

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 20, 2017

TIME: 1:30 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 1:32 p.m.

MINUTES APPROVAL: **Senator Hagedorn** moved to approve the Minutes of February 3, 2017. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Shanyse Barber**, the new Committee Page, commented that she is from Payette, Idaho, and staying in Nampa. She explained that she learned about the Page program in October when she was here for a meeting. She applied for the Page position, and she expressed appreciation to Senator Lee who endorsed her. She stated that she hopes to learn a lot while she is here.

GUBERNATORIAL APPOINTMENT: **Shellee Daniels, State Public Defense Commission (SPDC).** **Shellee Daniels** shared her background as a native Idahoan, growing up in Idaho and attending Boise State University. She earned a Bachelor of Science in Political Science degree with a focus on Public Administration. **Ms. Daniels** detailed her work experience including serving in Governor Andrus's office, the Commission for Children and Youth (now the Department of Juvenile Corrections), the Idaho State Police, the Oneida County Commission, and Mountain States Insurance. She stated that she felt this work helped build skills she brings to this appointment including an understanding of budgeting, revenues, expenses, rules and regulations, and the diversity of Idaho's population. **Ms. Daniels** shared with the Committee the background of the Oneida public defense efforts leading up to the establishment of a Public Defender Office serving Power and Oneida counties. She felt these opportunities strengthened her abilities for negotiation, cooperation, and coordination, qualities that will serve her well on the SPDC.

RS 25272 **Regarding post-traumatic stress.** **Senator Burgoyne** moved to send **RS 25272** to print and to send back to the Senate Health and Welfare Committee. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 25304 **Regarding the cost of the Commercial Driver's License test.** **Senator Lee** moved to send **RS 25304** to print and to send back to the Senate Transportation Committee. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

RS 25288 **Regarding judges' pay.** **Senator Davis** pointed out that this RS represents the result of negotiation and there will be an opportunity for further, more significant conversation.

MOTION: **Senator Davis** moved to send **RS 25288** to print.
Senator Lee noted she had a conflict of interest pursuant to Senate Rule 39(H).

Chairman Lodge noted she had a conflict of interest pursuant to Senate Rule 39(H).

Senator Nye seconded the motion. The motion passed by **voice vote**.

RS 25097

Regarding firearms restoration. **Senator Burgoyne** noted that Sandy Jones, Director, Commission of Pardons and Parole (Commission), requested that he present this **RS 25097**. **Senator Burgoyne** reminded the Committee of similar legislation last year, but it needed clarification. This legislation provides that clarification. The intent of the legislation is to protect the Commissioners from public votes. Under this bill, application for firearm restoration hearings will continue to be held in public, but the Commissioners will go into executive session to decide whether or not to grant hearings. **Senator Burgoyne** pointed out that the bill explains confidentiality of records, and that only the voting results from the are to be public. He indicated those individuals who are covered by the confidentiality statute, including those recently added, and advised that breaching confidentiality by any of these individuals is a misdemeanor.

MOTION:

Senator Davis moved to send **RS 25097** to print. **Senator Hagadorn** seconded the motion. The motion passed by **voice vote**.

S 1089

Regarding facility dogs in courtrooms. **Senator Shawn Keough**, introduced Louis Marshall, Prosecuting Attorney from Bonner County. She shared pictures of facility dogs (attachments 1-5). **Senator Keough** explained that this bill amends Idaho Code § 29-3023 adding facility dogs to those having a supportive relationship with a child who is testifying in Court. Additions to the Code include the types of testimony the child is giving, how the dog's presence in the Court is managed, and the definition of a facility dog. **Senator Keough** requested Prosecutor Marshall address the Committee.

Prosecutor Marshall explained the history leading up to the use of facility dogs in Bonner County. He outlined the process used to build a relationship between the child and the dog prior to the Court hearing. In response to a query by Senator Burgoyne, **Prosecutor Marshall** described the training process for facility dogs. **Senator Burgoyne** asked if the training is designed specifically for this task or if the training is more generic. **Prosecutor Marshall** responded that the dogs are trained for this specific task.

Senator Anthon asked who requests that a dog be used. **Prosecutor Marshall** replied that the child and dog meet prior to a hearing. If the child likes the dog, the prosecutor asks if the dog can be on the stand. If the child does not like the dog, it is not used.

Senator Nye asked if there would just be the dog, or if a supporting person would also be there. He wanted to know who will pay for the dog and the training. He also inquired why this can only happen if the child is summoned, and only in non-criminal proceedings involving abuse. **Prosecutor Marshall** explained that when a dog is used, the parents do not accompany the child to the stand, only the dog and the handler. He added that a judge could include a parent, but he felt it is better to have just the dog to avoid coaching by a parent. Regarding the fiscal impact, **Prosecutor Marshall** commented that Bonner County's dog was provided free. The cost of sending the handler to California and paying for the training was paid from the County budget. The dog is still owned by the company to protect the dog from inadequate care or loss of certification by the handler. In answer to Senator Nye's question regarding using the dog only in non-criminal matters, **Prosecutor Marshall** replied that he believed the dog should be used in any court proceeding where it would help a vulnerable child.

Senator Hagadorn stated a concern with the specification of where the dog comes from. He referred to the requirement for training being overseen by Assistance Dogs International (ADI) or a similar internationally recognized organization. He asked who tracks that to know who those similar organizations are, and if they have the same accreditation capabilities as the ADI. **Prosecutor Marshall** replied that he is not aware of any other international organizations. This wording followed the pattern of other states already having passed similar legislation.

Senator Anthon inquired if there is any case law saying the use of facility dogs creates an appealable legal flaw in a court proceeding. **Prosecutor Marshall** stated that all appellate case law in the United States that he is aware of is positive for the utilization of facility dogs.

Senator Burgoyne commented that this statute uses the term "shall". He asked if there is anything that precludes a Court from allowing these dogs to be used in aspects of cases that are not in this statute, or if they have discretion for that decision. **Prosecutor Marshall** believes that a Court has overriding discretion over what happens in the judge's presence, including in civil cases or other instances not delineated in the statute.

Senator Keough closed by stating that the facility dogs are an asset that would help some children in this situation, while still allowing the judge to make a different decision.

MOTION:

Senator Lee moved to send **S 1089** to the floor with a do pass recommendation. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

S 1104

Regarding the use of judicial resources. **Judge Barry Wood**, Deputy Administrative Director of the Courts, explained that **S 1104** amends Idaho Code § 1-2205 by eliminating statutory authority granted to the District Magistrate Commission to determine the number and location of magistrate judges as the number is of judges appointed in a given judicial district is primarily determined by the appropriation provided by the Idaho Legislature. He indicated that the purpose of the amendment is to eliminate the statutory requirement that there be at least one resident magistrate judge appointed in each of Idaho's 44 counties, except for those counties wherein the board of county commissioners has, by a majority vote, adopted a resolution waving that right.

Judge Wood related that the amendment to Idaho Code § 1-2206 would alter the initial residence requirement that the magistrate reside in the county for which the appointment was originally made, including the county to which the magistrate was reassigned under Idaho Code § 1-2207.

In reference to Idaho Code § 1-2207, **Judge Wood** named areas in this amendment concerning instances when there is a vacancy in the Magistrate position, when there is no vacancy in a magistrate position, and the reassignment of magistrates. He detailed processes, time constraints, and the request for appropriations.

Judge Wood indicated that the amending of Idaho Code § 1-2220 is necessary because of the other amendments in this bill.

Judge Wood discussed the need for these changes including the changes in demographics in the State and the workload needs of the court. The court brought this legislation to ascertain if the Legislature wanted to adopt a policy involving reassignment of magistrates or to continue funding new positions.

A discussion ensued considering:

- the percentage of cases heard in one county by judges from another county;
- retention vote;
- the ability of citizens to become familiar with judges from another county; and
- reappointment to another county if voted out of office

Dan Chadwick, Executive Director, Idaho Association of Counties, requested that the Committee hold **S 1104**. He alleged that some counties would not be able to vote, relations between the courts and the county commissioners would be compromised, and that the amendment needs more work. He named nine counties that would never have the opportunity to vote under this legislation. The other counties will always get to vote on at least one magistrate. He declared that the county commissioners are willing to work with the courts to resolve this difficult issue.

MOTION:

Senator Davis moved to hold **S 1104** in committee. **Senator Foreman** seconded the motion.

Senator Davis addressed the issue facing the counties that would not be able to elect the judges. He pointed out that at this time the public policy of Idaho grants the people a role in the selection of judges; because of the logistics of the State, this presents a dilemma. **Senator Davis** pointed out that Judge Wood is presenting a policy that addresses this problem, but there is the concern of the nine counties wherein citizens will not be able to vote on their magistrates. He emphasized that there needs to be a solution accommodating both the counties and the courts. **Senator Davis** expressed appreciation to Judge Wood for bringing this legislation which compels the Senate to focus on this problem.

Senator Burgoyne also expressed appreciation that the court brought this forward to initiate consideration of this issue. He reiterated some of the conflicting factors regarding the right to vote, the efficient and effective use of time, and funding concerns.

Senator Lee noted she had a conflict of interest pursuant to Senate Rule 39(H).

Senator Davis advised the Committee that Judge Wood and the court have been open to an honest conversation regarding this conundrum. They are willing to continue working with the Senate to solve the problem in a way amenable to all interested parties.

Motion passed by **voice vote**.

S 1090

Regarding to quality of life. Robert Aldridge, Quality of Life Coalition, suggested in the interest of this very important bill, and the lack of time remaining for the meeting, he would request the hearing be postponed. **Chairman Lodge** schedule the hearing for Wednesday, February 22.

ADJOURNED:

There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:52 p.m.

Chairman Patti Anne Lodge

Carol Cornwall, Secretary