

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 15, 2024

TIME: 1:00 P.M.

PLACE: Room WW54

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

RS 31162 **Relating to Income Tax.**

MOTION: **Senator Anthon** moved to send **RS 31162** to print. **Senator Hartgen** seconded the motion. The motion passed by **voice vote**.

RS 31598 **Relating to the Occupational Licensing Reform Act.**

MOTION: **Senator Anthon** moved to send **RS 31598** to print. **Senator Hartgen** seconded the motion. The motion passed by **voice vote**.

RS 31608 **A Concurrent Resolution Stating Findings of the Legislature and Approving Pending Rules of the Department of Environmental Quality Reviewed by the Senate Resources and Environment Committee.**

MOTION: **Senator Anthon** moved to send **RS 31608** to print. **Senator Hartgen** seconded the motion. The motion passed by **voice vote**.

RS 31634 **A Concurrent Resolution Stating Findings of the Legislature and Approving Pending Rules of the Idaho Department of Fish and Game, the Idaho Department of Lands, the Division of Occupational and Professional Licenses, the Department of Parks and Recreation, and the Idaho Department of Water Resources Reviewed by the State Resources and Environment Committee and the House Resources and Conservation Committee with Exceptions.**

MOTION: **Senator Anthon** moved to send **RS 31634** to print. **Senator Hartgen** seconded the motion. The motion passed by **voice vote**.

RS 31635 **A Concurrent Resolution Stating Findings of the Legislature and Approving Pending Rules of the Idaho Department of Lands Reviewed by the Senate Resources and Environment Committee.**

MOTION: **Senator Anthon** moved to send **RS 31635** to print. **Senator Hartgen** seconded the motion. The motion passed by **voice vote**.

RS 31643 **A Concurrent Resolution Stating Findings of the Legislature and Approving Pending Rules of the Department of Health and Welfare Reviewed by the Senate Health and Welfare Committee.**

MOTION: **Senator Anthon** moved to send **RS 31643** to print. **Senator Hartgen** seconded the motion. The motion passed by **voice vote**.

RS 31647

A Concurrent Resolution Stating Findings of the Legislature and Approving Pending Rules of the Division of Human Resources and Personnel Commission, the Idaho Industrial Commission, and the Public Employees System of Idaho, Reviewed by the Senate Commerce and Human Resources Committee and the House Commerce and Human Resources Committee, with Exceptions.

MOTION:

Senator Anthon moved to send **RS 31647** to print. **Senator Hartgen** seconded the motion. The motion passed by **voice vote**.

PASSED THE GAVEL:

Chairman Lakey passed the gavel to Vice Chairman Foreman.

H 494

CRIMES AND PUNISHMENTS - Amends, repeals, and adds to existing law to revise provisions regarding the crimes of trafficking and commercial sexual activity. **Senator Lakey** explained that **H 494** was a collaborative effort from the Attorney General's office, law enforcement, and prosecutors to combat prostitution and human trafficking. He continued that **H 494** changed the prostitution section of Idaho Code from "prostitution" to "commercial sexual activity" as well as punishments for selling and buying such commercial activity. **Senator Lakey** described the changed human trafficking section of Idaho code which categorized different forms of human trafficking and the punishment for each form.

DISCUSSION:

Senator Lee asked for clarification on page 21 of the bill related to substitute property. **Senator Lakey** answered that the section related to scenarios that involved destroyed property used in the act of human trafficking and this section would allow the State to receive compensation for an equivalent property. **Senator Lee** asked a follow-up relating to the claim that there were no mandatory minimums. **Senator Lakey** responded that there was minimum prison time, but there was judicial discretion.

Senator Hartgen asked why the legislation was using Attorney General's (AG) Office funds for a program that Idaho State Police (ISP) was already training on. **Senator Lakey** answered that this was an additional resource for ISP to use and recognized the AG's ability to provide additional help to law enforcement agencies in these situations.

TESTIMONY:

Jeff Nye, Chief, Criminal Law Division of the Attorney General's Office, testified in support of **H 494**. **Chief Nye** explained during the previous session the Legislature required the AG's office file a human trafficking report every year and this legislation was based on that report. He continued that his office then began to research other states and how they handled human trafficking to see how Idaho could improve its processes.

Chief Nye explained that after much consideration, the office decided the Texas model was the North Star of the Idaho program. He referenced 1880-605 on page 11 of **H 494** which had extensive discussion from stakeholders including the ISP, local prosecutors, and law enforcement which centered around whether the Attorney General should have concurrent jurisdiction over human trafficking. The consensus was no, instead the AG's office had the ability to help assist when help was requested. **Chief Nye** finished with a note about an added attorney position who specialized in human trafficking law.

Senator Ruchti asked what states were looked at in the development of the new model and why Texas was chosen. **Chief Nye** answered that his office looked at dozens of states, but decided on Texas because of the structure.

Senator Wintrow asked how the AG's office collaborated with victim advocates and how they responded to **H 494**. **Chief Nye** responded that first drafts of the legislation were circulated with victim advocacy groups who were at the forefront

of the human trafficking conversation. He continued that in his conversations the groups were most excited for page six on commercial sexual activity. They also appreciated the language in subsections three and four. **Chief Nye** finished by noting that children found in human trafficking situations were taken into the care of a peace officer rather than law enforcement.

Senator Wintrow asked if legislation passed earlier in the session by the Senate related to the assessment of juveniles when they were recorded into the system would benefit his office. **Chief Nye** answered yes, that it would be beneficial to the AG's Office. He added that he hoped his office continued to be able to provide recommendations when it came to combating human trafficking.

Senator Wintrow asked if Chief Nye had insight on situations where a minor was being harmed by a parent or guardian. **Chief Nye** explained that he did not have any specific insight into those situations. He noted that if **H 494** were to pass, and a report was written in two years from now, there would be a focus from the AG's office not only in arresting traffickers, but also supporting victims.

MOTION: **Senator Wintrow** moved to send **H 494** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

DISCUSSION: **Senator Hart** pointed to the length of the bill being 42 pages and would want time to read **H 494** extensively before voting on the floor. **Senator Foreman** reserved his right to change his vote on the floor. **Senator Lee** acknowledged the hard work of the Chair on **H 494** and collaboration with other stakeholders based on past concerns with the legislation. **Senator Ricks** echoed Senator Lee on the legislation as well as improvements made to the bill.

VOICE VOTE: The motion carried by **voice vote**.

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

H 515 **LEWD CONDUCT WITH A MINOR CHILD - Amends existing law to revise the penalty for lewd conduct with a minor child and to revise provisions regarding sentencing in capital cases.** **Representative Tanner** stated **H 515** amended the death penalty code to include sexual crimes against children 12 or younger. **Representative Tanner** explained that the death penalty would only apply to the most heinous of cases including rape of a two year old, repeated rape, and multiple victims. He continued that this amendment to the death penalty code would follow the same constitutionality that Idaho had for murder law. **Representative Tanner** referenced a previous split United States Supreme Court (SCOTUS) decision which struck down the ability for sexual crimes to be given the death penalty. He explained that current SCOTUS Justices had voted to allow for states to give the death penalty for the most heinous of crimes. He remarked that Florida had already passed similar legislation and had started the process to try their first case which would begin the legal battles against **H 515**. **Representative Tanner** explained that the Idaho death penalty code was different from many other states. In those instances, one juror saying no to the death penalty meant that it was not an option for punishment. **Representative Tanner** concluded by noting the extensive conversations he had with victims who he believed Idaho should stand up for.

DISCUSSION:

Senator Lee asked why the age of 12 was used for the age of a victim. **Representative Tanner** responded that during research, he found laws prior to 2008 which had 12 as the common age for this type of legislation, and felt like a good starting point in the case of a legal battle.

Senator Ruchti asked how Representative Tanner picked what crimes deserved the death penalty and referenced his discussion in relation to the most heinous crimes. **Representative Tanner** explained that the constitutionality of the matter was considered, but he was looking to narrow down to the most serious crimes.

Senator Wintrow referenced legislation she had sponsored while serving in the House. The bill prohibited firearm possession from those convicted of Lewd Conduct. It did not pass. She questioned if the public and the Legislature were open to the severity of the death penalty conviction. **Representative Tanner** responded that many states prior to 2008 had similar legislation, so when drafting **H 515** he focused on something that had a previously effective legislative history.

Senator Ruchti asked for clarification on whether states had the death penalty for these types of crimes prior to 2008. **Representative Tanner** responded yes.

Senator Hartgen commented that she believed life in prison without parole may be a better sentence than the death penalty due to the treatment of those prisoners by other inmates. It lowered financial cost to the State during the appeals process for death row inmates. **Representative Tanner** responded that, during his conversations with victims, they stated having the assaulter still physically present could be a torment for them. **Senator Hartgen** clarified that the financial burden was less of a consideration for her than the harshness of life long imprisonment compared to the death penalty.

TESTIMONY:

Tony Geddes, Chief Public Defender for Ada County, testified against **H 515**. **Mr. Geddes** pointed to the unconstitutionality of the legislation. Courts across the United States, including the Supreme Court, decided in many cases that the death penalty was not a proportional punishment for rape. He noted that Idaho already had extremely harsh punishments for those convicted of these crimes including life long imprisonment. He concluded that his office would need 20 additional attorneys were this legislation to pass. He did not believe the State was ready to pay for them.

Senator Ruchti asked if there was a proliferation of this type of legislation prior to 2008 and what states currently had legislation similar to **H 515**. **Mr. Geddes** answered that he was not familiar with any legislation prior to 2008. He noted that the Supreme Court had given lots of latitude for states to decide their own death penalty laws and sex crimes had generally not been included.

Senator Hart asked the cost to appeal a death penalty conviction on both sides. **Mr. Geddes** explained that, purely on the trial side, the State required two death penalty qualified attorneys on every case and each could only hear two cases at a time with no other types of criminal cases. He continued that if the case went to trial for an extended period, it could cost the State millions. **Senator Hart** asked for clarification whether attorneys could have other litigation while in a death penalty case. **Mr. Geddes** responded that, in line with the American Bar Association standards (ABA), there must be two attorneys on each case, and they must only have two death penalty cases with no other litigation.

Senator Wintrow asked if Mr. Geddes's office and the State would have enough money to fund all the attorneys for these cases. **Mr. Geddes** responded that it would be guesswork based on the case load, but his office alone could cost millions of dollars.

Senator Lee asked if there were any mitigating factors for prosecutors to use this legislation and if there was any language in **H 515** that would require prosecutors to bring a death penalty case. **Mr. Geddes** responded the prosecutors had discretion and currently had 60 days to make a determination from the entry of the plea. **Senator Lee** asked about the constitutionality of life imprisonment. **Mr. Geddes** responded that life imprisonment would pass constitutional muster. **Whitne Strain**, testified in support of **H 515**. **Ms. Strain** told her personal story of abuse from her father at a young age, and described the pain she felt as shrapnel in her heart. She expressed her understanding for the financial cost of the legislation, but pointed to the human cost of abuse and the people who may never be able to contribute their full potential to the State of Idaho. She urged the committee to support the legislation and the lives it could save.

Senator Lee thanked Ms. Strain for her bravery in sharing in committee. **Senator Lee** explained that the financial cost was not the problem with the legislation. Their concern was being shut down by the Supreme Court of the United States (SCOTUS), and giving victims false hope on a promise that could not be kept. **Ms. Strain** expressed her understanding for making sure that the legislation passed constitutionality, but hoped that the committee would balance that with the damage that was done to victims.

Anne Taylor, Cook County Public Defender, testified in opposition to **H 515**. **Ms. Taylor** explained that she was one of 13 lead counsel for capital crimes in Idaho. She stated that after someone was charged with a crime that could receive the death penalty, the accused was required to have a capital team appointed to them within 14 days. **Ms. Taylor** added that the current capabilities of the State allowed for 26 capital cases and because of the two-case maximum. The obligations filled up quickly and **H 515** could leave people unrepresented.

Chairman Lakey asked about the process if the 60 day notice of intent to seek the death penalty was not taken, how non-death penalty-qualified representation was given. **Ms. Taylor** explained that Idaho guidelines required vertical representation which required a client to have the same attorney throughout a case. She continued to explain the process on how representation may be changed, but noted that this process was months into a case.

Robert Gillis, Idaho Tough on Crime, testified in support of **H 515**. **Mr. Gillis** expressed his concern for a trend across the country encouraging leniency against offenders rather than holding offenders accountable.

Senator Foreman asked Mr. Gillis if the message would be heard by perpetrators and if this legislation would be a deterrent at all. **Mr. Gillis** responded that the type of people who committed these crimes had a different view of the world, and while the majority may not be deterred, even one or two can save lives.

Senator Hart asked if there were children coming across the border who were being trafficked and who were the victims of that crime. **Mr. Gillis** responded yes and that was a primary activity of the cartels and gangs of the region.

Aaron Bazzoli, Chief Public Defender Canyon County, testified in opposition to **H 515**. **Mr. Bazzoli** explained that he viewed this legislation as a way to attack children under the age of 16 who abused a child 12 or younger and argued that this legislation may overwhelm the legal system.

Dan Shipherd testified in support of **H 515**. **Mr. Shipherd** explained that **H 515** would be a deterrent message to would-be perpetrators and be an opportunity for justice for the victims. He also noted that more people may be lost from these

acts than from the death penalty and that the victims should be at the forefront.

Erik Lehtinen State Appellate Public Defender, Testified in opposition to **H 515**. **Mr. Lehtinen** estimated the cost that this would create for his office and noted the lack of attorneys that were in the State. It would require his office to hire at least eight additional attorneys as well as support staff which would have an untold initial cost.

Senator Lee asked when charges were brought if it would require the whole team from the start. **Mr. Lehtinen** responded that, based on the current Idaho standard, they would need a full team from working 100 percent from the start to build a mitigation case to attempt to avoid a death penalty conviction. **Senator Lee** asked if cases would be less likely to be charged because of the initial lack of resources he described. **Mr. Lehtinen** explained that lewd and lascivious conduct cases were extremely challenging cases for prosecutors. He noted that capital cases could go on for a long time and traumatize victims.

Senator Hart asked if the prosecutors would incur similar costs to his office. **Mr. Lehtinen** responded that he would assume yes. **Senator Hart** asked who would defend the bill in front of the Supreme Court. **Mr. Lehtinen** responded that he believed it would be the Attorney General's Office.

Erik Fredricksen, State Public Defender, testified in opposition to **H 515**. **Mr. Fredricksen** noted that only six states had the death penalty for these cases prior to 2008 and explained that general deterrence was not a factor in those cases.

Randy Rinkon, testified in support of **H 515**. **Mr. Rinkon** stated that he would hate to tell a victim that they would not be able to receive justice based on staffing concerns and that victims should be priority over staff problems.

DISCUSSION:

Chairman Lakey invited Representative Tanner to close. **Representative Tanner** commented that staff and cost should not be a hurdle in making a tangible difference in the life of Idahoans. **Representative Tanner** addressed concerns relating to the constitutionality of **H 515** and noted that prosecutors would only be trying a case if they knew they could win. He concluded by describing how the death penalty can be the only option for retribution to some victims.

Senator Lee asked how Representative Tanner would address concerns about **H 515** as a deterrent and how the bill had a chilling effect because of the requirement to give specific representation at the beginning of the case.

Representative Tanner responded that Idaho had good prosecutors who decided when to specifically use the death penalty. He explained that **H 515** would allow for better negotiations because of the threat for a harsher sentence for the perpetrator.

Chairman Lakey asked what states currently had cases before the Supreme Court and how the representative saw them playing out. **Representative Tanner** responded that Florida had a case before the Supreme Court and that, due to the change in the makeup of the court, they may change their vote.

MOTION:

Senator Anthon moved to send **H 515** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion.

DISCUSSION: **Senator Foreman** explained his reason for voting against **H 515** while appreciating the motivation behind the bill

Senator Wintrow noted how a society treats its prisoners was a reflection of the society and explained that **H 515** would not be a deterrent against sex crimes so she voted nay.

Senator Lee stated that she had no compassion or restraint for anyone that committed sexual crimes against children, but noted that with this legislation people might not be charged when they deserved it and she would be voting nay.

Senator Hart noted inaccuracy in the fiscal note and if **H 515** were returned with a revised fiscal note next year, he may be able to support it.

Chairman Lakey explained that the death penalty should be used carefully, but these are the most heinous of crimes and deserve the death penalty just like murder. He continued that it was not about money or staffing, and he trusted Idaho prosecutors to not attempt to give the death penalty for smaller cases.

VOICE VOTE: The motion failed by **voice vote**.

H 601 **Chairman Lakey** requested that discussion on **H 601** be continued on Wednesday.

MOTION: **Senator Anthon** moved to continue the hearing on **H 601** until Wednesday. **Senator Ruchti** seconded the motion. The motion passed by **voice vote**.

H 461 **IDAHO ADMINISTRATIVE PROCEDURE ACT - Amended existing law to revise provisions regarding contested cases and the Office of Administrative Hearings.** **Senator Lee** stated that **H 461** was a continuation of previous legislation that created the Office of Administrative Hearings. When the office was created, it was believed that the Idaho Personnel Commission and Driver's License Suspension cases with the Idaho Department of Transportation would be exempt from the Office of Administrative Hearings, however, that was not made explicit so **H 461** cleared that up.

MOTION: **Senator Foreman** moved to send **H 461** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

H 610 **TRAFFIC ENFORCEMENT - Amended existing law to provide for an increased fine for a first violation of overtaking a school bus and misdemeanor penalties for second and subsequent violations.** **Senator Hartgen** turned over her time to **Chris Goetz**, Sheriff, Clearwater County. **Sheriff Goetz** explained that current bus passing laws were not being enforced which led to a lack of funding in the school bus dash cam fund. He continued that **H 610** reduced the first offense of passing a stopped bus to an infraction and the second offense being a misdemeanor.

MOTION: **Senator Anthon** moved to send **H 461** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:53 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Griffin Zue
Assistant Secretary