

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 27, 2018

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Luker, Vice Chairman Malek, Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/
EXCUSED:** Representative Perry

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 Luker called the meeting to order at 1:32 p.m.

H 530: **Senior District Judge Barry Wood**, Acting Deputy Administrative Director of the Courts, presented **H 530** by informing the committee the Courts seek important policy decisions from the Legislature to establish a disbursement schedule in a single statute that sets an order of priority among 24 competing priorities of various fee statutes governing criminal defendants' partial-payment remission of fees, fines and restitutions (fees). There exists a conflict between at least five statutes to be resolved; there is no priority stated in approximately 19 statutes that results in confusion and disparate practices around the state; and the Courts need to program Odyssey, the official court record, to effectuate the policy and objectives regarding the fee disbursement schedule. He provided background and context for making the policy decision. Judge Wood remarked the bill also seeks a policy decision on whether to order the established disbursement in one statute. The Idaho Supreme Court has ruled that all the fees assessed against a defendant are an entire debt owed by the defendant, and the Legislature should set the policy in what order they should be paid. **H 530** asks the Legislature to establish these priorities rather than the courts administratively.

Jason Spillman, Legal Counsel for the Administrative Office of the Courts, presented an analysis that set forth all the statutory sections requiring fees from criminal defendants, the costs, and distribution instructions. The rationale for the policy request is to attempt to give heed to previously announced legislative intent regarding disbursement priorities, such as the five statutes mentioned that have priority intent within their statutory language, and address the funding needs of important county public safety programs by moving misdemeanor probation supervision fees and problem solving court fees up in order on the list. He said not all fees are always assessed and some are one-time fees. Mr. Spillman provided a breakdown of reasoning behind the order for each section of Idaho Code §§ 31-32011 (1) through (24). (Attachment 1)

In response to committee questions on whether a percentage of the fees assessed could be prorated throughout the case or be done dollar-for-dollar, **Mr. Spillman** replied the interpretation of the legislative history indicates following the five statutes' payment placement directives, so each item on the distribution list is funded fully before going down the list. He also replied that the distribution list ordering in the bill is based upon a combination of past legislative projections and suggestions from the current court. Having all fees in one statute would work better when new statutes come along, and if reorganization is desired at some time, it would be easier to address.

Holly Koole Rebholtz*, Idaho Prosecuting Attorneys Association (IPAA), spoke in **opposition** to **H 530** saying they have concerns about the removal of language in Idaho Code §19- 5302 which says victims shall get priority payment for restitution. She said victims do not choose to be in the criminal justice system but are put there by defendants' actions, and the IPAA believes they should be made whole before other programs are funded.

In response to a committee question, **Mr. Spillman** replied the courts recognize victims need to be compensated, and defendants reporting to probation are more likely to pay restitution because someone is monitoring them.

MOTION:

Rep. Gannon made a motion to send **H 530** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** will sponsor the bill on the floor.

H 552:

Jim Tibbs, Ada County Commissioner, presented **H 552**, by informing the committee the bill seeks to rectify funding for the misdemeanor supervision program and compliance with the law and statutory legislative intent. The implementation of Odyssey resulted in a significant debt to the program, and if the funding problem is not resolved, Ada County will have to decide whether to reduce the program or fund it in another way, most likely through property taxes. This is a valuable program and one for which Ada County would still like to provide services. Odyssey's implementation in August 2016 resulted in misdemeanor probation fees being delayed or not received, causing a deficit in FY2017 of approximately \$250,000 from Ada County's current expense fund contrary to the requirements of Idaho Code §31-3201D. **H 530**, which moves probation fees from item 10 to 3 would probably resolve some of the funding issues, but does not resolve that the statute still requires funds to be diverted and not applied exclusively to the county probation program, contrary to law. Counties can choose whether to receive their probation fees under the Odyssey disbursement schedule in **H 530** or opt out and receive monthly probation fees directly under **H 552**. Both the **H 530** and **H 552** can coexist.

In response to committee questions, **Commissioner Tibbs** explained the probation fee is not included in the judgment of conviction or the deferred monthly payment arrangement but is treated as a separate payment by Ada County Courts. Specifically, **H 552** allows the Board of County Commissioners to designate the Ada County Sheriff's Office to collect misdemeanor supervision payments, who then reports them to the Ada County Clerk's Office (Clerk) to record as received in the Register of Actions. They have confirmed with the Clerk the approach they have proposed can be carried out as Odyssey stands today, but would defer to the Courts whether Odyssey can be re-programmed to carry out this approach.

Sheriff Steve Bartlett, Ada County Sheriff; **Erica White**, Attorney, Ada County Prosecutor's Office; **Michael Kane**, Sheriff's Association and the Association of Counties spoke **in support** of **H 552** stating the county misdemeanor probation fee is a separate fee incurred on a monthly basis that defendants can have waived or changed. At a meeting of Idaho counties, **H 552** was unanimously supported, and the counties are asking for their probation service fees to be treated similarly to the Idaho Department of Correction felony probation supervision fees, which are excluded from Odyssey disbursement list.

Judge Wood spoke **in opposition** to **H 552** and in response to committee questions, informing the committee Odyssey allows the order of payments set up by the Idaho Supreme Court's Administrative Order, which was entered to resolve some of the differences discussed previously. Judge Wood asked committee members to look with him at Idaho Code § 31-3201D, that Ada County says Courts have not followed, and see that it does not say anywhere that the money is to be paid to the county sheriff. It says it is supposed to be paid to the Clerk of the Court. Judge Wood remarked that each of the 24 items in the disbursement list have a statutory claim to payment of fees, which is the reason the courts are seeking a policy decision from the Legislature.

Commissioner Tibbs was called upon to answer a question from the committee regarding the economic impact of the current Courts' distribution priorities through Odyssey on other counties, and he replied Canyon County was short about \$400,000 this year, but Twin Falls County had done better financially.

MOTION:

Rep. Zollinger made a motion to **HOLD H 552** in committee.

In response to a committee question, **Judge Wood** advised the setting of probation fees, as well as other fees, fines and restitution, is a judicial function and not an administrative function to be set by probation officer.

Commission Tibbs closed saying before Odyssey they were in conformance with the law by being self funded. This is an effort for Ada County to comply with the law.

VOTE ON MOTION:

Motion carried by voice vote. Reps. Luker, McDonald and Wintrow requested to be recorded as voting **NAY**.

H 533:

Rep. Kerby presented **H 533**, which provides an optional diversion program for first time driving under the influence (DUI) offenders and requires an ignition interlock device installed in their cars for six months to one year to run concurrent with the driver's license suspension. Rep. Kerby stated this has been identified as an effective way to change behavior and have fewer people driving on the road causing accidents and death while under the influence. Recidivism is reduced 67 to 71 percent. To be eligible for diversion, a DUI offender's alcohol concentration must be between .08 and .20, and they cannot have a conviction or been in a diversion program within the last 10 years. A diversion contract is entered into and an ignition interlock device must be installed on every car a DUI offender operates, and the contract can include educational requirements, therapy, counseling, inmate labor work details, and probation supervision fees. It is optional for both the prosecuting attorney and the DUI offender. Upon agreeing to a diversion, a DUI offender waives the right to a speedy trial. Successful completion of the diversion program results in the charges being dismissed, and the original charges are prosecuted for program failure.

Frank Harris, Director of State Government Affairs, Mothers Against Drunk Driving; **Brad Frolick**, Director of Government Relations, Intoxalock, member of a coalition of interlock manufacturers; **Michael Kane**, Sheriff's Association and the Association of Counties; **Tom Arkoosh**, Idaho Association of Criminal Defense Attorneys; **Dan Blocksom**, Boise County Prosecutor; **Mary Helen Freeman**, Mothers Against Drunk Driving; spoke **in support of H 533** saying Idaho is one of only two states with no provision for ignition interlock devices for first-time offenders, and states with it have seen a reduction in repeat offenders, arrests and fatalities. There is a safety valve for the court not to impose diversion if it presents a security threat to the community. Sending people to prison does not guarantee they will not drink and drive when they come home.

In response to committee questions, **Mr. Frolick** replied that the interlock devices cost about \$75 a month with installation being \$80-\$100, but competition is so strong, many times installation is free. The device measures the deep air coming off of the lungs. There are three levels of devices, ones with no camera, with camera and with camera and GPS. Idaho will be using the type without a camera or GPS.

Grant Loebs, Prosecuting Attorney, Twin Falls County, spoke **in opposition to H 533** saying the Prosecuting Attorneys Association, the Fraternal Order of Police, and the Chiefs of Police oppose this bill as written. The bill has one fatal flaw in an otherwise good bill by not requiring a plea of guilty. Requiring interlocks and diversion is good; however, without a guilty plea a DUI offender would have no conviction of DUI on his record.

Rep. Kerby stated at the end of the diversion, a guilty plea can be entered if the diversion program failed. The Clerk of the Idaho Supreme Court advised Rep. Kerby that a diversion disposition is going to be added to the Odyssey program, so defendants will have a guilty or a diversion disposition entered. In many cases, in counties across Idaho, prosecutors are reducing first time DUI charges to Reckless Driving to keep people employed, and for lack of resources. Unfortunately, that gives DUI offenders no opportunity for rehabilitation, and diversion keeps people employed and reduces resources for trial. Convicting offenders does not change their behavior.

MOTION: **Rep. McCrostie** made a motion to **HOLD H 533** for time certain, March 1, 2018. **Motion carried by voice vote.**

H 551: **Sen. Burgoyne** introduced **H 551** by stating it does not conflict in any way with **H 553**, and in fact, it supplements it. He explained some of the testimony given for **H 553** is relevant to this bill. Research shows an interlock device on a first offence had a significant impact on having a second offence and has an overall impact on DUI deaths, disability, and other damages.

Matt Conde, Triple AAA Idaho; **Michael Kane**, Idaho Sheriff's Association, The Idaho Association of Counties, Property Casualty Insurance Association of America, American Insurance Association; **Frank Harris**, Director of State Government Affairs, Mothers Against Drunk Driving; **Kara Sessions**; **Brad Frolick**, Director of Government Relations, Intoxalot, and member of coalition of interlock manufacturers; and **Benny Siders** spoke **in support of H 551** stating the objectives of ignition interlock are to keep people safer on Idaho roads. Every DUI offender pays a \$15 fee which goes into an interlock device fund that is for users with financial hardships. Interlock device data is downloading every 30 to 60 days which is then uploaded to the state, and random retests are run. Interlocks detect breath samples post conviction. A state with an all DUI offender policy can expect at least a 7% reduction in DUI fatalities and a 7% reduction in recidivism. The fiscal impact is minimal, and there is federal incentive grant money to encourage states to pass interlock legislation.

Michael Kane was called upon to answer a question from the committee regarding whether an ignition interlock device under **H 551** would be mandatory to persons who have a license suspension because of refusal to take a Breathalyzer test, and he responded it is required when they are driving again, but can be expedited if they need to get to work.

MOTION: **Rep. McDonald** made a motion to send **H 551** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wintrow** will sponsor the bill on the floor.

H 586: **Rep. Gannon** presented **H 586** and stated this is an important bill because it affects the people who serve on Idaho juries, in a voluntary capacity, who make important decisions such as whether people go to prison or should be awarded damages in a civil matter and gives them some compensation for their service. Since 1968 the counties have been required by statute to pay \$10 a day for that service. A 2013 bill gave counties the option of paying up to \$50 a day, and one or two counties are paying very close to it, although many still pay \$10. There has been an argument for twenty years on whether the state, through the Supreme Court system, or the counties should pay jurors. This bill provides that jurors serving in lengthy trials that last more than 5 days will be paid \$50 a day by statute, and the state will reimburse counties \$40 a day. This is supported by the counties and the Supreme Court. The fiscal impact is estimated at \$75,000 based upon information from 2014 provided from the Supreme Court.

Chairman Luker spoke in opposition to **H 586** opining that counties are responsible, not the state, and in civil cases, it would prevent judges accessing jury fees as costs.

Rep. Wintrow spoke in support of **H 586** saying \$75,000 is not a large amount to invest in something so important as jurors who provide a benefit directly for Idaho citizens.

MOTION: **Rep. Wintrow** made a motion to send **H 586** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Luker** requested to be recorded as voting **NAY.** **Rep. Gannon** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 6:18 p.m.

Representative Luker
Chair

Wendy Carver-Herbert
Secretary