

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 18, 2019

TIME: 1:00 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 1:00 p.m.

MINUTES APPROVAL: **Vice Chairman Lee** moved to approve the Minutes of January 23, 2019. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.
Senator Lodge moved to approve the Minutes of January 30, 2019. **Senator Grow** seconded the motion. The motion carried by **voice vote**.
Senator Thayn moved to approve the Minutes of February 6, 2019. **Vice Chairman Lee** seconded the motion. The motion carried by **voice vote**.
Senator Lee moved to approve the Minutes of February 13, 2019. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

RS 27129 **Chairman Lakey** indicated that **RS 27129** is a concurrent resolution to continue the Interim Committee to Study Occupational Licensing. The RS will go to the Commerce and Human Resources Committee after printing.

MOTION: **Senator Grow** moved to print **RS 27129**. **Vice Chairman Lee** seconded the motion. The motion carried by **voice vote**.

H 170 **Representative Heather Scott**, District 1, presented **H 170**. She stated that the Idaho Department of Health and Welfare (DHW) is charged with investigating allegations of neglect, abuse, and abandonment of children. The proposed legislation would provide a notification of rights. The DHW social workers would present the parents with a list of their constitutional rights when they are in direct contact with the parents or guardians of a child who is subject to investigation. There are no penalties if they forget the sheet, no signatures are required, and no reading of rights. **Representative Scott** explained the notification form (see Attachment 1). She discussed the background on the Child Protective Act. In 1974 Congress passed the Child Abuse Prevention and Treatment Act, known as CAPTA. It mandated that all the states establish a procedure to investigate suspected incidents of child mistreatment. Idaho requires mandatory reporting by anyone that suspects abuse. Failure to report abuse, neglect, or abandonment is a misdemeanor. She gave statistics regarding the number of cases reported, investigated, and the number of children actually removed from their homes in 2018. Out of the 10,000 visits, 1,374 (approximately 14 percent) of the children were taken into State custody. **Representative Scott** stated that this legislation is not intended to, and does not reduce the role of Child Protective Services (CPS). Her concern is that CPS social workers' policies require information to be collected for their comprehensive safety assessment reports, including detaining and

questioning children, assessment of family philosophies, and home photographs and inspections. Her opinion is that while parents can say "no," they seldom do, and her assumption is that it is because they do not know they can say "no." **H 170** is a bill containing a directive to CPS social workers to hand a parent or guardian a piece of paper with their rights listed upon initial direct contact. It will not diminish the important role of CPS.

TESTIMONY: **Scott Herndon**, District 1, began his testimony by enumerating the rights in **H 170**. He stated it is about giving parents knowledge of the current law, it does not grant any rights that the parents do not already possess. It gives a balance of interest represented by both the State in protecting truly abused, neglected, or abandoned children. There is also the parents' interest in protecting the privacy and dignity of their home and their relationship with their child. Regarding parents' interests, **H 170** is only disclosing rights they already possess when dealing with CPS. It is important to know the rights of first contact because this is when there is the potential for maximum intrusion into the family's home and privacy. The Fourth Amendment to the Constitution grants parents the right to be free from unreasonable search and seizure. If a parent says no, there is no probable cause with exigent circumstances. A search warrant is required. This amendment involves any interaction between the CPS and the right to question children and their families and the right to enter their home or to detain them. There are case studies that show there is damage actually done to children when the government over-intrudes into family life. It can cause emotional harm and psychological damage. Having the parents know their rights does not mean that the CPS cannot fulfill its interest in protecting children.

DISCUSSION: **Senator Burgoyne** asked what would happen if a child protection worker violated the parents' constitutional rights, would the parents have a remedy without the passage of **H 170**. **Mr. Herndon** responded in the affirmative. There is a legal remedy in the federal courts where if a representative of the government under the color of law violates the constitutional right of the parents, they can bring suit in federal courts to obtain a legal remedy.

TESTIMONY: **Francine Frank**, Ada County resident and licensed master social worker, shared her concerns about **H 170**. She indicated that she fears it would have a negative impact by putting the most vulnerable children of Idaho at increased risk for abuse and neglect. CPS makes their best effort to ensure childrens' safety in the least restrictive environment, preferably in their own homes. This bill would require the social worker to advise parents or caregivers of their Miranda rights. Those rights are a function of a criminal investigation interrogation. Social workers are not law enforcement officials or attorneys. To begin an interaction with parents in such a manner would interfere with relationships and trust between the social worker and parents. It would result in some cases being delayed or in decreased access to the children. Minutes count when children are in danger. **Ms. Frank** asked for the Committee to vote no on **H 170**.

