

MINUTES
JOINT MEETING
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 22, 2024

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, Ruchti

ABSENT/ EXCUSED: None

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 1:32 p.m.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Ricks** moved to send the Gubernatorial Appointment of Jason Kreizenbeck to the Judicial Council to the floor with a recommendation that he be confirmed by the Senate. **Senator Ruchti** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Ruchti** moved to send the Gubernatorial Appointment of R. Todd Garbett to the Judicial Council to the floor with a recommendation that he be confirmed by the Senate. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Gubernatorial Appointment of Keely Duke of Boise, Idaho, to the Judicial Council**, for a term commencing July 1, 2023 and expiring July 1, 2027. **Ms. Duke** indicated she had practiced law in Idaho for 25 years and during that time had represented a wide range of clients in nearly every jurisdiction in Idaho. She stated she was married with four children. **Ms. Duke** commented she had enjoyed serving on the Judicial Council and being involved in picking potential candidates to serve in such an important role. She added that people/businesses needed to feel Idaho judges were up to the challenge.

DISCUSSION: **Senator Lee** thanked Ms. Duke for her patience as the Legislature worked through the nomination process in the last Legislative Session. **Senator Lee** asked Ms. Duke how she would keep a balance between the constitutional requirement for judges to be elected and still pass through the current appointment process to the Judicial Council. **Ms. Duke** responded that she felt the balance was met with the Governor's appointment from the names submitted by the Council, then those judges have to run for election in their respective district. They would only be able to continue serving if they won in the next election cycle.

Senator Ruchti and **Senator Wintrow** asked Ms. Duke what characteristics she looked for in the applicants for the Council positions. **Ms. Duke** stated she focused on competence, demeanor, and the ability to do the job. **Senator Ruchti** questioned why the same qualities were important to her as a practitioner. She stated how important it was to her to be able to tell anyone she represented that they would have their day in court and their defense would be heard. **Ms. Duke** added it was important to her that the attorneys who were now judges would be able to do the research, have the necessary work ethic to handle the heavy loads, and treat the clients with respect and dignity so that they felt they had been heard.

RS 30975

To Amend the Penalties and Requisite Elements for the Crime of Electioneering. **Senator Linda Wright Hartgen** stated she had received complaints that there were areas in Idaho where residents had experienced interference and intimidation when they went to the voting polls. This legislation augments what is already prohibited for electioneering and its related activities in the polling places. The penalty for electioneering prohibitions was expanded to include and increase the fine amount and include a misdemeanor charge for multiple convictions. The legislation increased the distance to 250 feet from the front door of the polling location where activities could take place. Added activities included no advocating for or against any candidate or measure, soliciting votes for any candidate by any means, and giving or offering to give any money or gifts, and signing any initiatives within the 250 foot distance. These restrictions did not apply if there was private property within that distance. The legislation did nothing where private property was involved. **Chairman Lakey** commented this legislation helped to clear up ambiguity as to where one measured the property line.

MOTION:

Senator Anthon moved to send **RS 30975** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1232

Child Protection - Adds to Existing Law to Provide for Parental Rights during Certain Child Protection Investigations. **Senator Scott Herndon** stated this legislation provided for the notification of parents or guardians of their legal rights with respect to child protection investigations.

When the Department of Health and Welfare received notice of possible child abuse, neglect, or abandonment, the parents had certain rights. They included: refusal to answer questions, counsel of an attorney or to have one present during the investigation, to refuse entry to their home, and to refuse the questioning of any minor children in their home unless there was a court order.

Notification required by this legislation was made in writing at the time of or within seventy-two (72) hours after the first in person contact with the parents. Anyone who had legal custody of the child was entitled to the same rights. The notification required was to be made in writing on a form used by the department.

Finally, failure by the department to provide notification required by this legislation in an investigation would not affect the department's ability to conduct the investigation or carry out their duties to protect the child.

Senator Herndon added the intent of the legislation was to take the lightest touch approach. It also allowed the department to prescribe the format used to communicate the parent's rights. The former Director of the Department of Health and Welfare advised that the right process to follow was to not overwhelm the parents and to make sure their rights were made clear. Currently, the Department used the trifold pamphlet distributed to the Committee (Attachment 1). It fulfilled all of the necessary requirements. The main changes from last year's legislation were that there was no right of civil action if the notification was not made to the parents in writing and it did not jeopardize the ongoing investigation. The end result was to let all involved feel a kind of balance of power where one felt comfortable cooperating and getting the department the information they needed and having an appropriate understanding of their position in an investigation.

DISCUSSION:

Senator Lee questioned Senator Herndon's description of "light touch" in relation to interactions between parents and the Health and Welfare Department. **Senator Herndon** explained the manner in which the parental rights would be communicated as prescribed by the department in whatever format they chose to use. The pamphlet provided was the one currently being used and it contained the necessary information. **Senator Herndon** clarified that the legislation did not contain any information relating to lawsuits. It also stated that failure by the Department to notify the parents of their rights in writing did not jeopardize the underlying investigation. He added the reason to add this statute was because the Department was using the pamphlet with every investigation, but a change in Department leadership could change that process.

Senator Lee asked for additional language to clearly state what the parents needed to know when complying with requests from the Department. **Senator Herndon** said that information was included in the rest of Chapter 16, Title 16. He added the language in question was in the Idaho code and was on the Department's website. This legislation added to what was not in Idaho code. **Senator Lee** asked if Senator Herndon would be opposed to an amendment. He responded that he felt it was not necessary to move the bill forward.

Senator Wintrow stated that she was aware of parent contacts being made over the phone rather than in person. **Senator Herndon** explained that the first person direct contact came after the CPS worker had already approached the family. If law enforcement was the first contact, this requirement did not apply. If exigent circumstances occurred and an officer believed there was a child in imminent danger, the requirement to notify would not exist. **Senator Wintrow** questioned verification of the notification sent to parents. **Senator Herndon** stated there was no remedy in the legislation concerning notifications lost in the mail. The Department would follow through to make sure attempts to comply were met.

Chairman Lakey stated it was important for parents to understand their rights, but be aware that law enforcement could override the refusal to enter the home or talk to the children if they followed the approved procedure. **Senator Herndon** asked to have **S 1232** sent to the floor with a **do pass** recommendation. He suggested looking at the pamphlet to see if it complied with the way the process was currently being handled and thereby not require any changes. He was also open to sending **S 1232** to the **14th Order** after it went to the floor with a **do pass** recommendation.

MOTION:

Vice Chairman Foreman moved to send **S 1232** to the Senate floor with a **do pass** recommendation. **Senator Hart** seconded the motion.

Senator Lee explained that if parents would be looking at the statute for guidance, the language must be correct so that law enforcement was not being requested each time Title 16 was used.

**SUBSTITUTE
MOTION:**

Senator Lee moved to send **S 1232** to the **14th Order for Possible Amendment**. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Foreman** requested to be recorded voting **nay**.

ADJOURNED:

There being no further business to come before the Committee **Chairman Lakey** adjourned the meeting at 2:15 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary