

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 28, 2024

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:**

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.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Wintrow** moved to send the Gubernatorial Reappointment of John D. Hayden, Jr. to the State Board of Correction to the floor with the recommendation that he be confirmed by the Senate. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

S 1262 **COMMUNICATIONS SECURITY - Amends existing law to provide for the use of telecommunication, email, text message, and other forms of electronic communication.** **Dan Murphy**, in support of this bill, agreed with how language and words could be used to intimidate or hurt someone. He said **S 1262** was good, but he wanted to see it to go even further.

Senator Nichols stated 1990 was a long time ago and that this update would go a long way to match contemporary technology.

MOTION: **Senator Hart** moved to send **S 1262** to the floor with a **do pass** recommendation. **Senator Forman** seconded the motion. The motion carried by **voice vote**.

S 1348 **DEBTS OWED TO COURTS - Amends existing law to establish provisions regarding collection of debts owed to a court.** **Senator Lee** gave an overview of how courts could recover outstanding fines that continued to grow and were at \$292,611,400 as of 2023. Comparing 2022 to 2024 (2023 was an anomaly with COVID dollars) assessed amount of \$77,399,449 and amount collected of \$56,718,106 yielded a \$20 million plus difference. This was the trend for the last five years. This was important as court expenses had risen 16 percent from 2022 to 2024. There existed in Idaho Code § 1-1901 the language and intent of the courts to be able to collect these fines (Attachment 1). **Senator Lee** explained how **S 1348** would require courts to review debts owed every 90 days and have those found delinquent establish a payment plan. Fines were difficult for counties to collect., With a court order, the assessment of these delinquencies could improve.

DISCUSSION: **Senator Ricks** inquired if a person was required to come to court for non payment every 90 days, would this not incur additional court fees. **Senator Lee** noted that most cases were resolved due to the hassle of going to court. Those whose fines were delinquent who showed up in court only had to explain why they weren't making payments; this would not incur additional fines. **Senator Ricks** asked about the amounts owed by juveniles. **Senator Lee** replied delinquent fines for juveniles were negligible. Fines were used by judges as an alternative to sentencing or jail. **Senator Wintrow** asked if people could pay in person, online, or by mail. **Senator Lee** replied yes.

TESTIMONY: **Pete Wood**, Criminal Defense Attorney, declared his opposition to **S 1348** because many of those who were delinquent could not afford to pay them. It was also held by the Idaho Supreme Court that it was illegal to issue a warrant for failure to pay. **Senator Hart** inquired about it being good policy for taxpayers to pay their fines. **Mr. Wood** responded yes, but, by responding to the judge about their delinquencies, it opened them up to legal jeopardy. **Mr. Wood** recommended his clients invoke their 5th Amendment right and remain silent about why they could not pay. This recommendation required a public defender be appointed to these cases. **Senator Hart** brought up the option of levying a fine in lieu of jail time, and if Mr. Wood entertained jail time over a fine. **Mr. Wood** replied it was not an either/or proposition, it was almost always both. Jail time would be consistent punishment for all, whereas fines were relative to how much money one had. If it were a fine, those that had money always paid, those that didn't have the resources often fell behind.

DISCUSSION: **Senator Wintrow** inquired about the significant increase in delinquencies from 2017 to 2023, a \$236 million increase in 6 years. **Mr. Wood** replied that the poor could not afford these fines due to the increase in other expenses. These cases cost more to defend because a judge could find the delinquent payer willfully violated the order by explaining to the judge why they couldn't pay. By invoking their right to silence, they avoided contempt of the court order.

Senator Foreman asked would the court accept community service in lieu of payments. **Mr. Wood** replied that this had happened and was not a bad policy. Even when the court asked for a \$10 payment on the day they were sentenced, they explained they didn't have \$10 for the fine. These people were at the bottom socioeconomically.

TESTIMONY: **Jason Spillman** provided some assessment of the impact **S 1348** would have upon the courts. He noted Senator Lee was correct in that some courts were using review hearings already. The issue was feasibility for larger counties with busy dockets.

DISCUSSION: **Senator Anthon** inquired what would be the solution. **Mr. Spillman** replied that the courts had a duty to compel enforcement, if it went to collections, the courts had a way to provide information to those agencies and clerks in a secure manner. **Senator Hartgen** asked wasn't the greater amount of money for felony restitution. **Mr. Spillman** responded that the monies collected went to more than just the courts, they were dispersed throughout State government.

TESTIMONY: **Eric Fredericksen**, Idaho State Public Defender discussed how this bill would affect his office. The concerns for each of these restitution cases were: 1) A public defender would be appointed to each of these cases from day one, 2) An increased workload for the public defenders office. 3) Smaller counties would require \$100 per hour contract public defenders which would make a big dent in the conflict budget.

DISCUSSION: **Senator Ruchti** asked if spending was greater after implementing these policies. **Mr. Frederickson** replied he had not seen the reports, but the agency was assessing the reports. With the public defenders required, the concern was that spending would outpace monies received.

Senator Wintrow inquired of Senator Lee, was each judicial district able to establish their own processes and procedures. **Senator Lee** replied yes.

MOTION: **Senator Anthon** moved to send **S 1348** to the 14th Order of Business for possible amendment. **Senator Hartgen** seconded the motion.

DISCUSSION: **Senator Ruchti** was concerned that this may be more complicated and possibly more costly with the need for more judges. There could be many things that happened spontaneously in court that required attorneys be present. **Senator Anthon** hadn't heard another solution and the status quo wasn't working. **Senator Hart** reflected on the possibility of settlement conference. **Senator Lakey** agreed with Senator Anthon, the status quo was not working. Accountability was necessary and payments had to be made.

VOICE VOTE: The motion to send **S 1348** to the 14th Order of Business carried by **voice vote**.

S 1280 **ADOPTION - Amends existing law to provide an exception to residency requirements in certain adoption proceedings.** **Senator VanOrden** explained how, in certain cases, **S 1280** would allow children in foster care to be adopted by families and relatives who did not live in Idaho. This would eliminate the requirement for these families to live in Idaho for six consecutive months prior to adoption. **Senator Wintrow** asked why this change was so important. **Senator VanOrden** replied this would be a savings for these families and remove the hardship of establishing residency in Idaho for six months.

MOTION: **Senator Lee** moved to send **S 1280** to the floor with a **do pass** recommendation. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

S 1309 **ADOPTION - Amends existing law to revise provisions regarding allowable expenses for a birth mother.** **Senator VanOrden** confirmed the bills pertinent points; it raised the allowed minimum birth mother expenses from \$500 to \$2,000 without court approval, and these payments were made to vendors and not directly to the birth mother.

TESTIMONY IN SUPPORT: **Terri Marcroft**, Founder and Executive Director, Unplanned Good Inc. noted that Idaho was one of ten states that currently posed a limit on expenses for a birth mother. Anything over \$500 required court approval adding delays and additional attorney fees. Instead of \$2,000 being a cap on expenses, payments above \$2,000 toward expenses would trigger the need for a financial plan to be submitted to the court (Attachment 2). **Lieutenant Governor Bedke** was in support of **S 1309** (Attachment 3). **Cara Walsh**, A New Beginning Adoption Agency, focused on the therapeutic benefits approach especially with unplanned pregnancies (Attachment 4).

MOTION: **Senator Anthon** moved to send **S 1309** to the 14th Order of Business for possible amendments. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1368 **ADOPTION - Amends existing law to prohibit adoption placement or advertisement by unlicensed entities.** **Senator VanOrden** related how this bill banned unlicensed adoption facilitators from advertising in Idaho. Without this bill, facilitators acted like "baby brokers" and charged large sums of money. Surrounding states that already had these laws became more attractive to adoptive parents seeking to avoid these type of facilitators. **Senator Foreman** suggested that under **S 1368** a citizen could run an ad in good faith and could possibly run afoul. **Senator VanOrden** replied this bill was targeting people who were supposed to be licensed, but were not.

TESTIMONY: **Terri Marcroft** spoke in favor of **S 1368**. This would ban unlicensed adoption facilitators from doing business in Idaho. These facilitators only provided for the match with birth mothers and did not follow through to complete the adoption. These facilitators charged a substantial amount of money, leaving the adoptive parents with few resources to help the adoptive mother.

Stephanie Pearl, Executive Director, New Beginning Adoption Agency explained how this would help protect Idaho's adoptive parents and birth mothers by guiding those who needed services to get them.

MOTION: **Senator Hartgen** moved to send **S 1368** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1349 **UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT - Amends, repeals, and adds to existing law to establish the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.** **Bob Aldridge**, Chairman, Trust Estate Professionals of Idaho, noted this bill dealt with standards of evidence, Constitutional protections, and integration of Development Disability provisions on Conservatorship and Guardianship. This would provide more rights to people, help keep the courts out of their lives, and reduce court costs and visits (Attachment 5).

DISCUSSION: **Senator Wintrow** inquired was there any stakeholder approval. **Mr. Aldridge** replied many stakeholders were consulted for input into this legislation. **Senator Lee** asked about the parental rights language being new. **Mr. Aldridge** confirmed this was existing law and it had worked very well. **Senator Lee** asked if the courts had a chance to review **S 1349**. **Mr. Aldridge** replied that yes, this was presented to the Idaho Supreme Court Committee. **Senator Anthon** asked was there a provision for a medical doctor to make a determination as to custody or care. **Mr. Aldridge** replied no, as this would take away the ability of the person to continue control. In addition, it was quite difficult to get physicians to sign anything as they regarded it as a legal determination. **Senator Anthon** continued, in the petition of the court to find someone incapacitated, was a doctor appointed. **Mr. Aldridge** replied the courts could ask for professional evaluations when appropriate. Doctors had been reluctant to submit anything unless it was prepared by their own office. Determination if someone was incapacitated or not was a court decision, not a doctor's decision.

TESTIMONY IN SUPPORT:

Merrily Munther, Attorney at Law, concurred with Mr. Aldridge, especially helping the elderly and disabled (Attachment 6). **Corey R. McCool**, President Idaho Guardian and Fiduciary Association, was in support to ensure vulnerable adults were cared for and protected (Attachment 7). **Kara M. Gleckler**, Attorney at Law, who focused on elder law, was in agreement that this bill clarified existing law (Attachment 8).

Christine Pisani, Executive Director, Idaho Council on Developmental Disabilities, spoke in favor of the way **S 1349** provided needed clarification and protections for those who were at risk of losing their rights. She noted there were other ways to help those with disabilities than legal guardianship.

DISCUSSION:

Senator Anthon had found this issue very personal, as such, it was hard to make a decision quickly when the Supreme Court heard two hours of presentation for a bill that had significant rewrites in it. This would require more study time to improve his confidence this was done right. **Senator Lakey** said testimony of **S 1349** would continue at the next meeting. He added **S 1367** would be heard at a later meeting.

ADJOURNED:

There being no further business at this time, **Senator Lakey** adjourned the meeting at 3:05 p.m.

Senator Lakey, Chair

Sharon Pennington
Secretary

Jim Hickey
Assistant Secretary