

MINUTES
Approved by the Committee
Foster Care Study Committee
Wednesday, August 31, 2016
10:00 AM to 4:00 PM
State Capitol, WW 55
Boise, Idaho

Co-chair Senator Abby Lee called the meeting to order at 10:00 a.m. and a silent roll was taken. Members present: Senators Bart Davis, Mary Souza, Kelly Anthon, and Cherie Buckner-Webb; Co-chair Representative Christy Perry and Representatives Mike Moyle, Lynn Luker, Jason Monks, and Melissa Wintrow; Legislative Services Office staff Ryan Bush and Ana Lara.

Other attendees: Russ Barron, Gary Moore, Stephanie Miller, Sabrina Brown, Joyce Broadsword, and Susan Dwello, Department of Health and Welfare; Jaime Hansen, Family Advocates; Brent King, Attorney General's Office; Teri W hilden, Canyon County Prosecutor's Office; Judge Barry Wood, Sara Thomas, and Kerry Hong, Idaho Supreme Court; Stacy McAlevy and Tahna Barton, CASA; Shane Darrington, Court Appointed Attorney, 3rd District; Brian McCauley, Foster Parent; and Tahja Jensen, Ada County Public Defender's Office.

Note: Presentations and handouts provided by presenters/speakers are posted on the Idaho Legislature website: <https://legislature.idaho.gov/sessioninfo/2016/interim/fostercare>; and copies of those items are on file at the Legislative Services Office located in the State Capitol.

Co-chair Senator Abby Lee asked for a silent roll call and for a motion to approve the minutes from the August 5th meeting. Senator Anthon moved, and Senator Davis seconded, to approve the minutes. The motion passed unanimously. Co-chair Lee highlighted the objectives of the meeting, and she added that the meeting on September 12th will include a review of data provided by the Department of Health and Welfare. Co-chair Representative Christy Perry stated that information gathered at this meeting and the next will help develop a focus for the committee's efforts.

Co-chair Lee introduced Mr. Russ Barron, Deputy Director, Department of Health and Welfare. He stated that the foster care program serves as a support to the child protection/welfare system. There are three main goals of the larger child protection system, and for his department. They are:

1. Keep children safe;
2. While in department care, promote the good health and well-being of the children;
3. Whether it is the reunification of children with their families or making decisions on permanent placements, always taking into consideration both #1 and #2 above.

He said the larger system would not be successful without the foster care program and emphasized the vital role it plays in meeting the three goals. When parents fail to protect their own children, more individuals must get involved to help the children - law enforcement, the schools, the courts, the Department of Juvenile Corrections, the guardian ad litem volunteers, and the foster parents. He said that collaboration between these groups is essential, yet he recognized there will be disagreements in identifying the best interests. He added that there are not enough forums where the groups can work together. He anticipated that the data his department will present at the next meeting will confirm that the number one reason why children come into care is neglect, most often fueled by parental abuse of alcohol or drugs.

Mr. Barron identified areas where his department is working to address issues:

- Improving communication with the foster parents;
- Doing a better job at making the foster parents feel valued in the system. He stated this will start with him, and will involve two-way communication;
- Continuing to collaborate with stakeholders; and

- Improving the technology within his department and the department's processes.

He added that the department is questioning its policies to determine what needs to be changed. For example:

- Are we trying too hard to keep families together?
- Are we doing everything possible to reunite the child with the parent?
- Are parental rights being terminated too quickly?
- How are we defining the "best interests" of the child and can we reach agreement with all the stakeholders in the system on the definition?
- Do we need to take a closer look at the age of the children when they come into the system?

Co-chair Lee asked what the department staff response was to the statutory changes that took effect July 1st. Mr. Barron remarked that, in broad terms, any change is difficult on staff, because funding and other resources are so tight. However, he added that, to date, he has not received any feedback regarding the statutory changes. He explained there have not been any unannounced moves since March, excluding those for safety concerns. And, he clarified that social worker requests for unannounced moves are reviewed within the department.

Representative Luker stated that a question arose at the last meeting regarding whether the department values the attachment between foster parent and child. He asked Mr. Barron to respond to the perception voiced by some foster parents that the department does not want them to form an attachment with their foster children. Mr. Barron responded that there is nothing in current foster parent training or practices that would create such a perception. And, he stated that the current department practice is to encourage the attachment.

Representative Luker asked: 1) are there federal guidelines he would adjudge counterproductive; and 2) what kind of money is attached to the federal guidelines. Regarding the federal financial contribution, Mr. Barron replied for the most part it is a 50-50 match. While noting that some of the federal guidelines are gray, he said they clearly state that family placement must be considered first, and if it is not considered first, the department's funding could be threatened. Referencing an earlier comment about having a recognized standard for what constitutes the best interest of a child, Senator Anthon asked if Mr. Barron's concern is for application of that standard within the department or within the court system. Mr. Barron responded that good communication between all the stakeholders in the system on this is essential.

Co-chair Lee introduced Ms. Teri Whilden, Deputy County Prosecutor, Child Protection Unit, Canyon County. Ms. Whilden stated that she handles 160 child protection cases from when the child is removed from their parent, to when there is either reunification with their parent, or there is a termination of the parent's rights and the child is placed with a foster family, and then through to adoption. She stated that most of her child protection cases come from declarations from law enforcement, not from the Department of Health and Welfare, and she said parent methamphetamine use is the number one reason for removal of the child from the home.

Ms. Whilden said that in Canyon County, the prosecuting attorneys try to collaborate with the Department of Health & Welfare on what should happen, but there are times when they disagree on what is in the child's best interest. In these situations, she said the judge's power to make the placement decision is helpful. Continuing, she explained that every decision made must comply with state law and agency standards, as well as with federal standards. She added that the laws are not easy to interpret. She asked for the members to take the time to understand the existing federal law, in order to ensure that any further legislation does not conflict with it or further complicate it. She stated that the primary goal of child protection law at the local and federal level is for the reunification of families. If reunification with parents can't occur, the presumption is for relative placement. She emphasized that non-relative placement is only considered when these latter two options are not available.

She stated that though the premise of the child protection system is for the child to be returned to his or her family, she recognized the difficulty in this, because it is natural for a bond to be created and nurtured between foster parent and child. She suggested that one helpful process change would be to identify family members earlier in the process, so that both the foster parents and the child are not disappointed during the final stages of the adoption efforts.

Senator Souza asked if the child protection laws guide the decision-making process in those instances when reuniting the child with either the biological parent or the family relative is not in the best interest of the child. Ms. Whilden responded that she trusts the social workers for determining what is in the child's best interest, and in situations where there is disagreement with the department, a judge will make the final determination. Representative Wintrow asked how long these laws have been in place. Ms. Whilden stated that federal laws are expansive, and there are many of them. The body of laws in this area evolved over fifty years. Originally, the enacted laws spoke to foster care, and as time went by, more legislation focused on timelines.

Co-chair Perry asked what the average child protection case looks like in Canyon County, including the time involved and the number of attorneys involved. Ms. Whilden stated that reunification averages between 12-15 months. After that, if there is no reunification, the state must move for termination, unless there is a compelling reason. She added that from this point, it can take two years to move through the adoption process. She stated that four to seven attorneys are involved in an average case over this period. Following up, Co-chair Perry asked what training she received as a prosecutor in this area of law. Ms. Whilden said she is presently enrolled in a child protection law certification program, provided by the National Association of Counsel For Children. She added that there is not much local child protection training available.

Representative Luker asked if there are areas of the process she navigates that can be simplified without running afoul of federal law. Ms. Whilden suggested that first it would be helpful to have the department clarify how it interprets "consider," as that word is used in the directive "consider the family first" in placement. Representative Luker asked if Ms. Whilden is familiar with any child protection cases where a prosecutor files the preliminary paperwork, but then loses interest and doesn't push the case along. Ms. Whilden stated she has seen this occur in some smaller counties. She observed that child protection cases are often given to younger lawyers and these lawyers do not receive much training, so they don't know how to do them.

Senator Buckner-Webb asked if Ms. Whilden has seen cases where "family" is defined differently in some cultures than in others. Ms. Whilden said she has seen such cases, and that the Indian Child Welfare Act speaks to that. She said the department also looks at kinship placements before they look at non-relative placements, because there may be a close family friend who can be a kinship placement. Following up, Senator Buckner-Webb commented that it is not only with the tribal nations - there are many cultures where "family" is defined a lot more broadly than in the mainstream, dominant culture. Ms. Whilden agreed. Co-chair Perry stated that she is excited that it is understood that the word "consider" does not make it an absolute. She asked for timeframe specifics for those cases where parents come back into the picture late in the process. Ms. Whilden responded that although it is very difficult to remove a child from the home after he or she has been with a foster family for a year, she explained that mandating timeframes is not a viable solution.

Co-chair Lee asked if Ms. Whilden represents the department in child protection cases in court. She also asked her to discuss what occurs when a prosecutor disagrees with the department, in light of the new statutes. Ms. Whilden stated that she does not represent the department until the termination phase. She opined that this is good, because there needs to be an independent state voice in court. Continuing, she stated that when there is a disagreement between the prosecutor and the department, she tries to make sure the department has a voice. She asks for the social worker's perspective. If she disagrees with that perspective in a case, when she goes on the record, she explains to the judge what the department wants, and then she explains why the state doesn't

agree with the department. She added that in a few instances, a lawyer from the Attorney General's Office was invited to court to represent the social worker's perspective.

Co-chair Lee asked if Ms. Whilden has seen any impact from changes to the statutes that took effect July 1, and Ms. Whilden replied she hadn't seen any impacts yet. Referencing the Child Protection Act, Section 16-1624(4), Idaho Code, Senator Anthon asked if there has been litigation over the interpretation of "fit and willing relative" in termination proceedings. Ms. Whilden agreed to review this section and provide her thoughts to the members at a future meeting. Senator Davis asked if the following statements accurately portray the relationship between the prosecuting attorney and the department:

- The prosecuting attorney has a legal duty to represent the department in termination proceedings, but not in other proceedings.
- In non-termination proceedings, the prosecuting attorney sometimes sees things differently than the department, and they then argue a separate set of facts to the judge.

After agreeing with Senator Davis' description, a discussion ensued on this topic. Key points made by Ms. Whilden included:

- There is rarely a disagreement between her and the department by the time the case reaches the termination stage, because any disagreement would have been addressed earlier in the process. She suggested that the members consider legislation that will clarify the relationship between the department and the local prosecuting attorney. At present, the Deputy Attorney General represents the department (attorney-client relationship) and the prosecuting attorney represents the State of Idaho. During a termination proceeding, the prosecuting attorney does have a relationship with the department, but she has not experienced a conflict. Though she agreed that this could be an issue in other jurisdictions, she said she did not have a solution, and she suggested the members speak to the Attorney General's Office.
- Her definition for "best interest" for a child in a child protection case would start with a safe home, one where a child can blossom into a functioning adult. Also, it is important for the children to keep in touch with their heritage and their biological family. She agreed to provide the members with any further contributions to her definition of the child's "best interests." Finally, she encouraged the members to sit in at a child protection court proceeding.
- Regardless of which agency brought her a child protection case, whether it be law enforcement or the Department of Health & Welfare, she treated all the cases the same. She added that she has not been party to a conflict arising with the department at a termination proceeding, but she indicated that if one did arise, she would pass the case on to someone in the Attorney General's Office.
- The legal authority she relies upon in child protection cases comes from guidance she requested from the Attorney General's Office. An email she received from Deputy Attorney General Brent King sets out clearly why she does not represent the department. She agreed to provide a copy of that correspondence to the members. Co-chair Lee indicated that the co-chairs have reached out to the Attorney General's Office on this topic, and she anticipates hearing from them in the near future.

Co-chair Lee introduced Judge Barry Wood, Deputy Administrative Director and Government Liaison, Idaho Supreme Court. Judge Wood distributed a [letter](#) to the members from Judge Bryan Murray, which highlights the many benefits Idaho's guardian ad litem (GAL) and (Court Appointed Special Advocate Association) CASA programs provide to the child protection system. Judge Wood shared a brief history of the GAL program, and then highlighted the following relevant statutes pertaining to the program under the Child Protection Act, Chapter 16, Title 16, Idaho Code:

- Section 16-1602(23) – Definitions – Guardian ad litem.
- Section 16-1614 – Appointment of guardian ad litem, counsel for guardian ad litem, counsel for child.

- Section 16-1632(i) – Process for appointing GALs in districts where there are insufficient numbers of GALs.
- Section 16-1602(25) – GAL program defined.
- Section 16-1633 – GAL duties defined. These duties were expanded by the passage of House Bill 556, which amended Section 16-1629(8), Idaho Code. He noted there is a case in Ada County that may be impacted by this statute.

Judge Wood encouraged the members to keep in mind court capacity when discussing child protection cases. While some cases are simple, others are complex and require a lot of personnel, including guardian ad litem volunteers and public defenders. He noted that general funds are appropriated to help run the GAL program, and the present appropriation amount is \$641,700. Responding to an earlier question from Senator Davis, Judge Wood stated that in the felony arena, the court takes the position that the prosecuting attorneys are in the judicial branch, and the state agency departments are in the executive branch. Senator Davis asked Judge Wood to consider the conflict that might arise if a prosecuting attorney is compelled to represent the department in a termination proceeding, and Judge Wood agreed to think about it.

Co-chair Lee introduced Mr. Kerrie Hong, Justice Services Division Director, Idaho Supreme Court, who explained the role of Idaho Supreme Court as grant administrator for GAL programs. He pointed to the following pertinent statutes: Section 16-1602(22), Idaho Code -- Duties of the grant administrator; Section 16-1638, Idaho Code -- Creation of the GAL account; and Sections 16-1632 through 16-1638, Idaho Code -- How moneys can be expended. He also noted that 97% of the appropriation (\$625,000) is distributed for the administration of the seven GAL district programs, and 3% of the appropriation (\$16,700) is for grant administration. Specific allocations are made in cooperation with a GAL subcommittee, which encourages the districts to recruit and raise funds, in order to have access to grant funding. He added that child protection filings were steady in fiscal years 2014 and 2015, but there were many more in 2016.

Co-chair Lee introduced Ms. Stacy McAlevy, Executive Director, 7th Judicial District, CASA program, who explained that the four primary responsibilities of the guardian ad litem volunteers are: to investigate, facilitate, advocate, and monitor. She agreed to provide the co-chairs and Senator Davis with a list of a volunteer's job responsibilities. The discussion that ensued regarding the role the CASA volunteer plays included the following key points by Ms. McAlevy:

- Explaining how a CASA volunteer might define the best interest of the child differently than the department, she said that the department focuses on the family unit, where CASA focuses on just the individual child's best interest.
- When CASA volunteers disagree on what is in the best interest of the child, the CASA supervisor is engaged, will review the situation, and present the CASA perspective in court.
- In determining placement, the best interest of the child depends on the details of the specific case that brought the child into care. When the CASA worker's recommendation is in conflict with the department, the CASA professional in the case will testify in court and present the information. The new statutes pertaining to child placement that took effect July 1, which give judges more tools, are helpful.
- Though there are always frustrations in advocacy for the volunteers, she noted that when the judge doesn't support the CASA volunteer's perspective, in most instances, this doesn't stop the volunteer from continuing to advocate for other needs of the child.

Co-chair Lee introduced Ms. Tahna Barton, Executive Director, 5th Judicial District, CASA program. Ms. Barton discussed several points regarding the operation of CASA program in her district, including:

- All CASA guardian ad litem volunteers receive 30 hours of initial training and then 20 hours annually; and background check are required and redone every 2 years.
- Volunteers are trained to make independent, fact-based decisions. It is a struggle to find appropriate resources, and there are challenges in maintaining a volunteer-driven organization, particularly in rural communities.

- She expressed her concern for the department's 2015 shift to using more in-home safety plans, and she asked the committee to review this.

Co-chair Lee asked where a foster parent would go to advocate for a child when they had a concern. Ms. Barton said that in her 5th district, a foster parent goes to the department social worker, and then, if the child's needs aren't being met, they go to the CASA volunteer. Senator Souza asked for more details regarding the safety plans. The discussion that ensued contained the following key points made by Ms. Barton:

- There has been a slight increase in the number of child protection cases in the past few years. In response to this, the department shifted its policy regarding which cases would enter the court system. Specifically, the department chose to use more in-house safety plans. Due to this shift, she has observed an increase in volunteer caseloads.
- The increase in safety plans is a concern, because: 1) when a safety plan is done in a home with a social worker, the results of the plan are typically not monitored, due to the department's limited resources; so consequently, there aren't as many positive results; and 2) safety is typically not an issue. Rather, safety plans are now in use in homes that are on the borderline between safe and unsafe.
- When a safety assessment is done, the department identifies solutions to fix the issue. She stated that the problem lies in: 1) whether or not the parent actually follows through with the actions the plan requires; and 2) whether there are resources to follow up, in order to determine if the issue is resolved.

Co-chair Lee stated that the department will address the child protection process at the next meeting. And, the initial investigation steps before it becomes a child protection case will be included in that discussion. She commented that, if appropriate, the child might have a voice in the safety plan process. Co-chair Lee also encouraged the CASA district representatives to provide the committee with any policy suggestions they might have regarding how to better advocate for children in the system.

The meeting adjourned for lunch at 12:13 p.m.

The committee reconvened at 1:34 p.m.

Co-chair Lee called upon attorney Shane Darrington to share a guardian ad litem attorney's perspective on the foster care system. Mr. Darrington explained that for the last five years he has almost exclusively handled court-appointed cases, many of them child protection cases, and was appointed as either the mother's attorney, the father's attorney or the guardian ad litem's attorney.

He emphasized that a guardian ad litem should always have an attorney per statute, with the exception if there is no guardian ad litem appointed. The only time that a guardian ad litem is not appointed is if the child is 12 years or older and can instruct his own attorney.

Mr. Darrington listed the following duties for a guardian ad litem:

- Independent factual investigation;
- File any reports with the court;
- Advocate for the child;
- Advocate for the child's best interests;
- Monitor the circumstances of the child;
- Ensure that the court's orders are being carried out;
- Maintain confidentiality; and
- Other duties as identified by the court.

Mr. Darrington emphasized that presently there is a shortage of guardian ad litem in the system and is a cause for concern.

Mr. Darrington defined "Code X" aka "code 10" as a federal code that allows for a fast track for temporary foster care placement. He explained that children that are removed from a home can only be placed with licensed foster parents, and code 10 allows them to be placed with family members who they want to be with but are not currently licensed foster parents. The issue, he said, that often arises is that the fast track is only available for the first 30 days of removal, and if code 10 is not done within the first 30 days then the fast track is done away with. Some times, he explained, the code 10 was not completed because the parent did not disclose any additional family members that a child could have potentially been placed with.

Mr. Darrington stated that often times foster care parents are not made aware from the outset that the placement is temporary and the main priority for children is reunification with their family. The other concern, he said, from both a guardian ad litem and guardian ad litem's attorney's perspective is that transportation to counseling, sport events, etc. for foster children is done through a contract transportation provider. At times transportation providers run late, and opined they are not always sensitive to timeliness. He also emphasized that in many parts of the state there is a push to have a statewide CASA program.

Senator Davis asked if Mr. Darrington would offer his opinion on what the definition of 'best interest' might include. Mr. Darrington responded that the definition might include: safety (including mental and physical health), education, and instilling a moral compass (in the secular sense).

Senator Davis explained that in statute the Dept. of H&W is directed to "consider" family in making their placement decisions, and asked what factors he might include in that consideration. Mr. Darrington opined that there should be good cause for a child not to be placed with a family member, rather than it simply be considered. He added that a stronger word than "consider" should be used.

Senator Davis asked if he was aware of any federal law that was in conflict with state law. Mr. Darrington offered the Indian-Child Welfare Act as a possibility.

Senator Davis asked Mr. Darrington for his opinion on what statutory errors may have been included in the 2016 legislation to foster care. He stated that while the changes have not impacted any of his cases, he would relay in his response what others have told him. He has been told that there has been a change in the number of emergency removals which, prior to this legislation, was being done not infrequently. Since the legislation has been enacted he's been told that this number has declined. He did caution the committee about the potential for 'mud-slinging' in court by foster care parents against the birth parents given their new elevation of party status; he had experienced this as a tribal judge. He offered his appreciation for what has been amended, but stated that he would not like to see it go further.

Co-chair Lee asked what happens when a guardian ad litem disagrees with a party and what ability does he have to advocate. He explained that while some guardian ad litem's always follow the recommendation of the Dept. of Health & Welfare, many guardian ad litem's are very vocal about their disagreement when they believe the recommendation is not in the best interest of the child. Ultimately, it is up to the court to decide what to do when the parties do not agree.

Representative Monks asked if Mr. Darrington draws a distinction between keeping a child with kin with whom he knows and is familiar, and keeping a child with kin with whom he has never met or has had limited contact. He answered that the order he would place priority placement would begin with:

1. Kin with whom the child has a relationship;
2. Fictive kin (even beyond those defined in code);
3. Extended family with whom the child may not have a relationship; and then
4. Foster family that has no prior relationship with the child.

Representative Luker asked if the 30 day limit in Code 10 is a federal regulation. He answered that he does believe it is a federal regulation, and stated his belief that almost all regulation is

federally mandated. Representative Luker inquired if whether foster parents should be defined more specifically in terms of their role, and addressing the ultimate adoption question by classification of those who have an intention to adopt and those who do not. Mr. Darrington opined that limiting it to that extent may become detrimental because adoption does happen and this could potentially cause children to move more frequently before adoptive parents can be found. He stated that it would be best to make it clear to foster parents from the outset that the primary goal is to reunify children with their parents; this could be addressed through education rather than by legislative means.

Co-chair Perry asked how a situation where a family member adopts a child and the child still has contact with the parent with whom they were removed from is addressed. He responded that this situation is not addressed very well; he suggested that increasing the number of guardian ad litem that have more time to spend to ensure the court orders are being followed or more time for case managers to have contact with family members and request protection orders if needed could help address this issue.

Co-chair Lee called upon Ms. Tahja Jensen to present next. Ms. Jensen introduced herself as a deputy public defender for Ada County who handles exclusively child protection cases. She began her presentation by explaining the process which first begins with:

- Shelter Care - Occurs within the first 48 hours of removal and parents receive documents for the removal of their child. An appointment is made for the public defender to meet with the parents to explain why the children were/will be removed.
- Between the time of shelter care and the pre-trial conference the parents are working with the risk-worker from the Dept. of H&W to set up visits and navigating what is to come.
- Pre-Trial Conference – Dept. of H&W is tasked with presenting a report of the investigation including historical information and an update of what has occurred since the removal.
- Most often cases are stipulated to jurisdiction at trial; most of the time legal custody is given to the Dept. of H&W
- She explained that it was her understanding that between the shelter-care hearing and the case plan hearing the Dept. of H&W has held a family group decision-making meeting with parents, extended family, and at times foster parents. The department asks for concurrent planning (plan b) which is required for the case plan hearing. Ms. Jensen opined that at times the department is not transparent with its intentions and this can be frustrating with the parent and often times with the foster parents as well.
- Case Plan Hearing – A case plan is the 'road map' to be able to reunify with the child. It is also usually the first time that the court can hear from the foster parents. The foster parents will report on how the child reacts after or before a home visit, and provide medical and educational status updates. Ms. Jensen opined that it can be a very emotional time for both the foster parents and parents; at times she believes that foster parents should be reminded that reunification is the primary goal.
- A review may be set if they believe a parent is getting closer to reunification, but a 6 month mark is set for a meeting regardless. Judges ask for progress reporting from the social worker and guardian ad litem. She opined that at times social workers and guardian ad litem emphasize the "bad" information in their reporting and fail to include the "good" as well. She stressed that the court should hear "the good, the bad, and the ugly."
- Permanency Hearing – It's held at the 12 month mark and the ensuing court decisions are rarely unforeseen at this point Ms. Jensen explained. The court may order extended foster care or a guardian option for permanency. At the outcome of the case, if parties have respected each other through the process and the process has been smooth, parents are more likely to accept

termination of parent rights she said. The cases that most often go to trial, she opined, are the ones where parents feel like they were treated unfairly or that there was a lack of transparency.

Senator Davis asked Ms. Jensen to reflect on what 'best interest' means to her. She replied that this term should not be confused with 'best life.' Her clients may not have the same socio-economic background that some people enjoy, but children desire to return home to their families above anything else. He followed up with the question of whether she saw any mistakes in the legislation that passed. She replied that she wasn't prepared to answer that question at this point, but opined that the legislation has served the department well.

Co-chair Perry asked if there was any rule or statute that parents are not allowed to know the congruent plan. Ms. Jensen responded that once the court has obtained temporary jurisdiction, the parent has a residual right to visitation and information on the well-being of the child; there is no case plan at this point. Throughout the process there is a possibility for a parent to obtain additional rights, but they are in practice 'co-parenting' with the Dept. of H&W she explained.

Representative Luker asked if Ms. Jensen had been witness to cases where she believed that children should not have been removed. She replied yes, and opined that had there been more work on the front end of safety-planning or assisting the family with daycare and other tools, the child may have not needed to be removed.

Representative Luker followed with a question of whether the 'rules of evidence' in this context was a state or federal manner. Ms. Jensen replied that she believed it was either in the Child Protective Act or the juvenile rules for the state of Idaho that lays out the standard as 'reasonable cause' and that the rules of evidence in a child protective act do not apply in any hearing (i.e. shelter care hearing and permanency hearing) with the exception of an aggravated circumstances hearing, adjudicated hearing, or termination trial. He asked what kind of tools of discovery a public defender has and are they effective. She explained that child protection is a civil practice and so she relies heavily on the civil rules procedure; she does a discovery request at the initiation of the case and can do a specific discovery request at any time. She voiced her concern that it is never abundantly clear what records may exist and consequently does not always know what is available for request.

Senator Souza asked for clarification on decisions that might be made of which the parent may not be made aware. Ms. Jensen explained that their ability to obtain information is entitled to them by right, unless a court order specifies otherwise. At times the Dept. of H&W cannot share information regarding placement changes due to privacy concerns of the foster parent or when family members request that the reason for their inability to be selected as a permanency option not be disclosed for privacy reasons.

Senator Anthon asked if some of the items she described are not discoverable under the discovery rules. She explained that the discovery process is fairly informal; the response she has received is that case law under the Child Protective Act in Idaho is very limited in terms of what tools are available, although admittedly she has never filed for a motion to compel which is permissible under the rules. Typically, she said, the fastest route is to ask the judge for it, but the need for this is limited.

At the conclusion of Ms. Jensen's presentation, Co-chair Lee invited the public to provide testimony. Since no members of the public had signed up or approached the podium, she proceeded to the committee discussion period.

Co-chair Lee asked the committee members if they had any topics in mind that they would like to cover in the next meetings. After much discussion, the following topics were requested:

- A list of items that the Dept. of H&W is currently working on at the request of the co-chairs, other committee members, etc.;
- Ask the Dept. of H&W if they are aware of any conflict between state and federal law;
- What, if any, federal regulatory scheme would prevent the legislature from taking any action or endanger any funding;
- Research on family connection, early bonding, and the importance of family connections in regards to placement;

- What systems can be initiated to increase problem-solving, collaboration, and communication;
- Testimony from social workers;
- What additional resources are needed;
- Racial make-up data of the children and foster parents;
- Rules of evidence in hearings and the definition of 'neglect;'
- Support pathways and impediments for reunification;
- Support for placement of a child with special needs; and
- Testimony from professionals on consequences for children that are removed from their homes.

The committee adjourned at 3:45 p.m.