

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, March 17, 2015

TIME: 1:30 or Upon Adjournment

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: Holly Koole Rebholtz, IPAA; Grant Loeb, IPAA; Whitney Welsh, Ada County Prosecutors Office; Laurie Nolan, Ada County Prosecutors Office; Sara Thomas, State Appellate Public Defender; Robert Aldridge, TEPI; Mike Brassey, Uniform Law Commission; David Jensen, Uniform Law Commission; Sandra Meyer, IPAA; Ian Thompson, IPDC; Bill Vasconcellas, UBS Financial Services.

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

MOTION: **Rep. Dayley** made a motion to approve the minutes of the March 9, 2015, meeting. **Motion carried by voice vote.**

H 241: **Holly Koole Rebholtz**, Idaho Prosecuting Attorneys Association (IPAA) presented **H 241**. This bill creates a new title, violation of an order prohibiting conduct, for Idaho Code 18-920. Presently the law allows for a no contact order to be issued when a criminal case has been filed and the order is only valid once it has been served on the defendant. If the order is violated it becomes a new criminal case, and the defendant must have a criminal jury trial and be found guilty beyond a reasonable doubt. The intent of this title change is to move the conversation away from the word contact and change it to a violation of an order prohibiting conduct. In order to adequately protect victims, Idaho Code 18-920 must delegate power to the court to issue an order prohibiting conduct. An order prohibiting conduct must be broader than "contact", and must allow Idaho Judges discretion to narrowly tailor the order based on the facts and circumstances of each case. The purpose of an order prohibiting conduct is to protect victims from being re-victimized. The courts need the ability to respond to the specific needs of each case. The judge can only set the terms of the order based on facts that are reasonably related to the case, the judge cannot abuse their discretion.

In response to questions from the committee, **Ms. Rebholtz** clarified that if charges have been filed and the charges do not include use of a gun, an individuals gun rights would not be addressed in the court order. Changing the court order to include an all inclusive "or" would not address the question of what contact means. Does contact have an ordinary definition and does that definition apply to this order. Changing the order to an order prohibiting conduct is a preemptive action due to the direction the prosecutors believe the orders are going. By changing the order to conduct it gives the judge the opportunity to look at the specific incidents of the case, which is not possible with a no contact order. Simply revising the order won't fix the situation; however, revising the order will remain an option.

Grant Loebs, Idaho Prosecuting Attorneys Association (IPAA) testified in support of **H 241**. The best option for a victim is to allow judge discretion, based on the facts presented and the behavior observed, to add conduct to the order. There is nothing that prohibits the legislature from delegating this discretion to the court. It is not likely judges would abuse this discretion since the orders must pertain specifically to the details of the case. In light of *State v. Herren*, it is important judges are allowed to tailor the order to the specific case.

In response to questions from the committee, **Mr. Loeb**s, explained the options before the committee are to continue with the narrowly defined definition of contact; to define and list what defines contact; or to allow the judge, who is familiar with the case, to determine what conduct should be included in the order. The sidebar designated for the judge is in place by stating the restrictions must be reasonably related to the case. Additionally, the defense will have representation in the court room to challenge any restrictions in the court order and the order can be modified as necessary. The current code addresses contact and it is up to the judge to determine what contact is. The intent of this bill is to remedy the issue that occurred when the judge in *State v. Herren* determined being within a certain distance as contact even though it was not defined as contact in the no contact order. Mr. Loeb explained even though references to victims have been removed from the statute, context for the statute is found in the crimes listed, all of which involve a victim.

Rep. Nye invoked Rule 38 stating a possible conflict of interest but that he would be voting on the legislation.

Whitney Welsh, Ada County Deputy Prosecuting Attorney testified in support of **H 241**. The intent of this bill is to bring notice and clarity to this statute for both the State and the defense. Presently the statute only prohibits contact, resulting in a gray area for victims and especially defendants. A more appropriate tool would be a prohibited conduct order which provides clarity and protection for both parties.

In response to questions from the committee, **Ms. Welsh** stated she is not familiar with similar language being used by other states. Similar statutes in Idaho would be the violation of protection order statute. The Ada County no contact order includes items that are not contact and not in statute.

MOTION: **Rep. Nye** made a motion to send **H 241** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Rep. Gannon** made a substitute motion to send **H 241** to General Orders with an amendment as follows: Add to page 1, line 17 the words, "forbidding certain contact by the defendant with another person as defined by the order."

AMENDED SUBSTITUTE MOTION: **Rep. Luker** made an amended substitute motion to **HOLD H 241** in committee. Roll call vote was requested. **Motion carried by a vote of 11 AYE, 6 NAY. Voting in favor** of the motion: **Reps. Dayley, Luker, McMillan, Perry, Sims, Trujillo, Cheatham, Nate, Scott, McCrostie, and Nye. Voting in opposition** to the motion: **Reps. Malek, McDonald, Kerby, Gannon, Wintrow and Chairman Wills.**

S 1025: **Mike Brassey**, Uniform Law Commissioner presented **S 1025**. The original intent was to harmonize unincorporated business organizations, such as partnerships, limited partnerships, limited liability companies and unincorporated non profit organizations, for the purpose of easier use by practitioners. It was determined that all statutes pertaining to unincorporated business organizations should be updated with the most modern language and definitions. For this purpose, the Uniform Law Commissioners requested members of the Corporate and Business section of the Bar form a committee. However, after years of work, the committee determined all statutes pertaining to business, including assumed business names and professional organizations, should be reorganized into one section. The result of their work is **S 1025**.

David Jensen, chairman of the committee assigned to update the statutes, testified **in support of S 1025**. The committee was comprised of members of the Corporate and Business section of the Bar and representatives from the Secretary of State's Office. They reviewed existing acts Idaho had adopted and noted slight variations in each act. The committee's principle objective was to harmonize the language and definitions throughout the sections of code without changing any substantive content. Additionally, the committee included Assumed Business Names (ABN) and Professional Entities in Idaho Code despite their absence in the uniform act and did not adopt statutory trusts or limited cooperative associations despite their inclusion in the uniform act. The uniform act does not address registering out of state entities who are conducting business in the state as an entity that is not recognized by the state. There was no mechanism for these entities to register with the Secretary of State and so the committee added a mechanism to Idaho Code.

In response to a question from the committee, **Mr. Jensen** explained that although it could be possible substantive changes were made although that was not the committee's objective. No fees were increased and the fee amounts were provided by the Secretary of State. It is possible some fees were added due to new filings provided for in the act but the new fees would be consistent with fees originally in the section.

MOTION: **Rep. Nye** made a motion to send **S 1025** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Scott** requested to be recorded as voting **NAY.** **Rep. Malek** will sponsor the bill on the floor.

S 1109: **Mike Brassey** presented **S 1109**. This bill is a trailer bill to **S 1025** and repeals laws that were inadvertently not repealed in the first bill. In addition, it amends statutory references pertaining to professional licensing statutes referring to professional corporations statutes and cleans up some language.

MOTION: **Rep. Malek** made a motion to send **S 1109** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.

S 1056aa: **Robert Aldridge**, Trust and Estate Professionals of Idaho (TEPI) presented **S 1056aa**. This bill creates the ownership method of community property with right of survivorship for personal property. The Idaho Legislature has passed legislation allowing community property with right of survivorship in real property. That enactment has greatly helped estate planning for married couples who want to pass their real property to each other at first death and want to avoid having to probate the property to get that passage. All that is needed is the recording of a death certificate to automatically transfer the property to the surviving spouse. This bill extends that same concept to personal property which is essentially any property that is not real property.

Bill Vasconcellas, UBS Financial Services testified **in support of S 1056aa**. Presently when you open an investment account you can only title the account as joint tenancy with the right of survivorship or community property with no survivorship. The risk with titling the account as joint tenancy with the right of survivorship is the IRS can determine you do not get a step up in basis for the second half of the community property.

MOTION: **Rep. Trujillo** made a motion to send **S 1056aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

S 1040aa: **Sara Thomas**, State Appellate Public Defender, presented **S 1040aa**. This bill is designed to make the statute consistent and to clearly designate when a defendant can claim ineffective assistant of council. The statute is unclear and does not designate a specific time, it simply says successive petitions must be filed in a reasonable amount of time from when the defendant knows there is a issue. The courts have continuously held a reasonable amount of time in a capital case is 42 days. If the defendant makes their claim of ineffective assistance of council within the 42 days, the State Appellate Public Defender (SAPD) must simultaneously represent the defendant in the appeal and handle the defendants claim of ineffective assistance of council. The confusion in the statute and the determined reasonable amount of time results in lack of clarify for the defendant about when they should file a claim and SAPD being forced to pay out of their operating expenses for a conflict attorney to handle the case, who might not even be necessary if the appeal is won or the sentence is overturned. Potentially it could result in issues with Federal Courts and it has created inconsistent procedure in Idaho Courts. SAPD proposes the time to file a successive petition claiming ineffective assistant of council be set to run from the date of the final remittitur.

MOTION: **Rep. Trujillo** made a motion to send **S 1040aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

Rep. Nye invoked Rule 38 stating a possible conflict of interest but that he would be voting on the legislation.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:03 PM.

Representative Wills
Chair

Katie Butcher
Secretary