

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Thursday, February 21, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry (Smith), Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/  
EXCUSED:** Rep. Malek
- GUESTS:** Mike Kane, ISA; Dawn Peck, ISP; Ferando Castro, DHW; Bob Aldridge, TEPI; Noll Garcia, Idaho Self Advocate Leadership Network; Christine Picaui, Idaho Council on Developmental Disabilities (ICDD); Roger Seiber, Capitol West; Dorothy Snowball; Tom Ball, SAIN; Matthew Gamette, ISP; Amanda Holley, ICDD; Mark Snowball; Dina Flores, Disability Rights Idaho; Rich Hahn, Idaho Power; Steve Prill, ACHD; Kim Gourley, Idaho Power Company; Rep. Ed Morse; Ed Guerricabetia, Davison Copple, Copple & Copple; and Monica Hopkins, ACLU.
- Chairman Wills** called the meeting to order at 1:30 p.m. He welcomed the audience and announced new member, **Rep. Chris Smith**, (substitute for **Rep. Perry**). **Chairman Wills** turned the gavel over to **Vice Chair Rep. Luker**.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes of the February 5, 2013 and February 11, 2013 meetings. **Motion carried by voice vote.**
- H 125:** **Rep. Burgoyne** presented **H125**. He said the primary focus of the legislation is to require new guardians/conservators of vulnerable adults to disclose civil judgments, bankruptcy filings and to submit to a criminal background check when being considered for appointment. He said the Idaho Department of Health and Welfare (IDHW) would conduct the background checks, at the expense of the individual seeking appointment and would submit the reports to the courts. He stated that a person seeking appointment does not automatically pass or fail, the court will take the circumstances into consideration and appointment will be at the court's discretion. He said institutions and commercial entities would be exempt from disclosing civil judgments and bankruptcies and are exempt from the background check requirement as well. He said this bill is the result of two years of effort and is supported by several state agencies, including Trust and Estate Planning Professionals of Idaho (TEPI).
- Fernando Castro**, IDHW, in response to questions, assured the committee that there is not currently a backlog of background checks, and this legislation will not create a backlog at IDHW.
- In response to questions, **Bob Aldridge** said this statute covers both guardians and conservators. He said part of the structure for conservatorship will make sure that there are no Trusts or Powers of Attorney on file that would suffice in lieu of a conservatorship/guardianship.

**Noll Garcia**, The Idaho Self-Advocate Leadership Network, testified **in support** of **H 125**. He said this legislation, if passed, will prevent people with certain criminal backgrounds from becoming guardians to people who may not be able to protect themselves. He said people with disabilities have the right to be free from harm and he believes this legislation will, in a small way, help to alleviate some harm caused to people with disabilities.

**Christine Pisani**, Program Specialist, Idaho Council on Developmental Disabilities (ICDD) testified **in support** of **H 125**. She said in guardianship, the government strips a person of all of their rights and places them under the authority of another person. When this becomes necessary, the government should take some basic steps to insure that the vulnerable adult is not being placed under the authority of a guardian who is unfit or even a threat. She said when a person asks the court to give them complete control over another human being, they should be willing to give the court access to the information it needs to make that determination. She said people with disabilities and elders are more vulnerable to victimization and abuse and gave supporting statistics. She said ICDD supports **H 125** as it further protects vulnerable adults.

**Dina Flores-Brewer**, Disability Rights Idaho (DRI), testified **in support** of **H 125**. She said that background checks won't stop all the abuse of vulnerable adults but it is a good tool to help determine appropriate appointment and DRI supports this basic step of protecting disabled people.

**Thomas Ball**, an individual, testified **in support** of **H 125**. He said there are many misuses of guardianship and he talked about how having mandatory background checks is really a moral issue, not a financial one. He said most employers require you to undergo a background check when you apply for a job and guardianship is a very important job.

**MOTION:** **Rep. Packer** made a motion to send **H 125** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

**H 102:** **Matthew Gamette**, Lab Improvement Manager, Idaho State Police (ISP), presented **H 102**. He said ISP exists to provide support to all state and local law enforcement. He said that currently private experts are allowed to use state facilities to reanalyze evidence and this creates lab accreditation and productivity issues. Labs, in essence, shut down with a private consultant is utilizing the facilities which is a drain on the system. He said that ISP does not have the statutory obligation nor the resources to allow private parties to use the labs. He said this bill would protect the integrity of laboratories, prevent contamination of evidence and would specifically prohibit private forensic consultants from using state owned forensic laboratory facilities, with the exception of ISP approved subcontractors.

**MOTION:** **Rep. Trujillo** made a motion to send **H 102** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** will sponsor the bill on the floor.

