

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 14, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Hagedorn, Lakey, Anthon, Foreman, Potts, 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 Judiciary & Rules Committee (Committee) to order at 1:32 P.M.

GUBERNATORIAL APPOINTMENT HEARING: **Committee Consideration of the Gubernatorial Appointment of Dr. Karen Neill to the Commission on Pardons and Parole (Commission).** **Dr. Neill** described her research background and publication experience. **Dr. Neill** explained her perspective on the connections between the criminal justice system and human services. She expressed her desire to bring a health care perspective to the Commission.

DISCUSSION: **Senator Burgoyne** asked Dr. Neill to share her perspective on the Commission's role in the rights of people after incarceration and how her background prepared her to make those kinds of decisions. **Dr. Neill** noted the experience she gained in forensics, specifically her expertise in domestic violence. She highlighted the importance of viewing cases in a comprehensive fashion.

Vice Chairman Lee asked for Dr. Neill's perspective on the workload of the Commission. **Dr. Neill** responded the workload is heavy however she is committed to the time it takes to make critical decisions and emphasized the importance of balancing her time.

Chairman Lodge inquired as to what Dr. Neill saw as the most important needs of the Commission. **Dr. Neill** noted the workload can be intense but maintaining balance in the decision-making process is vital.

RS 26075 **Relating to Expungement of Fingerprint and Criminal History Amending Idaho Code § 67-3004.** **Senator Burgoyne** gave a brief overview of this expungement provision. The provision is limited to those who are not charged by indictment or information within a year of arrest or service of a criminal summons. This RS would expunge the publicly available law enforcement records of the Idaho State Police Bureau of Criminal Identification, the FBI and the public court file. Law enforcement's internal records are not expunged, not publicly available, and not shared with the public. If law enforcement maintains a file on an individual because they suspect them of criminal activity, those internal records are not removed and do not get expunged.

DISCUSSION: **Senator Hagedorn** inquired as to whether this would impact situations where someone had been arrested in Ada County and the charges were dropped, but their record of arrest and mugshot remain on the Ada County web site. **Senator Burgoyne** explained this RS is not a clawback for such situations.

Senator Lakey questioned if there was any input from prosecutors regarding the bill. **Senator Burgoyne** offered to answer that question at the hearing, as he could only speculate at the moment.

MOTION: **Senator Foreman** moved to send **RS 26075** to print. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

S 1240 **Relating to Juvenile Corrections; Regarding Notification Given Upon Release of Juvenile Offenders.** **Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC), presented **S 1240**, which intends to align law with current practice regarding the mandate for IDJC to notify all stakeholders when a juvenile is released from IDJC custody.

DISCUSSION: **Senator Potts** questioned why this is in statute when it could be put in rule. **Ms. Harrigfeld** explained this is clarified in statute. **Senator Potts** questioned why putting it into rule would not be sufficient. **Ms. Harrigfeld** answered, if the Legislature would prefer, IDJC would conduct rulemaking revisions.

Senator Anthon asked what would need to happen if new rules were needed. **Ms. Harrigfeld** responded IDJC would have to create a whole set of rules for such situations. **Senator Burgoyne** voiced his support for clarifying in a statute instead of a rule because this adds more permanency to the issue of ensuring victims' rights.

MOTION: **Senator Burgoyne** moved to send **S 1240** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

DISCUSSION: **Senator Potts** voiced support for preference for putting this in rule as that would allow changes. **Senator Hagedorn** expressed hesitation toward rulemaking. He voiced concern over generating more paperwork and more rules for something that is already well-stated and clear.

VOTE: The motion passed by **voice vote**.

S 1242 **Relating to Juvenile Corrections; Regarding Revision to Escaped Juvenile Offender.** **Ms. Harrigfeld** presented **S 1242**, which clarifies several definitions in Idaho Code.

MOTION: **Senator Anthon** moved to send **S 1242** to the floor with a **do pass** recommendation. **Senator Potts** seconded the motion. The motion passed by **voice vote**.

S 1244 **Legal Immunity for Persons Aiding Pets in Vehicles.** **Senator Nye** explained this bill pertains to domestic pets inside cars that are at risk of serious injury or death. This bill gives protection from claims against citizens who respond in good faith. (Attachment 1 & 2)

DISCUSSION: **Senator Lakey** questioned the meaning of a reasonable, good faith effort. He provided an example of somebody that leaves their dog in the car with the window down and some water in a dish. They may think they are being reasonable, but somebody may be a little more strident and not think that is reasonable and break the window to get them out. **Senator Nye** responded, as it is written, it would be whether a reasonable person would have thought that was a reasonable act.

Senator Foreman asked why the bill is necessary when there is a system in place where the police deal with this kind of situation professionally in a matter of minutes. **Senator Nye** answered about 20 other states have the same or similar legislation. Other states have faced the same issue and come to the conclusion that this is a way to encourage people not to have their dogs at risk.

Senator Lakey requested clarification as to whether a person is immune from liability if they have a reasonable, good faith belief and they act on it or if feasible they contact law enforcement before, or immediately after, entering.

Senator Hagedorn questioned whether a person can be charged with trespass for breaking into the vehicle. **Senator Nye** responded in the negative. **Senator Hagedorn** asked what would happen if someone did excessive damage to a vehicle as retaliation for something else, but then claimed they damaged the vehicle to free a dog. **Senator Nye** responded that goes to the good faith nature of the conduct and that the individual could be prosecuted to the full extent of the law.

Senator Lakey voiced support for the individual contacting law enforcement before acting.

Senator Burgoyne raised the possibility that when amendments are added to this bill, clarification could be provided regarding what constitutes a good faith intrusion into a vehicle.

MOTION: **Senator Anthon** moved to send **S 1244** to the 14th Order for possible amendment. **Senator Lakey** seconded the motion.

DISCUSSION: **Senator Anthon** stated this legislation needs to be supported, but language needs to be effective so that it is supported.

VOTE: **Senator Foreman** moved the bill be held in committee. He stated the bill is very well intentioned however opens up many possibilities for abuse. The motion failed for lack of a second.

DISCUSSION: **Senator Potts** noted in the 600 e-mails received regarding this issue, very few were from the east side of the state.

TESTIMONY **Dr. Jeff Rosenthal**, D.V.M., Executive Director of the Idaho Humane Society, Inc.(IHS), and veterinarian, testified that these cases occur throughout the State. In the past 12 months, IHS responded to 230 calls for dogs in hot cars. Ultimately, it is a judgment call on the part of the officers to open the vehicle, but procedures are followed: they attempt to validate the conditions under which the animal is being kept with infrared thermometers and also typically videotape or photograph the animal in the car.

Wyoma Clouss, constituent of District 21, is a member of the Idaho Dog Coalition, which includes kennel clubs and hunting dog clubs throughout the State. She questioned whether every rescuer can accurately determine if a dog is in distress. She also mentioned the issue of secondary liability and whether there is rescue work required to take the rescued dog to the local veterinarian

for treatment or evaluation. She questioned who would give permission for treatment and who would pay for it. She queried who would be responsible if the rescued dog bites someone or a bystander or if the dog gets loose and is injured or killed.

Lisa Kauffman, vice president of Spay Neuter Idaho Pets, Inc. (SNIP) stated her support for **S 1244**. She stated that if an animal is left in a vehicle, law enforcement should be contacted first, but entering the vehicle should also be an option.

DISCUSSION:

Senator Potts noted that being reasonable is unpredictable and reasonable people can be very unreasonable at times. **Ms. Kauffman** noted it does not matter if a person is reasonable or unreasonable, their decision to break into a car when there is a suffering animal or baby is reasonable.

Senator Burgoyne remarked that the reasonable person standard makes him uncomfortable with this legislation. When a judge or jury reviews the case in hindsight, they could second guess whether the person who enters the vehicle acted as a reasonable person.

Senator Hagedorn proposed a hypothetical situation in which a dog is in duress and the police are called. As individuals are getting ready to break the window, the owner of the car arrives, opens up the car, and releases the dog but the dog dies. The way this bill is written, that person would have immunity because that is the person who opened the car to save the dog. **Ms. Kauffman** believes the feeling of guilt on the part of the owner would be punishment enough.

Senator Hagedorn said the way the bill is written, the person leaving the dog or child in the car is provided immunity. **Ms. Kauffman** deferred to **Senator Nye**, who noted that one can always overanalyze a statute. He also pointed out this was written because there are already 10 or 12 or more states that have laws similar to it.

MOTION:

The motion passed by **voice vote**. **Senator Foreman** and **Senator Potts** voted **nay**.

S 1245

Legal Immunity for Vehicle Entry. Senator Nye presented **S 1245**, which proposes to protect the Good Samaritan from legal claims when they act in good faith. **Vice Chairman Lee** asked whether there is any information in Idaho on situations where someone has been unable or unwilling to break a window to save a child. She also inquired if, in the event that a window was broken to save a child, there were any sanctions for that action. **Senator Nye** stated this legislation is put forth to prevent injury and death to children.

Senator Lakey noted calling law enforcement when a baby in duress in a car seems unnecessary, and the passerby should just save the child. **Senator Nye** expressed he trusted the judgement of Senator Lakey and Chairman Lodge.

Senator Hagedorn hypothesized a situation of a babysitter who leaves a baby in a car and discovers the baby unconscious. This bill seems to provide her immunity. **Senator Nye** offered to get an opinion from the Attorney General.

MOTION:

Vice Chairman Lee moved to send the bill to the 14th Order for possible amendment. **Senator Anthon** seconded the motion.

DISCUSSION: **Senator Foreman** pointed out that individuals could be slumped over and appear to be in distress, but actually sleeping. He also questioned how this bill is better than the 911 protocol currently followed. **Senator Nye** noted the timing factor and how patrols can take several minutes to arrive. **Senator Foreman** noted that in Moscow his patrol would arrive on the scene in no more than four minutes. He noted this bill could benefit from a rewrite.

Senator Potts stated his belief that a reasonable person would act in this situation. **Senator Lakey** observed Idaho has Good Samaritan statutes that really apply more to helping somebody in an accident but there could be some language or modeling that could be used and incorporated in this situation. **Senator Burgoyne** stated the response time in Idaho depends on where the individual is located and, in remote locations, law enforcement could not be accessed quickly.

VOTE: The Committee voted to send **S 1245** to the 14th Order for possible amendment. The motion passed by **voice vote**. **Senator Foreman** and **Senator Potts** voted **nay**.

GUBERNATORIAL APPOINTMENT **Committee Vote for Gubernatorial Appointment of Nicole Fitzgerald as the Director of Idaho Office of Drug Policy.**

VOTE:

MOTION: **Vice Chairman Lee** moved to send the gubernatorial appointment of Nicole Fitzgerald, as the Director of the Idaho Office of Drug Policy, to the floor with a recommendation that she be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The appointment passed by **voice vote**.

Senator Lodge
Chair

Anna Wroblewski-Jones
Secretary

Samuel Griffin
Assistant Secretary