

MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, March 07, 2018

TIME: 1:30 pm or Upon Adjournment of the House Floor Session

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:** None

GUESTS: Ian Thomson, Joseph C. Miller, IACDL; Kathy Griesmyer, ACLU; Fred Birnbaum, IFF; Kip Paporello, Jacob Mulkey, Terry Weir, Paul Jagosh, FOP; Daniel Clark, Bonner County Prosecutor; Jeff Lavey, ICOPA; Holly Koole, IPA; Kimberly Simmons, PDC; Sharon Harrigfeld, IDJC; Kelli Brassfield, IAC; Elisa Massoth, Attorney; Scott McKay, Nevin, Benjamin, McKay; Phil Frans, Susanne Ingman, LeeAnn Clark, John Lynn, Doug Guillory Curt McKenzie, Self

Chairman Luker called the meeting to order at 1:32 p.m.

MOTION: **Rep. Chaney** made a motion to approve the minutes of the January 17, 2018 meeting. **Motion carried by voice vote.**

MOTION: **Rep. Chaney** made a motion to approve the minutes of the February 1, 2018 meeting. **Motion carried by voice vote.**

MOTION: **Rep. Chaney** made a motion to approve the minutes of the February 15, 2018 meeting. **Motion carried by voice vote.**

S 1240: **Sharon Harrigfeld**, Executive Director of the Idaho Department of Juvenile Corrections (IDJC) presented **S 1240**, which clarifies stakeholders, such as judges, prosecuting attorneys and victims will be notified when the IDJC releases juvenile offenders, as well as when the department contemplates doing so. This law comports with current practice.

MOTION: **Rep. Perry** made a motion to send **S 1240** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

S 1242: **Sharon Harrigfeld**, Executive Director of the Idaho Department of Juvenile Corrections (IDJC) presented **S 1242**. This is a technical correction to clarify the definition of an escapee, by deleting one reference to the word "custody".

MOTION: **Rep. McDonald** made a motion to send **S 1242** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Cheatham** will sponsor the bill on the floor.

S 1257: **Kimberly Simmons**, Executive Director of the State Public Defense Commission (PDC) presented **S 1257** which adds two (2) additional members to the PDC. It includes a second representative recommended by the Idaho Association of Counties (IAC) and a second defending attorney recommended by the PDC from the Public Defender Roster. These two members, along with four others are appointed by the Governor and confirmed by the Senate. Three additional positions consist of one (1) representative from the Idaho Senate, one (1) representative from the Idaho House of Representatives and one (1) representative appointed by the chief justice of the Idaho Supreme Court. The intent of this bill is to gain good representation of urban and rural geographies and demographics, as well as provide representation from a contract defending attorney and a defending attorney from an institutional office. In answer to questions from the Committee, Ms. Simmons explained the fiscal note was based on the worst case scenario of bringing members from counties the furthest distance to convene for PDC business, but she anticipates the actual costs will be less. She stated rather than prescribing what types of backgrounds and positions should be considered for PDC recommendations, the legislation is written to provide the counties flexibility in who they recommend, as they have better knowledge of their needs and challenges.

MOTION: **Rep. Nate** made a motion to send **S 1257** to General Orders.

Speaking to the motion, **Rep. Nate** stated he was not comfortable with the composition of the PDC being determined by a super majority appointed by the Governor. The power should remain with the counties. He also stated if the intent is to have a county clerk and rural counties represented, as mentioned by **Ms. Simmons**, then it should be spelled out in the legislation.

Kelli Brassfield, Idaho Association of Counties was called upon to answer questions from the Committee regarding the nomination process for PDC members. She stated, IAC provides a list of three names to the Governor for each appointment. She said the process has been working well and association members voted **in support** of this legislation.

SUBSTITUTE MOTION: **Rep. Chaney** made a motion to send **S 1257** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Rep. Chaney** stated he philosophically supports the original motion; however, from a legal perspective, there could be potential issues with a private entity such as IAC making appointments without Executive branch or other governmental oversight.

In answer to questions from the Committee, **Ms. Simmons** stated she is amenable to providing future clarification on the types of candidates that should be considered for Commission recommendations and could use the rule making process if needed.

VOTE ON SUBSTITUTE MOTION: **Chairman Luker** called for a vote on the substitute motion to send **S 1257** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Nate, Hanks, Zito** and **Zollinger** requested to be recorded as voting **NAY.** **Rep. Perry** will sponsor the bill on the floor.

S 1258: **Kimberly Simmons**, Executive Director of the State Public Defense Commission (PDC) presented **S 1258** which amends Idaho Code to provide a way for Idaho counties to apply for state funding to assist with extraordinary expenses related to the provision of indigent defense delivery services. The legislation adds the counties to an already existing statute that provides a way for an indigent defense provider to apply for such funding. In answer to questions from the Committee, Ms. Simmons explained through the movement of money from joint initiative grants, the budget for the Extraordinary Litigation Fund will go from \$250,000 in 2016 and 2017, to \$421,000 in 2018 and 2019 for counties and defending attorneys with extraordinary litigation costs such as contract attorneys, travel and expert witnesses.

MOTION: **Rep. Gannon** made a motion to send **S 1258** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Zollinger** will sponsor the bill on the floor.

H 581: Continuation of the meeting on March 5, 2018.

Phil Franz, Susan Ingman, LeeAnn Clark, and Doug Guillory spoke in support of **H 581**. Each shared their stories of loved ones who they believe are incarcerated under mandatory minimum drug possession sentences without just cause.

Kathy Griesmyer, Policy Director, ACLU of Idaho spoke in support of **H 581**. She stated mandatory minimum sentencing was a popular national policy move from the 1990s that is changing. Since then, many states have repealed or changed their mandatory minimum laws and some have experienced declines in prison populations as well as violent and property crimes. She stated recent information from the U.S. Department of Justice indicates certainty of being caught and prosecuted is a more powerful deterrent than severity of punishment. In answer to questions from the Committee, Ms. Griesmyer stated this ultimately comes down to allowing judges discretion in making sentencing decisions and redirecting money currently spent on incarceration to programs for drug addiction, rehabilitation and education.

Fred Birnbaum, Idaho Freedom Foundation spoke in support of **H 581** because it provides a good system of checks and balances between the prosecuting attorneys and judges by providing both with discretionary power. In answer to questions from the Committee, Mr. Birnbaum said he was not convinced removing from the law, the word, "mandatory" before the word "minimum" would pose a great risk of driving more drug trafficking into the state. If the guidelines for sentencing were removed, then that could impact sentencing, but with those guidelines in place, judges can make decisions for tough sentencing when warranted. He went on to say if a pattern emerges that shows judges are issuing softer sentences, then it could send a signal that might change drug trafficking behavior. If that were to happen, the law could be amended in the future.

Kip Paporello and Terry Weir, Fraternal Order of Police and **Jeff Lavey**, Idaho Chiefs of Police Association, spoke in opposition to **H 581**. They stated drug dealers are very aware of Idaho's laws and cited a known heroine dealer from a neighboring state who refuses to come into Idaho because of it's mandatory minimum drug trafficking laws. They stated drug trafficking goes hand-in-hand with theft, robbery, violence and other crimes that impact the safety and security of communities. They stated the amount of drugs required to trigger a mandatory minimum sentence are more than an average user or addict would purchase or have on hand because the street value alone would typically prohibit it. They said dealers and traffickers know the amounts that can be distributed to members of their networks to avoid the maximum penalties and they do not trust those who push to secure higher amounts out of fear they are distributing to undercover cops. He explained that Idaho is situated between drug hubs in Seattle, Portland and Salt Lake and he predicted if this legislation is passed, the state would see an increase in drug trafficking and the price of drugs on the street will go down because supply will go up, creating an ever growing cycle of crime, violence, addiction and death. In answer to questions from the Committee, Detective Paporello stated keeping mandatory minimums in place is important because it drives a clear message about sentencing statewide, and no matter where you are, you will be treated the same. He is concerned about sentencing discrepancies in urban vs rural areas, for example. This can send a signal to traffickers who may exploit the differences.

Scott McKay, Nevin, Benjamin, McKay; **Joseph Miller**, Idaho Criminal Defense Committee and **Elisa Massoth**, a criminal defense attorney spoke **in support of H 581**. Each shared their perspective as criminal defense attorneys. They stated this is about providing balance in the sentencing process by allowing judges the discretion to make sentencing decisions. They stated while there are many well intended prosecutors, often they do not have all the information needed when issuing charges. During the course of pre-trial investigation (PSI) many details are gathered that can provide greater insight into the case, but by the time a PSI is completed, it's often too late as the case has progressed to trial or sentencing, and the Judge has no choice but to issue the required sentence. Since judges have access to all the information in the PSI they can use their judgement to determine an adequate sentence if the legislation passes. Today, there are several sentencing mechanisms in place to address high level drug traffickers, including Federal drug statutes, and while there is a safety valve in Federal statute, there isn't one in Idaho statute for low-level, first-time offenders. Despite this fact, mandatory minimums have been removed from Federal drug trafficking laws and there has not been a floodgate of softer charges.

Holly Koole Rebholtz, Idaho Prosecuting Attorney's Association spoke **in opposition to H 581**. She clarified the number of offenders who are incarcerated and serving mandatory minimums and invited the Committee to review any of the approximately 400 cases to better understand the facts behind the original charges. In answer to questions from the Committee, she stated judges have some, if not all, the information from these cases when they go to sentencing.

MOTION:

Rep. Chaney made a motion to send **H 581** to the floor with a **DO PASS** recommendation.

Reps. Malek, McDonald and Hanks debated **in opposition** to the motion. They stated this is a matter of fighting a war on criminal enterprise, and if the desire is to change the law, then law enforcement should be better included in the conversation about how to change it. The kinds and amounts of drugs the mandatory minimums law addresses are for people who are connected to a higher level drug dealer and no matter how you look at it, transport of drugs is a criminal offense.

Reps. Nate, Zito and Chairman Luker spoke **in support** of the motion. They spoke about the importance of allowing discernment and discretion, which judges must rely upon in all aspects of the cases they handle, and these same skills and qualities can be used in determining sentencing for drug traffickers as well. They said it provides a good balance of power. The original intent of the law, when it was written in the 1990s, included the safety valve to allow some judicial discretion, but it was repealed because of a challenge in the Idaho Supreme Court.

Rep. Gannon said he has serious concerns about drugs coming into the state, but he pointed out this legislation does not repeal the sentencing guidelines that a judge will use. However, he is concerned about the lack of definition for "manifest injustice" that should be included to alleviate any question about how to apply it in sentencing. He said he would support the motion, but he will ask the Attorney General for an opinion before voting on the floor.

**ROLL CALL
VOTE:**

Rep. Perry requested a roll call vote on **H 581**. **Motion carried by a vote of 11 AYE and 6 NAY. Voting in favor** of the motion: **Reps. Luker, Perry, Kerby, Nate, Chaney, Zito, Zollinger, Ehardt, Gannon, McCrostie, Wintrow (Hale)**. **Voting in opposition** to the motion: **Reps. Malek, Dayley, McDonald, Cheatham, Amador, Hanks**. **Reps. Rubel and Perry** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the Committee, the meeting adjourned at 6:47 p.m.

Representative Luker
Chair

Wendy Carver-Herbert
Secretary