask what the facilities do with the kits they are given. **Senator Johnson** inquired about what happens to the kits being collected if the victims choose not to have them processed or if a crime wasn't actually committed. **Mr. Gamette** responded that the decision is left to the agency as it is written in their individual agency policies after a consultation with the county prosecutor. **Representative Wintrow** stated that each agency has its own policies and rules to govern evidence and chain of custody of that evidence. It was determined by the committee formulating the legislation to eliminate any language about a timeline for destruction of evidence and leave that to the individual law enforcement agencies. **Senator Johnson** asked why an evidence kit would be kept if no evidence of a crime was found. **Representative Wintrow** responded that it may be the policy of the law enforcement agency to do so. **Senator Burgoyne** added that occasionally rape kits are kept in case there are other potential civil actions.

MOTION: **Senator Burgoyne** moved to send **H 528** to the floor with a **do pass** recommendation. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

RS 24679 **Senator Davis** stated that this is the rewrite of Joint Rule 18 that the Committee has looked at before.

MOTION: **Senator Souza** moved to send **RS 24679** to print. **Senator Davis** suggested that, in light of the fact that this issue has been thoroughly discussed previously, the RS be sent to the 10th Order of Business. **Chairman Lodge** asked for a vote to send the RS to the 10th Order. The vote carried by **voice vote**. **Chairman Lodge** advised that the RS will receive a Senate Concurrent Resolution number and be sent to the 10th Order of Business.

S 1373 **Senator Burgoyne** explained that **S 1373** will provide an opportunity for a civil protection order by victims of malicious harassment, stalking and telephone harassment. The bill has received technical help from the Idaho Prosecuting Attorneys Association and has the support of the prosecutors, the Women and Children's Alliance, the Idaho Coalition on Sexual and Domestic Violence, and it has also received technical help from the Attorney General's Office. **Senator Burgoyne** related that the current harassment and stalking regulations in Idaho are lacking. Unless criminal charges of stalking or harassment are prosecuted to a conviction, allowing the court to enter a no-contact order, victims have limited recourse. Recourse that is available falls into the domestic violence statute and requires a relationship between the parties, and is available only if the perpetrator threatens or commits an act causing physical injury, sexual abuse

or forced imprisonment of a family or household member. **S 1373** fills the gaps in current law that deny victims of stalking and harassment the ability to obtain civil protection orders, regardless of the relationship between the victim and the perpetrator. States vary widely in how they handle civil protection orders. **Senator Burgoyne** pointed out that all of the surrounding states have these statutes. He then mentioned a concern Senator Davis had previously that this bill went too far in directing the court about processes. In referring this question to Michael Henderson, Counsel for the Idaho Supreme Court, Senator Burgoyne was advised that the bill does not cross the line. **Senator Burgoyne** shared the story of a Meridian resident Cynthia Hilton, and her inability to receive protection against her estranged husband who was stalking her (see attachment 2).

Senator Burgoyne went on to detail what the bill would do, including providing a means by which a victim may petition for a civil protection order, obtaining an emergency protection order in case of the expectation of immediate and irreparable injury. The bill would also allow for a no-contact order which includes actual physical contact, contact or attempted contact, directly or indirectly, by oral, written or electronic means. After the petition is filed the court will hear the case within fourteen days. If the protection is granted, it can apply for up to one year. The order is entered in to the Idaho Law Enforcement Telecommunication System. Violation of the protection is a misdemeanor.

Maureen Wishkoski, Court Advocate Manager, Women and Children's Alliance, explained the fear and anxiety that victims of stalking experience, not only for themselves but also for their children. She recounted times when victims have been sent by law enforcement to the county to get protection orders, but they do not qualify. She outlined the extensive logging of information necessary in order to have the stalker arrested. A protection order can enable law enforcement and the courts to more quickly respond to stalking behavior.

Dan Dinger, Ada County Prosecutor's Office, advised that he prosecutes domestic violence cases. He also handles violations of no-contact orders and felony-level stalking cases. **Mr. Dinger** noted that the Ada County Prosecutor's Office supports the bill. He pointed out that these gaps are real and there are victims who have not had any help. Sometimes it can take weeks or even months to document incidents to prove a case of stalking. He supports the bill and feels it will fill gaps in the current law and give victims the help they need.

Fairy Hitchcock, Hitchcock Family Advocates, explained her family situation and the difficulty they had in getting assistance. She supports the bill and hopes it will give other victims help.

Jennifer Landhuis, Idaho Coalition Against Sexual and Domestic Violence, and National Center for Victims of Crime, supports this bill. **Ms. Landhuis** pointed out that stalking is prevalent in today's society; stalking happens most with 18 to 24 year olds. She shared information and statistics dealing with the prevalence of sexual assault, reasons why victims do not report and the complications of following through after the report (see attachment 3). She shared the reasons why perpetrators offend and how the stalking affects the victims. She observed that while civil protection orders can't completely solve this problems, it can provide law enforcement with a way to help.

Senator Davis remarked that Ms. Hitchcock, with her life experience, is exhibit A of what has just been outlined. He stated that she and her family are the personification of the troubles that were emphasized by Ms. Landhuis.

Greg Olson has also experienced situations comparable to those of Ms. Hitchcock. While he agrees with the goal of the bill, **Mr. Olson** stated that he sees a problem in the execution of the bill. He suggested including interviews by trained police officers and others in the system who can make sure the claims are valid. Engaging these people first in advising the perpetrator that there is a law that applies and they need to stop the stalking or harassing behavior will prevent the courts from being flooded with litigation.

Senator Jordan commented that this bill is a tool to allow officers to support the victims and to warn the perpetrators away. **Mr. Olson** replied that the specific process is not written into the law.

Savannah Goodman spoke in favor of the bill and told her story of stalking. When she was targeted by a stalker she went to the police and to the Victims' Services Coordinator. Nothing could be done because the relationship was not familial. Until she or her children were injured, nothing could be done to obtain legal protection.

Representative Clow emphasized that this bill will give victims more protection. Although the police and prosecutors have not had legal means to provide assistance to victims, this bill will give them the ability to do so.

MOTION: **Senator Souza** moved to send **S 1373** to the floor with a **do pass** recommendation. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

S 1383 **Michael Kane**, Idaho Sheriffs' Association, pointed out that this bill relating to the civil rights of persons convicted of crimes has been before the Committee before and has been discussed at length. **Mr. Kane** reported that arson, felony riot, extortion and racketeering have been removed from the list of crimes affected by the bill. All law enforcement supports it.

MOTION: **Senator Jordan** moved to send **S 1383** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

S 1374 **Bob Aldridge**, Trust and Estate Professionals of Idaho, explained that the process of conservatorship and guardianship is set out in the probate code. The process as now instituted requires court proceedings and can be expensive and time consuming. This legislation is an effort to address these situations informally. If these efforts do not work, the formal court proceedings can be used. This bill allows a parent to appoint a guardian while the parent is alive, similar to a Will in case of death. Filing is required, and detailed procedures are outlined in the document. **Mr. Aldridge** gave an explanation of the bill, section by section. In conclusion, he reiterated the need for this intervening, less formal step to avoid expense and time demands. He stated that this legislation is designed to be an immediate support for a minor when a parent becomes incapable of taking care of the child.

Senator Lee stated that we have an emergency guardianship system. She expressed concern about children who have financial assets accessible by others. **Mr. Aldridge** responded that other interested parties can intervene if they are aware of abuses of the conservatorship or guardianship.

MOTION: **Senator Jordan** moved to send **S 1374** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

Senator Davis disclosed that there is a bill dealing with foster parents that has come from the House. He expressed his expectations that there will be a concurrent resolution to consider foster parents. **Senator Davis** suggested that it may be wise to wait for upcoming consideration of these issues and include guardianship and conservatorship in these discussions. He stated that he agrees with the intent of this bill, but would rather see this considered by the courts in a coordinated effort with the legislature.

Senator Jordan withdrew her motion in light of Senator Davis' insights. **Senator Burgoyne** withdrew his second to the motion.

Having no motion, Chairman Lodge will determine the disposition of the bill.

S 1375

Bob Aldridge, Trust and Estate Professionals of Idaho, explained that disability rights advocates stated that they did not want "developmental disability" to be part of this legislation. There are amendments to this legislation that will remove "developmental disability" from the bill and limit it only to minors. This legislation will present a second option to parents who know who they want to nominate on a delegation based on certain criteria.

Senator Davis commented that he felt the same way about this bill as **S 1374**. He appreciates all of the work Mr. Aldridge has done but feels it should be part of the legislative review.

Having no motion, Chairman Lodge will determine the disposition of the bill.

ADJOURNED: **Chairman Lodge** adjourned the meeting at 3:02 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary