

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

- DATE:** Monday, February 27, 2017
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, Trujillo, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Gannon, McCrostie, Wintrow
- ABSENT/  
EXCUSED:** None
- GUESTS:** Charlie Spencer, ISP; Mike Kane, ISA; Wayne Hoffman, IFF; Tom Arkoosh, IACPL; Michael Henderson, Supreme Court; Nanci Thoemert, Supreme Court; Chris Bieter, Court; Sara Thomas, ISC; Justin Cotton, Barbara Quatterbaum; Elisa Massoth, ACDL; David Pimentel, University of Idaho College of Law; Kathy Peter; Kathy Griesmeyer, ACLU; Carlyn Ward; Kay Hess; Richard Hess; Chief Jeff Lavey, Idaho Chiefs of Police; Teresa Baker, Idaho Association of Counties; Sharon Harrigfeld, ISA; Meray Chadwell, IDJC; Gene Hess; Dennis Farnhume, Idaho Farm Bureau
- Chairman Luker** called the meeting to order at 1:31 P.M.
- H 148:** **Michael Henderson**, Idaho Supreme Court presented **H 148**. This legislation is proposed by the Supreme Court based on a recommendation from its Guardianship and Conservatorship Committee, which brings together judges, practitioners, legislators, and others who deal with this area of the law. It will amend the guardianship statutes in a few respects. First, in *Doe I v. Doe II*, 160 Idaho 311, 372 P.3d 366 (2016), the Supreme Court held that the current statutes permit the appointment of only a single guardian for a minor. This bill will permit the appointment of two co-guardians for minors, incapacitated persons, and persons with developmental disabilities. It will set standards for the appointments of co-guardians, and also provide that the court would determine whether the co-guardians could act independently or would be required to act jointly. Second, the legislation will clarify the standards for temporary guardians, who are appointed by a court when a guardian has not yet been appointed but a temporary guardian is needed to protect the individual, or when there is substantial evidence that an appointed guardian is not performing the duties of a guardian. Third, the bill will provide that Supreme Court rules will establish the qualifications of court visitors and the standards for visitors' reports to the court. Finally, the bill will require that in cases of persons with developmental disabilities, the reports of evaluation committees would be made in compliance with Supreme Court rules.
- Judge Chris Beiter** Idaho Court spoke **in support** of **H 148**.
- In response to questions, **Judge Beiter** said the visitor section is up to the discretion of the guardian as to who may visit.
- MOTION:** **Rep. Trujillo** made a motion to send **H 148 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. Trujillo** will sponsor the bill on the floor.
- H 200:** **Rep. Chaney** presented **H 200**. The proposed legislation will amend existing law §31-3221, Idaho Code to allow a court to award credit/debit card convenience fees to a party when the party used a credit card to pay court costs and filing costs. Currently state law does not recognize credit card convenience fees as a debt owed to the court.

**John Watts** spoke in support of H 200.

**MOTION:** **Rep. Kerby** made a motion to send H 200 to the floor with a **DO PASS recommendation. Motion carried by voice vote. Rep. Chaney** will sponsor the bill on the floor.

**H 202:** **Rep. Harris** presented H 202. This legislation will change the current code regarding civil asset forfeitures in several regards. Notably, modifications include: (1) vehicles would not be subject to forfeiture in connection with mere possession of a controlled substance; they would need to have been used in connection with trafficking offenses as enumerated, or to comprise ill-gotten gains; (2) property that is merely in proximity to a controlled substance is not subject to forfeiture absent a meaningful connection to a violation of the chapter; (3) mere presence of U.S. currency is not sufficient cause for a seizure or forfeiture; (4) creating a right of replevin of property while proceedings are pending provided the owners can show necessity and security; (5) courts must determine whether a property forfeiture is proportionate to the crime alleged, as is currently reflected in case law; (6) an obsolete publication provision is removed; (7) innocent owners are absolved of having to pay the state & a pos's costs associated with the seizure; (8) law enforcement may not bypass the disposition procedures and retain property without judicial approval; and (9) reporting requirements regarding forfeited property are instituted.

**Rep. Rubel** spoke in support of H 202.

In response to questions, **Rep. Rubel** said money cannot be taken just because they are in possession of cash, this must be processed through the burden of proof.

**MOTION:** **Rep. Trujillo** made a motion to send H 202 to the floor with a **DO PASS recommendation.**

**Mike Kane**, Idaho Sheriffs Association, spoke in opposition H 202 due to the Sheriffs and Idaho State Police not being involved in the discussions.

In response to questions, **Mr. Kane** said the law is complex, this change will create favor on the drug trafficker, not on law enforcement officers. Money should be placed into evidence and proven through a court of law.

**Major Charles Spencer**, Idaho State Police spoke in opposition to H 202 outlining seizure versus forfeiture of property.

In response to questions, **Major Spencer** said the wording could be clearer, it is important for the courts to decide and follow seizure of property.

**Wayne Hoffman**, Idaho Freedom Foundation spoke in support of H 202.

**Tom Arkoosh**, and **Elisa Massoth**, Idaho Association of Criminal Defense Lawyers spoke in support of H 202.

**David Pimentel**, University of Idaho, College of Law spoke in support of H 202 on behalf of himself and as a scholar.

**Kathy Greismeyer**, American Civil Liberties Union of Idaho spoke in support of H 202 and the reporting requirements specified.

**Caroline Ward**, Legal Research Intern, Concordia University spoke in support of H 202 and reported her research process showing the Idaho counties currently have no uniform method or public access to account for money or assets that have been seized.

In response to questions, **Ms. Ward** said they requested information from 10 counties, but due to difficulties, research was not extended to another 10 counties at this time.

**Chief Jeff Levey**, Chief of Police, **spoke in opposition** of **H 202** since no Chiefs were contacted they would like to express their opinions.

**SUBSTITUTE MOTION:**

**Rep. McDonald** made a substitute motion the send **H 202** to General Orders.

**ROLL CALL VOTE ON SUBSTITUTE MOTION:**

**Rep. Trujillo** requested a roll call vote. **Substitute motion failed by a vote of 5 AYE and 12 NAY. Voting in favor** of the motion: **Rep. Malek, McDonald, Cheatham, Kerby and Amador. Voting in opposition** to the motion: **Reps. Perry, Dayley, Trujillo, Nate, Chaney, Hanks, Zito, Zollinger, Gannon, McCrostie, Wintrow, and Luker.**

**VOTE ON ORIGINAL MOTION:**

**Chairman Luker** called for the vote on the original motion to send **H 202 to the floor with a DO PASS recommendation. Motion carried by voice vote. Rep. McDonald** requested to be recorded as voting **NAY. Rep. Harris** will sponsor the bill on the floor.

**Chairman Luker** called a recess of the committee at 4:00 p.m.

**Chairman Luker** reconvened the meeting at 4:10 p.m.

**H 178:**

**Rep. Holtzclaw** presented **H 178**. This legislation will increase the penalty for the direct or indirect sale of heroin to users when a user of the heroin dies. The penalty under such circumstances becomes second degree murder. As discussed in the Statement of Intent, this law is directed against those who sell this highly addictive and extremely dangerous drug, which is becoming more widely used throughout the state. It is intended to send a strong message to discourage those who would come to our state and sell heroin to our citizens.

In response to questions, **Rep. Gannon** said this bill will add to the tools Idaho needs to fight dangerous drugs for sale or resale. Sales can be made directly or indirectly.

In response to questions, **Rep. Holtzclaw** said this is to get the dealers not the users who need treatment.

**Tom Arkoosh**, Idaho Association of Criminal Defense Lawyers, **spoke in opposition** of **H 178**. This bill does not help solve the problem of drug addiction nor work as a deterrent to drug addicts since pushers do not tend to be prosecuted.

**Barbara Quatterbaum**, **spoke in support** of **H 178** based on personal experiences.

**Elisa Massoth**, Idaho Association of Criminal Defense Lawyers, **spoke in opposition** of **H 178**. The prosecution for death penalty or life in prison has a large fiscal impact on Idaho.

**Mike Kane**, Idaho Sheriffs Association, **spoke in support** of **H 178**.

**Kathy Griesmeyer**, ACLU, **spoke in opposition** of **H 178**. Many addicts are poly substance abusers, and it is difficult to determine if only heroine caused the death individually.

**Major Charles Spencer**, Idaho State Police, **spoke in support** **H 178**.

**Justin Cotton** **spoke in support** of **H 178**. Mr. Cotton's best friend died from a heroin overdose recently. Dealers are not chemically bound to sell and need to have strict punishment when caught.

**MOTION:**

**Rep. Gannon** made a motion to send **H 178** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION:**

**Rep. Chaney** made a substitute motion to **Hold H 178** in Committee.

**ROLL CALL  
VOTE ON  
SUBSTITUTE  
MOTION:**

Rep. Trujillo requested a roll call vote. **Substitute motion failed by a vote of 7 AYE and 10 NAY. Voting in favor** of the motion: **Rep. Perry, Dayley, Chaney, Amador, Wintrow, McCrostie, and Luker. Voting in opposition** to the motion: **Reps. Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Hanks, Zito, Zollinger, and Gannon.**

**VOTE ON  
ORIGINAL  
MOTION:**

**Chairman Luker** called for the vote on the original motion to send **H 178** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Dayley, Chaney, McCrostie, and Wintrow** requested to be recorded as voting **NAY. Rep. Gannon** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 5:50 P.M.

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Representative Luker  
Chair

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Heidi McKay  
Secretary