

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Tuesday, March 13, 2012
- TIME:** 1:30 PM or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan (McMillan), Perry, Sims, Burgoyne, Jaquet, Killen
- ABSENT/
EXCUSED:** None.
- GUESTS:** Jim Kouril, Idaho Internet Crimes Against Children Taskforce (ICAC); Max Greenlee & Jason Risch, Risch Pisca; Tim Brady & Joel Teuber, Fraternal Order of Police (FOP); Holly Koole, Idaho Prosecuting Attorneys Association (IPAA); Scott Johnson, Kevin Bernatz, Skip Green, & Betty Grimm, Idaho Department of Juvenile Corrections (IDJC); Jan Sylvester; Judge Barry Wood & Patti Tobias; Idaho Supreme Court; Ross Edmunds, Department of Health & Welfare (IDHW)
- Chairman Wills** called the meeting to order at 2:14 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes from the March 7, 2012 committee meeting. **Motion carried by voice vote.**
- S 1337A:** **Joel Teuber**, Fraternal Order of Police, presented **S 1337a**. He explained that this bill has three purposes: 1) to remove the declaratory language by the legislature at the beginning of Idaho Code § 18-1507. 2) To amend the definition of Sexually Exploitative Materials so that offenders are not able to avoid arrest and prosecution simply because they are using new technology. This change would not allow for the arrest or prosecution of a person who is surfing the web and accidentally stumbles upon child pornography. The person has to "knowingly and willfully" access or possess the sexually exploitative material as delineated on page 3, lines 45-46 and the prosecutor would have to prove this beyond a reasonable doubt. 3) To address current trends in Child Pornography production and distribution. Because a child is equally victimized whether their image is sold vs. simply traded or given away, this bill proposes the removal of the language "for commercial purposes" from the Sexual Exploitation of a Child Law. Currently, this "commercial purpose" language allows those to be charged only with "possession" rather than distribution. He stated there is a connection between those who possess the child pornography and hands-on sexual acts.
- Mr. Teuber** also noted that the punishments did not change from existing law and any offense would have to be proved beyond a reasonable doubt. All other changes in the bill were simply made out of necessity to keep definitions and references consistent in order to not adversely affect other code sections. In closing Mr. Teuber said **S 1337a** is supported by the Idaho Sheriff's Association, the IPAA and the Idaho Human Trafficking Association.
- In response to committee questions, **Mr. Teuber** said the definitions are neither intended to encompass the computerized examples of images that are not an actual child nor cover a drawing of a real child, the child would have to be a real person. The level of culpability is changed from "knowing" to "knowingly and willfully" upon recommendation from prosecutors who wanted to have a high threshold of proof.

Holly Koole, IPAA, stated that the IPAA supports this bill. In regards to the development of the bill, she said that prosecutors met with the Fraternal Order of Police and both organizations concluded that certain changes were needed to prevent loopholes in this law. For example, "commercial purpose" needed to be removed because offenders who were exchanging pornographic materials without compensation were falling outside the statutory definition. On page 4, paragraph 3, 2 b & c: seriousness of prison sentences, **Mr. Teuber** said that Section a is the access to the material and Sections b-d refers to the person who induces a child with that material. Ms. Koole said the Association of Defense Counsel was not involved in the drafting of this bill.

Mr. Teuber pointed to page 3, lines 45-46, and said "knowingly and willfully," the state of mind required at the time of the offense, applies to all Sections, a-d. **Ms. Koole** said the fine would be assessed at the time of sentencing by a judge and would be used to cover court costs, restitution, or for punitive purposes. There was further committee concern that none of the funds would go to help the victimized child. Ms. Koole explained there is a process for crime victims to receive counseling, via the Victim's Compensation Act, and the cost is covered by the state.

MOTION: **Rep. Killen** made a motion to send **S 1337a** to the floor with a **DO PASS** recommendation. **Motion was carried by voice vote.**

H 639: **Rep. Luker** presented **H 639** and said this bill clarifies the forum where a suit can be brought. He explained people who contract cannot be required to appear outside the ordinary tribunals, meaning Idaho courts. There are often form contracts that contain a "forum choice clause" which may require an arbitration to occur in some other state. Business entities were concerned that arbitration would be affected, and this amendment preserves the right to arbitrate in Idaho. Rep. Luker said the purpose of this legislation is to confirm that it is against Idaho law to require anyone to waive their right to arbitrate in Idaho courts.

MOTION: **Rep. Smith(24)** made a motion to send **H 639** to **General Orders** with committee amendments attached. (Committee amendments clarified this does not impair arbitration contract agreements, except to require the forum to be in Idaho.)**Rep. Hart** seconded the motion.

