

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 05, 2014

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo (Jordan)

**ABSENT/
EXCUSED:** Representative(s) Burgoyne

GUESTS: Skip Smyser, Idaho Ski Area Assn; Daniel Chadwick, Idaho Assn of Counties; Paul Jackson, Farmers Insurance; Russell Westerberg; Woody Richards, Insurance Companies; Lyn Darrington, State Farm Insurance Co.; Ken Howard, AIC; Amber Pence, City of Boise; Rob Luce, Department of Health and Welfare; Barbara Jordan, ITLA; Madilynn Lee Taylor, MCC; Kristyn Kirschenman, Risch-Pisca; Mike Kane, ISA; Mike Kane, PCI; Elli Brown, Veritas Advisors; Angie Richards, Allstate, American Family, Farm Bureau; Jason Kreizenbeck, Lobby Idaho; Elizabeth Roberts, Ben Wilson, John Grubbs, Citizens

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

Chairman Wills welcomed to the committee **Rep. Jordan** who is filling in for **Rep. Ringo**.

RS 22698: **Rep. Kauffman** presented **RS 22698** to enhance penalties for persons convicted of felony violations against older persons which are defined as 65 years of age or older. **Rep. Kauffman** stated that according to the National Institute of Justice, one in ten older Americans or about five million individuals are believed to experience abuse every year. Elder abuse can occur in many different forms including financial exploitation, fraud, physical or emotional abuse, and neglect by a care giver. Fiscal impact cannot be determined at this time because there are currently no mechanisms for gathering data on the number of cases involving elder abuse. In addition, prosecutors will have the discretion of whether to prosecute these crimes with the enhanced penalty.

MOTION: **Rep. Nielson** made a motion to introduce **RS 22698**. **Motion carried by voice vote.**

RS 22652: **Rep. Bolz** presented to the committee **RS 22652** which authorizes Legislative Council to appoint an interim study committee to complete a study of the public defender system. This committee will continue the work from the 2013 Interim Committee which looked at Idaho's duty to public defense as required by the 6th Amendment to the U.S. Constitution. He said there are several issues that still need to be resolved. This includes standards, what role municipalities will play, and what mechanisms are needed to have a constant, stable, continuing funding source for the public defenders in Idaho.

MOTION: **Rep. Luker** made a motion to introduce **RS 22652**. **Motion carried by voice vote.**

RS 22653: **Rep. Bolz** presented to the committee **RS 22653** which provides for the establishment of a State Public Defender Commission under the Idaho Department of Self Governing Agencies. The Commission will consist of seven members and would be asked to report to the legislature annually. Rep. Bolz explained this will start the reform proposed by the 2013 Public Defense Interim Committee. The proposed legislation outlines the powers and duties of the Commission, including rules and training. It also provides for a uniform reporting requirement from counties. Rep. Bolz said it authorizes the establishment of a State Public Defense Commission Fund providing for two separate funding entities, one for training and one for the commission itself. The fiscal impact is \$300,000; \$105,000 of this money is to be used for training purposes only. The current county practice of flat fee contracts is not constitutional. These will no longer be allowed; however, current contracts will be honored until completion.

MOTION: **Rep. Trujillo** made a motion to introduce **RS 22653**. **Motion carried by voice vote.**

RS 22549: **Michael Kane**, of the Idaho Sheriffs Association, presented **RS 22549** which is to establish sustainable funding for the statewide witness notification system, known as VINE. Mr. Kane said this successful electronic system assists prosecutors and correctional agencies in fulfilling their constitutional duty to assure the victims of crime are notified of changes in the status of offenders. The fee for those charged with felonies and misdemeanors would be increased to \$15 from \$10. There were over 100,000 notifications to Idahoans last year.

MOTION: **Rep. Meline** made a motion to introduce **RS 22549**. **Motion carried by voice vote.**

RS 22550: **Michael Kane**, of the Idaho Sheriffs Association, presented **RS 22550** which increases the daily rate for state sentenced prisoners housed in the county jails from \$40 a day to \$50 a day. This adjustment to the daily rate is needed so that the county property taxpayers will not have to make up the cost difference in housing state prisoners. This number has not been increased in 14 years. In comparison, currently there are 250 Idaho prisoners housed in Colorado at a daily rate of \$57. These programs have allowed the state to avoid building another prison. He gave an example for the fiscal component of the bill, if one assumes there are 600 daily prisoners for 365 days, the impact will be 2.17 million dollars.

MOTION: **Rep. Horman** made a motion to introduce **RS 22550**. **Motion carried by voice vote.**

RS 22592: **Michael Kane**, with the Property and Casualty Insurers Association of America, presented **RS 22592** which will modify the law that prevents a jury from learning that a person who is a plaintiff in a personal injury action, stemming from an automobile accident, failed to wear a seat belt. Mr. Kane clarified that only under very limited conditions would the jury be informed that a person was not using their seat belt. These certain conditions must be in place. The court must hold a hearing before the insurance industry is allowed to speak about it to the jury. There must be clear and convincing evidence, which is the highest burden that exists in civil law, that the person was more injured because they did not wear their seat belt. This would only effect third party claims and it will not penalize children as long as they are under the legal driving age.

MOTION: **Rep. Perry** made a motion to introduce **RS 22592**. **Motion carried by voice vote.**

RS 22656: **Rep. Gannon** presented to the committee **RS 22656** which modifies Section 4 of the Injury to Children Statute by providing that medical treatment must be sought in cases where a child may die or suffer permanent injury. This proposed legislation changes the faith healing exemption in the Code so parents will be motivated to provide basic medical services when the child is in danger of death or permanent impairment. Rep. Gannon said the actions of the parents are still subject to the willful provisions of the injury statute.

- MOTION:** **Rep. Meline** made a motion to introduce **RS 22656**. **Motion carried by voice vote.**
- RS 22612:** **Rep. Malek** presented to the committee **RS 22612** which articulates criminal liability for an individual who molests another using forcible sexual penetration by use of a foreign object when the victim is asleep or unconscious at the time. This proposed legislation closes the loophole for victims who cannot prove that a violation made was against their will.
- MOTION:** **Rep. Bateman** made a motion to introduce **RS 22612**. **Motion carried by voice vote.**
- RS 22800:** **Rep. Malek** presented **RS 22800** which would change the current video voyeurism law in Idaho Code. The law is narrowly tailored to combat the sharing of images that are used for sexual gratification, when there is not consent to do so. The proposed legislation would provide protections against the usage of pictures or videos of an intimate or private nature that are shared without consent, for purposes other than sexual gratification such as revenge, extortion, or humiliation.
- MOTION:** **Rep. Packer** made a motion to introduce **RS 22800**. **Motion carried by voice vote.**
- RS 22487C1:** **Jason Kreizenbeck** of Lobby Idaho, LLC, presented **RS 22487C1** which would create a statewide voluntary 24/7 Sobriety and Drug Monitoring Program to be administered by the Attorney General. With statewide uniform standards provided by the Attorney General, this is an opt-in program for the counties. This is also an offender-pay program requiring the cost of testing to be paid at the time of each test.
- In response to a question, **Mr. Kreizenbeck** stated this would be a new duty for the Attorney General. The Attorney General would write the rules and ensure county compliance with the program.
- MOTION:** **Rep. Trujillo** made a motion to introduce **RS 22487C1**. **Motion carried by voice vote.**
- RS 22718:** **Skip Smyser**, Lobby Idaho, LLC, presented **RS 22718** which will amend the Ski Liability Act to modernize the terms skiers, terrain park, inherent risks in skiing to include terrain park, snow immersions and inbound avalanches. The original legislation was passed in 1979. Since then, the ski hill has become a year-round activity center. This modernization of language is intended to recognize the current usage of the ski hills. This would not impact any ongoing litigation.
- MOTION:** **Rep. Dayley** made a motion to introduce **RS 22718**. **Motion carried by voice vote.**
- RS 22746:** **Rep. Luker** presented **RS 22746** to the committee which decriminalizes building code violations, making them infractions instead of misdemeanors, and providing for a flagrant, violator misdemeanor. This is the same proposed legislation previously looked at by this committee with the addition of Subsection 4 for the flagrant violator.
- MOTION:** **Rep. Packer** made a motion to introduce **RS 22746**. **Motion carried by voice vote.**
- RS 22732:** **Rep. Perry** presented **RS 22732** which makes changes to the Idaho Child Protection Act. Currently, a child may be taken into shelter care by a police officer without a court order if the officer believes prompt removal is necessary to prevent serious physical or mental injury to the child. Rep. Perry indicated the Act is very vague in regards to what actually constitutes serious physical and mental injury. It places the decision in the hands of only one person. There is relatively little training in this area for law enforcement officers; whereas, social workers with the Idaho Department of Health and Welfare have had substantial training in this area. This legislation would require a peace officer to consult with the Idaho Department of Health and Welfare's Child Protection Division before declaring a child in imminent danger and taking them into state care. It is designed to prevent unnecessary trauma to children and expense by the state.

Rep. Perry responded to a question regarding the officers right to remove a child saying it does not take away the authority from the officer. It only requires them to consult. The police officer can still make the determination. In response to a question regarding how long the consult would take and how the law enforcement officer would know where to call, **Robert Luce**, Idaho Department of Health and Welfare Division Administrator over Family and Community Services, explained they instituted a Centralized Intake Unit in Idaho last year. All child protection cases come through this center which is open 24 hours, seven day a week. All law enforcement has the number to the center and their wait time is 10 to 20 seconds. Currently, more than 50% of this type of consult is occurring; they are trying to capture the rest. There is no penalty if the recommendation is not followed and the idea is to standardize the front door to child protection across the state.

MOTION: **Rep. Nielson** made a motion to introduce **RS 22732**. **Motion carried by voice vote.**

RS 22733: **Rep. Perry** presented **RS 22733** which will revise the timing of shelter care hearings for a child declared in imminent danger. This change is designed to lessen the number of children taken into shelter care by allowing the Idaho Department of Health and Welfare, Child Protective Unit, ample time to preform a proper investigation. This would ensure children are taken into custody only when facts dictate it to be absolutely necessary. Currently, the statute reads the hearing must take place within 48 hours, excluding holiday and weekends. In practice, these hearings are usually held within 24 hours. **Rep. Perry** explained the data reflects that holding hearings too early holds the social worker at a disadvantage. More children are being kept in custody. This is at a traumatic cost to the child and the state. This proposed legislation will specify that a hearing can be held no earlier than the second judicial working day and no later than the third. This still keeps flexibility in place for the court system while allowing for the social worker to make a better determination for the child. The goal is to protect the child and family from unnecessary trauma.

MOTION: **Rep. Malek** made a motion to introduce **RS 22733**. **Motion carried by voice vote.**

RS 22802: **Rep. Trujillo** presented **RS 22802** to the committee which relates to reckless-inattentive driving. The proposed change allows for the prosecution of a person who causes danger to persons or property when the operator knowingly operates a vehicle with a medical condition that is not properly treated. This RS will replace **H 450**. This updated legislation has been modified to reflect suggestions made from committee members.

MOTION: **Rep. Packer** made a motion to introduce **RS 22802**. **Motion carried by voice vote.**

UNANIMOUS CONSENT REQUEST: **Rep. Trujillo** made a unanimous consent request to **HOLD H 450** in committee. There being no objection, the request was granted.

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

RS 22449C1: **Rep. Wills** presented **RS 22449C1** which will update House Rule 74 which deals with the selection, removal, duties and compensation of attaches. It will update the rule to reflect current House practice of allowing the Speaker to select attaches and determine their compensation.

MOTION: **Rep. Bateman** made a motion to introduce **RS 22449C1**. **Motion carried by voice vote.**

Vice Chairman Luker returned the gavel to **Chairman Wills**.

Toef Leija, a Murtaugh High School Student, presented to the committee information on methamphetamine (meth). He stated that according to Idaho Statute, any person who knowingly manufactures or attempts to manufacture meth shall be convicted of a felony. Meth releases a surge of dopamine and over time the dopamine receptors make it impossible to feel pleasure naturally. Certain behaviors like paranoia, insomnia, anxiety, extreme aggression, delusions, and hallucinations are experienced by meth users. Meth can have other affects like an increased heart rate, lower resistance to illness, liver damage, meth mouth, convolutions, stroke or death. Mr. Leija explained the current law states that anyone with 28 grams but less than 200 grams shall be sent to a mandatory fixed term of imprisonment for three years and fined no less than \$10,000. If a person carries 200 grams or more but less than 400 grams, a person shall be sentenced to a mandatory minimum of five years and fined no less than \$15,000. If a person carries 400 grams or more, a person shall be sentenced to a mandatory fixed term of 10 years and fined no less than \$25,000. The maximum number of years for imprisonment for trafficking in meth is life and the maximum fine shall be \$100,000. Mr. Leija said the changes he would like to see is for the amount of meth in grams to be lowered from 28 to five. Children's lives should not be destroyed because of drug traffickers. More children are dropping out of schools and joining gangs because they believe drugs will help them in the long term. Mr. Leija would like to see the distribution of meth reduced to a minimum in the state of Idaho. He believes that if Idaho changes the amount of grams to be considered drug trafficking, it would eliminate meth as much as possible.

Chairman Wills announced a tentative date for the State Penitentiary tour for February 25. The tour of the Juvenile Correctional Facility will occur next year.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:03 PM.

Representative Wills
Chair

Francoise Cleveland
Secretary