

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, February 26, 2018

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Siddoway, Senators Hill, Winder, Lodge, Vick, Anthon, Stennett, and Buckner-Webb.

**ABSENT/ EXCUSED:** Vice Chairman Hagedorn

**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 Siddoway** called the Senate State Affairs Committee (Committee) to order at 8:03 a.m. with a quorum present.

**MINUTES APPROVAL:** **Senator Hill** moved to approve the Minutes of February 7, 2018. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

**RS 26130C1** **A JOINT RESOLUTION PROPOSING an amendment to Section 2, Article III, of the Constitution of the State of Idaho, relating to the Idaho Commission for Reapportionment (Commission).**

**Representative Loertscher**, District 32, stated there have been two redistricting commissions in the last two cycles; another one will soon be implemented. **RS 26130C1** will increase the number of members on the Commission to nine and create a method for choosing the ninth member. He pointed out there have been an even number of commissioners and the State has experienced a problem of deadlock on many occasions. The ninth member will be elected by The Legislative Council.

**Senator Stennett** commented the commission is held to a tight standard by the Supreme Court. She noted having an even number supports parity. She asked what would be corrected with this RS, as things have been working with the current system. **Representative Loertscher** replied having a tiebreaker will allow the process of drawing boundaries to move faster.

**Senator Vick** asked why it would not be more expensive to have nine commissioners. **Representative Loertscher** responded it would be more expensive, but that can be adjusted. He predicted it will be a little more expensive.

**MOTION:** **Senator Hill** moved to send **RS 26130C1**, with an adjustment to the fiscal note, to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**. **Senator Stennett** was recorded as voting **nay**.

**HCR 48** **STATING FINDINGS OF THE LEGISLATURE honoring Marilyn Shuler .**

**Representative Ilana Rubel**, District 18, presented **HCR 48** to honor Marilyn Shuler. **Representative Rubel** declared that Ms. Shuler, who passed away last year, was a great proponent of children's rights and human rights in Idaho. As a result of childhood polio, Ms. Shuler had experienced social isolation which led her to have a deep sense of empathy. **Representative Rubel** related that Ms. Shuler committed her life to addressing discrimination. **Representative Rubel** detailed Ms. Shuler's contributions as follows:

- kindergarten teacher;
- supporter of public kindergarten across Idaho;
- advocate for hard-to-place foster children;
- founder of the John D. Shuler Memorial Fund, which created opportunities such as music lessons, summer camps, and letter jackets for foster children;
- director of the YMCA; and
- co-founder of the Idaho Anne Frank Human Rights Memorial.

**Representative Rubel** stated Ms. Shuler served Idaho in many other ways and was known as Idaho's foremost human rights champion. She served for 20 years as Director of the Idaho Commission on Human Rights. **Representative Rubel** concluded by requesting that the Legislature recognize and honor the many accomplishments and contributions made by Marilyn Tate Shuler to the people of Idaho.

**MOTION:** **Senator Buckner-Webb** moved to send **HCR 48** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**S 1313** **RELATING TO SELF-DEFENSE to include in Idaho Code the Castle Doctrine and Stand Your Ground principles recognized by case law and jury instructions.**

**Chairman Siddoway** requested that those testifying keep their comments short to avoid imposition of a time restriction.

**Senator Todd Lakey**, District 12, indicated **S 1313** dealt with the right to defend one's self and others, as well as a person's place of habitation, place of business, and occupied vehicle. He explained the legal concepts guiding Idaho laws are described generally as the Castle Doctrine or Stand Your Ground Doctrine (SYG). They have long been recognized in case law and in jury instruction, which are established by the judicial branch. **Senator Lakey** perceived these principles should be established and maintained in Idaho Code.

**Senator Lakey** observed that development of the statutory language needed to be a careful effort to establish the principles in Idaho Code while not harming the years of good case law and precedent. He advised that the amount of change was limited, and existing Idaho language and concepts were used to incorporate the principles and language from Idaho case law and jury instruction into Code. **Senator Lakey** noted that legislative intent language is included; he identified the entities who collaboratively developed the language. **Senator Lakey** detailed the provisions of the bill including:

- amending Title 18 which deals with justifiable homicide, and Title 19 which deals with criminal procedure, by adding "place of business or employment", and "an occupied vehicle";
- adding "a person who unlawfully and by force or by stealth enters or attempts to enter . . . is presumed to be doing so with the intent to commit a felony"; and
- adding definitions for "habitation", "place of business or employment", and "vehicle".

**Senator Lakey** stated **S 1313** repeals old language in Idaho Code § 18-4010 which deals with the archaic "bare fear" and replaces it with the reasonable person standard.

**Senator Lakey** referred to Idaho Code § 19-201A stating the legislative intent language continues applying Idaho principles of case law and jury instruction. He noted the changes Idaho Code § 19-202(2) adds that a person protecting his/her family or possessions may use sufficient force as would appear to be reasonably necessary to prevent the threatened injury. **Senator Lakey** clarified this judgment would be from the viewpoint of a reasonable person placed in the same position, without the benefit of hindsight.

In referring to Page 3 of the bill, **Senator Lakey** indicated that a defensive person is not required to wait and see if the danger is apparent or real, and is not required to retreat from any place the person has a right to be. He identified language which states this does not apply to inmates as they interact with jail or prison staff acting in their official capacity. **Senator Lakey** pointed out the burden of proof is on the prosecution. He then identified the conditions under which a person can use force or deadly force.

**Senator Winder** referred to calls in opposition to this bill. Some said it needed to be stronger, closer to **H 444**. He asked Senator Lakey to explain the differences regarding the reasonable person standard. **Senator Lakey** reiterated the reasonable person designation in **S 1313** comes from existing Idaho Code and jury instruction. He stated he would get an explanation of the principle as used in **H 444** to Senator Winder.

**Senator Lakey** judged **H 444** as using language from other states, which weaken the protections in Idaho under existing case law. He pointed out some of the differences as:

- The removal of the ability to defend one's property if the person is knowingly engaged in unlawful activity;
- The allowance for a parent or grandparent to remove a child from a person's home;
- The utilization of language indicating a person could go after someone for past actions;
- The denial of law enforcement to engage in typical activities such as separating and talking to people in order to assess the situation; and
- The removal of the ability for law enforcement to detain.

**Senator Lakey** considered that **S 1313** takes a more common sense approach under Idaho case law.

**Senator Anthon** referred to the use of "curtilage" in **S 1313** and asked if **H 444** includes defending the yard. **Senator Lakey** replied that it does not encompass curtilage, but only uses the term "porch".

**Senator Stennett** asked for clarification of the section regarding "occupied vehicle". **Senator Lakey** replied that breaking into an occupied vehicle is akin to breaking into a home. Defending an unoccupied car is defending property and falls under a different part of Idaho Code. **Senator Stennett** asked if this allows a person inside a vehicle to shoot someone outside the vehicle who is trying to break in. **Senator Lakey** answered the person would be able to use a firearm for defense.

**TESTIMONY IN  
SUPPORT:**

**Grant Loeb**s, Prosecuting Attorney, Twin Falls County, and Idaho Prosecuting Attorneys Association, stated **S 1313** clarifies the law for citizens regarding definitions. It also supports Idaho tradition of case law and jury instruction, and explains the rights of the victim.

**Brent Wright**, Police Officer in Twin Falls, Idaho, and the Idaho Fraternal Order of Police (IFOP), stated the IFOP supports the bill because it clarifies the confusion that exists under current law and puts it in statute.

**Richard Trudeau**, Eagle, Idaho, explained why there are no assurances for non-prosecution with SYG only, and asserted that **S 1313** gives that assurance.

**Keely Hopkins**, State Liaison for the National Rifle Association, observed **S 1313** consolidated and codified practices that currently exist.

**Mathew Faulks**, Idaho State Rifle and Pistol Association (ISRPA), supports a clear statement of the law regarding Castle Doctrine and SYG. He identified issues the ISRPA believes need clarification.

**Senator Winder** noted the bill states "the person acting pursuant to this section may use any degree of force as would appear to be reasonably necessary to prevent the threatened injury." Such language allows more than simply shooting someone.

**Seth Rosquist**, Idaho Second Amendment Alliance (ISAA), indicated the ISAA perceives a need to strengthen self defense laws in Idaho. He stated **S 1313** is an effort to do so, but it needs to be stronger. He stated the ISAA would support this bill with some amendments (see Attachment 1).

**TESTIMONY IN  
OPPOSITION:**

**Eric Leiht** felt **S 1313** would cause more problems by reducing the choice to use a firearm to a matter of opinion.

**Terry Pickens-Manweiler** believes the current law to be adequate. **Ms. Pickens-Manweiler** judged some provisions of **S 1313** to challenge judicial, prosecutorial defense, and law enforcement decisions in terms of justifying a homicide. She felt the use of a legal presumption to be a serious concern.

**Jennifer Laforge**, Moms Demand Action (see Attachment 2).

**Senator Hill** requested the source for statistics indicating a rise in justified homicide rates in other states that had enacted similar legislation. **Ms. Laforge** replied she was referring to Florida and would send the source for the statistics to him.

**Diana David** spoke as a gun owner, a military family member, gun violence survivor, and a friend of others who have died from gun violence. **Ms. David** felt SYG laws have become a license to kill and puts everyone in danger. She declared Idaho already has laws allowing citizens to protect themselves. **Senator Vick** inquired if the shooters in the cases she knew of were convicted. **Ms. David** replied they were. **Senator Vick** commented that if they were found guilty, it didn't seem the law was the problem.

**Nicole R. Brown**, Moms Demand Action, Idaho Chapter explained the intensity of training given to military personnel who then must follow strict guidelines in determining the need for deadly force. She felt under, **S 1313**, civilians would be given more liberal guidelines with far less training, and would be allowed to make deadly force decisions (see Attachment 3).

**Elana Story**, Mom's Demand Action, focused on the unintended consequences **S 1313** could have (see Attachment 4).

**Melany Flitton Fowell** asserted **S 1313** encourages reckless and combative vigilantism. She surmised that **S 1313** is not needed, because Idaho law already protects the right to defend one's life, family, and home with deadly force (see Attachment 5).

**Kate Brusse**, Moms Demand Action, stated responsible gun ownership can further the cause of preventing gun violence. She observed Idaho law already allows for the defense of families and homes, and recognizes the right to use self-defense in public. **S 1313** expands the use of deadly force. **Ms. Brusse** expressed great concern regarding not waiting to ascertain whether the danger is apparent or real.

**Gretchen Gringa** spoke from a faith perspective, referencing Biblical teachings against killing. She commented that no public place is safe, and she referred to a Texas A & M University study showing no evidence that SYG laws deter crime; the study should, instead, such laws increase killing.

**Kathy Greismeyer**, Policy Director, American Civil Liberties Union, noted that much of her written testimony has been discussed previously. **Ms. Greismeyer** focused on homicide rates in states that have adopted SYG legislation, and the racial impact on racial disparity with SYG laws (see Attachment 6).

**Nirmala Sandho**, Southwest Chapter of National Organization for Women, stated **S 1313** is unnecessary and could have serious unintended consequences. She claimed SYG laws distort the law, encourage escalation in violence rather than de-escalation, and cause a disproportionate negative effect in communities of color (see Attachment 7).

**Stephanie Hansen**, Moms Demand Action, expressed concern about the negative effect SYG laws have on people of color as she has a child adopted from Ethiopia (see Attachment 8).

**Sarah Lowall**, Reverend, Boise Unitarian Universalists Fellowship, and Interfaith Equality Coalition of Idaho, said **S 1313** allows for too much misinterpretation. **Reverend Lowall** spoke of the need to follow faith-based tenets. She expressed concern that there would be tragic ramifications from the misinterpretation of a situation by a person in a high state of fear and anxiety.

**Senator Lakey** declared it is important that individuals act with good judgment in stressful situations. He felt acting on some people's feeling that there should be no Castle Doctrine or SYG laws in Idaho would mean repealing existing provisions we have had for over 100 years. **Senator Lakey** emphasized **S 1313** puts existing case law and jury instruction into Idaho Code. Referring to Idaho Criminal Jury Instruction 1519, **Senator Lakey** noted it is not necessary to retreat, but one may stand his/her ground and use any means necessary to defend one's self or another person. He declared **S 1313**:

- does not change any laws,
- does not allow vigilante action,
- does not expand the scope of the current law except in the cases of employment and vehicle,
- does not create any new law regarding waiting to ascertain if a danger is apparent or real, as this is included in the McGreedy case, and
- does not create any new law, so statistics of increased homicide rates from other states do not apply.

**Senator Lakey** explained this bill is not to provide a deterrent, but to allow self defense. He felt it was important to maintain existing law. He compared some aspects of **S 1313** and **H 444**, noting a problem with language and a lack of clarity.

**MOTION:**            **Senator Vick** moved to send **S 1313** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**. **Senators Stennett** and **Buckner-Webb** were recorded as voting **nay**.

**ADJOURNED:**    There being no further business, **Chairman Siddoway** adjourned the meeting at 10:22 a.m.

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Senator Siddoway, Chair

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Twyla Melton, Secretary

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Carol Cornwall, Assistant Secretary