

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Tuesday, March 22, 2016

**TIME:** 8:00 A.M.

**PLACE:** Room WW54

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

**ABSENT/ EXCUSED:** Senator Johnson

**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 8:00 a.m.

**H 556** **Representative Christy Perry**, District 11, explained that research shows children abruptly removed from homes where they have formed attachments may suffer a great deal of distress akin to Post Traumatic Stress Disorder (PTSD). The Office of Performance Evaluations (OPE) regarding juvenile offenders has found most frequently juveniles committed to State custody have been in the Department of Health and Welfare's (DHW) child protection system. There have been some concerns about the processes for children in foster care for some time, and numerous pleas have been made to make changes in the system. **Representative Perry** emphasized that this bill is not an indictment against DHW or the social workers. It is about making changes and improvements for the children. After the bill passed the house, there were issues that needed to be addressed, so there has been continuing discussion between the Senate and the House. Other stakeholders have been included in this discussion, including DHW. She stated that changes have been agreed upon and that she will be requesting that **H 556** be sent to the 14th Order of Business for amendment.

**Representative Perry** described the changes that **H 556** will make to foster care procedures. She indicated that the courts will be included as a consentor to select the foster parents for a child. Parameters regarding the amount of time family members have to declare their desire to be part of the process were set, along with changes in the permanency plan and its process. Continuing changes will address what will be included in the permanency plan. She pointed out that two specific problems became apparent during the work on this bill. First, the children have been moved repeatedly. Once they have been in a home for quite some time, they are moved. The second is that what is being told to the foster parent is not always the real reason, as in a case where the foster parents were not following the directions of DHW. The foster parents had been told, however, that the reason for the move was that they had gotten too close to the child.

In considering a placement by DHW, **Representative Perry** pointed out that placement needed to be in the least restrictive environment following a priority list: 1.) a fit and willing relative; 2.) a fit and willing nonrelative with a significant relationship with the child; and 3.) foster parents and other persons licensed in accordance with statute. These were to apply to temporary placement, but it was also used for permanent placement. In some instances a child would be placed with the foster parents, who had the understanding that they would be able to adopt the child. If relatives arrived who wanted the child, even if they did not have a relationship with the child, they would be given preference. This bill would allow considerations beyond unification of the family if such unification is not in the best interest of the child. The goal is to have a child stay in a placement instead of being moved, allowing stability and bonding.

Because there are still issues and more changes that need to be made, **Representative Perry** reported that an interim committee will be established to investigate the concerns and bring back some ideas for improvement in the foster care program, as well as concerns that have become apparent in guardianship situations.

**Senator Burgoyne** asked Representative Perry if she had seen the information from the Shoshone-Bannock Tribes (see attachment 1). **Representative Perry** replied that she had not.

**Senator Souza** asked about the addition of the term "or permanent" regarding placement. After some discussion, **Senator Davis** advised that these will be the words used, as agreed by all of the parties in the discussions, pending the findings of the interim committee. **Representative Perry** confirmed that this had been the agreement.

#### TESTIMONY:

**McKenzie Lyon**, Shoshone-Bannock Tribes (Tribes), indicated that language in this bill has been changed to support the Indian Child Welfare Act (ICWA). She expressed appreciation for attention to the concerns of the Tribes. **Senator Davis** explained the work that went into providing the language needed by the Tribes to consider the ICWA issues.

**Terry Murrison**, a foster parent, supported the bill, pending the consideration of an interim committee. She shared her perspective on these issues and emphasized her strong belief that the child should be with parents with whom a bond has been established. **Ms. Murrison** shared examples of what happens to children without human bonding.

**Val and Brian McCauly** spoke together in support of the bill. They commented that they are distressed by the way decisions have been made in removing children based on "becoming too close to the child." They shared their experience of having a child removed from their home. **Ms. McCauly** stated that as foster parents they are aware of the fact that at some point they will have to give the child up, but that they still have the natural instincts toward the children. She added that their motivation is not to bring a child back into their home, but to see changes so the same trauma does not happen to others. **Ms. McCauly** emphasized that foster children's rights to due process according to the 14th Amendment are not being protected by the courts. The most important thing is to protect the best interest of the child, not the foster parents.

**Merritt Dublin**, a foster parent, spoke in support of the bill. **Ms. Dublin** indicated that she is impressed by the way this legislation has dealt with the issues, and that it is very much appreciated. She felt the language is problematic but that this will be addressed by the interim committee. **Ms. Dublin** explained the federal government's role in establishing some of the processes regarding placement of children in foster care as opposed to kinship care. She suggested that both words, "temporary and permanent," be removed. She felt it was important to give equal weight to relatives and foster parents in the placement decision.

**Jeannie Swenson**, a foster parent, spoke in support of the bill. **Ms. Swenson** has had 24 foster children and one adoptive child who had been her foster child. She reiterated the concerns of others regarding the emotional trauma foster children go through. These children matter and need a permanent place.

**Joshua Wikard**, Ada County Public Defender, spoke in opposition to the bill. He has handled many child protection cases. He understands that if there is to be a removal due to safety concerns, notice in advance of the removal is to be given to the foster parents. **Mr. Wikard** is concerned that the biological parents are not given that same notice if their children are going to be moved from their current foster placement. He urged the Committee to add language that the biological parents will also be given notice.

**Senator Davis** requested that Mr. Wikard peruse the Child Protective Act and advise the Committee of areas of concern with regard to notification.

**Kari Wardel**, a foster parent, spoke in support of the bill and shared her experience as a foster parent and problems that occurred regarding changes in placement of her foster child. She noted concerns that DHW thinks it is okay to move children if the foster parent doesn't agree with them. She has been told by DHW representatives that children are resilient and can attach to any caregiver. She asked that the interim committee consider the timeframes for family to come forward.

**Senator Davis** explained that the State needed to give thoughtful consideration to timeframes and public policy. It is one of the items the interim committee will address.

**Stacey Hoffman**, social worker and former foster parent, spoke in support of the bill, stating that in the years she was a foster parent she experienced the same situations that have been expressed here by others. She referred to the situation involving her own children and to situations involving inmates for whom she has been a social worker. She emphasized the need for judicial oversight to assist DHW in making appropriate placements.

**Galen Carlson**, Ada County Deputy Prosecutor and Supervising Prosecutor for the Child Protection Unit, spoke in opposition to the bill. **Ms. Carlson** expressed her appreciation for the changes proposed in this bill and the concerns that have been addressed. She stated that the Idaho Prosecuting Attorneys Association (IPPA) would like to be included on the interim committee. She stated that her main concern with the legislation is delaying permanency for children. She pointed out that as the bill is written, if the placement is contested a judge has to approve or deny the placement. She said she anticipates increased litigation that will delay permanency decisions. She would like to see the interim committee look at this issue in terms of the timeline for getting a decision from the judge.

**Senator Lee** asserted that, although the legislation is not perfect, an effort is being made here to reduce the time involved. Having judicial input should streamline the process. **Ms. Carlson** commented that they have litigated out-of-state placements and the placements have been delayed up to a year. She felt that having the judges give recommendations would be okay, but having them make the placement decision can cause litigation. **Senator Lee** replied that this is an issue that should be addressed in the interim committee.

**Senator Burgoyne** asked if IPPA has a position regarding moving the bill to the amending order for the agreed upon amendments and addressing further issues through the interim committee. **Ms. Carlson** replied that she objects to the involvement of the judges as previously mentioned. For that reason she is objecting on behalf of IPPA. **Senator Burgoyne** asked if she is saying the bill should not be moved to the amending order. **Ms. Carlson** asked Holly Kool from IPPA to discuss the legislative process. **Holly Kool** stated that IPPA would like them to move the legislation to the amending order. IPPA appreciates the amendments that are here and would like to be part of the interim committee to work on the other issues.

**Senator Davis** indicated that DHW had no objection to the removal of "temporary or permanent" and asked Russ Barron to confirm if that is the case. If DHW does not have an objection, a new amendment to that effect will accompany the bill to the amending order.

**Russ Barron** Deputy Director, Department of Health and Welfare, expressed appreciation for the work that has gone into the reform effort. He agreed to the removal of the three words. He commented that there is a lot more to talk about and there are solutions that can be enacted.

Russell and Jamie Menth were unable to be in attendance. Their written testimony is attached (see attachment 2).

**MOTION:** **Senator Davis** moved to send **H 556** to the 14th Order of Business for possible amendment. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**S 1420** **Senator Davis** observed that the Committee had a good explanation of this bill relating to judges' salaries. The only change is that the reference to the Attorney General in the first SOP is being eliminated in a revised SOP because this bill will not affect him.

**Senators Lee, Burgoyne and Lodge** all disclosed under Rule 39H that they may be affected by this bill as they have relatives in the judicial system.

**MOTION:** **Senator Davis** moved to send **S 1420** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**H 580** **Sara Thomas**, State Appellate Public Defender, stated that she is here in her capacity as Chair of the Criminal Justice Commission (Commission). She explained that this bill is a portion of a previous bill, **S 1277**, which had elicited some serious concerns from the Senate floor and from citizens. Because of these concerns the Commission requested that **S 1277** be held in committee in the House, and they introduced **H 580**, which is the portion of the original bill that deals with rape. The Commission will reconsider the original bill and bring a better proposal next year on sexual battery of an adult. **H 580** updates Idaho's law to be gender neutral, updates the rape of a spouse statute to address those circumstances where harm is threatened to a third party and removes the requirement that a victim resist in certain circumstances.

**MOTION:**        **Senator Davis** moved to send **H 580** to the floor with a **do pass** recommendation.  
**Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**    **Chairman Lodge** adjourned the meeting at 9:45 a.m.

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Senator Lodge  
Chair

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Carol Cornwall  
Secretary