

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 19, 2024

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Hart, Hartgen, Wintrow, Ruchti

ABSENT/ EXCUSED: Senator Ricks

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 Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

INTRODUCTION: **New Senate Page - Roy Hutchings, Rupert, Idaho.** **Chairman Lakey** gave Roy Hutchings the floor to introduce himself to the committee. **Mr. Hutchings** explained that he was undecided on his plans going forward, but had considered both college and the national guard. He hoped that this experience would help him in figuring out his plans and that it would be a fun experience.

RS 31364 **Relating to Mandatory Minimum Sentencing for Multiple DUI Violations including Manslaughter** **Senator Bjerke** explained that **RS 31364** added mandatory minimums to vehicular manslaughter charges if the defendant was found guilty of a prior DUI.

MOTION: **Senator Anthon** moved to send **RS 31364** to print. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

S 1324 **ENTICING OF CHILDREN - Amends existing law to revise a penalty regarding the crime of enticing children.** **Senator Foreman** stated that **S 1324** amended § 18-1509 of Idaho code to make the first conviction of enticing children a felony rather than a misdemeanor. **Senator Foreman** continued that current Idaho code § 18-4501, which defined kidnapping, stated that anyone who enticed a child away from their parent, guardian, or other person having lawful control of the child, committed a felony on the first offense. **Senator Foreman** stated that **S 1324** made these two sections of code consistent with each other while also being strongly supported by law enforcement and the Fraternal Order of Police.

DISCUSSION: **Senator Wintrow** asked about the history of the current code as she had previously introduced a similar bill relating to § 18-1508. **Senator Wintrow** continued to explain that the section of code that Senator Foreman attempted to revise was added in 2003 and updated in 2012. **Senator Wintrow** wanted to hear of any research that Senator Foreman had done to understand why the code was written the way it was. **Senator Foreman** responded that he did not have any specifics on the history of the section of code, but had consulted with multiple prosecutors who agreed there was an inconsistency that they believed should be remedied.

Senator Lee raised concern that enticing had generally been used as a step down from kidnaping or attempted kidnaping when not enough evidence was available to charge the person or a plea deal had been struck, but if removed a

lower charge would be used. **Senator Foreman** responded by pointing to the current kidnapping code which aligned the definition of enticing almost word for word with the child enticement code that called for the first offense being a felony, while current child enticement code had it as a misdemeanor. **Senator Foreman** explained a third Idaho code which spoke on the enticement of a person under 16 on a computer which was also a felony. The State had three statutes with two being felonies and one being a misdemeanor. **Senator Foreman** believed that the state should make all the statutes felonies.

Senator Lee stated that she believed these were drafted as an opportunity to have different enforcement mechanisms for crimes. She stated these had historically been used in cases with minors where there may be a 17 and 15 year old couple.

She asked how this legislation would affect minors. **Senator Foreman** responded that he trusted the court system, and while this may possibly rule out one avenue that the courts had as a means to get a conviction, the courts did not exist in a vacuum. **Senator Foreman** believed that the courts had enough understanding and did enough research to continue to properly deal with cases while also having a stronger tool when necessary.

Senator Anthon continued questions about a possible 17 year old and 15 year old in a relationship in which they decided to run away together which could lead to a felony and mandatory sentence. **Senator Foreman** responded that if the situation were to occur it would most likely fall under kidnapping code leading to a felony conviction regardless of **S 1324**. **Senator Foreman** reiterated that the court would have to look at the sum total of evidence to make a proper ruling.

Chairman Lakey noted that the legislation did not have a mandatory minimum it had a maximum sentence of 5 years.

Senator Hart asked Senator Foreman what brought this specific legislation to the top of his list and if this was an ongoing problem that was arising in the State. **Senator Foreman** responded that a constituent of his brought this to his attention and it was a growing problem. **Senator Hart** continued that in other sections of Idaho Code there was an age buffer to avoid problems that were mentioned by the other committee members and asked the sponsor if any research had been done on similar legislation to possibly add it to this bill. **Senator Foreman** responded that the only legislation that he researched were other child enticement, kidnapping, and enticing a child for unlawful sex acts bills.

TESTIMONY:

Mary Ellen Nourse testified in favor of **S 1324**. **Ms. Nourse** provided an example from her time as an educator within the Idaho prison system where she encountered an offender nicknamed the Ice Cream Man who lured children into his van with the promise of ice cream. He eventually assaulted a young boy. **Ms. Nourse** believed that if the crime was a felony that it may have deterred the offender.

Kris Steneck testified in favor of **S 1324**. **Ms. Steneck** shared multiple different stories related both to her time in law enforcement as well as a civilian in which she was able to see attempted kidnappings. **Ms. Steneck** also wanted to clarify the difference between this legislation and Romeo and Juliet laws.

Senator Lee, in relation to a story told by Ms. Steneck, asked if she thought that the State of Idaho would not be able to charge someone with attempted kidnapping under current statute. **Ms. Steneck** responded that she would need to hear from prosecutors on the viability of using the attempted kidnapping

statute, but explained that she believed many of these laws are geared towards internet crimes instead of in-person crimes.

DISCUSSION: **Chairman Lakey** thanked those who testified and gave the floor to Senator Foreman to close the debate. **Senator Foreman** explained his hesitancy to move a first offense to a felony, but believed it was a necessary way to add repercussions to law because of an uptick in cases.

Senator Lee asked what the state charged people with after getting rid of the misdemeanor as a tool for prosecutors, **Senator Lee** continued that the lack of Romeo and Juliet sections within the bill could be problematic and noted that many times when it came to minors it may have been parents who had a power imbalance possibly attempting to have a minor receive a felony. **Chairman Lakey** commented that there may have been another tool as a prosecutor in disturbing the peace that's often a default for prosecutors in many situations. **Senator Ruchti** responded that through the testimony heard today there were obvious crimes that needed to be prosecuted, but seemed to already have felonies in code to charge violators with.

MOTION: **Senator Anthon** moved to send **S 1324** to the floor with a **do pass** recommendation. **Senator Foreman** seconded the motion.

DISCUSSION: **Senator Anthon** spoke to the motion and clarified that while not disagreeing with Senator Lee or Senator Ruchti, he believed that for these types of crimes the book should be thrown at perpetrators. **Senator Anthon** continued that every day there were minors who wanted to run off to California and parents wanted some sort of legal recourse. He stated that child enticement should not be a misdemeanor, so he supported the motion.

SUBSTITUTE MOTION: **Senator Lee** moved to send **S 1324** to the 14th Order of Business for possible amendment. **Senator Hart** seconded the motion.

DISCUSSION: **Senator Lee** agreed with Senator Anthon that the State of Idaho should have strong laws on these issues, but wanted to first attempt to solve the minor to minor problem and send a strong message to parents or other individuals that there was a way to deal with these problems outside a first time felony conviction. She supported the legislation. **Chairman Lakey** clarified that if there were minors involved it would go to juvenile court which would handle the process differently.

Senator Wintrow shared the concerns of Senator Lee. She mentioned § 18-1509 of Idaho Code already in place may handled the situation of enticement better than the current revision and had concerns about removing a tool from prosecutor's tool box. She explained that she would like to hear more testimony from local police forces, prosecutors, and probation offices on their opinion of the bill before changing the statute to a felony.

Chairman Lakey asked Senator Foreman his preference on being sent to the amending order. **Senator Foreman** explained that he would prefer that the bill not go to the amending order, but rather that it go to the floor with a do pass recommendation.

Senator Hart asked for clarification on what vote was before the committee. **Chairman Lakey** answered the substitute motion, and offered Senator Hart a chance to speak on the motion. **Senator Hart** explained that in his ten sessions in the legislature he had noticed that when legislation received more deliberation that the State produced better legislation. He expressed that he did not want to vote no on the legislation, but believed that it needed more work.

**SUBSTITUTE
MOTION VOTE:**

Chairman Lakey called for a roll call vote on the substitute motion. **Senators Lee, Hart, Hartgen, and Ruchti** voted aye. **Chairman Lakey, Senators Foreman, Anthon, and Wintrow** voted nay. The substitute failed.

**ORIGINAL
MOTION VOTE:**

Chairman Lakey called for a roll call vote. **Senators Foreman, Anthon, Hartgen and Chairman Lakey** voted aye. **Senators Lee, Hart, Wintrow, and Ruchti** voted nay. The motion failed.

Both votes being split, **S 1324** was held with subject to the call of the chair.

S 1326

MOTOR VEHICLES - Adds to existing law to provide for the crimes of aggravated driving while reckless, to provide penalties, and to provide that evidence of conviction shall be admissible in a civil action for damages. **Senator Hartgen** described that this bill added the crime of aggravated driving while reckless to Idaho code. This code added to existing reckless driving law under which a person causing bodily harm, permanent disability, or permanent disfigurement to any persons other than themselves may be charged with aggravated driving while reckless. This legislation was in line with current DUI laws. If no harm was done to others for a person's first offense then it was a misdemeanor, but if harm was caused it could be a felony. **Senator Hartgen** explained that this legislation was necessary as there was an uptick in car related injuries and deaths which had only received misdemeanor charges which resulted in small fines rather than felony charges.

TESTIMONY:

Michael Windler, former Idaho State Police Officer, Kimberly, Idaho, testified in favor of **S 1326**. He explained that the State was seeing more reckless driving on streets that were being used as raceways. This increase in reckless driving was endangering drivers, passengers, pedestrians, and other motorists. **Mr. Windler** believed that having stronger punishments would deter such behavior.

Mike Pohanka, chaplain for multiple law enforcement agencies, testified in favor of **S 1326**. He explained that he had heard of a story involving a young man driving in excess of 100 MPH on a 45 MPH road that caused serious harm to multiple people. **Mr. Pohanka** believed that the young man should be held accountable and the implementation of this law would send a message to others about driving in a dangerous manner.

Robby Bleazard, Idaho Prosecuting Attorneys Association, testified in favor of **S 1326**. He referenced a letter sent to the members of the committee laying out the position of the association and stood for questions (Attachment 1).

Senator Wintrow asked for clarification on § 49-1401 and the fact patterns that a prosecutor may look for in an aggravated driving while reckless case. **Mr. Bleazard** explained the two theories on how someone received a § 49-1401 offense and how the legislation allowed for a sort of enchantment under the circumstance of there being permanent disability, permanent disfigurement, or great bodily harm. **Senator Wintrow** asked for more clarification on what types of acts would count towards recklessness. **Mr. Bleazard** expanded that, as part of § 49-1401, there were two different charges. The first was inattentive driving which was a lesser charge than reckless driving and explained the difference in charges.

DISCUSSION: **Senator Hartgen** finished by stating that there was nothing hidden within the bill and that if a person seriously harmed someone while committing reckless driving, then they would be charged with aggravated reckless driving. She stood for questions.

Senator Foreman commented that he liked the bill, but asked about the sentence being up to 15 years rather than a 10 or 5 year sentence. **Senator Hartgen** answered that there was still discretion for the judge in these cases. 15 years was a maximum, but the law had a minimum of 30 days in county jail.

Senator Lee thanked Senator Hartgen for the bill and the people who testified in front of the committee. She praised the discretion that it gave both judges and prosecutors.

Senator Foreman thanked Senator Hartgen and reserved the right to change opinion on the floor.

Senator Anthon thanked both senator Hartgen as well as the Winder family.

MOTION: **Senator Lee** moved to send **S 1326** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

S 1346 **TIME OF COMMENCING CRIMINAL ACTIONS - Amends existing law to provide that there shall be no statute of limitations for the crime of incest.** **Senator Anthon** explained very simply this bill removed the statute of limitations off of incest and yielded the rest of his time to McCord Larsen to explain the bill.

McCord Larsen, Cassia County prosecuting attorney, took the stand and expanded on why this legislation was brought before the committee. **Mr. Larsen** recently prosecuted a case involving a young woman who was raped by her grandfather, which she had reported years ago, but was ignored. During the process of prosecuting this case **Mr. Larsen** noticed that there was currently no defense against incest within the legal code for rape. He noted that during his time asking constituents and stakeholders about the issue there had been unanimous support for the bill.

Senator Anthon closed the discussion by noting the wicked dynamics that could be involved in these cases and wanted to make sure that prosecutors had as many tools to deal with these cases as were needed

Senator Wintrow thanked Senator Anthon for the work behind the bill and recognized the difficulty that a subject like this could have on the people involved.

Senator Ruchti noted that the removal of a statute of limitations should be done with extreme caution. There was a select number of extremely heinous crimes that deserve the special recognition and incest was one.

MOTION: **Senator Wintrow** moved to send **S 1346** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1350: **JUVENILE CORRECTIONS ACT - Amends existing law to provide for requirements regarding reporting for a sentencing hearing.** **Senator Wintrow** explained that **S 1350** was a recommendation from our criminal justice commission based on the data reported from H 341 that was passed last year. This legislation provided for standardized training, screening, and assessment tools for juveniles in the court systems.

TESTIMONY:

Monty Prow, Director of the Idaho Department of Juvenile Corrections, testified in support of **S 1350**. He explained that this bill attempted to put into place some of the recommendations of the subcommittee on possible ways to combat the problem of human trafficking within the state. **Director Prow** showed the committee an example of what screenings for human trafficking would entail and the processes that the juvenile justice system would go through. He expressed to the committee the extent of the problem and why there was such a need for reform in this area. 52% of the youths that came through the screening were at high risk of being involved in trafficking with 6% being confirmed, and 24% of females being confirmed trafficking victims. **Director Prow** emphasized the importance of creating a system to capture youth in the juvenile system rather than later in life.

Senator Lee asked for clarification on what the bill was attempting to do. **Senator Lee** made sure that this legislation wasn't allowing criminals to skirt responsibility for crimes. **Director Prow** believed that this legislation as written shut the gap as well as getting to the heart of whether the State had a victim from a professional or not and the appropriate response to that victim.

Chairman Lakey asked about the addition of new work to the current juvenile justice system. He clarified that all of the tools were already easy to obtain and incorporate into the process. **Director Prow** responded that there were already several off-the-shelf validated screenings already created either federally or by other state governments. The legislation stated that the Idaho Department of Juvenile Corrections would be working with stakeholders to either create or implement one of the screening processes within 6 months.

Senator Wintrow explained the stages of change that the bill had gone through while also reassuring the committee that these standardized assessments already existed and were being utilized. This legislation made sure that the process and data was standardized and available to all judges.

MOTION:

Senator Lee moved to send **S 1350** to the floor with a **do pass** recommendation. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:57 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary