

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 09, 2018

**TIME:** 1:30 P.M.

**PLACE:** WW54

**MEMBERS PRESENT:** Vice Chairman Lee, Senators Hagedorn, Lakey, Anthon, Foreman, Potts, Burgoyne, and Nye

**ABSENT/ EXCUSED:** Chairman Lodge

**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:** **Vice Chairman Lee** called the Judiciary & Rules Committee (Committee) to order at 1:34 P.M.

**GUBERNATORIAL APPOINTMENT HEARING:** **Committee Consideration of the Appointment of Elizabeth "Liz" Chavez to the Idaho Judicial Council (Council) (telephonic appearance).** **Elizabeth "Liz" Chavez** discussed her experience in the Legislature. She discussed how the Council operates and the importance of monthly meetings. She praised the Idaho judiciary.

**DISCUSSION:** **Senator Hagedorn** asked what Ms. Chavez considered as some of the greatest challenges facing the Council at the present. **Ms. Chavez** responded that the past year brought into focus our aging judiciary and the need for concerted recruiting efforts. She described the difficulty in efforts to interview judge replacements due to geographical locations.

**MINUTES APPROVAL:** **Senator Lakey** moved to approve the Minutes from January 19, 2018. **Senator Nye** seconded the motion. The motion passed by **voice vote**.

**MINUTES APPROVAL:** **Senator Anthon** moved to approve the Minutes from January 22, 2018. **Senator Hagedorn** seconded the motion. The motion passed by **voice vote**.

**MINUTES APPROVAL:** **Senator Potts** moved to approve the Minutes from January 26, 2018. **Senator Nye** seconded the motion. The motion passed by **voice vote**.

**RS 26000** **Relating to Parents and Guardians Revising Provisions Regarding Delegation of Powers.** **Robert Aldridge** of Trust and Estate Professionals of Idaho, Inc. (TEPI) presented this RS. The proposed legislation would allow people to create and advance a person to take care of a child because they will be unable to, either because of incarceration or incapacity.

**MOTION:** **Senator Hagedorn** moved to send **RS 26000** to print. **Senator Potts** seconded the motion.

**DISCUSSION:** **Senator Lee** voiced her support for the RS, but would like to stay informed of any changes that may arise pertaining to it. **Senator Anthon** commented that he would like to know the rule of the court in designating a substitute guardian versus the role of a doctor in allowing the court to be excluded.

**VOTE:** The motion passed by **voice vote**.

**RS 26120**

**Relating to Pre-Trial Release; Establishing Idaho Code § 19-2904A to Determine Pre-Trial Supervision.** **Sara Thomas**, Administrative Director of the Courts, Idaho Supreme Court (ISC), explained the changes proposed by this RS. **Ms. Thomas** explained she previously asked for a bill to be printed, which became **S 1238**, to allow counties to charge a fee for pre-trial supervision. Several changes have been made since that time. The first was a change in the fee, which was changed from a monthly fee to a daily fee of \$2.50. Secondly, subsection 6 was an eligibility requirement in finding indigent status before the fee is waived.

**DISCUSSION:**

**Senator Hagedorn** questioned whether the new RS would allow the private sector to provide services. **Ms. Thomas** responded counties are allowed to decide whether to have a program; some counties already contract with a private company. **Senator Hagedorn** followed up for clarification about the change from a \$30 fee to a \$75 per month fee. **Ms. Thomas** responded she heard from several counties which deemed the \$30 fee as low. In addition, the counties proposed a daily fee. **Senator Hagedorn** questioned why the costs should be the same for everyone. **Ms. Thomas** answered that the counties responded with what they needed and the basic amount would keep the program functioning. **Senator Potts** stated he would like to see a breakdown by county in order to see which counties are being accommodated. **Ms. Thomas** noted she will provide a spreadsheet with the breakdown of services provided. She added only a few counties are charging over \$30.

**MOTION:**

**Senator Anthon** moved to send **RS 26120** to print. **Senator Hagedorn** seconded the motion.

**DISCUSSION:**

**Senator Foreman** questioned whether courts in the counties that currently have the pre-trial release agreements get to decide whether a person enters the program. **Ms. Thomas** responded the legislation only requires the court to supply that supervision if the county has already chosen to provide the service. **Senator Foreman** asked a follow-up question regarding whether there have been any bail bond industry complaints. **Ms. Thomas** stated there have been complaints regarding subsection 6, which pertain to indigent status before the fee is waived; this is why this RS would change that.

**VOTE:**

The motion passed by **voice vote**.

**RS 25700C1**

**Regarding Constitutional Amendment to Allow for Preventative Detention.** **Paul Panther**, Chief of the Criminal Law Division, Office of the Attorney General, and **Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC), introduced **RS 25700C1**. **Paul Panther** explained he is not testifying on behalf of the Attorney General's Office. The Idaho Criminal Justice Commission voted to approve this RS, which is why Mr. Panther testified. This RS proposes to add a provision to Article 1, Section 6 of Idaho Constitution. This amendment would allow a defendant to be held without bond in limited circumstances where the defendant would likely not appear at trial and would be a risk to public safety. He commented the definition of "dangerous crime" will need to be addressed by the Legislature, noting the Legislature should have discretion to do so. He explained the State's burden of proof would need to prove "clear and convincing evidence" at the evidentiary hearing level. He noted this standard is higher than meeting "the preponderance of evidence" requirement in general civil cases. The Idaho Supreme Court held the standard of "clear and convincing evidence" is understood to be highly probable or reasonably certain. He noted this was a high standard of burden of proof that the State would shoulder in this circumstance. He remarked this RS does not require reduction of bail, nor does it contain provisions permitting indigent persons to petition the court. He commented this

is an evidence-based, risk-based way to protect public safety. It depends on the State proving the defendant is too dangerous or a flight risk.

**DISCUSSION:** **Senator Potts** voiced skepticism of the proposed changes; he listed items that will be of value when debating this RS in the future. He noted his scepticism of the changes to the Constitution. He remarked on the importance of seeing the statistics of individuals not appearing in court. He commented on the ramifications in defining what constitutes a "dangerous crime," and denying an individual the right to bail. **Mr. Panther** said he will address those issues at a subsequent hearing.

**Senator Foreman** expressed concern regarding the negative impact on the bail bond industry and defining a serious crime. Additionally, he communicated concern regarding the additional impact on law enforcement attempting to track down individuals who fail to appear. He commented whether this change is in fact necessary. **Senator Nye** asked Mr. Panther for an Attorney General's opinion on this RS. **Mr. Panther** responded that he would do so. **Senator Anthon** stated his concerns going forward, such as the inability to know the limited circumstances in applicability. He also expressed concern that there is no definition of a dangerous crime until the Legislature decides to act. **Senator Hagedorn** asked what the maximum bail is for capital crimes and if so defined in statute. He inquired as to how such is determined. **Mr. Panther** did not believe there is a maximum set and added there may be exceptions when someone may be unable to pay thus creating a circumstance for potential fiscal impact. **Senator Hagedorn** stated there must be a fiscal impact of this RS. **Mr. Panther** expressed appreciation of the senator's concern.

**MOTION:** **Senator Anthon** moved to send **RS 25700C1** to print. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

**DISCUSSION:** **Senator Potts** praised Mr. Panther's hard work in doing what is right for the State. **Senator Burgoyne** voiced his concern that the Legislature's interpretation of what is considered dangerous affects what the Constitution means; such efforts could raise issues about whether the Legislature can and should define dangerous crimes. **Senator Hagedorn** brought up the possibility that the Legislature may not define dangerous crimes.

**RS 25723** **Relating to Criminal History Records; Amending Idaho Code § 67-3002 to Define Terms And Make Technical Corrections.** **Senator Burgoyne** explained **RS 25723** would authorize public and private sector employers, licensing authorities, and state and local governments who hire, license, or appoint people who are required by Idaho law to undergo criminal background checks to opt-in to a program which automatically updates those background checks. This was introduced in 2015 as "rap back."

**MOTION:**            **Senator Anthon** moved to send **RS 25723** to print. **Senator Hagedorn** seconded the motion. The motion passed by **voice vote**.

**ADJOURNED:**      There being no further business, Vice Chairman Lee adjourned the meeting at 2:24 P.M.

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Senator Patty Ann Lodge  
Chair

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Anna Wroblewski-Jones  
Secretary

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Samuel Griffin  
Assistant Secretary