

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 17, 2021

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Senator Thayn

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 meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the Minutes of February 3, 2021. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Senator Lee moved to approve the Minutes of February 17, 2021. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

Senator Lodge moved to approve the Minutes of February 22, 2021. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Senator Ricks moved to approve the Minutes of February 24, 2021. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

Senator Anthon moved to approve the Minutes of March 1, 2021. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Senator Wintrow moved to approve the Minutes of March 3, 2021. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Committee Consideration of the Appointment of Marianne King** as Administrator of the Office of Drug Policy (ODP) commencing March 8, 2021, and will serve at the pleasure of the Governor. **Ms. King** stated that her career began working in juvenile corrections. She later became a probation officer and then became the Executive Director of DrugFree Idaho Inc., a non profit community coalition. In 2013 she became a Grant Project Director for the State's Office of Drug Policy (ODP). She quickly realized the value of pulling together community stakeholders, and developing front-end programming and policies that focus on ways to help combat drug abuse before it happens.

Ms. King listed three goals of the ODP. The first is to build upon their established work and expand their impact by strengthening their current connections with underserved populations. Second, to continue to focus on primary prevention, and to include the identification and implementation of school-based curriculum in middle schools. Third, to revisit and relaunch strategic plans with expanded substance abuse focus. **Ms. King** concluded by stating her personal goal is to make sure that the ODP continues to make a difference.

DISCUSSION: **Senators Burgoyne, Wintrow, and Lodge** asked questions relating to drug usage and ODP's programs. **Ms. King** said the Department of Health and Welfare handles research relating to tobacco products and their connection to illegal drug use. She said her personal opinion is that any substance that changes the way adolescents think or feel is dangerous and opens the door to experimentation. She indicated that getting necessary information to kids and parents is key to helping reduce drug use and abuse.

Ms. King mentioned a grant on teen vaping and stated she would provide more information to Senator Lodge to present to the Millennium Fund Committee.

MOTION: **Senator Wintrow** moved to send the Gubernatorial appointment of Marianne King as Administrator of the ODP to the floor with a recommendation that she be confirmed by the Senate. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

H 193 **Relating to Child Support. Representative Kevin Andrus**, District 28, explained that **H 193** relates to a custody situation where one of the parents who is supposed to be paying child support is self-employed. An individual is able to make it appear on tax documents that there is no revenue from their business, thereby exempting him from paying the support. This legislation deals with liens applied to the property and allowing a judge to ask for an accountant-approved audit of the adjusted gross income for the individual responsible for the child support. **Representative Andrus** stated that Connor Stein, sponsor of the bill, would answer questions.

DISCUSSION: **Senator Lee** asked if the self-employed person always has to pay for the audit. **Mr. Stein** responded that the decision of who pays for the audit could be determined by a judge. **Mr. Stein** explained that his family dealt with child-support issues from a self-employed person for several years. This legislation would help clarify the process, and the information provided to the Department of Health and Welfare and Child Support Services. His opinion is that whether one is employed or self-employed, the costs should be shared equally between both parties. **H 193** addresses the process for individuals who disregard their obligation to pay child support.

Chairman Lakey added that additional clarity in regard to the foreclosure of liens should be included in the legislation.

Senator Wintrow asked in writing the legislation what formal sources were used. **Mr. Stein** responded that Chairman Chaney worked on the verbigge and several other attorneys who practice family law provided input on the bill. Their goal was for the legislation to be fair to all those involved.

Representative Andrus recommended **H 193** be sent to the 14th Order of Business for resolution of the question regarding the payment of fees for audits.

MOTION: **Senator Burgoyne** moved to send **H 193** to the floor with a **do pass** recommendation.

DISCUSSION: **Senator Lee** stated that she would not be able to support the bill as it is currently written. Committee members discussed the timing of **H 193** in relation to the time of the Session. The general consensus was to go the 14th Order of Business.

SUBSTITUTE MOTION: **Senator Wintrow** moved that **H 193** be sent to the 14th Order of Business for possible amendment. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 241

Relating to Motor Vehicles, Ignition Interlock. **Senator Burgoyne** presented **H 241**. **Senator Burgoyne** indicated that the legislation originated with a request for an amendment from the Idaho Department of Transportation (ITD) to the State's ignition interlock law. The legislation would include the following waiver provisions: 1.) If no civil or criminal case is pending relating to the order to install the ignition interlock device, a person may file a waiver petition in the magistrate court within 30 days of the installation order; 2.) The installation requirement is stayed while a waiver petition is pending or being appealed; 3.) The ITD is not a party to the waiver proceeding; and 4.) A court order granting a waiver petition applies to all statutory installation requirements. **Senator Burgoyne** explained details of the legislation. The amendment states that if a criminal case is pending, this amendment does not apply. Relating to the court order to install the ignition interlock device, a person may file a petition for relief in magistrate court under this section in his county of residence. If the petition is filed within 30 days of the order and the order reflects a refusal to blow or if the limit is exceeded, the interlock is required for a year. If there is no contest, then certainty is created. If any petition for judicial review in the district court or motion of petition before a magistrate court is pending, the ignition interlock device requirement shall be stayed. The IDT shall not be a party to any petition for interlock relief before a court.

Representative David Cannon, co-sponsor of the legislation, summarized **H 241**, stating that there is a gap in the terms and procedures that are outlined for a waiver petition in cases where a lawsuit is not pending. This legislation would address that and provide for the procedural approach to filing a petition.

TESTIMONY:

Elisa Massoth, Criminal Defense Attorney, testified she helped work on the revisions included in **H 241**. **Ms. Massoth** explained that this legislation helps with the disparity between someone who can hire a private practitioner versus someone who would qualify for a public defender. This legislation equalizes that disparity. Originally, the legislation did not make it clear when the waiver was effective.

Tom Arkoosh, Idaho Association of Criminal Defense Lawyers (IACDL), indicated that he did not know of anyone he previously worked with (police, prosecutors, sheriffs, and ITD) who had any objection to **H 241**. **Mr. Arkoosh** said the IACDL supports the passage of **H 241**.

MOTION:

Senator Wintrow moved to send **H 241** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

H 148

Relating to Driver's License Suspension. **Representative Greg Chaney**, standing in for Representative Ryan Kerby, stated the purpose of this legislation is to correct an inherent inequity in the dual application of two Idaho statutes relating to the charges for a criminal driving under the influence (DUI) charge. **Representative Chaney** explained the details of this legislation. If the defendant driver is found innocent of the criminal DUI charge, the current law requires the administrative suspension of the defendant's driver's license to continue for the original time prescribed. The proposed legislation corrects this inequity by providing that if a person's license is suspended for a criminal DUI charge and the same criminal DUI charge is subsequently vacated or dismissed, then the administrative suspension of the driver's license shall also be vacated. The defendant's driving privileges shall be restored on the effective date that the criminal DUI charges are vacated or dismissed.

DISCUSSION:

Senator Wintrow asked Representative Chaney if Idaho Code 18-8004, 18-8004C and 18-8006 would all be treated in the same manner in their interpretations. **Representative Chaney** stated that if there are no charges, then the same philosophical rationale applies. It is a separate decision by a judge or prosecuting attorney to vacate any charges. The legislation defines what sort of charge, once vacated, no longer requires the ignition interlock.

Holly Rebholtz, representing the Idaho Prosecuting Attorney's Association, stated that they are opposed to **H 148**. She stated there is a public safety concern and administrative license suspensions (ALS) make the roads and communities safer. Drunk driving is one of the most dangerous crimes that law enforcement and prosecutors encounter. The administrative license suspension is tied to a chemical test. **Ms. Rebholtz** testified the Idaho Prosecuting Attorney's Association sees ALS as a deterrent. People do not want their driver's licenses taken away. If the test result is over .08, the suspension happens immediately. Due process is given to challenge the suspension if the individual believes the test was inaccurate. Idaho handles the license suspension issue similar to most other states. Suspension is a deterrent and the loss of driving privileges reduces recidivism and causes people to think twice before driving drunk in Idaho.

Bruce Wong, Director, Ada County Highway District, stated his focus with **H 148** is on safety operations. **Mr. Wong** testified that he believes this legislation should be passed and driving privileges returned to those found innocent of the DUI charges.

Michael Kane, representing AAA of Idaho, stated that previous legislation required that when an individual exceeds a .08 limit, it is not prudent for the courts to wait for a year after the criminal proceedings are finished to impose restrictions to protect the public. Administrative License Suspension (ALS) gives the individual an opportunity to have a hearing. If the person does not take the opportunity, then their license will be suspended for 30 days. After that, for another 60 days, the individual can have a work permit or school permit or whatever is needed to go on with their regular activities. The purpose of ALS is to get the person into treatment and install an interlock device. AAA is concerned about two provisions that are included in **H 148**. The first one involves a driver who exceeds .20 or higher and gets a plea bargain or somehow manages to get the charges removed. Those individuals need immediate treatment. The second concern is that when someone is drunk and injures or disables another, that should not be a reason to get rid of the required suspension.

Carlie Foster, representing the Ada County Highway District, explained that the Ada County Highway District asked for feedback on language in the bill relating to what procedures were needed if the machine used in testing was not calibrating correctly and the individual is found not guilty. **Ms. Foster** stated that Ada County believes that a person found not guilty should not receive the associated penalties that a guilty party receives.

Elisa Massoth, Criminal Defense Attorney, stated that she supports **H 148**. **Ms. Massoth** commented that administrative license due process does exist but is very limited and difficult to defend. She continued that this legislation focuses on someone who has been found not guilty. By the time an individual would get that dismissal or not guilty notice, the driver's license suspension most likely will have already been in effect for months.

Chairman Chaney concluded saying that for those individuals who feel wronged by their results, there is not time under the current guidelines to begin an investigation. By the time a dismissal is made, one would probably be outside of the 90 day period. **Chairman Chaney** stated that it is unjust to withhold licenses from people who are found not guilty.

Senator Burgoyne pointed out that relating to **H 148**, the proof in a civil case and criminal case is different. He stated that a preponderance of the evidence is not proof beyond a reasonable doubt. The distinction is important when the criminal case is dismissed or vacated. **Senator Burgoyne** continued that when a DUI charge turns into a plea bargain to reckless driving, the potential for getting out of the automatic license suspension and the interlock is concerning to him.

MOTION: **Senator Zito** moved to send **H 148** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion.

DISCUSSION: **Chairman Lakey** stated that he would not vote to pass **H 148**. He commented that he sees the importance of recognizing the difference between criminal and civil proceedings. Often plea bargains are made to lesser crimes which cause the DUI charges to be reduced. He feels the legislation goes too far.

VOICE VOTE: The motion to send **H 148** to the floor with a **do pass** recommendation failed to pass by **voice vote**. **H 148** will be held in Committee.

Chairman Lakey briefly discussed the proposed tour to the Boise Connection and Intervention Station. The tour was to see the facility, meet the staff and learn about the services offered at the center.

PAGE GRADUATION: **Chairman Lakey** thanked Ella Luekenga for her work as a Senate page during the second half of the 2021 Legislative Session. **Ms. Luekenga** shared that her experience at the Senate was "awesome" and she appreciated the opportunity to participate in the page program.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:10 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary