

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 25, 2019

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Grow, Cheatham, and Burgoyne

ABSENT/ EXCUSED: Senator Nye

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 Lakey** called the Senate Judiciary & Rules Committee (Committee) to order at 1:36 p.m.

GUBERNATORIAL APPOINTMENT VOTE: **The Gubernatorial Appointment of John D. Hayden, Jr., to the State Board of Correction .**

MOTION: **Senator Burgoyne** moved to send the Gubernatorial appointment of John D. Hayden, Jr. to the State Board of Correction to the floor with the recommendation that he be confirmed by the Senate. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Vice Chairman Lee** moved to approve the Minutes of January 16, 2019. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.
Chairman Lakey announced that in order to accommodate Mr. Kane's schedule **S 1110** would be heard before other legislation.

S 1110 **Relating to Bail Enforcement Agents to Provide that Bail Enforcement Agents May Arrest a Defendant in Certain Instances.** **Michael Kane**, Idaho Sheriff's Association, stated these individuals, who are not law enforcement officers and not Peace Officers Specialized Training (POST) certified, have the ability to arrest people at gunpoint in certain instances. Bail enforcement agents, also known as bounty hunters, are not regulated in Idaho, so this bill is to set guidelines for that profession. This is a compromise bill where the needs of law enforcement, the general public, and bail enforcement agents have been taken into account. **Mr. Kane** detailed bail enforcement agents qualifications, things they must do, things they can not do, prior appropriate authorizations, and penalties for not following the guidelines of the bill. He gave examples of issues that have transpired in the past due to having no regulations in place.

DISCUSSION: **Senator Grow** and **Mr. Kane** discussed clarifying Section 10. **Senator Grow** asked if protection exists for the public against a bail enforcement agent carrying a gun. **Mr. Kane** replied that currently there is none.
Senator Burgoyne asked for clarification on the amendment for Idaho Code § 41-1039 because there were some numbering issues which he thought could be easily corrected in the 14th Order of Business. **Mr. Kane** agreed with him.

TESTIMONY: **Sheriff Kerin Donohue**, Canyon County, gave two examples of apprehensions when a bail enforcement agent shot at a vehicle. He stated the bail enforcement agents need to wear identification and notify law enforcement when they are going to apprehend someone.

DISCUSSION: **Senator Cheatham** asked if a concealed weapons permit would be required when carrying a weapon. **Mr. Kane** replied in the negative. A concealed weapons permit is not required in almost all situations, unless they are on school grounds, or if they are a felon.

TESTIMONY: **Fred Birnbaum**, CEO, Idaho Freedom's Foundation, spoke in support of **S 1110**. He stated that he thought the bill satisfies the concerns about excessive regulations.

Melinda Merrill, representing the Idaho Bail Coalition, spoke in support of **S 1110**. She indicated that the Idaho Bail Coalition had worked with all the necessary parties to make this legislation work for everyone.

MOTION: **Senator Cheatham** moved to send **S 1110** to the 14th Order of Business for possible amendment. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

S 1071 **Relating to Attorney's Fees, Witness Fees and Expenses Awarded in Certain Instances and to Revise the Definition of "Licensing Authority"** and to make technical corrections. **Senator Lori Den Hartog**, District 22, stated this bill entitles the prevailing party in an administrative procedure between a licensee and a licensing authority to recover their reasonable investigative and defense costs, if they prevail in that procedure. The intent of this bill is to put the license holder on the same footing as the licensing authority. Some licensing authorities thought they had solid grounds for an investigation, and when they completed the investigation the license holder was found innocent. That license holder had no ability to recover those legal fees. Recovery of costs should be given to both parties. **Senator Hartog** indicated that **S 1071** would ensure that there weren't frivolous or ongoing investigations continuing. It allows everyone to act in good faith.

DISCUSSION: **Vice Chairman Lee** inquired about foster care licensing, as she has had a number of issues and concerns where individuals had been denied a license. **Senator Burgoyne** responded that he did not think foster parents were going to qualify as a licensee, and that is what this legislation applies to.

Senator Burgoyne stated that he regarded **S 1071** as an important step in lessening regulatory burdens on people. It is critical that occupational licensees be held to standards that are consistent with public health and safety and their general welfare in terms of getting what they pay for from people who provide services. Idaho licensing statutes that allowed for agencies to recover attorneys fees and costs when a licensee was found to have done something wrong, were not allowing the licensee the chance to recover their costs and fees when they prevailed in the action. On that basis **S 1071** would provide a way of making sure that regulatory burdens were shared correctly.

MOTION: **Vice Chairman Lee** moved to send **S 1071** to the floor with a **do pass** recommendation. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

S 1072 **Relating to the Idaho Administrative Procedure Act and to Revise Provisions Regarding Fees Associated with Publishing Certain Rules.** **Senator Den Hartog** stated this legislation is intended to remove the potential financial disincentive that agencies could face when cutting or reducing regulations. It falls in line with the Governor's Executive Order to reduce the rules the State departments bring forward each year. **Senator Den Hartog** commented that if an agency is actively working on reducing the regulatory burdens that are in the Idaho Administrative Bulletin, it would not be prudent to charge them fees as they come through and present those production rules for us to consider.

MOTION: **Senator Thayne** moved to send **S 1072** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

S 1127 **Relating to the Interstate Agreement on Detainers. Jared Larsen**, Policy Advisor on Public Safety and Criminal Justice Matters and Extradition Coordinator, Governor's Office, explained this bill governs the transfer of sentenced prisoners from one state to another, from the federal government to a state, or from a state to the federal government to stand trial for a separate crime. This legislation changes the Interstate Agreement on Detainers (IAD) from the Director of the Idaho Department of Correction to the Attorney General or his designee. This aligns with some neighboring state policies and with how Idaho handles extradition requests.

DISCUSSION: **Senator Burgoyne** asked for clarification regarding the difference between extradition and detainers. **Mr. Larsen** responded they are completely separate. He stated extradition is how someone is arrested in another state from a warrant issued in the State of Idaho and brought back to Idaho. The Interstate Agreement on Detainers is solely for individuals who are incarcerated in another state. He provided additional detail on what these encompassed.

MOTION: **Senator Burgoyne** moved to send **S 1127** to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

S 1094 **Relating to the Children and Families Legal Services Fund to Provide Legal Service Fund Grants by the Supreme Court. Brodie Aston**, representing Idaho Legal Aid Services, presented **S 1094** which seeks to create a family and legal services fund. He stated much of the financial support for legal aid comes from the Federal Services Corporation, but that support has been declining in recent years. This legislation would create the children and families legal services fund in the State treasury, provide for what money shall be in the fund, how money in the fund may be expended, and provide certain conditions under which funds from this account cannot be used. Funds from this account would be awarded to Idaho Legal Aid Services with a very narrow purpose of helping some of the most vulnerable in the community. **Mr. Aston** explained they want to make sure they have appropriate sideboards/directives on this fund and for any funds that would be appropriated in the future. The funds will include monies appropriated by the legislature, grants, donations, and money from other sources.

TESTIMONY: **Jim Cook**, Executive Director, Idaho Legal Aid Services, stated they are a statewide nonprofit law firm that works in the civil arena. They represent victims of domestic violence, strangulation, sexual assault, stalking, as well as guardianships, incapacitated senior citizens, consumer related issues in the civil world, and he spoke in support of **S 1094**. **Mr. Cook** said they are currently unable to take the most critical cases, as they had previously, because they do not have enough attorneys. They use lengthy assessments regarding their applicants to determine which cases they are able to take. The cases that don't meet those requirements are consulted and then sent away. Most of these people are low income and do not have money for an attorney.

DISCUSSION: **Chairman Lakey** asked Mr. Cook to describe his goals and time frame to hire additional attorneys. **Mr. Cook** responded that with the State's long term projected growth, it was going to be difficult for service providers to keep up with public demand for help. He would like to hire an additional attorney for each of the seven judicial districts. He stated that his goal is to not have to turn away any domestic violence victims.

Vice Chairman Lee asked for clarification regarding criminal actions and remedies for individuals who are coming forward with allegations of extreme domestic violence. **Mr. Cook** stated in many of the cases either criminal charges have been dropped or they have been pled down to a misdemeanor. **Vice Chairman Lee** asked if Legal Aide was already able to accept donations and grants. **Mr. Cook** said they take donations, have received grants, and would still benefit from additional money to help provide more services to victims.

Senator Cheatham stated that the fiscal note says a fund would be created in the State treasury. **Mr. Brody** responded that it would be and would be overseen by the Supreme Court. **Senator Cheatham** questioned if the Supreme Court gets their funds from the State Legislature. **Mr. Brody** responded in the affirmative. .

TESTIMONY:

Stacy James spoke in support of this legislation. She explained the situation she was in, the process she went through, and the support she received. She stated the system served her the way it was designed to do when she was in an unsafe relationship with her husband.

Criselda Delacruz Valdez, Executive Director, Nampa Family Justice Center, explained they work in partnership with International Day Against Homophobia, Transphobia, and Biphobia (IDAHOT), Legal Aid Services and several other organizations. She testified in support of this legislation. The people they serve are victims of domestic violence, sexual assault, child abuse, elder abuse, stalking, and human trafficking. Statistics show the growing need for legal aid services in their service area, and any funding received would be a great asset to them.

DISCUSSION:

Senator Burgoyne stated he and Mr. Cook have had the opportunity to serve on the Supreme Court's Guardianship and Conservatorship Committee. One of the obligations of the courts in Idaho is to look out for vulnerable children and adults. Lack of access to representation adds to costs sustained by the State budget. He stated they have funded Idaho Legal Aid Services in the past, but have had no structure for it, and he believes **S 1094** is a sensible structure.

MOTION:

Senator Burgoyne moved to send **S 1094** to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion.

SUBSTITUTE MOTION:

Vice Chairman Lee moved that **S 1094** be held in Committee. **Senator Lodge** seconded the motion.

DISCUSSION:

Vice Chairman Lee commented that the stories were heartbreaking, but decisions have to be made on policy rather than individuals. She suggested reviewing **S 1094** further to determine what the needs are, and what the expectations would be. When that information is available, decisions regarding resource availability and expansion could be addressed.

Senator Lodge stated there is so much need and suffering and there needs to be a way to determine how to meet those needs. She suggested bringing all the invested parties together to look at the entire program to find out what is actually working. **Senator Lodge** commented that it is important to have a way to track how the money is being used. She indicated she would be willing to help work on anything that would determine what the needs are. She stated that she could not support the legislation as it is currently written.

Chairman Lakey commented that he needs to feel comfortable that the Legislature's obligations, under the criminal justice system in the Constitution, are being adequately addressed before going into the civil realm.

**VOICE VOTE ON
SUBSTITUTE
MOTION:**

The Substitute Motion to hold **S 1094** in Committee passed by **voice vote**.
Senator Burgoyne requested that his nay vote be recorded.

ADJOURNED:

There being no further business, **Chairman Lakey** adjourned the meeting at
3:05 p.m.

Senator Lakey, Chair

Sharon Pennington, Secretary

Assisted by Carol Waldrip