

MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Thursday, February 11, 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) Scott

**GUESTS:** Holly Koole Rebholtz, IPAA; Paul Orlovich, Aatronics, INC; Barry Wood, ISC; Michael Henderson, ISC; Kelly Miller, Idaho Coalition Against Domestic Sexual Violence; Kathy Griesmyer, ACLU Idaho; Aaron Golart, IDWR; George Gutierrez, Crime Victims Compensation; Leah Little, Crime Victims Compensation; Dan Chadwick, IAC; Amber Pence, City of Boise; Shawna Dunn, Ada County Prosecutors.

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

**RS 24380C2:** **Rep. Kerby** presented **RS 24380C2** which prohibits the use of non-consensual common law liens, and implements a penalty for anyone attempting to do so. Non-consensual common law liens are different from a lien which can be placed on the home because an individual who owes money, because they do not require notice to be given to the home owner. The individual placing a non-consensual common law lien on a residence is not required to have or list a reason for doing so. This legislation provides instruction for reversing a non-consensual common law lien if it has been placed on an individual's home.

**MOTION:** **Rep. Luker** made a motion to introduce **RS 24380C2**. **Motion carried by voice vote.**

**RS 24364:** **Rep. Perry** presented **RS 24364** which shifts the cost associated with staff attorneys serving district judges, from the counties to the Idaho Supreme Court. This change has the support of the counties and the courts. Ultimately this shift should remove some of the pressure on the County's Justice Levy Fund.

**MOTION:** **Rep. McCrostie** made a motion to introduce **RS 24364**. **Motion carried by voice vote.**

**RS 24469:** **Rep. Perry** presented **RS 24469** which seeks to redistribute a percentage of fines from State Motor Vehicle Laws and DUIs and develop a dedicated funding stream for the Drug Court, Mental Health Court, Family Services Court Fund. Presently 22.5% of these fines are deposited into the Public School Income Fund and this allocation has not been revised since 1971. Shifts in policy, practice and priority make it clear a better funding stream is needed for Speciality Courts. This new funding stream would allow for specialty courts to be established in counties desiring to have Specialty Courts.

**MOTION:** **Rep. Cheatham** made a motion to introduce **RS 24469**.

In response to a question from the committee, **Rep. Perry** explained the redistribution of the percentage is not being done with the express purpose of taking money away from the Public School Income Fund. Historically 100% of these fines and fees were going to the Public School Income Fund, but through redistribution and changes in funding, the fund now receives only 22.5% of the fees and fines. The redistribution outlined in this legislation is not the first time these funds and fees have been directed away from the Public School Income Fund, which now receives the majority of its funding from the General Fund.

**VOTE ON MOTION:**

**Motion carried by voice vote.**

**RS 24405C2:**

**Rep. Luker** presented **RS 24405C2**, which reclassifies first offenses for under age consumption or possession of alcohol from a low level misdemeanor to an infraction. Penalties for a violation have been revised due to the new classification. Subsequent violations which constitute a misdemeanor will begin as a first misdemeanor because of the different gradation of the penalty. Because an infraction is a civil violation an officer does not have the right to take the juvenile into custody, however taking a juvenile into custody is sometimes necessary when they are in an unsafe condition. Language has been added to allow a juvenile judge and peace officer to take care of transportation and inform parents.

In response to a question from the committee, **Rep. Luker** clarified the new language does give specific instruction to a juvenile judge and a peace officer regarding parental notification of the initial violation.

**MOTION:**

**Rep. Gannon** made a motion to introduce **RS 24405C2**. **Motion carried by voice vote.**

**H 434:**

**Michael Henderson**, Idaho Supreme Court, presented **H 434**. In the past, the courts have established a priority of payments based on what they believe to be the intent of the legislature. However, the courts would prefer the legislature determine what the priority should be. This legislation would establish payments must go through the clerk of the court, since currently a number of payments are being directed around the clerk of the court. With the implementation of Odyssey, it is imperative these payments go through the clerk of the court for proper prioritization. Directing a payment around the clerk of court may mean the payment was made directly to the probation officer, or a problem solving court, automatically giving that payment a higher priority. More often than not, there are payments of greater priority that should have been paid before the probation officer or the problem solving court. There is concern about giving other payments a higher priority than restitution to victims. The provision indicates restitution to a victim does not have to be made through the clerk of the court and may be paid directly to the victim, however the legislature has previously chosen to give court costs priority over restitution. (See Attachment 1).

In response to a question from the committee, **Mr. Henderson** explained the legislative intent regarding priority of payments is so vague it is imperative the courts receive clarification. Many items could be included within the definition of court costs because it has never been defined in statute and without a definition it is difficult to establish the priority. Over the years, different statutes have given higher priority to different items like restitution, fees, and court costs. Even though a statute may appear to give priority to restitution, there have been statutes enacted after that statute giving another item higher priority.

In response to a question from the committee, **Mr. Henderson** explained the changes this legislation makes to the current priority of payments established by the court, is placing misdemeanor probation fees with felony probation fees, and listing the surcharge, court technology fee and problem solving courts fee under the definition of court costs. An alternative would be to remove the surcharge, the court technology fee and the problem solving courts fee from the definition of court costs, essentially putting the current priority of payments established by the courts into statute, as a way to clarify the legislature's intent for priority of payment. It may not be in the best interest of crime victims to place restitution ahead of probation fees because without the probation officer, there is no one to confirm the offender is maintaining a job or making their restitution payment to the victim. The current amount of court costs is \$17.50, and with the additional fees being added to the definition of court costs in this legislation, the total would be \$127.50. The Court Clerk does take responsibility for collecting restitution payments, in addition to the other fees collected, and would be aware of any victims who are not being paid. The Clerk will collect the restitution and pay the restitution in order of priority. The Clerk may use probation revocation, collection agencies and tax intercept to insure the restitution is paid. Victims may execute on the offender's property to insure payment of restitution.

**Holly Koole Rebholtz**, IPAA, testified **in opposition** to **H 434**. IPAA agrees the court system should be funded. However, it is questionable whether placing the fees on the defendant is the correct method to fund the judicial system. The priority must be restitution for the victim. When other items are prioritized ahead of the victim's restitution, the result is the victim never receiving their compensation. Restitution is essential to the rehabilitation of the offender, it is a deterrence in crime, and is incredibly important for victims to receive. It is imperative the victim is paid first and made whole.

In response to a question from the committee, **Ms. Rebholtz** stated restitution is a very important part of the sentence. When the offender knows restitution is a part of their probation it is often an incentive to work diligently to make restitution. Once a case has left the control of the judiciary there is nothing the court can do to control whether the offender continues to make restitution payments. At that time, the victim has very little recourse and limited options to collect the remaining restitution. A civil judgement can be ordered, but the result is shifting the burden to the victim to collect their restitution. Ultimately, the victim incurs more cost by hiring an attorney. Criminal restitution has limited recourse for the victim, there are no mechanisms in place.

**MOTION:**

**Rep. Nye** made a motion to send **H 434** to the floor with a **DO PASS** recommendation.

**Paul Orlovich**, Aatronics, Inc. testified **in opposition** to **H 434**. He presented information about his personal experience with the restitution process due to his unfortunate experience of being embezzled from and ultimately losing his business. It was a very slow process to receive payment from the offender as they were working a minimum wage job and making small payments. When the court ordered the offender to sell anything they had purchased with the embezzled monies, they explained they had transferred the title of the vehicle to a family member but had not yet received a payment. This was only one of many challenges he faced trying to collect restitution and he believes victims should receive compensation first.

**Shawna Dunn**, Ada County Deputy Prosecutor testified in **opposition** to **H 434**. The number of criminal defendants who own property sufficient to pay restitution is relatively few. She has not seen anyone successfully execute their civil judgement through the filing of a lien on real property. Restitution may also be collected in installment payments which are set between \$50 and \$100 depending on the income of the individual. Courts costs may be \$127.50 but probation fees are also listed above restitution in order of priority and are typically \$50 to \$60. Full restitution is achievable to some degree, but only if the money being collected is going to the victim, not to the fees. If restitution payments were prioritized over probation fees, the offender would not be off of probation. Prioritizing restitution over probation fees may have a budgetary impact but would not result in the defendant being off probation or no longer being required to have a job or make restitution payments.

In response to a question from the committee, **Ms. Dunn** explained according to the priority of payments in this bill, the probation portion of the fees would carry the greatest weight financially of the items listed as higher priorities than restitution. Many victims are owed restitution amounting to less than \$150 and many offenders have less than \$150. If that offender pays \$100 to the courts, that may be the only payment ever made and it was made to the court, not to the victim.

**SUBSTITUTE MOTION:**

**Rep. Sims** made a substitute motion to **HOLD H 434** in committee.

**Chairman Wills** suggested the committee not take any action on **H 434** until all members of the committee could be present on February 15, 2016.

**MOTION WITHDRAWN:**

**Rep Sims** withdrew her substitute motion.

**MOTION WITHDRAWN:**

**Rep. Nye** withdrew his motion.

**Kelly Miller**, Idaho Coalition against Domestic Sexual Violence testified in **opposition** to **H 434**. The bill lowers the priority of restitution payments to victims, as well as crime victim compensation. Individuals who are directly impacted by crime should be the highest priority. By expanding the definition of court costs this legislation effectively lowers the ability of crime victim compensation program which is an essential program for victims. This could reduce payments to treatment providers, who will in turn bill the victim for the services not paid under crime victim compensation. This may reduce the types of services crime victim compensation can offer. There is a need for court programs, but Idaho cannot continue to fund it's court systems through court fees, fines and restitution. Without the necessary funding streams or direct appropriations government agencies must find ways to defer the cost to the citizens. In this case, the cost is being deferred to victims. Executing a civil judgement to receive restitution is a false solution. Victims of stalking and sexual violence crimes are forced to interact with the offender in civil court, ultimately resulting in more harm.

**Chairman Wills** stated **H 434** would continue to be considered on February 15, 2016, and **RS 24430** and **RS 24481** will also be heard on February 15, 2016.

**SCR 132:**

**Rep. McDonald** presented **SCR 132**. The purpose of this legislation is to recognize and honor the Idaho Peace Officers for their service to the State of Idaho. These individuals run toward the danger despite the possibility of personal harm. It is important to pay tribute to the brave men and women who put their lives on the line every day.

**Chairman Wills** stated his support for **SCR 132**. The bravery of these men and women who put themselves in harms way in order to save individuals in perilous situations on the road ought to be commended.

- MOTION:** **Rep. Dayley** made a motion to send **SCR 132** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McDonald** will sponsor the bill on the floor.
- RS 24369C2:** **Rep. Gannon** presented **RS 24369C2**. This legislation would apply to an individual who received only one minor in possession criminal misdemeanor conviction and plead guilty. This legislation would allow the individual, if they have not received another alcohol or drug conviction for five years following the first violation, to file a form at the clerk's office and have the guilty plea vacated and the matter sealed.
- MOTION:** **Rep. McCrostie** made a motion to introduce **RS 24369C2**. **Motion carried by voice vote.**
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:37 PM.

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Representative Wills  
Chair

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Katie Butcher  
Secretary