

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 07, 2024

TIME: 1:30 P.M.

PLACE: Room WW54

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

**ABSENT/
EXCUSED:** None

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 meeting of the Senate Judiciary & Rules Committee (Committee) to order at 1:31 p.m.

DISCUSSION: **Chairman Lakey** explained he would be presenting **H 406** and Vice Chairman Foreman would chair the Committee meeting.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Foreman.

H 406

Relating to uniform controlled substances - Adds to existing law to provide for the crimes of trafficking in fentanyl and drug-induced homicide. Chairman Lakey, Idaho State Senator, District 23, asserted Idaho was a great place to live and raise a family. The reason was the low crime rate, safe communities, and the people of Idaho. He announced how people were fleeing states like Oregon, Washington, and California and moving into Idaho. One main reason was the strong policy decisions in Idaho against drugs. He indicated it was due to the mandatory minimum sentences for those who were caught drug trafficking in Idaho. He mentioned law enforcement had drug dealers on tape who stated they would not do business in Idaho because of the mandatory minimums. The bill was a deterrent for drug trafficking, it would not eliminate all fentanyl in Idaho.

Chairman Lakey detailed **H 406**. The bill would allow for any person found to knowingly possess four grams or more of fentanyl to be charged with a felony, "trafficking in fentanyl". Others caught with five grams or 100 pills, would face a mandatory sentence of three years and a \$10,000 fine. **Chairman Lakey** stated while **H 406** would not solve the public health crisis, it would act as a powerful deterrent and major first step in combating fentanyl trafficking and the presence of drug cartels in Idaho. He noted Idaho Law Enforcement had pleaded for mandatory minimums for years.

Public awareness of the fentanyl problem had grown, as 86 percent of Idahoans supported the establishment of mandatory minimum sentences for trafficking and fentanyl. He stated there were two ways Idaho combatted drug dealers, one was possession with intent to deliver. The second was knowingly be in possession of a dealer quantity that fell under trafficking drugs.

Chairman Lakey cited the drug induced homicide portion of **H 406**, the delivering of substances to someone that resulted in death. Dealers who sold and provided lethal drugs resulting in the death of a purchaser would be held accountable. The

section did allow for judicial and prosecutorial discretion. In summary, **Senator Lakey** asked the Committee for their support for **H 406**.

DISCUSSION:

Representative Ted Hill addressed the Committee, he stated fentanyl was the number one drug threat in the United States. Over 110,000 individuals overdosed each year, with 70 percent of those from fentanyl. He reaffirmed the bill was to aid law enforcement, by giving them the tools they needed to deter the cartels from dealing fentanyl in Idaho with the issuance of mandatory minimums.

Senator Hart asked Representative Hill if there was a study on mandatory minimums, and if they decreased drug use in a community where they were used.

Representative Hill responded a study had not been done. The bill was in response to the feedback from law enforcement on the streets who dealt with the issue every day.

Senator Hart stated in New York City in 1973 mandatory minimums were enforced. There were studies against mandatory minimums. He asked if there was a study in favor of mandatory minimums in the last 50 years.

Representative Hill responded he had not found a study in support of mandatory minimums. He stated deterrence worked.

Senator Hart asked Representative Hill if **H 406** passed, how would it change the way the cartels did business in Idaho.

Representative Hill responded it would send the message to the cartels and traffickers that Idaho was tough on drugs. He added mandatory sentences made doing business on the streets difficult. It made the cost of doing business extremely difficult and the price high.

Senator Ruchti expressed difficulty with Representative Hill's response that no study was available. He asked Representative Hill if Idaho policy should be set on data, facts, and science.

Representative Hill responded he followed what law enforcement told him.

Senator Wintrow inquired about the impact on the courts and prisons when arrests increased.

Chairman Lakey responded the objective was to reduce the number of fentanyl abuses by putting in a deterrent, and by reducing the amount of fentanyl coming into Idaho it would eventually decrease arrests.

Senator Wintrow asked Chairman Lakey to expand on induced homicide. She asked about kids who passed drugs among friends at a party and would they be tried as an adult for homicide if a partygoer overdosed.

Chairman Lakey detailed that if a person who dealt in fentanyl delivered the substance to someone, and it ended that person's life, the dealer should be held accountable. If a juvenile committed the crime, it was not an automatic waiver into adult court and it was not an automatic conviction. He stated drug-induced homicide was not considered murder. The definition of murder was the unlawful killing of another human being with any killing that was willful and premeditated with malice. He stated the act had to be deliberate and performed with knowledge of the danger and the conscious disregard for human life. The innocent person at a party did not meet the standard for induced homicide, but could be charged with a lesser level of intent.

Senator Ruchti inquired about drug induced homicide. If a person had violated the provisions in Idaho Code § 37-2732B, any person who knowingly manufactured, delivered or brought into the state, provided a controlled substance to a person, had the minimum mandatory amount of drugs, and the person died, the provider could be in violation of drug induced homicide.

Chairman Lakey responded Idaho Code § 37-2732B covered controlled substances not just fentanyl.

Senator Hart questioned if **H 406** covered intent to commit drug induced homicide.

Chairman Lakey responded the intent portion was covered in the violation of the controlled substances provisions.

Senator Hart asked what other types of homicides would be charged if someone knew their actions might kill someone.

Chairman Lakey responded with murder. The level of intent had to be much higher.

Representative Hill, reported that his visual metric to no mandatory minimums was Seattle, Washington; Portland, Oregon; and Los Angeles, California. He stated Idaho needed mandatory minimums to keep the cartels away and keep Idaho from following the paths of these other cities.

Vice Chair Foreman informed the Committee it was time to hear testimony.

TESTIMONY:

Chief Tracy Basterrechea, Idaho Chiefs of Police Association, stated from January 19, 2024 to today's Committee meeting February 7, 2024, there had been five fentanyl overdoses in Meridian. Two were fatal and three had been saved by officers utilizing Narcan. He stated there was not a lack of judicial discretion. A judge still had to find probable cause someone was trafficking fentanyl. A jury had to find the accused guilty of trafficking fentanyl. **H 406** would set mandatory minimums for those trafficking fentanyl. It would not stop the fentanyl epidemic, but would help curb the flow of drugs into Idaho.

DISCUSSION:

Senator Ruchti asked about judicial discretion. The judge still had to find probable cause that someone was trafficking fentanyl. He inquired how the number of pills and grams of fentanyl were accounted for. How was someone considered a trafficker.

Chief Tracy Basterrechea responded that users did not carry the amount of pills or substances on them that traffickers did.

TESTIMONY:

Jean Fisher, State Director, Right on Crime, highlighted her past experience as a 33 year veteran deputy prosecutor from Ada County. She highlighted her experience working with child and sexual abuse victims. She stated the drug induced homicide portion of the **H 406** was flawed. She explained **H 406** was not about arresting the traffickers, but the users. This was a legal argument that **H 406** was focused on users not traffickers.

DISCUSSION: **Senator Wintrow** asked if Jean Fisher could clarify her disagreement on homicide and murder and how it dealt with juveniles.

Ms. Fisher responded that Idaho had murder defined by four different acts. First degree murder, second degree manslaughter, involuntary manslaughter, and vehicular manslaughter, which would not be focused on. Involuntary manslaughter was a deliberate criminal act which resulted in the unintended death of another person causing a drug induced homicide. **Ms. Fisher** explained if someone knowingly gave another person drugs at a party, knowing they were already participating in an illegal act, neither of them intending to die, but unknowingly to either party ingested a fatal amount of fentanyl. This act was user to user, not trafficker.

Senator Ruchti asked under drug induced homicide in § 37-2732A, it did not reference intent. If someone were to hand drugs to a friend at a party, not knowing the drugs had been laced, and that person died, the distributor could get charged under this law.

Ms. Fisher responded someone could be charged whether there was intent or not.

Senator Hart asked if the person offering the drugs was not at a party, but in a different setting, just user to user and the person died, could they be charged.

Ms. Fisher responded if someone unknowingly offered someone a drug laced with fentanyl and the recipient died, it would be hard to prove and prosecute. She urged the Committee to change the language of the bill.

Senator Wintrow pointed out that the law was already on the books for involuntary manslaughter. She questioned why drug-induced homicide needed to be added.

Ms. Fisher responded this was exactly the case she was making. If someone was purposely trying to harm others by passing off laced drugs, there were other laws to charge them with.

TESTIMONY: **Mike Miraglia**, Legislative Chair, Fraternal Order of Police, stated he was in support of **H 406**. He described his background as a detective that built drug trafficking cases that were centered around homicides. These cases took a tremendous amount of information to prove.

DISCUSSION: **Senator Anthon** asked why all of the drugs needed to be included in the drug-induced homicide charge.

Mike Miraglia responded it was the act of delivering the drugs that was used to determine whether there was intent or not. Fentanyl was added to the list with all the other drugs that could possibly be laced with fentanyl, such as cocaine.

TESTIMONY: **Monica Martinez**, Senior Case Manager, Idaho Anti-Trafficking Coalition, stated she was a victims advocate for the ones who would be punished by **H 406**. Drug and human trafficking were connected. The cartels and drug traffickers knew the mules and vulnerable individuals committed these crimes and were targets for law enforcement. These victims were extorted and forced to distribute, sell, and transport these illegal substances. Those were the ones who were prosecuted, not the cartels and drug traffickers.

DISCUSSION: **Senator Hart** inquired if human trafficking was sexual in nature.

Ms. Martinez responded these victims were used to traffic drugs, it was not only sexual. Human trafficking was complex. It was about power and control over the victims, and the cartels would use drugs as a way to control them.

Senator Hart inquired if these victims were trafficking drugs as well as being trafficked themselves.

Ms. Martinez responded the victims were used for both drugs and sexual acts. Human trafficking used these victims as mules so the cartels would not be caught.

Senator Hart inquired if someone was trapped in a human trafficking situation and was caught with more than 100 pills, could they be charged with drug trafficking, if they were trafficked themselves.

Ms. Martinez responded yes, they were trapped in the middle of the drug trafficking ring. She added the victims did not reach out for help. They had been coached and threatened and were unaware they were victims.

Senator Ricks asked if there could be modifications to this legislation that would reduce and get drug dealers off the street and lessen human trafficking.

Ms. Martinez added there could be victim assistance written into the legislation. Victims had no where to go and were coached to be afraid of law enforcement. They would not ask for help, and once caught they were criminals, not victims.

TESTIMONY: **Sheriff Matt Clifford**, Ada County Sheriff, reviewed his background in law enforcement for the last 23 years in Ada county. He stated he had worked many drug cases. The scariest of trends was fentanyl. He cited he was in support of **H 406**. This bill was to catch the trafficker, not the user. Law enforcement, prosecutors, and judges took all circumstances into account when investigating a crime.

TESTIMONY: **Juliann Donnelly**, Director, ACLU of Idaho, expressed her opposition to **H 406**. She stated the text of the bill allowed people to be prosecuted for very small quantities of fentanyl. The bill erased intent, which meant more people would be arrested. Ultimately, more Idahoans would be in prison and not recovering from drug use. People who had addictions before being imprisoned were at very high risk of death immediately upon release.

DISCUSSION: **Senator Hart** inquired what could be done differently about people being released from prison who did not get drug treatment.

Ms. Donnelly responded if the user did not receive treatment while incarcerated they would go back to using. The bill did not cover treatment. She suggested instead of adding lengthy prison sentences, add funding for treatment.

DISCUSSION: **Chairman Lakey** reviewed **H 406**. The quantities required were not user quantities. Drug dealing was a violent crime, deaths resulted and families were ruined.

Representative Hill stated it was a war on the cartels to defend the boundaries of Idaho. He expressed his support for **H 406**.

POINT OF ORDER: **Senator Hart** stated he wanted a point of order. The house had three and a half hours of testimony on **H 406**, there needed to be more public testimony and he stated he was not ready to vote on **H 406**.

MOTION: **Senator Anthon** moved to send **H 406** to the floor with a **do pass** recommendation. **Senator Hartgen** seconded the motion.

SUBSTITUTE MOTION: **Senator Ruchti** moved to send **H 406** to the 14th order of business for possible amendment. **Senator Wintrow** seconded the motion.

AMENDED SUBSTITUTE MOTION: **Senator Hart** moved to hold **H 406** in Committee. **Senator Ruchti** seconded the motion.

DISCUSSION: **Senator Hart** stated there needed to be more testimony on **H 406**. He added he had met with 22 reformed users who had in their possession more than 100 pills when they were arrested. These were addicts not dealers. These users were being convicted in federal court and were charged with trafficking. The bill over-charged persons arrested who were users.
Senator Wintrow agreed there needed to be more testimony on **H 406**, particularly more clarification on possession in the mandatory minimums section of drug trafficking.

ROLL CALL VOTE: **Vice Chair Foreman** called for a roll call vote on the amended substitute motion to hold **H 406** in Committee. **Senators Hart, Wintrow** and **Ruchti** voted aye and **Senators Lee, Anthon, Ricks, Hartgen, Vice Chairman Foreman,** and **Chairman Lakey** voted nay. The motion failed.

ROLL CALL VOTE: **Vice Chair Foreman** called for a roll call vote on the substitute motion to send **H 406** to the 14th order. **Senators Hart, Wintrow,** and **Ruchti** voted aye. **Senators Lee, Anthon, Ricks, Hartgen, Vice Chairman Foreman,** and **Chairman Lakey** voted nay. The motion failed.

ROLL CALL VOTE: **Vice Chairman Foreman** called for a roll call vote on the original motion to send **H 406** to the floor with a **do pass** recommendation. **Senator Lee, Anthon, Ricks, Hartgen, Wintrow, Vice Chairman Foreman** and **Chairman Lakey** voted aye. **Senators Hart** and **Ruchti** voted nay. The motion passed.

DISCUSSION: **Senator Ruchti** remarked he was not for mandatory minimums. He felt they did not work. There was no proving a drug trafficker had scales and measuring devices, they only had to have possession of over the amount of minimums, and they would be considered a drug trafficker even though they might be a user. He believed Idaho was tough on drug related crime already.
Senator Hart added there was a huge problem with fentanyl use in Idaho. The drugs were flowing over the southern border.

ADJOURNED: There being no further business at this time **Vice Chairman Foreman** adjourned the meeting at 3:05 p.m.

Chairman Lakey

Sharon Pennington
Secretary

Melissa Price
Secretary