Christine Tiddins, Idaho Voices for Children, stated that they were in opposition to **H 170**. She discussed the three main reasons for their opposition. The proposal 1). does not place a priority on children; 2). could interfere with the State's responsibility to protect children from abuse and neglect; and 3). does not reflect the feedback being heard from individuals and communities who have been impacted by foster care (see Attachment 2).

Lindsay Harrington, former CPS worker, indicated that she had concerns about **H 170**. She explained that if child protection workers were asked to obtain probable cause before entering a home, this may greatly reduce their ability to ensure immediate safety for the children. Her second concern is that obtaining probable cause is outside the assessment scope of child protection. They are not completing criminal investigations or not looking to charge anyone and they can not legally remove children from the home. Another concern she has is that reading the rights to parents will diminish CPS's ability to build rapport and help families who are struggling; they will work against families rather than with them to build better lives. **Ms. Harrington's** last concern is with the barriers in the foster care system. She feels strongly that those involved need to listen to the young people impacted by foster care.

Darren Mitchell, Sergeant, Special Victims Unit, Boise Police Department, indicated that this bill contains conflicting language. The bill states that the DHW investigation is not criminal, but immediately thereafter states that the rights understood by most people are related to criminal processes. This may confuse people about the true nature of the contact. Notifying parents of these rights typically associated with criminal jeopardy before having made any other assessment of the situation will lead to misconceptions and inaccurate interpretations.

DISCUSSION: **Senator Burgoyne** commented that he felt this hearing was leading to trusting social workers and people outside of the home more than the parents. Trying to arrive at a balance would be important. **Sergeant Mitchell** stated that more children wind up being removed from the home because there is not an answer as to how the injury occurred; the presumption would be that it occurred in the home. The result would be removing the child to keep him safe until the investigation is completed. **Senator Burgoyne** asked what evidence had to be presented to a judge to get a court order. **Sergeant Mitchell** indicated that he was not sure of the verbage but thought that it was "reasonable suspicion."

TESTIMONY: **Michael Kane**, representing the Idaho Sheriff's Association (Association), spoke in opposition to **H 170** and stated it is not just about parents. It protects everyone who might be living or visiting the home. There is a disconnect in civil matters. The DHW is directing this investigative effort; the CPS workers do not have the ability to get search warrants or arrest warrants. They are civil people dealing with a civil process. The subject rights are not given to criminal suspects until there is either an arrest or detention. Miranda rights are not given until a person is in custody. **Mr. Kane** said that the Association is very concerned that there will be a new exclusionary rule invented by the courts as a result of this statutorily created series of rights.

Ivy Smith stated that she is in opposition to **H 170**. She was in the foster care system since she was 12 years old. She shared her experience (see Attachment 3). **Ms. Smith** said her experience shows the kinds of dangers children would be put in if social workers were required to notify the parents before beginning a safety assessment. When people call in from the community to report to CPS about possible abuse or neglect, this legislation would only hinder CPS worker's ability to conduct the investigations in a timely manner and get a clear story. **Ms. Smith** pointed out that there was no attempt made to collaborate with the Foster Youth Advisory Board.

Dustin Ingram, representing himself, spoke in favor of **H 170** and disputed the earlier statement that there is no such thing as a warrant to examine a child. He stated that if a child is taken out of a home because his parents refuse to allow a medical exam, the children are run through rape kits and forensic interviews conducted by law enforcement and a social worker. **Mr. Ingram** indicated that there is a course of things that happen to the children without the parents' consent or knowledge and those things take place before a court hearing is held. He said warrants can be obtained with reasonable suspicion and that legal standard is very low. He felt that taking a child out of a home that is dirty or because the parents are standing up for their rights is not right. **Mr. Ingram** stated that DHW can not be trusted to police themselves. The majority of people are good parents but they are being forced to go to court to prove their innocence.

Erica Kallin, representing the Idaho Prosecuting Attorneys Association (IPA), stated she had submitted a letter in opposition to **H 170** (see Attachment 4). She reiterated that when CPS is denied access to children, which this legislation is proposing, it will have a chilling affect on the DHW's ability to protect children.

Tom Arkoosh, representing the Association of Criminal Defense Lawyers, testified in favor of this legislation. **Mr. Arkoosh** stated that there are no new rights created by **H 170**. This is a notification bill in which parents and children have the right against unreasonable search and seizure, the right to remain silent and legal advice in approaching the matter in a rational way. His concern is about the representation being given. If there is reasonable suspicion to believe that the child is in danger, the agency should have an order to approach the house. **H 170** is an opportunity for a legislative solution to resolve these issues.

Kieran Donahue, Canyon County Sheriff, testified in opposition to **H 170**. He stated that a police officer's job is to protect the constitutional rights of every individual. He explained that getting a search warrant requires probable cause, and reasonable suspicion was never enough reason. In the overall protection of society, it is important to err on the side of the children. He indicated that forensic interviews are valuable for those who are trained to use them in the interviewing process. **Sheriff Donahue** stated that it is important to not penalize the system because of the actions of a few.

David Jeppsen, Director, DHW, stated that he takes his responsibility to ensure the health and safety of all Idahoans, especially children, seriously. He indicated that it was important for his staff to have the ability to have eyes on the children, to talk to them, and interview family members to assess the safety factors and risks of the home. **Director Jeppsen** said that he was particularly concerned with children under the age of five since many of them have no outside contact. Idaho law requires a follow up on all allegations and the conduction of a comprehensive assessment ensuring the safety of the child. The role of the CPS worker is to determine if the child is safe. He made a commitment to make sure that if one of his staff violates the rights of any individual, he will take the appropriate action. **Director Jeppsen** stated he was anxious to work with the legislature and advocates to improve the process of keeping children safe.

Representative Scott concluded her presentation by stating that this bill is a directive to the DHW, CPS social workers to hand a parent or guardian a piece of paper with their rights upon initial direct contact. The bill does not require that the rights be read to the parents. The form presented at the door is not Miranda rights. She commented that **H 170** is talking about earlier stages of helping children than foster care covers, and it was not discussed in the legislation. **Representative Scott** stated that she feels this bill will put parents and government on an equal playing field and it is not giving parents additional rights.

DISCUSSION: **Vice Chairman Lee** inquired how children under five and those who are home schooled get the added attention they need. **Representative Scott** replied that she would hope parents would be reasonable and answer their questions since that does not raise suspicion that something is wrong in the home. If that does not occur, a deeper investigation would be needed.

**WRITTEN
TESTIMONY IN
OPPOSITION:**

The following people submitted written testimony in **Opposition** to **H 170**:

Christine Tiddens, Idaho Voices for Children (See Attachment 2)

Ivy Smith, Former Foster Youth (See Attachment 3)

Erica Kallin, Idaho Prosecuting Attorneys Association (See Attachment 4)

Chris Orvis, Idaho Fraternal Order of Police (See Attachment 5)

KJ Brandt, North Idaho CASA (See Attachment 6)

Amanda Roberts, Licensed Social Worker (See Attachment 7)

Sadie Heindel, Licensed Social Worker (See Attachment 8)

Breanne Varela, Licensed Social Worker (See Attachment 9)

Vaughn Killeen, Executive Director, Idaho Sheriffs Association (See Attachment 10)

Elizabeth Norton, Former Foster Youth (See Attachment 11)

**WRITTEN
TESTIMONY
IN FAVOR:**

The following people submitted written testimony in **Favor** of **H 170**:

ACLU of Idaho (See Attachment 12)

Miste Karlfeldt, Executive Director, Health Freedom of Idaho (See Attachment 13)

MOTION:

Senator Burgoyne moved that **H 170** be held in Committee. **Vice Chairman Lee** seconded the motion.

DISCUSSION:

Senator Burgoyne commented that he felt there was increasing legislation conveying the message that Idaho does not have good laws. He does not feel that way. He stated that people in Idaho have unique views about their property rights, their rights in their homes, their security in their homes and they are often very well armed. **Senator Burgoyne** is concerned that giving the notice proposed in **H 170** is going to promote a confrontation because the information in the notice is not accurate. **Chairman Lakey** added that he does not have an issue with giving parents information about the process but he is concerned with the information in regard to exigent circumstances. He suggested giving this legislation to the legislative review panel and letting them work on it. **Vice Chairman Lee** agreed that **H 170** has focused attention on an issue that requires further discussion. **Senator Grow** commented that handing someone a piece of paper listing constitutional rights and having the right to an attorney may cause a confrontational interaction between the CPS and the parent. **Senator Thayne** stated that he would not be supporting the motion because he sees **H 170** as a way to educate parents about their rights and he believes more respect on both the side of the parents and the CPS workers would be beneficial.

VOICE VOTE: The motion to hold **H 170** in Committee passed by **voice vote**. **Senator Thayn** requested that he be recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:37 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary