

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Thursday, February 23, 2012  
**TIME:** 1:30 p.m. or Upon Adjournment  
**PLACE:** Room EW42  
**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/  
EXCUSED:** Rep. Smith(24)

**GUESTS:** Randy Colson, President of Idaho Towing and Recovery Pros; Tim Higgins & Brent Reinke; Idaho Dept. of Corrections (IDOC); Fairy Hitchcock, Hitchcock Family Advocates; Mike Kane, Idaho Sheriff's Association (ISA); Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Mark Kubinski, Idaho Dept. of Corrections/Attorney General's Office; Lt. Col. Ralph Powell & Dawn Peck, Idaho State Police (ISP)

**Chairman Wills** called the meeting to order at 2:47 p.m.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of the February 21, 2012 meeting. **Motion was carried by voice vote.**

**UNANIMOUS  
CONSENT  
REQUEST:** **Chairman Wills** requested unanimous consent to **HOLD S 1263** in committee. He explained this is the former "VINE" bill and because it is a fee bill, it needs to begin in the House. The new RS will be introduced in the Ways and Means Committee and then will be referred to our committee. There being no objection, consent was granted.

**H 514:** **Rep. Nonini** presented **H 514**. He said the bill was changed at the RS stage at the request of this committee, and the new language reflects those changes. He explained that originally he wanted to amend the stalking statute. This bill will amend the Disturbing the Peace statute, Idaho Code § 18-6409, a misdemeanor offense. Additionally, he stated that the Idaho Prosecuting Attorneys Association (IPAA) and the Idaho Sheriff's Association (ISA) support this legislation.

**MOTION:** **Rep. Nielsen** made a motion to send **H 514** to the floor with a **DO PASS** recommendation.

**Fairy Hitchcock**, representing Hitchcock Family Advocates, spoke in opposition to the bill. She brought five handouts which outlined her criminal history. She explained that the Idaho State Repository System (ISTARS) can be incorrect and the court clerks are unwilling to change or update it. Even though she received a withheld judgment, a dismissal, and an acquittal for various charges, all of these charges still appear when her name is searched in ISTARS. She urged the committee not to send **H 514** to the house floor.

In response to committee questions, **Ms. Hitchcock** stated that criminal charges never seem to be truly expunged. The charge "goes into hiding," but doesn't go away. Even if you have the case closed, it is still visible.

**Holly Koole**, IPAA, explained and clarified there is no expungement mechanism in the Idaho statutes. If you receive a withheld judgment, you can tell an employer this, but it never goes off the record. She indicated that there are some circumstances where records can be expunged. Expungement rules for juveniles are different, and their records cannot be released.

In regards to the definition of "emotional distress," in the bill, **Ms. Koole** explained this is the definition taken from the stalking statute. It may also be defined in a criminal jury instruction. She then explained that the proposed additional language to the Disturbing the Peace statute is necessary because there have been fact patterns in the past that have not fit the first part of the statute, and the language that we currently have doesn't cover all possible scenarios. She confirmed that the added verbiage may be used in instances of bullying, though there is a specific statute for this purpose, and there is case law that states you must charge under the most specific statute.

**Rep. Nonini** explained that he had constituents that have had an ongoing problem with a harassing neighbor and under the current code, they have no recourse.

**VOTE ON THE MOTION:**

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

**H 403:**

**Lt. Col. Ralph Powell**, ISP, presented **H 403**. He explained that an agreement was struck between the towing industry and the ISP. He said this bill is designed to ensure the safety of Idaho's citizens and ensure that when ISP sends a tow truck, those who are involved with that tow truck will be safe.

In response to committee questions, **Lt. Col. Powell** clarified that the agreement with tow truck operators will be found within ISP procedure. He outlined incidents with tow truck operators throughout the state: 1) Coeur d' Alene: stolen ipod, 2) Boise area: registered sex offender, 3) Treasure Valley: intoxicated driver, 4) Region 4: property stolen from the towed vehicle, 5) District 5: took new tires, sold them and replaced with old tires & registered sex offender. He said these people will be prevented from responding to ISP tow truck calls, but will not be prevented from working as a tow truck driver. Next, he explained that currently there is a positive working relationship between ISP and tow truck operators around the state of Idaho.

**Lt. Col. Powell** distributed the ISP procedure handout that contains the list of disqualifying criminal convictions (those convictions that will prevent a tow truck operator from qualifying for the ISP list). He said he is unaware of the percentage of tow truck companies used by ISP as compared to total available tow truck companies in Idaho. Abandoned vehicles are included in the statute because tow truck companies are often called upon by ISP for removal of these vehicles.

The committee commented about the use of the word "may," on line 22, and stated that, as it is written, it will mean that the police will have the option to use either the Idaho or Federal database, but are not mandated to use both. Further discussion confirmed that the chosen verbiage likely won't make a difference and the purpose is to allow ISP to perform these background checks. **Dawn Peck**, Bureau of Criminal Identification, confirmed that the language gives ISP the authority to receive the background information from the FBI. **Lt. Col. Powell** explained that even if a driver is disqualified, the entire company is not disqualified; the procedure only addresses the requirements for the responding drivers.

**Randy Colson**, President of the Idaho State Towing Association, said the association met with **Col. Powell** and are satisfied with the bill. They believe this legislation will benefit the industry as a whole.

**MOTION:**

**Rep. Hart** made a motion to send **H 403** to the floor with a **DO PASS** recommendation.

In opposition to the motion, **Rep. Bateman** stated a concern with the fee increase and a one-time check seems to be ineffective. In support of the motion, **Chairman Wills** agreed with these sentiments, but from his own experience, has seen many broken down cars far from civilization and there is a need to provide security for these people. In support of the motion, **Rep. Burgoyne** recognized the distinction between a private consumer who checks the background of service people they hire versus the citizen who is broken down, far from any town. When ISP calls a tow truck, ISP is endorsing the operator and guaranteeing that you will be safe while with the tow truck driver.

**VOTE ON THE MOTION:** **Motion was carried by voice vote. Rep. Bateman** requested to be recorded as having voted **NAY**. **Rep. Hart** will sponsor the bill on the floor.

**S 1215A:** **Brent Reinke**, Director of IDOC, presented **S 1215a**. He showed the committee a case containing examples of contraband in Idaho State Prisons.

**Mark Higgins**, IDOC, said the purpose of this bill is to create safer facilities and make it harder for inmates to obtain and possess contraband in prison. He explained that this bill updates various contraband definitions. Specifically, the new definitions include cell phones, which are often involved in drug trafficking activities from inside prison. The bill creates three categories of punishment: 1) Nuisance Contraband (infraction), 2) Simple Contraband (misdemeanor offense) which are items that cause danger to the facility such as money or tattoo equipment, and 3) Major Contraband (felony offense) which are items that cause a major danger to the safety of a facility, such as controlled substances, tobacco, and escape aids. He explained tobacco is major contraband because of the danger created by the huge profits that are made in the trafficking of tobacco.

**MOTION:** **Rep. Burgoyne** made a motion to send **S 1215a** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote. Rep. Burgoyne** will sponsor the bill on the floor.

**S 1292:** **Brent Reinke**, IDOC, presented **S 1292**. He explained this is the third piece of execution legislation, and it addresses the acquisition of chemicals for an execution.

**Mark Kubinski**, the Deputy Attorney General for IDOC, said in light of the recent execution, IDOC determined a need for new statutory language. The new section is as follows: 1) subsection 1, clarifies carrying out an execution does not qualify as the "practice of medicine," 2) subsection 2, any authorized entity that distributes substances used in executions shall be able to distribute those substances to the director for the execution and shall not be subject to liability for the death of the condemned person. 3) IDOC staff is exempt from legal ramifications associated with using these drugs to carry out an execution.

In response to committee questions, **Mr. Kubinski** said this legislation should protect employees of IDOC from any opposition.

**MOTION:** **Rep. Nielsen** made a motion to send **S 1292** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:47 p.m.

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Representative Wills  
Chair

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Stephanie Nemore  
Secretary