

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Monday, March 13, 2017

**TIME:** 2:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Anthon, Agenbroad, Foreman, 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.

**CONVENED:** **Chairman Heider** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 2:07 p.m.

**S 1139** **Relating to Health Care. Morgan Howard** introduced herself to the Committee as an intern for Senator Johnson to present **S 1139**. **Ms. Howard** explained the bill clarifies admitting privileges for advanced practice nurses and physician assistants. Idaho Code is unclear as to whether these practitioners have the right to admit patients to hospitals. The issue was brought to light by rural hospitals with fewer physicians than larger hospitals.

**Ms. Howard** also presented some proposed amendments to the bill that were drafted by the Department of Health and Welfare (Department). The first is a rewrite of new Idaho Code § 39-1396 providing guidelines for hospitals granting admission privileges. The amendments to sections two and three of the bill include a reference to the new Idaho Code § 39-1396. The amendment to section 4 provides practitioners must be licensed and granted privileges by the facility's bylaws, and the facility must practice oversight of those admitted. Finally, there is a correction to title. **Ms. Howard** requested the bill be sent to the Fourteenth Order for possible amendment.

**Vice Chairman Souza** asked if Ms. Howard could review the amendments, explain the amendment language compared to the original bill, and state whether or not Ms. Howard agrees with the amendments. **Ms. Howard** explained the amendment to section 1 adds guidelines for admitting privileges. It specifies the practitioner granted privileges must be recommended by the medical staff and approved by the governing board of the hospital, and the practice must be within the scope of the practitioner's license. **Ms. Howard** said the amendments seem reasonable and there is no reason to grant privileges if not recommended by hospital staff. She supports the changes.

**Ms. Howard** commented sections 2 and 3 replace the language "or other persons specified in the bylaws" with a reference to Idaho Code § 39-1396 to streamline the bill. She is in agreement with the changes. The amendment to section 4 specifies the practitioners must be licensed and granted privileges in accordance with the facility's bylaws. The language is to protect the hospital from legal liability, and she supports these changes as well.

**Senator Anthon** referred to the word "through" at the beginning of line 2 on page 2 of the amendments and asked if that is the correct word. **Ms. Howard** responded it is grammatically correct to her knowledge. The bill drafters in the Legislative Services Office prepared the language to be consistent with Idaho Code.

**Senator Lee** inquired if the amendments are acceptable to the hospital association and if there is concern about hospital accreditation if the bill passes. **Ms. Howard** replied she is not aware of any objections to the amendments by the Idaho Hospital Association or Idaho Medical Association. **Senator Lee** asked if Toni Lawson of the Idaho Hospital Association could be recognized to respond to the question.

**Toni Lawson** introduced herself to the Committee as vice president of government relations for the Idaho Hospital Association. She has not seen or reviewed the amendments and cannot comment at this time. Hospitals have run into some issues in this area, and her association wants to work with the Department this summer to clarify some areas, hopefully without having to bring new legislation.

**MOTION:**

**Senator Martin** moved to send **S 1139** to the floor with a recommendation that it be referred to the Fourteenth Order for possible amendment. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**H 222**

**Relating to the Secure Treatment Facility Act.** **Cameron Gilliland** introduced himself as the Deputy Administrator for the Division of Family and Community Services at the Department. He oversees the Southwest Idaho Treatment Center (SWITC) and the State's crisis services for individuals with developmental disabilities.

**Mr. Gilliland** explained **H 222** authorizes the Department to establish, operate, and maintain a secure treatment facility for individuals with developmental disabilities who pose a threat to the safety of others. The facility would be located at the SWITC campus with a maximum of four beds. Currently, the SWITC is asked to serve some dangerous clients who have come through the court system and is not adequately equipped to do so. Courts are understandably reluctant to place someone in jail who is intellectually disabled or has severe autism but must assess if the client is competent to stand trial while assuring safety of the public and the client. Many of these clients who commit dangerous crimes such as murder, rape, and felony assault are placed at the SWITC instead of in jail while the court sorts out the issues. **Mr. Gilliland** displayed two items taken from clients, a spoon and a stick both fashioned into weapons, that might be used against other clients or staff. SWITC staff have collected dozens of such handmade weapons over the past couple of years.

**Mr. Gilliland** said the SWITC's licensure requirements do not allow for the center to be secure. Clients are free to move about the complex and the community as well as have access to personal and household items that they may use as weapons. The mix of little control and dangerous clients has resulted in significant worker's compensation claims and attacks on clients, staff, and the community, as well as multiple calls to law enforcement. During calendar year 2016, SWITC experienced a 29 percent rate of worker's compensation claims, meaning nearly one of three workers at the SWITC filed an injury claim, and 70 percent of those claims were the result of intentional attacks by clients. Last year, there were 784 assaults at the SWITC. Employee turnover at the SWITC is about twice that of the rest of the Department. During the past five years, there have been 12 medical layoffs. Workers have experienced traumatic brain injury, puncture wounds, human bites, and sexual assault, including injuries causing permanent disability.

**Mr. Gilliland** informed the Committee dangerous clients have also left campus and attacked members of the public. A woman who stopped to assist one of the runaway clients was assaulted by the client when she opened her car door to ask him if he needed help. Another client attacked and injured a child at the Walmart off Garrity Road. The need for secure facilities is ongoing and immediate. There is currently a SWITC client who attacks female employees without warning by grabbing their hair near the scalp. The client attempts to slam the employees' heads into her knee while shouting, "I will kill you." Only well trained staff and vigilance have prevented serious injury. This particular client had been in the Canyon County Jail and the Idaho Department of Corrections (IDOC) prior to coming to the SWITC. Due to the severity of danger posed by these clients, an emergency exists, and the Department is requesting authority to implement secure features as soon as the bill is signed into law.

**Mr. Gilliland** stated the bill contains safeguards to assure appropriate treatment and outside oversight. Idaho courts will provide oversight by determining who will come to the facility. A court must commit a client to the Department, and the court would have to find the client is appropriate to be confined to the State's secure treatment facility. In addition to court oversight, the Director of the Department will make the decision regarding placement. Additional outside oversight will be provided through licensure and rules to be developed after passage of the bill. Licensure will require an annual survey similar to the process currently utilized for the SWITC. Another form of oversight will be provided by the client's attorneys and DisAbility Rights Idaho, and both will have unfettered access to the clients in the secure facility.

**Mr. Gilliland** commented the bill does not result in a fiscal impact at this time. If the bill passes, some secure features such as locks, cameras, alarms, and possibly fencing of the current campus can be completed this year. Safety can be improved quickly, while the Department continues to explore the costs and benefits of constructing a new facility or remodeling an existing building. The cost of a new facility has been estimated at \$1.7 million, while remodeling a building would cost considerably less. The Department will work with the Governor's office and the Legislature to determine the best way to cover necessary costs in future years.

**Mr. Gilliland** said he bill represents significant collaboration and negotiation among several stakeholders, including the Administrative Office of the Idaho Supreme Court, DisAbility Rights Idaho, the Idaho Council on Development Disabilities, the American Civil Liberties Union, Canyon County Sheriff's Office and Prosecutor's Office, and the Idaho Sheriff's Association. At the final House hearing, no stakeholders spoke against the bill. Passage will allow the Department to more safely serve clients while protecting clients and the public.

**Chairman Heider** asked for a status update on a proposed plan to turn a facility in Eastern Idaho into a secure facility. **Mr. Gilliland** responded there are two facilities working their way through the process this year, and Chairman Heider may be thinking of the secure mental health facility for adolescents that has been discussed for Eastern Idaho. The secure facility contemplated under **H 222** is for the narrow population of individuals with developmental disabilities and possibly also mental health issues.

**Senator Martin** inquired about the source of funds to perform the security upgrades. **Mr. Gilliland** replied existing funds will be used this fiscal year. There are many buildings at the SWITC, and there is one building in current use that was built with stronger windows and doors that can accept locks. Fencing and a time-out room are also under consideration. No additional funding will be requested this year. **Senator Martin** further inquired how the new building or major renovation would be funded. **Mr. Gilliland** answered at one time it was contemplated to move the entire SWITC campus and sell the land. An architect drew up some plans for a new secure facility, and that was the source of the cost estimate. However, the Department is reviewing other options. Some secure features can be put on the existing building, but it may not turn out to be the best permanent situation. **Senator Martin** asked if there will be a request next year for additional money to enhance an interim facility. **Mr. Gilliland** replied he can't say for sure.

**Senator Lee** referred to page 1, line 29 of the bill that says, "when a person is the subject of a court order pursuant to Idaho Code § 56-1404 for admission to a secure facility, the department may disposition to the facility or another appropriate placement." She asked how that is language differs from current practice, and she further inquired what discretion is afforded the Department, since the court has determined the person should be at a secure facility. **Mr. Gilliland** responded if a person with developmental disabilities commits a crime and the court deems the person incompetent to stand trial, the court will commit the person to the Department, and this population is generally already going to the SWITC. The bill would give the Department a more secure option in the facility, and he does not foresee an increase in the number of clients coming to the Department. The Department's psychiatrist and clinicians make a recommendation to the Director whether a client goes to the secure treatment facility or is placed in the general SWITC population. Generally, the person would go to the secure facility while the Department assesses risk. If determined to be unsafe, the client would stay in the secure facility until it was possible to transition to the general population.

**Senator Lee** inquired whether this in any way will relieve the pressures on the county jails or IDOC facilities. **Mr. Gilliland** answered it will relieve the county jails to the extent it will be an easier choice for the court to send the person to the SWITC rather than to jail. However, the developmental disabilities population represents a narrow segment of the larger mental health population.

**Senator Foreman** asked whether there was any thought given to simply asking for emergency authority to put locks on the existing building and make it secure for the time being. That would allow time to get bids and finalize plans to either build a new building or convert an existing building, and the Department could come back later with a new bill to implement the final plan. **Chairman Heider** commented the SWITC property was going to be sold and the facility shut down, and the Department would have had a significant amount of money for different options. That is not going to happen now so the Department is looking to add security features now and possibly build a different facility later. **Mr. Gilliland** added this bill contains an emergency clause because some legislators suggested it is important to implement these provisions now due to the existing dangerous clients.

**Senator Anthon** referred to page 2 and the criteria for admission starting on line 38 and stated the criteria involves the court make a finding that the criteria have been met. He inquired what is the result if the court finds based on competent medical testimony there is a developmental disability but the Department disagrees. **Mr. Gilliland** answered the Court can commit and determine a developmental disability regardless of whether the Department agrees. However, the Department works with the court to make that determination. There have been cases where the Department disagreed, but the Department still gets the client, and the client will probably be sent to the SWITC.

**Vice Chairman Souza** asked if the Department will want a trailer bill to finance the \$1.7 million for this year. She further inquired how the Department will determine the true cost of the new facility. **Mr. Gilliland** responded the Department will not request additional funding this year. Costs for a permanent facility will be developed only if it is determined a different facility is required. Currently, there is one client to place in the secure facility, and in the past there has been a maximum of three clients at a time. The Department's primary concern is to develop some immediately safety measures, and it is possible no additional funding will be requested if the initial measures work. Primary treatment needs to be clinical and not based on walls and doors.

**Senator Lee** referred to page 3, line 1 of the bill that says the court shall order the person to be appropriate for admission to the facility. However, the bill goes on to say in the next section that admission to the facility will be determined solely by the director or the director's designee. **Senator Lee** asked if it is a policy change to give so much discretion to the Director. She is concerned there is no one else who can determine the client can be reassigned to a less restrictive facility. **Mr. Gilliland** asked for clarification on Senator Lee's question. **Senator Lee** gave the example of a person in a halfway house who takes a rod off the wall and beats someone to death. If the court finds this person is not competent to stand trial, the law says the person will be committed to the Department. The court may find the person is a terrible danger to others and order the person to a secure center, but the Department may or may not have a place to put the person. The bill would allow the Department to use its assessment to place the person in a lesser facility. In some cases, it results in placing people in the county jail or IDOC. **Mr. Gilliland** replied the current statute pertaining to persons with developmental disabilities says the Director and his designee have the authority to determine where someone is placed. Sometimes the courts will overemphasize the danger of a developmentally disabled individual, so the Department makes its own analysis based on years of experience. At present, everyone who comes to the Department from the court is able to walk off the SWITC campus and do harm to other people. The bill would not solve the problem described, but it solves a problem for the Department in that there is currently no secure facility, and the Department sometimes gets dangerous clients.

**TESTIMONY:**

**Christine Pisani** introduced herself to the Committee on behalf of the Idaho Council on Development Disabilities (ICDD) and stated the ICDD has agreed not to oppose the bill after it was changed from initial versions. **Ms. Pisani** testified in accordance with Attachment 1. She expressed concern regarding cuts in funding for psychiatric rehabilitation treatment services and disagreed with the characterization that violent behavior has increased in the developmental disabilities population. She urged the Department to work with stakeholders to develop plans for services designed to prevent violent behavior and reduce incarceration, and to provide these services in home communities.

**Senator Lee** asked whether Ms. Pisani believes there is a need for a place to securely house dangerous individuals away from others. **Ms. Pisani** responded the community has suffered greatly at the loss of mental health services to meet the needs of the developmental disabilities population. Additional mental health services would likely prevent this type of placement.

**TESTIMONY:**

**Jim Baugh** introduced himself to the Committee as the Executive Director of DisAbility Rights Idaho (DRI), which is the protection and advocacy system referred to in the statutes. His organization provides free legal and advocacy services, including public policy analysis for Idahoans with disabilities, and has unique federal authority to investigate instances of abuse and neglect in the disability population.

**Mr. Baugh** stated DRI is not unconcerned about the safety of residents, and resident to resident abuse is one of the types of situations DRI investigates. He understands the need to design a physical setting that is a safer environment allowing for better observation and interventions to prevent injuries. **Mr. Baugh** complimented the Department for working through several versions of the bill and negotiating with stakeholders.

**Mr. Baugh** reiterated Ms. Pisani's comments that developmental disabilities haven't fundamentally changed, but what has changed is people with developmental disabilities are not getting adequate mental health treatment services because Idaho has not developed its mental health facilities with that specialty in mind. This is a small sub-population, and while people with developmental disabilities are more likely to have or develop a mental illness, it is a difficult sub-population to treat. Standard mental health treatments require patients to provide feedback and manage medications, and that is more difficult for a person who has limited communication or may not understand abstract concepts. It is an area for improvement, and in other states it has been shown that specialized treatment can prevent people from becoming violent.

**Mr. Baugh** commented the language about the Department making decisions about moving someone in and out of the secure facility pertains to moving the person between the secure building and the general SWITC population. Those decisions are more competently made by the clinical staff and the Department, as opposed to the court. The statute does not give the Director of the Department the authority to place a person in the jail. That placement would have to be done by the court.

**TESTIMONY:**

**Kieran Donahue** introduced himself as the Canyon County Sheriff and also on behalf of the Idaho Sheriff's Association. He said this bill is about the safety of the client as well as the public and other clients.

**Sheriff Donahue** stated the Canyon County jail currently has a unique individual at the jail who was taken on by the Department about ten years ago and is now in her mid-20s. This client has been deemed to be a dangerously mentally ill person and was found incompetent to stand trial by a district judge. The client has been housed at the Canyon County jail intermittently over the last two years, and in that time she has injured nine jail staff. Three of the nine injured jail employees were seriously injured, and one nearly lost her arm. Jail staff are not trained mental health professionals, and the jail is not built to house such mentally ill persons.

**Sheriff Donahue** explained the client has been charged with 17 felonies in Canyon County, and there was no place to house her. IDOC was asked to take her and she was housed in the penitentiary on two occasions but never convicted of a crime. She is so incredibly strong, she must be restrained with belly chains and leg irons. This is someone's daughter and sister, and his staff see her that way. The staff sings to the person because she has the mental capacity of a seven year old and it calms her down. Because she has a tendency to slam her head on concrete floors and walls when she doesn't get her way, the client wears a helmet at almost all times. A few months ago, her restraints were removed, and one day she took her helmet off and tore it in two with her bare hands. Idaho, the courts, and the Department must have a place to secure these mentally ill patients with developmental disabilities who have been found incompetent to stand trial, both for their own safety and the safety of others.

**Mr. Gilliland** returned to the podium to summarize the presentation of the bill. The Department is asking for another tool to serve individuals with developmental disabilities and mental health issues. The Department has worked hard to collaborate with providers and other stakeholders and came up with the best bill possible. It doesn't solve some of the general issues around mental health, but it offers the stakeholders another option to provide more safety for all clients and staff. The SWITC is the best place for this individual, and the SWITC staff is properly trained and has had some success with this individual for the past month.

**Senator Anthon** stated he supports the general policy idea but he still has concerns. In a situation where a person who is charged with a crime, the magistrate judge will make a legal determination as to whether the person has a developmental disability. This bill says unless the Department agrees with the judge, the judge will not have this tool available for the person charged with the crime.

**Mr. Gilliland** answered if the person has a developmental disability, it is a rare occasion that the Department would not agree. In guardianship and competency cases, the judge gives notice to the Department, and the Department refers the matter to an evaluation committee, including a doctor, psychologist and social worker. The evaluation report goes to the court saying whether or not the person has a developmental disability. The judge would still commit the person to the Department. In those cases, the Department still has the person, and the person would likely be at the SWITC anyway. They would all be the Department's issue.

**Senator Anthon** stated at the end of the proceeding, it is the judge who decides who is developmentally disabled, and he asked why this language was inserted in the bill to authorize the Department to make that decision instead of the judge.

**Mr. Gilliland** responded he is not sure. The Department wants to be involved in making the determinations.

**Brent King** introduced himself to the Committee as Deputy Attorney General for the Department. The Department's determination that developmental disability is the primary diagnosis has two functions. The first is to determine the nature of the incompetency, whether because of a developmental disability or a mental illness. The determination also prevents conflicting results between Department personnel or programs and allows the Department to place the person in the most appropriate program. The legislation deals specifically with the situation described by Mr. Baugh, which is the Department's ability to move a person back and forth between the secure facility and the general population, whether it's the SWITC or some other mental health program. The Department is not trying to supplant a judicial decision of any sort, and if a judge commits someone to the Department, the Department will have that person.

**MOTION:** **Senator Lee** moved to send **H 222** to the floor with a **do pass** recommendation. **Vice Chairman Souza** seconded the motion.

**DISCUSSION:** **Senator Lee** expressed appreciation to the Department for working so hard to bring forward another tool. There are still a few concerns but she will support the bill because these options are needed. She looks forward to implementing other preventative issues and collaboration to review how this has worked and make any needed changes.

**Chairman Heider** commented this is a tool to help the Department carry out its obligations and it is needed.

**Senator Anthon** said he has some concerns about the bill but he will support the motion. These matters involve a crime and committing someone to State care, and someone's fundamental rights are being taken. At some point, there must be a very good judicial process. This kind of discretion in the Department is concerning, and he hopes there will not be problems as a result.

The motion carried by **voice vote**. **Senator Foreman** requested he be recorded as voting nay.

**Chairman Heider** announced the House Health and Welfare Committee would meet on March 14, 2017 at 9:00 a.m. to hear about issues with the Veyo contract.

**ADJOURNED:** There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:17 p.m.

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Senator Heider  
Chair

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Jeanne Jackson-Heim  
Secretary