

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Monday, March 19, 2018

TIME: 1:30 pm OR Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/
EXCUSED:** Vice Chairman Malek

GUESTS: Pat Donaldson, Idaho Department of Correction; Paul Panther, AG & ICJC; Tom Dolan, Connie Smock, Corizon; Melinda Merrill, Lance Giles, Ryan Beruhard, Idaho Bail Coalition; Corey Sarber, St. Alphonsus; Rich Hahn, American Bail Coalition; Ken McClure, Brian Whitlock, IMA; Sarah Bettwieser, St. Lukes; Sara Thomas, Christina Iverson, ISC; Seth Grigg, IAC; Sharon Harrigfeld, ICJC;

Chairman Luker called the meeting to order at 1:31 p.m.

MOTION: **Rep. Wintrow** made a motion to approve the minutes of the March 5, 2018 meeting.
Motion carried by voice vote.

S 1246: **Kendra Knighten**, Special Assistant on Criminal Justice, Idaho Office of the Governor presented **S 1246**. The Idaho Department of Correction (IDOC) is required to provide health care services to inmates in accordance with the Eighth Amendment standards. IDOC currently contracts with Corizon, a third-party provider of on-site health care services who also handles payments for off-site medical services. This bill clarifies §20-237B of Idaho Code to specifically state that a privatized medical provider under contract with the Department is authorized to pay health care providers for medical services provided outside of correctional institutions at an amount no greater than Idaho Medicaid reimbursement rates. The goal is to limit IDOC exposure to rising health care charges. The Idaho Supreme Court recently ruled against the State/Corizon because the current law does not allow for a third-party to bill other private hospitals and medical providers at the Medicaid rate. In the process of resolving the lawsuits and drafting this bill, the State worked with hospitals to attempt to resolve concerns. As a result, amendments to this bill were drafted to further clarify the rates and the process for payment. She requested the Committee send **S 1246** to the amending order so the new amendments could be applied. In answer to questions from the Committee, Ms. Knighten clarified the cost savings will be passed back to IDOC and are not profit to Corizon. She stated this is needed because tax payers cover the burden of providing medical services to the 600 to 700 inmates seen offsite. The existing fiscal note for the amendment will remain the same as stated in the original bill.

Ken McClure, Idaho Medical Association, spoke **in opposition** to **S 1246**. He stated he appreciated the fact that the hospitals were consulted on this legislation; however, the Medical Association was not and there are concerns. He stated Medicaid is difficult to manage because it does not cover the actual cost of providing service. Many providers are making difficult decisions to no longer accept Medicaid patients. It's complicated because prisoners are a difficult population to serve and yet medical providers are being reimbursed at half the rate of a commercial insurance companies, so they simply do not want to do it. The only exception where care must be provided is in emergency situations. This disproportionately impacts emergency and specialty medical providers because most primary care services are provided at the prison.

Brian Whitlock, President, Idaho Hospital Association, spoke **in support** of **S 1246**. He reiterated this bill and its amendments as stated by **Ms. Knighten**. He agreed with **Mr. McClure** that Medicaid rates do not cover costs, but as it became apparent that rates were not something that could be negotiated in this legislation, the association turned its focus on negotiating a workable and timely process for how payments would be handled. He stated the amendments to the bill offer a good compromise to all parties, and not everyone got what they wanted, but it allows a path for moving forward. In answer to questions from the Committee, Mr. Whitlock stated medical providers can opt out of providing services. If the IDOC has an inmate who requires care that is not provided in an area of the state, they would need to find a service provider elsewhere. In cases where Medicaid does not cover certain services or procedures, then a rate could be negotiated to provide that service.

Pat Donaldson, Chief of Management Services, Idaho Department of Correction, was called upon to answer questions from the Committee. He stated it has always been the intent to only pay Medicaid rates and current statute addresses this, but the problem arose when Corizon, a third-party other than the state, began paying the medical bills on behalf of the state.

MOTION: **Rep. Gannon** made a motion to send **S 1246** to General Orders with amendments. **Motion carried by voice vote. Rep. Kerby** will sponsor the bill on the floor.

Henry Atencio, Executive Director, Idaho Department of Correction provided an update on prisons in Idaho. Population reached a record high of 8,468 in February 2018. Drivers of this increase include: Idaho is fastest growing state in country and not everyone is a law abiding citizen; felony criminal filings are increasing; and probation and parole violators are coming back. Feels there is room for improvement on IDOC part to reduce population rates, but there's been great improvement in releasing drug offenders and property offenders at a better rate. He provided an overview of the Community Reentry Centers (CRC), which offer a good six to 18 month transition for inmates getting ready for parole and preparing to assimilate into the community on their own. He stated the optimum time in the CRC is 12 to 18 months. In answer to questions from the Committee, Director Atencio stated inmates who are moved out of state come back to Idaho when they are getting close to their parole date so they can participate in their required programming. The goal is to have them ready by the end of their fixed term. He explained IDOC sends a Deputy Warden to the contracted out-of-state prisons for weekly monitoring.

S 1316aa: **Sen. Den Hartog** and **Sen. Burgoyne** presented **S 1316aa**, which entitles the prevailing party, in an administrative proceeding between a licensee and a self-governing licensing authority to recover reasonable investigative and defense costs. The assessment of fees in such proceedings will be subject to judicial review if judicial review is requested. To the extent this bill incentivizes sound investigatory and litigation management practices resulting in well-grounded licensure actions, licensure authorities will be able to recover their reasonable and appropriate investigative costs and attorney's fees. To the extent licensure authorities bring licensure actions in which they cannot prevail, they will owe reasonable and appropriate defense costs and attorney's fees to licensees. **Sen. Den Hartog** stated as the current law stands, it is a one way street for a license holder. The bill is currently directed at self-licensing boards and a few others. If it goes well it could be expanded to others in the future. **Sen. Burgoyne** explained the Bureau of Occupational Licenses came forward with technical corrections and they are good with the changes outlined in this bill.

MOTION: **Rep. Zollinger** made a motion to send **S 1316aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Zollinger** will sponsor the bill on the floor.

S 1269: **Sharon Harrigfeld**, Executive Director, Idaho Department of Correction and Chair of the Idaho Criminal Justice Commission introduced **Paul Panther**, Chief of Criminal Law Division, Deputy Attorney General on behalf of the Criminal Justice Commission. Mr. Panther presented **S 1269**. This legislation amends Idaho criminal code relating to battery by adding a new section pertaining to sexual battery to differentiate between unlawful touching (which would be charged under the current law as battery), and unlawful touching of private areas for the purpose of degrading, humiliating, or demeaning the victim or for the defendant's sexual gratification (which could be charged as sexual battery under this legislation). Under this bill, sexual battery remains a misdemeanor, with the possibility of an increased fine and jail time. This also provides a new section on aggravated sexual battery, which would be a felony with an increased sentence. Finally, the bill revises the Sexual Offender Registration Notification and Community Right-to-Know Act to include aggravated sexual battery as a registrable offense.

MOTION: **Rep. Wintrow** made a motion to send **S 1269** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

S 1270aa: **Paul Panther**, Chief of Criminal Law Division, Deputy Attorney General, presented **S 1270aa** on behalf of the Idaho Criminal Justice Commission. This bill removes language requiring that the conduct of forcible penetration was done for sexual arousal, gratification, or abuse. This allows for other possible cases where the forbidden conduct takes place. He stated, proving sexual intent is sometimes difficult, so removing this language and adding the word "willfully" clarifies the act was done on purpose.

MOTION: **Rep. Wintrow** made a motion to send **S 1270aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

S 1300: **Sara Thomas**, Administrative Director of the Courts, Idaho Supreme Court presented **S 1300**. This legislation adds new language to the current "Bail, Release on Recognizance and Condition of Release" statute, I.C. § 19-2904 that authorizes the courts to require, as a condition of a defendant's release, that they be supervised while awaiting trial. Each county can decide whether to establish a supervised pretrial release program and if they do so, then the court may require supervision or monitoring of a defendant who is awaiting trial to ensure public safety, protection of victims and witnesses, and compliance with other conditions of release. It also adds a section addressing a "Pretrial Supervision Fee" to allow the court, as opposed to the county, to impose a fee of no more than \$2.50 per day, plus actual costs of electronic monitoring and/or drug and alcohol testing (if required) for those on a pretrial release program. The fees would be distributed to the counties to be used exclusively to cover the costs of the pretrial services. Ms. Thomas stated Idaho statutes don't currently identify provisions for pretrial requirements, but some counties have created their own pretrial supervision services. Those programs vary based on what the offender needs and others base services on what the county can afford. Fees imposed by a county on the basis of its authority under I.C. § 31-870 are not financial obligations of the state courts and then distributed to the county, but rather they are obligations owed directly to the county. In order to collect unpaid fees, a county must use its authority to collect fees as it would collect property tax, or the county must obtain a civil judgement through a small claims process. The purpose of this bill is to provide legal authority for the courts to impose and collect the pretrial supervision fees and if still owing at the time of judgement, then the remaining fees would be added to the criminal judgement. Then the process of collecting financial obligations to the courts in a criminal case could then be used.

Chairman Luker called a recess of the Committee at 3:30 p.m.

Chairman Luker resumed the meeting at 4:36 p.m.

In answer to questions from the Committee, **Ms. Thomas** stated any pretrial fees submitted to the court system prior to judgement would be paid for this purpose. After sentencing, any money paid would go toward the total court costs and applied via the court's priority of payments. She also clarified counties will not be forced to provide pretrial services if they are not doing so already. It is at the discretion of the counties. If a person is acquitted of charges, they are still responsible for paying their pretrial supervision fees. This is not unlike the need to pay attorney fees or other costs associated with waging a defense. She explained the process for obtaining a bail bond and while some parts of the country have gotten rid of commercial bonds, this bill does not do that. She stated bail bondsmen do not make sure people comply with the conditions of release, they only ensure that a person appears in court.

Lance Giles, on behalf of the Idaho Bail Coalition and **Rich Hahn** representing the American Bail Coalition spoke **in opposition** to **S 1300**. They stated this was not developed with consultation with the bail industry and it is not necessary. Idaho counties have been doing this for 15 years and it's been working fine. The Idaho Bail Act already takes into account public safety of victims and witnesses and pre-trial supervision is already a condition of release, and is already provided. They stated this is an attempt to move away from the bail system to tax-payer supported pretrial release and program supervision system operated by the state and counties.

Seth Grigg, Idaho Association of Counties (IAC) spoke **in support** of **S 1300**. He reiterated the pretrial justice system has been in place for 15 years, so this isn't a new function in 30 counties. Regardless, the bail industry is still thriving in Idaho. IAC worked with the courts on the terms of the legislation and how the fees are to be paid. Many counties providing pretrial programs don't charge a set fee. In answer to questions from the Committee, Mr. Grigg stated member counties of IAC voted to support this bill but Ada County is not a member, so he does not know their position. He clarified this bill establishes reimbursement for actual supervision up to \$2.50 per day and counties may have the service providers who administer compliance tests or monitoring devices bill separately for these services. While the counties have not had a problem collecting these fees in the past, there may be in the future if they are unable to do so through Odyssey. Therefore they may need to establish their own systems for collecting. He stated he did not believe counties would rush to charge for, or increase their supervision fees just because the legislation would allow charging up to \$2.50 per day.

MOTION: **Rep. Gannon** made a motion to send **S 1300** to General Orders.

Speaking to the motion, **Rep. Gannon** stated there should be a way for people to get their pretrial supervision fees refunded if a person is mistakenly charged and they are acquitted or the case is dismissed.

SUBSTITUTE MOTION: **Rep. Wintrow** made a substitute motion to send **S 1300** to the floor with a **DO PASS** recommendation.

Speaking to the substitute motion, **Rep. Wintrow** stated this bill is trying to provide a way for counties to charge for services and get paid.

VOTE ON SUBSTITUTE MOTION: **Chairman Luker** called for a vote on the substitute motion to send **S 1300** to the floor with a **DO PASS** recommendation. **Motion failed by voice vote.**

VOTE ON ORIGINAL MOTION: **Chairman Luker** called for a vote on the original motion to send **S 1300** to General Orders. **Motion carried by voice vote. Reps. Dayley, Wintrow, and Chairman Luker** requested to be recorded as voting **NAY**. **Rep. Gannon** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 5:32 p.m.

Representative Luker
Chair

Wendy Carver-Herbert
Secretary