

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, February 13, 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 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 the Legislative Services Library.

Chairman Chaney called the meeting to order at 1:30 p.m.

Chairman Chaney reviewed options for Committee motions.

H 405: **Chairman Chaney** returned the bill to Committee for consideration. This bill amends the DUI diversion program law to exclude commercial drivers from participating due to Federal requirements.

MOTION: **Rep. McCrostie** made a motion to send **H 405** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Scott** requested that she be recorded as voting **NAY.** **Rep. Kerby** will sponsor the bill on the floor.

H 427: **Chairman Chaney** returned the bill to Committee for consideration. This bill updates the crimes the Governor must review for final approval of commutations and pardons.

MOTION: **Rep. Wintrow** made a motion to send **H 427** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Chairman Chaney** will sponsor the bill on the floor.

H 456: **Chairman Chaney** returned the bill to Committee for consideration. This bill requires the Commission of Pardons and Parole to retain an original copy of the pardon, commutation or remission of fines and forfeitures at the Commission and file an original with courts and provide a copy to the petitioner.

MOTION: **Rep. Wintrow** made a motion to send **H 456** to floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Troy** will sponsor the bill on the floor.

H 384: **Chairman Chaney** returned the bill to Committee for consideration. This bill provides compensation and other benefits for wrongfully convicted exonerees.

MOTION: **Rep. McCrostie** made a motion to send **H 384** to floor with a **DO PASS** recommendation.

Rep. Amador spoke in support of the motion, but he suggested the sponsor adjust the Fiscal Note to address the flow of funds by asking JFAC to appropriate some money to the fund so a claimant isn't left waiting for compensation until the Legislature convenes.

Rep. Monks spoke in support, of the motion, he stated concern about accountability of local jurisdictions not being addressed and perhaps it could be considered in the future.

Rep. Ricks, explained this bill does not prevent a person from filing a civil claim, but it does limit payouts from the State at a maximum amount if the claimant receives an award from another jurisdiction. He said he would also work with **Rep. Amador** to address the Fiscal Note.

VOTE ON MOTION:

Chairman Chaney called for a vote on the motion. **Motion carried by voice vote.** **Rep. Ricks** will sponsor the bill on the floor.

H 432:

Chairman Chaney returned the bill to Committee for consideration. This bill allows for the creation of a Criminal Justice Integrated Data System through the state Controller's Office.

Rep. Marshall stated he had concerns about the voluntary nature of the program and the possibility data would not be complete enough to generate valid outcomes. He was also concerned about the cost.

MOTION:

Rep. Wintrow made a motion to send **H 432** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION:

Rep. Scott made a substitute motion to **HOLD H 432** in committee. Speaking to the motion she said it is important to understand what is being shared, how it is being shared and it needed to be reviewed further.

Rep. Young stated she opposed taxpayer dollars supporting priority access to data by participating non-governmental agencies. She explained she would not support the bill as written, but would support it if these concerns could be addressed.

Rep. Zollinger spoke **in support** of the substitute motion. He stated he supported the overall goal of the bill, but shared the concerns stated by **Reps. Marshall, Scott** and **Young**.

Reps. Wintrow and **Hartgen** spoke **in support** of the original motion. They reiterated the data being used is not new data, there are provisions to protect it and it could help the state address serious challenges in the criminal justice system.

Rep. Troy, stated the price tag for such a system would be extraordinarily high if the state wasn't piggybacking on the Controller's office data system. The cost of the data analysts is small in comparison to the amount of money the state could save in the long run.

AMENDED SUBSTITUTE MOTION:

Rep. Kerby made an amended substitute motion to send **H 432** to General Orders. Speaking to the motion, Rep. Kerby said he liked the intent of the bill. However, he shared some concerns mentioned by other Committee members.

Reps. Troy and **Scott** spoke **in support** of the amended substitute motion.

VOTE ON AMENDED SUBSTITUTE MOTION:

Chairman Chaney called for a vote on the amended substitute motion to send **H 432** to General Orders. **Motion carried by voice vote.** **Rep. Troy** will sponsor the bill on the floor.

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

H 469:

Chairman Chaney presented the bill which amends the drug trafficking statute as it relates to minimum amounts of heroin that can be possessed without triggering mandatory minimum sentences, and it adds specified quantities and sentencing time frames for possession of fentanyl. Chairman Chaney explained the current law sets the amount of heroine too low for many personal users. It could result in trafficking charges rather than just possession charge. Fentanyl is a new compound that is being cut into other drugs as a filler and the quantities for drug trafficking possession are similar to what is being proposed for heroin. Chairman Chaney recapped the recent Legislative history regarding the drug trafficking statute and stated this bill is the result of much discussion and compromise among stakeholders. Although this bill does not address marijuana, Chairman Chaney explained a recent district court opinion on how weight measurement of marijuana laced edibles would likely be considered when determining mandatory drug trafficking sentences.

In answer to questions from the Committee, **Chairman Chaney** provided an example that one pound of marijuana laced gummy edibles would not be measured as one pound of marijuana, and therefore would not trigger a mandatory sentence. He said he couldn't speculate on whether a higher court would interpret the district court opinion differently.

Holly Koole Rebholtz, Idaho Prosecuting Attorneys Association; **Murphy Olmstead**, Idaho Sheriff's Association; and **Paul Jagosh**, Idaho Fraternal Order of Police, spoke **in support** of **H 469**. It was explained that past public testimony on mandatory minimum sentencing bills was focused on defendants getting caught up in mandatory sentences for possession of heroin in the lowest tier. This bill addresses the biggest area of concern and is a reasonable compromise. In answer to Committee questions, Mr. Jagosh stated five grams of heroin has a \$1,000 street value and is 50 to 75 doses and is still considered a dealers amount.

Gary Dawson, self-employed forensic toxicologist, testified about fentanyl's potency. He stated that five grams of fentanyl is enough to overdose 50 to 100,000 people. In answer to Committee questions, he explained how fentanyl is used for medical purposes and how it is being abused illicitly and described the physical symptoms from overdosing, which generally result in respiratory failure and cardiac arrest.

Tom Arkoosh, Idaho Association of Criminal Defense Council (IACDC), spoke **in opposition** to the bill. He stated giving judges discretion in uniform sentencing rather than mandatory sentencing would be more effective if the real intent of this legislation is to distinguish between trafficking and personal use. He questioned why only heroin was addressed since the IACDC proposed to reduce the lower tiers of marijuana. In answer to questions to from the Committee, Mr. Arkoosh clarified his organization is supportive of the bill's intent to increase the heroin possession amount, but it falls short of separating traffickers from addicts.

Scott McKay, attorney with Nevin, Benjamin, McKay & Bartlett, reiterated the history of past bills addressing mandatory minimum sentencing. He said this bill is a step in the right direction, but it still endorses mandatory minimum sentences and does not get to the fundamental issue of letting judges determine fair sentences. He suggested the bill be referred to the amending order to address marijuana quantities and define edibles.

Eric Parker spoke **in support** of the bill.

In response to testimony regarding the addition of marijuana and edibles, **Chairman Chaney** explained this bill, as written, has the best chance of moving forward. He stated if marijuana edibles become a sentencing issue, it could be addressed in the future.

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

H 457: **Rep. Christensen** presented the bill to prohibit registered sex offenders from living within 500 feet of licensed daycares. It grandfathered those who may already live within 500 feet, and it will not apply if a daycare opens within 500 feet of an offenders established residence. He requested the Committee send the bill to General Orders to correct some errors in the existing sex offender registry code. Rep. Christensen yielded his time to **Frank Lee** to explain the amendment.

Frank Lee, Givens Pursley, representing Boise Rescue Mission, explained the error relates to exemptions for certain residential shelters and facilities that may house registered sex offenders. He explained the goal is to retain the exception, but make sure the prohibition against loitering around school grounds and day cares continues.

H 467: **Rep. Zollinger** explained this bill would reverse the law that allowed warrantless arrests for certain misdemeanors, which the Idaho Supreme Court (ISC) has ruled unconstitutional. He requested the Committee send the bill to General Orders to delete the section discussing felonies because it is covered in a previous section and to make some technical corrections in the Statement of Purpose. In answer to Committee questions, he stated he did not have the bill reviewed by the judiciary, but the ISC findings are clear. He said this bill is consistent with about 38 other states and he worked with prosecutors.

Jamie Richmond spoke about her experience regarding protection orders.

Von Killeen, Idaho Sheriff's Association, spoke **in opposition** to the bill. He requested the Committee hold the bill for one year because the association is working with **Sen. Burgoyne** and other stakeholders on a constitutional amendment. He explained it would be time consuming to bring these protections back if the constitutional amendment was successful. He stated this will take away protections, primarily for women.

In answer to questions from the Committee, **Rep. Zollinger** stated constitutional amendments are difficult to adopt. He said it is important to balance probable cause and due process rights, and obtaining a warrant is not that difficult.

Chairman Chaney called a 10-minute recess at 3:20 p.m.

Chairman Chaney reconvened the meeting at 3:28 p.m.

**UNANIMOUS
CONSENT
REQUEST:**

Chairman Chaney made a unanimous consent request to move **H 406** to the end of the agenda. There being no objection, the request was granted.

H 383: **Rep. Wintrow** presented the bill to allow for civil protection orders in cases of sexual assault. She emphasized the bill does not trigger removal of firearm rights, as that is only allowed under the Domestic Violence Act. She explained this is needed because current law only allows protection orders in cases where the victim has a domestic or intimate partner relationship with the alleged offender. She stated the bill offers a balanced approach to offering some peace of mind to victims and due process rights to alleged perpetrators. Rep. Wintrow yielded her time to **Annie Hightower**, **Aleshea Boals** and **Sheriff Donahue** to provide details.

Annie Hightower, Director of Law and Policy for Idaho Coalition Against Sexual and Domestic Violence, explained 2018 data indicated that 67 percent of sexual assault victims would not qualify for a civil protection order under current law. She said it is disappointing that judges can issue protection orders for telephone harassment, but not for one of the most intimate and invasive crimes outside of homicide. She shared her personal story of being sexual assaulted, and how fear can impact a victim's ability to function.

Aleshea Boals, Victim Witness Coordinator, Canyon County, stated protection orders are needed because most sexual assault crimes are not quickly investigated. She shared the story of a 13-year old victim that needed to move out of state until criminal charges were filed.

Sheriff Kieran Donahue, Canyon County Sheriff explained that law enforcement doesn't have immediate protection tools available. He described the complexity of these cases and the time it takes to investigate. He reiterated both the victim and offender have rights, but this legislation provides a little bit of a time out to give victims some peace of mind so they can try to put their lives back together.

Coleen Zahn, Deputy Attorney General and Chief of the Criminal Division, responded to Committee questions by explaining the process for obtaining a civil protection order. She explained the method of service as outlined in I.C. 39-6310. She stated the preponderance of the evidence standard would be used rather than the clear and convincing evidence standard. She explained the Federal firearm restriction as outlined in the Lautenberg Amendment only applies to protection orders involving an intimate partner relationship. The law defines an intimate partner.

Terry Durden, Chief Legal Advisor, Ada County Sheriff's Office; **Julie Custer**, AAUW; **Christine Beckstead**; **Dr. Scott Smith**, Executive Director, Bingham Crisis Center; **Lori Burrelle**, Southwest National Organization for Women; **Sue Canfield**, retired victim advocate, spoke **in support** of **H 383**. They spoke of the ability to better serve sexual assault victims by giving them time to process their experiences with some peace of mind and freedom from fear of violence. It was stated that false reports of sexual assault are rare because of the intimate nature of the crime.

Jinny Peterson, and **Andrea Parker** spoke **in opposition** to **H 383**. They stated concerns about ex parte proceedings infringing on a person's Constitutional rights to due process. They spoke of the cost and reputational damage that alleged perpetrators can incur and this matter should be dealt with in the criminal court, not civil court.

Danielle Swerin, Women's and Children's Alliance Court Advocate and Research Analyst at Idaho State Police, responded to questions from the Committee. She explained data is not publicly available on the respondent when a protection order is issued against them. Respondents can request a termination of a protection order if it is determined false claims are made against them. Judges have the flexibility to establish different boundary distances for different environments when the applicant and respondent work or go to school together.

Chairman Chaney thanked the page, **Matthew DeMordaunt** for his service.

H 406:

Rep. Troy explained this bill closes some gaps in the female genital mutilation (FMG) law adopted last year. The bill prohibits FMG on a child and a child cannot be taken out of state for the procedure. This also adds the crime to the list of violent felonies eligible for \$5,000 victim compensation.

Lori Burrelle, Southwest Idaho National Organization for Women, requested clarification on whether this bill would prohibit a parent from taking a child out of state for medical treatment if **H 465** were to pass. **Chairman Chaney** explained they are separate issues and it would not.

ADJOURN: There being no further business to come before the Committee, the meeting adjourned at 5:09 p.m.

Representative Chaney
Chair

Wendy Carver-Herbert
Secretary