MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE:	Thursday, March 17, 2016
TIME:	1:30 PM or Upon Adjournment
PLACE:	Room EW42
MEMBERS:	Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow
ABSENT/ EXCUSED:	Representative(s) McDonald, Nate
GUESTS:	Maureen Wishkoski, Women's and Children's Alliance; Jennifer Landhuis, Idaho Coalition Against Sexual and Domestic Violence; Sherri Cameron, Boise Police Department; Senator Kelly Anthon; Bob Aldridge, TEPI; Judge Bryan Murray, Idaho Courts; Deena Layne, ISC; Jessica Lorello, Attorney General; Savahna Goodman, Self; Miren Unsworth, IDHW; Holly Koole Rebholtz, IPAA; Dan Dinger, IPAA; Representative Lance Clow.

Chairman Wills called the meeting to order at 2:22 PM.

SCR 150: **Sen. Davis** presented **SCR 150**. The purpose of this legislation is for the fiscal note to better reflect the true fiscal impact of the bill. A statement of purpose and a fiscal note are required to be attached to any introduced bill. Fiscal notes must contain the proponent's full fiscal year projected increase or decrease. The proponent bears the responsibility of providing accurate information. If it is determined there will be no fiscal impact, the fiscal note must contain a statement of the reason no fiscal impact is projected. All statements of purpose and fiscal notes must be reviewed by the committee for compliance before final action is taken. A member of the committee may challenge the sufficiency of a fiscal note prior to the committee's final action on the bill. Any member may debate the sufficiency of the statement of purpose or fiscal note when the bill is taken up for consideration on the floor. Any revisions of the statement of purpose or fiscal note are ministerial only. It must be clear the statement of purpose is not intended to reflect legislative intent and a notice will be placed on each statement of purpose and fiscal note

In response to a question from the committee, **Sen. Davis** explained revisions of the statement of purpose or the fiscal note may happen in a ministerial function, meaning without unanimous consent because doing so would imply the statement of purpose is more than a mere attachment.

In response to a question from the committee, **Sen. Davis** explained the legislature is the sole judge of legislative rules. The notice which will clarify the statement of purpose and the fiscal note are only a mere attachment and not an expression of legislative intent, will automatically be applied when the statement of purpose is generated in GEMS. This notice is intended to alert those reviewing the legislation that the statement of purpose and the fiscal note are not intended to reflect legislative intent.

MOTION: **Rep. Sims** made a motion to send **SCR 150** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Moyle** will sponsor the bill on the floor.

S 1362: **Sen. Davis** presented **S 1362** to the committee.

MOTION: **Rep. Nye** made a motion to send **S 1362** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Kerby** will sponsor the bill on the floor.

S 1373: **Sen. Burgoyne** presented **S 1373**. This legislation permits a victim of malicious harassment, stalking or telephone harassment, as defined in Idaho law, to file a civil petition in court seeking a protective order on behalf of themselves or their children. Presently, in order to qualify for a protective order, a specific relationship must exist between the victim and the perpetrator. Stalking does not qualify for a civil protective order. However, many times the required romantic or familial relationship do not exist between victim and perpetrator, and the victim is left without any recourse. A violation of the protection order is a misdemeanor. The cost of court filing fees and bonds are waived because Idaho receives between 9 million and 15 million federal dollars intended for victims of domestic violence. These funds hinge on court filings fees not being charged to those filing a civil protective order due to stalking.

In response to a question from the committee, **Sen. Burgoyne** explained a petition for an ex parte order must meet the requirements in Idaho Code 18-7907, except this bill will also require the victim to show stalking or harassment has occurred in the last 90 days, irreparable injury into the future and a likelihood the stalking will continue. Stalkers do not limit themselves to one of the three statutes and telephone harassment has the potential to be just as serious as malicious harassment or stalking, thus it is included.

Sherri Cameron, Boise Police Department, testified **in support** of **S 1373**. Stalking is one of the most difficult cases to prove and build. This is due to the language in the statute requiring a pattern of behavior. When a victim is not able to receive a protection order, it is very difficult to protect the victim and it is impossible for the police department to take action. Often when a stalker is no longer able to reach the victim by the phone their behavior will escalate. If the civil order is not treated as a criminal offense it is not enforceable. In a majority of cases, protection orders do stop the behavior.

In response to a question from the committee, **Ms. Cameron** explained what irreparable injury may look like in a victim's life. These cases have a traumatic impact on a victim's life, including making changes to where they eat, shop, and work out. Planning their lives around where they may come into contact with the perpetrator. This behavior often prevents the victim from going to work which sometimes results in loss of a job, or taking their children to school. Sometimes the victim will move, change their vehicle, change their phone number and change their children's school.

Maureen Wishkoski, Women's and Children's Alliance, testified **in support** of **S 1373**. Although some will say a protective order is just a piece of paper, the protective order does work and often successfully stops the behavior. There were more than 700 protective orders in Ada County in 2015.

Jennifer Landhuis, Idaho Coalition Against Sexual and Domestic Violence, Stalking Resource Center, testified **in support** of **S 1373**. Nationally, 7.5 million people are stalked in a single year. In 50 percent of the cases the relationship required under Idaho law to file for a civil order of protection, does not exist. Only 40 percent of stalking victims contact law enforcement. A protective order is a tool for law enforcement but it is only effective if it available.

Savahna Goodman, testified **in support** of **S 1373**. She provided information about her personal experience with a stalker. She received texts at all hours of the day and for hours at a time. The texts would come in groups of 100-200 texts at a time. She did not meet the qualifications for a protective order because she did not have a romantic or familial relationship with the stalker. Over time the behavior escalated and she chose to make significant changes in her life, including quitting her job. At this time, the stalking has ceased, but she has concern for others in this situation who are unable to receive a protective order, and who may not have the freedom she had to make such significant changes in their lives to avoid their stalker.

Daniel Dinger, IPAA, testified **in support** of **S 1373**. He serves as the supervisor of the IPAA's domestic violence unit. This unit handles domestic violence and other types of cases, including stalking. There are gaps in the law, including situations where the necessary relationship qualifications are not met, or where the necessary relationship does exist but no specific threat of violence has been made. A specific threat of violence is a necessary qualification for a protective order. This legislation would provide the change necessary to provide protection and relief for vulnerable individuals in the community.

Rep. Clow testified **in support** of **S 1373**. He was made aware of Savahna's situation and he found it very surprising she did not qualify for a protective order. He was happy to cosponsor this legislation in order to provide a judge with the opportunity to make a reasonable determination about granting a protective order in this type of situation.

MOTION: **Rep. Gannon** made a motion to send **S 1373** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Clow** will sponsor the bill on the floor.

S 1302: **Bob Aldridge**, TEPI presented **S 1302**. A number of years ago, the "family allowance" was removed from the Probate Code. However, it has been found that not all cross-references to the family allowance in the Probate Code were removed at that time. This bill simply removes the remaining cross references to the non-existent family allowance.

MOTION: **Rep. McCrostie** made a motion to send **S 1302** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. McCrostie** will sponsor the bill on the floor.

S 1303aa: **Bob Aldridge**, TEPI presented **S 1303aa**. This bill is referred to as the Revised Uniform Fiduciary Access to Digital Assets Act. This bill deals only with digital assets such as e-mail, social media, online accounts for banking and investing, online storage of music, photographs and documents, ancestry accounts, and many other digital accounts and property. The bill modernizes the law and updates the rules regarding access to such digital assets by fiduciaries. This bill addresses four common types of fiduciaries including: personal representatives for a deceased person's estate, court-appointed guardians or conservators for a living protected person's estate, agents appointed under powers of attorney, or trustees. Specifically, this bill gives the holder of the account control. The holder is allowed to specify whether their digital assets should be preserved, distributed to heirs, or destroyed. It provides uniformity, respects privacy interests, recognizes the different types of fiduciaries who may need access, requires clear proof of authority, recognizes limits from federal law, and protects custodians of digital assets who comply with a fiduciary's apparently authorized request for access, by giving them immunity so long as they act reasonably and in good faith.

In response to a question from the committee, **Mr. Aldridge** explained this legislation came from the Uniform Laws Commission. Two changes have been made to the original legislation from the Uniform Laws Commission. One was per the request of the Motion Picture Association to include "and designated recipient." The second change was per the request of the Idaho Trial Lawyers to include "reasonably". This legislation has been introduced across many states, and is likely to be adopted across the nation.

MOTION: **Rep. Kerby** made a motion to send **S 1303aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Kerby** will sponsor the bill on the floor.

S 1343: **Sen. Anthon** presented **S 1343**. This bill is about public safety and addresses concerns from law enforcement, the courts, and the Commission of Pardons and Parole. These concerns pertain to how the Board of Pardons and Parole can effectively handle the most dangerous parolee's and their violations. A hearing officer may choose, based on the nature of the violation, whether to impose 90/180 day sanctions. If the violation is of a sexual or violent nature, or if a violator has been formally charged with a new felony or violent misdemeanor, the hearing officer may decide the violator should remain in custody while the charge is being adjudicated.

In response to a question from the committee, **Sen. Anthon** explained there is nothing preventing the new formal charge or a conviction to be the trigger for the hearing.

MOTION: **Rep. Gannon** made a motion to send **S 1343** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Gannon** will sponsor the bill on the floor.

S 1328aa: **Judge Bryan Murray**, Chair, Idaho Supreme Court Child Protection Committee, presented **S 1328aa**. This legislation was prepared by the Idaho Supreme Court Child Protection Committee. The purpose of the proposed changes is to implement best practices identified and/or developed by the committee. This includes practices required by recent federal legislation. According to 2014 data from the Idaho Medicaid program, 46% of foster kids in Idaho are prescribed psychotropic medications. This legislation requires the Idaho Department of Health and Welfare (IDHW) to report if a child is being prescribed psychotropic medications and if so, how much, at every review and permanency hearing. The courts may then inquire about the circumstances.

In 2014, the Preventing Sex Trafficking and Strengthening Families Act, and the Fostering Connections Act were implemented. Both laws are directed at state agencies and compliance with both is necessary to maintain federal funding. Only the changes to the Idaho statute necessary to maintain federal funding and which are believed to improve outcomes for Idaho foster children have been identified. Implementing the proposed changes will not have a direct impact on the General Fund but failure to do so, will result in the loss of desperately needed federal funding. Transitional planning must start at age 14 rather than 16 and must be included in case plans. The Idaho Supreme Court Child Protection Committee recommends a review and/or permanency hearing 90 days prior to a youth aging out for the purpose of addressing the transition plan.

For youth 14 years old and older, the case plan must document the youth was provided with information about their rights including: education, health, visitation, court participation and a receipt of their annual credit report. IDHW must sign an acknowledgment that the youth was provided the information and it was explained in an age or developmentally appropriate way. For youth 12 years old and older, the court will inquire at review and permanency hearings what the youth desires for permanency placement. In this case, if the youth is 16 years old and older, a list of permissibly permanency goals is provided. If the permanency goal is APPLA the permanency plan must document the steps IDHW is taking to ensure the foster parents or child care institution are following the reasonable and prudent parent standard when determining whether to allow the youth to participate in extracurricular, enrichment, and social activities and the opportunities provided to the youth to engage in age or developmentally appropriate enrichment activities. The impetus for this is the youth often are housed but not allowed opportunities to engage is the typical activities youth are interested in. The 2014 Preventing Sex Trafficking and Strengthening Families Act has added specific requirements to the current requirement that the court make a written, case-specific findings as to why a more permanent goal is not in the best interest of the child. The new requirements includes why APPLA is the best permanency goal for the youth and the compelling reasons why it is not in their best interest to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the custody of the Department in a relative placement. It is important to note Federal law makes long-term foster care with a relative acceptable for the purposes of Title IV-E funding. This is the reason relative placement is listed, even though it is not listed as a permanency goal in Idaho statute.

IDHW must make reasonable efforts to place siblings together, and if siblings cannot be placed together, IDHW must provide a plan for frequent visitation or ongoing interaction between the siblings, unless it is contrary to the welfare of one or more of the siblings. IDHW must develop a plan to ensure the educational stability for the child, including assurances the child's placement takes into account the appropriateness of the current educational setting and the proximity of the school the child is enrolled in at the time of the placement. As well as assurances IDHW will make reasonable efforts to ensure the child remains in the school the child is enrolled in at the time of the placement.

The Bureau of Indian Affairs has adopted new guidelines for implementing the Indian Child Welfare Act. The only change the committee is proposing to the Idaho statute is to require the court, at every hearing, to inquire about the child's possible Indian status. Early identification of the child's status ensures compliance with ICWA and avoids potential disruption to the child's life and to judicial proceedings due to failure to comply with ICWA. Continual inquiry is necessary because new information about the child's status may arise at any time. If there is reason to believe the child is an Indian child but no final determination has been made about the child's status, IDHW will document its efforts to determine the child's status and the court will determine whether IDHW is making active efforts to work with all tribes of which the child may be a member to determine if the child is, or may be eligible for membership.

By amending the language pertaining to shelter care hearings, it will reduce confusion about the correct outcome when the court doesn't place the child in shelter care. Amendments to the language pertaining to review and status hearings, seeks to clarify the purpose of a review hearing and create an opportunity for the court to review discrete issues without requiring a report from IDHW and the guardian ad litem. Current statute is not clear on what kind of hearing is required when a child is removed from a home pursuant to 16-1623. Changes have been made to clarify this is a redisposition hearing and not a shelter care hearing. It is also clarified this section applies only when a child is removed without a prior hearing. Permanency hearings will be required annually, in addition to the 30 day permanency hearing. Reports at review hearings must be filed at least 5 days prior to the hearing.

It is imperative youth are involved in court and in the plans being made for their future. At age 8 a child has the right to notice and come to court. At age 12 the child may begin participating, answering questions and may be assigned a lawyer, even if they have a guardian ad litem. At age 14 they may begin participating in the preparation of their case plans. At age 16 they will help create the transition plan to move them into adulthood which will be reviewed with a judge 90 days before they turn 18.

In response to a question from the committee, **Judge Murray** explained the use of "to plan" rather than "shall plan" was specifically requested by the children who do not wish to be forced into the plan.

In response to a question from the committee, **Judge Murray** explained there are national standards and rights for foster care children, and the agency has worked on standards and rights for Idaho foster care children. This shift is due to the historical focus on the rights of the parents, rather than the rights of the children.

In response to a question from the committee, **Judge Murray** explained an inquiry from the courts motivates and moves people into action. However, the right to inquire does not give the judge the authority to make changes.

In response to a question from the committee, **Judge Murray** explained in regard to protective orders, law enforcement will make the initial decision about whether to remove the adult or the child. Law enforcement is often reluctant to remove the home owner and it is often unclear who the offender is.

In response to a question from the committee, **Judge Murray** explained adoption subsidies are one category. The State receives incentive monies by not leaving kids in foster care for long periods of time or by moving children into adoption. Adoption subsidies go to a specific child based on their history in the system and their qualifications. The adoption subsidy can be lost if proper procedure, detailed in IV-E funding, is not followed. The subsidies and the incentive monies are paid out from different funds.

MOTION: **Rep. Nye** made a motion to send **S 1328aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Nye** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:39 PM.

Representative Wills
Chair

Katie Butcher
Secretary