

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 07, 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. **Chairman Darrington** said he had a letter of unanimous consent from the Transportation Committee requesting that **RS 21438** be sent to print.

MOTION **Senator Lodge** moved, seconded by **Vice Chairman Vick**, to print **RS 21438**. The motion carried by **voice vote**.

S 1370 **Relating to Venereal Diseases. Michael Kane**, representing the Idaho Sheriffs Association, explained this bill modernizes the law in regard to STDs that must be tested for in correctional settings. It also eliminates the need to test all drug related charges. It eliminates a tropical related disease, chaneroid, and adds a more common STD disease, chlamydia.

MOTION **Senator Nuxoll** moved, seconded by **Senator LeFavour**, to send **S 1370** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

S 1358 **Relating to Bullying. Kim Kane**, former Executive Director of Suicide Prevention (SPAN) of Idaho, explained that suicide is the second leading cause of death for youths in Idaho. She said one in seven Idaho high school students have considered suicide and one in eight has made suicide plans and one in fourteen have actually made suicide attempts. In the last five years, Idaho has lost 72 school age children to suicide. Sixteen of those children who took their lives were age 14 or younger. The American Foundation for Suicide Prevention has made bullying a public policy priority stating that research shows that persisting bullying in youth contributes to feelings of loneliness and isolation and can have serious mental health consequences including depression and anxiety. From decades of research there are three factors in place for anyone who seriously attempts or completes suicide: (1) failed belongingness, (2) perceived burdenness and (3) the capability for self harm. SPAN concentrates their prevention efforts on the first two factors. School staff spend more time with our children than any other professionals and often more than the parents. She presented copies of the marked up bill with the proposed amendments to the Committee to follow. She then outlined the bill into 3 main parts: (1) revises what action shall be an infraction (2) addresses school board and school districts, and (3) directs school personnel and administrators as they play a principal role.

Chairman Darrington questioned where these statistics came from and if they were factual. **Ms. Kane** said they came from the Youth at Risk survey which is done every two years. **Chairman Darrington** asked what kind of a sample. **Ms. Kane** said this last year's sample was over 2,000 students. The numbers appear unchanged for the last 3 surveys. The Chairman clarified that she was not suggesting suicide was the only reason necessitating the legislation. **Ms. Kane** said no, that bullying leads to depression, anxiety and a wide variety of psychiatric problems that might last a lifetime. **Senator Mortimer** asked if the legislation was vetted and passed by the Department of Education and if they were in support. **Ms. Kane** said it had been, and she did not believe they objected.

Jessica Harrison, Idaho School Boards Association (ISBA), explained that they worked with Senator LeFavour on this bill; however, ISBA still has concerns with the legislation. One concern is the fiscal note. ISBA believes that increased costs will occur at the school district and charter school level associated with the provision of annual professional development, program costs, administrative costs, and also increased costs associated with enforcement, student discipline, and legal costs. Another of their concerns is the possibility of lawsuits if there is disagreement about whether school personnel intervened as required by the legislation. An additional concern is that it is duplicative. It is already the obligation of a teacher or administrator to protect the health, welfare, and safety of the district's students and to follow district policies and address disciplinary matters. The Code of Ethics for Professional Educators also requires a certificated professional to engage in appropriate supervision of students to ensure safety and failure to do so could lead to termination. She said that their schools were already participating in events to teach or prevent the bullying issue.

Senator Davis said he would like to have information provided on the amount required for the fiscal note. **Senator Mortimer** asked if there were comments about the phrase "regardless of location" and did that increase responsibility from what it is today. **Ms. Harrison** said there was significant concern by the school district that this would include areas outside of the school location. **Senator Mortimer** asked if the districts felt that most or all of the changes made in this legislation were covered in the existing district policy. **Ms. Harrison** said yes. **Senator LeFavour** said this was language from ISBA. **Chairman Darrington** asked at what point does the doctrine of in loco parentis for the schools end in the community and start. He said it appears that would play a role on how far the authority of the school would go. He asked if she was suggesting that this legislation would go beyond the school. **Ms. Harrison** said that was a concern and the phrase was not put in at their suggestion. **Senator LeFavour** said the reason for the phrase was that they might be in a vehicle.

Terry Crozier, an Idahoan representing the parents and grandparents who want their children safe. **Chairman Darrington** asked what this legislation would do that is not now being done under the law and policies. **Mr. Crozier** said it would give them more tools.

Rob Winslow, Executive Director of the Idaho Association of School Administrators, said the Association has some of the same concerns of the ISBA. They do support strengthening Idaho's bullying laws, but they feel this legislation is similar to what they are already doing as they are committed to provide a safe environment.

Jim Baugh, Executive Director of Disability Rights of Idaho, testified in favor of the bill with the amendments included. Children with disabilities are often victims of bullying. He said they need to do whatever is necessary to keep children safe. He pointed out that the amendments to Title 18 are in the criminal code and don't specifically impose any obligations on school districts, but are imposed on law enforcement and prosecutors to prosecute the infraction of sexual harassment or intimidation.

Monica Hopkins, American Civil Liberties Union (ACLU), said that the state anti-bullying laws are wholly inadequate to protect students from bullying in school and need to be strengthened. However, S1358 as written may threaten constitutionally protected student speech and impose unconstitutional restrictions on students outside of school. **Senator Mortimer** asked what she meant by infringing on someone's constitutional rights. **Ms. Hopkins** referred to page 1, section (2) the definition of "harassment, intimidation or bullying" is overly broad and could be strengthened by adding "and" at the end of (2)(a)(iv) and follow up with (b) "Is sufficiently severe, persistent or pervasive..."

Sarah Lee, former educator, supports the bill and suggested more training to certified staff of a softer way of handling bullies, i.e. counseling. She said consistency is important and the problem of bullying needs to be addressed.

Barbara Kemp, read her son **Abbot Pinkerton's** testimony, who was bullied throughout elementary and junior high school. His letter said he had thoughts of suicide, but had a supportive and caring family. Abbot was an Asperger kid and is now 21 years old.

Robin Nettinga, Idaho Education Association, spoke in support of S1358. She explained that in the past decade, teenage bullying had expanded to malicious words and harmful pictures that can rocket around the school on the internet and cell phones in minutes. This issue is of special importance to educators because bullied students are far more likely to fall behind in their studies, get sick and/or depressed, miss school, and drop out. The National Education Association (NEA) estimates that 160,000 children miss school every day due to fear of attack or intimidation by other students. The NEA has developed the "Bully Free: It Starts with Me Campaign," which includes training for teachers and education support professionals employed in public schools. This free bullying and sexual harassment prevention and intervention training is built on a research-based curriculum. The training spells out concrete steps educators can take to prevent bullying and lays the groundwork for implementing school-wide engagement in bullying prevention. The IEA has a group of Idaho teachers who have been trained and, when invited, can deliver quality professional development on this topic.

Senator Davis asked if she wanted the Committee to believe that the teachers currently lacked an understanding of bullying and how to prevent it. **Ms. Nettinga** said no she did not want the Committee to think that; she wanted to provide more tools through training and professional development with a clearer understanding for teachers and support staff. **Senator Davis** said he was concerned with a teacher being asked to attend one more in-service class. He added that a student may react at school based on things that happen at home and it probably can't be resolved by code. He said he found value in wanting to do something with the texting problem, etc., but the schools say there are tools currently in place, but today's solution will cost more money. **Ms. Nettinga** said that still her concern is for members to have the tools that they need in order to help children succeed. **Senator Mortimer** asked about the language on page 3, "...include a provision that school personnel shall intervene or facilitate intervention on behalf of students facing harassment,..." He wondered if that would put more responsibility on teachers and possibly open up liability for teachers. **Ms. Nettinga** said that language does put some additional responsibility on the educators, but at the same time it also provides them with

tools. **Senator Mortimer** asked if those words "intervene or facilitate" could have been changed to have less liability. **Senator LeFavour** said that the language was in the bill that was passed in this body last year and also was submitted to the group of sponsors. **Chairman Darrington** asked if Ms. Nettinga would support criminal penalties for teachers who in the eyes of parents or others didn't deal with this effectively in the classroom or hallways they were supervising. **Ms. Nettinga** said she did not have an answer as it would require deeper thought.

Sylvia Chariton, Vice President of Public Policy for the American Association for University of Women in Idaho (AAUW), supports S1358. She said sexual harassment is a growing problem in schools nationwide. Often students have observed or witnessed sexual harassment, and yet it is rarely reported.

Julie Lynde, Executive Director of Cornerstone Family Council, explained that they support the sponsors in seeking a remedy to the problem of bullying, but the proposed legislation is a problematic overreach; and therefore, they oppose the bill. **Senator Davis** asked how this bill applied to home schools since at the print hearing, Senator LeFavour thought the bill would have application in the home school environment. He asked where is the language that is troubling regarding home schools. **Ms. Lynde** responded that the language that required the teacher in-service appears to require home school educators to attend training. **Senator LeFavour** said that the code directs them to follow their district bullying policy, and if they are not part of the school district, it would not apply.

Barry Peters, President of Idaho Coalition of Home Educators, explained that the amendments that were described address many of the concerns with the effect of this bill. He still questioned whether all these rules were applicable in a home school setting. He suggested a clear statement in the bill that these provisions apply within the public school setting. He also had concerns about the language changed from "may be" an infraction to "shall be" an infraction. He believes that language to be excessive and hoped through the amending order these issues would be addressed. **Senator Vick** referred to page 1, line 15 and "school property." He asked if that was a concern and did it apply to home schools. **Mr. Peters** said it could be viewed that way as well as in a vehicle and there needs to be a clear exclusion from these provisions that might apply to home education.

Jeni Griffin from Idaho Falls, said her son, Todd, committed suicide nine years ago and he got no protection from the teacher. Ms. Griffin is in support of the bill.

Fairy Hitchcock opposes the bill and suggests that children are taught kindness through literature.

Tina Young, a BSU Counselor, and **Grace Owens**, a retired high school teacher, testified in support of the bill.

Eric Anderson, who was bullied as a student, said this bill will give tools to the teachers and there should be less complacency of faculty regarding this problem. He supports the bill.

Barbara Kemp, who previously read testimony from son, Abbott, supports the bill, but does question the constitutionality.

MOTION

Senator Nuxoll moved, seconded by **Senator Mortimer**, to hold **S 1358** in Committee.

**SUBSTITUTE
MOTION**

Senator Bock moved, seconded by **Senator McKague**, to send **S1358** to the **14th Order** for Amendment. **Senator Davis** voiced concerns. **Senator Mortimer** said much more work should be done on the bill. **Senator Bock** said many had worked on this issue. **Senator Lodge** said they needed time to work on the bill and she would prefer to hold the bill in Committee. There was a roll call vote. Chairman Darrington, Senators Davis, McKague, Bock, and LeFavour voted aye, and Vice Chairman Vick, Senators Lodge, Mortimer, and Nuxoll voted nay. The substitute motion passed 5 to 4.

RS 21431

Relating to Challenges to Apportionment Plans. **Senator Davis** explained this legislation grants to the Idaho Supreme Court the authority to establish rules establishing the time periods to challenge an appeal of reapportionment plans, both legislative and congressional, approved by the redistricting commission, and as the court of original jurisdiction of then-existing plans.

MOTION

Senator Lodge moved, seconded by **Senator LeFavour**, to print **RS 21431**. The motion carried by **voice vote**.

There being no further business, **Chairman Darrington** adjourned the meeting at 3:10 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary