

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 17, 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: Chris Rich, Ada County Clerk; Lani Wright, Ada County Clerk; Giovanna McLaughlin, Ada County Clerk; Stephen Adams, Ada County Clerk; Barry Wood, ISC; Andrea Patterson, ISC; Kerry Hong, ISC; Michael Mehall, Self; Daniel Chadwick, IAC; Stacy Pittman, Self; Mason Shipley, Self; Dan Blocksom, IAC; Elisha Figueroa, ODP.

Vice Chairman Dayley called the meeting to order at 1:33 PM.

MOTION: **Rep. Wintrow** made a motion to approve the minutes of the February 9, 2016, meeting. **Motion carried by voice vote.**

RS 24259C2: **Nate Fisher**, Student Association, University of Idaho, presented **RS 24259C2**. This legislation now includes the requested language in subsection C and states, "Cooperates with emergency medical assistance and law enforcement personnel at the scene." The intent of this legislation is to remove repercussions associated with underage drinking when there is a need for emergency medical services.

In response to a question from the committee, **Mr. Fisher** explained in a situation where someone has overimbibed and there is fear of alcohol poisoning it is important for someone to stay on scene who can cooperate and provide information to law enforcement and medical personnel about what and how much was ingested. Cooperation is not fully defined. Some of the states who have adopted legislation for immunity in these circumstances have also added the cooperation language and have not had any issues arise after doing so. The immunity provided by this legislation does not cover anything outside of a minor in consumption of alcohol or minor in possession of alcohol. Minors would not have immunity from any other illegal activities they were engaged in.

MOTION: **Rep. Perry** made a motion to introduce **RS 24259C2**. **Motion carried by voice vote.**

H 492: **Rep. Perry** presented **H 492** which creates a new section of code to reflect a monetary move of staff attorneys, often called law clerks, from the responsibility of the counties to the supreme court. These law clerks work for and are accountable to the judges, not to the counties, even though the counties pay their wages. Counties have been reporting most counties have reached the maximum amount of their Justice Levy Fund and have made requests to have the levy amount raised. The Public Defense Interim Committee discussed this issue and had reason to believe the plight of the Justice Fund Levy was directly related to the delivery of public defense, because the majority of public defense funding comes from the Justice Levy Fund. This legislation is a result of their discussion, however the Public Defense Interim Committee does not have the authority to weigh in on this issue and this legislation is not under the official recommendation of the committee. This

change is sanctioned by the counties and the courts and will result in approximately \$3.9 million becoming available again in county budgets.

In response to questions from the committee, **Daniel Chadwick**, Executive Director, IAC, explained the Justice Fund Levy is used for the courts and all law enforcement functions of a county. Not all counties have a Justice Fund Levy, some rely solely on the current expense fund. The Justice Fund Levy was created as an attempt to give the counties flexibility. Nineteen counties have met their maximum amount in their Justice Fund Levy and need monies freed up to continue to cover necessary expenses for their law enforcement functions, including jails, law enforcement, sheriffs, and public defenders. The \$3.9 million made available by transferring law clerks to the supreme court, would not be proportionally dispersed among the counties. Thus the monies made available could not be used to cover the amount requested for public defender services. Some law clerks salaries are capped in their county salary system, by placing these employees under the care of the courts they will receive more stability and a better defined salary.

In response to a question from the committee, **Rep. Perry** explained with the passage of this bill it will get a placeholder in JFAC, and they will determine how the money will be appropriated.

In response to a question from the committee, **Mr. Chadwick** explained similar to the state, the counties have received a considerable reduction in the amount of \$18 million to \$22 million. However, the counties have a separate levy for indigent services and it is not impacted by what this legislation does. The amount saved by the counties is difficult to determine due to the fluctuation of the number of claims they pay in a year, which is twice the number of claims the state pays.

In response to a question from the committee, **Rep. Perry** explained there is approximately \$20,000 pay difference across the state for law clerks.

Steven Adams, Ada County Clerk, testified **in opposition** to **H 492**. As a law clerk he is opposed to this transfer and would prefer to remain employed by the county. He believes Ada County can provide better benefits, and he has less of a chance of being furloughed as a county employee. He is concerned about how his relationship with county employees, the use of county supplies and technical support will change by becoming an employee of the state.

In the fourth judicial district there is a law clerk who is not attached to a district judge and serves the senior judges. This bill implies there is one staff attorney per district judge, so this position may be eliminated because it is not attached to a district judge. Language was suggested to clarify counties would not be prohibited from hiring additional staff attorneys as needed. As well as language stating staff attorneys would not be required to be licensed in Idaho, considering many staff attorneys are licensed in other states, or be licensed at all, since some staff attorneys have graduated from law school but have not yet received confirmation they have passed the bar. Language was requested specifically stating the salary of district staff attorneys would not be less than the salary of the staff attorneys serving the Idaho Court of Appeals and the Idaho Supreme Court. This is important because salaries for staff attorneys vary across the state and staff attorneys at various counties often have a higher case load than staff attorneys at the appellate level who make more money. He is concerned about the transfer of his accrued vacation time and sick time as well as his PERSI vesting and benefits.

There is the possibility this bill and Idaho Supreme Court policies could limit staff attorneys to being term staff attorneys, he is opposed to limiting a judge's ability to hire and keep a staff attorney as long as they wish. This statute would be better suited in a different section of code.

In response to questions from the committee, **Mr. Adams** explained the concern over term staff attorneys stems from current Supreme Court practices of hiring term staff attorneys. He is not familiar with how a district judge requests their supplies, only that it is different from his request through the Trial Court Administrator. On average, Ada County will have three or four staff attorneys waiting on bar exam results.

Daniel Chadwick, Executive Director, IAC, testified in support of **H 492** which resolves a long standing issue between judges and county commissioners by placing these positions in the hands of the court.

In response to a question from the committee, **Andrea Patterson**, Human Resource Director, Idaho Courts, explained the Supreme Court would work with each staff attorney to ensure there is no lapse between when their county health insurance ends and their state health insurance policy begins. If the county is a member of PERSI, retirement benefits would be seamless. When an individual separates from county employment typically any accrued vacation is paid out. The legislature has set in place certain vacation accruals for state employees and the Idaho Supreme Court has replicated that practice for employees of the judicial branch. The courts must look at their internal equity before promising to match accrued time but would seek to be as flexible and fare with the transfer of accrual time as they are allowed to be. It is not the supreme court's policy to allow an employee to buy vacation time but they would work with each employee to determine how to best meet their vacation time needs.

In response to questions from the committee, **Judge Barry Wood** explained the appropriation for this transfer was not included in the court's budget submitted to the Governor's Office on November 1, 2015. This transfer has been discussed for the last fifteen years and the courts have always contended if the legislature chose to transfer the staff attorneys, the courts would gladly accept the employees and administer the program. Most staff attorneys are one year clerks, some are two year clerks and a very small number are long term law clerks. The bill's definition of staff attorney would not be in conflict with the Supreme Court's definition of law clerks. The statute does not mention a requirement to be licensed in order to be a staff attorney, the common understanding is the person applying has graduated from a law school and is either licensed to practice law or is pursuing the license to practice.

In response to a question from the committee, **Ms. Patterson**, explained historically when the legislature has written laws regarding state employee classification, compensation, treatment for vacation or other aspects, there has always been a caveat stating the supreme court may establish its own system of classification and compensation as a separate branch of government. A key difference in the judicial branch under the supreme court, is all employees are at will. The law clerks who will be transferred as a result of passage of this bill, currently serve at the will of their supervising district judge and this would not change once they are transferred. The Idaho Supreme Court has a compensation system for appellate law clerks and those figures are made public. Nationally, appellate law clerks make more than trial court law clerks, so she would not support language requiring all law clerks to receive the same compensation. Within the same judicial district, there can be a variation in compensation by as much as \$19,000. This transfer would allow all law clerks in their first year of clerking to receive equal pay. An Ada County law clerk salary is \$54,825, the Idaho Supreme Court beginning appellate salary is \$54,450, the Supreme Court would not ask someone transferring from any county where they receive a higher salary, to take a pay cut.

MOTION: **Rep. Nye** made a motion to send **H 492** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

H 493: **Rep. Perry** presented **H 493** which seeks to redistribute a percentage of fines from State Motor Vehicle Laws and DUIs and develop a dedicated funding stream for the Drug Court, Mental Health Court, Family Services Court Fund. Presently 22.5% of these fines are deposited into the Public School Income Fund while all other funds are distributed to the courts and transportation systems. Reallocate 11.25% of the 22.5% going to the Public School Income Fund to the Drug Court, Mental Health Court, Family Services Court Fund. This allocation has not been revised since 1971. Shifts in policy, practice and priority make it clear a better funding stream is needed for Speciality Courts. This new funding stream would allow for specialty courts to be established in counties desiring to have Speciality Courts.

In response to questions from the committee, **Judge Wood** explained the difference between **H 461** which was designed to fix the structural funding issue in the Drug Court Fund because of the "other court services" line in the fund and **H 493** which is intended to put more money into the problem solving courts. The funding issue **H 461** is designed to fix, is due to expenses required to be paid out of the Drug Court Fund exceeding the income to the fund. To fix the issue, **H 461** will move any non-drug court related monies out of the "other court services" line, back to the general fund where it was prior to being moved in 2009. Then **H 461** will redirect the surcharge money to offset that change. That effect to the General Fund is projected to be \$854,000. This method is preferred by JFAC and it is believed to be a more long term solution.

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

In response to a question from the committee, **Rep. Perry** explained although she would prefer to reallocate the full 22.5%, the reason for reallocating only 11.25% is to create the dedicated funding stream, allow it to be in place and begin working. Once this is completed the problem solving courts can be reviewed to determine if the other 11.25%, or a portion of it, is needed to continue the work of the problem solving courts.

MOTION: **Rep. Malek** made a motion to send **H 493** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. McCrostie, Gannon and Luker** requested to be recorded as voting **NAY.** **Rep. Perry** will sponsor the bill on the floor.

H 495: **Rep. Gannon** presented **H 495** which doesn't change present law or present penalty. Minor in Consumption would remain a misdemeanor and a violator still faces a fine, appearing before the judge and the present penalties as they would apply. What this bill does is provide an incentive to stay out of trouble and if they do so for five years with no drug or alcohol related convictions the violator can have the guilty plea vacated and the matter sealed.

MOTION: **Rep. McDonald** made a motion to send **H 495** to the floor with a **DO PASS** recommendation.

Mason Shipley, testified in support of **H 495**. He appreciates the opportunity to have a conviction sealed and believes it will assist young people whose futures may be affected by poor decisions made at a young age.

VOTE ON MOTION: **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

H 491:

Rep. Kerby presented **H 491** which prohibits the use of non-consensual common law liens, and implements a penalty for anyone attempting to do so. Non-consensual common law liens are different from a lien which can be placed on the home because an individual who owes money, because they do not require notice to be given to the home owner. The individual placing a non-consensual common law lien on a residence is not required to have or list a reason for doing so. This legislation provides instruction for reversing a non-consensual common law lien if it has been placed on an individual's home. An amendment has been requested to clarify the filing fee for a petition to release shall be \$35, and clarifies the language regarding the releasing of such liens.

In response to questions from the committee, **Rep. Luker** explained the \$35 filing fee is the current filing fee to remove the lien. Filing to remove the lien requires a court order and State time to do so.

Chris Rich, Ada County Clerk, testified **in support** of **H 491**. He explained the ramifications of the current language which states "an order striking and releasing the claim". In Ada County and thirty four other counties, everything is processed electronically. At the end of each day, three title plants will extract from the county's portal all land record transaction documents imaged that day. An index is populated and the images are resold to other title companies. This is done so when a property search is conducted it is easy to determine the history of the property and if there are any liens against it. An avenue often suggested to remove a non-consensual common law lien has been to expunge (or strike) the lien from the record. However, all this accomplishes is removing the image from Ada County's database and does not update the title companies who also have copies. A better solution is to file a release of lien which allows these title companies to reconcile the lien and it's removal from the property. This is the solution proposed in the amendment.

MOTION:

Rep. Luker made a motion to send **H 491** to General Orders with amendments attached.

Stacy Pittman, testified **in support** of **H 491**. She provided information about her experience when a non-consensual common law lien was filed against each attorney in the firm and against the firm, when a defendant did not like the outcome of a judgment. Ms. Pittman's office was contacted by an individual in the Secretary of State's office and alerted to the possibility of a frivolous lien. Removing the lien was an extensive process. She was required to file a civil court case and the filing fee was \$220. To file the lien cost \$3 but to acquire a certified copy was \$5. Statute provided for a \$5,000 fine per violation. It took approximately seven months to go to court, the defendant did not appear and the judge removed the liens by court order. The judge awarded \$5,000 per violation which will never be collected.

Michael Mehall, testified on **H 491**. He provided information about his experience as a victim of a frivolous non-consensual common law lien. When he sought to refinance his home, it was revealed three liens amounting to \$3.5 million had been placed against his home. The liens were filed by a trust as an attempt by the individual to shield herself against liability. Previously Mr. Mehall's firm had attempted to collect on a debt the woman owed. Mr. Mehall retained a lawyer since the liens were valid under common law. The individual sought a pay off in return for dropping the suit. The Sheriff's office began investigating, and at that same time another group informed him they had retained the right to the \$3.5 million lien but if he placed money in an escrow account the liens would be dropped. The individual was eventually charged with a felony and arrested, she later plead guilty to a misdemeanor. Mr. Mehall was able to recover his attorney's fees and lost funds through restitution. Mr. Mehall must still sue in civil court in order to have the liens removed.

**VOTE ON
MOTION:**

Motion carried by voice vote. Rep. Kerby will sponsor the bill on the floor.

Chairman Wills thanked **Chantel Wills** for her service as a page.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:50 PM.

Representative Wills
Chair

Katie Butcher
Secretary