

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, February 21, 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: The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

Chairman Dayley called the meeting to order at 1:35 p.m.

MOTION: **Rep. McCrostie** made a motion to approve the minutes of the February 7, 2019 and February 11, 2019 meetings. **Motion carried by voice vote.**

Chairman Dayley stated the Committee will adjourn at 5:00 p.m. Any remaining bills or testimony will be carried over to Monday, February 25, 2019.

H 98: **Rep. Wintrow** presented **H 98**. This bill creates a minimum marriage age of 16 years old. Currently there is no marriage age minimum in Idaho. Under this legislation 16- and 17-year-olds can get married, but both parties must consent. It would also require parent or guardian permission and court approval. This bill will also align the law with Idaho's statutory rape laws and a person age 16 or 17 years may marry a person no more than three years older. She stated the stats for young marriages are going down, but last year 75 girls and 15 boys under the age of 18 were married.

Rep. Wintrow yielded her time to **Annie Hightower**, Executive Director of Policy, Idaho Coalition Against Sexual and Domestic Violence. Ms. Hightower stated young women are typically at higher risk of domestic violence. There is some question about whether minors can even file for protection orders or divorce on their own, which puts them at greater risk. Child marriage has lifelong consequences including higher rates of poverty and diminished mental and physical health. In answer to a question from the Committee, Rep. Wintrow stated the statute defines a bride as a girl and groom as a boy and does not currently address same sex marriages.

Barry Wood, Senior District Judge, Idaho Supreme Court, yielded to questions from the Committee. He explained the court currently only gets involved if one of the parties is under the age of 16. It requires the court petition, medical opinion on soundness to fulfill the marriage contract, parental consent and a hearing. These cases are extraordinary rare. If one, or both parties is age 16 or 17, they seek a license through the county recorder, but it must include the consent of the parent or guardian. This legislation would require 16- and 17-year-olds to go through the court process that currently applies to minors under the age of 16 years. He said the process doesn't normally take long, assuming the medical opinion is readily available.

Jennifer Zielinski, Idaho Anti-Trafficking Coalition, **Abby Barzie**, **Sage Griffin**, **Lisa Hunter** and **Sam Anderson** spoke in support of **H 98**. Their comments included: Underage marriage in Idaho may help human traffickers avoid prosecution due to current laws; child marriages can have slave-like characteristics of human trafficking; this is a human rights issue; child marriages result in higher rates of divorce and domestic violence; the bill protects the child's rights; kids should be allowed to be kids and child marriage robs children of their childhood; girls are forced into situations where they are too young to understand the gravity of the decision.

In answer to questions from the Committee, **Rep. Wintrow** explained her initial interest in this issue was the result of her work on the human trafficking subcommittee, but her focus has evolved to looking at underage marriage and statutory rape as a child protection issue. She said this law would not be retroactive if it were passed into law.

MOTION: **Rep. Troy** made a motion to send **H 98** to the floor with a **DO PASS** recommendation.

Speaking to the motion, **Reps. Ehardt and Zollinger** said they will support the motion, but they have more questions for the sponsor, and reserve the right to change their vote on the floor.

VOTE ON MOTION: **Chairman Dayley** called for a vote on the motion. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

H 170: **Rep. Scott** presented **H 170**. This bill would add a new section to Title 16, Chapter 16, which would be entitled "Notification of Rights". Under this proposed law, the Department of Health and Welfare would be required to provide a written form that states a parent's rights in a child protection investigation. She stated that each of the rights described on the form are protected under the fourth, fifth, sixth and fourteenth amendments. She reviewed the federal Child Abuse Prevention and Treatment Act, which states that all children under age 18 suspected of being abused must be reported. She explained that about 11 percent of Idaho homes are turned into the Department of Health and Welfare for investigation, but 83 percent are unfounded. She stated this notice would help parents who may be under stressed conditions to understand their rights. **Rep. Scott** yielded her time to **Scott Herndon**, District 1, who reiterated that of the 10,000 homes visited annually by Child Protective Services (CPS), 80 percent are found to be without cause. He said the purpose of the bill was not to remove any of the responsibility from CPS. It was written to prevent them from maximally invading the parent/child relationship and violating a parent's Constitutional rights.

Mr. Herndon and Rep. Scott answered questions from the Committee. Their responses included that while the fifth and sixth amendments refer to criminal cases, additional amendments apply. **Mr. Herndon** explained there is U.S. Supreme Court case law that states the right to remain silent applies in all civil, criminal, administrative, judicial, investigatory or adjudicatory situations. The right to remain silent is in the fourth amendment as it relates to being detained for questioning, or being seized. **Rep. Scott** stated this legislation is being brought forward based on many examples of case law where the Ninth Circuit Court has reinforced parental relationships. **Mr. Herndon** stated CPS social workers do not have the power to arrest or cite those being investigated, but under Federal law they are empowered to move a case forward. He explained law enforcement is not involved in all cases, therefore, it makes the most sense for CPS to handle the notification of rights because they are involved with cases from beginning to end. **Rep. Scott** reiterated that unlike Miranda Rights, no one will read the rights. They will only be given to the parent or guardian. She explained that if a CPS worker is not invited into a home,

they can still go to court and get a warrant to conduct the investigation. This bill does not require the notice be provided in any language other than English.

Rep. Goesling suggested that the identification of the person presenting the document along with a CPS phone number should be included on the form.

Robert Jones, Misty Karlfeldt, Dustin Ingram, Don Martin and Christin Jones spoke in support of **H 170**. Each shared their personal stories, or stories of those who were unable to testify in person. They stated: it is good for parents to understand their rights; this furthers child safety; and child protective services workers do not have proper training.

MOTION:

Rep. Chaney made a motion to send **H 170** to the floor with a **DO PASS** recommendation.

Reps. Chaney, Kerby, Zito, Goesling, Ehardt and Young spoke in support of the motion. Their comments included: it is good for people to know what their rights are; 8,000 cases each year are unfounded; investigations can be intrusive and can greatly impact the parent/child relationship; the process itself can be considered abusive; and a great deal of responsibility is in the hands of CPS workers, but that shouldn't be granted at the expense of denying Constitutional rights.

Rep. Davis stated she would support sending the bill out of Committee, but reserved the right to change her vote on the floor. She said she supports government transparency, but she is also concerned about child safety.

Reps. Wintrow, Amador and Gannon spoke in opposition to the motion. They stated: the 8,000 cases may actually be unsubstantiated, rather than unfounded; it is difficult to make a decision when CPS is unable to respond to questions from the Committee; this may be a personnel and training issue versus a systemic problem; this could put children in abusive situations at greater risk; this could increase the number of law enforcement calls by CPS; the Child Abuse Prevention and Treatment Act is intended to protect the most vulnerable population in society and this bill appears to go to greater lengths to protect parental rights over the rights of children.

VOTE ON MOTION:

Chairman Dayley called for a vote on the motion to send **H 170** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Wintrow, Amador and Gannon** requested to be recorded as voting **NAY**. **Rep. Scott** will sponsor the bill on the floor.

Chairman Dayley called a recess of the Committee at 3:46 p.m.

Chairman Dayley reconvened the meeting at 3:54 p.m.

H 138:

Paul Smith, Executive Director of the Idaho Apartment Association presented **H 138**. Mr. Smith explained the process for creating the bill started 18 months ago and involved several tenant's groups, organizations for the disabled, legislators and landlord's groups. This has been an inclusive process and as a result, they have met the concerns of many, including many of the ACLU's issues. He said regardless of the number of people who testify in opposition, the bill is a compromise. He explained there are new rights for tenants. For example, if a landlord is not fixing things, a tenant can break their lease, or fix it and deduct the cost of the repair from their rent. Evictions can be lengthy and costly. Some people believe it is unfair from a tenant's perspective; however, it can be a hardship on landlords and surrounding neighbors. Surrounding states have similar lengths of time for the eviction process.

In answer to questions from the Committee, **Mr. Smith** said this legislation would apply to both residential and commercial leases. He explained this bill standardizes the eviction process and provides a reasonable time frame for resolution. He said no eviction happens in Idaho without a judge signing off on it, and he has faith the courts can sort it out. As a whole, it is good public policy. He was unable to answer how a party can request a jury trial in 12 days, and stated it would be a question better addressed by an attorney or the courts.

Noel Gill, Northwest Real Estate Capital Corp.; **Ian Bott**, Disability Council; **Shane Facer**; **Nick O'Bryant**; **Allison Brace**, Intermountain Fair Housing Council; **Josh Scholer**, Idaho Asset Building Network; **Christine Pisani**, Idaho Council on Disabilities; **Gail Heilman**, District 19 Landlord; **Patricia Young**, retired Magistrate Judge; and **Julianne Donnelly Tzul**, International Rescue Committee, spoke **in opposition** to **H 138**. Their comments included: the bill will have a negative impact on families, low income and refugees; it will have an increasing impact on homelessness because there is not enough affordable housing for the demand; **H 138** reduces time to prepare evidence from 3 weeks to 12 days; the expedited time frame will not allow tenants time to understand their rights, obtain legal council and evidence to support their cases; landlords do not always provide the reason a lease was violated when providing notice, nor does the notice itemize the charges or fines, making it difficult for tenants to prepare their cases. As a retired judge, Ms. Young stated she is concerned about the court's ability to hear these cases in a timely manner, especially in commercial cases. Ms. Donnelly Tzul said this bill facilitates the actions of the few who are unscrupulous and will use a lease violation as a way to discriminate.

Rep. Ricks involved Rule 38.

Leon Scott and **Ben Widmyer** spoke **in support** of **H 138**. Mr. Scott stated he has rarely had a tenant problem that he hasn't been able to resolve through the HAP program. Eviction is always the last resort, but it is costly. This bill updates how to handle abandoned property, which is good for landlords. Mr. Widmyer said he agrees with the issues of affordable housing, but this bill does not solve the problem, or make it worse. Evictions are for people who do not follow the rules and they often can be a nuisance to other neighbors. This bill adds protections for tenants by requiring landlords to put deposits in trust. Domestic violence victims also have additional protections. In answer to questions from the Committee, Mr. Widmyer said this bill is clear and concise and puts everyone on the same page, following the same rules. He stated he is not able to recover damages very often.

ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 5:10 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary