

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 27, 2019

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Senator Anthon

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

MINUTES APPROVAL: **Vice Chairman Lee** moved to approve the Minutes of February 4, 2019. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

RS 26940 **Relating to Judges; To Revise a Provision regarding the Salary of Justices of the Idaho Supreme Court.** **Sarah Thomas**, Administrative Director of the Courts, Idaho Supreme Court, advised that the Joint Finance-Appropriations Committee (JFAC) approved a 3 percent pay increase for Fiscal Year (FY) 2020 for permanent employees of the state. She indicated judicial salaries must be separately established by the Legislature and are set forth in Idaho Code § 59-502. This legislation presents an amendment to Idaho Code § 59-502 which would provide an increase in the total judicial salary pool of 2.95 percent - just under the amount provided for non-judicial employees (for details of recommended changes in judicial compensation see Attachment 1.)

Chairman Lakey, Vice Chairman Lee, Senator Lodge, and Senator Nye stated they had potential conflicts pursuant to Senate Rule 39(H), but intended to vote.

MOTION: **Senator Burgoyne** moved to send **RS 26940** to print. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

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

RS 26995 **Relating to Rights of Crime Victims.** **Chairman Lakey**, advised this legislation proposes amendments to **SJR 101** regarding the rights of crime victims. He stated that **SJR 101** is about the core principles of notice, opportunity to be present, opportunity to be heard, and standing. It has never been about the right to keep and bear arms. This amendment removes the controversial provision regarding reasonable protection.

MOTION: **Senator Cheatham** moved to send **RS 26995** to print. **Senator Thayn** seconded the motion.

DISCUSSION: **Senator Grow** asked if there was a direct statement in this legislation that negates the previously included language on gun rights. **Chairman Lakey** directed him to page 2, lines 12 and 13.

VOICE VOTE: The motion to send **RS 26995** to print carried by **voice vote**.

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

S 1074

Relating to County Jails - To Revise Provisions Regarding Reception and Board of Prisoners. **Seth Grigg**, Executive Director, Idaho Association of Counties, stated **S 1074** proposes amending Idaho Code § 20-612, to clarify that once an individual has been released from the Sheriff Department's custody, they are no longer responsible for the inmate's medical expenses. He indicated the need for this legislation arises from a recent Idaho Supreme Court decision in the case of *St. Alphonsus Regional Medical Center v. Raney*, 163 Idaho 342 (2018). That decision obligates the Ada County Sheriff to pay for medical care of a citizen after release from jail (for additional comments, see Attachment 2).

Mr. Grigg introduced Joseph Mallet, Chief Legal Advisor, Ada County Sheriff's Office, who spoke in favor of **S 1074**. He provided the Committee with background information on the law related to a sheriff's obligation to care for the inmates incarcerated in the county jail. **Mr. Mallet** reviewed the lawsuit against the Ada County Sheriff, which arose after charges were dismissed against an inmate who attempted suicide and was then hospitalized. The Ada County Sheriff agreed to cover medical expenses prior to the dismissal of charges, but not after. He stated the current language of Idaho Code § 20-612, referencing Idaho Code § 20-605, is what caused the Idaho Supreme Court to hold that the legislature intended for sheriffs to provide continuing health care for former inmates who were released for the purposes of providing medical care. **Mr. Mallet** advised this bill strikes the reference to Idaho Code § 20-605, and adds two sentences at the end to clarify intent (for additional comments, see Attachment 3).

DISCUSSION: **Senator Burgoyne** stated that the sentence added to the bill is good. He does not think striking the reference to Idaho Code § 20-605 will solve the problem because the statutes are read together. He indicated this fix solves only one piece of a much bigger issue and the Legislature needs to take a serious look at these statutes. **Mr. Mallet** stated that the statutes are read together, but Idaho Code §§ 20-604 and 20-605 deal with inmates who are transferred from one county to another county. **Senator Burgoyne** pointed out that in the case of a transfer of an inmate who is in a coma and leaves the jail for medical care, the sheriff is obligated to pay for medical care and will bill the other county. **Mr. Mallet** agreed with that analysis. He indicated that since the Supreme Court decision, Ada County has had six claims that fall under the decision; those claims have totaled about \$250,000. He stated this bill will solve that problem. **Senator Burgoyne** commented that in his view the Supreme Court probably made the only decision it could, given the statutes that this Legislature has written, and it is incumbent upon the Legislature to change it.

TESTIMONY: **Toni Lawson**, Vice President, Government Relations, Idaho Hospital Association (IHA), spoke in opposition to **S 1074**. She stated that IHA feels the bill is premature and asked that it be held in Committee. One of the concerns is, as drafted, **S 1074** simply allows counties to temporarily "furlough" a prisoner from custody, order them to go to the local hospital for care, and take them back into custody once that care has been given. She stated IHA has been asked to provide input on this legislation, and to develop amendments for consideration. They are struggling to find appropriate amendment language that doesn't simply shift the responsibility of what the legislature and courts have determined to be the responsibility of the counties on to the hospitals. They would prefer to see what happens with Medicaid expansion and how that impacts the county indigent program (for additional comments, see Attachment 4).

DISCUSSION: **Vice Chairman Lee** asked if hospitals are billing counties for inmate care at Medicaid rates. **Ms. Lawson** advised to the best of her knowledge they are using Medicaid rates. **Vice Chairman Lee** asked how waiting to act on this bill would change any decision. **Ms. Lawson** indicated that new qualifying rules under Medicaid expansion might change, and how this affects the indigent program is not yet known.

Senator Burgoyne stated that he does not like seeing tax payers get hit with paying for medical expenses. He asked Ms. Lawson's opinion on a possible amendment stating that in these situations, the first payor would be the prisoner and/or insurance or other medical benefits or programs through which he or she is eligible, then, if indigent, the county indigent program and, by extension, the Catastrophic Health Care (CAT) fund. **Ms. Lawson** stated IHA is willing to look at options. She indicated part of the discussion would have to be how this impacts the problem, and not simply who is paying.

TESTIMONY: **Steve Bartlett**, Sheriff, Ada County, addressed the issue of releasing inmates for hospital care. He stated that the sheriff's ultimate goal when dealing with an inmate who needs medical care is for the inmate to receive the best care possible. He indicated that it is not the practice of Ada County to release an inmate to a hospital for medical care, and then once that care has been completed, take the individual back into custody.

Mr. Grigg reiterated that this is a problem that needs to be addressed and kicking the can down the road leaves counties with significant exposure, which could dramatically impact the budgets of small jurisdictions. He stated that the intent is to make it clear in statute that if a prisoner is released from the sheriff's custody, the sheriff no longer has responsibility for medical costs. He commented that this is accomplished with **S 1074**.

DISCUSSION: **Chairman Lakey** asked if it was the county's intention to send this to the 14th Order of Business to change the wording from "county's" obligation to "sheriff's" obligation. **Mr. Grigg** stated he feels like the current language addresses IAC's concerns, but they are open to the change if the Committee feels this needs to be clarified.

The Committee discussed the possibility of sending **S 1074** to the 14th Order of Business for amendment, holding the bill in committee, or sending it to the floor.

Vice Chairman Lee stated she had a conflict of interest pursuant to Senate Rule 39(H), but intended to vote.

MOTION: **Vice Chairman Lee** moved to send **S 1074** to the floor with a **do pass** recommendation. **Senator Cheatham** seconded the motion.

DISCUSSION: **Chairman Lakey** commented that he is sympathetic to the arguments of the hospitals, and does think that county jails are under the obligation to pay for inmates while they are hospitalized. He noted there are other programs that could be responsible for medical care once criminal charges are dismissed. **Senator Burgoyne** commented that until the Legislature deals with Idaho Code §§ 20-604 and 20-605, this problem will not be solved. He indicated he does not mind revisiting these other issues or even having a trailer bill come along to address the kinds of issues that Ms. Lawson raised today, but he does not feel this bill alone will solve the problem.

VOICE VOTE: The motion to send **H 1074** to the floor with a **do pass** recommendation carried by **voice vote**. **Senator Burgoyne** requested that he be recorded as voting nay.

S 1133 **Relating to the Special Committee on Criminal Justice Reinvestment - To Revise the Date When the Committee Shall Cease to Exist.** **Senator Lodge** stated this bill reappoints the interim committee to continue to study the Criminal Justice System in Idaho through 2023.

DISCUSSION: **Senator Burgoyne** commented that he believes the bill would be helped by setting some goals. He stated a fundamental problem is that the legislature did not appropriate the money to bring down case loads of probation and parole, and did not institute the social worker component that is absolutely critical. He noted that we have the Criminal Justice Commission, this interim committee, and all the agencies that are dealing with criminal justice issues, and getting everyone on the same page has proved to be logistically difficult. He stated he reluctantly supports moving ahead with this legislation. **Senator Lodge** indicated she agreed with Senator Burgoyne's comments. She stated the interim committee has made repeated requests for more probation and parole officers, and the interim committee is trying to get more clerical help for them so the officers can spend more time with the individuals they oversee. The interim committee is working to save money, and avoid building an additional prison, by bringing down the incarceration rate and putting more people into community programs.

MOTION: **Senator Nye** moved to send **S 1133** to the floor with a **do pass** recommendation. **Senator Grow** seconded the motion. The motion carried by **voice vote**.

S 1134 **Relating to Juries - To Provide for County Jury Lists, to Provide that the Jury Commission May Use Certain Information from the Supreme Court, to Provide that the Supreme Court shall Compile and Maintain a Master Jury List, and to Provide that the Supreme Court May Request Certain Information.** **Jason Spillman**, Legal Counsel, Administrative Office of the Courts, stated that **S 1134** seeks to harness a functionality of the court's new Odyssey case management system. The Odyssey jury module will allow the Supreme Court to create a master jury list comprised of residents of the counties, so that the counties can then select jurors from a list created by the Supreme Court. In order to do so, the court needs access to the voter registration list and driver's license list. This bill would provide that access for the court. He indicated that currently the law requires that the jury commission for each county do this work. **Mr. Spillman** emphasized this is an opt in situation for the counties; a county that is happy with their current process will still be allowed to utilize that process.

DISCUSSION: **Vice Chairman Lee** asked for clarification that the counties would not have to pay a fee for access to this master jury list. **Mr. Spillman** acknowledged there would be no cost to the counties. **Senator Grow** asked if counties are now using providers other than Odyssey for compiling jury lists. **Mr. Spillman** responded that he believes some counties do use vendors to support their jury selection process. **Senator Grow** expressed concern that the state, through their evaluation process, may give the impression that Odyssey is the best product for this purpose, and thereby create competition for local businesses that may be providing this service for counties.

Senator Thayn asked why the Court could not enter into agreements with the counties to provide this service and, thus, this bill would not be needed. **Mr. Spillman** advised that statute clearly requires the jury commission to compile and maintain the list themselves. He indicated that in order to provide the counties the option to use Odyssey, it is his belief this amendment is necessary. **Senator Lodge** asked why the Supreme Court would want to take on jury selection for the counties. **Mr. Spillman** replied that the Supreme Court has the Odyssey tool which has this functionality built into it, and is willing to use that tool to help the counties with their jury selection process. **Senator Lodge** asked if Odyssey users are happy with the program. **Mr. Spillman** deferred the question to Sarah Thomas, Administrative Director of the Courts, for a response. **Ms. Thomas** indicated that not everyone is happy with the Odyssey system, but she does not expect to ever reach a place where everyone is happy. She stated that the longer users are on the system and understand the capabilities, the happier they are with it. The Supreme Court has the Odyssey jury module available, and wants to give the counties the

option, without cost, to utilize the program. It will provide additional functionality such as sending a text message to jurors when a trial is called off. **Senator Lodge** indicated her concern is that the Supreme Court is adding another function to the Odyssey system when users still have concerns about the system. She indicated she would like to hear how the counties feel about this issue. **Mr. Grigg** indicated he has not heard concerns about implementing an optional jury pool system that would be run by the Administrative Office of the Courts.

Senator Grow noted that counties would have the option to opt in, and asked if they do not already have that opportunity without this bill. **Ms. Thomas** advised they do not. She explained this bill gives the Supreme Court the right to access the county information necessary to compile the statewide list.

MOTION: **Senator Thayn** moved to send **S 1134** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**. **Senator Grow** asked to be recorded as voting nay.

ADJOURNED: There being no further business, **Chairman Lakey** adjourned the meeting at 2:50 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Assisted by Lois Bencken