

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, March 03, 2014

TIME: 1:30 PM or Upon Adjournment

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) Nielsen, Burgoyne

GUESTS: Brian Kane, Attorney General's Office; Mike Stoddard, Hawley Troxell; Kurt Holzer, ITLA; Kristen Atwood, ISA; Monica Hopkins, ACLU; August Cahill, Ada County Public Defender; Alan Trimming, Ada County Public Defender; Holly Koole, IPAA; Tony Poinelli, IAC; Eleonora Somoza, Canyon County Prosecuting Attorney; Jason Cantrell, Nampa Police Department

Chairman Wills called the meeting to order at 2:50 PM.

S 1341: **Ellie Somoza**, Nampa City Prosecuting Attorney, presented to the committee **S 1344** which would allow a gang enhancement to be filed in a misdemeanor or juvenile case. Because the current language of the Idaho Criminal Gang Enforcement Act says the enhancement may be used by indictment or information and misdemeanor charges and juvenile petitions are only charged by complaint or by petition, the language needed to be added. She said this was a technical oversight on the original legislation.

Sgt. Jason Cantrell, of the Nampa Police Department, said, since 2006, there has been a significant decrease of gang activity, drive by shootings, and the overall flaunting of gang members walking down the street in Canyon County. He attributed this to the Criminal Gang Enforcement Act. The Act has been a useful tool for law enforcement.

In response to a question, **Ms. Somoza** said the enhancement adds an additional year in jail to the sentence for gang-related activity. She said the original intent of this legislation was to include misdemeanors but the mechanism was not written to reflect that. A juvenile can be charged with a gang offense but the enhancement would not be charged unless they are waived to an adult court.

MOTION: **Rep. McDonald** made a motion to send **S 1341** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

H 517: **Rep. Morse** presented to the committee **H 517** which adds liability exemptions for activities on State Endowment Lands and immunizes the state from liability for the use of any road, trail, easement, or woodcutting activities on Endowment Land. The bill arose out of procedures and implications for granting an easement to a private individual to cross State Endowment Lands. The Department of Administration, as a condition of easement, asked for a \$2 million liability policy, which amounted to a substantial amount of money in perpetuity. If one went through a procedure to get an easement, then those people are treated differently than members of the public, woodcutters, and individuals engaged in recreation whom have absolutely no kinds of insurance policies and exposes the state to liability.

Rep. Morse said language was added to the legislation originally presented to the committee. **H 517** now includes the language: any government entity and its employees acting in the course and scope of their employment without malice or willful or wanton conduct shall not be liable for any claim which is based upon third parties that injure themselves or members of the public when using any road, trail or easement or cutting wood on Endowment Lands.

Kurt Holzer, of the Idaho Trial Lawyers Association, testified **in opposition** to **H 517**. One of the fundamental roles of the Trial Lawyers Association is to deal with the issue of personal responsibility. This legislation deals with far more than Endowment Lands. It immunizes anything that is based upon acts of third parties who injure themselves or members of the public using any road. This includes any highway district. This is a broad grant of immunity. To the extent there needs to be immunity or actions on the Endowment Lands, Idaho does have a recreational use immunity statute. From this, the landowner is immune from suit. There is no liability.

MOTION: **Rep. Luker** made a motion to send **H 517** to General Orders with a committee amendment to move the language "on endowment land". Subsection 9 would read, "Is based upon the acts of third parties that injure themselves or members of the public on endowment land using any road, trail or easement, or cutting wood." **Motion carried by voice vote. Rep. Morse** will sponsor the bill on the floor.

H 562: **Brian Kane**, Assistant Chief Deputy with the Attorney General's Office, presented to the committee **H 562** which addresses two areas of bond issuance in need of reform. The first repeals the requirement the Attorney General approve the issuance of bonds by state universities, and city and county housing authorities. The second authorizes public bodies to delegate authority to determine actual terms and condition of bonds in accordance with parameters and specific instructions established by the governing body in its authorizing resolution or ordinance.

Mr. Kane said the Attorney General's office has nothing to do with the bond issues on those entities, yet they are asked about them because of this Code. He said they would have no idea if the bonds were done properly since they are not involved in the process. It becomes an obstacle instead of a benefit within these circumstances. From a legal standpoint, the state has taken great pains to say they are independent bodies, corporate and politic, to detach them from the state so they do not incur a liability on behalf of the state. By keeping the state in the mix, it keeps the argument alive the state is involved. They would replace the strike out provisions with a delegation provision of the Code. This would allow the participants to make an entry into the bond market when the interest rates are lower. This will make the process for bond issues more efficient and cost effective.

MOTION: **Rep. Bolz** made a motion to send **H 562** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Bolz** will sponsor the bill on the floor.

H 542: **Rep. Bolz** presented to the committee **H 542** which establishes a State Public Defender Commission. He explained the committee had seen this bill before but the Controller's Office had a concern about one section dealing with funds. JFAC analysts said these funds could be included with intent language within a trailer bill; therefore, the section was withdrawn resulting in **H 542**. Both the Sixth Amendment of the United States Constitution and Article 1, Section 13, of the Idaho Constitution provides for a public defender system for indigents. Unfortunately, Idaho is not meeting that requirement. This legislation will start the process of fixing that broken system.

Rep. Bolz said the language within this legislation sets up the Public Defense Act, the State Public Defense Commission, lists the seven members to be appointed to the commission, and references compensation for those members. The commission members will receive no honorarium, only reimbursement for expenses. The bill lists the duties of the State Public Defense Commission which are to promulgate rules and make recommendations to the Idaho Legislature on public defense system issues. This includes such things as core requirements for contracts, qualifications and experience standards, enforcement mechanisms, and funding. The commission style was chosen over an association because of its enforcement authority.

Rep. Bolz said this legislation modifies current code on how public defenders are set up in each county. It can be done in one of the following ways: a county office which can be joined with other counties within the same judicial district; contract with an existing office of public defender; or contract with a defending attorney. Because they do not meet constitutional muster, flat fee contracts would no longer be allowed. The Commission would be governed within the Department of Self Governing Agencies.

MOTION:

Rep. Trujillo made a motion to send **H 452** to the floor with a **DO PASS** recommendation.

Monica Hopkins, Executive Director of ACLU of Idaho, testified regarding **H 542** indicating a neutral position on the legislation. The ACLU of Idaho has been working on establishing a constitutional public defender system in Idaho. **H 542** does not go far enough in creating an independent, properly funded, comprehensive enough system the public can trust to function constitutionally. They are concerned that the proposed commission is not independent enough for the American Bar Association standards. The commission is only allowed to make recommendations to the legislature regarding core contract requirements, attorney certification and practice standards, enforcement mechanisms, data collection, and conflict cases. This eliminates the ability for independent oversight, making the commission subject to the political willingness of the legislature to approve and/or fund the essential constitutional work of the commission charged with overseeing the public defense delivery system. The ACLU will remain neutral until there is at least a companion bill providing substantial funding so competent public defenders can provide relief to the dedicated competent lawyers who are struggling under their case loads.

Alan Trimming, the Ada County Public Defender, testified that he shared the ACLU's opinion about the scope of **H 452**. He expressed his concerns with the language of the bill, specifically public defender term, compensation, and appointment qualifications. He suggested the language "so far as possible" perpetuates the characterization that public defenders are second class attorneys in comparison to prosecutors. There is no provision for staffing, resource and salary parity. He said he was concerned by the deletion of the term "not less than two years" because public defenders tend to be politically incorrect; they get asked to advocate for unpopular people who are accused of doing some pretty hideous things; and, they get into serious head butting contests with other agencies not to mention the courts. A new public defender needs a couple of years to develop a rapport.

Tony Poinelli, with the Idaho Association of Idaho Counties, testified **in support** of **H 542**.

VOTE ON MOTION:

Motion carried by voice vote. Rep. Ringo requested she be recorded as voting **NAY**. **Rep. Bolz** will sponsor the bill on the floor.

H 563: **Rep. Malek** presented to the committee **H 563** which will change the video voyeurism law to provide protection to individuals whose pictures or videos of an intimate or private nature are shared without consent for purposes such as revenge, extortion, or humiliation. This legislation includes a new subsection which excludes interactive computer service, information service, and telecommunication service for content provided by another person, unless the provider intentionally aids or abets video voyeurism.

Holly Koole, with the Idaho Prosecuting Attorneys Association, testified **in support** of **H 563**.

Monica Hopkins, Executive Director of ACLU, testified **in opposition** to the way **H 563** is drafted. The ACLU is concerned this legislation has broad language which would criminalize protected speech under the First Amendment of the Constitution. Their main concern is Subsection 2(b) relating to dissemination. She said she understood the problem but wanted to narrowly tailor the language before this legislation passed so as not to infringe on the First Amendment. Any analysis should start with the point of view that sharing nude images, even if you fail to ask the subject's permission, is constitutionally protected free speech. As it is currently written, she said there were no exclusions for photos or videos that are newsworthy, photos one lawfully finds on the internet, or images an individual may not know the circumstances to know whether the subject intended it to be shared. She would like to see three provisions added to the law: malicious intent; actual harm; and an expectation of privacy in the original image as a supplement not a replacement to the knowledge requirement.

John Dinger, a Deputy Prosecutor with Ada County and a member of the Internet Crimes Against Children Task Force, testified **in support** of **H 563**. Under the current law, they cannot prosecute these types of crime because the reason for taking the images did not match the intent for posting them. This is a growing serious problem. These crimes are perpetrated against private individuals who need to be saved from being victimized. In response to a question, Mr. Dinger said if there is a question of constitutionality with free speech, it can be challenged in court.

MOTION: **Rep. Packer** made a motion to send **H 563** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.

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

HR 6: **Chairman Wills** presented to the committee **HR 6** which deals with the selection, removal, duties, and compensation of House attachés. This updated rule will reflect the current House practice of allowing the Speaker to select attachés and determine their compensation. This is a bipartisan rule change. There is majority and minority language within the resolution.

MOTION: **Rep. Malek** made a motion to send **HR 6** to the floor with a **DO PASS** recommendation.

In response to a question, **Chairman Wills** said there is nothing broken in the system it will just speed up and simplify the process.

VOTE ON MOTION: **Motion carried by voice vote.** **Rep. Wills** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:26 PM.

Representative Wills
Chair

Francoise Cleveland
Secretary