

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, February 17, 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:** Representative(s) Meline
GUESTS: Shelli Sonnenberg, Boise Police Dept.; Christa Ledbetter, Adult Protection; Kari Seibel, Nampa Police Department; Tom Geroes, Nampa Police; Deputy Matt Hawkins, Twin Falls County; Skip Smyser, ISAA; Mathew Walters, ISAA; Alan Moore, Bogus Basin; Ted McIntyre, Twin Falls County Sheriff Office; Jason Kreisenbeck, Lobby Idaho; Barbara Jorden, ITLA; Holly Koole, IPAA; Mike Kane, ISA; Caitlin Rusche, IAC; Judge Dennard, Courts; Lee Flinn, AARP; Russell Westerberg

Chairman Wills called the meeting to order at 1:31 PM.

Chairman Wills welcomed to the committee new House Page **Duncan Brain**. He is a honor student at Wallace High School where he plays varsity football, basketball, and golf.

H 453: **Rep. Kauffman** presented to the committee **H 453** which enables prosecutors and judges to use enhanced penalties to persons convicted of felonies against older persons. Older persons are defined as 65 years of age or older. Rep. Kauffman said as the population grows in the United States, the issue of elder mistreatment is garnering the attention of law enforcement, medical, and research communities. More and more people are living longer and this trend is expected to increase. The 2010 Census shows there are more than 180,000 Idahoans, or 12% of Idaho's population, over the age of 65. By 2025, it is estimated the percentage will be up to 17%. According to the National Institute of Justice, 1 in 10 older Americans, or about five million individuals a year, is expected to experience abuse. This abuse can take many forms like financial exploitation, fraud, physical abuse, neglect by a caregiver, or emotional abuse. He said this legislation will send a strong message that Idaho will not tolerate this bad behavior.

In response to a question, **Holly Koole** of the Idaho Prosecutors Association, assured the committee that these enhanced penalties would not be retroactive. Additional charges would not be allowed under this statute for a crime already sentenced. In response to a question, **Rep. Kauffman** indicated this enhancement is modeled after the firearms statute which uses a separate charge. The enhancement is not automatic.

Shelli Sonnenberg, a financial crimes detective for the Boise Police Department, testified in support of H 453. She said she has worked on a number of cases where crimes are committed due to the age of their victim. Many aged victims are vulnerable because of the mentality of that generation. An example would be how deals were agreed upon by a handshake. Currently, she cannot explain that a crime has vulnerability issues based upon age. An actual vulnerable adult charge cannot be pursued in these types of cases. In response to a question, Ms. Sonnenberg explained the language in the Code for the exploitation of vulnerable adults does cover a lot of vulnerabilities but these are very specific and merely being aged does not qualify.

Crista Ledbetter, of Adult Protection, explained she was testifying neither for nor against the bill but wanted to let the committee know that in 2013, 1,722 cases of abuse went through her office. That is a marked increase of 53% from the previous year. Her office can give cognitive tests for adults to determine vulnerability but they are not infallible. She gave an example of people with dementia who can pass the test in the daytime but would fail at night when symptoms are worse. Abuse or scams of the elderly is a daily occurrence.

Matt Hawkins, Deputy for the Twin Falls County Sheriffs Office, testified in support of H 453. He presented an example of owners of an assisted living center mistreating, with a wide variety of abuse, the adults in their facility. He said this legislation would be a great tool for him to use to pursue these types of crimes. In response to questions, Deputy Hawkins explained they prefer to charge individuals with everything they can so having an enhanced penalty of 10 years would help. He said it helps the prosecutor plead a case if there is more to charge. He said aggravated battery against a younger person is less of a crime than against one who is 65 or older who cannot save themselves or recover as quickly.

Michael Kane, of the Idaho Sheriffs Association, testified in support of H 453. He said research indicates there are mainly two types of financial crimes performed against the elderly, one perpetrated by caregivers and one by strangers. Stranger fraud can include investments, charity contributions, home and automobile repair, loans and mortgage, health and funeral, life insurance, health remedies, and travel. Caregiver fraud can include joint bank accounts, deed or title transfers, power of attorney, living trusts, and wills. He said the prevailing stereotype of elderly fraud victims is they are poorly informed, socially isolated, and potentially suffering from mental deterioration. They cling to old fashion ideas of politeness and manner that interfere with their ability to detect fraud. Recent research has refuted these stereotypes characterizing the majority of the victims as more educated, informed, and socially active than previously supposed. Seniors with active social lives are more susceptible because they have more exposure.

Mr. Kane said a vulnerable adult is defined in Idaho law as: an adult who is 18 years of age or older and who is unable to protect himself from abuse, neglect, or exploitation, due to a physical or mental impairment which affects the persons judgement or behavior to the extent he lacks efficient understanding or capacity to make or communicate or implement decisions. This is a very high burden of proof and not all victims qualify. This charge would be separate and the enhancement can be used in appropriate cases or not at all. In response to questions, Mr. Kane indicated the only proof required for the enhanced penalty is age. Proof of intent is not required. **Rep. Luker** noted there is a study which indicates the longer the sentence, the higher the rate of recidivism.

Ted McIntyre, investigator for the Twin Falls Sheriff's office, testified in support of **H 453**. Mr. McIntyre cited a case in which an elderly woman's medication was withheld from her and resulted in her becoming severely ill. Trying to prove this in court would have been extremely difficult. He said having an enhanced penalty would help.

Rep. Kauffman said they are not working to put as many people in jail as possible but some people deserve to be in jail. The state will need to pick up the bill for these elderly people when they are out of money. This is another way to keep bad people away from the elderly. He said he did not think the study **Rep. Luker** mentioned would say the inverse, that shorter sentences deter crime.

MOTION: **Rep. Burgoyne** made a motion to **HOLD H 453** in committee.

Rep. Burgoyne said this is not needed for everyone over the age of 65. He explained that some lives should not be worth more than others because of a birthday.

SUBSTITUTE MOTION: **Rep. Nielsen** made a motion to send **H 453** to the floor with a **DO PASS** recommendation.

VOTE ON SUBSTITUTE MOTION: Roll call vote was requested. **Substitute motion failed by a vote of 7 AYE, 8 NAY, 2 Absent/Excused. Voting in favor of the motion: Reps. Nielsen, Bolz, Bateman, Horman, Malek, McDonald, and Wills. Voting in opposition to the motion: Reps. Luker, McMillan, Perry, Sims, Dayley, Trujillo, Burgoyne, and Ringo. Reps. Packer and Meline were absent/excused.**

VOTE ON ORIGINAL MOTION: Roll call was requested on the original motion. **Original motion carried by a vote of 8 AYE, 7 NAY, 2 Absent/Excused. Voting in favor of the motion: Reps. Luker, McMillan, Perry, Sims, Dayley, Trujillo, Burgoyne, and Ringo. Voting in opposition to the motion: Reps. Nielsen, Bolz, Bateman, Horman, Malek, McDonald, and Wills. Reps. Packer and Meline was absent/excused. H 453 will be held in committee.**

H 446: **Hon. Michael Dennard**, Senior Judge and Senior Manager of Court Services for Children and Families at the Administrative Office of the Courts, presented **H 446** to the committee. This bill would amend Idaho Code by adding a subsection which would give the court the discretion to award attorney's fees and costs to the prevailing party on a motion to set aside or modify the decision of a parenting coordinator. The goal of appointing a parenting coordinator in a case is to avoid or substantially reduce, time-consuming and expensive litigation between high conflict parties and their children.

Rep. Luker noted, because the intent is for a person to reflect seriously before they put someone through the process, he is afraid it may turn away people with legitimate concerns.

MOTION: **Rep. Burgoyne** made a motion to send **H 446** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. McMillan, Luker, and Ringo** requested to be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

H 447: **Hon. Michael Dennard**, Idaho Supreme Court Senior Judge, presented to the committee **H 447** which eliminates the current statutory language for reporting requirements for guardians and conservators. He said the broad purpose of these amendments would be to transfer the specific requirements for these reports from statute to court rule. The bill would also ensure any costs recovered for visitors' reports in guardianships which are prepared by court employees, be deposited into the Guardianship and Conservatorship Fund.

MOTION: **Rep. Burgoyne** made a motion to send **H 447** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

H 462: **Skip Smyser**, of Lobby Idaho and representing the Idaho Ski Areas Association, presented **H 462** which updates and clarifies language within the Idaho Ski Liability Act. This is a modernization of the Idaho Ski Laws which were passed in 1979. He said what one sees now and what one would have seen in 1979 on a ski hill is very different. This bill would modernize the Code so it pertains to what is happening on the hill today. There are no national standards regarding these new activities. When standards are developed, he indicated they are open to having those as part of the law.

Matthew Walters, of the Idaho Ski Areas Association, testified **in support** of **H 462**. Mr. Walters detailed the definitions itemized in the legislation. He also explained the change in the expressed assumption of risk. This legislation defines which risks are inherent and are therefore assumed when you participate in the sport, like free style terrain parks, snow immersions and inbound avalanches.

Rep. Luker expressed concern that manufactured and constructed obstacles would be included in the immunity provided by this bill. He asked who would be liable if the structures fail. **Mr. Walters** responded the ski areas would be immune from being sued by the skier but the manufacturer could be sued. He said skiing will always have an inherent risk which cannot be removed by a ski operator. Other members of the committee expressed concern this legislation would expand the freedom of liability for the ski area operator. **Rep. Nielsen** likened the free style terrain to an amusement park on the hill and suggested to find liability language from dealings with amusement park operators.

Alan Moore, General Manager for Bogus Basin, testified **in support** of **H 462**. He said ski areas are slippery. Individuals have to accept the inherent risks. There is nothing really mechanical about the rails; they are welded metal which are continuously checked by the staff. He said if ski areas do not offer terrain parks then the skiers will build their own features without adult supervision or emergency personal. It is much safer to have these within the ski areas.

Several members of the committee expressed concern this legislation would completely absolve the ski areas of any liability. **Rep. Malek** said the ski areas would still be liable for negligence.

Barbara Jorden, of the Idaho Trials Layers Association, testified in regards to **H 462**. She asked the committee to hold off on any legislation until a set of standards is written for these types of terrain parks. Currently, there are no standards but the industry is working towards that goal. The standards should be a trade off for the immunity. Immunity discourages the search for safer practices. She is also concerned because the legislation would give immunity to all ski area operators, not just reputable ones.

Skip Smyser explained this legislation only covers ski hill operators. It would not cover areas like the one in Eagle, Idaho. When standards are developed, it is reasonable to come back and bring those into the law. This legislation is only a needed modernization of the language.

MOTION: **Rep. McMillan** made a motion to send **H 462** to the floor with a **DO PASS** recommendation.

Rep. Bateman said he supports this legislation because without immunity the same opportunities would not be available. There is an inherent risk in this type of behavior. **Rep. Sims** said she supports the bill because the insurance cost to the ski hill operators would be too high.

VOTE ON MOTION: **Motion carried by voice vote. Reps. Luker, Burgoyne, and Ringo** requested they be recorded as voting **NAY**. **Rep. Malek** will sponsor the bill on the floor.

H 459: **Rep. Malek** presented to the committee **H 459** which closes a gap in current statute to protect victims of molestation who are asleep or unconscious at the time.

MOTION: **Rep. Packer** made a motion to send **H 459** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Malek** will sponsor the bill on the floor.

H 456: **Michael Kane**, representing the Idaho Sheriffs Association, presented to the committee **H 456** which increases the daily rate for state sentenced prisoners housed in county jails from \$40 to \$50. The counties strongly support the bill. They are happy to house the inmates but would like to get reimbursed closer to what the actual cost is for housing a prisoner. The last raise to \$40 was in the year 2000. Many long-term prisoners are being held in the county jails so the state does not have to build another prison. The cost per day, per inmate differs greatly across the state, depending on how much the facility costs to operate. If the cost is above the \$40 rate, the county has to make up the difference. In response to questions, Mr. Kane said facilities have different operating costs depending on how large or small the facility is, how old, whether they contract the medical personnel, and other variations. He said even though the average cost is higher than \$50, they are trying to be reasonable and not overreaching.

MOTION: **Rep. Truillio** made a motion to send **H 456** to the floor with a **DO PASS** recommendation.

Rep. Bolz explained that **Rep. Bell** with JFAC does not see a problem with the raise but is concerned about the \$2.19 million increase. He said he is already requesting a 9% increase in the Department of Correction budget. The \$2.19 million would be added to that increase. **Rep. Ringo** said the cost is what it is; it is just a matter of who pays for it. Right now, the state is passing the cost down to the property taxpayers.

VOTE ON MOTION: **Motion carried by voice vote. Rep. Bolz** requested he be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:38 PM.

Representative Wills
Chair

Francoise Cleveland
Secretary