

MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Monday, March 11, 2019

TIME: 1:30 pm OR Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis (Goldman)

**ABSENT/
EXCUSED:** Representative Troy

GUESTS: Senator Jim Rice; Rob Squire, D.L. Evans Bank; Brandon Durst; Matt Byrne; David Oliphant; Dr. Jeff Brouman; Major Mark Bost, American's For Equal Shared Parenting; Regina Bost; Greg Hodger; Shantelle Olliphant; Natasha Harrington; Jayme Sullivan, AOC/ISC; Annie Hightower, ICASDV; Vince Skinner, BSU Professor; Sid Page

Chairman Dayley called the meeting to order at 1:30 p.m.

MOTION: **Rep. Marshall** made a motion to approve the minutes of March 1, 2019 and March 5, 2019. **Motion carried by voice vote.**

S 1119: **Sen. Anthon** presented **S 1119**. Sen. Anthon stated this is a defect clean up bill that makes it easier to understand the law as it relates to renewal on judgements. He yielded his time to **Robert Squire**, Vice President, Corporate Council, D.L. Evans Bank. Mr. Squire said the purpose of the bill is to clarify existing code, but not change it. It is not clear from the current language that entry of judgment includes entry of an order renewing judgment. If the language were intended to only run from the date of entry of judgment and not entry of renewals of judgment it is unclear what rights, if any, are actually granted by renewal of judgment. He said he believes the case law supports this change. He said the bank supports this bill because it has run into an issue in another state. This is to avoid similar problems in Idaho. It is genuinely confusing to attorney's and it can be clearer to creditors.

MOTION: **Rep. Zollinger** made a motion to send **S 1119** to the floor with a **DO PASS** recommendation. Speaking to the motion, Rep. Zollinger thanked the sponsor for bringing this bill forward and stated it will clarify the renewal of judgements. **Motion carried by voice vote.** **Rep. Zollinger** will sponsor the bill on the floor.

S 1117: **Sen. Burgoyne** presented **S 1117**. Sen. Burgoyne stated the legislation he drafted and was passed in 2016 was good, but it did not clearly state petitions for civil protection orders for harassment could be dismissed without hearing. This bill amends the law to more prominently state the criteria warranting the issuance of a protection order, and gives judges the authority, without hearing, to dismiss petitions that fail to state the facts sufficient to warrant a protection order. He stated it narrows the types of telephone harassment complaints that can be filed for protection orders and clarifies the intent of the law, which is to deal with serious threats and acts of violence.

MOTION: **Rep. Chaney** made a motion to send **S 1117** to the floor with a **DO PASS** recommendation.

In answer to a question from the Committee, **Rep. Burgoyne** stated the language on line 32 of page one is from the original criminal code, which was written a long time ago and he does not know it's exact meaning.

**VOTE ON
MOTION:**

Chairman Dayley called for a vote on the motion. **Motion carried by voice vote.**
Rep. Chaney will sponsor the bill on the floor.

H 197:

Rep. Zollinger presented **H 197**. Rep. Zollinger stated that while science has shown in the past there are certain periods of a child's life when one relationship with one parent is important, new studies are showing that a child's relationship with both parents is important. Shared parenting is better for children as shown through science. He stated Arizona and Utah have adopted shared parenting laws and 20 other states are looking into it. He explained this bill is less restrictive than the Utah law and it doesn't require a specific number of days a child must spend with a parent. Rep. Zollinger stated the bill clarifies the existing guidance provided to family law judges with regards to child custody. It includes a rebuttal presumption that an award of equal, shared parenting time to each parent is in the best interests of the child. It must be based on a preponderance of evidence in accordance with the facts and it allows the judges to have discretion to make sure the best interests of the child is taken into consideration. It lists the criteria a judge can take into consideration. In reference to the fiscal note, he stated there's been no indication of a large judicial burden in Arizona and Utah. He stated the judges will need to provide written finding of fact and conclusions of law, which can eliminate confusion and protect against potential bias. Findings can be short and shouldn't be burdensome. Written findings is the same thing required of judges in many other types of cases. He said he spoke with the Attorney General's office and there aren't any constitutional issues, but there may be a potential for a constitutional challenge.

Rep. Chaney invoked Rule 38.

In answer to questions from the Committee, **Rep. Zollinger** stated he did not expect a large impact due to people wanting to re-litigate after the bill passes. The cost to the courts is not expected to be more than usual because judges are already going through the same factors in cases they review now. He explained he has been working on some version of this issue and bill since his freshman year in the legislature. This bill was brought to him late in the session this year, but it has been vetted based on hundreds of conversations with family law attorneys, judges and families.

Rep. Zollinger yielded questions from the Committee to **Jerry Papin**, Idaho Parents Organization and National Parents Association. Mr. Papin stated many judges are doing a good job, but people are having widely different experiences. Judges aren't using a consistent system. He explained the rights of parents in the armed services and grandparents have been discussed, and there are several issues they'd like to address, but they chose not to include them in this bill so it would be more palatable. He reiterated the bill is about ensuring the continuity of the relationship with both parents and is supported by science. He stated the bill is a starting place for judges by establishing a presumption of equal parenting; judges have to do what they do in other parts of law by providing written finding of fact and conclusions of law; and it adds language for domestic violence protections. He said the Attorney General's office comment regarding a potential constitutional challenge regards a very narrow interpretation and this bill does not change the current law with regard to right to travel.

Sen. Rice spoke in opposition to H 197. Sen. Rice stated this legislation is more restrictive than Utah and the Arizona law is similar to Idaho. He said the courts have stated it would take more judges to handle the additional burden created by this bill because it will generate fewer settlements and more trials. He explained child custody case settlements can be separated into three general categories. The first, and majority, settle through mediation. The second type of cases settle after a parenting time evaluation is completed and both parties receive a professional analysis. The third type of cases are settled by the courts, which comprises a small percentage of cases. He stated there is no bias to men or women in Idaho. There isn't a bias against servicemen and women. Judges do favor the children. In answer to questions from the Committee, Sen. Rice said he believes mediation will be less successful with this bill. He also stated the bill replaces the focus on actual parenting time versus overnights, which correlates to child support. He said he expects to see everyone who doesn't have 50/50 overnight custody back into court for reconsideration. He explained that child support is based on a formula that includes the number of overnights, respective income of parents, and a few adjustors such as cost of health insurance and who will claim the child on income tax. When you change the number of overnights, child support payouts can change.

Vince Skinner, Brandon Durst, Matt Byrne, David Oliphant, Dr. Jeff Brouman, Major Mark Bost, Regina Bost, Natasha Harrington and Sid Page spoke in support of H 197. They each shared their personal stories. They stated: the current law does not allow for due process; it hurts relationships between children, parents, grandparents and alienates them from one side of their family tree. They stated a growing body of research supports shared parenting because it can increase the emotional security of the child and create better long-term outcomes when compared to children with only one parent. They explained their experience with the judicial process has shown bias toward one parent over another and did not ask or take any of their facts into consideration. They stated this bill is about preserving the relationship with children, not about the money – the financial cost can be extensive when fighting for more time with their children. It was explained while overnight visits are not the same as parenting time, overnight visits are just as valuable in building and nurturing relationships with children. Mr. Byrne and Mr. Oliphant stated that despite their ex's agreeing to shared time initially, the judges in their cases allowed less time with the child/children. Ms. Harrington stated that starting on equal ground is a good place to start in divorce and separation because it can remove the reason for the conflict.

Annie Hightower, Policy Director for the Idaho Coalition Against Sexual and Domestic Violence spoke **in opposition to H 197.** She stated she was unable to find peer reviewed articles on equal parenting time. Current law looks at what is in the best interest of the children. She said she agrees that shared parenting is good, but it should be looked at on a case by case basis and this bill strips judges of power to make decisions. In answer to questions from the Committee, Ms. Hightower said it is unclear what the preponderance of evidence is and would need to be clarified. She also responded by stating the removal of the language "relevant factors" on lines 32 and 33 of page one is concerning and would require the courts to create new case law.

In response to opposing testimony, **Mr. Papin**, stated family law attorneys do have an important say in this legislation, but they also have a financial stake in the game. He also explained the existing law addresses domestic violence and the bill enhances the domestic violence protections. He said there should be a presumption that shared custody is not acceptable if domestic violence is present.

MOTION:

Rep. Marshall made a motion to send **H 197** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION:

Rep. Chaney made a substitute motion to **HOLD H 197** in committee.

Speaking to the substitute motion, **Rep. Chaney** stated the Arizona law is almost word-for-word similar to Idaho's law. Idaho's current law allows for at least 35 percent custody and does take into consideration the best interests of children. He also said if judges are going to get it wrong, then it may be a matter of more education. If the bill passes, it will open the door to more re-litigation.

Reps. Ehardt, Young, Goesling, Ricks and Zito spoke in opposition to the substitute motion. Their comments included: family values mean both parents need to be involved with the children; it is important for fathers to be involved in their children's lives, especially male children; based on the data, Idaho is not as strong on equal parenting time; this bill asks judges to approach these decisions from a basis of innocence; this is an opportunity to expect dads to step up and believe many will; the bill gives judges the freedom to make decisions and allow them to look at more equal factors; by starting in the middle, it allows a balance of justice, and then other circumstances can be taken into consideration; and it will be less likely for children to become pawns.

Rep. McCrostie invoked rule 38.

Reps. Amador, Hartgen, Wintrow, McCrostie and Kerby spoke in support of the substitute motion. Their comments included: conceptually it is a good idea, but it would be good to hear from other individuals involved in family law; the change will spawn more litigation; judges take these matters seriously and take all information into consideration and should not be forced into a predetermined presumption; concern the fiscal note is not accurate; 80 to 90 percent of these cases get settled outside of court and get worked out; and it will open the door to re-litigation.

ROLL CALL VOTE ON SUBSTITUTE MOTION:

Chairman Dayley called for a roll call vote to **HOLD H 197** in Committee. **Substitute motion carried by vote of 9 AYE, 8 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Chaney, Kerby, Amador, Hartgen, Gannon, McCrostie, Wintrow, Goldman, Dayley. Voting in opposition** to the motion: **Reps. Zito, Zollinger, Ehardt, Scott, Goesling, Marshall, Ricks, Young. Rep. Troy** was **Absent/Excused**.

ADJOURN:

There being no further business to come before the Committee, the meeting was adjourned at 4:49 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary