

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Thursday, February 09, 2012  
**TIME:** 1:30 P.M.  
**PLACE:** Room EW42  
**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims(Ingram), Burgoyne, Jaquet, Killen

**ABSENT/  
EXCUSED:** None.

**GUESTS:** Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Tyler Mallard, Governor's Office; Judge Jack Varin, Idaho Supreme Court (ISC); Judge Michael Dennard & Michael Henderson, Idaho Supreme Court; Annie Kerrick, Idaho Coalition Against Domestic Violence; Benjamin Davenport, Risch/Pisca; Ken Burgess, Idaho Licensed Beverage Association; Dawn Peck & Lt. Bob Clements; ISP

**Chairman Wills** called the meeting to order at 1:33 p.m.

**RS 21125:** **Dawn Peck**, Manager of the Bureau of Investigation, ISP, presented **RS 21125**. She stated that the proposed legislation seeks to maintain stable funding source for the Idaho Law Enforcement Technology Service (ILETS). The primary purpose is to provide a dedicated and secure public information system providing law enforcement a means of reliably providing needed criminal justice information from state and federal systems.

**Ms. Peck** explained that ILETs has a 6-member Board who establish policies relating to management of operations of the ILETs system. This Board has formulated a plan that identifies major projects which need immediate attention, such as the replacement of critical equipment used to support the system. Currently, ILETs is funded through a combination of subscriber payments for access and transaction fees, along with ISP funded support. The Board has recognized that the current funding structure is inadequate to sustain daily operation and required infrastructure. Recognizing that the ILETs system is used to support and provide for public safety in use of the highway systems in the state, there is a real nexus to an "ILETS Transaction Fee" of \$8 for each title transfer of a motorized vehicle.

In response to committee questions, **Ms. Peck** clarified that in the past there has been federal funding sources for the system, but federal sources are no longer available. Committee members requested a spreadsheet to see how much money is currently generated from each of the current funding sources. Ms. Peck agreed to provide the funding information and added that when the current fee structure was implemented, ISP was directed to support 25% of funding, and currently provides 48%. Regarding coordination with other agencies such as the Department of Transportation, Ms. Peck indicated that POST had worked with them last year on this topic but is unclear as to whether they are in direct support of this proposed legislation. **Rep. Nielsen** clarified on the Fiscal Note portion of the SOP, a change to "there would be no fiscal impact."

**Rep. Sims** invoked Rule 38 stating a possible conflict of interest but she will be voting on the RS.

**MOTION:** **Rep. Burgoyne** made a motion to introduce **RS 21125**. **Motion was carried by voice vote.**

**RS 21165:**

**Rep. Trail** presented **RS 21165**. The proposed legislation would extend protections to victims of domestic violence (DV) by amending the current DV statute(s). Statistics state that nationally, 64-74% rapes go unreported to police. The current statute doesn't allow for victim protection in many domestic relationships because a civil protection order only covers victims in a certain relationship. For example, in a stalking situation, many times the stalker is unknown to the victim and thus would not come within one of the protected relationships. Currently, the length of a protection order is 14 days. This proposal is to change this to 10-28 days.

**Rep. Ringo** stated that she has spoken with a church pastor who works with DV victims and with Latah County Prosecutor Bill Thompson on these changes to the law. She conveyed that Mr. Thompson is concerned that those who are already victims have had to assume heightened burdens to get the protection they need. Next, she deferred to **Annie Kerrick** at the Idaho Coalition of Sexual and Domestic Violence. Ms. Kerrick stated that the name of the act would expand to include new categories covered by the act. On page 2 she outlined the definitions that would be updated to include new crimes and definitions to be added, including false imprisonment. In Idaho Code § 39-6304, the majority of the changes address victims of sexual assault and stalking. There is a clarification of the degree of risk, even if perpetrator lives more than 100 miles away. Idaho Code § 34-6306 extends the timing of an ex parte civil protection order where a full hearing needs to be 10-28 days from the issuance of the ex parte protection order. The addition covers victims of sexual assault and stalking. She explained the next major change, on page 6, line 1, subsection 7, which provides that the petitioner's address does not have to be disclosed and rather the petitioner can provide a "safe address" for service of process. Also, there is cleanup language in subsection e. In Idaho Code § 39-6306, which removes of the initial one year time limit, allowing a possible permanent protection order, which would cut down on court costs.

In response to committee questions, **Ms. Kerrick** stated that the victim would receive protection before the "10 day minimum" time frame in the form of the temporary protection order and explained further that when the petitioner files for a protection order, the temporary order would be issued within about one day. She explained that in some jurisdictions, as the law is now, some judges are scheduling the full hearing within 48 hours of the filing of the request for a protection order. Both the victim and respondent are unable to secure an attorney in that time frame and the court ends up having to grant an extension.

**Rep. Burgoyne** noted a change to the proposed legislation, on page 5, line 32. He suggested a comma between "stalking" and "solely" because these are separate justifications. Ms. Kerrick agreed these were separate clauses and would make the change. The committee also questioned support for the legislation and Ms. Kerrick stated that the Idaho Prosecuting Attorneys Office are in support, but she has not yet spoken with the Idaho State Bar Association. In regards to the definition of "false imprisonment" and its lack of use in another place in the legislation, Ms. Kerrick explained that "false imprisonment" is the definition as defined in the Idaho Code for this offense. The committee also suggested a change on page 3, line 32, "has been" should be "is," Ms. Kerrick agreed to make the change. Also, in regards to the word "annoys" on page 7, line 9, she explained that this is the verbiage from the stalking statute.

**MOTION:**

**Rep. Ellsworth** made a motion to introduce **RS 21165** with the changes on page 3, line 22 to delete "has been" to "is" and to insert a comma on page 5, line 32 before the word "stalking." **Motion was carried by voice vote.**

**H 455:**

**Judge Michael Dennard**, Idaho Supreme Court, presented **H 455**. He stated that the purpose behind the bill is to amend Idaho Code § 32-717D. This will allow parenting coordinators to charge a retainer fee. Parents frequently return to court to change custody or other issues that don't need re-litigation but come before the court because parents are unable to parent cooperatively. He explained that the purpose is to reduce misunderstandings, clarify priorities, and develop methods of collaboration. Parenting coordinator appointments are made in recurring cases, and it is difficult for the court to find people to fill these positions without providing payment for their service. Currently, 22 people have applied, 9 have been removed, and 12 are listed for reappointment. In closing he stated that allowing parenting coordinators to charge a retainer fee will help the court to maintain a list of qualified persons.

In response to committee questions, **Judge Dennard** explained that parenting coordinator compensation is listed on the roster, enabling the parties to compare hourly rates. He clarified that the purpose of this bill is to control the qualifications and background and regulate the ability of a parenting coordinator to be paid for their services. However, the court cannot control the payments to these coordinators, often resulting in nonpayment or incomplete payment. Also, he stated that the court does have the authority to appoint a parenting coordinator, but the parties can request a hearing to object to the appointment.

**MOTION:**

**Rep. Ellsworth** made a motion to send **H 455** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Ellsworth** will sponsor the bill on the floor.

**H 475:**

**Judge John Varin**, Idaho Supreme Court, presented **H 475**. He explained that high risk and high need substance abusers need to go to problem-solving court as part of their sentence. In regards to the court's constitutional authority to extend probation sentences, he stated that Article 1, Section 13 of the Idaho Constitution, covers the guarantees and due process rights as well as right not to be deprived of life, liberty and property. Idaho Code § 19-3921 gives the court discretion to order probation. Further, he explained that the granting of probation is not a due process issue, but the conditions of probation are. Probation may be extended or terminated but may not extend maximum sentence time limit.

In response to committee questions, **Judge Varin** stated that there may be an increased probationary cost to counties. He stated that he knows of no firm number, but since these people are already on probation, it won't be a significant cost. Additionally, in regards to whether the county commissioners are informed about increased costs he deferred to **Michael Henderson**, ISC. Mr. Henderson stated that there will be a net savings to counties because the use of problem-solving courts provides an alternative to incarceration, which is more costly than probation, at the end of the probationary period.

**MOTION:**

**Rep. Shirley** made a motion to send **H 475** to the floor with a **DO PASS** recommendation.

In support of the motion, **Rep. Luker** explained his due process concerns. He stated that the maximum jail time for misdemeanors is usually one year, and sometimes the sentences can be shorter. The core issue is whether notice and due process is changing after the sentence has been imposed. Judge Varin stated that probation is the court's discretion and the court has the ability to order full sentences or rather can order shortened incarceration time with subsequent probation. Rep. Luker suggested the addition of a provision that would provide notification that the offender could be subject to a 2 year sentencing provision, plus a possible year. **Michael Henderson** emphasized that the extension of probation in the felony context is permissible for many years and provided a case study: a judge ordered probation and restitution, when restitution was not near being paid at the end of the probation period, the probation term was extended.

**VOTE ON THE MOTION:**

**Motion was carried by voice vote. Rep. Shirley** will sponsor the bill on the floor.

**H 450:**

**Lt. Bob Clements**, ISP, presented **H 450**. He stated that the Idaho Constitution allows the Idaho Legislature to regulate intoxicating liquors. Under this direction, the Idaho State Police (ISP) shall investigate all alcohol license applications. Currently, the Alcohol Beverage Control (ABC) unit has one detective for the entire state. ABC conducts background and underage drinking compliance checks. Additionally, ABC provides training and guidance to licensees and is required to enforce the "aid to retailer" program. As of July 2005, each agent was determined to be responsible for monitoring 268 licensed establishments. This means that there should currently be 23 ABC officers. As it stands, ABC cannot adequately comply with their duties to regulate alcohol licensing.

In response to committee questions, **Lt. Clements** clarified that the sheriff's department and local law enforcement help enforce the laws, but the background investigations and regulation of liquor smuggling is specifically mandated to be completed by the ABC. Additionally, he confirmed that he needs \$1.5 million dollars for a separate fund which would allow ABC to hire approximately 10 officers plus 2 support staff, which would return ABC to 1964 staffing levels. Lt. Clements clarified that ABC's mission is to encourage the maintenance of the legal sale of the alcohol, but curtailing the use of alcohol is outside the scope of their duties.

**Ken Burgess**, who represented the Idaho Licensed Beverage Association, composed of bar owners and restaurants, stated that association members generally support the proposal, which will allow ABC to do their job effectively. He said there is a lack of consistency of enforcement of the laws. He suggested a need to train hospitality and law enforcement in the event of a violation and to have proactive measures in place to prevent violations before they occur. Also, he stated a need to reduce timelines for approval, make the licensing processing easier to navigate, and that the background/inspection checks are lengthy and burdensome. In conclusion he stated that he believes this legislation will go a long way towards providing public safety and meeting needs of affected parties.

**Jeremy Pisca**, an attorney representing beer and wine distributors, stated that his clients are in support of this bill. He suggested that user fees should go to support license enforcement. He provided testimony about a case where wholesalers in northern Idaho failed to comply with warehousing rules, and it took over a year for ABC to file a complaint against the violators, which shows the lack of resources available.

**MOTION:** **Rep. Killen** made a motion to send **H 450** to the floor with a **DO PASS** recommendation, subject to a change in the SOP, within the fiscal note. He said that "FY2010" is listed twice. The figure for FY2010, after FY2008, should actually be FY2009. **Rep. Jaquet** pointed out that the \$1.5 million dollars from the general fund will have to be replaced if this bill is passed. In regards to compliance checks, she said that 30-40 years ago it was possible to have an ABC officer come to your business and this is not the case today. Additionally, she stated that ABC generated funds that go into the general fund are used to pay for alcohol treatment programs.

**VOTE ON THE MOTION:** **Motion was carried by voice vote. Reps. Perry and Jaquet** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned 3:01 p.m.

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Representative Wills  
Chair

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Stephanie Nemore  
Secretary