

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 20, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

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 & Rules Committee (Committee) to order at 1:30 p.m.

INTRODUCTION: **Chairman Lakey** introduced the new page, Bridger Benson, from Nampa. **Bridger** stated that he became interested in being a page because of the American Legion, their Boys State Program, and their Oratorical Contest program. **Bridger** continued that he was interested in attending law school and felt this program would be a step on that path and would give him a good opportunity to learn more about politics and government.

MINUTES APPROVAL: **Senator Wintrow** moved to approve the minutes of January 25, 2023. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

Senator Foreman moved to approve the minutes of January 30, 2023. **Senator Hart** seconded the motion. The motion carried by **voice vote**.

Senator Ricks moved to hold the minutes of February 1, 2023 until the next meeting. **Senator Hart** seconded the motion. The motion carried by **voice vote**.

Senator Hartgen moved to approve the minutes of February 6, 2023. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Appointment of Benjamin Andersen** to the State Public Defense Commission to serve a term commencing January 24, 2023 and expiring July 1, 2024. **Mr. Andersen** explained he was the chief public defender for Twin Falls County and managed about 20 overflow contracts to help deal with the case load. **Mr. Andersen** said he enjoyed his work and tried to help find ways to humanize public defenders and help people recognize their worth. He continued by sharing the perspective he had developed of public defender positions over the last 20 years. He stated he valued the legal system, the jury system, the work the prosecutors did, and the work that needed to be done to make sure that the Constitutional rights of all Idahoans were protected, and the Commission met its charge to ensure that.

DISCUSSION:

Senator Anthon asked why public defender's positions cannot be filled. **Mr. Andersen** responded that this was not particular to the Twin Falls area but it seemed to be a nationwide concern. In their area, private attorneys had taken some of their cases to reduce the numbers the public defenders were trying to handle. **Senator Wintrow** questioned what roles Mr. Andersen viewed as being most important in his role as a commissioner. **Mr. Andersen** said he believed making sure the minimum standards were met throughout Idaho so that everyone was given the constitutional right to counsel and providing training or support from the Commission when and where it was needed were very important. He continued by explaining how important it was for people to have trust and confidence in their public defenders. One way to help make that possible was to have small enough case loads to give the public defenders the necessary time to spend with their clients to build those relationships and create trust and confidence.

Chairman Lakey announced there would be some switching of Agenda items to accommodate the presenter's schedules.

S 1106

JUVENILE PROCEEDINGS - Adds to existing law to provide rights of parents, guardians and others during child protection investigations. **Senator Herndon** explained this legislation would add a notification requirement to the statute, which is currently not there. It would inform parents, guardians and those who have custody of minor children that they were the subject of a Child Protective Service investigation. These were cases where there had been a report of child abandonment, neglect or abuse and they would have 72 hours from the first contact to be notified by the Department of Health and Welfare of their legal rights. The legislation provided that Health and Welfare would determine the format for the notification. The information would include what to expect in the investigation, called a comprehensive safety assessment, and would involve all the children living in the home not just the child about which the report was made. If a social worker came and wanted to talk to parents, their goal was to gain consent and most parents were willing to give consent. This legislation was trying to empower parents so they did not feel run over by the process and that they did have some control. By equipping parents with knowledge of their rights, they were more likely to cooperate with the department (see Attachment 1). **Senator Herndon** indicated that both the Fraternal Order of Police and Director Jeppeson of the Department of Health and Welfare were comfortable with this legislation.

DISCUSSION:

Senator Lee was concerned about what would happen if the department did not end up complying with the statute being added through this legislation. **Senator Herndon** explained there would be no remedy for parents to bring the department into compliance. Parents would have to file civil litigation and attempt resolution through that. He also clarified that the police departments were not responsible for delivering the information to the parents. That responsibility belonged with the Department of Health and Welfare.

TESTIMONY: **Joe Evans**, on behalf of members of his family, spoke in support of **S 1106**. **Mr. Evans** explained that his brother was a young, single, white, stay at home father with a learning disability and on social security. Several "busy bodies" felt he was not qualified to be a parent and reports to CPS were filed. The pamphlet that Health and Welfare was now using would have made his brother much better prepared to deal with the situation he was placed in. **Mr. Evans** believed his brother was subjected to trauma, family trauma, separation and anxiety resulting from the way CPS handled situations relating to his brother's children. Those same children were now struggling with their own parenting struggles as a result of the traumas they experienced as children. **Mr. Evans** also felt strongly that unsubstantiated reports were problematic without some sort of mandatory minimum reporting requirements. He stated people who lack the ability to make those determinations should not be allowed to file reports.

MOTION: **Vice Chairman Foreman** moved to send **S 1106** to the floor with a **do pass** recommendation. **Senator Hart** seconded the motion.

DISCUSSION: **Senators Wintrow, Lee, Foreman, Ricks, Hartgen** and **Hart** all had questions concerning the legislation proposed by Senator Herndon. There was a suggestion made that the Child Protection Oversight Committee should be consulted about the language used in **S 1106**. **Senator Lee** was concerned about the use of the word "unsubstantiated" meaning something did not happen when in reality something did happen just not to the level of a Child Protection Act violation. **Senator Foreman** was very anxious to educate parents about the rights they had to help them through the process they were going to experience. One of the main concerns relating to **S 1106** was subsection 5 and the affect it may have on the future and how more government may be added through litigation. **Senator Herndon** stated that subsection 5 was only an enforcement mechanism for placing the information into the parent's hands about their legal rights within 72 hours of the first contact in an investigation. It did not have anything to do with what the results of the investigation were. **Senator Herndon** assured the Committee that "unsubstantiated" did not mean there was not abuse, maltreatment or neglect. It means the department was not able to substantiate the origins of the report they were investigating.

Chairman Lakey summarized stating, the language gave parents, guardians or other persons having legal custody of the child, standing to challenge a violation of the provisions this section provided for. It stated that the Department of Health and Welfare were required to notify parents, guardians or persons that they have certain legal rights and those were included in said section. All this section did is provide for the fact that the department, if they contact a parent directly and in person, was going to have to provide a notification of their rights. If they threw all these in the garbage and never gave these to the parents, then the parents under subsection 5, would not have to come back to the legislature. They could go to a court, file a lawsuit at their own expense, and they could claim the Department was violating the new section of **S 1106**, 16-1648 by not informing parents of their rights in the CPS investigations.

Senator Lee questioned how the legislation might affect constitutional rights. **Senator Herndon** explained these rights were already possessed by parents. CPS investigations in the Ninth Circuit were strongly in favor of child protection but they also protect the Fourth and Sixth Amendments. This legislation allowed the department to determine how to get their work done and protect the children while also respecting the existing constitutional rights of the parents.

VOICE VOTE: A voice vote was called. Those voting aye for a **do pass** vote were **Chairman Lakey, Vice Chairman Foreman, Senators Ricks and Hart**. Those voting nay were **Senators Lee, Hartgen, Wintrow, and Ruchti**. A tie vote was called. The motion failed to pass.

MOTION: **Vice Chairman Foreman** moved to send **S 1106** to the **14th Order of Business** for possible amendment. **Senator Hart** seconded the motion. A roll call vote was called. Those voting aye were **Chairman Lakey, Vice Chairman Foreman, Senators Ricks, and Hart**. Those voting nay were **Senators Lee, Hartgen, Wintrow, and Ruchti**. The vote was a tie and motion failed.

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

RS 30395 **Relating to the removal of a sunset on the ability of the Occupational Licensing Review Committee's ability to function and reduce the burden of unnecessary governmental regulation.** **Chairman Lakey** explained this legislation was a print bill to be heard in the Commerce and Human Resources Committee. A committee had been established to review new potential licensing regulation as it came forward, made sure it fit the criteria in the statute, and then made a non-binding recommendation to the legislature. The legislation removed a sunset on the Committee. The bill changed the review of existing regulation to a ten year time frame rather than a five year.

MOTION: **Senator Lee** moved to send **RS 30395** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Foreman passed the gavel back to Chairman Lakey.

S 1059 **ADDRESS CONFIDENTIALITY FOR JUDICIAL OFFICERS - Amends and adds to existing law to provide confidentiality for judicial officers.** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, introduced **S 1059** stating the legislation created a new section to provide protection or address confidentiality for judicial officers. It mirrors the provisions similar to protections for law enforcement officers. **Mr. Spillman** gave some background issues happening throughout the country. Judge Cleve Colson, Magistrate Judge, from Blackfoot, Idaho had experienced someone obtaining his personal information, doxing him and trying to exert influence through intimidation over his decision in one of his cases. **Mr. Spillman** explained this legislation had two purposes. The first purpose was to ensure that the judges and their families should not have to fear for their own safety or the safety of their families. The second purpose was litigants should not have to worry that somehow the judge they were standing in front of was being intimidated or influenced by the other party. The process will work much like the requests which come from law enforcement to shield their addresses and telephone numbers from disclosure. It required an application from the judicial officer and payment of a fee to the agency providing the confidentiality service. There were two parts that were different than law enforcement. Judges were elected officials and the public had a right to know that said officials reside in the jurisdiction for which they were elected. The public agency shielding their information will be allowed to redact the specifics of the address but if someone asks if someone resides in a specific county, the public agency had to verify that. The second part that differs from law enforcement was the declarations of candidacy that were filed with the Secretary of State. There had been language added that excluded that information if the application had been filed and the fee paid to the agency providing the confidentiality service. **Chairman Lakey** questioned why the courts wanted an immunity provision in this legislation. **Mr. Spillman** responded that the immunity clause was a complete mirror provision that was provided in Title 19, Chapter 58 for the law enforcement process. It was in the bill because it was in the law enforcement bill that was granted by the legislature to them. **Mr. Spillman** said they assumed Chapter 58 was enacted to provide immunity to public agencies that were fulfilling this statutorily created duty. He commented

that if an honest mistake was made and the information was released, those involved would not be held civilly liable.

MOTION: **Senator Hartgen** moved to send **S 1059** to the floor with a **do pass** recommendation. **Senator Foreman** seconded the motion.

DISCUSSION: **Senator Ruchti** had a concern with the immunity from liability provision. He did not feel it was appropriate for the Court system to ask for immunity in this situation since the Idaho Tort Claims Act protected governmental agencies in many ways. If something happened to a judge and a person displayed reckless behavior in disclosing the information, that judge and/or his family would have no recourse under the Tort Claims Act, which already provided protections.

SUBSTITUTE MOTION: **Senator Ruchti** moved to send **S 1059** to the **14th order of Business** for possible amendment. **Senator Wintrow** seconded the motion. The motion failed.

ORIGINAL MOTION: The motion to send **S 1059** to the floor with a **do pass** recommendation passed by **voice vote**. **Senator Ruchti** requested to be recorded as voting nay.

Chairman Lakey indicated that **S 1090** and **S 1092** would be heard on Wednesday, March 1, 2023.

ADJOURNED: There being no further business, **Chairman Lakey** adjourned the Committee at 3:00 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary