

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 02, 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 Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the Minutes of January 29, 2020, for both the joint and regular meetings. **Senator Thayn** seconded the motion. **The motion carried by voice vote.**

Senator Thayn moved to approve the Minutes of February 14, 2020. **Senator Cheatham** seconded the motion. The motion carried by **voice vote.**

Vice Chairman Lee moved to approve the Minutes of February 17, 2020. **Senator Thayn** seconded the motion. The motion carried by **voice vote.**

Chairman Lakey advised the Committee to proceed with **RS 27828** since the presenters for **H 405** and **H 406** were not in attendance yet.

RS 27828 **Relating to Automatic Driver's License Suspension for Refusing Evidentiary Testing.** **Senator Burgoyne** stated that **RS 27828** is a consensus legislation of the Idaho Association of Criminal Defense Lawyers, AAA Idaho, and the Idaho Transportation Department (ITD). After several meetings, it was agreed to amend sections of Idaho Code relating to administering of the ignition interlock program. He emphasized that this bill does not change the law, but simply clarifies the petition procedure to obtain a waiver on the installation of ignition interlocking, and the governing party to file the petition.

MOTION: **Senator Cheatham** moved to send **RS 27828** to print. **Vice Chairman Lee** seconded the motion. The motion carried by **voice vote.**

H 405 **Relating to Eligibility Requirement for Driving Under the Influence (DUI) Diversion Program.** **Representative Ryan Kerby**, District 9, stated that **H 405** clarifies that drivers who hold a commercial driver's license (CDL) are not eligible for the DUI Diversion program. This is in compliance with the Federal Motor Carrier Safety Administration (FMCSA) regulations.

TESTIMONY: **Brendan Floyd**, Policy Specialist, Division of Motor Vehicles (DMV) of ITD, elaborated on the letter that the ITD had received from FMCSA in 2019. FMCSA had observed that CDL drivers were not explicitly excluded from the DUI Diversion program in H 078 (2019). He advised the Committee of the penalties ITD would bear for noncompliance of FMCSA regulations.

Matthew Conde, AAA Idaho, spoke in support of the intent of **H 405** but requested the subsection language be amended. He stated that Idaho Code § 19-3508(2)(b) would create disputes on the eligibility requirement for a diversion program, thus Idaho Code 19-3508 § (2)(a) is a sufficient requirement.

In response to Senator Grow's question and Mr. Conde's testimony, **Brian Goeke**, Policy Manager, DMV, illustrated scenarios on eligibility for the diversion program. He noted that according to federal regulations, one falls under the provision if, at the time of the charge: (a.) one does not hold a CDL regardless of what vehicle one drives; or (b.) one does not drive commercial vehicles regardless of what type of driver's license one holds. He reiterated the need for Idaho Code § 19-3508 (2)(b) to conform with the federal regulations.

Chairman Lakey asked Mr. Conde if an amendment is needed in this legislation. **Mr. Conde** answered affirmatively that a simple change of "and" to "or" in Idaho Code § 19-3508 (2)(a) is needed in **H 405**.

MOTION: **Senator Grow** moved to send **H 405** to the 14th Order of Business for possible amendment. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 406 **Relating to Female Genital Mutilation (FGM) of a Child. Representative Caroline Nilsson Troy**, District 5, briefed the Committee that FGM is one of United Nations' top issues on human rights. She stated that **H 406** will append two more criteria in criminalizing FGM, and would add FGM to a child to the list of crimes considered crimes of violence under Idaho Code § 19-5304.

In response to Senator Nye's inquiry on the legality and cost of defense for possible court cases, **Representative Troy** replied that the Attorney General's Office was not consulted on this bill. She also mentioned that cost of defense was not taken into consideration because FGM practice is cultural, and not in any way related to religious beliefs.

MOTION: **Senator Thayn** moved to send **H 406** to the floor with a **do pass** recommendation. **Vice Chairman Lee** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Vice Chairman Lee** and **Senators Burgoyne** and **Thayn** spoke in support of **H 406**. **Senator Thayn** commented that the basic underlying law related to this legislation has been in place for a year and there have been no court cases to date.

RS 27844 **Relating to Vacation of Suspension of Driving Privileges. Steve Price**, general counsel to Ada County Highway District (ACHD), presented **RS 27844** which addresses criminal DUI charges, and the concurrent suspension of driving privileges associated with the same criminal DUI charges. **Mr. Price** indicated that the current law states that both DUI charges and suspension charges run independently and separately. The proposed bill would stipulate the restoration of driving privileges on the effective date that the correlating criminal DUI charges are vacated or dismissed.

Senator Burgoyne and **Mr. Price** further discussed a few scenarios that the bill would cover upon its passage. **Senator Burgoyne** expressed his disfavor of the bill due to some technicalities. **Chairman Lakey** spoke in agreement with Senator Burgoyne's view. However, he said that he will support the bill but acknowledged that **RS 27844** needs some work on some aspects.

MOTION: **Senator Nye** moved to send **RS 27844** to print. **Senator Thayn** seconded the motion. The motion carried by **voice vote**, with **Vice Chairman Lee** and **Senators Burgoyne** and **Grow** requesting that they be recorded as voting nay.

S 1355 **Relating to the Idaho Medal of Honor.** **Senator Cheatham** stated that **S 1355** adds two new subsections, makes six amendments, and streamlines the process of awarding the Idaho Medal of Honor. These amendments would include: replacing some language with "Idaho Medal of Honor"; change in the schedule of presentation of awards; the addition of one member to the Idaho Medal of Honor Commission (Commission); the definition of some language; and corrections on some words used. The additional subsections provide the procedure for nomination and the qualifications for the Idaho Medal of Honor.

TESTIMONY: **Representative Jake Ellis**, District 15, spoke in support of the bill. He stated that the language and amendments in this bill had the unanimous consent of the Commission.

MOTION: **Senator Burgoyne** moved to send **S 1355** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

S 1370 **Relating to Employment of Prisoners.** **Jared Larsen**, Criminal Justice Policy Advisor, Office of the Governor, began with a brief background of the Idaho Board of Correction (Board). He explained that **S 1370** seeks to clarify that the Board may provide employment under Idaho Code § 20-209 but it is not required to provide employment in the same way it is required to provide care and maintenance. He emphasized that there are other bills that would expand work opportunities for inmates such as **S 1232** and **H 373**. This legislation is not hostile to employment of inmates but establishes that the Board does not have to but can provide employment for inmates (see Attachment 1).

MOTION: **Senator Lodge** moved to send **S 1370** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

S 1371 **Relating to Guardianship of Deployed Dependents.** **Vice Chairman Lee** stated that **S 1371** further clarifies that extended absence of a parent or parents due to active duty in or deployment with the United States Armed Forces does not constitute abandonment nor neglect. This legislation establishes parents' rights to authorize indeterminate temporary guardianship upon their extended absence due to military service.

TESTIMONY: **Dan Chadwick**, veteran, articulated his support for **S 1371**.

MOTION: **Senator Anthon** moved to send **S 1371** to the floor with a **do pass** recommendation. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Chairman Lakey** and **Senator Anthon** commended Vice Chairman Lee's effort in drafting **S 1371**. **Chairman Lakey** highlighted that it is important that military men and women should not lose parental rights because of their military service to the nation.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:29 p.m.

Senator Todd M. Lakey
Chair

Sharon Pennington
Secretary

Rellie Wisdom
Majority Staff Assistant