

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

- DATE:** Monday, February 11, 2019
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Lee, Senators Lodge, Thayn, Grow, Cheatham, Burgoyne, and Nye
- ABSENT/ EXCUSED:** Senator Anthon
- 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:** **Vice Chairman Lee** convened the meeting of the Senate Judiciary and Rules Committee (Committee) at 1:30 p.m.
- MOTION:** **Senator Lodge** moved to send **RS 26489, RS 26689, RS 26690, and RS 26726** to print.
- SUBSTITUTE MOTION:** **Senator Burgoyne** moved to send **RS 26489, RS 26689, RS 26690, RS 26726, and RS 26565**. **Senator Nye** seconded the motion. The motion carried by **voice vote** to print.
- PASSED THE GAVEL:** Vice Chairman Lee passed the gavel to Chairman Lakey. He indicated that **RS 26633C1** and **RS 26775** would not be heard today.
- H 30** **Relating to Criminal Defendants. Blake Brumfield**, Program Manager, Developmental Disability (DD) Crisis Prevention & Court Services, explained that Idaho Criminal Code §18-311 designates three evaluation methods for legal competency to stand trial: an individual psychologist, individual psychiatrist, or a DD evaluation committee if a developmental disability is the suspected reason for incompetency. **Mr. Brumfield** also explained that the DD evaluation committee consists of a social worker, psychologist, and physician with training in competency, mental health, and developmental disabilities assessments. Proposed changes will improve the accuracy of defendants suspected of being incompetent to stand trial by reason of developmental disability. **Mr. Brumfield** further explained that the proposed changes will not only improve accuracy, but will save costs and improve safety by matching the appropriate safe setting for making someone competent to stand trial. This legislation was shared with the Idaho Supreme Court, Disability Rights Idaho, the Idaho Prosecuting Attorneys Association, and the Idaho Association of Criminal Defense Lawyers. **Mr. Brumfield** stated that Disability Rights and the State Independent Living Council are not opposed to the changes and no other organization has taken a stand on it. A minor fiscal impact would be felt by Idaho counties and the Department of Health and Welfare. County expenditures are estimated to increase \$13,000 statewide to pay physicians.
- DISCUSSION:** **Senator Thayn** asked Mr. Brumfield how often he thought this process would be used. **Mr. Brumfield** answered that his program did 45 competency assessments the last fiscal year, compared to roughly 400 done by the Mental Health program. **Mr. Brumfield** also stated that there should be 13 additional assessments coming to his program with the proposed legislation.

**Senator Burgoyne** asked Mr. Brumfield what he thought the opinion of criminal defense attorneys and individuals representing people who might benefit from this legislation would be. **Mr. Brumfield** answered that this legislation should be supported by criminal defense attorneys because the DD evaluation program would be administered by highly trained individuals who can accurately determine the competency of a defendant.

**Senator Burgoyne** expressed concern that this legislation might put legal disadvantage on the developmentally disabled and asked Mr. Brumfield to address that concern. **Mr. Brumfield** answered that the main purpose of this legislation is to more accurately declare competency or incompetency at or before the stage of Idaho Criminal Code § 18-211.

**Chairman Lakey** asked Mr. Brumfield if there would be a way for the counsel or the defendant to provide their own expert to determine incompetency. **Mr. Brumfield** answered that defendants can hire their own experts.

**Senator Grow** asked Mr. Brumfield if the same evaluator will evaluate the defendant after 30, 60, and 90 days. **Mr. Brumfield** answered that it is not always the same evaluator.

**Senator Grow** asked Mr. Brumfield why he thought a committee would be better at evaluating a defendant than an individual evaluator. **Mr. Brumfield** answered that having a committee is better because it brings in a wholistic approach with individuals from multiple disciplines who can provide more information and accuracy in determining competency.

**Senator Grow** asked Mr. Brumfield what risks there might be with not having an evaluation committee. **Mr. Brumfield** answered that longer time in incarceration before proceeding to court may be needed, as well as dangerous misplacements while working with defendants towards competency.

**Senator Burgoyne** commented that he was concerned this bill might work against a defendant's best interest, and that it would have been beneficial to hear testimony from the Criminal Defense Bar for more surety of the bill's benefit.

**Senator Thayn** questioned whether this legislation is an effort to try and find those that are developmentally delayed, and send them down a certain path, or an effort to find those that are pretending to be developmentally delayed so that they can be protected from the criminal justice system.

**Chairman Lakey** commented that he views this provision of the code as an effort to make the best determination, from an independent standpoint, as to the competency of a defendant to proceed in a trial.

**MOTION:** **Senator Thayn** moved to send **H 30** to the floor with a **do pass** recommendation. The motion failed for lack of a second.

**MOTION:** **Senator Burgoyne** moved to hold **H 30** subject to the call of the Chair. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

**H 43** **Relating to Public Defense Terminology.** **Kathleen Elliott**, Executive Director, Idaho Public Defense Commission, stated that the proposed amendment of Idaho Code §§ 19-850, 19-851, and 19-862a, changes the word "grant" to "financial assistance", and "proposed amendment" to "compliance proposal." **Ms. Elliott** explained that there is no fiscal impact as this change in terminology will not alter the budget or the procedures by which the public defense commission disburses funds appropriated by the Idaho Legislature.

**MOTION:** **Senator Thayn** moved to send **H 43** to the floor with a **do pass** recommendation. **Vice Chairman Lee** seconded the motion. The motion carried by **voice vote**.

**S 1044**

**Relating to Small Lawsuit and Resolution Act.** **Barbara Jordan**, Trial Lawyers Association, explained that this bill amends Idaho Code § 7-1509 by updating the dollar value limit for cases which fall under the small lawsuit criteria and have been evaluated to be less than \$35,000. **Ms. Jordan** also explained that this is a follow-up bill to the change that occurred in 2018 that raised the limit of the Small Lawsuit Resolution Act from \$25,000 to \$35,000, which reflected the change in the value of the dollar over time. This statute provides a fair, efficient, and inexpensive system to settle small dollar amount cases, thereby reducing the number of civil cases which would otherwise end up in court. **Ms. Jordan** also stated that this legislation will have little to no fiscal impact.

**MOTION:** **Senator Grow** moved to send **S 1044** to the floor with a **do pass** recommendation. **Senator Cheatham** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lakey** adjourned the meeting at 2:05 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary

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Jacob Garner  
Assistant Secretary