Rep. Sims invoked Rule 38 stating a possible conflict of interest because she is the owner of several franchises but will be voting on the bill.

VOTE ON MOTION: **Motion was carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

H 648: **Senior District Judge Barry Wood** presented **H 648**. He said this bill would provide an improved method for screening felons to identify those with serious mental illness and drug abuse issues if they are placed on probation. Idaho Code § 19-2524, allowed the judge to order a substance abuse assessment and a mental evaluation. In 2009, § 19-2522 was amended by **H 626**: if the court determined the examination provided certain information then the court did not need to order an additional examination. **H 648** would amend § 19-2524, in 2 steps. First, the Idaho Department of Corrections (IDOC) would have to pay for the substance abuse assessments and the Idaho Department of Health and Welfare (IDHW) would have to pay for the mental health assessments. This ensures the use of standardized process at sentencing. The initial screening process determines a need for treatment and then the assessment phase will assign the appropriate treatment. This will also define "serious mental illness." As a result of this legislation, more offenders will go through the less costly screening process, however, fewer will need extended treatment, so the Courts estimate a net savings to the general fund. This bill is a product of collaboration between agencies and district court judges.

In response to committee questions, **Judge Wood** explained that competency evaluations cannot be used to meet the "intelligently consent" (to a mental health or drug abuse evaluation) requirement, and this person would have to be found competent in a prior assessment. In regards to the reimbursement schedule, he explained that any fees that would be assessed against the offender for the treatment programs would be based on need/ability to pay. Also, fee determination is made at the time the assessment is completed.

Ross Edmunds, IDHW, spoke in support of the changes. He said he believes there will be a cost increase to the IDHW and wants to conduct an analysis to determine this. He said the IDOC uses a sliding fee scale to determine ability to pay, a process that mimics the IDHW sliding scale system.

MOTION: **Rep. Bolz** made a motion to send **H 648** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Rep. Perry** made a substitute motion to **HOLD H 648** in committee for a time certain.

Reps. Nielsen, Smith(24) and Jaquet spoke in support of the original motion, stating the need to move the bill along and noted that the bill seems clear after reading the statement of purpose.

In response to committee questions, **Mr. Edmunds** said that the IDOC has appropriated the funds for a process used to address substance abuse disorder. Under Idaho Code § 19-2524, IDOC can internally evaluate those persons.

In support of the substitute motion, **Rep. Ellsworth** commented that the changes are not needed until next year and this bill needs further work. She said there are problems with the Fiscal Note, and supports the motion to hold for a time certain in order to get more comfortable with the bill.

VOTE ON THE SUBSTITUTE MOTION: **Motion to HOLD 648 in committee for time certain failed by voice vote.**

VOTE ON THE ORIGINAL MOTION: **Motion to send H 648 to the floor with a DO PASS recommendation passed by voice vote. Reps. Perry, Ellsworth and Hart** requested to be recorded as having voted NAY. **Reps. Smith(24) and Burgoyne** will sponsor the bill on the floor.

H 651: **Patti Tobias**, Administrative Director of the Courts, presented **H 651**. She said this bill changes the annual salary of justices of the Supreme Court, judges of the Court of Appeals, district judges and attorney magistrate judges beginning July 1, 2012. She said all appropriation bills voted on by JFAC resulted in a salary increase of 2% for all state employees including an increase to the judges salaries of 2%. Funding for **H 651** has already been included in the funding for the courts by JFAC. In closing, she said there has been a 30% increase in costs for civil disputes, as a result, cases are becoming increasingly complex and time consuming, creating a need for this increase.

MOTION: **Rep. Bolz** made a motion to send **H 651** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Rep. Nielsen** made a substitute motion to **HOLD H 651** in committee.

In response to committee questions, **Ms. Tobias** explained this bill only provides a 2% increase. The new salary for a Supreme Court justice is \$121,900.00. Today the salary is \$110,500.00.

In support of the motion, **Rep. Hart** said he believes this bill is necessary to retain quality justices and this money will be well spent.

VOTE ON THE SUBSTITUTE MOTION: Motion to HOLD H 651 in committee failed by voice vote.

VOTE ON THE ORIGINAL MOTION: Motion to send H 651 to the floor with a DO PASS recommendation passed by voice vote. Reps. McMillan and Nielsen requested to be recorded as having voted NAY. Rep. Wills will sponsor the bill on the floor.

Sharon Harrigfeld, Idaho Department of Juvenile Corrections (IDJC), introduced Betty Grimm, Skip Green, Kevin Bernatz, and Scott Johnson, of the IDJC, to the committee.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:32 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary