

MINUTES
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Friday, January 29, 2016

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:** Representative(s) Perry

GUESTS: Michael Henderson, Idaho Supreme Court; Judge Barry Wood, ISC; Holly Koole Rebholtz, IPAA.

Chairman Wills called the meeting to order at 1:31 PM.

MOTION: **Rep. Wintrow** made a motion to approve the minutes of the January 25, 2016, meeting. **Motion carried by voice vote.**

MOTION: **Rep. Wintrow** made a motion to approve the minutes of the January 27, 2016, meeting. **Motion carried by voice vote.**

RS 24140: **Michael Henderson**, Legal Counsel for the Idaho Supreme Court, presented **RS 24140**. The proposed legislation was recommended by judges presiding over problem solving courts. The belief is it would be productive and helpful to provide withheld judgments or hold out the promise of a withheld judgment, to participants in the problem solving courts as an added incentive to complete treatment. However, Idaho Code 37-27-38, pertaining to sentencing criteria for cases involving controlled substances, often prevents judges from granting withheld judgments. There are three conditions in this section for a withheld judgement in a controlled substance case, and they are stringent and often unattainable. More than 90% of controlled substance offences are charged as manufacturing, possession with the intent to deliver or simple possession. Under the conditions, a misdemeanor possession of marijuana or a DWP as a result of a unpaid fine for a infraction or for other reasons, would disqualify the defendant from eligibility to receive a withheld judgment. In regard to the defendant successfully cooperating with law enforcement, many offenders are not given the opportunity to do so. This proposed legislation would allow judges to offer a withheld judgment at their discretion.

In response to a question from the committee, **Mr. Henderson** explained it will be possible to identify the offender even if a withheld judgment is granted. Using the Odyssey portal it would still be possible to search an individuals name and see the charge, even if it resulted in a withheld judgment.

MOTION: **Rep. Dayley** made a motion to introduce **RS 24140**. **Motion carried by voice vote.**

RS 24146:

Michael Henderson, Legal Counsel for the Idaho Supreme Court, presented **RS 24146**. This proposed legislation is recommend by the Supreme Court's guardianship and conservatorship committee. The purpose is to improve the statute regarding minor's compromise. This is a situation where a minor brings an action for the recovery of damages, a settlement offer is made and must be accepted by an adult on behalf of the minor. In the case a parent is unable to do so, the current language does not allow for the decision to be made by a conservator or guardian. Additionally, the Courts may need the prerogative to pass over the adult who by statute is first in line, and give the decision making authority to a different authority figure in the best interest of the child. Guidelines are established to determine if the compromise is in the best interest for the child.

In response to questions from the committee, **Mr. Henderson** stated he believes the situations where a parent would be passed over by the courts would be very rare. This legislation does include requirements that when the courts direct the funds to be paid they are subject to the provisions of an appropriate protective order. The use of District Court is intended to refer to the Court as a whole and does not exclude the Magistrate Division. However, in most cases the dollar amount would be significant enough the case would be heard before the District Court rather than the Magistrate Division. The Court has the discretion to determine who has access to the records and there is a provision that allows for records to be sealed. This legislation does not address sealing the files of a minor's compromise, and a minor's compromise may not fall under the provisions for sealing court records in Chapter 32. Per a request, the Rule 32 Committee and the Courts could consider adding language pertaining to sealing the records of a minor's compromise hearing.

MOTION:

Rep. Nye made a motion to introduce **RS 24146**. **Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 2:04 PM.

Representative Wills
Chair

Katie Butcher
Secretary