

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

- DATE:** Wednesday, February 27, 2019
- TIME:** 1:30 pm or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Dayley, Vice Chairman Chaney, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy (Maurin), Young, Gannon, McCrostie (Nash), 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 end of the session, the sign-in sheet will be filed with the minutes in Legislative Services Library.
- Chairman Dayley** called the meeting to order at 1:30 p.m.
- MOTION:** **Rep. Marshall** made a motion to approve the minutes of February 15th, 2019.
Motion carried by voice vote.
- Chairman Dayley** reviewed Committee and testimony procedures.
- H 99:** **Chairman Dayley** returned **H 99** to the Committee for consideration, which was held for time certain from the meeting of February 25, 2019.
- Rep. Rubel** presented **H 99**. Rep. Rubel stated that 83% of those convicted of drug trafficking in Idaho do not have a violent criminal record and 42% have no prior criminal record. Most are first-time traffickers and have no previous trafficking charges. The annual fiscal cost for incarcerating these individuals is about \$11.4M. If only eight of those individuals were given probation instead of serving a mandatory minimum sentence, the savings to the state would be approximately \$1M. She pointed out the extreme discrepancy in the sentences of other egregious crimes versus drug trafficking. She covered the two rationales for when mandatory minimum sentences were originally put into law. In 1994 a constitutional change removed discretionary sentencing by judges due to the mandatory minimum clause. The constitutional change removed the ability to use discretionary sentencing, if the person cooperated with prosecutors and investigations. In 2018, a bill passed with a super majority out of the House, but only had an informational hearing in the Senate. Rep. Rubel discussed other significant developments, including the Justice Reinvestment Commission voted unanimously to reform mandatory minimum sentences. At the Federal level, "The First Act" scaled back mandatory minimum sentences for drug offenses.
- Rep. Rubel** explained the current law is a power shift from judges to prosecutors in this category of offenses. The prosecutors have the discretion in determining what charges they bring and how they plea bargain. She discussed the balance between state and federal laws. The federal laws have a safety valve so state laws are far more stringent. So, prosecutors often prefer to bring cases to the state courts because of the more stringent mandatory sentences. This in turn burdens our state funds, courts and prisons. Reform presents opportunity to shift costs away from state courts and prisons. Judges in favor of reform explain there is a manifest injustice as there are cases of first time and non-violent offenders where they are given no options in sentencing.
- Rep. Rubel** discussed opposition due to the belief of inconsistency in sentencing.

She stated consistency in sentencing is being used for other egregious crimes and the same consistency can be applied to drug trafficking.

Rep. Rubel stated the original rationale behind mandatory minimum sentencing was for deterrence. Deterrence is only one of the objectives in our criminal justice system. Locking up first-time drug offenders can turn them into long-term criminal offenders after prison terms rather giving them a chance at rehabilitation. She said national data shows that the certainty of getting caught is more effective than the severity of the punishment. Judges should be trusted to have discretion in sentencing like they do for other offenses.

In answer to questions from the Committee, **Rep. Rubel** stated there is no acceptable percentage to wrongly incarcerating someone in the hopes it will have a deterrent effect on others. With regard to abolishing mandatory minimum sentencing on all crimes, she said there is a moral distinction and difference between possession of drugs for personal use and the other egregious crimes that require mandatory minimums such as murder and repeated sexual abuse of a child.

Judith Herman school counselor, West Ada School District; **Scott McKay**, criminal defense attorney; and **Lynette Gillery**, testified in support of H 99. Some shared their personal stories of how current law has impacted their lives. Their comments also included: drug addiction is a national health crisis; addicts should be given a chance with education and rehabilitation instead of mandatory sentences; the goal of the law is to target large scale drug dealers, but this actually targets drug addicts.

Joe Andreoli, President, Fraternal Order of Police; **Kip Paperello**, narcotics detective, Ada County; **Chris Orvis**, Legislative Chairman, Fraternal Order of Police; **Scott Bandy**, Idaho Prosecuting Attorney's Association, spoke in opposition to H 99. Officer Andreoli urged the Committee to make decisions based on fact and not emotion. He shared details on the amount of drugs in possession of some defendants that were discussed in previous testimony. He stated the amounts were excessively beyond what is needed for personal use. Their comments also included: the public and judges don't always have the full story; drug cartels are set up in the states surrounding Idaho, but they are telling their people to go around Idaho because of the drug trafficking laws; drug crimes are tied to other crimes such as property crimes and violence; the weights and monetary value of drugs in possession that trigger the mandatory minimums are above what a normal addict would use; mandatory minimums are a deterrent; the drug problem solving courts are working for the low level offenders and addicts; there is little talk of the lives that are impacted by the people who are selling drugs.

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

Chairman Dayley reconvened the meeting at 3:38 p.m.

Fred Birnbaum, Idaho Freedom Foundation, spoke in support of H 99. He stated this legislation does not do as much as victims hope, nor is it as dangerous as the opponents state. He said it changes the word "must" to "shall". It allows a judge's discretion in extraordinary circumstances. It is a modest and reasonable bill.

Kieran Donahue, Sheriff, Canyon County; and **Scott Fisher**, testified in opposition to H 99. Sheriff Donahue stated Idaho is a high intensity drug trafficking area. The state receives Federal funds for projects to address drug trafficking across the state as a result of this. There are addicts who are dealers, and dealers who are not addicts. They are businesses people. Mr. Fisher shared his personal story of loss due to drugs.

MOTION:

Rep. Zito made a motion to send H 99 to the floor with a **DO PASS** recommendation.

Reps. Hartgen and Goesling spoke in **opposition** to the motion. Their comments included: crime rates are up in Idaho and the Legislature can change the minimums by raising the amounts of drugs that can be held in possession; drug charges are frequently dealt down; the drug and mental health problem solving courts give addicts an option of diversion or jail, and many of them succeed; jail can be a deterrent.

In answer to questions from the Committee, **Rep. Rubel** stated this bill does not decriminalize anything. This won't open the floodgate to lighter sentences for egregious drug dealers or cartels.

Reps. Wintrow and Ehardt spoke in **support** of the motion. Their comments included: this will not open the flood gates, but it will open a small window in cases where manifest injustice has taken place; this provides recourse; when the Founding Founders created the justice system, one of their key points was, "may a guilty man go free, rather than an innocent man go to prison".

**ROLL CALL
VOTE ON
MOTION:**

Chairman Dayley called for a roll call vote on the motion. **Motion carried by a vote of 13 AYE, 4 NAY, 1 Absent/Excused.** Voting in favor of the motion: **Reps. Kerby, Amador, Zito, Zollinger, Ehardt, Marshall, Troy, Young, Gannon, McCrostie, Wintrow, Davis, Dayley.** Voting in opposition to the motion: **Reps. Chaney, Goesling, Hartgen, Ricks.** **Rep. Scott was Absent/Excused.** **Reps. Rubel and Zollinger** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the Committee, the meeting adjourned at 4:03 p.m.

Representative Dayley
Chair

Wendy Carver-Herbert
Secretary