

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 13, 2019

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Cheatham, Burgoyne, and Nye

ABSENT/ EXCUSED: Senator Grow

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.

RS 27086 **Unanimous Consent Request Relating to Rule Rejection. Senator Lakey** requested that **RS 27086** be sent to print and returned to the Senate Agricultural Affairs Committee (see Attachment 1).

MOTION: **Senator Lodge** moved to send **RS 27086** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

REPORT: **Relating to the Report of the Joint Publishing Committee (Report).** **Jennifer Novak**, Secretary of the Senate, indicated that she would present the recommendations of the Report and stated that Attachment 1 would give the required information. The Report recommends to continue printing 150 copies of the Session laws. An additional ten volumes were added dating back to 1984. A recommendation was made for the Secretary of the Senate and the Chief Clerk of the House to be allotted the time during the next two terms to upload the additional Session laws (see Attachment 2).

MOTION: **Senator Anthon** moved to approve the Joint Publishing Committee Report. **Senator Lodge** seconded the motion. The motion carried by **voice vote**. The report will be sent to the floor with a **do adopt** recommendation.

H 78 **Relating to Crimes and Punishments, Vice Chairman Lee**, recognized Representative Ryan Kerby for all of his efforts in working on this legislation. **Vice Chairman Lee** indicated that there were some significant changes made to **H 78**. She stated that this bill would create a diversion program for adults with the intent of trying to change their behavior and is an innovative way to ensure that these individuals do not drive drunk. It would require an interlock device to be placed on their cars for 12 months that would not let the car be turned on if they had been drinking. It would also require inmate labor details. This is a voluntary program. **Vice Chairman Lee** stated she was aware that the Prosecutors Board does not support this program, but there are several prosecutors and assistant prosecutors who do support this as a way to change behavior.

TESTIMONY: **Brad Fralick**, Director of Government Relations, Interlock, and representing the Coalition of Ignition Interlock Manufacturers, indicated that his organization is in support of **H 78**. He discussed the advantages and benefits of using an interlock device to help change behaviors and explained programs being offered in other states. He said that on average, when talking about recidivism rates, it is approximately two-thirds less than those who do not use the device.

TESTIMONY: **Holly Koole Rebholtz**, representing the Idaho Prosecuting Attorneys Association, stated they oppose **H 78** and listed reasons why (see Attachment 3). **Ms. Rebholtz** gave input from surrounding states on their experiences with DUI diversion programs.

DISCUSSION: **Senator Anthon** asked when the vote tally in Attachment 2 was taken. **Ms. Rebholtz** responded that it was taken before the amendments in the House and they were given the exact letter that the Senate Committee was given. **Senator Cheatham** inquired if in a court case a judge would be able to see the progress of using the interlock device. **Ms. Rebholtz** stated that the way the bill is currently written, a judge is not required to get involved at all.

TESTIMONY: **Michael Kane**, representing the Idaho Sheriffs Association, said that since the meeting with Representative Kirby, Vice Chairman Lee and Senator Burgoyne and their agreement to work towards an amendment that would take the bill back to the way it was prior to the amendment in the House, the Sheriffs Association would support it. Their support is given with the understanding that the legislation would go to the 14th Order for Amendment.

Miden Aberusa, Lead Victim Services Specialist, Mothers Against Drunk Drivers, testified in support of **H 78**. **Ms. Aberusa** stated similar reasons to previous testimonies. She indicated that availability and accessibility of the interlock devices would not be an issue or a cost to the public. The drunk driver pays for the device and for those who can not pay, the indigent programs cover the cost.

Elisa Massoth, Attorney from Payette, Idaho, District 9, speaking on behalf of herself and the Idaho Association of Criminal Defense Lawyers, stated that she was in support of **H 78**. She shared the unique challenges of living in rural Idaho. If a driver's license has been revoked, there is no other form of transportation. The offender is anxious to do whatever they can to stay gainfully employed and keep their life on the right track. They are unable to do that if they have no driver's license so they are motivated to take proactive steps. She reiterated that the bill is optional so there is flexibility to not take the device. **Ms. Massoth** argued that in terms of case load, it would ultimately reduce the case load for both the courts and the prosecutors.

Matthew Conde, AAA Idaho, testified against **H 78**. He stated that adding an interlock device has been proven to save lives, but it must be used for that to happen. It does become an important wake-up call for people who have had an issue in that they realize driving is a privilege, not a right. It can help people to realize that they need to make some adjustments and change their relationship with alcohol in order to be able to keep the driving privilege without putting others at risk. AAA is in favor of assigning an interlock in any diversion program. It only works to keep a car from moving if alcohol is involved. It doesn't test for other drugs. Studies show that drugs and alcohol are often both found in the system. The reason they are asking to have the original language restored is because the interlock is the means by which driving is prevented.

MOTION: **Senator Anthon** moved to send **H 78** to the 14th Order of Business for possible amendment. **Senator Cheatham** seconded the motion. The motion passed by **voice vote**.

H 209 **Relating to Peace Officers Arresting without a Warrant.** **Representative Bill Goesling**, District 5, indicated that **H 209** was a result of a shooting in the Moscow, Idaho School District. A police officer in Texas alerted the Moscow Policy Department. They responded, identified, located and cited the individual. The individual remained at large which created concern within the community. **H 209** would provide when a police officer may make arrests with or without a warrant. It would also provide a list of events which may warrant such an action.

TESTIMONY: **Quinn Perry**, Policy and Government Affairs Director, Idaho School Boards Association (Association), stated that her Association supports **H 209**. **Ms. Perry** commented on the incident in Moscow (see Attachment 4). She explained that **H 209** would make it possible for law enforcement to treat a threat upon a school as seriously as it would domestic violence, assault, or stalking by placing the individual under arrest and having them evaluated in police custody.

Paul Stark, General Counsel, Idaho Education Association (IEA), said that IEA stands in favor of **H 209**. He stated that the U.S. Supreme Court grants the act of warrantless arresting under some circumstances to be constitutional. This law is necessary to protect the children as well as the educators in their schools.

Representative Goesling enumerated two small language changes. On lines 24 and 25, "assault and battery" will be replaced by "violence." On lines 27, 28, and 29 the words "threatens violence upon school grounds of firearms and other deadly or dangerous weapons" are added. He stated that he had support from Idaho Association of School Administrators, Idaho Sheriffs Association, the Fraternal Order of Police, Idaho Police Chiefs Association, Idaho Prosecutors Association, and the Idaho State School Board Association.

MOTION: **Senator Thayne** moved to send **H 209** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

DISCUSSION: **Senator Grow** asked Representative Goesling if there had been questions concerning this legislation taking away gun rights. **Representative Goesling** stated that questions had been asked about gun rights. He said that his response was that the safety of children was of the utmost importance and good people were hired and trained to be police officers. He indicated that one of his efforts was to increase funding so that each school could have a safety resource officer who would have the training they need to do the job. **Chairman Lakey** commented that he felt this legislation was the next step in the Legislature's efforts to protect schools. **Senator Anthon** stated that he would support the motion in Committee but would not commit to support it on the floor.

VOICE VOTE: The motion to send **H 209** to the floor with a **do pass** recommendation passed by **voice vote**.

H 204 **Relating to the Definition of Personal Property.** **Representative John Green**, District 2, stated that this legislation is to consolidate the three different classes of property in one place. The first class consists of real property, which is real estate that is accepted in every jurisdiction. The second class consists of tangible personal property and intangible personal property. Tangible property would be the things we can perceive with the senses. Intangible would be those things that we could not perceive with senses. Companies that deal with intellectual property are to a large extent dependent on intangible personal property definition statutes and cases to protect their rights. **Representative Green** said that he decided to design a definition that would clarify what property rights are for intellectual property. The goal was to make laws to attract businesses coming to Idaho and then protect their intellectual property rights should litigation arise. To date there has been no litigation in this area and no contrary case law concerning this definition. Currently the statute only includes the evidence of the intangible property, not the underlying thing that has the value to the person who is concerned. He said that all the lawyers he had consulted agreed that it was a good idea when they understood this was a consolidation to make it easy to find these definitions in the law. The Idaho State Tax Commission did not have an issue with this legislation affecting intangibles.

DISCUSSION: **Senator Anthon** and **Representative Green** had a discussion concerning the possibility of a contrary definition in codes in other areas and how that might affect this legislation. **Representative Green** stated that he has never seen a jurisdiction where it had a contrary definition to the one included in **H 204**.

Senator Burgoyne and **Representative Green** discussed what constitutes tangible versus intangible property. **Senator Burgoyne** was concerned that there may not be a good sense of what the ramifications are of putting this into code. **Representative Green** responded that because the definition is so clear, that in terms of jurisprudence throughout the country, there is nothing within it that would conflict with any case in the United States.

MOTION: **Senator Thayne** moved to send **H 204** to the floor with a **do pass** recommendation. **Senator Cheatham** seconded the motion. The motion failed. **H 204** will be held in Committee.

DISCUSSION: A discussion was held regarding whether adding the definition of personal property to the Idaho Code was really necessary or prudent. **Senator Burgoyne** and **Senator Anthon** both questioned the wisdom in that and stated that they would be voting against **H 204**. **Chairman Lakey** suggested that some additional follow up may help resolve some of the questions and they could possibly pursue it next year.

Chairman Lakey stated that because of time constraints, **H 30** would be heard on Friday, March 15, 2019.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:10 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary