

MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, February 07, 2019

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** None

GUESTS: Jason Hudson, AFL-CIO; Jesse Taylor, ABC; Quinn Perry, Idaho School Boards Association; Matt Compton, IEA; Gloria Totoricaguena, Idaho Policy Counseling; Jared Larsen, Governor's Office; Adam Matthews; Cody Ricks, Ricks' Disability; Rep. Pricilla Giddings

Vice Chairman Chaney called the meeting to order at 1:31 p.m.

RS 26623: **Rep. Erpelding** presented **RS 26623**, proposed legislation extending the time in which a claim for unpaid wages could be made to the Department of Labor (DOL) or in District Court from six months to 12 months. According to the DOL, there are two times when people typically notice a wage shortage: the Monday after pay day and after filing taxes. The six month statute of limitations does not allow enough time for the problem to be identified.

MOTION: **Rep. Wintrow** made a motion to introduce **RS 26623**. **Motion carried by voice vote.**

RS 26490C2: **Reps. Troy** and **Giddings** presented **RS 26490C2**. The proposed legislation explains the state's responsibility to outlaw female genital mutilation (FGM). Twenty-eight states have anti-FGM laws, but Idaho is not one of them. There are about 560 girls at risk in the state of Idaho.

Rep. Marshall raised the issue of language use in defining law, stating the law should define the crime and punishment, but not presume guilt. The words, "shall be guilty" in line 16 of the RS are concerning. He is open to pursuing a bigger initiative to address this issue throughout Idaho Code and will vote to introduce the RS.

MOTION: **Rep. Ehardt** made a motion to introduce **RS 26490C2**. **Motion carried by voice vote.**

RS 26508: **Rep. Goesling** presented **RS 26508**. The proposed legislation allows law enforcement to take a suspect into custody to evaluate their ability to carry out their threat of violence to a school, even if the suspect is not on school property. In answer to questions from the Committee, Rep. Goesling explained that the law passed last year allowed law enforcement to respond whether the threat is made on or off school property, but they can only hold the suspect if the officer witnesses the threat. Under current law, the suspect can be cited for a misdemeanor for making a threat, but law enforcement is unable hold the suspect until further evaluation of risk can be assessed.

MOTION: **Rep. Gannon** made a motion to introduce **RS 26508**.

In answer to questions from the committee, **Rep. Goesling** stated the Idaho Association of School Administrators brought the request for the proposed bill forward, and it is supported by the Idaho Sheriff's Association, Fraternal Order of Police, Idaho Office of School Safety and Security, Idaho School Board Association, Idaho Prosecutors Association, Idaho Education Association, Moscow Chief of Police and Sheriff of Latah County. He was unable to answer the question about where in code domestic violence is defined, or why the change in wording in line 23 occurred, which changed the wording from "domestic assault or battery" to "domestic violence," and will would provide the answer at the bill hearing.

SUBSTITUTE MOTION:

Rep. Zollinger made a substitute motion to return **RS 26508** to the sponsor until there is an answer to the question about why the words were changed in line 23 from "domestic assault or battery" to "domestic violence."

Speaking to the original motion, **Rep. McCrostie** said he supports the original motion because the reference on line 23 aligns with the title of Idaho Code § 18-918. This title change is not the substantive part of the bill, the substantive section of **RS 26508** is on lines 25 to 27.

ROLL CALL VOTE ON SUBSTITUTE MOTION:

Vice Chairman Chaney called for a roll call vote on the substitute motion to return **RS 26508** to the sponsor. **Motion failed by a vote of 4 AYE and 14 NAY.** **Voting in favor** of the substitute motion: **Reps. Zito, Zollinger, Ehardt and Scott.** **Voting in opposition** to the motion: **Reps. Chaney, Kerby, Amador, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis and Dayley.**

VOTE ON ORIGINAL MOTION:

Vice Chairman Chaney called for a vote on the original motion to introduce **RS 26508.** **Motion carried by voice vote.** **Reps. Zito and Zollinger** requested to be recorded as voting **Nay.**

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

RS 26649C1:

Rep. Wintrow presented **RS 26649C1.** The proposed legislation regarding the processing of sexual assault evidence kits. Current law says all kits are processed unless the victim says they don't want it processed, or there's no evidence to charge. The proposed legislation requires all sexual assault evidence kits to be tested unless there is no evidence that a crime occurred, even if the victim chooses not to prosecute. Processing all kits allows scientific data to go into a tracking mechanism that is available to law enforcement for tracking possible connections to other crimes. The victim always retains the right to choose whether to prosecute. In answer to a question from the Committee, Rep. Wintrow stated all information is removed from the database if it is determined that no crime was committed.

MOTION:

Rep. McCrostie made a motion to introduce **RS 26649C1.** **Motion carried by voice vote.**

RS 26709:

Rep. Troy presented **RS 26709.** In 1992 Idaho code enacted a fine of up to \$5,000 for certain crimes of violence, separate from other criminal penalties. This legislation requests the list of crimes be expanded to include attempted murder and attempted rape. Often these fines are used for counseling for victims.

MOTION:

Rep. Hartgen made a motion to introduce **RS 26709.** **Motion carried by voice vote.**

RS 26766: **Rep. Chaney** presented **RS 26766**, describing how predictive algorithmic risk assessment tools for pretrial release and sentencing decisions can be used. He explained these tools use an algorithm to determine a person's likelihood of recidivism in the future and can be held in jail or face penalties based on the predictive information provided by these tools. Only the vendors know what data is used or how the algorithms are created. In some states criminal defendants have been unable to get information about what data is used to determine their sentences because the companies that own these tools have argued that information is a trade secret. According to the data, minorities are being electronically discriminated against. The accuracy of these systems is 56% to 65%, but the rate of error is biased against minorities. The proposed legislation addresses the pretrial use of these tools only and requires non-biased, fully transparent systems to be used.

In answer to questions from the Committee, **Rep. Chaney** stated the technology is being used in Ada County, but not at the State level, so no Idaho specific demographic data is available. The proposed legislation lists requirements to meet the approved standards for bodies using these tools. With regard to free from bias for protected versus all classes, Rep. Chaney stated the very nature of the tools use some biases, whether the defendant lives in the community or has previous convictions could be taken into consideration.

MOTION: **Rep. Gannon** made a motion to introduce **RS 26766**. **Motion carried by voice vote.**

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

RS 26773: **Chairman Dayley** presented **RS 26773**, stating the legislation was drafted after a review of the minutes, follow-up with the individuals who voiced concerns, visits with former ethics committee members, and consultation with the Attorney General's office and Chief Clerk of the House. He also addressed questions from the Committee regarding the Respectful Workplace Policy.

MOTION: **Rep. Amador** made a motion to introduce **RS 26773**.

Speaking to the motion, **Rep. Amador** stated that he, **Reps. Troy**, and **Dayley** worked on the Respectful Workplace Policy and encouraged members to talk with them about its purpose.

In answer to questions from the Committee, **Chairman Dayley** clarified the Respectful Workplace Policy Committee was put in place by the Legislative Council. Members of the Council are nominated and elected by the Senate and House membership. He explained the difference between a democracy and representative government and stated the Legislative Council operates under the same representative government principles as the rest of government. The Ethics Committee is designed to investigate matters brought forward in a way that preserves the privacy of all parties, but if the matter requires action, a recommendation would be made to the full House and would require a two-thirds vote.

Concerns about the Respectful Workplace Policy by some Committee members included: there is no process for the body of the House to provide input into the creation of the policy; it creates another level of bureaucracy; the policy language is very general and doesn't clearly state what constitutes a violation; the role of a Committee is not to make policy; and issues can be leaked to the press.

Speaking to the motion, **Rep. Young** stated she would not vote in favor of introducing the proposed legislation because it doesn't provide a clear definition for what constitutes an ethics violation, and it could be used as a political weapon.

ROLL CALL VOTE: Vice Chairman Chaney requested a roll call vote on the motion to introduce **RS 26773. Motion carried by a vote of 9 AYE, 3 Nay 6 Absent/Excused. Voting in favor** of the motion: **Reps. Chaney, Amador, Zollinger, Hartgen, Ricks, Troy, Gannon, Wintrow and Dayley. Voting in opposition** to the motion: **Reps. Zito, Scott, and Young. Reps. Kerby, Ehardt, Goesling, Marshall, McCrostie and Davis** were **Absent/Excused.**

HR 1: **HR 1** Repeals and replaces Rule 76, the House Ethics Committee, which was held for time certain, February 7, 2019.

MOTION: **Rep. Amador** made a motion to **HOLD HR 1** in Committee. **Motion carried by voice vote.**

Vice Chairman Chaney handed the gavel over to **Chairman Dayley.**

Chairman Dayley reminded the Committee to make sure Fiscal Notes are accurate and detailed.

ADJOURN: There being no further business to come before the Committee, the meeting was adjourned at 3:09 p.m.

Representative Chaney
Chair

Wendy Carver-Herbert
Secretary