

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 19, 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:** Representative Ricks

GUESTS: Michael Ekstrand; Kathy Griesmyer, ACLU Idaho; Gloria Totoricaguena, Idaho Policy; David Gomez, Meridian Police; Stu Hobson, Nampa Police; Paul Stark, Matt Compton, IEA; Tom Arkoosh, Mark Manweiler, Justine Parker, Elisa Massoth, IACDL; Kathy Goldman; Jared Larsen, Governor's Office; Jeff Clayton, Jesse Taylor, ABC; Mike Munger, IOSSS; Miron Aburusa, MADD; Kenden Poole, CIIM; Greg Bailey, Moscow School District 28; Holly Koole Rebholtz, IPAA; Sara Thomas, Barry Wood, ISC; Quinn Perry, ISBA; Kody Aldrich, ACSO; Travis Engle, Daren Ward, Canyon County Sheriff; Mike Kane, ISA

Chairman Dayley called the meeting to order at 1:32 p.m.

Chairman Dayley clarified the use of call for previous question and general orders.

H 115: **Rep. Goesling** presented **H 115**. This bill is important for protecting the state's most important asset, its children. He yielded his time to **Quinn Perry, Dr. Greg Bailey, David Gomez** and **Stu Hobson**.

Quinn Perry, Policy Director, Idaho School Boards Association (ISBA). The ISBA had a resolution to support the change in statute and they worked with stakeholders across the state to draft this legislation. The bill makes it possible to treat a threat on a school as seriously as domestic violence, assault and stalking.

Dr. Greg Bailey, Director of Moscow School District, shared the story that was the impetus for this legislation. Last year a 26-year-old man made a social media threat to two Moscow schools. Law enforcement had no way of detaining him because there were no weapons in the home and law enforcement did not witness any wrong doing. This caused chaos and panic throughout the district, including parents wanting to police the schools, calls for arming teachers and high absentee rates. He said it inhibited the positive learning environment that students deserve to have.

David Gomez, Mountain View High School Resource Officer, Meridian Police Department, said there currently are six misdemeanor crimes that allow an arrest when the crime is not committed in the presence of law enforcement. This bill would add school threats to the list of misdemeanor crimes that would allow law enforcement to make an arrest. Officer Gomez said this will allow law enforcement to take a suspect into custody so they can be evaluated and begin receiving mental health treatment if necessary. In answer to questions from the Committee, Officer Gomez explained it is not always the most expedient to secure an arrest warrant. Warrants take time and require specific types of information that may not be easily available initially. This bill would allow law enforcement to assess the situation and take action if they believe there is probable cause and the suspect poses a credible risk to public safety.

Stu Hobson, Ridgeview High School Resource Officer, Nampa Police Department stated this bill provides law enforcement another tool in their tool belt to protect kids. This can help parents feel more secure in sending their kids to school. It also helps smaller communities that don't have as many resources. It allows their law enforcement to take action if warranted.

Paul Stark, Idaho Education Association, spoke **in support of H 115**. He said this bill has the support of the Idaho Sheriff's Association. He explained there is a difference between a search warrant and an arrest warrant. Coming into a person's home is a different portion of the Fourth Amendment. The supreme court has weighed in on warrantless arrests and it does pass Constitutional scrutiny under the Fourth Amendment. If a person is arrested on a warrantless arrest, it is speedily brought before a judge who rules whether the probable cause determination is warranted.

Rep. Marshall stated this bill clearly defines what threats are under Idaho Code §18-3302i and what arises to the threat of a misdemeanor and felony. If there is probable cause that a felony or misdemeanor exists, it gives police the authority to make a quick arrest.

Rep. Goesling requested that **H 115** be sent to General Orders with the following correction: the statute written as "18-902" on line 22 should be written as "18-901".

MOTION:

Rep. Gannon made a motion to send **H 115** to General Orders with a Committee amendment to change the statute written as "18-902" on line 22 to "18-901".

Rep. Marshall said the word "arrested" on line 21 of the bill is inappropriate and suggested it be deleted. **Rep. Goesling** stated he was not prepared to know whether it would change the substance of the bill. **Rep. Chaney** suggested it be drafted as a separate amendment.

VOTE ON MOTION:

Chairman Dayley called for vote on the motion. **Motion carried by voice vote.** **Rep. Zollinger** requested to recorded as voting **NAY**. **Rep. Goesling** will sponsor the bill on the floor.

H 78:

Rep. Kerby presented **H 78**. He explained the goal of the bill is to change people's behavior on their time and money. The Statement of Purpose and Financial Note describe the bill. The program is completely voluntary. He stated the Fiscal Note was done by the LSO budgeting office and some people say this is high, which indicates the usage is very high the first year. He speculates the numbers won't be that high in the first year because it will take some time to catch on. He stated there is a lot of good data to support this program, and according to MADD, recidivism rates decreased by 63% in states with similar programs. **Rep. Kerby** outlined the specifics of the bill and the amendments as they are incorporated in Draft Bill DRELB342 (Attachment 1). He explained he was asked if he would incorporate amendments brought forward by the Transportation Committee Chairman regarding restoring driving privileges as outlined in **RS 26864** (Attachment 2). He requested the bill be sent to General Orders with these recommended Committee amendments.

MOTION:

Rep Chaney made a motion to send **H 78** to General Orders with Committee amendments consistent with **RS 26864** and Draft Bill DRELB342.

Miron Aburusa Mothers Against Drunk Drivers of Southwest Idaho; **Kenden Poole**, CIIM; **Elisa Massoth**, Idaho Association of Criminal Defense Lawyers; and **Michael Kane**, Idaho Sheriff's Association, spoke **in support of H 78**. Their comments included: it helps reduce recidivism; it helps people who live in areas where no public transportation is available; it allows people to take proactive steps to keep their driver's license.

Holly Koole Rebholtz, Idaho Prosecuting Attorneys Association spoke in **opposition** to **H 78**. She stated the association supported the bill last year, but they oppose this bill because it does not require offenders to enter a guilty plea. She stated Oregon's original DUI diversion program did not require a guilty plea and it caused many legal issues that the Legislature needed to amend the law.

Speaking in **opposition** to the motion, **Rep. Marshall** stated almost all prosecutors across the state are against this and he doesn't think it bodes well for the program. He questioned who enforces the provisions of the bill and stated the Problem Solving Courts already have an interlock program. In response to Rep. Marshall's comments, **Rep. Kerby** stated prosecutors across the state are taking a variety of positions and not everyone understands it. He reiterated that a prosecuting attorney doesn't have to use the program. It is optional.

Reps. Wintrow and Gannon spoke in **support** of the motion. Rep. Gannon stated persons charged with a DUI and low access to financial means still need to go to work. This is good for people who are motivated.

VOTE ON MOTION:

Chairman Dayley called for a vote on the motion to send **H 78** to General Orders with Committee amendments. **Motion carried by voice vote.** **Rep. Marshall** requested to be recorded as voting **NAY**. **Rep. Kerby** will sponsor the bill on the floor.

Chairman Dayley called a recess of the Committee at 3:25 p.m.

Chairman Dayley reconvened the meeting at 3:33 p.m.

H 118:

Rep. Chaney presented **H 118**. He explained he was requesting the bill be sent to the amending order so it can incorporate amendments as written in Draft Bill DRRCB243 (Attachment 3). He described the risk assessment algorithms as a computer suggesting to a judge what kind of sentence a person should receive based on a prediction of how that person will behave. This bill does not seek to remove the tool, the purpose of the bill is to remove the ability to conceal errors and retain a defendant's Constitutional rights. He stated this is essentially a civil rights bill because when these systems error, they error against minorities. There has been no standard or transparency. He explained there have been problems in other states. When the systems are challenged, the vendor refuses to hand over information on the basis of the algorithms being a trade secret. He said these tools should be objective and should be free of bias. The bill only relates to pretrial conditions.

In answer to questions from the Committee, **Rep. Chaney** said he was not aware that the Ada County system was an actuarial-based program and not based on algorithms. He explained the state is not getting ahead of itself with this legislation because the Courts like uniformity, but there are any number of programs that could be used and applied differently.

Michael Ekstrand, Boise State University Computer Science Professor testified on behalf of himself and not the university. He spoke in **support** of the bill. He said there are ways to use data to improve outcomes, but it needs to be done carefully. This bill requires the tools be built very carefully and provides the ability to check the work of the vendors to insure the tools behave as advertised. This bill brings many good tools. Validating the system is good and it is not a one and done initiative. Validation needs to be contextual and take Idaho specific conditions into consideration to ensure they do not produce undue bias into Idaho's justice system.

MOTION:

Rep. Ehardt made a motion to send **H 118** to General Orders with Committee amendments consistent with Draft Bill DRRCB243.

Mark Manweiler and Tom Arkoosh Idaho Association of Criminal Defense Attorney's testified **in opposition to H 118**. They stated there is agreement that racial bias is a bad thing, but this bill is a solution that is in search of a problem. All of the data being spoken about are national studies and situations. This is just one of many tools judges use to make decisions on sentences. Mr. Manweiler said he is concerned that the bill doesn't clearly say who is going to validate it, or who will pay for the validation.

**SUBSTITUTE
MOTION:**

Rep. Marshall made a substitute motion to **HOLD H 118** in Committee.

Speaking to the motion, **Rep. Marshall** said it would be virtually impossible that any computer could be free of bias and he would rather trust judges and humans. He stated he would actually support the idea of outlawing these systems all together. He is concerned about the use of artificial intelligence and the impact on due process.

Kathy Griesmyer ACLU Idaho spoke **in support of H 118**. She spoke about the inherent racial bias, error rates and lack of transparency of these systems. Even though Idaho is not racially diverse, blacks and Hispanics are incarcerated at a higher rate. She stated that the ACLU has sued the Idaho Department of Health and Welfare for their use of an algorithm-based tool and it was found to be unconstitutional. An Idaho specific tool is now being evaluated for the Department. She said she shared this story as a point of comparison that if these tools aren't built correctly they can be problematic. She said improvements have been made in the bill and it is good that the tools will need to be revalidated. She said a negative aspect of the bill is it doesn't require a report on the rate of false positives. In answer to questions from the Committee, Ms. Griesmyer said they don't see a risk of lawsuits on the court algorithm programs at this point, but they are tracking cases across the country where algorithms are being challenged for lack of transparency. She said if they had a choice they wouldn't want these tools used in Idaho. However, based on their experience with similar tools, having some sideboards is beneficial.

Jeff Clayton, American Bail Coalition, spoke **in support of H 118**. He said this is one of the hottest topics in pretrial justice right now and if it is dealt with today, or in the future, it is coming down the path. There are three or four people who are building these and they are being built the same way.

Michael Kane, Idaho Sheriff's Association spoke **in support of H 118**. This is not a finding of guilt. It is only information that helps judges determine whether defendants can be let out of jail pending trial. He said **Rep. Chaney** is addressing their concerns about not restricting the Ada County system with an amendment. He said it is not a perfect bill and there are tweaks to be made, but they are committed to keep working on it.

Rep. Chaney closed the debate by saying Idaho is not ahead of itself on this issue. There are 30+ counties using a system and not all are using the Ada County system. He said the technology is here now and the state needs to see what is inside the black box to ensure it acts appropriately.

Speaking to the substitute motion, **Rep. Wintrow** said it would be beneficial to bring together a working group to find the best solution. **Rep. Gannon** said it would be better to consider this bill in conjunction with what's coming down the pike.

**AMENDED
SUBSTITUTE
MOTION:**

Rep. Zollinger made an amended substitute motion to send the **H 118** to General Orders.

Rep. Chaney said he supports the amended substitute motion and would work with anyone on the Committee who would like to have input into the amendment.

**VOTE ON
AMENDED
SUBSTITUTE
MOTION:**

Chairman Dayley called for a roll call vote on the amended substitute motion. **Motion carried by a vote of 7 AYE, 6 NAY and 5 Absent/Excused. Voting in favor of the motion: Reps. Chaney, Zito, Zollinger, Ehardt, Young, Dayley. Voting in opposition to the motion: Reps. Goesling, Hartgen, Marshall, Gannon, Wintrow, Davis. Reps. Kerby, Amador, Ricks, Troy, McCrostie were Absent/Excused. Rep. Chaney** will sponsor the bill on floor.

ADJOURN:

There being no further business to come before the Committee, the meeting adjourned at 5:21 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary