

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 13, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** Representative McCrostie

GUESTS: Charlie Spencer, Christina Straub, Anne Wardle, Idaho State Police; Lori Burrelle, Diane Jensen, SW ID Chapter of National Org. for Women; Mark Estess, Idaho Chiefs of Police; Annie Hightower, IDASDV; Nicole Fitzgerald, Council on Domestic Violence; Pro-Life; Joshua Wickard, PD; Jean Fisher, ISAKI; Toni Lawson, Idaho Hospital Association; Jared Larsen, Governor's Office; Beatrice Black

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

Eric Fredericksen, State Appellate Public Defender (SAPD) presented an update. The SAPD provides appellate representation to indigent defendants who have been convicted of a felony in district court. The SAPD also provides appellate representation to petitioners in state felony post-conviction and habeas cases. In capital cases, where a defendant has been sentenced to death, the SAPD provides district court representation for post-conviction proceedings, as well as representation on appeal. This provides relief to the counties through the Capital Crimes Defense Fund. Mr. Fredericksen explained attorneys are evaluated on workloads to determine how busy they are and they are busier than usual, but SAPD contracts out if needed. Today, there are 30 active first degree murder cases in Idaho, which is similar to last year. Of those 30 cases there are six death notices. In answer to a question from the Committee, he stated the average length of time a capital death case is in his office is 14 years.

Matthew Gamette, Laboratory Assistant Director, Idaho State Police (ISP) Forensic Services presented an update on the processing and tracking of sexual assault evidence kits. ISP Forensic Services operates three labs, but only the Meridian, Idaho lab processes DNA. Idaho is the first state in the country to put a fully functional tracking system on line to track sexual assault evidence kits and is shared free of charge with any state that wants to implement the tracking system. Six hundred and forty kits are appropriated. However, 689 kits have been submitted. The numbers differ because law enforcement may have previously taken the kits, but held them for further investigation, or at the request of the victim. In answer to a question from the Committee, Mr. Gamette stated tracking is important because there should be accountability for every kit that is collected. Tracking and accountability was established with previous legislation and many states are interested.

H 116: **Rep. Wintrow**, presented **H 116**. This legislation relates to the processing of sexual assault evidence kits and asks hospitals to enter the data when it is collected. There has been confusion in the past about whether to process the kits, or not if the victim chooses to not pursue prosecution. This bill clarifies this, and evidence kits will be processed in all cases unless the accusation is unfounded. If the charge is unfounded, the data will be removed from the database.

Annie Hightower, Director for Idaho Coalition Against Sexual and Domestic Violence; **Beatrice Black**, Women's and Children's Alliance; **Jean Fisher**, Ada County Prosecutor's Office and **Lori Burelle** on behalf of the Southwest Chapter of the National Organization for Women spoke **in support** of **H 116**. They explained the process for writing this bill has been very collaborative and victims' rights have always been at the center. Ms. Hightower stated this bill will help establish trust between victims and law enforcement; confirm a suspect's identity in some cases; help enhance public safety; and confirm case specific information in some cases. Sexual assault is a very complicated topic and this is a positive step forward to support victims and helps them gain some sense of healing. Ms. Fisher stated this bill would remove the subjective nature of deciding what to do with the evidence kits once they are collected.

MOTION: **Rep. Kerby** made a motion to send **H 116** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

H 117: **Rep. Troy**, presented **H 117**. The law currently allows a fine of up to \$5,000 for certain crimes of violence and is separate from criminal penalties and restitution. If the fines are recovered, families often use the funds for victim counseling and other treatments. This bill adds the crimes of attempted strangulation and attempted rape, which are currently eligible for up to \$2,500 and this bill increases the amount to \$5,000. These crimes are traumatic and have lasting impacts on victims. In answer to questions from the Committee, Rep. Troy stated the bill is different from the Crime Victims Compensation Act and victims can collect from both. She said this bill does not address increasing the maximum fine above \$5,000, but it could be looked at in the future.

MOTION: **Rep. Gannon** made a motion to send **H 117** to the floor with a **DO PASS** recommendation.

In answer to questions from the Committee, **Rep. Troy** explained the crimes listed in the bill are when a person is convicted of attempted acts. Rep. Troy yielded to **Rep. Chaney** who explained I.C. §18-306 is the statute dealing with certain attempted crimes and it provides a definition and conviction of attempted felonies.

Speaking to the motion, **Reps. Zollinger, Ehardt, Young** and **Marshall** stated they were concerned attempted rape and attempted murder are not clearly defined and the bill should state that the fines apply "upon conviction" of attempted murder and rape. **Rep. Chaney** explained the definition of attempts is based on the qualifying language of paragraph one of Section 1 of I.C. §19-5307 where it is defined with the language that states, "defendant found guilty of any felony listed in subsections 2 and 3 of this section." Therefore, this addresses the concerns being raised. He said the bill is just raising the ceiling of the fine from \$2,500 to \$5,000. **Reps. Gannon, Kerby** and **Chairman Dayley** concurred with Rep. Chaney.

MOTION: **Rep. Goesling** made a motion to call for previous question.

ROLL CALL VOTE: **Chairman Dayley** called for a roll call vote on call for previous question. **Motion failed by vote of 13 AYE, 4 Nay, 1 Absent/Excused.** **Voting in favor** of the motion: **Reps. Goesling, Ricks, Troy, Wintrow.** **Voting in opposition** to the motion: **Reps. Chaney, Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Hartgen, Marshall, Young, Gannon, Davis, Dayley.** **Rep. McCrostie** was **Absent/Excused.**

Rep. Troy requested a motion to hold the bill in committee until she could have more time to address the questions from the Committee.

MOTION WITHDRAWN: **Rep. Gannon** made a motion to withdraw his motion to send **H 117** to the floor with a **DO PASS** recommendation.

MOTION: **Rep. Gannon** made a motion to **HOLD H 117** in Committee for time certain Feb. 19, 2019.

SUBSTITUTE MOTION: **Rep. Wintrow** made a substitute motion to send **H 117** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Wintrow** stated that amending legislation on the fly is a very serious issue and was concerned the bill could get delayed.

In answer to questions from the Committee, **Rep. Troy** stated a retired judge from the Idaho court of appeals reviewed the legislation and she is confident in her opinion. **Reps. Marshall** and **Young** stated the explanation provided by **Rep. Chaney** addressed their concerns and would vote in favor of the substitute motion.

VOTE ON SUBSTITUTE MOTION: **Chairman Dayley** called for a vote on the substitute motion. **Motion carried by voice vote.** **Rep. Zollinger** requested he be recorded as voting **NAY.** **Rep. Troy** will sponsor the bill on the floor.

H 114: **Rep. Giddings** presented **H 114**, which makes female genital mutilation (FGM) of a minor a felony. The Federal court case last fall put the responsibility of outlawing this practice back on the states. She stated she worked with several Deputies in the Attorney General's office to get their opinions. This legislation increases the statute of limitations to three years from the date the offense is reported by the victim to law enforcement for ritualized abuse of children and FGM. Under current law the statute of limitation is five years from the date of the act. This is impractical because many children are very young when the offense is committed. **Rep. Giddings** also stated she looked into the questions from the Committee regarding the language that states "shall be guilty of a felony." This language is used in several Idaho criminal codes and suggested it could be addressed as a broader clean up. She explained several states have stronger FGM laws that prevent people from taking girls out of state or the country. FGM is different from male circumcision because there are no benefits and it can have long term physical and mental health complications. FGM is considered an international health crisis by the World Health Organization.

In answer to a question from the Committee, **Rep. Giddings** said they would get clarification from the Attorney General on whether this legislation would prohibit surgeries in U.S. hospitals, by licensed doctors to alter the genitalia of healthy intersex babies at the request of parents.

Pro Life spoke in support of the bill.

Rep. Marshall said he remains concerned about the language that pronounces guilt. **Chairman Dayley** said he and **Rep. Marshall** have spoken about this and he supports a comprehensive review to address this concern.

MOTION: **Rep. Kerby** made a motion to send **H 114** to the floor with a **DO PASS** recommendation. **Motion carried by voice.** **Reps. Giddings** and **Troy** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:26 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary