

MINUTES

## HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

**DATE:** Monday, February 17, 2020

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

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

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheets 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 sheets will be filed with the minutes in the Legislative Services Library.

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

**MOTION:** **Rep. Marshall** made a motion to approve the minutes of the January 21, 2020 and January 23, 2020 meetings. **Motion carried by voice vote.**

**Chairman Chaney** introduced the new Committee Page, **Ashlyn Young**.

**H 457:** **Chairman Chaney** returned the bill to the Committee for consideration. It amends statute to include daycares on the list of restrictions for convicted sex offenders. The sponsor requested the bill be sent to General Orders to provide for allowed residential facilities.

**MOTION:** **Rep. Zollinger** made a motion to send **H 457** to General Orders. **Motion carried by voice vote.** **Rep. Christensen** will sponsor the bill on the floor.

**H 467:** **Chairman Chaney** returned the bill to the Committee for consideration. This bill would reverse the law allowing warrantless arrests for certain misdemeanors, which the Idaho Supreme Court ruled unconstitutional. The sponsor requested the bill be sent to General Orders to correct a typo on the Statement of Purpose and remove a redundant subsection on certain felony offenses.

**MOTION:** **Rep. Kerby** made a motion to send **H 467** to General Orders.

**SUBSTITUTE  
MOTION:** **Rep. Wintrow** made a substitute motion to **HOLD H 467** in committee. Speaking to the motion, she questioned the harm which could occur if it were left in place until a decision was reached on a proposed Constitutional amendment to address warrantless arrests.

**AMENDED  
SUBSTITUTE  
MOTION:** **Rep. Gannon** made an amended substitute motion to **HOLD H 467** in committee, subject to call of the chair.

**Reps. Zollinger and Zito** spoke in support of the original motion, citing legal and executive confusion of an unconstitutional law, and stated bills should not be judged in relation to other bills, but on each bill's individual merit. **Reps. McCrostie and Gannon** spoke in support of the amended substitute motion, stating there may be virtue in protecting some of the community's most vulnerable.

**VOTE ON  
AMENDED  
SUBSTITUTE  
MOTION:**

**Chairman Chaney** called for a roll call vote on the amended substitute motion. **Motion failed by a vote of 7 AYE, 10 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Amador, Goesling, Ricks, Gannon, McCrostie, Wintrow, and Davis. Voting in opposition** to the motion: **Reps. Kerby, Zito, Zollinger, Ehardt, Scott, Hartgen, Marshall, Troy, Young and Chairman Chaney. Rep. Monks** was absent/excused.

The committee deliberated on the substitute motion, citing the responsibility of the courts to decide the constitutionality of laws and the legislature's responsibility to uphold the constitutionality. Concerns such as severe crimes going unpunished because of a lapse in legal framework, impact on felonies, misunderstanding about the actual meaning of the bill, and whether this would affect schools negatively were discussed.

**Rep. Amador** spoke in support of the substitute motion, concerned the proposed legislation removes any standing to challenge court opinions in the future.

**VOTE ON  
SUBSTITUTE  
MOTION:**

**Chairman Chaney** called for a roll call vote on the substitute motion. **Motion failed by a vote of 6 AYE, 11 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Amador, Goesling, Gannon, McCrostie, Wintrow, and Davis. Voting in opposition** to the motion: **Reps. Kerby, Zito, Zollinger, Ehardt, Scott, Hartgen, Marshall, Ricks, Troy, Young and Chairman Chaney. Rep. Monks** was absent/excused.

**VOTE ON  
ORIGINAL  
MOTION:**

**Chairman Chaney** called for a vote on the original motion to send **H 457** to General Orders. **Motion carried by voice vote. Rep. Zollinger** will sponsor the bill on the floor.

**H 406:**

**Chairman Chaney** returned the bill to the Committee for consideration. This legislation prohibits female genital mutilation to be performed on children and makes it a crime to allow such a procedure to be done out of state. The legislation also adds the crime to the list of violent felonies eligible for \$5,000 victim compensation.

**MOTION:**

**Rep. Amador** made a motion to send **H 406** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Troy** will sponsor the bill on the floor.

**H 454:**

**Rep. Dixon** presented a bill to refine the law around child protection neglect. He asserted the law is too broad, so this bill hopes to decrease unsubstantiated calls. The bill language comes from federal law and was vetted through various county prosecutors. In response to committee questions and concerns about bill language, Rep. Dixon claimed the current statute is not working well, offered to clarify "unsubstantiated" in the offered stats for the committee before they vote, and clarified this bill does not change who would be a mandated reporter. He stated he is willing to further define the word "serious" and clarified his intent. Rep Dixon expressed his desire to protect children and the family unit, but acknowledged there are disagreements in society about acceptable parenting methods. The bill would also eliminate use of resources by CPS.

**Rep. Gannon** spoke in opposition to this legislation, citing incomplete and unsatisfactory language of the bill.

**Ivy Smith** testified in opposition to the bill as a former foster youth and as a member of the Idaho Foster Youth Advisory Board. She stated this bill and the following bills do not center on the best interests of youth, but are taking away the protections of children. She claims not all important stakeholders were at the table for this decision and this change is too critical without involving these groups.

**Jenny Peterson, Arlene Herndon, Scott Herndon and Misty Carfeld** testified in support of this bill. Their points focused on respecting parental rights to decide how to care for their children and to provide more clarity on cases from a prosecuting and liability perspective. They also stated this bill would help families feel more secure, as some parents are afraid of CPS intervention traumatizing their children.

**Robert Jones**, former foster child testified of his involvement in 200 cases, which has shown him examples of seemingly absurd reasons for neglect. He stated it does not hurt to define this further, and by reducing nuisance calls CPS can focus on serious abuse cases. He also noted intervention can sometimes be worse than what the child is living through.

**Mirin Unsworth**, Department of Health & Welfare, stated out of 23,000 referrals, 12,000 were not assigned because they did not cross the threshold of abuse. Home Health and Safety issues include feces, drug paraphernalia, and exposed wiring. 506 cases last year were unsubstantiated or had insufficient evidence. She stated a majority of referrals are from licensed or school resources. Only twelve percent of reports are parents calling against another parent. There are 403 CPS employees across the whole system, all of whom are exceptionally busy and held to specific time lines. This bill's impact is too difficult to estimate.

**H 402:** **Rep. Scott** presented **H 402** which adds language to a section to enhance CPS training, including specific language of what training they will receive. Four rights are specifically added to the language.

**Scott Herndon, Jenny Peterson, Robert Jones, Arlene Herndon and Misty Carfeld** testified in support of this bill, emphasizing the importance of clarifying and communicating parental rights. A few shared personal stories, explaining parental stress would be lessened if they understood and acted within their rights.

**H 403:** **Rep. Scott** presented **H 403**. In 2015, a bill on parental rights was passed. This legislation would complete this cross referencing of the CPA and parental rights. In response to committee questions, Rep. Scott stated she knows someone who was impacted for educational neglect so she made sure it was covered in the bill language.

**H 455:** **Rep. Scott** presented **H 455**, which removes the term "other person" from the list of individuals who can report child neglect. Rep. Scott stated this change would not alter Idaho's status as a mandatory reporting state, nor removes the ability and requirement of professionals to report abuse. She stated it would remain a misdemeanor for professionals who do not report abuse. In response to committee questions, Rep. Scott clarified the roles of guardian ad litem and church representative are not included as professionals, but all should report abuse if witnessed. The committee expressed concern with not listing every possible person who could report abuse, expressing the view as children are an extremely vulnerable population which cannot report for themselves, they would like to go above and beyond to protect them.

**Scott Herndon** testified in support of the legislation. He stated Idaho is one of 18 states requiring everyone to be a mandated reporter. Referring to the Governor's executive order to govern more efficiently and effectively, Mr. Herndon stated CPS seemed like a good focus based on the number of calls coming into the system. Answering committee questions, Mr. Herndon explained guardian ad litem individuals belong in the volunteer field rather than the professional field. He stated the list was vetted by Health and Welfare with little push back.

**Christine Tiddens**, Co-Director, Idaho Voices for Children, spoke **in opposition to H455**. She stated this bill will dismantle the Child Protection Act and gut mandatory reporting. Community members report in good faith, with fewer than 1% of reports made in error. The faster neglect is identified the faster it can be rectified. Health and well being must be considered in all policy discussion.

**Charlye Hahn and Ivy Smith** testified **in opposition** to the bill. They are in favor of keeping mandatory reporting. They each shared personal stories of reporting abuse, explaining professionals are not enough. The public needs to be responsible not for investigating, but reporting abusive situations. Both expressed their dismay at regarding parental rights over the rights of the child.

**Rep. Scott** closed the testimony stating the community is not getting it right—angry neighbors and ex-spouses dominate claims. This bill will not stop everyone else from reporting. In response to committee questions, she stated the removal of the misdemeanor charge is a reflection of our community values. She claims we are overburdening a system which is broken.

**Chairman Chaney** called a five-minute recess at 4:28 p.m.

**Chairman Monks** reconvened the meeting at 4:33 p.m.

**H 429:**

**Rep. Chaney** presented the bill which addresses how the Public Defense Commission (PDC) judicial districts are managed. The current system is based on a population center and allows for economy of scale, but three members of the second judicial district have asked to pilot a judicial district project. The PDC has no true oversight in this program, but they will set standards and assist in training. If this program works it would lead to a realignment of the PDC. In response to committee questions, Rep. Chaney shared an ongoing discussion on the best ways to model public defense and a simple overview of how the program would be run. The committee deliberated on bill structure, funding, and the post-legislation process.

**Jeremy Chou**, Givens Pursley represented the counties and answered committee questions. The funding model will be decided by 2021.

**Seth Grigg**, Executive Director, Idaho Association of Counties stated some counties provide public defense through an institutional office, and others prefer to administer public defense the way proposed in this bill. The counties would pool resources to offer the program. Five counties in the second judicial district received funding under \$300,000 and contributed over \$1.8 million. Around \$2.2 million would go to support this program, which means there are more than sufficient funds to support benefits. In response to committee questions, Mr. Grigg stated instead of allowing counties to handle this themselves, PDC will help remove conflict as counties fund prosecution and defense.

**Patty Weeks** testified Nez Perce county has been talking about this program for years and believe it will improve the public defense services. Currently, counties do not have the legal experience needed to provide defense services, and are comfortable with relinquishing local control of these services.

**Kathleen Elliott**, Executive Director, Public Defense Commission stated the commission is neutral toward the bill. The Commission has the experience to accomplish the intent. The capital outlay will be more than \$5000. There are differences in FTE between counties and the commission, and questions of ethics must be addressed.

**Chairman Monks** turned the gavel over to **Chairman Chaney**.

**H 458:**

**Rep. Necochea** presented **H 458**, which changes the enhanced misdemeanor charge from a felony if the charge occurs in a health care setting. The bill does not lessen the charges of alcohol or drug influence. This change addresses stakeholder concerns, contains limitations of certain definitions, and will include an amendment to address unlawful touching.

**Amy Johnson, Jim Baugh, Marv Quenton, Joe Witherby, Karena Youtz, Ian Bott, Suzanne McKinney, Mel Leviton and Gail Wetherby** testified **in support** of the bill. Many recounted personal histories with this law, emphasizing the difficulty in recovering from mental health crises, and facing felony charges compounds the hardship as a felony remains on individuals' records forever. Many expressed understanding battery against health care workers is a real problem. Another point was mental illness is one of the top issues affecting the burdens on jails, courts, and prisons. The current statute creates an enhanced penalty for people experiencing a major health crisis. They pleaded with the Committee not to criminalize mental illness.

**Joe Miller** of the Idaho Association of Criminal Defense Lawyers and **Mel Leviton** of the Idaho State Independent Living Council testified **in support** of the bill. They want health care workers to be safe, but also wants safety and justice for the mentally ill. Some are victims of the current law and are now stuck with a felony even though there was no injury.

**Justin Korneck and Ashley Brown** testified **in opposition** to the bill, stating it is too broad and subjective. They shared personal stories of being attacked as health care professionals, and claimed this bill does not address the real need for individuals with mental illness.

**Tyler Kerns**, Violence Prevention, St. Alphonsus; **Claudia Miewould**, Director of Behavioral Health, Kootenai Health; **Michael McGrane** of Idaho Nurses Association and Nurse Leaders of Idaho; **Jeff Morell**, CEO, Intermountain Hospital; **Randall Hutspeth**, Executive Director, Idaho Center of Nursing; and **Emily McClure**, Idaho Medical Association testified **in opposition** to the bill. According to these witnesses, the language of the bill, though on the surface it seems like a good idea, could make the law unenforceable and is too broad to provide the protection health care workers need. Nurses suffer a high rate of injury and sexual advances. The current statute has been an active deterrent to violence. There is a discrepancy between charges in mental health facilities and in emergency rooms, but the bill does not address the difference, nor does it take into account court findings. Many offered to work with the sponsor to help find a mutually beneficial solution.

**Holly Koole-Rebholtz** stated she was available for questions.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 6:47 p.m.

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Representative Chaney  
Chair

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Wendy Carver-Herbert  
Secretary