



Idaho Supreme Court

Other Policy Matters & Potential Legislative Topics from Others for the 2016 Legislative Session that Would Have an Impact on the Courts

The Supreme Court wishes to update the Legislature on a number of policy matters and potential legislative topics that may be proposed by various agencies or groups, which would have an impact on the Courts, and would be of importance to Idahoans.

Amendment of I.C. § 18-920 to clarify the meaning of “contact”

One of the issues raised in *State v. Herren*, 157 Idaho 722, 339 P.3d 1126 (2014), was whether violation of a distance restriction ordered under I.C. § 18-920 constituted contact within the meaning of the statute, and could therefore be the basis of a prosecution for violation of a no contact order. The Court found it unnecessary to resolve this question in order to decide the case, but in a footnote the Court stated, “We invite the Legislature to resolve this dispute.” During the 2015 Legislative Session, the Idaho Prosecuting Attorneys Association proposed HB 140, which would have amended I.C. § 18-920 by giving courts authority to prohibit defendants charged with or convicted of a crime “from engaging in prohibited conduct defined by the order.” This loosely defined grant of power was unacceptable to a majority of the House Judiciary, Rules and Administration Committee, and the bill was held in committee. Proposals may be made during the session to address this issue and to clarify that violation of a distance restriction can constitute a misdemeanor under this statute.

Gestational agreements

The Interim Administrative Director of the Courts has become aware that many cases have been presented to our courts seeking the issuance of orders that would make the intended parents the “legal” parents of a child carried by a gestational mother. Legislative input in this area is needed that will provide guidance to our judges, and that will protect the interests of intended parents, gestational mothers, and children.

ICJC Sex Crimes proposal

The Idaho Criminal Justice Commission (ICJC) has drafted a proposal to: (1) create a new crime of sexual battery of an adult; (2) combine the rape statute, I.C. § 18-6101, and the male rape statute, I.C. § 18-6108, into a single gender-neutral rape statute; and (3) to add a subsection to the rape statute providing that an act of penetration is rape “[w]here the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.”

Attorney General’s Child Protective Act proposal

The Attorney General is considering introducing legislation that would make the Idaho Department of Health and Welfare (IDHW) a party in Child Protective Act (CPA) cases and parental termination cases arising from CPA cases. The proposed bill also provides that IDHW would be represented exclusively by the Office of the Attorney General in such cases.

Crime Victims Compensation Account fines

The Judiciary has been informed that the Industrial Commission is considering proposing an increase in these fines. We are reviewing whether adoption of this proposal at this time would have any impact on the implementation of the Odyssey court management system.

Sign language interpreter legislation

The 2014 Legislature passed HB 152a, addressing licensing of sign language interpreters. The bill was vetoed by the Governor. It would have made it a misdemeanor to practice sign language interpretation without a license in a variety of contexts, including in the courts. Compliance with this legislation would have made it impossible for the courts, in many instances, to fulfill their constitutional and statutory responsibilities. The Courts will be working with the supporters of this legislation to craft a bill that will further the interests they seek to serve while allowing the courts to continue to fulfill their responsibilities and meet the needs of deaf and hearing impaired persons.

Report to the Governor
C.L. “Butch” Otter
and the
2nd Regular Session of the
63rd Idaho Legislature



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Executions and garnishments

In 2014, the House passed HB 449, which would have allowed attorneys as well as sheriffs to serve wage garnishment orders. Judges on the Court's legislative review teams expressed strong concerns about the bill. Ultimately, the bill did not receive a hearing in the Senate Judiciary & Rules Committee. But as a result of the discussions that took place at that time, it was agreed that the courts would work with the lobbyist for the collection agencies that supported HB 449 to examine the subject of service of garnishments and other related issues. An informal group was formed that brought together representatives of several stakeholders, and that group has been discussing a variety of issues related to garnishments and executions generally. The group should shortly be ready to make some proposals that may better protect the rights and interests of creditors, debtors, and garnishees.

Public Defense Reform Interim Committee

The 2013 Legislature began the process of public defense reform by passing three bills dealing with the appointment of counsel and also established a legislative interim committee to continue the analysis of the public defense system. Specifically, in 2013, HB 147 amended provisions of the public defense system for adults, HB 148 provided counsel in child protection cases, and HB 149 dealt with counsel in juvenile cases. Litigation was commenced in 2015 regarding public defense funding and other matters. The Committee is continuing to consider issues relating to the structure and funding of public defense services, including the responsibilities and authority of the Public Defense Commission.

Criminal Justice Reinvestment

The 2014 Legislature enacted SB 1357 which amended a number of statutes dealing with probation and parole of felony offenders with an eye toward prudent reinvestment and reallocation of resources to reduce prison costs, enhance rehabilitation and provide greater public safety. Statutory amendments enacted in 2015 adjusted the effective date of some primary provisions to October 1, 2015. Other provisions of SB 1357 require several reports to the Idaho Legislature on a gap analysis in programming and funding, as well as a program assessment.

The need is to continue to strengthen felony probation as an evidence-based sentencing alternative. Significantly improving access to behavioral health treatment for offenders in the community is also necessary to make probation more successful, restore lives, reduce recidivism and improve public safety.

Improve the collection of court fees, fines, and other obligations

The Court urges that all three branches of government continue the work approved by the Idaho Criminal Justice Commission to help inform the Legislature when it considers proposals to add new fees, fines, and other obligations. The effort will examine the existing statutory scheme relating to the collection of fees in criminal cases to clarify:

- (a) whether each of the current fees is to be assessed for each case or for each count or charge within a case;
- (b) the priority of how payments are to be applied to the various fees, fines, and restitution when the payment received is insufficient to pay the entirety of the court ordered obligations;
- (c) best practices for the collection of fees, including a clearer definition of the role of probation officers in these collections;
- (d) whether provisions for waiver of the various fees should be made uniform; and
- (e) how the burden placed on offenders by the various fees, costs, and fines should be taken into account, both as to its effect on the ability of offenders to successfully rehabilitate themselves, and with regard to the uncertain and variable level of funding for the judicial system and other agencies that is created by this approach.

The transition to the Court's new case management system Odyssey, by Tyler Technologies, will support this important work and the proper accounting of millions of dollars in court ordered obligations.

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