

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 07, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/EXCUSED: Senator Foreman

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) to order at 1:33 p.m.

RS 26296 **Relating to Judicial Review; To Revise Provisions Regarding Judicial Review of Decisions of Boards of County Commissioners and to Specify Procedural Provisions.** **Mike Kane**, Idaho Association of Counties, presented **RS 26296** and stated it is a trailer to a bill that left the House. The bill proposes to revise the Idaho Administrative Procedures Act (IDAPA), yet is silent regarding how counties will operate politically as to their land use planning functions. The RS is designed to allow counties to use what is currently in IDAPA statute for land use planning decisions. **Mr. Kane** also noted the proposal is to have a State hearing officer conduct the hearings. He stated this would not work at the county level.
Senator Burgoyne commented on a miscommunication made during drafting of the legislation that left the House. He remarked, in his opinion, the RS is both necessary and complementary to the IDAPA.

MOTION: **Senator Burgoyne** moved to print **RS 26296**. **Vice Chairman Lee** seconded the motion.
Senator Lakey disclosed a potential conflict of interest pursuant to Senate Rule 39(H).

VOICE VOTE: The motion carried by **voice vote**.

H 499 **Relating to County Records; To Provide for Classification and Retention of Law Enforcement Media Recordings.** **Mike Kane**, Idaho Sheriff's Association, related **H 499** is a joint effort from both the Association of Counties and the Idaho Sheriff's Association. The legislation addresses the retention of media by law enforcement officers. He asked permission to yield to Terry Derden for further clarification.

Terry Derden, Associate Legal Advisor, Ada County Sheriff's Office, presented **H 499**. He listed three issues law enforcement agencies often encounter regarding their body camera programs: 1.) retention of large amounts of data; 2.) relaying information to prosecutors for discovery; and 3.) handling public releases. He indicated retention of data, and the cost associated with the retention of data, is one of the main issues preventing agencies from maintaining a body camera program. Currently, digital media recordings are required to be kept for a minimum of two years. The approximate annual cost to store the data is around \$1,000 per employee. **Mr. Derden** asserted approximately 60-70 percent of that data does not need to be stored. He noted the possibility of doubled storage when files are sent to the prosecutor for discovery.

Mr. Derden explained **H 499** would set a minimum retention requirement for specified digital media files based on evidentiary value. The dates range from a minimum of 14 days to 200 days or longer. Finally, a "waterfall approach" would be used for deletion of recordings. A time limit would be set in the system, then the day after, the recordings would be deleted. **Mr. Derden** recommended setting time limits slightly above minimum retentions to ensure the agency had time to respond to complaints and investigations.

DISCUSSION:

Senator Burgoyne requested confirmation from Mr. Derden regarding the provisions on page two. He asked Mr. Derden to confirm counties would preserve information if there was a legal independent duty to do so. **Mr. Derden** replied that is correct, there is flexibility with the minimum floor. **Senator Burgoyne** asked for confirmation exculpatory material would be maintained. **Mr. Derden** confirmed. He added the information is forwarded to the prosecutor who would then preserve the data in their own format. He pointed out Ada County had software system that could track the location of the recording and mark its status in a case.

Senator Hagedorn asked if the need for the legislation would exist if they had access to unlimited memory. **Mr. Derden** said as a lawyer, he would not recommend deleting anything. **Senator Hagedorn** inquired as to whether compression technology was an option. **Mr. Derden** said options used to control space include using lower video resolution and writing clearer policies regarding what will or will not be recorded. **Senator Hagedorn** reworded his question. He asked if they were currently using compression programs to limit the amount of space required for storage. **Mr. Derden** replied he could not answer for all agencies. He said Ada County uses Axxon.

MOTION:

Senator Potts moved to send **H 499** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

DISCUSSION:

Senator Hagedorn commented Idaho has one of the biggest memory manufacturers in the world. He stated perhaps the Committee should consider a central repository for memory storage to keep the money in state.

VOICE VOTE:

The motion carried by **voice vote**.

H 530

Relating to Courts; Criminal Case Payments. **Jason Spillman**, Legal Counsel, Idaho Supreme Court (ISC), presented **H 530** and stated it addresses the distribution of partial payments by criminal defendants. **Mr. Spillman** said at sentencing, and at their discretion, judges can impose upon a defendant certain fees, costs, fines, or restitution payments. These fines and fees are used to fund several programs in lieu of monies from the General Fund. Counties receive these funds to pay for programs such as misdemeanor probation and problem-solving courts. The fees are paid to the court, the court must then disburse the funds to the various agencies. The defendant often cannot pay the entire amount due and enters into a payment arrangement with the court. **H 530** attempts to establish a

disbursement schedule in a single statute to prioritize disbursement of the monthly payments.

Mr. Spillman stated there are 24 possible fees. The first five of the fee disbursements are based upon the rules of statutory construction. The legislation would give guidance over the remaining 19 where priority has not been established. The legislation would also allow the court to program their case management system to establish a record of fees paid, received, and disbursed, and would allow for automation of the process.

Mr. Spillman explained the rationale behind the suggested ordering in the statute. He noted the bill gives heed to the prior announcements of previous legislatures regarding which fees should be disbursed first. And, the bill addresses the funding needs of important county public safety programs. He added since every case is different, generalizations needed to be made. He also noted victim's restitution is unique in that it is the only one that is not required to be paid through the clerk of the court. (Attachment 1)

DISCUSSION: **Senator Burgoyne** wanted to verify he understood how the distribution of payments worked. **Mr. Spillman** described each of the fee categories as representing a bucket. He said each bucket must be full before moving to the next bucket. **Senator Burgoyne** asked if restitution to victims was number six based on court interpretations of the legislative enactment. **Mr. Spillman** stated that was true to some degree. He noted the programs served by three and four on the list were hardest hit.

Senator Burgoyne asked what position nine and ten formally held since these fees went to the Idaho Supreme Court and had been lowered in priority. **Mr. Spillman** stated they were previously six and seven, below victim's restitution. **Senator Burgoyne** asked if the bill lowered the priority of the restitution to victims. **Mr. Spillman** responded it currently occupies the fifth spot. Three and four are mutually exclusive and often a defendant does not participate in both.

Further discussion ensued concerning victim's restitution as a priority.

Senator Nye asked if there could be one bucket instead of 24. **Mr. Spillman** replied there could be one and they could be pro-rated; however, the bill was drafted in its current form because previous legislators chose to give the disbursements of certain fees priority of other fees. They also indicated no desire to pro-rate.

Senator Hagedorn stated he felt the ordering was correct. The computer needs human input to order the fees. He noted the possibility of the defendant being returned to jail because they did not receive probation or drug court services. Should the defendant be returned to jail, restitution would not happen. They needed to be able to fund the programs that would ensure the person who is paying restitution would be able pay.

MOTION: **Senator Hagedorn** moved to send **H 530** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

DISCUSSION: Discussion again ensued concerning victim's restitution as a priority.

Chairman Lodge commented on the need to have a mentoring system in place to encourage the defendants to become productive, accountable citizens.

MOTION: The motion carried by **voice vote**.

Relating to Bail Enforcement; To Provide that Bail Enforcement Agents May Arrest a Defendant in Certain Circumstances. **Mike Kane**, Idaho Sheriff's Association, presented **H 534** and stated it was the result of three years work involving numerous law enforcement agencies and the bail industry. The bill is a compromise bill to set guidelines to the profession of bounty hunting. Part one states who can be a bail enforcement agent. There is an age requirement of at least 21 years of age, the individual cannot be adjudicated mentally ill, nor be a fugitive. Page two details specifications for an arrest.

Bail agents are required to have with them an affidavit, identifying information of the defendant, and identifying information for themselves - including who they work for. In order to do a planned apprehension, they must wear identifying clothing, and notify law enforcement of the planned apprehension. Finally, bail agents are prohibited from representing themselves as police officers and carrying weapons - unless legally allowed to do so.

DISCUSSION: **Chairman Lodge** asked if this is the legislative work of previous years. **Mr. Kane** confirmed.

Senator Anthon inquired as to the age limit. **Mr. Kane** replied the requirements set forth in section two, lines 23-40 were taken from the concealed weapons law. He further stated, it does not limit someone younger from becoming a bail bondsman; however, they would not be allowed to carry a concealed weapon. This would apply to the person specifically empowered by the bail bondsman to make the arrest. **Senator Anthon** asked if the one effectuating arrest is required to have a concealed weapon permit for a concealed carry. **Mr. Kane** replied in the negative. He added the concealed weapons laws were a good guideline to follow.

Senator Potts wondered if it was ideal for a bail agent to wear identifying information when making an arrest. He stated it seemed contradictory in purpose. He asked if there were any negative repercussions to the bail agent for making the arrest. **Mr. Kane** stated nothing in the bill provides a defense in court for someone who is arrested, because the government is not conducting the arrest. He emphasized the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution only apply when the government makes a mistake or does something without probable cause.

TESTIMONY: **Nate Fisher** representing the Professional Bail Agents of Idaho expressed support for the bill.

MOTION: **Senator Potts** moved to send **H 534** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

Senator Anthon reserved the right for further comments on the floor.

VOICE VOTE: The motion carried by **voice vote**.

Foster Care Improvement Act. **Vice Chairman Lee**, presented **S 1341** and stated in 2016, H 556 made a significant change in the State's policies regarding the handling of foster care and child protection. She asserted **S 1341** is the next step. She explained the legislation essentially does five things: 1.) places in statute a policy keeping siblings together in foster care (subject to judicial discretion); 2.) adds prioritization on how the Idaho Department of Health and Welfare (IDHW) investigates incoming reports. If the IDHW knows, or has reason to know, that an adult in the home has been convicted of lewd and lascivious conduct, or has had a previous conviction of felony injury to a child, then IDHW shall investigate; 3.) places a court rule in statute clarifying when a judge can provide judicial review; 4.) moves the citizen review committees from IDHW to public health districts. **Vice Chairman Lee** said this move is because the public health districts align with the judicial districts; and 5.) establishes an oversight committee.

She noted many other states have such a committee and three separate office of performance evaluation reports each recommend an oversight committee. **Vice Chairman Lee** cited a February 2017 Office of Performance Evaluation report from Director Rakesh Mohan in support of a legislative oversight committee as well.

TESTIMONY:

Christine Tiddens, Community Outreach Director, Idaho Voices for Children, testified in support of **S 1341** (Attachment 2).

Lori Wolff, Deputy Director, IDHW, expressed her concerns regarding **S 1341**. She acknowledged she appreciated the perspective and input of those that had put their time into the legislation, as it codifies some important practices and judicial rules that have been discussed and implemented. However, she mentioned the child protection system is probably one of the most complex systems in the State and its impact on individuals and their communities is critical. She noted areas in the bill where she felt impact was greatest. She stated IDHW does not currently have access to the information needed that would allow them prioritize calls. They would need to create data exchanges to enable information matching.

Ms. Wolff voiced concern regarding the citizen review panels. She said the volunteers would be reviewing approximately 800 cases a month. Additional administrative support would be needed to transfer information. She noted this is sensitive, confidential information that is often in different process stages.

Ms. Wolff stated the IDHW's concerns regarding the addition of a committee, and voiced disappointment that the final bill did not include their recommendations to include critical stakeholders as representatives in the panel.

Finally, **Ms. Wolff** pointed out there were additional costs that were not included in the fiscal impact.

DISCUSSION:

Senator Anthon asked what resource they lacked that did not allow them access to the lewd and lascivious conviction information. **Ms. Wolff** replied IDHW either needs more staff or a data matching system. **Senator Anthon** inquired as to the volume of open cases. He asked if the 800 cases a month includes all cases Statewide. **Ms. Wolff** confirmed it was Statewide.

Senator Anthon asked Ms. Wolff her opinion as to the adequacy of the current system. **Ms. Wolff** clarified if he was referring to the citizen review panels. **Senator Anthon** responded on the review of the 800 cases. **Ms. Wolff** replied IDHW is concerned about the volume of cases. To help the public health districts, they would need help to move the information.

Senator Hagedorn asked, if the legislation was implemented as written, what would be IDHW's addition to the fiscal note. **Ms. Wolff** replied they anticipate \$65,000 for the data matching system, unless they hired additional staff. Additional staff would cost more over time than the data matching system. She added they need additional support for the review panels which would require two full-time employees.

Senator Hagedorn asked Vice Chairman Lee if the oversight panel that will be reviewing the citizen panel reports will be an executive session or an open session. He wondered how the reports would be kept from public disclosure. **Vice Chairman Lee** noted the possibility of following the protocol of other states, mentioning the 120-day date in Oregon and a review after 60 days. **Senator Hagedorn** asked how the reports would be kept confidential in the legislative review panel if the panel is an open meeting. **Vice Chairman Lee** stated the IDHW would need to review the reports prior to submittal to the committee. **Senator Hagedorn** stated he understands what they are trying to do, but he does not believe that is what the legislation says.

Dr. Robert Ball submitted written testimony in support of **S 1341** (Attachment 3).

Beth Norton submitted written testimony in support of **S 1341** (Attachment 4).

MOTION: **Senator Nye** moved to send **S 1341** to the floor with a **do pass** recommendation.
Senator Anthon seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:07 p.m.

Senator Lodge
Chair

Anna Wroblewski-Jones
Secretary

Diane James
Assistant Secretary