

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 13, 2017

TIME: 1:15 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye

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 Senate Judiciary and Rules Committee (Committee) to order at 1:17 p.m. and welcomed those in attendance.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the Minutes of January 23, 2017. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 24853 **Regarding DNA Testing for Sex Offenders. Major Charlie Spencer**, Idaho State Police, stated that legislation is being pursued to deal with the registration of sex offenders and obtaining DNA samples from them. Every year approximately 300 sex offenders move to Idaho with no provision to have DNA samples placed on file to help law enforcement determine if they have been involved in other crimes. In 2012 legislation was passed to collect samples from felons other than sex offenders, but that legislation created a lack of testing for approximately 1,534 offenders who did not have DNA samples on file. The passage of **RS 24853** would address both issues. **Major Spencer** requested \$153,500 of one-time money to get the backlog of offenders added to the sex offender registry and for the collection of DNA samples, as well as an ongoing \$30,000 per year to add the approximately 300 new sex offenders moving to the State of Idaho annually.

Senator Burgoyne asked if there was a national registry for DNA samples or if it was done state by state. He questioned whether Idaho law enforcement would be able to match the DNA to crime scenes from the DNA sampled here. **Major Spencer** responded that when the samples are processed a list is kept. There are numerous other steps taken to confirm that a suspect does match the samples but that would be the first step. If a person becomes a suspect, then additional steps would be taken through the criminal process. **Senator Burgoyne** asked if the offender would pay for the DNA sample. **Major Spencer** replied that the offenders do not pay for the samples.

Chairman Lodge asked why out-of-state offenders are not required to pay for their own DNA sample. **Major Spencer** responded that the State receives no funding from those fees. Some of the cost of the DNA samples is being passed on through the registration process in the counties, but at a State level there is no funding for collection of samples. The request is for General Fund money. Under Idaho Code the cost is currently being passed on to registrants through the counties.

Senator Lee moved to print **RS 24853**. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

RS 24993C1 **Regarding Facility Dogs in Courtrooms. Senator Shawn Keough** stated that **RS 24993C1** seeks to amend the Idaho Code § 19-3023 that deals with children summoned as witnesses.

Senator Hagedorn moved to print **RS 24993C1**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS25042C1

Regarding the rights of persons who have capacity and do not need a guardian. **Robert Aldridge**, representing the Quality of Life Coalition (Coalition), stated that the legislation presented would protect the rights of persons who have capacity and do not need or have a guardian to make their own medical choices. The term "developmental disability" covers a wide range of conditions, many of which do not impair the ability of the person to make competent medical decisions; this right has often been denied to such persons. It is a denial of their fundamental rights and can lead to expensive and unneeded court proceedings. If there is no guardian, the health care provider should make the standard checks already existing in the Medical Consent and Natural Death Act for capacity to make medical decisions. This bill also makes some clarifications regarding the revocation or suspension of an advance directive (for example, a living will or durable power of attorney for health care of a POST – Physician's Order for Scope of Treatment), and for presumed consent to resuscitation. The existing language of the statute had left some issues unclear which this bill now clarifies and which reflect actual practice. The bill amends Idaho Code § 66-405 where there is a guardian for a person with a developmental disability (called a "respondent") to have the proper legal standards in the statute. The existing statute, written many years ago, did not have those proper standards and could lead to violation of the legal protections required for respondents.

Senator Davis questioned the use of "respondent" and asked why the word "ward" was not being used. **Mr. Aldridge** stated that "respondent" is the term used through the Development Disability Act to refer to someone who is in a proceeding for guardianship. "Ward" and "protected person" are used in the Uniform Probate Code. Supreme Court committees are in the process of replacing existing language with more neutral language. **Senator Davis** asked if "do not resuscitate" (DNR) was defined in the bill. **Mr. Aldridge** responded that it was found elsewhere in the Code. It defines "do not resuscitate" and "do not intubate" orders in other areas, but it is not in the section being amended. **Senator Davis** asked why a change was being made from 17 to 18 years of age. **Mr. Aldridge** stated that wherever it said 17 years or less, it was easier to say 18 years or older, and that had been done consistently in previous bills.

Senator Anthon asked about a change in the definition of licensed independent practitioner to include an advanced practice registered nurse and a physician's assistant. He inquired if it was standard for someone with those qualifications to be able to make the determination which triggers either the do not resuscitate or other advance directives. **Mr. Aldridge** indicated that the language was previously added in other parts of the Code. **Senator Anthon** asked if it was common practice to include in living wills or advance directives reference to either a physician's assistant or a registered advance practitioner nurse. **Mr. Aldridge** stated that the current Natural Death Act has all three with the ability to make all of the decisions. Physician assistants and advanced practitioner nurses act under a licensed physician giving them added protection.

Senator Burgoyne asked if, in the case of no guardian, there would be a statement instructing the health care provider to perform the standard checks included in the Medical Consent and Natural Death Act to determine capacity. **Mr. Aldridge** indicated the Statement of Purpose clarifies that just because one has a diagnosis of developmental disability, one does not lose rights. This section indicates which tests should be applied. **Senator Burgoyne** was concerned about what would happen when someone who is developmentally disabled goes to an emergency room with an obvious disability, but whose level of cognition may not be obvious. He asked if the health care professional would be entitled to assume that this person needs to have the standard checks administered before treatment is given. **Mr. Aldridge** responded that everyone going into a medical situation has that right and those checks would be made.

Senator Anthon moved to print **RS 25042C1**. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

RS 25049

Regarding the Delegation of Powers by Parent or Guardian. **Robert Aldridge**, representing Trust and Estate Professionals of Idaho, Inc., stated that he would be asking for a bill regarding the delegation of powers by parent or guardian. With many troops going overseas, there was not an effective way to make sure their children were being taken care of. A power of attorney was created which allowed the person to delegate their parental authority on a limited and short term basis to another family member, usually grandparents. It provided a way for grandparents to work with doctors to provide medical care for those children. This bill will allow a person to have a springing delegation to name whomever they want to be responsible for their children. There are three things that could trigger the delegation. They include 1.) incarceration, 2.) incapacity, or 3.) by a statement that they now wish to delegate that power. These changes have been requested by a large number of people in various circumstances who are using a power of attorney. The time periods have been extended to 24 months. The delegation to someone who is not a grandparent or a sibling is now a 12 month period unless it is renewed. If the delegation is to a relative, a time period can be specified. This bill would clarify that a delegation of power does not supersede any court order regarding the care and custody of a minor child. This legislation would provide a way to rectify the circumstance when custody has been given to an unqualified person.

Senator Davis stated that this RS may replicate the faulty statutory language that the court criticized in the Doe decision because this legislation speaks of "a minor" or "a grandparent." He inquired if there was a reason that Mr. Aldridge had not followed the model that was in **H 148**. **Mr. Aldridge** indicated that when this bill was written, it was to comply with current law. **Senator Davis** suggested that Mr. Aldridge speak with the sponsors of **H 148** and ask them to include this legislation. **Mr. Aldridge** stated that his concern with that was that **H 148** deals totally with guardianship and this legislation is outside of that area. **Senator Davis** responded that it made sense then to do this as a stand-alone bill, and suggested that the Doe decision concept be addressed prior to introduction.

Senator Anthon indicated his concern was with capacity and whether the determination of capacity is one of a medical care opinion or a determination of the court. **Mr. Aldridge** stated that the determination of capacity could come from either source. **Senator Anthon** expressed that his understanding is that upon certification of a licensed physician the guardianship triggers, and it will remain so until another physician gives another opinion. He asked if there is one doctor who states that the parent is unable to care for the minor and another says the parent is able to care for the minor, would it become a judicial decision. **Mr. Aldridge** responded that generally unless there is a clear statement, it will not be triggered as a matter of practice because the people involved are usually close friends or family. He indicated that he had never seen competing statements from physicians except in an existing court case.

Senator Burgoyne asked Mr. Aldridge if the question was whether the parent or guardian could adequately care for the minor or if a physician had issued the certification. If the certification was issued, can the court inquire any further? **Mr. Aldridge** stated that normally there is not a court action in these cases. If there is, it is going to be an action for guardianship. **Senator Burgoyne** gave a hypothetical situation where a guardian made some decisions that had ongoing consequences and there was a guardianship court proceeding. In the proceedings the court found that a different guardian should be appointed or that no guardian should be appointed. What would be the legal justification for this action? **Mr. Aldridge** stated that the guardian of the person has to act in the best interests of the ward or the minor. If they made decisions that were incorrect, they would be potentially liable for those decisions. They would have the same rights and responsibilities that the parent had. **Senator Burgoyne** asked why "or incapacitated person" was deleted. **Mr. Aldridge** stated part of the reason for the bill was to remove that kind of language.

Senator Davis moved that **RS 25042C1** be returned to sponsor. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 24917 **Regarding a drafting error in LLC statute.** **Senator Davis** stated that **RS 24917** dealt with the Idaho's Limited Liability Company (LLC) section of the business organization code.

Senator Hagedorn moved to print **RS 24917**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 25015 **Regarding judgment renewal.** **Senator Davis** said this amendment strives to provide clarity and statutory parallelism within Idaho Code §10-1111, Judgment Renewal.

Senator Burgoyne moved to print **RS 25015**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 25154 **Regarding designated fire stations as a "safe haven".** **Senator Davis** stated that this amendment would allow for fire stations where there are personnel on duty to be included as "Safe Haven" under Chapter 82, Title 39, of Idaho Code. Several years ago there were situations where frustrated mothers were dumping children into dumpsters. Idaho was among the first states to adopt "Safe Haven" legislation. Under that legislation a parent could give up a child by taking him/her to a particular location with no questions asked. The child would be safely received and turned over to Health and Welfare, a shelter care hearing would commence, and the child could be placed for adoption. Some states have added fire stations but until now Idaho had not. This has caused confusion for some parents. Adding fire stations as a "Safe Haven" is the only change being added to **RS 25154**.

Senator Agenbroad moved to print **RS 25154**. **Senator Burgoyne** seconded the motion.

Senator Nye indicated that "Safe Haven" on line 33 indicated that it would include "any other governmental entity" where there are personnel on duty. He stated that "any other governmental entity" should be taken out. **Senator Davis** agreed. He recommended that there needs to be "where there are personnel on duty." **Senator Anthon** moved to print **RS 25154**. **Senator Hagedorn** suggested sending **RS 25154** back to sponsor and listing all of the entities that are operating fire stations where personnel are on duty. **Senator Davis** requested to return **RS 25154** to him for language correction.

RS 25187 **Regarding payment of rent.** **Senator Lakey** asked to have **RS 25187** held for further work. There were no objections.

RS 25234 **Regarding victim restitution.** **Chairman Lodge** stated that she was presenting this bill for Senator Rice. The legislation raises unlawful entries to a felony when the offender is fleeing from the police. The bill would also clarify that the victim can recover restitution. She asked the Committee to print the RS and hold it until Senator Rice returns.

Senator Davis moved to print **RS 25234**. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

Chairman Lodge indicated that at this point the majority of the RS's have been printed. This Committee is a privilege committee and as such will be asked to print bills for other committees. Those committees need to have a unanimous consent request from their committee to be presented in Judiciary Rules.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:13 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Assistant Secretary