

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

- DATE:** Monday, March 05, 2018
- TIME:** 1:30 pm or Upon Adjournment of House Floor Session
- 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 3:23 p.m.
- HR 6:** **Chairman Luker** presented **HR 6**, which recognizes the modern era of phones with video and photo capability, making it easy for consumers to document events. This resolution amends House Rule 75 by allowing the public to record and transmit House proceedings and hearings. It also provides provisions for accredited media.
- MOTION:** **Rep. Chaney** made a motion to send **HR 6** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Luker** will sponsor the bill on the floor.
- H 581:** Out of respect for the law enforcement officers recently killed in the line of duty in Coeur d'Alene and Sandpoint, **Rep. Malek** asked the sponsors if they would be willing to hold **H 581** until next year. The sponsors, **Rep. Rubel** and **Rep. Perry** shared their condolences but stated they believe the issues are unrelated.
- Rep. Rubel** and **Rep. Perry** presented **H 581**, a bill that amends the mandatory minimum sentencing provision for trafficking in controlled substances. They stated mandatory minimums have contributed to extreme overcrowding in the prisons. Today, there are 900 first time, low level offenders incarcerated in Idaho prisons at a cost of \$20 million per year. The current law does not allow sentencing discretion based on lack of past record, conduct, or levels of offense. They stated current statute also is not targeting only high level offenders and traffickers, as was initially intended when it went into effect in the 1990s. They stated mandatory minimums ruins lives and fracture families as many low level offenders do not get the benefit of rehabilitation and are often drawn deeper into depression and addiction by not having the support of family and friends. This is complicated by the fact low level offenders are being shipped out of state to other prisons to ease crowding. They stated this bill is about balancing power between prosecutors and the judiciary. It transfers sentencing discretion to the judges and still provides the intent of stringent minimum sentencing requirements for high level offenders, but allows a safety valve for cases of manifest injustice and in cases where a minimum sentence is not necessary for the protection of the public. In answer to questions from the Committee, Rep. Rubel stated a definition for manifest injustice is not included in the bill.

Daniel Clark, Bonneville County Prosecuting Attorney spoke **in opposition** to **H 581**. He stated, no matter how you look at it, this bill is a repeal of the mandatory minimum trafficking statute. The law as it exists today was designed to address dealers and not users. Only four percent of Idaho's prison population is made up of those serving mandatory minimums. He stated drug traffickers are very well aware of the fact Idaho has mandatory minimums and believes it will lead to an increase in violent crime, petty crime, drug trafficking, and an expansion of criminal enterprises in the state if this legislation passes. In answer to questions from the committee, Mr. Clark described how he uses mandatory minimums in plea agreements and takes several factors such as age, past record, weights of drugs in possession, cooperation, among other things when determining appropriate charges. He stated prosecutors have no recourse if a judge deviates from the intent of statute and applies manifest injustice in a case. He said the use of mandatory minimums is a matter of deterrence, not discretion when it comes to moving large amounts of drugs in the State.

Ian Thompson, Idaho Association of Criminal Defence Lawyers, Legislative Committee Chairman spoke **in support** of **H 581**. He stated first degree murder, repeated sexual abuse of a child and drug trafficking are the only three crimes with a mandatory minimum prison sentence and yet there are many more serious crimes that do not. He said if mandatory minimums is the answer to deterring crime, then why wouldn't it be applied to other types of crime. He stated the original rationale for the mandatory minimums law was to target large to middle scale drug dealers and he believes this bill does not change that intent. Unfortunately, the law is not only applicable to drug dealers as it merely requires possession of certain amounts of drugs, which includes users, drug addicts, and mules. While the original law provided incentive for low level offenders to cooperate because judges had discretion to reduce sentences for any reason, the Idaho Supreme Court ruled that doing so invalidates mandatory minimums, therefore that section of Idaho Code was repealed more than 20 years ago, taking away a judge's ability to determine an appropriate sentence and the incentive for offenders to cooperate with police or prosecution. In answer to questions from the Committee, he said he does not believe most users and addicts are making economic decisions based on Idaho's mandatory minimums law and the most don't even know about it. He also stated he believed this bill would be a repeal of mandatory minimums if it was challenged in a higher court, and the sentences outlined in this legislation are not mandatory.

Due to time constraints, **H 581** will be carried over to the meeting of March 7, 2018 at 1:30 p.m. or upon adjournment of the House of Representatives floor session. **Chairman Luker** explained testimony will be taken for **H 581** from those who signed up to testify at the March 5th meeting only. No new sign-ups will be accepted for this topic.

ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 5:12 p.m.

Representative Luker
Chair

Wendy Carver-Herbert
Secretary