

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 20, 2012
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour
ABSENT/ EXCUSED:

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.

Chairman Darrington called the meeting to order at 1:35 p.m. and asked the secretary to call the roll. He welcomed Senator McKague on her return to the Committee. He then introduced and welcomed Alexa Woodland, the Committee's Page for the next six weeks.

Chairman Darrington said they would not vote to confirm the appointments as noted on the Agenda, but would address that at Wednesday's meeting.

RS 21245 **Relating to the Sexual Exploitation of a child.** **Joel Teuber**, Fraternal Office of Police, introduced Detective Tim Brady to explain the bill. **Detective Brady** explained that the purpose of this legislation was due to the change in technology. Some of the definitions in code are being updated to incorporate modern technology. This legislation provides updated language that addresses multiple new ways children are being exploited, so that the charged crime(s) more accurately describe the illegal behavior and associated penalties considering the current and potential future technology. The biggest change is commercial purpose. It is geared toward people who are trafficking and distributing child pornography for monetary reasons. That is not necessarily the case anymore; child pornography is distributed mostly to gain more child pornography.

MOTION **Senator Davis** moved, seconded by **Senator Mortimer**, to print **RS 21245**. The motion carried by **voice vote**.

Chairman Darrington recognized and welcomed Tony Park, former Attorney General, to the Committee.

RS 21246 **Relating to enticing a Child.** **Detective Brady** explained the purpose of this bill is to update Idaho child enticement laws to more closely match technological trends that exist in today's society. The current law does not clearly specify that children can be enticed electronically in many ways other than the Internet. Society and technology have progressed to the point where communication exists in multiple forums through a myriad of devices, which the current law does not adequately address. This legislation will update the law regarding these issues.

MOTION **Senator Nuxoll** moved, seconded by **Senator Lodge**, to print **RS 21246**. The motion carried by **voice vote**.

RS 21281 **Relating to the Idaho Trade Secrets Act.** **Jeremy Pisca**, representing Premier Technologies, Inc., explained this bill would revise the Idaho Trade Secrets Act to allow for recovery when one improperly retains misappropriated trade secrets. The bill explains the damages recoverable when there is a violation of the act and allows an award of reasonable attorney fees to a prevailing party.

- MOTION** **Senator Davis** moved, seconded by **Vice Chairman Vick**, to print **RS 21281**. The motion carried by **voice vote**.
- RS 21148** **Relating to the Sexual Offender Registration Act.** **Senator Bock** explained that S1385, effective July 1, 2010, amended the definition of statutory to include only such acts when the offender is age 18 or older and the victim is under age 16, or the victim is 16 or 17 and the offender is 3 or more years older than the victim. This legislation provides an avenue to petition the Court to be removed from the Sexual Offender Registry if they could not have been charged for statutory rape under current law as amended by S1385.
- Senator Davis** said that on page 3, line 11, it is mandatory that the court "shall" exempt the petitioner and "may" order that any information regarding the petitioner be expunged from the central registry. He asked why the court didn't have discretion in light of the circumstances of each individual case. He thought it was incongruent. **Senator Bock** thought it was okay, but he could see that "may" might be the more appropriate word. He would be happy to change it from "shall" to "may." **Chairman Darrington** suggested that if the Committee agreed, they could order it to be printed under a C1 with that change made and not have to go through the process again.
- MOTION** **Senator Davis** moved, seconded by **Senator LeFavour**, to print **RS 21148** as a C1 after the change suggested of "shall" to "may" on line 11, page 3 is made. The motion carried by **voice vote**.
- RS 21301** **Relating to Costs of Court Ordered Testing.** **Seth Grigg**, Idaho Association of Counties, explained the purpose of this legislation is to clarify that court ordered tests of breath and bodily fluids as a condition of probation are not to be included in the cost of supervision fee authorized in sections 20-225 and 31-3201D, Idaho Code. It clarifies that if court ordered tests, the offender pays; if tests are not court ordered and the supervising agency requests the testing, the agency pays.
- Senator Davis** asked where in the legislation is the last half of that statement. **Mr. Grigg** said it was implied.
- MOTION** **Senator Davis** moved, seconded by **Senator Lodge**, to print **RS 21301**. The motion carried by **voice vote**.
- S 1300** **Relating to Child Custody and Visitation Involving Deployed Parents.** **Mark San Souci**, Regional Liaison for Military Families, Northwest Region, explained that the Department of Defense request that states adopt legislation to consider the unique aspects of military service when balancing equities between parent and child in custody and visitation cases involving service members who must be separated from their families for an extended period of time. The bill requires that no permanent orders altering existing custody arrangements should be entered while the custodial parent is unavailable due to military service. The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined. The bill also allows a parent to present testimony and evidence by electronic means if the deployment prevents the service member from appearing in person at a hearing related to a petition for the modification of child custody. In closing, Mr. San Souci said that 42 states had enacted most all of these provisions for military families.

Senator Davis said that a parent's deployment may be at a period of time where that child is going through a remarkable maturation time period, teen or preteen, and upon the return of the deployed individual to refer back to the original order seems to be a presumption that the deployed person is not disadvantaged. He said he thought Idaho's focus should be what was in the best interest of the child. He suggested to provide for a reset on the best interest and modify Idaho's code section and allow the court to a fresh start as to what's in the best interest of the child at that point in their emotional and social development. **Mr. San Souci** said he thought those particular lines had been discussed last year with legislative staff and this was the latest variation from last year's work. He said he was open to rework based on any suggestions of the Committee.

Senator Davis asked if Idaho's family law section had been vetted by the practitioners. **Mr. San Souci** said he knew that the Supreme Court had approved it. **Chairman Darrington** said he believed it had been vetted by the bill writer in Legislative Services through the Department of Health and Welfare. **Senator Davis** asked if the judges had commented about any concerns. **Chairman Darrington** called Michael Henderson, legal counsel for the Idaho Supreme Court, to the podium. **Mr. Henderson** said they did review it and some judges expressed concern as to how this would interact with Servicemember Civil Review Package of 2003, which places considerable restrictions on what civil proceedings could be changed while a service member is on active service. There was some general concerns about the interaction with this bill and the Servicemembers Civil Relief Act (SCRA). **Senator Davis** addressed a question to Mr. San Souci. He asked what was the standard of the federal statute. **Mr. San Souci** said he was not aware that any of the other states that had considered this legislation had a concern or conflict with the federal statute. He was not able to quote that statute.

MOTION **Senator LeFavour** moved to send **S 1300** to the 14th Order for Amendment. There was no second, and the motion was lost.

MOTION **Senator Bock** moved, seconded by **Senator Nuxoll**, to hold **S1300** in Committee subject to the call of the Chair. The motion carried by **voice vote**. **Senator Davis** suggested that someone from the family law section of the State Bar that feels comfortable with the language, give confidence and help the Committee to better understand how this relates with the SCRA.

Chairman Darrington asked if Senator Nuxoll had a motion regarding the minutes of February 13, 2012. **Senator Nuxoll**, moved, seconded by **Senator Mortimer**, to approve the minutes of **February 13, 2012** as written. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:35 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary