

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, March 07, 2012
TIME: Upon Adjournment of the House
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:** None.
GUESTS: R. David Moore, Blackfoot Police Dept.; John Evans, Garden City Mayor; Scot Haug, Post Falls Police Dept.; Michael Henderson, Idaho Supreme Court; Tony Poinelli, Idaho Association of Counties (IAC); Jerry Russell & Bill Flink, Peace Officer Standards & Training (POST)/Idaho State Police (ISP); Tim Brady & Joel Teuber, Fraternal Order of Police; Holly Koole, Idaho Prosecuting Attorneys Association (IPAA)

Chairman Wills called the meeting to order at 2:14 p.m.

MOTION: **Rep. Bolz** made a motion to approve the minutes from the February 29, 2012 committee meeting. **Motion was carried by voice vote.**

S 1341: **Sen. Bock** presented **S 1341**. He explained that this bill relates to **S 1385** (2010), which amended the definition of statutory rape. One item that was overlooked was that there are people currently required to register as a sex offender that would not be convicted as a sex offender under the new law. The only purpose of **S 1341** is to provide offenders with an avenue to remove themselves from the registry by petitioning the judge. A judge has the discretion to remove the offender from the registry. Sen. Bock pointed to page 2, lines 38-48, and explained that the language here will be stricken because it doesn't synchronize with **S 1385**. The operative language, on page 3, outlines the process for removal from the sex offender registry in the event the offender fits within the appropriate definition.

In response to committee questions, **Sen. Bock** said prosecutors support **S 1341**. He next explained the word "may" rather than "shall" is used in lines 11-12, because "shall" removes the judge's discretion to determine whether the person is within the exemption category. In closing, Sen. Bock said **S 1341** passed the Senate unanimously.

MOTION: **Rep. Shirley** made a motion to send **S 1341** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Reps. Shirley and Jaquet** will sponsor the bill on the floor.

S 1332: **Rep. Burgoyne** presented **S 1332**. He said we have seen this bill twice before, once in 2010, where it started in the House and § 1 of the bill amended how attorney's fees in administrative cases were treated. Previously, Administrative Hearing Officers could not award attorney's fees. **H 409** (2010) fixed this, then the Supreme Court held in the Smith decision that the Legislature did not adequately fix the matter. **H 409** was a trailer bill and is now found within **S 1332**, subsection 4, on the bottom of page 1- page 5. **S 1332** includes the necessary changes, subsection 4 and 5, and a technical correction in § 6. The new language states: Hearing officers, agencies and the courts may all award attorneys fees when the non-prevailing party has been frivolous in the administrative hearing itself or in the appeal. On page 1, line 38: in civil judicial proceedings where the adverse party is a government agency, the court shall award the adverse party attorney's fees.

The purpose is to require government agencies to only begin lawsuits where they have a reasonable probability of winning. The technical correction in subsection 6, line 18, Idaho Code § 13-120 pertains to any conduct or proceeding in court if the case is for \$25K or less and it clarifies how one party can send a demand letter to the opposing party and if there is no response within 10 days then that party can sue and receive a judgment. The \$25K amount will be changed to \$35K, as per another Senate bill from earlier in the 2012 session.

In response to committee questions, **Rep. Burgoyne** said the problematic language **H 209** (2011 legislative session) is not included in **S 1332**. **Rep. Luker** explained that the Legislative Services Office (LSO) will make a technical corrections that will change the \$25K threshold to \$35K. LSO can do so without additional legislation, and since this is a technical correction of the original statute the other bill would take precedence.

The committee questioned the limits on the addition of political subdivisions (page 2, line 7), and **Rep. Burgoyne** said he was not aware of additional political subdivisions, and this has not been an issue with colleges/universities. County commissioners sitting on the Board of Equalization would likely be included within this statute.

MOTION: **Rep. Ellsworth** made a motion to send **S 1332** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Reps. Burgoyne, Ellsworth and Luker** will sponsor the bill on the floor.

S 1275: **William Flink**, Division Administrator for POST/ISP, presented **S 1275**. He explained that various jurisdictions throughout Idaho have established traffic safety education programs and the purpose of these is to offer an alternative to fines, points, and insurance increases that are associated with traffic offenses. These cities/counties have been doing this without statutory authority to do so. **Rep. Wills** and **Sen. Darrington** brought an interim committee together in 2011 to find a solution to this issue. **S 1275** will establish the authority for counties and cities to offer the traffic safety education program, but it will remain a voluntary program. A fee would be charged for the program in lieu of the traffic violation fine, but the cost of that program may not be greater than the fine itself.

In response to committee questions, **Mr. Flink** stated that as of 2010, ten jurisdictions are providing this traffic education program, totaling an infraction fee diversion of about 3,500 fines across the state. One of the jurisdictions does not charge a fee and no programs charge a fee greater than the citation amount. Examples of fees are \$55.00, \$75.00, and \$100.00.

Cities and counties can participate in the program, and each county can do it individually. In regards to the substance of the course, the National Safety Council program is used. If a traffic violator chooses the program, the charge would not go on their insurance. This program is not designed for a serial traffic offender, and **Mr. Flink** said that the main purpose is to give those without a prior traffic violation a chance to avoid their first citation.

Some cities ceased providing the traffic education option in 2008 when the Attorney General issued an opinion on the matter, but would restart once statutory authority exists to do so. In regards to the fee structure: a portion of the fees earned on driver education "tuition" will be sent to the POST training fund and support for the Idaho State Repository (ISTARS).

Chief David Moore, Blackfoot Police Department (BPD) and Idaho Chief of Police Association, said this program has worked well in Blackfoot and the majority of the attendees gave an above average rating of the course. He said seniors have reported a positive re-education of the basic safety laws. He also said he worked on the 2011 interim committee that addressed this issue.

In response to committee questions, **Chief Moore** stated that Blackfoot has 5-8 people/class, which is given every 2 weeks. He explained that Post Falls was the first to offer the program, and Blackfoot uses the National Safety Standard materials for the class. Blackfoot charges \$55.00 for the class, which was determined to be an amount that allowed the BPD to be able to recover their costs. If someone chose to come to the class on their own volition, without a citation, each participant in the course would be charged the same amount.

Chief Moore explained the Chief's Association previously (before 2008) sent the funds they earned from the class to POST. POST currently cannot accept these funds without the enabling legislation.

Chief Scott Haug, Post Falls Police Department (PFPD), said 5,000 drivers have been educated so far, the community loves it, and traffic related incidents have decreased. He explained the 3 options when a citizen is stopped for a traffic violation: warning, citation, or traffic safety education program. The driver who chooses the program must sign up within 14 days. PFPD uses the ID Transportation Department's drivers manual and educational videos. The benefits include: no traffic citation, no points on record, and no interaction with the prosecutor which frees up court's schedule. PFPD has noticed improved driving after the education.

In response to committee questions, **Chief Haug** said officers receive training about traffic violations during their field training program (14 weeks) where officers are provided guidance on when and how to offer traffic school as an option. Generally, the officer should observe behavior and use their own discretion in deciding whether to offer the traffic school option. When it is chosen, the offender is issued a traffic safety summons which is available once every 18 months. Violators are permitted to choose the traffic safety school again, but the officer will examine their driving record if they plan on offering it a second time. When a violator is pulled over, previously issued traffic summons appears on their record, so the officer would know whether the traffic school has been chosen within the previous 18 months.

John Evans, Mayor of Garden City, said 5,400 people have been through the program since 2006. Parents have a chance to apply corrective action, and traffic school is offered in lieu of points on license and a fine which creates a positive response to policing in the community. In 2006, there were 413 traffic accidents in Garden City. In 2010, there were 250 accidents. Mr. Evans believes the class can be credited with the decrease in traffic accidents. The Garden City traffic school is given 2 times per month, is 4 hours long, and each class has approximately 35 attendees per class.

In response to committee questions, **Mr. Evans** confirmed his officers spend 8 hours/month for instruction and \$130,000 is generated from class fees a year, which covers the Garden City Police Department's costs. He said the Attorney General and private opinion differ as to whether the authority exists to offer this program, and the resolution of this issue will be to establish the authority in Idaho Code. He also confirmed the two issues within this bill are to make the authority clear and provide more fees for POST. Lastly, there are limits for out-of-state citizens; if these people receive a traffic ticket, that person would have to convince the officer that they would return to complete the school for that to be a viable option for them.

MOTION:

Rep. Bolz made a motion to send **S 1275** to the floor with a **DO PASS** recommendation.

In opposition to the motion, **Rep. Luker** said there is a problem with multiple cities using a different option to deal with infractions that defers monies that were formerly going into the infraction fund. Programs, other than POST and ISTARS, that rely on funding from the infraction fund will be hurt by this. Secondly, there is no cap in the bill, the only limit is what is stated in the city ordinance. Third, the AG opinion is being ignored and is skirting the legislative duty, and officer discretion can be a slippery slope.

Committee discussion included: differing cities and county jurisdictions are doing something without state approval and how the diversion created by the law which diverts funds for state programs is a problem. Also, the course will seem attractive, which will decrease funds earned from infraction citations.

In support of the motion, **Rep. Burgoyne** stated the AG's opinion makes a gray area for the cities/counties about authority on what to do.

Chairman Wills explained that this bill arose when cities were setting up programs with differing standards and rules. He said he believes there needs to be consistency and fairness throughout the state. He emphasized that if **S 1340** is not passed, each jurisdiction will continue using the program in their own way because there will be no standardized rules in place. Controlling officer discretion is alarming and should not be done.

The Committee expressed concern that they are stepping over the line where private businesses are conducting this type of programming.

SUBSTITUTE MOTION:

AMENDED SUBSTITUTE MOTION:

ROLL CALL VOTE ON AMENDED SUBSTITUTE MOTION:

S 1340:

MOTION:

Rep. Luker made a motion to hold **S 1275** in committee. The Chairman was unclear so he requested a roll call vote.

Motion passed by a vote of 7 AYE, 5 NAY and 3 absent/excused. Voting in favor of the motion: Vice Chairman Luker, Reps. Smith(24), Nielsen, Hart, Ellsworth, McMillan and Sims. Voting in opposition to the motion: Chairman Wills, Reps. Shirley, Bolz, Burgoyne, and Jaquet. Reps. Bateman, Perry, and Killen were absent/excused.

Rep. Nielsen gave notice of his intent to make a motion to reconsider his vote on **S 1275**. He explained that he would like to conduct further research on the topic before voting again.

Tony Poinelli, presented **S 1340**. He explained this bill relates to court ordered fees for bodily fluid tests. It applies only to court ordered costs and fees already outlined by the courts.

Michael Henderson, Legal Counsel for the Idaho Supreme Court, said the bill's purpose is to clarify the fees that can be assessed against a person on probation, in addition to the probation fees. Legislation in 1994 required probationers to pay for probation costs, rather than taxpayers. This bill clarifies that court ordered breath and bodily fluid tests as a condition of probation are not to be included in the cost of supervision fee authorized in Idaho Code § 20-225 and § 31-3201D. Also, the court may order the payment of other lawful costs and fees required of those on probation, and they must pay for these costs when they are able to do so. This statute applies to all probationers.

Rep. Jaquet made a motion to send **S 1340** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

- S 1338:** **Joel Teuber**, Fraternal Order of the Police, presented **S 1338**. He explained the purpose of this bill is to update child enticement laws in order to more closely match current methods of electronic enticement. He said this is supported by many organizations such as the Idaho Human Trafficking Organization. Lines 10-11, clarify that it is illegal to entice just one child. Lines 13-14 include all other possible electronic means of enticement. Lines 27-29 state that police and prosecutors do not have to wait for the perpetrator to succeed to be in violation of the statute. "Child" is changed to "person under 16" and the remaining changes clean up the code section.
- MOTION:** **Rep. Smith** made a motion to send **S 1338** to the floor with a **DO PASS** recommendation.
- In response to committee questions, **Mr. Teuber** said this bill clarifies that the perpetrator does not have to succeed in the acts to be charged, the enticement alone is enough.
- The committee expressed concern over the other acts that are included under Title 15 which would be included because they did not seem to apply or to be sexual in nature. **Mr. Teuber** pointed to lines 15-19 and said this applies only to the sexual acts within those chapters, so the other offenses would not be included. In regards to the possible removal of line 15, **Holly Koole**, IPAA, said that the bulk of Title 15 deals with children and vulnerable adults, but it would be possible to list the sex crimes individually. It would likely be easier and more clear to list only the exclusions in Title 15. The standard would be "beyond a reasonable doubt."
- In support of the motion, **Vice Chairman Luker** said that, for example, the beer and wine offense would not apply here, and he is concerned that § 1509(a) is not required to be proved. **Mr. Teuber** pointed to lines 15-16, with a reference to a "sexual act" and said that if the enticement is not for a sexual act, then these offenses would not be included under the purview of **S 1338**.
- SUBSTITUTE MOTION:** **Rep. Ellsworth** made a motion to send **S 1338** to General Orders.
- In support of the motion, **Rep. Hart** would like to add a few words of clarification because there is a need to create a narrow interpretation of the bill.
- ROLL CALL VOTE:** **Chairman Wills** called for a roll call vote on the substitute motion to send **S 1338** to General Orders. **Motion failed by a vote of 3 AYE, 8 NAY and 4 absent/excused.** Voting in favor of the motion: **Reps. Hart, Ellsworth, and Sims.** Voting in opposition to the motion: **Chairman Wills, Vice Chairman Luker, Reps. Smith(24), Nielsen, Shirley, Bolz, McMillan, and Jaquet. Reps. Bateman, Perry, Burgoyne and Killen** were **absent/excused**.
- VOTE ON ORIGINAL MOTION:** **Chairman Wills** called for a vote on the original motion to send **S 1338** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.** **Reps. Ellsworth, Sims, and Hart** requested to be recorded as having voted **NAY**. **Rep. Jaquet** will sponsor the bill on the floor.
- MOTION TO RECONSIDER:** **Rep. Nielsen** made a motion for reconsideration of his vote on **S 1275**. **Motion failed by voice vote.**
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 4:23 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary