

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 25, 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: The sign in sheet will be retained in the committee secretary's office until the end of the session. Following the end of the session, the sign in sheet will be filed with the minutes in the Legislative Services Library.

Chairman Wills called the meeting to order at 1:32 PM.

Chairman Wills introduced the new House Page, **Matthew Hacker**, a Idaho Virtual Academy senior from Potlatch.

MOTION: **Rep. Dayley** made a motion to **HOLD H 502** in committee. **Motion carried by voice vote.**

H 504: **Rep. Perry** presented **H 504**, which is the result of the Public Defense Reform Interim Committee. The committee's intent was to ensure constitutional defense in Idaho, ensure quality of service by setting standards and to maximize existing resources. The primary issues considered were administration, funding, oversight and enforcement.

Senator Lakey testified **in support of H 504**. Crafting of this bill began three years ago and has had input from judges, county commissioners, attorneys, public defenders and the courts. This legislation is important because it establishes the principles for indigent public defense in Idaho. These are the foundational principles the committee will move forward on during negotiated rule making to develop the more detailed and specific standards for provision of indigent services. This legislation is very valuable because it keeps implementation at the county level while simultaneously providing the methodology for the counties to fund the additional cost.

Darrell Bolz, Chair, State Public Defense Commission, testified **in support of H 504**. The Commission unanimously supports the legislation, but has the following concerns. Will the 4.5 FTE in the bill be enough to complete the requirements; whether the time lines are achievable, specifically the time lines for the grant awards; and whether the salary for the executive director is too low. This is a very positive step for Idaho and the Commission is dedicated to making it a success. (See Attachment 1)

Elisa Massoth, Vice President, Idaho Association of Criminal Defense Lawyers (IACDL), testified **in support of H 504**. This legislation is a step in the right direction for public defense reform in Idaho. IACDL supports adherence to the ABA standards, parity of funding with prosecution resources for the defense, and training for attorneys protecting the constitutional rights of the indigent.

Kimberly Simmons, IACDL Executive Board of Directors, testified in support of **H 504**. Most public defenders carry case loads double the American Bar Association's recommended 150 felony cases per year. It is imperative public defenders have the same resources as prosecutors, such as investigators, expert witnesses and other essentials for a complete and effective defense. Public defense reform and oversight should include a commission to set standards under which public defender offices should be created and maintained. There should be provision for sufficient time and space for attorneys to meet privately and confidentially with their clients, and a controlled work load in order to provide quality representation. Counsel should be matched with the complexity of a case based on their training and experience. This bill addresses these issues and is invaluable for public defense reform. It is a good step toward creating a balanced system.

In response to a question from the committee, **Ms. Simmons** explained this legislation would bring the case load for Idaho's public defenders closer to the recommended ABA case load of 150. Without this legislation they are at risk of the case load continuing to rise.

Robert White testified in support of **H 504**. He provided information about his experience with a public defender. In 2009 his daughter was raped and he reported the crime to the police and to health and welfare. No steps were taken, he chose to make a citizens arrest which was within his rights according to the laws of Idaho. Instead of making the arrest, he was arrested and charged with second degree kidnapping. He was assigned a public defender and he had a defense. However, he was told to plead guilty because of his race. He felt he had no help, and he plead guilty. His family urged him to change his plea and he contacted his public defender to make him aware Mr. White wished to withdraw his guilty plea. Upon doing so, his public defender withdrew from the case. He was assigned a conflict attorney who determined Mr. White was within his rights. A hearing was held so Mr. White could withdraw his guilty plea. His public defender admitted during this hearing he had encouraged Mr. White to plead guilty because of his race and he was unfamiliar with the statutes surround a citizens arrest. He believes this bill will help and hopes it will prevent more situations like his.

Dan Blocksom, Policy Analyst, Idaho Association of Counties (IAC), testified on **H 504**. The Counties neither support nor oppose the bill. IAC membership is split and they have some concerns centered around the standards. The Counties desire to provide constitutionally adequate defense but they are worried about the cost associated with the new standards and whether the county tax payers will be expected to carry the burden. They are concerned that even with the grants, there may not be enough funds for implementation. The Counties are committed to doing their best to implement whatever standards come forward. They will fully participate in the rule making and remain at the table to discuss future legislation that may become necessary.

Kathy Griesmyer, Public Policy Strategist, ACLU, testified in support of **H 504**. The ACLU support rests on the standards created by the Public Defense Commission, the established grant and the enforcement mechanism. The ACLU does have concern regarding the funding levels being enough to achieve compliance. This is an instrumental first step and they look forward to implementation and working through the rule making process.

Robin Crisler, ACLU, testified in support of **H 504**. He provided information about his experience with a public defender. Instead of going to court, he was pressured to take a plea bargain that was not in his best interest for the purpose of relieving the public defender's office of the burden of defending him. Without proper legal defense, many across the state are faced with the same situation.

Rep. Perry stated the sixth amendment has been overlooked in its importance.

In response to a question from the committee, **Rep. Perry** explained the \$4.2 million is set aside for grant applications. Grant applications are a means for the county to determine what standards they are not meeting. The county will review its public defense and request a grant for the areas they need to improve in order to meet the standards. The grant can be as much as 15% of the local share or \$25,000, whichever is greater. Money has also been set aside for extenuating circumstances and anomalies. The Counties are encouraged to pool their resources. If the county is not able to meet the parameters for case load they would use a grant application to request additional attorneys.

MOTION:

Rep. Trujillo made a motion to send **H 504** to the floor with a **DO PASS** recommendation.

Rep. Luker stated his support of **H 504**. The Counties case load is driven by the prosecution, this is one of the reasons it is imperative the Counties maintain control and are required to set their budget based off of their case load. One of the first considerations the State Public Defense Commission will consider is work load verses case load, and the grants are designed to address this concern. The grant process is flexible so each county may request support based on their individual deficiencies. Consolidating counties is an exciting aspect and is proven to provide more consistency. The State will ask for compliance and if a county does not comply with the standards despite multiple attempts by the State to do so, the cost will revert back to the counties.

In response to a question from the committee, **Rep. Perry** explained in regard to concern over additional costs being bourn by the counties, the cost for each county is based on how far out of compliance they are with the standards. The standards will roll out slowly allowing the counties time to comply and adjust. The state has already appropriated funds to help with the known immediate cost increase for the counties. The commission will return in three years and review which counties have merged and how the funds are being used. The State Public Defense Commission has committed to negotiated rule making throughout the entire process and will not adopt temporary rules.

In response to a question from the committee, **Rep. Perry** stated the national average for plea bargains is 95% of cases, and this is the same in Canyon County. It is important to determine and understand the reason for such a high percentage. The percentage is concerning especially because plea bargains never require proof of guilt and are not a declaration of innocence.

VOTE ON MOTION:

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

H 508:

Roy Eiguren, presented **H 508**. This bill provides the basic requirements to regulate bounty hunters in Idaho. The only requirement in Idaho Code to be a bail agent, is to have an approved affidavit from the Supreme Court authorizing them to arrest. It is not the intent of this legislation to require licensing for bail agents. A incident in Bonneville County prompted this legislation. In this incident the bounty hunters represented themselves as law enforcement officers, wore badges but did not show any form of identification that was visible to law enforcement officers, and lacked training in the basic use of firearms. This bill establishes a definition for the term "Bail Enforcement Agent" and establishes requirements to be an agent.

In response to a question from the committee, **Mr. Eiguren** explained the rationale behind requiring the agent to obtain a Idaho enhanced concealed carry licence, regardless of their desire to carry concealed, is because it requires a background check and is preferred to requiring the agents be licensed. There are more than 300 agents licensed by the Idaho Department of Insurance. Agents from out of state can operate in Idaho and they would need to meet Idaho's requirements in order to operate in state.

John Robles, owner of Idaho Fugitive Investigations LLC, testified **in opposition** to **H 508**. Guidelines are long overdue, but this bill is premature and much more is needed to reform the statute. The agents he works with have received extensive training, and the incident prompting this bill are rare. He opposes any controls that undermine the professionalism of bail enforcement agents. He believes the bill should include standardized testing, a universally recognized badge, background checks, training, biyearly certification, credentials and fees.

In response to a question from the committee, **Mr. Robles** explained most of his agents have a basic Idaho ccw, not the enhanced ccw. Although there has only been one incident, it was clear the agents who were a part of the incident needed more training and this may be prevented in the future if agents were required to be trained.

Jarin Liscinski, Beneficial Bail Bonds testified **in opposition** to **H 508**. He expressed concerns about the safety of bail enforcement agents and the requirement to obtain an enhanced concealed carry.

In response to a question from the committee, **Mr. Liscinski** explained he is required to carry and obtain a licence from the Idaho Department of Insurance, and in order to obtain the license there is an application process and a background check which includes fingerprinting. The license requires continuing education and ultimately they are licensed insurance agents under the lines of surety.

Jesse Taylor, American Bail Coalition (ABC) testified **in support** of **H 508**. The American Bail Coalition is a group of the surety companies, and they support this bill. This bill creates a mechanism to bring regulation to the bail recovery agent, not the bail bondsman.

Steve Ryan, Triton Management Corporation and Northwest Surety Investigations, testified **in support** of **H 508**. He is a NRA Instructor and a training coordinator for Triton Management Corporation, he believes Idaho bail enforcement agents need to be held to a higher standard. Approximately 10% of arrests by a bail recovery agent involve the use of force. When force is required, the agent is held to the same standard as Idaho law enforcement.

Roy Eiguren, explained there is no duplicity in the requirements in this bill and the requirement to be a licensed bail agent licensed by the Idaho Department of Insurance as an insurance agent to write bail.

In response to a question from the committee, **Mr. Eiguren** explained the intent of this legislation is not to require a licensed bail agent appointed to handle a surrender to meet this new criteria. The new criteria applies to a bail enforcement agent empowered to arrest an individual.

MOTION:

Rep. McDonald made a motion to send **H 508** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Scott** requested to be recorded as voting **NAY.** **Chairman Wills** will sponsor the bill on the floor.

H 528:

Rep. Wintrow presented **H 528**. This bill creates a minimum standard for rape kit testing and provides a reasonable time for that process. It establishes a tracking system to improve efficiency and transparency. It requires an annual report to the Idaho Legislature to provide a continuous view of how the system is working. Without a statute in place there is room for inconsistent approaches which could impact efficiency and service. A question was raised about how to determine which kits should be processed and how. This questions stems from the complexities surrounding prosecution, investigation and a victims report. This bill clarifies and codifies which kits should be tested and the reasonable time line to do so. All kits will now be tested unless the victim indicates they do not wish to have their kit tested or if there is no evidence of a crime. The time line allows for 30 days to get the kit to ISP and allows ISP 90 days to process the kit. Language was added to indicate a delay in processing the kit cannot be used to inhibit a speedy trial or penalize a case. If a kit is not turned in for processing, law enforcement will consult with the county processor who will sign off. ISP will promulgate rules surrounding the tracking and will present the annual report to the legislature.

Jennifer Landuis, Director of Social Change, Idaho Coalition Against Sexual and Domestic Violence, testified **in support of H 528**. This bill addresses the gaps and short comings in Idaho's current processing of rape kits. Although there is concern about the level of false reports both the FBI and United States Department of Justice estimate the level of false reports is only 8%, no higher than any other crime. Only 30% of victims will report their rape because they fear the perpetrator, fear they won't be believed, fear being retraumatized by the system and fear nothing will happen if they do come forward. This legislation outlines a victim centered process for notifying victims about the status of their kit.

Cynthia Cook, SANE (Sexual Assault Nurse Examiner) testified **in support of H 528**. Since 2001, within the region which includes Ada County, Canyon County, Owyhee County, Gem County, Washington County, Valley County, Elmore County, Duck Valley and Ontario, Oregon, there has been 1,590 victims of sexual assault and 1,272 of them chose to have evidence collected. The process of collecting evidence is very extensive and on average it takes between 2 to 2.5 hours for a SANE nurse to complete the examination. The nurse remains on site for another four hours to confirm the evidence is handled appropriately, packaged and chain of custody is maintained. The examination includes a forensic interview, an assessment of their body, photo documentation of injuries and evidence is collected.

Matthew Gamette, ISP Forensic Laboratory, testified **in support of H 528**. The ISP Forensic Laboratory works with the manufacturer to identify the proper swabs and items for the kit, the kits are procured, and distributed to hospitals. There is no cost to the hospital or the victim, the cost of the kits is absorbed into the ISP budget. There is no tracking mechanism, the number of kits sent out and returned is reconciled but specific kits are not tracked. This bill would require a serial number for tracking. ISP Forensic Laboratory does not store the kits, they are processed and returned to law enforcement. There were 93 sexual assault kit submissions in 2014, and 128 in 2015. ISP anticipates continued increase in the number of sexual assault kits they process. An average analyst can work 59 DNA cases a year. The total cost, including facilities and man power averages \$3,000 per kit. Just the reagents and kit cost is \$500 per kit.

The current turnaround to process a non-priority DNA case is 213 days. Priority and speedy trial DNA cases do receive priority over other kits. Presently, there are 113 DNA cases in the laboratory which have been there longer than 30 days. The DNA casework is very different than the DNA database. DNA casework is processing a sexual assault kit or homicide evidence and the DNA database contains samples from convicted felons. There is no backlog of DNA database samples and currently the database contains 35,000 samples. There is a significant backlog in DNA casework. Analysts are being trained, and this will help with reducing the backlog. However, it takes an average of six months to one year to train a new analyst, the backlog will not be immediately remedied. Idaho's backlog of DNA casework is not significant compared to the national average. ISP Forensic Laboratory's goal, based on their current number of staff, is to be under 60 days to process a DNA case. Reducing the turn around time to less than 30 days has been requested by the Prosecutors and the Idaho Supreme Court.

In 2014, ISP sought information about the number of unsubmitted kits in Idaho through an optional survey. ISP was then able to meet with stakeholders and determine a policy of how kits should be processed. It was determined the policy would be if the victim requested the kit not be turned in, or the police decided there was no evidence of a crime, the kit did not need to be turned in to the ISP Forensic Laboratory. The results of the survey revealed that cases where identity was not in question were not turned in, this resulted in the perpetrator's DNA not being entered into CODIS. ISP Forensic Laboratory was able to work with the FBI to process these kits and by July 2016 the 265 previously unsubmitted kits will have been processed through the FBI lab and entered into CODIS. This bill allows for 90 days for ISP to process DNA casework kits, the goal is to complete them in 30 days but additional days are allowed for personnel shortages or equipment malfunctions. If the kit goes beyond 90 days the laboratory would be required to report the delay to the legislature.

MOTION: **Rep. Kerby** made a motion to send **H 528** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:42 PM.

Representative Wills
Chair

Katie Butcher
Secretary