

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 21, 2018

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/
EXCUSED:** None

GUESTS: The sign-in sheet will be retained with the minutes 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 Luker called the meeting to order at 1:31 p.m.

H 532: **Brody Aston**, Contract Lobbyist, Westerberg and Associates, on behalf of Legal Aid Services, presented **H 532** to create a family and legal services fund for future possible appropriation. Any funding would be excluded from use for class action law suits, criminal cases, abortion or reproduction services, representation of persons who are incarcerated, representation of undocumented persons, or lawsuits against Idaho or any of its political subdivisions. Answering questions from the committee, Mr. Aston said the fund is being set up to provide oversight for any state funding, instead of the previously used line item on the Attorney General's budget.

Jim Cook, Director, Idaho Legal Aid Services, further presented information on **H 532**. Legal Aid Services is a 501(c)(3) statewide non-profit legal organization. Because domestic violence cases are very complicated, dangerous, and the need is great, they employ a lethality assessment component. Help from the state would allow them to serve more people, usually women with minimum wage jobs and children. This will save the state costs for law enforcement, emergency rooms, loss of wages, and serve the citizens. Answering questions from the committee, Mr. Cook explained there has been, or is expected to be a reduction in funds from grants, the Federal Legal Services Corporation, Department of Federal Housing and Urban Development, United Way, and the Agencies on Aging. This bucket provides the Idaho Supreme Court oversight and would house only state funds.

Rep. Gannon declared **Rule 38**, stating a possible conflict of interest and that he would not be voting.

Daniel Dinger, Ada County Prosecutor's Office, testified **in support** of **H 532** and the need for civil assistance for individuals with domestic violence cases. Victims lack financial resources to pay for assistance beyond the prosecutor's office.

Maureen Wishkoski, Core Advocate Manager, Women's and Children's Alliance (WCA), testified **in support** of **H 532**. The statewide attorney access makes Legal Aid resources even more valuable. They also produce information to help victims understand the civil legal system and host the victims' hotline They insure the law is for everyone.

Lisa Thompsen, Owner, Administrator, Senior Care Resource, testified **in support** of **H 532**. She shared stories of three clients who were successfully helped by Legal Aid Services. This service fills a legal community void and helps incapacitated adults with financial protection, medical oversight, and continuum of care support.

MOTION: **Rep. Wintrow** made a motion to send **H 532** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Nate, Hanks, Zitto, and Ehardt** requested to be recorded as voting **NAY. Rep. Malek** will sponsor the bill on the floor.

H 499: **Seth Grigg**, Executive Director, Idaho Association of Counties (IAC), presented **H 499** to add a fourth level of media records retention at the county level. There are three types of records: permanent, semi-permanent, and temporary. Law enforcement digital recordings fall within the temporary category, with a two-year retention. The requested fourth category provides shorter retention with specific parameters.

Terry Durden, Ada County Sheriff, further presented **H 499**. This addition helps implement body camera programs, which collect 8-1/2 gigabytes per deputy per month, which costs \$1,000 per deputy per year for cloud storage. The largest portion of the videos are garden variety activities not requiring lengthy retention. Videos needing lengthy storage are marked early in the retention process. Cities have a different retention schedule than counties. Answering questions from the committee, Mr. Durden said many county sheriffs are still using VHS tapes for mounted recordings. The determinate of evidentiary value is the use of force policy definition, the code for criminal offense, a public records request, or a complaint. The spoliation instruction will assure flagging for discovery in cases. Cloud metadata offers a variety of information and is kept for a long time.

MOTION: **Rep. Amador** made a motion to send **H 499** to the floor with a **DO PASS** recommendation.

Kathy Griesmyer, Policy Director, ACLU of Idaho, testified **in support** of **H 499**. The minimum retention period provides transparency.

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

H 554: **Rep. Chaney** presented **H 554** to repeal and restore the statute to provide failure to wear a seat belt as inadmissible in a civil action. The 2014 change did not work as intended and caused confusion for juries and the courts.

MOTION: **Rep. Perry** made a motion to send **H 554** to the floor with a **DO PASS** recommendation.

Barbara Jorden, Idaho Trial Lawyers Association (ITLA), testified **in support** of **H 554**. Their previous work with insurance companies has proven to be a mistake and needs to be corrected. This will allow those persons injured in accidents caused through no fault of their own to be put back to whole instead of being penalized.

Mike Kane, Property and Casualty Insurers Association of America, American Insurance Association, testified **in opposition** to **H 554**. The original statute was in conflict with the state policy to wear seat belts. Any problems need to be fixed instead of returning to the previous statute wording.

Woody Richards, Farm Bureau Mutual Insurance Company, Allstate Insurance Company, American Family Insurance Company, testified **in opposition** to **H 554**. Repeal will exclude valuable information from jury consideration.

Kent Day, Liberty Mutual Insurance Group, testified **in opposition** to **H 554**. This may allow the seat belt defense to be used to equitably distribute first and second collision injuries with a judicial finding of likelihood.

Kurt Holzer, ITLA, testified **in support** of **H 554**. Jurors do not hear all of the evidence in a case. He shared a specific case leading to imposing defence costs on a client who did nothing wrong and was not wearing a seat belt at the time of the accident, although she had been previously wearing it.

Nancy Sharp, Self, testified **in support** of **H 554** and told of her accident, how not wearing their seat belts saved her life and her sister, and how she was forced to sue her sister to continue medical coverage.

Answering a question from the committee, **Mr. Kane**, said the current legislation provides a different damage consideration by the jury. There have been no conversations regarding working together to make the existing statute work, although they are willing to do so.

SUBSTITUTE MOTION:

Rep. McDonald made a substitute motion to send **H 554** to General Orders.

Mr. Holzer, responded to a question, stating the simple law became complex making it harder and farther from the basic Idaho standard of "you cause an accident, you are responsible."

Rep. Chaney, in closing remarks, said the current statute confuses the liability issue for everyone. There is no change for the purposes of negligence. Answering a question, he said the changes are a verbatim return to the previous legislation.

VOTE ON MOTION:

Substitute motion failed by voice vote.

VOTE ON MOTION:

Original motion carried by voice vote. **Rep. McDonald** requested to be recorded as voting **NAY**. **Rep. Chaney** will sponsor the bill on the floor.

Chairman Luker put the committee at ease at 3:20 p.m.

Chairman Luker resumed the meeting at 3:28 p.m.

H 491:

Rep. Gannon presented **H 491**. This legislation concerns the possession of one half of an ounce or less of marijuana. For these first-time offenders, education and rehabilitative consequences are more important than jail time. When they take the initiative options prior to trial and sentencing, they are rewarded with the charge dropped to an infraction. The community service option helps those making minimum wage and unable to afford the \$250 fine. If a defendant does not take advantage of the options, the court case continues and the charge remains a misdemeanor. **H 491** recognizes both the illegality of marijuana use and the impact on minor offenders.

MOTION:

Rep. Zollinger made a motion to send **H 491** to the floor with a **DO PASS** recommendation.

Matt Vrasper testified **in support** of **H 491**. This will help kids who make a mistake that impacts their student loans and their future.

Joe Goode, Boise State University student, testified **in support** of **H 491**. With a misdemeanor charge, scholarships are lost, students may drop out of college, and they may not find jobs. This change invests in the futures of young people who make a mistake.

Sam Gold, Boise State University student, testified **in support** of **H 491**. He shared the testimony of his friend, **Zebulon Morris**, who was arrested for possession in another state and given a five-hour course option which taught him a lot without impacting his future.

Andrew Masser, Criminal Defense Attorney, testified **in support** of **H 491**. This is an example of a smart, cost savings approach. The drug education component is very valuable.

Maria Kennedy, ACLU, testified **in support** of **H 491**.

Yvonne Sandmire, Coach, Boise State University, testified **in support** of **H 491**. Pot smoking, unlike other substances, does not lead to serious crimes.

Jody Pederson, Co-Director, Interfaith Sanctuary Homeless Shelter, testified **in support of H 491**. The existing charges lead to many young people at the shelter who are not able to get that next step into life because of their record. Diversion is more important than jail time, and it gives people a second chance, for which they are grateful.

Chris Goetz, Idaho Sheriffs Association, testified **in opposition to H 491**. There are other misdemeanor charges beyond marijuana. This can lead to a cycle when the individual fails to complete the options and returns to court multiple times.

In closing, **Rep. Gannon** said the misdemeanor charge stands until the diversion work is done. The timing remains vague to allow for rural court access. This is intended to be done before sentencing by a remorseful defendant. First time alcohol consumption has previously been changed to an infraction. Having the offender take care of the problem eases the court system and prosecutor burdens.

SUBSTITUTE MOTION:

Rep. Perry made a substitute motion to **HOLD H 491** for time certain at the discretion of the Chair. **Substitute motion carried by voice vote. Reps. McDonald and Amador** requested to be recorded as voting **NAY**.

H 599:

Rep. Chaney presented **H 599**. This legislation removes 7,000 court cases every year by helping persons who are unable to pay their fines, which can have a spiral effect with serious consequences. The changes reclassify non-driving related driving without privileges, removes mandatory jail time, reclassifies first and second failure to purchase offenses, allows reinstatement when suspension is the failure to pay cause, and ends court fee license suspension. Answering a question from the committee, Rep. Chaney said the Idaho-specific suspensions do not impact interstate agreements.

MOTION:

Rep. Amador made a motion to send **H 599** to the floor with a **DO PASS** recommendation.

Tom Arkoosh, Idaho Defense, testified **in support of H 599**. The predicated acts do not affect public safety in terms of driving habits.

Matthew Conde, AAA Idaho, testified **in opposition to H 599**. A drivers license demonstrates training and basic motor vehicle proficiency. This legislation provides a person who never had a drivers license a diminished consequence.

Andrew Masser, Criminal Defense Attorney, testified **in support of H 599**. This provides a cost savings in prosecutorial and court resources.

Kathy Griesmyer, Policy Director, ACLU Idaho, testified **in support of H 599**. This frees up time and costs for public defenders, jails, courts, and counties.

SUBSTITUTE MOTION:

Rep. McCrostie made a substitute motion to send **H 599** to General Orders for amendments on Page 5, Line 34, to add a sentence making it a misdemeanor to operate a motor vehicle when never licensed.

ROLL CALL VOTE:

Roll call vote was requested. **Substitute motion failed by a vote of 7 AYE, 10 NAY. Voting in favor of the substitute motion: Reps. Luker, Malek, Dayley, McDonald, Gannon (17), McCrostie and Wintrow. Voting in opposition to the substitute motion: Reps. Perry, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt.**

**VOTE ON
ORIGINAL
MOTION:**

Original motion carried by voice vote. Rep. Chaney will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 6:03 p.m.

Representative Luker
Chair

Karen Westen
Secretary