

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 13, 2014

TIME: 1:30 P.M.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** None

GUESTS: Michael Garner, City of Boise; Steve Rutherford, City of Boise; Bill Nary, City of Meridian; George Gutierrez, Crime Victims Comp; Scott Spjute, Boise City; Kristyn Kirenenman, Risch-Pisca; Raeleen Welton, RMO; Amber Pence, City of Boise; Monica Hopkins, ACLU; Ken Harward, AIC; Pat Tucker, Idaho Falls citizen; John Foster, IDABO (Kestrel West); Russell Westerberg, Boise City; Lynn Darrington, State Farm Insurance Company

Chairman Wills called the meeting to order at 1:32 PM.

MOTION: **Rep. Bolz** made a motion to approve the minutes of the February 5, 2014, meeting. **Motion carried by voice vote.**

H 466: **Rep. Trujillo** presented **H 466** which 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 being treated. She said when an accident involves damage to property or a person, more attention needs to be paid to the reason behind these damages. It needs to be determined if it was truly an accident or was careless behavior on the part of the driver.

Pat Tucker, of Idaho Falls, testified before the committee **in support of H 466**. Her daughter, **Cady Tucker**, died on August 15, 2002, in an accident caused by a long-term diagnosed, insulin dependent, diabetic driver with uncontrolled blood sugar levels. The driver was never charged nor ticketed for the accident because of the difficulties of charging when the cause is an untreated medical condition. **H 466** would make all the difference because if the standard set forth by the legislation had been in place, Cady would be alive today. It would hold people with untreated medical conditions accountable for their actions and would put people on notice if they have an untreated medical condition, to be responsible and not to drive unless they are fit for driving. She said according to the CDC by 2050 one-third of the U.S. population will have diabetes. She quoted Idaho Falls Police Sergeant, **Dave Frei**, as saying that diabetic drivers are worse than drunk drivers because they are virtually unconscious.

In response to questions from the committee, **Rep. Trujillo** said people would be liable only if they were not treating. This would be so, even if they don't have the resources to do so. **Rep. Malek** indicated that criminal liability for driving with an untreated medical condition would be incurred whether by negligence or simply because they failed to treat because they were busy that morning and forgot to take their medication. He said it is a balancing test: is the access to transportation more important than human lives? Other members mentioned that driving is a privilege not a right.

MOTION: **Rep. Malek** made a motion to send **H 466** to the floor with a **DO PASS** recommendation.

Members of the committee commented that the object of this legislation is to be a deterrent. Sometimes our laws serve an important function by informing people what society expects. If the language is in the Code, then people will start to pay attention.

VOTE ON MOTION:

Motion carried by voice vote. Reps. McMillan and Sims requested to be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

H 434:

Rep. Luker presented to the committee **H 434** which updates and upgrades Idaho law concerning infraction penalties. This law would increase the infraction penalty maximum from \$100 to \$300. It also changes the manner in which fines are set by giving fine-setting authority to the Legislature, except where discretionary sentencing is specifically given to the courts. This legislation also provides cities and counties flexibility in using infraction penalties rather than misdemeanors in punishing ordinance violations. Because the infraction penalties are retained at their current levels, this legislation would be revenue neutral. **Rep. Luker** explained there is a need for this legislation due to concerns in our state regarding the public defender's cost and amount of work. Part of the overburden comes from a proliferation of misdemeanors. Due to the U.S. Supreme Court's definition of the right to jury trial and the right to public defense, any offense that carries a potential for jail time entitles someone to public defense, as long as they qualify financially. So this is attempting to set a transition from a low level misdemeanors to infractions thereby allowing public defenders more time to give their attention to those that may need it more.

In response to a question, **Rep. Luker** said this legislation would give cities and counties greater flexibility to use the infraction as a tool for setting an appropriate fine for an ordinance they are trying to enact.

MOTION:

Rep. Neilsen made a motion to send **H 434** to the floor with a **DO PASS** recommendation.

Steve Rutherford, City of Boise, testified in favor of the bill saying that cities across the state are looking at ways to convert misdemeanors to infractions. They support this kind of step as a foundation. In response to a question, Mr. Rutherford indicated that \$300 would be an adequate amount to charge people. He said \$300 is a lot of money for many people especially if you add court costs and fees.

Monica Hopkins, executive director of the ACLU of Idaho, asked the committee to hold the bill. She said because this bill raises the infraction level without a corresponding move of misdemeanors to infractions, it might actually have the opposite effect than intended on the existing public defense system.

In response to a question, **Rep. Luker** confirmed that the infraction penalties would remain the same until the Legislature acts; it is only the maximum threshold that changes.

VOTE ON MOTION:

Motion carried by voice vote. Rep. Luker will sponsor the bill on the floor.

Chairman Wills turned the gavel over to **Rep. Bolz**.

H 435:

Rep. Luker presented to the committee **H 435** which decriminalizes land use violations. In Section 1, the existing law which states that the enforcement of the issue can be by infraction or misdemeanor is struck and replaced by the infraction language. He said there is an important civil compliance portion added that allows city or county enforcement actions. Currently, there is a reimbursement provision in law that can place a lien on the property for the removal costs. Misdemeanors are criminal offenses. He asked, if an individual has a messy yard or a zoning violation, should they be charged or convicted of a criminal offense?

Several members of the committee expressed concern regarding how much of a deterrent for habitual offenders an infraction would be compared to a misdemeanor. Concern was also expressed regarding the protection of land value if the violations were not taken care of appropriately. It was also discussed whether this change would be crippling to smaller developers whereas larger corporations may look at this as merely being a cost of business.

Michael Garner, Code Enforcement Officer for the City of Boise, testified **in opposition to H 435** the reduction of penalties for violations of zoning. He said misdemeanors are rare occurrences. Typically, all other avenues are exhausted before looking at these criminal options. Infraction threats may not be a big enough deterrent to aid enforcement officials. In Boise, there are five officers who cover more than 2,000 cases per year. Less than 20 are cited because they are able to negotiate with owners and tenants. They do this through warning levels, notice of violation, and threat of citation. Calls are received daily regarding dangerous situations or the potential for diminished property value. Without citation authority, the clean up would not happen.

In response to a question, **Mr. Garner** explained the process for the City of Boise. He said it was a "knock and talk" process. They explain to the violator why a problem exists then the offender is given a warning. If the offense is more egregious, they will negotiate with the offender. As long as there is an effort made, they typically give people up to 30 days to rectify the problem.

Steve Rutherford, with the Boise City Attorney's office, testified **in opposition to H 435**. He said misdemeanors are needed when enforcement officers have done everything they can from a civil administrative process. Only about 20 cases make it to the courthouse. Only seven of those cases received help from a public defender and none of them went to trial. It is very rare when they use the misdemeanor tool but it is very important to use for noncompliance.

Bill Nary, Meridian City Attorney, testified **in opposition to H 435**. He said land use laws are there to preserve our communities. The City of Meridian contracts through the City of Boise to enforce their land use requirements. They will have people who will treat the infractions as a cost of doing business. They have very few people who are charged with misdemeanors for land use violations and they are the worst offenders. Misdemeanors are the only tool they have to make them comply. He also spoke to compliance enforcement stating that liens are not efficient. They only come into play if the owner sells the property. He asked that the committee leave the discretion to the cities.

Russell Westerberg, representing the City of Boise, testified **in opposition to H 435** and asked that the committee not confuse this bill with the worthy effort to reduce prison population and to reduce reliance on public defenders. It will do neither.

Rep. Luker concluded the discussion on **H 435** by pointing out that there were no discussions about the cities ever writing infractions. Infractions are a tool that is not being used by the cities so they don't know how effective it will be. Raising the infraction level to \$300 will help.

MOTION:

Rep. Batemen made a motion to **HOLD H 435** in committee.

Rep. Bateman questioned whether \$300 would really deter individuals. He said since there are comparably few citations, they should let local government have the tools they need.

SUBSTITUTE MOTION:

Rep. Nielsen made a substitute motion to send **H 435** to General Orders with the amendment as follows: after three infractions are used then the fourth violation would be charged as a misdemeanor.

Several members of the committee stated they didn't hear there was a problem needing to be fixed. If the cities are satisfied with the system, let them continue.

**VOTE ON
SUBSTITUTE
MOTION:**

Roll call vote was requested. **Motion failed by a vote of 6 AYE, 9 NAY, and 2 Absent/Excused. Voting in favor** of the motion: **Reps. Luker, Nielsen, Bolz, Sims, Dayley, and Malek. Voting in opposition** to the motion: **Reps. Bateman, McMillan, Perry, Packer, Trujillo, McDonald, Burgoyne, Meline, and Ringo. Reps. Horman and Wills** were absent/excused.

**VOTE ON
ORIGINAL
MOTION:**

Original motion carried by voice vote. H 435 will be held in committee.

H 463:

Rep. Luker presented to the committee **H 463** which decriminalizes building code violations, making them infractions instead of misdemeanors. In this proposed legislation there is a persistent flagrant violator provision.

MOTION:

Rep. Trujillo made a motion to send **H 463** to the floor with a **DO PASS** recommendation.

Michael Garner, Code Enforcement Officer for the City of Boise, and **Steve Rutherford**, with the Boise City Attorney's office, testified **in opposition** to **H 463** indicating they believe this bill is similar to **H 435**.

Bill Nary, Meridian City Attorney, testified **in opposition** to **H 463**. He indicated the law is not abused now and this would give a lack of discretion to the city. He said he likes the idea of a step up approach but most people are not serial violators. He cannot recharge them for the same offense.

John Foster, representing the Idaho Association of Building Officials, testified that although the association has not had the opportunity to read the bill, he wanted to thank **Rep. Luker** for making changes to the bill as they requested.

**SUBSTITUTE
MOTION:**

Rep. Ringo made the substitute motion to **HOLD H 463** in committee.

Rep. Luker clarified that they can charge a separate infraction for each day and each infraction would be a separate offense. The homeowner can end up with 365 infractions. The concern was for fly-by-night contractors who could be a persistent violator. They are obviously going to make more than one violation and the separate infractions can be pursued within the three year period. **Rep. Burgoyne** said it was incongruous for a homeowner to get 365 infractions but cannot get a misdemeanor.

**VOTE ON
SUBSTITUTE
MOTION:**

Roll call vote was requested. **Substitute motion failed by a vote of 5 AYE, 9 NAY, and 3 Absent/Excused. Voting in favor** of the motion: **Reps. McMillan, Packer, Burgoyne, Meline, and Ringo. Voting in opposition** to the motion: **Reps. Luker, Bolz, Bateman, Perry, Sims, Dayley, Malek, Trujillo, and McDonald. Rep. Nielsen, Horman, and Wills** were absent/excused.

**VOTE ON
ORIGINAL
MOTION:**

Original motion carried by voice vote. Reps. Burgoyne, Meline, and Ringo requested that they be recorded as voting **NAY. Rep. Luker** will sponsor the bill on the floor.

Colonel Ralph Powell, Director of the Idaho State Police, presented to the committee an update on the recent accomplishments of the Idaho State Police (ISP). The Idaho State Police Act was signed into law on February 20, 1939, by **Governor C.A. Bottolfson**. They are celebrating their 75th Anniversary. He thanked **Chairman Wills** and **Rep. McDonald** for their faithful service to the ISP. The ISP, headquartered in Meridian, is divided into six districts, with patrol and investigations operations in each district. All of their programs work to support ISP's mission of "Providing public safety across the state of Idaho through law enforcement excellence." He said during the 2012 session, the Legislature approved a dedicated funding source from license fees to go to the Alcohol Beverage Control (ABC) program to fund 12 positions. ABC is fully operational and its personnel have made progress towards visiting the premises of each of the more than 5,000 licensees in the state. ABC is also charged with ensuring compliance by licensees with Idaho's gaming statutes, certain prohibited acts, and conducting compliance operations to enforce underage drinking laws.

Col. Powell said Forensic Services provides direct support to Idaho's criminal justice community through crime scene evidence collection and analysis. In FY2013, nearly 8,200 new cases were received and processed. The committee has supported their efforts concerning the DNA program, and since the "All Felons" DNA statute went into effect on July 1, 2013, the Forensics program has received almost 7,400 samples. The DNA Database section has been able to keep pace with this increased load without a backlog and they have achieved a 30-day turnaround time. There have been 13 positive DNA matches since July 1st.

Col. Powell said Support Services has two programs: the Bureau of Criminal Identification (BCI) and the Criminal Justice Information Systems (CJIS). BCI manages the Public Safety and Security Information System, known as "ILETS", and the state's Automated Fingerprint Identification System, which identifies wanted persons through fingerprint comparisons. BCI also maintains Idaho's Central Sex Offender Registry, the Missing Persons Clearinghouse, the Uniform Crime Reporting Program and the AMBER Alert system. CJIS is another critical support provider for all Idaho law enforcement. It interfaces with several non-criminal justice computer systems, including the state's Vehicle Title and Registration System and the Drivers License System. CJIS also supports linkage to the FBI National Crime Information Center (NCIC) and the national DNA database (CODIS).

Col. Powell said the POST Academy is supported by dedicated and federal funds. POST receives operational direction from the POST Council which is comprised of criminal justice partners from local, state and federal agencies. ISP's Management Services provides human resource support, finance and budget services, and purchasing and warehouse activities in support of all ISP programs. Both the Racing Commission and the Brand Board are industry-supported entities located within ISP and are responsive to the concerns of their respective governing boards. The Idaho Criminal Intelligence Center is Idaho's designated Fusion Center. It provides a variety of services to local, state and federal law enforcement including Idaho's Drug Tip Hotline, case deconfliction, threat assessments, narcotics intelligence, photo line-ups, general case support and training for over 200 fusion center liaison officers.

Col. Powell said in FY2013, our Patrol Troopers responded to over 215,000 calls for service and investigated over 5,100 motor vehicle collisions of which 110 involved fatalities. The past two years have proven to be the lowest number of fatal crashes in Idaho since record keeping started in 1956. Troopers made nearly 5,800 felony and misdemeanor arrests, with over 1,400 of those arrests being for impaired driving. Between 2007 and 2012, the total commercial vehicle crashes in Idaho were down 26%, injury commercial vehicle crashes were down 24%, and commercial vehicle fatal crashes were down 19%.

Col. Powell shared how despite the low staffing levels, they have tried to make the best use of the resources they have. A study conducted for their Patrol program and updated in 2011, details the number of miles of state and federal highways that must be patrolled in Idaho. The study concludes that ISP would need more than 90 additional troopers to provide adequate statewide patrol coverage. ISP is able to capitalize on collaborations with city, county, and federal law enforcement agencies to enhance the service they provide. ISP supports every law enforcement agency in the state in working complex, large-scale drug trafficking and high-profile criminal cases. To further ISP's interdiction efforts, ISP has expanded its K9 program from one "passive alert drug detection" K9 in Jerome, by adding three more dogs. The K9s and their handlers are currently training to become certified. Col. Powell thanked the committee for their continued support of the ISP and their dedicated employees as they strive to provide quality law enforcement services to Idaho's citizens and visitors.

Rep. Bolz thanked **Julia Horman** for her hard work as the committee's Page for the last six weeks and wished her well in her future endeavors.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:23 PM.

Representative Wills
Chair

Francoise Cleveland
Secretary