

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, February 25, 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:** None

GUESTS: Raeleen Welton, Idaho Licensed Beverage Association; Charlie Spencer, Idaho State Police; Russ Wheatley, Idaho State Police; Tyler Mallard, Risch Pisca; Jeremy Pisca, Saint Alphonsus Regional Medical Center; Mark Dunham, Risch Pisca; Corey Surber, Saint Alphonsus Health System; Emily McClure, Idaho Medical Association; Daniel Chadwick, Idaho Criminal Justice Commission and Idaho Association of Counties; Steve Millard, Idaho Hospital Association; Monica Hopkins, American Civil Liberties Union; David Lehman, Kootenai Medical Center; Jared Hoskins, Idaho Criminal Justice Commission; Margaret Henbest, Nurse Leaders of Idaho

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

H 126: **Rep. Malek** explained this legislation adds a new class of employees, under the assault and battery upon certain personnel statute. He said that new class would be any personnel that provides health care, making any assault on this class a felony. He explained the reason for adding this class of people to the statute was due to the fact that health care employees are mandated to perform care and it has become more dangerous to do so. He said it would not be limited to emergency room doctors and nurses, that it would also include medical centers, mental health specialists, etc.

Rep. Malek responded to questions as to why this covers health care employees if an assault occurs at any time rather than just during the performance of their duties by stating that in some cases they are targeted outside their duty hours. He explained that a person would only need to have knowledge of a health care employees' status to be covered under this legislation. In regards to the possible fiscal impact with the increase of penalty from misdemeanor to felony and up to twenty-five years imprisonment; he said he anticipates this legislation as having a deterrent effect rather than having actual punitive actions. He explained the umbrella of health care employee would include any employee at these medical facilities, to include secretaries, clerks, security, etc. due to the danger that all employees in health care facilities face. He said the umbrella for facilities would also fall under nursing homes and senior living facilities. When asked if any criminal justice organizations have weighed in on this legislation, he said the Idaho Prosecuting Attorneys Association has been informed of it and are not opposing. He explained without this legislation an assault on a health care employee would possibly fall under the penalties of battery or aggravated battery, depending on the circumstances. He gave some examples of actual assaults on health care employees.

Members of the committee expressed support for this legislation, as some have family members in the health care field. Others expressed concern for patients with mental illness and others who could possibly assault a health care employee, without intent to harm, being charged under this legislation. Some noted there is no statistical data available to show the occurrence and tracking of assaults on health care employees.

Emily McClure, lobbyist for the Idaho Medical Association, testified and gave examples of how medical personnel have been attacked to include those outside of hospitals and clinics. She explained the goal is not to put people in jail undesirably and under current law there is inconsistency. She said this legislation specifies that the felony offense would be charged if there was intent on creating bodily harm. She explained the problem faced with amending the statute as a whole would be the amount of stakeholders that would want a say.

In regards to questions concerning the change to a possible twenty-five year sentence, **Ms. McClure** explained it fits within the statute as a protected class, the health care employee class adds to those already covered.

Steve Millard, president of the Idaho Hospital Association, testified **in favor** of this legislation. He said assaults are happening so often they are no longer recorded. He gave examples of attacks and explained there is no hard data as hospitals do not collect this on medical records.

Mr. Millard responded to questions regarding how to make the public aware of these charges by stating they would place signs on the walls of health care facilities. He explained some assaults are not reported because the victim may be afraid to do so. He answered questions regarding injuries that are treated as a result of an assault becoming a worker's compensation claim by stating there could be some, but no data has been collected from these claims.

David Lehman, lobbyist for the Kootenai Medical Center, testified that half of all nonfatal violent acts occur in a health care setting. He said when health care employees are injured, they have the most days away from work as a result. He explained this forces hospitals to increase staffing as a result, to include on-call staff as well, which increases costs. He said one of the biggest factors in assaults in an emergency room are drugs and alcohol. He explained the Kootenai Medical Center has put staff in place to address the repeat violent offenders when they come in.

Mr. Lehman responded to questions regarding frequency in assaults from ten years ago, compared with the present, by stating records were not kept as well in the past. He said the increase in those looking for illegal drugs and the poor economy can be reasons of the increase in assaults.

Margaret Henbest, Executive Director, Nurse Leaders of Idaho, testified **in favor** of **H 126** because it will provide a deterrent to possible future assaults on health care employees. She said that nurses are the frontline health care employees as they are in continuous contact with patients. She said assaults on health care employees is trending up, possibly due to drug use and drug seeking behavior.

MOTION:

Rep. Burgoyne made a motion to send **H 126** to the floor with a **DO PASS** recommendation.

The committee expressed concern regarding the broad brush encompassing all employees in the medical field and the penalty of up to twenty-five years. They expressed concern for possible court costs that would come from this and the lack of information and data regarding assaults. Others stressed to the committee that the statute is not changing, that this would only add another class of protected individuals.

ROLL CALL VOTE: Roll call vote was requested on **H 126**. **Motion carried by a vote of 9 AYE, 7 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Nielsen, Perry(Smith), Dayley, Horman, Malek, Packer, Trujillo, Burgoyne** and **Wills**. **Voting in opposition** to the motion: **Reps. Luker, Bolz, McMillan, Sims, Patterson, Meline** and **Ringo**. **Rep. Bateman was absent/excused**. **Rep. Malek** will sponsor the bill on the floor.

Chairman Wills called for a five minute break.

MOTION: **Rep. Nielsen** made a motion to change his vote on **H 126**. **Motion carried by voice vote**.

AMENDED ROLL CALL VOTE: Amended roll call vote on **H 126**. **Motion tied by a vote of 8 AYE, 8 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Perry(Smith), Dayley, Horman, Malek, Packer, Trujillo, Burgoyne** and **Wills**. **Voting in opposition** to the motion: **Reps. Nielsen, Luker, Bolz, McMillan, Sims, Patterson, Meline** and **Ringo**. **Rep. Bateman was absent/excused**. **H 126** will be **HELD** in committee.

H 147: **Daniel Chadwick**, Idaho Criminal Justice Commission, presented **H 147**. He explained it provides a change to the general public defense statute. He said the definition changes to include defending attorney and a word replacement from needy to indigent person. He explained it will define what a serious crime is and when someone would have the right to council for any serious crime. He outlined examples of determining when an attorney will be appointed and explained the court can say those presumptions are not covered in a certain case. He said it allows for the use of any information given by a person to be used for impeachment processes but not against themselves, in testimony, except in cases perjury. He said if there is particular hardship, the court could hold a reimbursement fee against a person if there is a finding of guilt. He said this legislation repeals the term substitute council.

Mr. Chadwick responded to questions clarifying the manifest hardships on an indigent person by explaining how the reimbursement will apply to the individual and their financial situation. He said that there is a statute of limitations in regards to the reimbursement fee, if assigned, that takes into consideration the length of probation and parole.

Monica Hopkins, American Civil Liberties Union, testified **in favor** of **H 147**. She expressed concern that some definitions in this legislation could be strengthened further but is in favor of the move to ensure consistency and accountability.

MOTION: **Rep. Burgoyne** made a motion to send **H 147** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote**. **Rep. Burgoyne** will sponsor the bill on the floor.

H 148: **Daniel Chadwick**, Idaho Criminal Justice Commission, explained this legislation relates to the Child Protective Act. He said it provides that a guardian will be appointed to the child and an attorney will be appointed for the guardian of that child. He clarified that an attorney may be appointed as an attorney for a child or for their appointed guardian but may not serve in both roles in the same case. He said this legislation requires the appointment of a guardian for all children under twelve.

Mr. Chadwick responded to questions as to how the age twelve was determined by stating it was currently in the law.

MOTION: **Rep. Trujillo** made a motion to send **H 148** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote**. **Rep. Dayley** will sponsor the bill on the floor.

- H 149:** **Daniel Chadwick**, Idaho Criminal Justice Commission, explained this legislation clarifies the circumstances when a juvenile has a right to council. He explained that statements made by juveniles, while in diversion proceedings, may not be used in a court of law.
- RECESS:** **Rep. Malek** called for a recess at 3:31 p.m. Upon reconvening the committee at 3:34 p.m., **Chairman Wills** explained the voting procedures the committee has undertaken during this meeting have been in accordance with the rules.
- Mr. Chadwick**, explained in **H 149** when a juvenile waives the right to council, he must do so on the record and in writing. He said the court will investigate the juvenile's situation and competency in these cases, before granting their appeal. He explained the circumstances in which they are not allow to waive council, to include cases involving felonies and sex crimes.
- Jared Hoskin**, Idaho Criminal Justice Commission, provided research from a question that was brought up during the print hearing of this legislation regarding a juvenile's right to council if incident happens at a school. He explained this would not impact their right. In terms of delaying any action of an SRO or Principal, he said the juvenile has the right to remain silent and request an attorney and this legislation would not affect that.
- MOTION:** **Rep. Sims** made a motion to send **H 149** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** will sponsor the bill on the floor.
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:49 p.m.

Representative Wills
Chair

Jackie Wright
Secretary