

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 11, 2015

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow

**ABSENT/
EXCUSED:** None

GUESTS: Patti Tobias; Holly Koole Rebholtz, IPAA; Scott Brandy, IPAA; Leah Little; Vanessa Rodriguez; Bekah Serrato; George Gutierrez; Ian Thomson, IPDC; Dan Blocksom, Idaho Association of Counties.

Chairman Wills called the meeting to order at 1:30 PM.

RS 23507: **Rep. Luker** presented **RS 23507**. This proposed legislation would amend two statutes that contain variable fine amounts for infraction fines, to have fixed fine amounts.

MOTION: **Rep. Malek** made a motion to introduce **RS 23507**. **Motion carried by voice vote.**

RS 23528C1: **Rep. Luker** presented **RS 23528C1**, which would reclassify violations for minors in possession of tobacco. The proposed legislation would set a \$300 infraction fine for a first offense, and maintain a misdemeanor for subsequent offenses with an increased fine of \$300 to \$500, and reduce potential jail time from 6 months to 30 days.

In response to questions from the committee, **Rep. Luker** explained infractions require a set fine amount and the fine for underage possession of tobacco would be \$300, he was not opposed to changing the fine amount to \$17.50.

MOTION: **Rep. Malek** made a motion to return **RS 23528C1** to the sponsor. **Motion carried by voice vote.**

H 61: **Michael Henderson**, Idaho Supreme Court presented **H 61**, which would clarify the court may exercise both options, placing the juvenile in the custody of the Department and then providing that the juvenile may be on probation following the release from custody. Allowing the courts to do so, will help ensure that the juvenile makes a successful transition to the community and can be provided with supervision and services to continue to promote his rehabilitation. This legislation would also provide guidance regarding the length of the probation, which would be up to three years after the release from custody, but not past the offender's 21st birthday. It would also require a hearing within 30 days after the juvenile's release from custody to determine the terms and conditions of probation.

In response to questions from the committee, **Mr. Henderson** clarified, that as of the hearing date, the juvenile would simultaneously be in the custody of the Idaho Department of Juvenile Corrections and on probation.

Rep. Malek made a motion to send **H 61** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

H 62: Senior District Judge, **Barry Wood**, Idaho Supreme Court, presented **H 62**. Mr. Wood stated victims have a constitutional right to be reimbursed for economic loss; however, it is often difficult for a crime victim to collect on the judgment. This bill would extend the lien period from five years to twenty years, allowing the victim additional time to collect on the judgment. The victim will continue to be allowed to renew the lien in five year increments following the initial twenty years.

MOTION: **Rep. Trujillo** made a motion to send **H 62** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nye** requested to be recorded as voting **NAY**. **Rep. Scott** will sponsor the bill on the floor.

H 64: **Michael Henderson**, Idaho Supreme Court, presented **H 64**. The intent of this legislation is to provide clarity and fairness with respect to giving credit for time spent in incarceration prior to sentencing or to a revocation of probation. Presently, there is no statute that would allow the defendant to receive credit for jail time served as a condition of probation if the defendant's probation is later revoked and he is ordered to serve the suspended sentence. As a matter of fairness, and consistency with the intent of the Legislature in providing maximum periods of incarceration, the defendant should receive credit for the time served as a condition of probation. In addition, this legislation is intended to clarify that a defendant will receive credit for the time spent after service of a bench warrant for a violation of probation, or after being arrested by his probation officer for a probation violation, if his probation is subsequently revoked and he is ordered to serve the suspended sentence.

In response to questions from the committee, **Mr. Henderson** explained the difference in each district's use of credit for time served differs based on the preference of the district judge.

Scott Bandy, Idaho Prosecuting Attorneys Association (IPAA), stated the Department of Correction has had difficulty calculating credit for time served and distinguishing between pre-judgement incarceration and jail incarceration as a term and condition of probation. A resolution was considered to distinguish between the two at the time of disposition by the district court judge. IPAA believes the process of not being given credit for jail incarceration as a term and condition of probation has been used as a deciding point or as the benefit of the bargain for the offender to receive probation. The jail days that are ordered as a term or condition of probation are less onerous and less burdensome on the offender, allowing them to easily schedule with their probation officer around any family or work obligations and participate in custody programming. The legislation would undermine the probation officer's ability to supervise their offenders and potentially disincentivize the offender's participation and compliance with probation. In addition, it will increase the difficulty Department of Correction already has when attempting to maintain discharge at 150%, because it would consume a larger portion of the fixed sentence, resulting in longer incarceration into the indeterminate time and delayed programming.

In response to questions from the committee, **Mr. Bandy** clarified IPAA opposes this legislation. If an offender receives credit for time served it would use a large portion of their fixed sentence, requiring the offender to stay longer due to the programming they have yet to receive in the institution which is needed in order for them to qualify for release. A fixed portion of the sentence is only a portion of the total sentence and it would not be possible for an offender to have more credit than their remaining sentence. IPAA endorses giving the offender the incentive to perform in the community and believe this can be accomplished by the use of discretionary jail days at the parole officer's discretion. Discretionary jail days would no longer be a useful tool if the offender is given credit for time served.

Mr. Henderson clarified the intention of this bill is not to discourage courts from imposing jail time as a condition of probation or discretionary jail time, both of which are tools that are currently used and can continue to be used. The intent of this bill is if the offender has served time, discretionary jail time or additional jail time as a condition of probation, they would receive credit for that time if later their probation is revoked.

MOTION: **Rep. Trujillo** made a motion to send **H 64** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McDonald** requested to be recorded as voting **NAY.** **Rep. Nye** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:44 PM.

Representative Wills
Chair

Katie Butcher
Secretary