

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 11, 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:** None

GUESTS: The sign-in sheet will be retained in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

Chairman Wills called the meeting to order at 2:44 PM.

S 1351: **Emily McClure**, representing the Idaho Medical Association, presented to the committee **S 1351** which makes it a felony to batter health care workers while they are performing their duties or because of their profession. She said battery against healthcare workers is a serious problem in Idaho, particularly in emergency rooms and by those who are high or seeking drugs. Healthcare workers are in need of added protection because they have a higher rate of violent incidents than other professionals. A healthcare worker is three times more likely to be the victim of a violent crime in the workplace than any other private sector professional. They are often required by federal law to treat violent people, and treating them requires they be in close physical proximity to them. Medical professionals are often targeted outside the medical environment by those looking for drugs, particularly in rural communities where they are more readily recognized.

Ms. McClure said they began this effort last year with a bill that would have added health care workers to the list of other professionals afforded enhanced protection. This bill differs from last year's bill in that it only applies to battery, not assault, and they decreased the maximum potential penalty from five years to three years. She emphasized this is a maximum potential penalty. Like last year's bill, it still includes a qualifier the battery must take place "when the victim is in the course of performing his or her professional or employment duties or because of the victim's professional or employment status."

In response to a question, **Ms. McClure** said this legislation is one facet of a multifaceted attempt to curb violence in the healthcare workplace including security, self defense training, and specific facility programs.

Jim Baugh, of the Disability Rights of Idaho, testified in **opposition** to **S 1351**. He said this legislation imposes a sentence to anyone who commits a battery against a licensed, certified or registered healthcare provider in Idaho. This not only applies to anyone in an emergency room but also to assisted living facilities, home health programs, state and private psychiatric hospitals, certified family homes, and group homes for people with developmental disabilities. In all of these facilities where people interact and are in constant contact with professionals, there are individuals who have a hard time controlling their behavior. There are many who have developmental disabilities or traumatic brain injuries whose ability to control their tantrum or rages are minimal or nonexistent. He said he is concerned this bill criminalizes behaviors which are a basic function of someone's disability. Our criminal justice system won't prosecute people who are incapable of forming an

intent but that is a very high bar. These people need behavior modification not a criminal sentence.

Wallace Maxwell, a nurse, testified **in support** of **S 1351**. He said this legislation is not just about making sure the perpetrator understands the seriousness of the crime; it also shows the healthcare provider someone is working to protect and support them. This legislation marks a culture shift on how violence to the healthcare provider is viewed.

Julie Hoerner, Director of the Emergency and Trauma Services of Kootenai Health and representing Kootenai Health, the Nurse Leaders of Idaho, and the Emergency Nurses Association, testified **in support** of **S 1351**. She said the cost of these assaults on our health care providers is significant. Aside from the cost of the physical trauma an employee experiences, there is also low moral, increased stress, absenteeism, lost wages, time away from work, family impact, and turnover. This is impacting the ability to hire nurses into the profession. She said there are an alarming number of people who have not filed a report because they believe nothing will happen. She hopes this legislation will get the word out so the number of assaults decrease.

Holly Koole, of the Idaho Prosecuting Attorney Association, testified **in support** of **S 1351**. In response to a question, Ms. Koole said the criminal justice system provides numerous safeguards for the mentally ill or vulnerable who cannot form the intent to commit a crime.

Gabriel McCarthy, a private attorney, testified **in opposition** to **S 1351** in its current form. He said this legislation would not correct the harm presented and it may actually harm those it is supposed to protect. Because battery is an impulsive action, this felony would not deter. In addition, there is no exception for coworkers. It only takes one person to have a conflict at work and suddenly there is a potential for a felony to be charged. He said what is needed are proactive policies to address the problem before the battery occurs.

Toni Lawson, of the Idaho Hospital Association, testified **in support** of **S 1351**. She said her top concern is the safety and wellness of those who care for others around the state. There is particular concern for rural hospitals which are staffed by two or three people at a time. They do not have the extra staff for security. She explained health care workers do not fight back because their role is to heal not to fight. Healthcare workers are held to a higher standard and that employee may face reprimand if they fight back.

Clement Abbondandolo, the Security Director with St. Luke's Hospital, testified security departments in most big hospitals respond to 15 to 20 combative or assaultive patients per month. In the eleven months he has been in his position, only two of those have had charges filed. The bulk of nursing staff does not file charges because they don't believe anything will come of the charges.

Monica Hopkins, Executive Director of the ACLU of Idaho, testified **in opposition** to **S 1351**. She said the ACLU is concerned about the broad scope of the bill. Healthcare professionals should be encouraged to file under existing statutes. She explained many of the examples heard today would qualify for aggravated battery which would result in a longer jail sentence than provided in this legislation.

MOTION:

Rep. Packer made a motion to send **S 1351** to the floor with a **DO PASS** recommendation.

Rep. Luker said testimony today highlighted how the current law is not working; however, it seems the real matter is, current laws are not being used. The legislature is trying to implement laws that are data driven and there was no data presented to support this law.

Rep. McDonald said this is a serious problem and the legislature needs to support the healthcare worker like the law does for a police officer or government official.

**ROLL CALL
VOTE:**

Roll call vote was requested. **Motion carried by a vote of 12 AYE, 4 NAY, 1 Absent/Excused. Voting in favor of the motion: Reps. Bolz, Bateman, Perry, Dayley, Horman, Malek, Packer, McDonald, Burgoyne, Meline, Ringo, and Wills. Voting in opposition to the motion: Luker, Nielsen, McMillan, and Sims. Rep. Trujillo was absent/excused. Reps. Malek and McDonald will sponsor the bill on the floor.**

Michael Kane, of the Idaho Sheriffs Association, said the Idaho Sheriffs Association is required to report to the Legislature once every three years but it does not need to be an oral presentation. He asked the Secretary to forward their presentation to the committee in written form. (See attached.)

**S 1248, S 1249,
and S1240aa:**

Chairman Wills announced the remainder of bills on the agenda, **S 1248, S 1249, and S 1240aa** would be rescheduled and heard before the committee on March 13, 2014.

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 4:12 PM.

Representative Wills
Chair

Francoise Cleveland
Secretary