

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 19, 2020

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Grow, Cheatham, 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 Lakey** called the meeting of the Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

**MOTION:** **Chairman Lakey** asked for unanimous consent to place **S 1338** on the February 21, 2020 agenda. There were no objections.

**PRESENTATION:** **Monty Prow**, Director, Idaho Department of Juvenile Corrections (DJC), presented the annual update from the DJC (see Attachment 1). **Mr. Prow** explained that the state and county work as a partner with youth and their families. Ninety-five percent of youth involved in the juvenile justice system have their cases managed at a local level. Justice involvement that escalates, requiring expensive services such as rehabilitation, are often the least effective. Research is clear that there are five elements of any effective long term residential facility: targeted treatment, education, counseling, family engagement, and skills building. **Mr. Prow** specified that the DJC works diligently to incorporate all five. The current recidivism rate is 24 percent, a 21 percent reduction from the previous report. When the juveniles were questioned if they feel they have the necessary skills to make a positive impact in their community, 99 percent responded affirmatively.

**PASSED THE GAVEL:** Chairman Lakey passed the gavel to Vice Chairman Lee.

**RS 27703** **Chairman Lakey** presented **RS 27703**, relating to occupational licensing reform. He stated that this added a chapter to Idaho Code to provide for the creation of an occupational and professional license review committee.

**MOTION:** **Senator Anthon** moved to send **RS 27703** to print. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**S 1340** **Chairman Lakey** presented **S 1340**, relating to sentencing for persons convicted of a crime. **Chairman Lakey** informed the Committee that **S 1340** provides an update to the sentencing statute, bringing it more in line with current practices and case law. The legislation defines the policies of the State of Idaho. The first policy, evaluated by a judge in sentencing, is to consider whether placement in the community is appropriate. Additional goals to be considered are protection of society and the possibility of risk reduction through rehabilitation, deterrence, punishment, and victim impact. **S 1340** specifies that each discretionary sentence is to be individually tailored to that particular defendant based on the totality of the circumstances. It also provides factors used to weigh imprisonment, or avoiding imprisonment. Lastly, it adds a reference to the defendant's criminogenic needs and the ability for treatment.

**DISCUSSION:** **Senator Grow** requested Chairman Lakey specify what problems **S 1340** addressed. **Chairman Lakey** responded that it brings the sentencing statute up to date. **Senator Burgoyne** stated that the only substantive change he can see is the removal of the word provocation on line 4 of page 2. He questioned if there was any discussion when writing the legislation that provocation was not necessary. **Chairman Lakey** stated that there had been no discussion, but he believed the issue was addressed in subsections d and e.

**TESTIMONY:** **Tom Arkoosh**, Idaho Association of Criminal Defense Lawyers, and **Paul Riggins**, Criminal Defense Lawyer, both testified in support of **S 1340**.

**MOTION:** **Senator Burgoyne** moved to send **S 1340** to the floor with a **do pass** recommendation. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Lee passed the gavel to Chairman Lakey.

**S 1292** **Senator Jim Guthrie**, District 28, presented **S 1292**, relating to motorcycle profiling. **Senator Guthrie** clarified that **S 1292** does three things: defines motorcycle profiling, makes motorcycle profiling illegal, and makes it clear that the legislation does not create a cause of action against any individual, division of government, or law enforcement entity. Senator Guthrie then yielded to Representative Robert Anderst.

**Representative Anderst** informed the Committee that **S 1292** had failed by one vote in 2019, and the proponents of the bill spent the interim continuing to educate people on the issue. He explained that the bill was fairly simple and the Committee was familiar with it.

**TESTIMONY:** **David Devereaux**, American Bikers Aimed Towards Education (ABATE), voiced his support for **S 1292**. He informed the Committee that he had founded the Motorcycle Profiling Project (MPP), a nationwide grassroots effort to prevent profiling and discrimination against motorcyclists. **Senator Nye** requested that Mr. Devereaux specify the penalty for profiling. **Mr. Devereaux** clarified that **S 1292** does not allow a private cause of action, meaning you would not be allowed to monetarily sue an individual, agency, officer, or state. It provides an affirmative defense, where a citation received that is proven to be the result of illegal profiling could be dismissed. **Lane Triplett**, Idaho Coalition for Motorcycle Safety, also testified in favor of **S 1292**.

**MOTION:** **Senator Cheatham** moved to send **S 1292** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

**DISCUSSION:** **Senator Lodge** relayed to the Committee the training and education programs the motorcycle groups are doing. She also reported the many charities they contribute to. **Senator Burgoyne** stated that he is against profiling, but was concerned regarding recognizing profiling in one context and not another. He stated he would be voting against the bill.

**VOICE VOTE:** The motion to send **S 1292** to the floor with a **do pass** recommendation carried by **voice vote**.

**S 1343**

**Carlie Foster**, Lobby Idaho, LLC, representing the Idaho Ski Areas Association, presented **S 1343**, relating to bicyclists and mountain operators. **Ms. Foster** informed the Committee that in the late 1970s, the Idaho Legislature passed Idaho Code Title 6, Chapter 11. This was to establish responsibilities and liability limitations for skiers and ski area operators, recognizing that skiing is a dangerous sport and all risk cannot be avoided. Since that time, Idaho ski areas have begun to open year-round. While activities at various ski areas differ, most now include mountain biking. **S 1343** establishes Chapter 33, in Title 6, to outline duties for both mountain operators and bicyclists. The bill limits liability against mountain operators by individuals undertaking activities on their property. It also establishes responsibilities for which operators shall be liable, including signage and trail boards.

**Matthew Walters**, Attorney, Elam & Burke, informed the Committee that skiing and mountain biking are similar in that they are both inherently dangerous. The Ski Liability Act (Idaho Code § 6-1201-1206) has been successful for 40 years, so they attempted to use similar language when drafting **S 1343**.

**DISCUSSION:** **Senator Burgoyne** requested that Mr. Walters list the inherent dangers that mountain trail operators cannot eliminate. **Mr. Walters** explained that anytime you have an activity that deals with a high rate of speed going down a hill, you are not able to remove all potential dangers. **Senator Burgoyne** stated that how someone rides puts themselves at risk, if they are negligent it is their responsibility. **Mr. Walters** replied that unfortunately, when someone is injured they want their medical expenses paid. Often they look where there are financial resources or insurance, leading to allegations towards the mountain operators. **Senator Burgoyne** questioned if **S 1343** differentiates between adults and minors. **Mr. Walters** responded that they apply equally. **Senator Burgoyne** inquired if there could be a claim against an operator for allowing a 14-year-old to encounter what is admittedly a matter of inherent danger. **Mr. Walters** explained that whether you are bicycling at a mountain resort or in the foothills, it is dangerous. **S 1343** provides protection for mountain operators.

**Senator Grow** pointed out that Idaho's mountains are one of the state's greatest assets. Skiing or bicycling is a high risk activity. Mountain resorts have a challenge remaining in business, and it is a responsibility to do what is necessary to prevent them from being litigated.

**TESTIMONY:** **Robert Looper**, President, Idaho Ski Area Association; **Phil Edholm**, President and CEO, Lookout Ski Area; **Carlos Matuto**, Southwest Idaho Mountain Biking Association; and **Matt Erpelding**, Vice President, Government and Community Relations, Boise Chamber of Commerce, all testified in support of **S 1343**.

**Wyatt Johnson**, Idaho Trial Lawyers Association, testified in opposition to **S 1343**. **Mr. Johnson** informed the Committee that Idaho trial lawyers exist to protect the right to jury trial under the United States and the State Constitution. He believes mountain biking is important to keep the resorts viable, but he believes **S 1343** is an inadequate bill.

**MOTION:** **Senator Anthon** moved to send **S 1343** to the floor with a **do pass** recommendation. **Senator Grow** seconded the motion.

**DISCUSSION:** **Senator Anthon** explained that there is a doctrine of law called the assumption of risk. In Idaho, as a matter of state policy, the assumption of risk is codified to an extent as regarding ski resorts. There is a recognition that it is impossible to avoid all risk in these recreational areas. Frivolous lawsuits will undo the economic viability of our recreational facilities.

**VOICE VOTE:** The motion to send **S 1343** to the floor with a **do pass** recommendation carried by **voice vote**.

**H 373**                    **Senator Lodge** presented **H 373**, relating to Idaho Correctional Industries (ICI). **Senator Lodge** informed the Committee that they were familiar with **H 373**, which gives prisoners the opportunity to work in various areas of agriculture. **Senator Lodge** then introduced Kevin Mickelson, General Manager, ICI. **Mr. Mickelson** introduced Private Agricultural Partners Steve Cherry, General Manager of CS Beef, and Sean Garland, former trainee and current employee of CS Beef. Mr. Mickelson, Mr. Cherry, and Mr. Garland all provided written testimony in support of **H 373** (see Attachment 2).

**MOTION:**            **Vice Chairman Lee** moved to send **H 373** to the floor with a **do pass** recommendation. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**        There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:10 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary