

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Monday, February 15, 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:** None
- GUESTS:** Carlie Foster, Lobby Idaho; Donna Looze, AAUW; Judge Barry Wood, ISC; Holly Koole Rebholtz, IPAA; Kathy Griesmyer, ACLU Idaho; Trent Wright, Idaho Bankers.
- Chairman Wills** called the meeting to order at 1:30 PM.
- H 461:** **Judge Barry Wood** presented **H 461**. The issue has come about following the economic recession of 2009 and 2010 when \$4.2 million was taken from the Court's General Fund appropriation. As a result, many expenses and positions were transferred over time to the Drug Court Fund. This shift of personnel and operation expenses was supposed to be offset with the emergency surcharge passed by the legislature in 2010. The projected revenues did not materialize. This piece of legislation is an integral part of the solution and seeks to redirect 80% of the surcharge monies currently being deposited into the Drug Court Fund, to the General Fund. The Joint Appropriations and Finance Committee will consider legislation proposed as a General Fund appropriation which would put the other court services part of the Drug Court Fund back into the General Fund. This bill would serve as a partial off-set of the proposed General Fund appropriation.
- MOTION:** **Rep. Nye** made a motion to send **H 461** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Dayley** will sponsor the bill on the floor.
- RS 24430:** **Judge Barry Wood** presented **RS 24430**. This proposed legislation is recommended 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. This legislation provides the priority order for who has the decision making authority, as well as clear stipulations for passing over an authority figure with a higher priority. The Courts can only pass over the parents if they find the parent could not act reasonably and in the best interest of the child. Guidelines are established to determine if the compromise is in the best interest for the child.
- MOTION:** **Rep. Dayley** made a motion to introduce **RS 24430**. **Motion carried by voice vote.**

RS 24259C1: **Rep. Troy** presented **RS 24259C1**. This legislation is designed to remove some of the barriers for those who are under age and have over consumed alcohol, to seek emergency medical assistance. There have been instances where minors have died because medical assistance was not sought due to fear of being arrested. This legislation provides limited use immunity for the individual in need of medical assistance or the individual who sought emergency medical assistance for the individual in need. This immunity depends on the individual who sought the help or the person in need of help remaining on the scene until medical assistance or law enforcement arrive. The Idaho Prosecuting Attorneys Association and law enforcement have requested language be added stating the immunity hinges on the cooperation of the individual.

Nate Fisher, Student Association, University of Idaho, clarified the requested language would be added as new subsection C and would state, "Cooperates with emergency medical assistance and law enforcement personnel at the scene."

MOTION: **Rep. Malek** made a motion to introduce **RS 24259C1**, with the amended language in new subsection C, "Cooperates with emergency medical assistance and law enforcement personnel at the scene." **Motion carried by voice vote.**

RS 24263: **Rep. Malek** presented **RS 24263**. This legislation seeks to amend the definition of "trustee". In 2015, **S 1135** made changes, but litigation in the interim confused the definition of "owner" or "repeated owner" when there is a conflict between the rightful claimant in a mechanics lien and the sale, when there is the sale of a deed. This minor change eliminates the issue subject to litigation.

MOTION: **Rep. Gannon** made a motion to introduce **RS 24263**. **Motion carried by voice vote.**

H 439: **Rep. Perry** presented **H 439**. This bill simply clarifies the role of the State Appellate Public Defender's Office (SAPD). Historically the office has always dealt with felony appeals. There was some question as to whether SAPD had the right to handle all appeals, or just certain appeals. The Supreme Court ruled the SAPD would handle all felony appeals. SAPD will handle interlocutory appeals from the District Court where the interlocutory appeal was filed as of the date the SAPD began. This bill clarifies regardless of denial of a post conviction relief or denial of a habeas corpus proceeding, it doesn't matter whether it was denied or granted it only matters that an appeal is in process.

MOTION: **Rep. Nate** made a motion to send **H 439** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

RS 24508: **Rep. Perry** presented **RS 24508**. This legislation is a product of the Public Defense Reform Interim Committee. There have been no significant changes to Idaho's indigent defense delivery system and standards since 1967. The focus of the Public Defense Reform Interim Committee is to deliver a constitutionally sufficient delivery system. This legislation expands the scope of the public defense system and requires the Public Defense Commission to promulgate rules which will create the standards by which everyone should abide. It implements a grant mechanism based on those standards, as well as continues statewide trainings, and requires review for compliance issues.

In response to a question from the committee about penalties for avoiding the economic disincentives or incentives, **Rep. Luker** explained there are broad, guiding principles before you get to the standards.

MOTION: **Rep. Trujillo** made a motion to introduce **RS 24508**. **Motion carried by voice vote.**

RS 24517: **Rep. Chaney** presented **RS 24517**. This legislation addresses an activity known as sexting. Current law considers taking a picture of oneself and sending it, as a minor, to be production and distribution of child pornography. This act falls under a felony statute, and there is the possibility the minor would be required to file as a sex offender. This legislation in no way condones the practice of sexting, but kids who make poor decisions with their cell phones do not need to be labeled as sex offenders, especially when it is self made and self distributed content. This is a life or death situation for kids who can be manipulated with the content after it has been sent. The current law considers the sender and the manipulator equally.

MOTION: **Rep. Kerby** made a motion to introduce **RS 24517**.

In response to a question from the committee, **Rep. Chaney** explained this legislation does include penalties for forwarding the content. This legislation considers it a misdemeanor for the person sending it and the person receiving it. It becomes a felony when the content is forwarded to additional parties. This legislation also contains a social media provision where an individual who places the content on social media gets one strike as a misdemeanor. Any additional posting is considered a felony due to the nature of social media and its widespread distribution.

VOTE ON MOTION: **Motion carried by voice vote.**

RS 24445: **Rep. Dayley** presented **RS 24445**. This legislation is the rejection of the rule change in IDAPA 50.01.01, the Idaho Commission of Pardons and Parole, Rules of the Commission of Pardons and Parole, Section 250, Subsection 05 which had sought to strike language pertaining to Institutional Parole. The committee rejected this portion of the rule change per the Commission's request.

MOTION: **Rep. Trujillo** made a motion to introduce **RS 24445**. **Motion carried by voice vote.**

RS 24512 **Rep. Dayley** presented **RS 24512**. This legislation is the rejection of the entire rule making docket presented by Idaho State Police, IDAPA 11.05.01, Docket Number 11-0501-1401, Rules Governing Alcohol Beverage Control.

MOTION: **Rep. Gannon** made a motion to introduce **RS 24512**. **Motion carried by voice vote.**

RS 24183C1: **Rep. Nate** presented **RS 24183C1**. Under current law a public official may be offered and may accept a gift of any magnitude as long as there is no direct correlation between the gift and an official action. Proving a connection between a gift and an official action is nearly impossible, and the current law requires no accountability. This legislation would make it illegal for any government official or public servant to accept a gift from anyone conducting business or desiring to conduct business with the government. It would prohibit state legislators from accepting gifts over \$50, even if the gift is not directly connected to a specific vote or action. The bill would not impact de minimis gifts of \$50 or less, campaign donations, gifts received because of kinship, existing friendships or business connections. This legislation would protect both the giver and the recipient, and will improve Idaho Citizen's trust in public servants.

In response to questions from the committee, **Rep. Nate** clarified after a legislator's service with the legislature is complete, the legislator would not be prohibited from receiving gifts from anyone conducting business or desiring to conduct business with the government. Striking "officials concerned with government contracts and pecuniary transactions" and replacing it with "public servants" is necessary to change the title of that section and make it consistent with the rest of the section. This should clarify who is considered to be a public servant and is required to abide by this law. The intent of this legislation would be to apply this rule to all public servants, not just legislators. It is not known who would investigate any claims or how the process would be triggered. This law would likely be enforced by either the office of the Secretary of State or the Attorney General. The term "public servant" is already used in this section; however, it is not clear whether public servant has a definition in Idaho Code.

MOTION: **Rep. Malek** made a motion to introduce **RS 24183C1**.

In response to questions from the committee, **Rep. Nate** explained due to the elimination of section d, lobbying has been added to the new section and falls under the \$50 limit. Educational trips and tours would be limited to \$50 a legislator. If the cost of an education trip or tour went over \$50 it could be recorded as a campaign contribution or if the legislator were to record the trip as the campaign expense. Trips presented by a 501(c)(3), like the North Idaho Tour, would be permissible if the expenses were delineated as a campaign contribution or if the legislator were to record the trip as the campaign expense. Trips, like the North Idaho Tour and South Idaho Tour, result in giving a disproportionate voice to that area of the state.

SUBSTITUTE MOTION: **Rep. Nye** made a motion to return **RS 24183C1** to the sponsor.

VOTE ON SUBSTITUTE MOTION: Roll call vote was requested. **Motion failed by a vote of 7 AYE, 10 NAY. Voting in favor** of the motion: **Reps. Dayley, McMillan, Perry, Trujillo, Kerby, McCrostie, Nye. Voting in opposition** to the motion: **Reps. Luker, Sims, Malek, McDonald, Cheatham, Nate, Scott, Gannon, Wintrow, Chairman Wills.**

VOTE ON ORIGINAL MOTION: **Motion carried by voice vote. Reps. Trujillo and McCrostie** requested to be recorded as voting **NAY**.

RS 24524: **Rep. Wintrow** presented **RS 24524**. The purpose of this legislation is to create and codify systems used by law enforcement, health care facilities and the Idaho State Police Forensic Lab in the processing of a sexual assault evidence kits. It creates a system for tracking and reporting, and requires an annual audit with the findings reported to the legislature on an annual basis. This legislation would provide a consistent process for all involved. Idaho has received federal funding they have used to address the backlog of kits and this legislation would provide a mechanism to prevent future backlogs.

In response to questions from the committee, **Rep. Wintrow** said the fiscal note is based off of the personnel required to meet the 30 day time line. This includes two forensic scientists and a person to track the kits.

MOTION: **Rep. McCrostie** made a motion to introduce **RS 24524**.

In response to questions from the committee, **Rep. Wintrow** explained there is currently no tracking mechanism in place and the proposal is to place a serial number on each kit. Idaho State Police Forensic Laboratory would be given statutory authority to track the kits and create the system to track them. The kit does expire. The chain of evidence is determined by current law enforcement procedures. Once the crime lab has processed the kit, it is returned to the law enforcement officer for the remainder of the investigation. It is unclear whether the thirty day time line could be used to undermine the prosecution if the time frame is not met.

**VOTE ON
MOTION:**

Motion carried by voice vote.

RS 24481:

Michael Henderson, Legal Counsel, ISC, presented **RS 24481**. The courts are required to include a distance restriction with every no contact order they issue. Because contact is not defined in statute it is not clear whether a violation of the distance restriction is a violation of the no contact order. The purpose of this legislation is to clarify whether a violation of a distance restriction constitutes "contact". It also seeks to consider engaging in violent or threatening acts against the person listed or their family, contact or communication in person, in writing, electronically, or through a third person, as violations of a no contact order. The court may issue a distance restriction not to exceed 1,500 feet of the person or places they frequent.

In response to questions from the committee, **Mr. Henderson** explained the maximum distance of 1,500 feet is used here because the same amount is used in the civil protection order statute. The person would have had to knowingly violate the distance in order to be charged with a violation. The Supreme Court has taken on this issue due to judges expressing concern about the current distance requirement not being enforceable because violation of a distance restriction is not defined as contact.

In response to a question from the committee, **Mr. Henderson** explained the actions listed in this legislation are intended to cover what are clear, known violations of no contact. Violations of distance restrictions only become a factor in no contact orders once State v. Herren was decided.

MOTION:

Rep. Malek made a motion to return **RS 24481** to the sponsor. **Motion carried by voice vote.**

Chairman Wills turned the gavel over to **Vice Chairman Dayley**.

RS 24455C1:

Rep. Wills presented **RS 24455C1**. The purpose of this legislation is to provide clear rules and guidelines for out of state bail agents making arrests in Idaho as well as to make it clear bail enforcement agents are not law enforcement officers. This legislation outlines the requirements to become a bail enforcement agent, including the requirement for an Idaho Enhanced Concealed Carry License in order to carry concealed. Guidelines for badges and outer garments are also established.

MOTION:

Rep. Trujillo made a motion to introduce **RS 24455C1**.

In response to questions from the committee, **Rep. Wills**, explained the current definition of a bail enforcement agent in Idaho Code does not provide a clear definition or requirement for becoming and identifying oneself as a bail enforcement agent.

**VOTE ON
MOTION:**

Motion carried by voice vote.

Vice Chairman Dayley turned the gavel over to **Chairman Wills**.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:10 PM.

Representative Wills
Chair

Katie Butcher
Secretary