**H 105:** **Mike Kane**, Idaho Sheriff's Association, presented **H 105**. He said this bill proposes an electronic monitoring of sex offenders which would be funded by increasing the \$40. registration charge for sex offenders to \$80.. Currently, all registration is handled in paper and sent to a central registry at ISP. When a sex offender moves, he/she must notify the state police and then they will get back to the Sheriff of the county where the offender is relocating—this paper process takes time. The new system would make all the information available immediately, with no wait time. The registration process is currently funded by federal grants that are falling off. When the grants expire, the expense will fall on the property tax payers' shoulders. The intent of this bill is to make the sex offenders pay for themselves instead of the financial burden of their monitoring being placed on the tax payers. The new system would also allow electronic information sharing from other states. It will also help the offenders as they will be notified when it is time to reregister, saving them from a felony charge for failure to register.

In response to questions, **Mike Kane** said there are currently 3,900 offenders in the state. \$40 x 3,900 is a bit over \$150,000 which they believe is adequate to run the system. Watch Systems is the vendor they are looking at. He said that "offender" refers to sex offenders only. He said the information in the new system will contain much more than just names and addresses, it will include prior criminal history, tattoos, etc. This information would also feed into ILETs.

**Mark Snowball**, a registered sex offender, testified **in opposition** to **H 105** stating that deputies have refused to waive his registration fee for indigency, even though he was without a job or money and was residing in a halfway house. He said he is concerned that offenders already have difficulty paying the current registration fee and is afraid they will incur new criminal charges for failure to register simply due to lack of funds to pay the registration fee.

**Monica Hopkins**, executive director of ACLU of Idaho, testified **in opposition** to **H 105**, stating the new criminal charges which will be made against offender who are financially unable to reregister at the higher registration fee will place a burden on the criminal justice system.

**MOTION:** **Rep. Bateman** made a motion to send **H 105** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bateman** will sponsor the bill on the floor.

**H 103:** **Patti Tobias**, Idaho Supreme Court, presented **H 103**. She said **H 103** repeals the sunset clause. She said the courts were kept open through the emergency surcharge during the fiscal fail and the general fund has not recovered and the needs remain. The court services cannot remain at the current levels without the surcharge. She said she supports repealing the sunset clause in lieu of extending the surcharge because she trusts the Legislature, the judicial branch and the budgeting process.

In response to questions **Ms. Tobias** said there was a lot of discussion on how much to put on each charge in the conception of this bill but in the end all they were concerned about was the bottom line and they needed the money. Three years ago legislators determined that the best allocation of the funds and the best approach to generate \$3.4 million were those amounts. She said collection rate of fees on infractions are about 95%, misdemeanors are about 81-82% and felony collections are much lower as a lot of them are incarcerated.

**MOTION:** **Rep. Trujillo** made a motion to send **H 103** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION:**

**Rep. Nielson** made a substitute motion to send **H 103** to General Orders, with a committee amendment attached of two years.

**AMENDED SUBSTITUTE MOTION:**

**Rep. Wills** made an amended substitute motion to send **H 103** to General Orders with a committee amendment of a 5 year sunset clause.

**Vice Chair Luker** turned the gavel back over to **Chairman Wills**.

**ROLL CALL VOTE ON THE AMENDED SUBSTITUTE MOTION:**

**Chairman Wills** requested a roll call vote on **H 103**. **Amended Substitute Motion failed by a vote of 6 AYE and 10 NAY. Voting in favor of the motion: Reps. Nielsen, Bateman, McMillan, Sims, Dayley and Wills. Voting in opposition to the motion: Reps. Luker, Bolz, Perry, Horman, Packer, Patterson, Trujillo, Burgoyne, Meline, and Ringo.**

**VOTE ON THE SUBSTITUTE MOTION:**

**Substitute Motion failed by voice vote.**

**VOTE ON THE ORIGINAL MOTION:**

**Motion carried by voice vote. Reps. Nielson, Sims and Dayley** requested that they be recorded as voting **NAY. Rep. Perry** will sponsor the bill on the floor.

**H 104:**

**Rep. Ed Morse** presented **H 104**. He said this legislation is an addition to a condemnation statute. It as a provision, in Paragraph 7, which outlines the costs of condemnation. He is a surveyor and has seen plan changes used as a weapon and a tool to mitigate damage. He said landowners are entitled to just compensation after condemnation, they must be made whole, the cost of which is substantial. Some states have enacted laws/provisions to pay for some portion of the costs involved in this process but Idaho does not currently have a cost statute. He says he has seen many plan changes by condemning agencies, and sometimes these plans are incomplete when they are provided to the landowner, sometimes this is in good faith, sometimes it is done for bartering leverage. The landowner does not initiate this process, they are somewhat the victim and the cost burden settles on them. He said this legislation includes a landowner requested exception prior to filing litigation, and minor plan changes that do not affect a property or damage to the property.

**MOTION:**

**Rep Nielsen** made a motion to send **H 104** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION:**

**Rep. Luker** made a substitute motion to **HOLD H 104** in committee for time certain until Monday, March 25th. **Motion carried by voice vote.**

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 3:39 p.m.

---

Representative Wills  
Chair

---

Danelle Heath  
Secretary