

MINUTES  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**

**DATE:** Wednesday, February 19, 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:** Chairman Wills

**GUESTS:** Michael Henderson, Supreme Court; Barry Wood, Supreme Court; Kurt Holzer, ITLA; Barbara Jorden, ITLA; Mike Kane, PCI; Paul Panther, Attorney General; Paul Jackson, Farmers Insurance; John Watts, Veritas Advisors; Bryan Zollinger, Smith, Driscoll and Assoc.; Sean Beck, Johnson Mark, LLC; Stacy Langton, Johnson Mark, LLC; Kimball Jeppsen, Medical Recovery Services; Audra Powell, Smith, Driscoll and Assoc.; Mike Kane, ISA; Monica Hopkins, ACLU; Skip Smyser, Intoximeters, Inc.; Ben Webb, JP. Development Inc.; Angela Richards, Allstate; Phil Barber, American Insurance Association; Lyn Darrington, State Farm; Woody Richards, American Family; Jessie Luther, Browning Kaleczyc Berry and Hoven

**Vice Chairman Luker** called the meeting to order at 1:31 PM.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of the February 3, 2014, meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Ringo** made a motion to approve the minutes of the February 11, 2014, meeting. **Motion carried by voice vote.**

**Vice Chairman Luker** reminded the committee of the Department of Correction tour of the prison next Tuesday, March 25th, at 1:30 PM.

**HCR 40:** **Rep. Bolz** presented to the committee **HCR 40** which authorizes the continuation of an interim study committee appointed by Legislative Council. It would complete the work on the Idaho Public Defense System started several years ago with a subcommittee within the Criminal Justice Commission. The interim committee will finish their work on several matters like the role municipalities will play in the Public Defense System and permanent funding sources.

**MOTION:** **Rep. Trujillo** made a motion to send **HCR 40** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bolz** will sponsor the bill on the floor.

**H 454:** **Rep. Bolz** presented to the committee **H 454**. This legislation would establish a State Public Defender Commission. He said the Controller's office indicated the two separate accounts created by the legislation would not be feasible therefore a new bill will be drafted.

**Rep. Burgoyne** noted the importance of having representation on the commission from the minority party.

**UNANIMOUS  
CONSENT  
REQUEST:** **Rep. Bolz** made an unanimous consent request to **HOLD H 454** in committee. There being no objection, the request was granted.

**H 457:** **Michael Kane**, of the Property Casualty Insurers Association of America, presented **H 457**. This legislation would modify the law preventing a jury from learning a person who is a plaintiff in a personal injury action failed to wear a seat belt in an automobile accident. The strikeout provision says, no matter the circumstances, the fact someone did not wear a seat belt cannot be presented in court. Over the years, in limited circumstances, it has become apparent a jury should be able to hear this evidence. For example, when a defendant's injuries were worse due to the failure to wear the safety restraint. This legislation would allow this to happen. The defense would have to present the information with clear and convincing evidence to the judge first then, if approved, it would be presented to the jury. This evidence would only pertain to a third party suit, only when one person is suing another. This will not apply to children.

**Angela Richards**, representing Allstate and Farm Bureau Insurance Companies, testified in support of **H 457**. She said it will encourage people to use seat belts more often thereby reducing injuries and death. This legislation is about personal responsibility and fairness in presenting evidence in a civil suit.

**Phil Barber**, of the American Insurance Association, **Woody Richards**, of American Family Insurance, and **Paul Jackson**, of Farmers Insurance, testified in support of **H 457**.

**MOTION:** **Rep. Packer** made a motion to send **H 457** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**H 432:** **Rep. Perry** made an unanimous consent request to **HOLD H 432** in committee. There being no objection, the request was granted.

**H 512:** **Rep. Perry** presented to the committee **H 512**, which is a replacement of **H 432**. She said the current statute regarding the receipt of a public defender reads, "the court shall presume the following persons are indigent persons unless such a determination is contrary to the interest of justice." If an individual meets these criteria, they are automatically considered indigent and can receive a public defender. Determination for indigency can include persons who receive, or whose dependents receive, public assistance in the form of food, health coverage, or cash. Therefore, it is possible that receipt of a subsidy from the Idaho Health Exchange could be considered public assistance in the form of health coverage. She said the intent of this legislation is to clarify that participation in the Exchange, which is an avenue for a health insurance subsidy, shall not alone cause an automatic assumption of indigency. Changes were made from the previous bill, **H 432**, based on valid concerns of the ACLU on the overlap of verbiage of who can qualify based on federal poverty guidelines.

**MOTION:** **Rep. Trujillo** made a motion to send **H 512** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**H 510:** **Rep. Morse** presented to the committee **H 510**. The original language provides means for attachment, garnishment, and execution against monies owed by the state. The language excludes elected officials of the state of Idaho. The purpose of the bill is to strike that exclusion and treat all Idaho citizens the same.

In response to a question, **Rep. Morse** said the original law is a blanket protection for any type of attachment and garnishment of wages, including such items as past income taxes, child support, or a commercial debt.

**MOTION:** **Rep. Packer** made a motion to send **H 510** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Morse** will sponsor the bill on the floor.

**H 461:**

**Skip Smyser**, of Lobby Idaho, LLC, presented **H 461** to the committee on behalf of his client, Intoximeters, Inc. He explained a study was done on the 24/7 sobriety project in South Dakota. The study found alcohol consumption can impose an enormous health and safety cost on individuals in society. Problem drinkers account for a disproportionate share of these costs. He said, although millions of problem drinkers pass through the criminal justice system each year, reducing their alcohol consumption has proven difficult. Those convicted of an alcohol involved offense are sometimes ordered not to drink or frequent bars but their abstinence is difficult to enforce. The 24/7 program empowers the judges and those involved in the criminal justice system by having a better way to deal with these individuals. He said the 24/7 program, as a condition of pre-sentence release or a post-sentencing remedy, would allow the offender the opportunity to be involved in frequent sobriety testing. If they fail the test, it has an immediacy from law enforcement putting the offender back into the system without delay. This is a voluntary program geared toward DUIs but can also be used for other offenses like domestic violence. It has enough merit to be used throughout the state of Idaho.

In response to a question, **Mr. Smyser** said in South Dakota there has been a documented 12% reduction in repeat DUIs and a 9% reduction in domestic violence.

**MOTION:**

**Rep. McDonald** made a motion to send **H 461** to the floor with a **DO PASS** recommendation.

**Paul Panther**, Chief of the Criminal Law Division of the Office of Attorney General, detailed the specifics of **H 461**. He said this legislation is in line with the justice reinvestment efforts though immediate sanctions for offenses and keeping people out of jail and prison. This is a completely optional program. It allows somebody who is part of a court order to require a person to abstain from alcohol. He said the Attorney General would need to adopt the rules of the program. This includes providing for the nature and manner for the testing, establishing reasonable fees, review contracts, and overseeing data collection. This would protect the counties and create a uniformity across the state.

In response to questions, **Mr. Panther** said individuals would be given this option as a condition of their release. They would agree to the release provisions or stay in jail. He also indicated he did not anticipate a cost increase for the Attorney General's office. In response to a question regarding how long alcohol stays in the system, **Mr. Symser** admitted someone could theoretically work the system. However, most who are problem drinkers would drink alcohol consistently and be caught. Members of the committee expressed concern whether the sanctions would truly be immediate.

**Hon. Barry Wood**, Senior District Judge with the Idaho Supreme Court, testified in **support** of the concept of the bill. Drug testing in general is critically important to the judges in the judiciary system. It allows accountability to everyone involved.

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

**VOTE ON MOTION:**

**H 449:**

**John Watts**, representing the Idaho Collector's Association through Veritas Advisors, LLP, presented to the committee **H 449**, which details the process of collecting wage garnishments in Idaho. He said the purpose of this legislation is to provide a more expedited and economical mean for private sector business to collect money rightfully due them, through the extension of their good faith and credit, from someone who has chosen not to pay their bill. The role of collection agencies is to help businesses collect money rightfully owed to them by a debtor. The courts have adjudicated this money due.

**Mr. Watts** said there are several public policy changes within this legislation. The first public policy change allows a serving attorney to participate in wage garnishments that have been ordered by the court. The court still remains in the middle. Second, there is also an opportunity for the debtor to file a claim of exemption with the court. Thirdly, if the serving attorney does not turn the money over to the creditor, the provided language allows the creditor a 'cause of action' to collect up to three times the amount plus be subject to any criminal penalties incurred. Most importantly, the money the debtor has paid in good faith will be credited. The fee set for the service is \$40 plus an additional continuing garnishment fee. There will be no commission or return service fee.

**Audra Powell**, of Smith Driscoll and Associates, testified **in support** of **H 449**. She said this legislation would simplify the process for the debtor. It will not stop the sheriffs' offices from doing garnishments; it will just give another option for the creditor.

**MOTION:**

**Rep. Malek** made a motion to send **H 449** to the floor with a **DO PASS** recommendation.

In response to a question, **Ms. Powell** said, depending on the county and the case, there could be a substantial savings for the debtor.

**Michael Kane**, of the Idaho Sheriffs Association, testified **in opposition** the **H 449**. He said there is a centralized administrative process of garnishment. Garnishments are taken in the order they are received. The Sheriff keeps track and works through them in this order. He asked, without the Sheriff, who is going to keep track of who is first in line? The employers will have to guess which garnishment to do first. Large employers, like JR Simpot, may have numerous garnishments. When this happens, it is not unusual for the employer to write one check for all the employees under wage garnishment. If attorneys are going to get them, then the employers will have to issue separate checks for each debtor. If they send one check through the Sheriff, nobody will get their money in a timely manner since the Sheriff will not be able to cash the combined check. In addition, he indicated that attorneys make mistakes, which the Sheriffs catch. He said he does not see a reason to take the Sheriff out of the mix. The system works as it is.

**Ben Web**, Vice President and Partner Manager of JP Development, and Past President of the Idaho Collectors Association, testified **in support** of **H 449**. He said not all garnishments are served in a physical manner. The majority of garnishments are served on the employers via fax or by mail. He said whereas there may be mistakes in the documents, like a number or date, typically this is not indicative of the process. Nowhere in Idaho Code does it say the Sheriff is charged with the duty to look over the documents of the court. There are 44 different ways of doing wage garnishments from the counties. The employer still would need to keep track of the order, if the garnishments come from different Sheriffs.

**Michael Henderson**, legal counsel with the Idaho Supreme Court, testified in regard to **H 449**. He said the courts questioned why this legislation was needed. The Sheriffs have been doing a good job and they are a neutral, competent entity in this process. This new process can open the door for abuses. This can lead to disputes victimizing debtors which will ultimately effect creditors and lead back to the courts. He said he does not want to create situations where more disputes are generated than necessary. He asked who was going to verify the paperwork to ensure that the exemptions available will be honored and that the collector is taking no more than the permitted portion of wages? The most important problem to this legislation is the prioritization of the garnishments. The manner of how these garnishments are served will severely damage the process in a significant way. Whereas before multiple garnishments from different counties happened occasionally, the possibility of overlapping garnishments from different serving

attorneys will happen more frequently. How will the employer be able to determine which garnishments to process first? He said the employers will be liable if it is done incorrectly. The current system is working well and there is no need to change it.

**Bryan Zollinger**, an attorney with Smith, Driscoll and Associates in Idaho Falls, testified **in support of H 449**. He said this legislation would decrease the amount of fees paid by the debtor so the debt would be paid off quicker. This is better for both the debtor and the creditor. He said both the attorneys and the Sheriffs can make mistakes but attorneys are actually trained in the law. The employers are competent and know what is going on.

**Sean Beck**, managing attorney of the Idaho office of Johnson Mark, a creditor law firm, testified **in support of H 449**. He said based on similar processes in other states, the cost of garnishments will be less by using the private sector. In response to questions, he said using the private sector enables the debtor to ask questions about the garnishment to the attorney. Right now, attorneys have to direct questions through the Sheriff's office.

**Mr. Watts** concluded the testimony on the legislation. He reiterated this legislation is not a mandate, some people just prefer to use the private sector. It impacts wage garnishments only.

**Rep. Luker** spoke **in opposition to H 449** because it creates too much of a burden on small business.

**Rep. Burgoyne** spoke **in support of H 449** saying that once businesses have dealt with wage garnishments, it usually isn't a problem for them. It is part of the overhead of being in business.

**Rep. Bateman** spoke **in support of H 449** because he does not think government should have a monopoly on this type of business.

**ROLL CALL  
VOTE:**

Roll call vote was requested. **Motion carried by a vote of 10 AYE, 4 NAY, 3 Absent Excused. Voting in favor of the motion: Reps. Nielsen, Bateman, McMillan, Dayley, Malek, Packer, Trujillo, McDonald, Burgoyne, and Ringo. Voting in opposition to the motion: Reps. Luker, Sims, Horman, and Meline. Reps. Bolz, Perry, and Wills were absent/excused. Reps. Trujillo and Burgoyne will sponsor the bill on the floor.**

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 4:51 PM.

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Representative Luker  
Vice Chairman

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Francoise Cleveland  
Secretary