

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 29, 2012
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Mortimer, Nuxoll, Bock, and LeFavour
ABSENT/ EXCUSED: Senator McKague

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 and asked the secretary to call the roll. The first order of business will be the request letter of unanimous consent from the Commerce and Human Resources Committee to print **RS 21336**.

MOTION **Senator Lodge** moved, seconded by **Senator Mortimer**, to print **RS 21366**. The motion carried by **voice vote**.

RS 21410 **Relating to the Control of Venereal Diseases.** **Michael Kane** explained the RS deals with the duty of correctional officers and jailers to test people for certain STDs. He said language pertaining to AIDS was removed as the testing was for HIV, not AIDS. They also removed a disease, chaneroid which is a tropical disease, and added chlamydia which is the most prevalent STD. This legislation removed testing on persons charged with "drug related charges" so that they are not testing unnecessarily on every young person that comes in with drug paraphernalia or marijuana. However, he added, persons charged with any crime "involving the use of injectable drugs" would be tested.

MOTION **Senator Nuxoll** moved, seconded by **Senator Lodge**, to print **RS 21410**. The motion carried by **voice vote**.

MINUTES **Senator Davis** moved, seconded by **Vice Chairman Vick**, to approve the minutes of **February 22, 2012**, as corrected. The motion carried by **voice vote**.

S 1337 **Relating to the Sexual Exploitation of a Child.** **Joel Teuber**, Fraternal Order of Police, explained this bill will amend the current child exploitation laws. He stated that this bill also has the support of the Idaho Prosecuting Attorneys Association, the Idaho Chiefs of Police Association, the Idaho Sheriffs Association, the Idaho Coalition for Justice, and the Idaho Against Human Trafficking Association and letters from those organizations were put in your packets. He continued that they have worked with the local prosecutors and detectives that specialize in these types of crimes in drafting this bill. Mr. Teuber pointed out that the Committee has copies of a proposed amendment and also an engrossed draft of the bill as amended. He further explained that this bill updated definitions to more closely match technological trends that exist in today's society, and more clearly differentiates penalties based upon severity of the crime. Definitions will now all be contained in a separate section. Changes in technology have made some of these crimes much more difficult or impossible to prosecute. 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. He said it was bad enough that a child was abused by these predators, but imagine being a child and feeling degraded, put into painful and confusing acts and have those acts memorialized, sometimes put on the internet where they

remain forever. The children are robbed of their innocence and sense of security for life. The primary reason for the proposed legislation is to address current trends of child pornography production and distribution and to counteract the method used by offenders to avoid law enforcement and prosecution. In the last two years, perpetrators in Idaho have used computers, cell phones, web cam, video chat, instant messaging, social networks and other modern technology. Suspects are making contact with underage children trying to exploit them for sexual purposes.

Mr. Teuber continued that they were removing the language for commercial purposes from the Sexual Exploitation of a Child law and the reason for that is the trend is not so much selling child pornography, but in trading it, distributing it, exchanging it, and sharing it with others of like mind. The victimization is the same whether it is sold or not. Currently the commercial purpose language provides a loophole for offenders that share or distribute the pornography and they cannot be prosecuted in Idaho. Possession or accessing sexually exploitative material is a felony and could get up to 10 years. This bill would allow prosecution of anyone that causes or permits a child to engage in or be used to explicit sexual conduct for the purpose of producing sexually exploitative material, of the middle man or producer that advertises, finances, exhibits, publishes or produces, and removes the requirement that the material be "sold." This felony could be up to 30 years. These penalties were not changed from existing law other than removing the requirement that it be for commercial purposes. Other changes in the bill were made to keep consistent with definitions and references.

Senator Bock asked about constitutional law and how possession was treated. **Jean Howe**, Deputy with Ada County Prosecutor Office, said it depended on intention of the material. **Senator Bock** said what if there were drawings rather than photos. **Ms. Howe** said federal law prosecuted for cartoons, etc. **Senator Bock** requested research on the constitutional law and its application from Ms. Howe. **Senator Davis** had concerns that commercial purpose had been removed from 18-1507.

Holly Koole, Idaho Prosecuting Attorneys Association, stated that they were in support of the bill. **Senator Davis** asked if there was disparate treatment between vulnerable adults and the exploitation of a child. Holly deferred to Ms. Howe since she worked on these cases on a daily basis. **Ms. Howe** said it would not change the purpose or intent toward vulnerable adults. **Senator Davis** asked why not mirror the concepts for protecting children and have it apply to vulnerable adults. He pointed out that if "commercial purpose" isn't relevant to protect the child, why is it relevant for vulnerable adults. He thought there should be the same standard. **Ms. Howe** said right now the most important thing to protect children in Idaho is to address this law, not that vulnerable adults are less important. **Senator Davis** said he thought there should be parallel changes for both. **Ms. Howe** said they would definitely look into that. **Vice Chairman Vick** asked how many convictions could there be because of this change in the law. **Ms. Howe** said with the change in technology and the change in the law, it will open up more investigation for law enforcement. but she did not know how many.

Detective Tim Brady, Boise Police Department, was also assigned to the Internet Crimes Against Children (ICAC) Task Force. Detective Brady said they have had several cases that they turned to federal counterparts to be able to prosecute because of the loopholes in state law. He said the way this current legislation is written, if passed, it will allow a more severe penalty for the crime. He doesn't have an exact number, but the numbers will definitely increase from an investigative standpoint. He would estimate probably 10 to 12. **Senator Bock** asked how would someone with a false ID who put something on a cloud in never never land be prosecuted. **Detective Brady** said people often don't tell the truth about what they put on the internet. They must work with the provider of the service to get information about the ip address and their real identity.

Mr. Teuber, in closing, said if the Committee thought they should address the vulnerable adult situation, they would do so. **Senator Davis** said he thought there was no need to add that to the current amendment. **Chairman Darrington** clarified that would be a battle for another time.

MOTION

Senator Davis moved, seconded by **Senator Bock**, to send **S 1337** to the **14th Order** for Amendment. The motion carried by **voice vote**.

S 1338

Relating to Enticing a Child. **Joel Teuber** 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. Our society and technology have progressed to the point where communication exists in multiple forums through a myriad of devices, which current law does not adequately address. The proposed changes would allow for prosecution if offenders use new or future technology to entice a child including cell phones, text messages, instant messaging, and even gaming consoles. Some technology does not need the internet to communicate as is required by current code.

Detective Brady added an example from a case last year where a young man, a sexual predator, contacted a 14 year old female child initially online and the communication proceeded to text messaging. They were not able to prosecute under the current enticement code. The offender was prosecuted under a different code and subsequent to that investigation, the victim shared her experience of shame, and how she felt that it was her fault. She succumbed to his words of praise and compliments. He made her feel important, but now she feels dumb and that she cannot trust anyone, especially men. Lastly, he said these people are in our communities and their intention is to have sexual contact with children for their own sexual gratification. These changes in code will help prosecute these people more fully and hold them accountable for their actions.

MOTION

Senator LeFavour moved, seconded by **Senator Nuxoll**, to send **S 1338** to the Senate floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1341

Relating to the Sexual Offender Registration Act. **Senator Les Bock** explained this bill will allow a person who was previously convicted of statutory rape to be removed from the Sexual Offender Registry. The sole purpose of this change is to create an avenue to those who would not now be convicted because of the age between the two people involved.

Monica Hopkins, Executive Director of the American Civil Liberties Union of Idaho, urged the Committee to support this bill because it resolves a pattern of injustice. S 1341 addresses concern about juveniles who are labeled as sex offenders or predators as a result of a consensual relationship. The stigma and consequences that come with that classification have lifelong consequences, particularly registering as a sex offender. It effects future employment opportunities, the ability to attend their child's school functions, and where the offender can live. This bill will create a mechanism for this group of offenders to file a petition for removal from the registry if they meet certain criteria.

MOTION

Senator Mortimer moved, seconded by **Senator Lodge**, to send **S 1341** to the Senate floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 484

Relating to Boards of Community Guardian. Representative Tom Trail explained this bill relates to the Boards of Community Guardian and removes reference to the limitation for successive years on a Board of Community Guardian. A member will continue to serve on the board until that person's successor is appointed. A county can have between 7 to 11 members and may share a board with another county if within the same judicial district. The board obtains information to assess the need for intervention on behalf of an individual who may need a guardian. The ward must be incapacitated as defined by Idaho law. For a guardian to serve a ward; the ward must have no assets, resources, nor family member or friend who might serve as a guardian. Applicants who are developmentally disabled will be referred to Health and Welfare. The passage of this bill will enable guardians to continue to serve many of the needy citizens in Idaho.

MOTION

Senator Lodge moved, seconded by **Vice Chairman Vick**, to send **H 484** to the Senate floor with a **do pass** recommendation. 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