

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 29, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Senator Lakey

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) at 1:32 P.M.

PASSED THE GAVEL Chairman Lodge passed the gavel to Vice Chairman Lee.

DOCKET NO. 11-1101-1701 **Rules Governing the Idaho Peace Officer Standards and Training Council** presented by Victor McCraw, Idaho P.O.S.T. (POST) Division Administrator, and Dennis Stevenson, State Administrative Rules Coordinator. **Vice Chairman Lee** explained that this docket was before the Committee previously and requested recommendation on handling changes in the Rule. **Mr. Stevenson** deferred to **Mr. McCraw** for explanation regarding how to correct the desired changes.

Mr. McCraw explained Subsection 064.05 was where the change was sought removing "before God" and replacement with the phrase "with sincere and unfaltering commitment." He noted previous deliberations on this language change in the House of Representatives. He explained the necessity for the change and reiterated the violation of the First Amendment of the United States Constitution. He advised the POST Council is set to deliberate how to protect itself from a violation of the First Amendment.

Mr. McCraw explained that adding the words "and / or" after the phrase "before God" will be taken up in the March 2018 POST Council meeting. He noted the goal, once the Council votes, will be to present this as a temporary rule once the Legislative Session is over. He clarified that these word additions are not intended as the official 'oath of office' swearing in ceremony. He commented that the 'oath of office' is administered including the words "so help me God," unless the judge or agency representative offers alternative language.

Mr. Stevenson noted additional changes in Paragraph 201.01.d regarding "intermediate certificate". He noted that in sub-paragraph d there was a change inadvertently added by the Office of the Administrative Rules Coordinator (OARC). He proposed the Committee reject the erred language in Paragraph 201.01.d so the codified language would remain in place. **Vice Chairman Lee** clarified the rejection as was sought by the OARC.

Senator Hagedorn stated that the rule was previously approved and asked if that negates the ability to create a temporary rule. **Mr. Stevenson** responded

that rules are unlike legislation, and in that regard, they can be altered until the letter is submitted for action to be taken on the rule. He noted the rule could be brought back several times if needed. He noted, in this instance, it would be favored to reject the language in the Paragraph. **Senator Hagedorn** remarked how the Committee would note the language then defaulted to the original text.

Senator Anthon asked, since the council will be voting on the new proposed language in March, would it then also be indicative that the new proposed language be rejected as well. **Mr. Stevenson** responded that it would be exactly so. He proposed the Committee move to reject both of the parts of the rule as previously discussed by Mr. McCraw in Subsection 064-05 and Paragraph 201.01.d. He noted this would clear up any inconsistencies.

MOTION: **Senator Anthon** proposed to reject Subsection 064.05 and Paragraph 201.01.d of the **Docket No. 11-1101-1701**. **Senator Hagedorn** seconded. The motion passed by **voice vote**.

RS 25656 **Relating to Peace Officers Standards and Training** by Victor McCraw, Idaho P.O.S.T. Division Administrator (POST). Mr. McCraw presented this Routing Slip (RS). He noted this legislative change would change the membership of the POST Council. He noted the changes would amend the positions to one Chief of Police, one County Sheriff, the removal of representative of the Federal Bureau of Investigation (FBI), and the inclusion of the County Justice Administrator (CJA).

Mr. McCraw indicated better representation was sought on the council from the various geographical regions of the State. He noted it is the preference that the FBI should not interfere with the activities of the local government. He remarked the involvement of the FBI affects the delivery of local law enforcement noting how this prohibited their services and affected timely voting.

Mr. McCraw commented that the council would benefit from an added position of a County Juvenile Administrator. He noted the counties are underrepresented or lack sufficient representation altogether.

DISCUSSION: **Senator Anthon** asked if the position within the County Juvenile Justice Department language was statutorily defined for the office position of CJA. **Mr. McCraw** responded that the office was not statutorily defined; however, it was designated in the POST rules including this new position.

Senator Potts asked if there was a benefit to adding a CJA and simultaneously leaving the FBI agent position intact. He asked if that would better serve the council. **Mr. McCraw** responded that the FBI agent did not benefit POST. He noted it was decided since the FBI is not a stakeholder in POST, except in those circumstances when it offers intermittent advice, membership on the council was not warranted.

MOTION: **Senator Hagedorn** moved to send **RS 25656** to print. **Vice Chairman Lee** seconded. The motion passed by **voice vote**.

Relating to Correctional Facilities Amending § 20-237B of Idaho Code Regarding Medical Costs of State Prisoners Housed in Correctional Facilities by Pat Donaldson, Chief of Management Services Division, with the Idaho Department of Correction (IDOC). Mr. Donaldson noted that his department is responsible for providing health care services to approximately 7,600 inmates in the State of Idaho. He noted the department contracted all the services with Corizon, a third-party vendor. He noted Corizon is responsible for all costs ranging from internal prison health-care services, as well as off-site outpatient services. He noted the legislation is intended to limit the departments exposure to the level of risk assumed by the State of Idaho and to the indigent population of the state by way of Medicaid.

Mr. Donaldson commented that lack of this legislation would create an assumed risk for the IDOC with respect to how Medicaid payments are handled. He noted the use of this statutory amendment would result in significant savings to the State. He explained that the IDOC did not have adequate staff to process the Medicaid program and its services. He commented that this amendment required adding language to Idaho Code § 20-237B to include a privatized medical provider under contract with the IDOC, such as Corizon. He noted the benefit for the payment regarding provider services rendered for off-site medical services are calculated at an amount no greater than Medicaid rates.

Senator Burgoyne noted that once the bill is before the Committee for a hearing on the merits, he will be interested on the escape clause from the Medicaid provision and how it operates.

MOTION:

Senator Anthon moved to send **RS 25864** to print. **Senator Burgoyne** seconded. The motion passed by **voice vote**.

**GUBERNATORIAL
APPOINTMENT
HEARING**

Committee Consideration of Eric Fredericksen for the Appointment to the State Public Defense Commission (PDC). **Mr. Eric Fredericksen**, Director of the Idaho State Appellate Public Defender's Office, commented on his personal experience and background. He noted the activities of the PDC and the five year plan allowing for public defenders to manage their time and meet regulations in timely fashion. He noted he currently holds the Vice Chairman seat of the PDC.

Senator Burgoyne asked regarding the future of public defense in the State of Idaho. **Director Fredericksen** commented on the lawsuit from which the PDC was exempt. He noted the future of PDC in Idaho is changing in a very positive way. He remarked the funds appropriated by the Committee were making a difference.

Senator Burgoyne asked if the PDC in Idaho is improving. He noted the importance of the State Appellate Public Defender position and it's lead also on the PDC. **Director Fredericksen** noted the public defenders will have more case work, in his opinion, as the issues will be preserved to be taken up on appeal. He noted the post conviction area may decrease.

Senator Hagedorn asked regarding the gap in background upon graduating from University of Idaho in 1999 through 2002. **Director Fredericksen** responded that three-year period accounts for his attendance at University of Idaho College of Law. **Senator Hagedorn** noted a secondary gap which commenced in 2012 where Director Frederickson resigned from the the SAPD. **Director Fredericksen** responded that his inherent nature is to root for the underdog and thus why he returned to the SAPD where he truly feels

he belongs. He added he grew up in Jerome County, Idaho.

Chairman Lodge noted the vote on the confirmation of Director Fredericksen will take place during the next Committee meeting.

RS 25787

Relating to Legal Immunity from Civil Liability Amending Idaho Code § 5-344 Regarding Rendering Aid to a Certain Person(s) in a Motor Vehicle by Senator Mark Nye. **Senator Nye** presented this Routing Slip (RS). He noted this legislation will ensure babies and children are not left in vehicles during critical temperatures, even for a short amount of time . He remarked this allows individuals rendering aid to a baby or a person trapped inside a car to be exempt from civil and criminal prosecution.

DISCUSSION:

Senator Foreman remarked that, although both bills are well intended, his personal experience on the police force involved responding to 911 calls of this nature when outside temperatures reached critical levels. He recalled that, in those instances, only one out of the 100 calls was life threatening for a human. He noted, frequently, police officers had to refrain and even restrain bystanders from smashing windows on vehicles in attempt to rescue a child or pet trapped inside. He elaborated that in many of these instances the individuals did not need to be rescued. He commented on the erroneous public perception of "reasonable judgment." He noted that frequently error in judgement caused individuals to have the wrong perception whether a circumstance warranted the rescuing of others. **Senator Nye** responded that since 1998 there were 742 instances where children died in a hot vehicle after being left unattended. He noted all of those deaths were preventable.

Senator Potts asked regarding an existing law that allows for law enforcement to enter a vehicle to remove a distressed child from overheating in a car.

Senator Nye responded he was unsure if such law existed. He noted there is a 'Good Samaritan Statute' that grants immunity to individuals providing aid to others in motor vehicle accidents.

Senator Burgoyne stated it is a principle of criminal law that, if one is acting with necessity to save a life, one is immune from prosecution. **Senator Nye** responded by giving an example, if in emergency circumstances one is speeding to get to the hospital, does that warrant immunity from getting a speeding ticket. He affirmed one is not immune. He noted there has to be a union of acts and intent.

Senator Hagedorn commented by providing an example that, if in a situation where he would leave his dog in the car with the windows cracked, would that in turn give a passerby permission to break the windows open. He noted the reasonable action on his part, as an example, was that the cracked window sufficed for the dog to breathe. He elaborated that, in someone else's reasonable thought, that might not be enough and they might proceed to break the car window. He asked if that were to become law would he be reimbursed for the vehicle windows being broken.

Senator Nye responded that if the vehicle was insured then Senator Hagedorn would be reimbursed. He noted how this legislation would protect the Good Samaritan providing aid to the dog. He elaborated that since he embarked on presenting this legislation he found many cases where the cracked windows are insufficient for a baby or a dog. He commented that he learned from the various studies that the temperature of 80 degrees outside reached 109 degrees inside. He noted that children get heat stroke at temperature of 107 degrees. He explained that after 40 minutes inside a

vehicle temperatures reach 118 degrees.

Senator Hagedorn inquired regarding the size of the cracked window needing to be, and asked if four- five inches was enough. **Senator Nye** responded he was not aware.

Senator Hagedorn inquired if his automobile policy had a \$500 deductible then he would not be reimbursed for a broken window. He noted all this would stem from someone else erred judgement that the window warranted breaking.

Vice Chairman Lee asked if there was research available to confirm that individuals are hesitant to break a window in the event of an imminent harm to a baby. She commented if this was something where citizens were doing for fear of civil or criminal liability. **Senator Nye** responded that he didn't come across the research. He recalled living on the East Coast of the United States where individuals would frequently disregard someone who was injured and walk by. He noted that, if individuals are reluctant to aid, perhaps this might be something that Senator Foreman touched upon.

MOTION: **Vice Chairman Lee** moves to send **RS 25787** to print. **Senator Burgoyne** seconded. **Senator Foreman** voted **nay**. The motion passed by **voice vote**.

RS 25916 **Relating to Legal Immunity from Civil Liability Amending Idaho Code § 5-345 Regarding Rendering Aid to a Pet in a Motor Vehicle** by Senator Mark Nye.

MOTION: **Senator Anthon** moved to send **RS 25916** to print. **Senator Burgoyne** seconded. **Senator Foreman** voted **nay**. The motion passed by **voice vote**.

Senator Anthon commented there may not be support for this legislation but it warrants valid discussion and he supported the motion.

Senator Foreman commented he could not support printing this legislation because of his experience in this area. He noted the way the system works allowing the police to make the judgment call as to what response is warranted or if in fact, a malicious injury or property is to be damaged under exigent circumstances. He noted, if the law is modified and gives people immunity from improper judgment damaging property, there may be ramifications in that legislation.

Senator Burgoyne commented that the printing of this legislation warrants what can be learned.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:23 p.m.

Senator Lodge
Chair

Anna Wroblewski-Jones
Secretary