

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, March 14, 2014  
**TIME:** 1:30 P.M.  
**PLACE:** Room WW54  
**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Hagedorn, Lakey, Bock and Werk  
**ABSENT/ EXCUSED:** Senator Nuxoll

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:33 p.m.

**PAGE GRADUATION:** **Chairman Lodge** stated the Committee has had a great Page during this last six week period and asked Claire Breen to tell the Committee what she has learned during her time with the Senate and also what her plans are for the future.

**PRESENTATION:** **Tyler Kelly and Sean Schupack - Chairman Lodge** presented the two interns who assisted the Committee through the justice reinvestment legislation and helped with other research. She introduced Sean Schupack and asked that he tell the Committee about himself and his academic plans. **Tyler Kelly** recapped what he had learned during his internship and his academic plans for the future.

**H 518** **Relating to Scrap Metal Businesses - Representative Malek** stated last year he proposed some amendments to the Scrap Metal Act. At that time there were concerns about the businesses that would be affected by the proposed legislation. During the interim the stakeholders met and crafted the language that is in this negotiated legislation before you today. **Neil Colwell** - representing Avista Corporation, explained that the scrap metal industry would support the legislation that was introduced last year on the condition that there be a comprehensive review of the scrap metal law. The Industries concerns were implementation of the legislation in their businesses. The stakeholders were scrap metal dealers, law enforcement, utilities, agriculture, large contractors and home builders who met to draft the changes in this bill.

**Kendara Dean** - employee of Western Recycling, stated their business was one of the stakeholders in the collaborative effort to draft the legislation. The scrap metal dealers had the following concerns: 1) the definition of commercial metal property and that the definition be refined in the bill; 2) no exemption of certain types of companies; all entities buying and selling scrap metal should fall under the rules of the legislation; 3) provide for more specific detail on the circumstances by which a scrap metal dealer must make photographic images of its customers; 4) modernize the method of payments on commercial accounts; 5) providing records to law enforcement; 6) specified time limit for retaining the records; 7) reasonable protections from liability; and 8) entities and individuals that donate scrap metal. All of these items are included in the legislation: 1) the refined definition of commercial metal property; 2) exemptions were aligned so that businesses are exempt as long as an entity does not meet the definition of a scrap metal dealer; 3) photographic image requirements were clarified; 4) modernized method of payments; 5) metal dealers can call law enforcement and have them examine their records; 6) retention of records will be five years; 7) softened the liability section and added

an exemption; and 8) added an exemption for individuals who are donating scrap metal.

**Senator Davis** asked how will the language in this legislation affect an electrical distributor. He noticed that the legislation had struck some of the recycling language and then added the definition of a scrap metal business meaning a commercial enterprise that purchases, receives and processes non-ferrous metal property. **Ms. Dean** replied that the concerns may be in the prior definitions. The reason they added the definition "a business that receives and processes recyclables" was to ensure that businesses like the electrical distributor, which are not processing scrap metals into something else, would not be subject to the definition. **Senator Davis** explained that the definition in the Scarp Metal Act did not apply to an electrical distributor in the past. Under the old definition the scrap metal processor maintains a hydraulic baler, shearing device or shredding device for recycling. Under that definition the bill language would not apply to an electrical distributor. Now that language is being eliminated from the bill and instead relying exclusively on the word "processes." The old definition included the word "recycling" because it is more specific. **Ms. Dean** stated the stakeholders struggled over the definition as they tried to make the definition broad enough so that it captured businesses that do not refer to their business as a recycler but buy and sell scrap metal, so that most of those businesses will fall under the definition and must be licensed.

**Michael Kane**, representing the Sheriffs Association, stated the law enforcement focus concerning the definition was to alleviate the pressure on the scrap metal dealer. Law enforcement's intent is not to enforce this law on retail outlets. They look at "process" by the definition a series of actions that produces something or leads to a particular result. When scrap metal dealers receive the metals they process them. **Senator Davis** asked that the definition language be amended so there is a definition of "process" or included that the definition is dealing with scrap product not the various nonferrous metals.

**MOTION:**

**Senator Davis** moved that **H 518** be referred to the 14th Order for amendment. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**H 455**

**Relating to Fees - Michael Kane**, representing the Sheriffs Association, stated the counties, cities, chiefs, Prosecutors Association, Idaho Attorney General and the Directors of the State Police, Board of Corrections and Pardon and Parole are all in support of this legislation. **Mr. Kane** referenced the hand-outs the Committee had in their packet: 1) the Constitution of the State of Idaho Article 1, Section 22, that deals with rights of crime victims and sets forth the duties of notification (see attachment 1) and 2) 2012 H 595 legislation which spells out the Victim Notification Fund. In order for this legislation to be successful they have come before the Committee today to request an additional \$5 be added to the \$10 fee that was requested in 2012. It is projected that this will raise enough money to maintain the program. This program fulfills a service throughout the State of an electronic victim and witness notification system (VINE) which is an asset to the prosecutors, department of corrections and sheriffs' offices. **Cameron Slater**, Programs Manager for the Idaho Sheriffs Association, said that she manages the VINE program speaking to two components to the VINE program: 1) custody notification which is linked to all their jails and notifies victims when an offender is released from custody and 2) court notification. VINE assists prosecutors and correctional agencies in fulfilling their constitutional duty to assure that victims of crime are notified of changes in the status of offenders. Defendants may register to be notified by phone or e-mail of their court dates to make sure they appear on time. Civil case notification is also tied into the system.

**Mr. Kane** said that in the last year there have been 200,000 notifications in this state and 25,000 new registrations by Idaho crime victims witnesses and concerned parties, the additional \$5 fee to the \$10 will bring in approximately \$500,000 to run the program. This is the most successful criminal justice program that they have put together since the passing of the rights of Crime Victims Amendment. **Senator Hagedorn** asked why does it cost \$15 to send an e-mail or phone call. **Mr. Kane** clarified the monies come from various offenders that have been convicted and the courts can waive the fees. When an offender's status changes it notifies the individuals that have signed up for the information. **Senator Hagedorn** asked for a breakdown of how the fee is divided up. **Mr. Kane** explained that Idaho State Police takes 5 percent of the fee to process the administrative paperwork, the remaining funds go to the Sheriffs Association which pays \$276,000 to the incarceration notification company, \$107,000 for the court notification piece and \$50,000 salary for the program manager. **Vice Chairman Vick** stated he has a frustration with the amount of fees that the State tacks onto felony, misdemeanors and infractions which make it difficult for most of these individuals on probation and parole to pay. He will be voting no on the bill. **Senator Hagedorn** stated he had a problem with contracting with a vendor that was the only contractor that processes these notifications. He asked the Sheriffs Association to check whether there are other vendors who might be able to supply this service. **Senator Davis** echoed **Senator Hagedorn's** concerns with the issue of only one vendor supplying the service for this program. Maybe the new court technology system Odyssey could be programmed to supply this service for the State.

**MOTION:**

**Senator Bock** moved to send **H 455** to the floor with a do pass recommendation. Seconded by **Senator Werk**. The motion carried by **voice vote**. **Vice Chairman Vick** requested that he be recorded as voting **nay**.

**H 434**

**Relating to Punishment for Infraction - Representative Luker** explained that **H 434** is an update to the infraction laws. This legislation updates Idaho law concerning infraction penalties. There are multiple purposes behind the update. First, the law presently gives authority to the Idaho Supreme Court to set infraction penalties. This amendment would restore that function to the Legislature, except where discretionary sentencing is specifically given to the courts. The bill maintains current fixed infraction penalties, but future changes would be up to the Legislature. Second, infraction penalties are now by definition limited to \$100. The bill increases that limit to \$300 to allow for more flexible use of infractions as penalties instead of misdemeanors. Misdemeanors by definition carry the potential for jail time, which requires the provision of a public defender. Changing penalties from misdemeanors to infractions in appropriate cases will reduce costs for and work load upon public defenders. This amendment sets a foundation for future legislative transition of some misdemeanor penalties to infraction penalties. The interim public defense reform committee has endorsed this legislation as one step toward reducing public defender costs and work load in Idaho. The legislation also provides cities and counties flexibility in using infraction penalties rather than misdemeanors in punishing ordinance violations, so as to encourage them to transition from misdemeanor to infraction violations where appropriate.

**Senator Davis** stated the Legislature has intentionally allowed the courts to set the fines for misdemeanors and infractions because they deal with these cases all the time. The courts will write the rules and the Legislature will set the ceiling by establishing not more than this amount. **Representative Luker** responded that if there are infractions that the Legislature does not want to set a policy level they can use Section 4 of the bill and let the court establish those fees. There are a number of infractions, that as a policy body, the Legislature has decided to set a level and that should be a policy matter for this body. When you get into variable sentences for misdemeanors and felonies there is usually a maximum fine amount and the court makes the determination based on the facts of the case. The bill also allows cities and the counties more flexibility to migrate the misdemeanors into infractions when dealing with their ordinances.

**Dan Chadwick**, Executive Director of the Idaho Association of Counties, spoke in support of **H 434**. The public defender interim reform committee met to discuss changes in fines in regards to infractions and misdemeanors. This legislation is the first step by the interim committee to identify and migrate some of the misdemeanors to infractions. The subcommittee has identified approximately 78 misdemeanors, city and county ordinances that should be reclassified as infractions. **Senator Bock** said that as part of the justice reinvestment work that the Committee has accomplished issues came up repeatedly that the State has some misdemeanors that should be infractions. **Chairman Lodge** voiced her concerns that there are many individuals looking at reducing misdemeanors and felonies, and they must make sure that the Legislature proceeds in a unified comprehensive manner rather than piecemeal. The Reinvestment Oversight Committee will also be looking at these reductions over the next five years.

**MOTION:** **Senator Lakey** moved to send **H 434** to the floor with a due pass recommendation. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**H 463** **Relating to the Idaho Building Code Act - Representative Luker** stated this legislation decriminalizes building code violations, making them infractions instead of misdemeanors, and providing for a flagrant violator misdemeanor. In the Building Code Subsection 2 " a separate violation is deemed to have occurred with respect to each building not in compliance with this chapter. Each day such a violation constitutes a separate offense". It is appropriate to migrate this into infractions which still gives the Legislature a powerful penalty. **Senator Hagedorn** said on line 29 of the bill it states "a flagrant violator is a person who is convicted to three or more violations under this section when such violations occurred within three years of an additional violation under this section." **Representative Luker** answered that the builder does not have to have the convictions within the three years, but the actual events must occur within the three years. **Senator Bock** stated the bill refers to additional convictions in Subsection 4. If the infraction is not contested are those convictions? **Representative Luker** answered convicted in court. **Senator Bock** replied if someone is convicted of an infraction are the rules applied to infractions such that an admission to infraction can constitute a conviction, and if it can how can you have multiple convictions of an infraction. **Representative Luker** answered the context makes it clear that it is for an infraction because that is the only thing that is left under the section other than flagrant violator violation. **Senator Bock** asked can somebody actually be convicted of an infraction or is a conviction a term that can always be applied to infraction. **Representative Luker** stated he could not tell whether there is a definition of conviction in the code. **Senator Davis** stated it is not just a violation of the Building Code it is a willful violation. A willful violation can take people's lives. In order for the courts to prosecute the builder for a misdemeanor the prosecutor has to prove that the violation is willful not just a violation of the Building Code. If you have a willful violation of the Code why would you not want that to be a misdemeanor? **Representative Luker** stated that this has not been brought up in previous discussions as they drafted the bill. **Senator**

**Davis** asked if the problem of the bill is in Section 2 why not delete it. Subsection 4 states that to be a flagrant violator the builder has to have three or more violations. If the builder has a willful violation on Monday, by Friday the violations are flagrant violations, or if on Monday they get charged with four offenses and they plead to all three. **Representative Luker** answered that the continuing violations do not apply to Subsection 4. If the builder has four separate violations from Monday to Thursday then that is the purpose of Subsection 4. **Senator Davis** said looking at Subsection 2 every day is a separate violation. If the builder willfully violated on Monday does the affect of that violation on Monday then on Tuesday because of Subsection 2 become a continuing willful violation so that by Wednesday the builder has three willful violations under § 39-4126. **Representative Luke** answered no because Subsection 2 is exempted out from Subsection 4 on lines 32 to 34. **Senator Bock** stated that if the builder has a willful violation of the Building Code the building inspector will red tag the project, and no further construction on the project can take place until it meets code. The problem he envisions with this bill is that the Legislature is invading the sovereignty of the cities and counties to protect their residents. **Representative Luker** answered in terms of policy, cities and counties are able to set building code standards because the State allows them that power. The Legislature sets the parameters and then gives the cities and the counties their powers under those parameters. As a broad public policy, are cities and counties given the right tools and are citizens imposed upon with unreasonable regulations? **Senator Bock** replied that the individuals that these policies are imposed upon have the opportunity to vote for the officials who make up the city ordinances and are enforcing the Building Code. **Representative Luker** stated we as a State adopt the Building Code and it is applied by local officials who are not elected.

- MOTION:** **Senator Werk** requested unanimous consent that **H 463** be held to the call of the Chair. There were no objections.
- MOTION:** **Senator Bock** moved to approve the Minutes of February 21, 2014. Seconded by **Senator Werk**. The motion carried by **voice vote**.
- MOTION:** **Senator Lakey** moved to approve the Minutes of February 24, 2014. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.
- ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:05 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary