

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 09, 2016

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow

**ABSENT/
EXCUSED:** Representative(s) Sims

GUESTS: Judge Barry Wood, ISC; Michael Henderson, ISC.

Chairman Wills called the meeting to order at 1:31 PM.

MOTION: **Rep. Wintrow** made a motion to approve the minutes of the February 1, 2016, meeting. **Motion carried by voice vote.**

MOTION: **Rep. Wintrow** made a motion to approve the minutes of the February 3, 2016, meeting. **Motion carried by voice vote.**

H 429: **Michael Henderson** presented **H 429**. This bill has been recommended by the Supreme Court, based on the recommendation of the Court's Administrative Conference. Withheld judgment provides the defendant with a second chance and avoids the burden of an actual conviction that may impair employment or education opportunities. Withheld judgments are not granted routinely and are given at the discretion of the court. The courts use Idaho Misdemeanor Criminal Rule 10 when considering a withheld judgment in a misdemeanor case; however, these factors are also used when determining if a withheld judgment should be granted in a felony case. Idaho Misdemeanor Criminal Rule 10 also provides under what extraordinary circumstances a second withheld judgement can be granted. There are three stringent, and often unattainable, conditions pertaining to granting a withheld judgement for a controlled substance case. These limitations often prevent judges from granting a withheld judgment in these cases. A previous misdemeanor conviction for possession of marijuana, no matter how long ago it occurred, will foreclose the possibility of a withheld judgement. A DWP where the defendant drove after his or her license had been suspended for failure to pay an infraction ticket would also prevent a withheld judgment. This will provide an additional option for the courts that will increase the likelihood of success in problem solving courts.

In response to questions from the committee, **Mr. Henderson** clarified even though a case is dismissed through a withheld judgment, law enforcement and the public will not lose access to the case file. Case files will be available through the repository and the Bureau of Criminal Investigation. Currently, access to records of arrest are not affected by a withheld judgment, and the passage of this legislation will not change the status quo. Most drug courts are post sentencing courts and the decision of whether to grant a withheld judgement or not, is made at the time of sentencing. In most cases, a withheld judgement is not granted at the time of sentencing. Thus, most individuals in drug court are not seeking a withheld judgement.

MOTION: **Rep. Dayley** made a motion to send **H 429** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.

RS 24407:

Judge Barry Wood presented **RS 24407**. The purpose of this legislation is to be a place holder bill. This legislation is a necessary part of a larger proposal specifically designed to correct the structural funding issue with the Drug Court, Mental Health Court, Family Court Services Fund (Drug Court Fund). JFAC requested this legislation in anticipation of their action on the Court's budget for FY 2017, which will result in the transfer of certain non-problem solving court obligations now being paid out of the Drug Court Fund back to the General Fund, and in turn, the General Fund will receive the surcharge monies now going into the Drug Court Fund to off-set the funding shift. This will accomplish the re-direct of surcharge monies if JFAC passes the proposal and if the legislature approves the Court's FY 2017 appropriation with these changes. This proposed legislation amends two statutes related to the surcharge monies. Decreases in the FY 2009 and 2010 budgets required non-problem solving court related personnel and expenses be shifted to the Drug Court Fund. In 2010, **H 687** was passed as a product of cooperation between the Court and the legislature, and imposed a fee of \$10 on every infraction, \$50 on every misdemeanor and \$100 on every felony. However, the revenues have not materialized as originally projected. The fees were set to sunset in 2013 but the legislature determined the fees should continue. The net effect of this amendment is that the Drug Court Fund would no longer receive surcharge monies generated under Idaho Code 31-3201H.

In response to a question from the committee, **Judge Wood** explained the original proposal was for a \$25 flat fee for infractions, misdemeanors, and felony convictions. The proposal was revised to a \$20 flat fee for each, however the final decision was to charge \$10 for every infraction, \$50 for every misdemeanor and \$100 for every felony. It was assumed, and later proven true, that collections of the \$100 fine for felony cases would fail to be collected. This is because a felony conviction resulting in the individual being placed in a penitentiary the courts have no recourse to collect the fee. A felony conviction resulting in probation does allow for the probation officer to attempt to collect the fee but they rarely materialize due to other fees and fines the offender must pay. There are fewer misdemeanors than infractions, but compared to recent history there are fewer convictions of both. A misdemeanor offender may use a deferred payment agreement, and these agreements are often paid, but there is not a collection mechanism for misdemeanor convictions. An infraction can result in a suspended license as a result of an unpaid fee. The courts can establish a fee but they have no recourse to collect them. There is a statute allowing the Administrative District Judge to work with the clerk of the court to set up a collection with a collection agency. Twin Falls County has utilized this provision and it has proven successful.

MOTION:

Rep. Trujillo made a motion to introduce **RS 24407**.

In response to a question from the committee, **Judge Wood** stated he has not been involved in any discussions to revert to the original proposal of a flat fee for all convictions. Previous discussions have determined it would be very problematic to revert to a flat fee for all convictions, as it is often law abiding citizens who receive an infraction.

In response to a question from the committee, **Judge Wood** explained it would require fiscal analysis to determine whether making misdemeanors equal to infractions would remove the motivation to keep charges as misdemeanors, rather than making them infractions, due to the monetary gain that accompanies misdemeanors. The reason for changing some misdemeanors to infractions is because of the cost savings when a public defense is not required. An infraction is a civil offense, not criminal, so equalizing them has not been considered as a solution.

VOTE ON MOTION:

Motion carried by voice vote.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:17 PM.

Representative Wills
Chair

Katie Butcher
Secretary