

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 12, 2014

TIME: 8:00 A.M.

PLACE: LINCOLN AUDITORIUM

MEMBERS PRESENT: Chairman McKenzie, Senators Davis, Fulcher, Hill, Winder, Lodge, Siddoway, Stennett and Werk

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 McKenzie** called the Senate State Affairs Committee (Committee) meeting to order at 8:02 a.m. with a quorum present and welcomed the Committee and guests. There is one bill on the agenda and with the amount of interest from people who have signed up prior to the meeting electronically and this morning, we will try to get through as much testimony as possible by rotating from one to the other as time allows. The Senate is scheduled to go on the floor at 10:30 a.m. and it is the intent to put **S 1254** before the Committee at 10:15 a.m. Testimony, both in favor of and against will be heard during that time. After the initial presentation, testimony will be held to three minutes if possible. **Chairman McKenzie** called Dakota Moore, Idaho State Liaison, National Rifle Association, to present **S 1254**.

S 1254

Mr. Moore stated that it would be remiss to fail to point out that the Constitution of the United States of America as well as the Constitution of Idaho explicitly states the right of the people to keep and bear arms. He said that the majority decision in the Heller case outlined this as a fundamental individual right and it was incorporated into the 14th Amendment during the McDonald decision. He stated that the Idaho Constitution goes into even further detail and prohibits any public entity from abridging an individual's right to keep and bear arms. He gave a legislative history of the 2011 bill, H 222, which passed in the House by a large majority. **S 1254** is different in that, in the previous House bill, no firearm training or experience was required nor were there age restrictions. The previous bill raised the issue of universities abilities to host sporting events and the juxtaposition of alcohol and firearms. **S1274** resolves these issues by:

- 1.) Only prior law enforcement personnel or those who have undergone enhanced training may receive the permit.
- 2.) An individual must be over the age of 21 to qualify for the enhanced permit
- 3.) An individual may not carry a concealed weapon within a public entertainment venue with a seating capacity of 1000 or a public dormitory.
- 4.) Alcohol consumption is already illegal when carrying a firearm and **S 1274** enhances those penalties.

Mr. Moore confronted a few myths he believes surround **S 1274**:

Myth: It is currently illegal to possess a firearm on a university or college campus.
Fact: Under Idaho law firearms are expressly prohibited by law at courthouses, juvenile detention facilities and K-12 schools. Public colleges and universities do not have authority to enact criminal law. **Mr. Moore** stated the reasons why colleges and universities should not be regulated in the same way as courthouses and jails.

- 1.) In order to gain access to a courthouse or jail you must pass through a metal detector. Jails and courthouses have clearly defined borders with armed security.
- 2.) Typical K-12 schools only span a few acres and are not home to the demographic of people normally targeted by violent criminals.
- 3.) An adult, legally able to own a gun, may have that gun in their vehicle on school campus.
- 4.) College and university campuses span hundreds of acres, have no clearly defined borders and are home to a key demographic that is targeted for violent crimes.

Myth: Banning firearms on college and university campuses is justified because it only infringes on an individual's 2nd Amendment right in a relatively safe environment.

Fact: An absolute firearm ban on public university campuses has far reaching implications on the students and employees ability to possess a firearm, such as students commuting to or from the campus.

Myth: Bullets will be zinging around campus because 18-25 year olds are unable to control themselves or act responsibly.

Fact: A large majority of drinking by students takes place off-campus where it is already legal to possess a firearm. Six states allow concealed carry on college campuses and since the law has been enacted, no legally owned firearm has been used to commit a murder on those campuses. **Mr. Moore** then presented a graph (see attachment a).

Myth: Police will not be able to tell the difference between an armed shooter wreaking havoc on innocent students and those people who have drawn their weapon in defense.

Fact: The enhanced carry license has a training requirement and will include instruction on what to do when law enforcement arrives on the scene – drop your weapon and raise your hands. Police are thoroughly trained in high risk situations and do not just show up on a scene and immediately shoot anyone holding a gun.

Myth: There is no recorded incident in which a victim or spectator of a violent crime on campus has prevented a crime by brandishing weapon:

Fact: Recently an individual defended himself against attackers on campus and was found to be acting within his legal rights, and the college the incident occurred on subsequently changed its policy on firearms to allow them in more areas.

Mr. Moore concluded his presentation with a quote from Supreme Court Associate Justice Abe Fortas, "It could hardly be argued that either students or teachers shed their constitutional rights to freedom of speech at the school house gate."

Mr. Moore stated that if that applies to the First Amendment it should apply to the second and asked the Committee to support **S 1254** and protect law abiding citizens fundamental right to self defense and their constitutional right to keep and bear arms.

Senator Stennett inquired into informal gatherings on university lawns. **Mr. Moore** replied that the limit only applies to a structure or building.

Senator Werk asked what the NRA's goal was and about intimidation and stress levels on campus. **Mr. Moore** replied that this was the best legislation that could be provided. Many people in Idaho already possess concealed carry permits and work in jobs more stressful than going to college. **Senator Werk** asked Chairman McKenzie about indemnification; if the campus could allow students to carry weapons anywhere; and, would they be liable for action. **Chairman McKenzie** replied that the bill simply preempts their regulatory authority in a very limited regard and they would still have liability for implementing their own policy.

Senator Hill expressed gratitude to the NRA for presenting the bill.

Senator Stennet inquired into the limitation on buildings and if it was because of danger. **Mr. Moore** replied that it was not, it was to give the ability to universities to host sporting events. **Senator Stennett** asked how Mr. Moore would feel about someone who shoots the wrong person. **Mr. Moore** answered that the situation was no more likely to happen on campus then it would anywhere else where concealed carry is already allowed. The bill protects more than it would harm and it would make the college and university campuses safer.

Senator Siddoway asked about the weapons in the dormitories and how students would store their weapons if they could not bring them into the dorms. **Mr. Moore** replied that a vast majority of the students who live in the dormitories are freshman and sophomore students who do not meet the age requirement and therefore would not have weapons anyway.

Chairman McKenzie opened the forum to public testimony and explained the rules. Those opposed to the bill:

Don Burnett – Interim President of the University of Idaho (UOI), pointed out several concerns: Reduces authority for colleges to regulate firearms; Higher education areas are complex and should not be compared to other places where concealed carry is allowed; and, it would add expense to the universities.

Bob Van Arnum, concerned citizen

Mark Browning, North Idaho College.

Diane Saylor, student and staff member at Boise State University (BSU) and concealed weapons permit holder, said police were trained and other people were not.

Marilyn Whitney, Communications and Legislative Affairs Officer for the State Board of Education, stated that the Idaho State Board of Education (Board) unanimously voted to oppose the bill and that the Board felt that the bill takes away a management tool to maintain an environment conducive to learning. Colleges and universities are already safe places.

Gary Margolis, former police officer and campus safety consultant working with BSU and UOI, said that a bill that allows ease of access to firearms is likely to have no positive effect on campus safety, and armed students are more likely to create an unsafe situation due to binge drinking and higher rates of suicide. It would also complicate the jobs of campus security and administration. Storing weapons would be an issue and there are issues with conducting interviews with students who may be armed. High stress situations are hard to negotiate for untrained individuals.

Senator Werk asked if there would be a fiscal impact on the universities. **Mr. Margolis** replied that there would be. **Senator Werk** said he did not believe that the fiscal note adequately reflected the potential for cost to the universities.

Chairman McKenzie stated that, currently, the universities prohibit most law abiding citizens from carrying concealed weapons on campus but, as has been pointed out, merely having the regulation does not prevent non law abiding citizens from carrying weapons, yet they do not arm the staff currently; therefore the fiscal note is accurate.

Senator Stennet asked about mental health issues and inquired about who monitors people with enhanced permits. **Mr. Margolis** replied that mental health providers have laws that allow them to disclose what is happening with a patient if that person is a risk to themselves or others and said that mental health professionals would have a greater obligation and concern to find out mental health issues of students.

Bruce Newcomb, Director of Government Relations, BSU, stated that BSU students and faculty are against this bill. Conservative members of the Supreme Court said that the right to bear arms is not inviolate. Training is not enough and police train more than private citizens. College campuses are safe places and there are alert systems in place at BSU; the bill is a solution for a nonexistent problem. **Senator Werk** asked if there would be a need to update the security structure. **Mr. Newcomb** replied that there would be. **Senator Werk** asked if there would be a liability issue to make sure that the people carrying guns would have the enhanced concealed carry. **Mr. Newcomb** replied that the indemnity only applied to state courts and not federal courts.

Senator Stennett asked if the only choice would be to increase tuition. **Mr. Newcomb** replied that the students would likely have to subsidize costs. **Senator Stennett** asked about heated arguments on campus. **Mr. Newcomb** replied that suicide rates were higher for college students and that there were tense situations on campus which might be made worse by guns.

Bert Glandon, President of the College of Western Idaho (CWI) Board of Trustees, stated that the bill is not clear in the definition of a campus and does not consider the diversity of the college campus; CWI does not have armed security. The bill is not well written and CWI campuses are not within the traditional campus structure. **Senator Stennett** asked at what point the law is enforceable where a campus property is attached to another school. **Mr. Glandon** replied that he did not know. **Chairman McKenzie** replied that the K-12 prohibitions would still apply and private contracts with the landlord would still apply.

In favor of the bill:

Dr. Kimberly McAdams, Professor of Abnormal Psychology at BSU, had her life threatened by a former student who wanted to shoot her. Now she is worried that if the individual came to her abnormal psychology class, which has only one door and no windows, there would be no way for her to escape with her life and the only way either her or her students would have a fighting chance is if she or one of her students could be armed and able to defend themselves. She stated that people in manic states are not lucid enough to fully understand what they are doing and that they do not value life. **Dr. McAdams** stated that the presidents of the universities are not the ones in the line of fire. She asked the Committee to give her a fighting chance to save her life and the life of her students.

Senator Siddoway asked if Dr. McAdams was proficient in firearms. **Dr. McAdams** stated that she currently was not but was beginning classes and would not bring a firearm to class unless she had proper training and felt comfortable with it; she would have a firearm with a laser.

Tony Snesko, Founder of Idaho Carry and Second Amendment 2014 and former Los Angeles police officer, said that it was stated that gun groups oppose this legislation; he knows of no group that opposes this bill. He said that President Obama stated that an estimated one in five women is sexually assaulted at college which is totally unacceptable, and that he wants colleges and universities nationwide to "step up" to help protect individuals from heinous crimes, which is why **S 1254** should pass. **Mr. Snesko** stated that, as a former police officer, police officers do not prevent crime, but take reports and show up after the crime has been committed, and unarmed security officers amount to little more than babysitters.

Paul Jagosh, Idaho Fraternal Order of Police, the largest police organization in Idaho, supports the bill because a responsible, law abiding and mentally sound person is the best response to an active shooter situation. Lives will be saved if law abiding citizens have guns to protect themselves. PoliceOne is one of the foremost comprehensive and trusted sources of information for police officers. They

conducted one of the most comprehensive studies/surveys of officers who work the streets and come face to face with gun violence across the nation. Eighty-eight percent of those surveyed said that casualties would have been reduced or avoided altogether if a law abiding citizen was present with a gun during an active shooter situation, and that 91 percent of the officers surveyed support concealed carry by civilians. Also, the Fraternal Order of Police believes that this should extend to college campuses as well. **Mr. Jagosh** stated that guns were already on campuses because currently there were no preventative measures to stop anyone from bringing a weapon on campus. In addition, there were going to be delays in first responder response time. **Mr. Jagosh** asked that the Committee listen to the experts – the people who deal with gun violence on a daily basis, and who support **S 1254**.

Senator Lodge asked if Mr. Jagosh could elucidate the public safety aspect. **Mr. Jagosh** responded that there is a campus rule that guns are prohibited. A homicidal maniac would not likely be dissuaded from committing an act of mass murder because of a written rule. This bill would make campuses safer.

Senator Stennett asked how much training is required. **Mr. Jagosh** replied that there is training when they go to the academy and then every few years there is updated training.

Senator Werk asked if Mr. Jagosh and the organization would support concealed carry anywhere on campus. **Mr. Jagosh** responded that they would. **Senator Werk** said that he had seen statistics that police hit their target 30 percent of the time and asked what the accuracy of people who had enhanced concealed permits are. **Mr. Jagosh** responded that he didn't know, but that the presence of weapons in law abiding citizens hands is a significant deterrent to premeditated crime. The question of whether or not police would be able to tell who the good guys are was not an issue as they do not just rush into a situation with "guns blazing," shooting everyone who has a gun. If there was a law abiding citizen with a gun the shooting would likely be over before they got there. **Senator Werk** said that he had an issue with the statement that if people knew that people were carrying guns they would be safer but stated that colleges are already statistically safer.

Senator Lodge asked if every member of the Fraternal Order of Police was for this bill. **Mr. Jagosh** responded that it was the duty of the lodge officers to get the opinions of their lodge members.

Aaron Tribble, lawyer in Eagle who has sued universities over their prohibition of firearms, said that he had a lot of insight into laws pertaining to firearms. The bill prohibited firearms in dorms and that was in contrast to the fundamental right to keep and bear arms in the home. He said that there is no law against carrying on campus at this time and that he has done so in the past, especially in the presence of his son where he didn't want to be left without an appreciable means of self defense. **Senator Werk** said he was still struggling with the language and said that, from his perspective, with immunity comes a lack of responsibility.

Clayton Kramer, adjunct faculty at the College of Western Idaho, stated that, while violent crimes in Idaho are low – the concern is the random acts of mass murder in gun-free zones that have become a problem in the last few years. He stated that the FBI statistics on active shooter scenarios showed there were 104 events over the last 12 years and that 3 ended when victims shot the killer and another 14 incidents ended when victims "subdued the killer." He stated that the concerns that "drunken college students would turn a fist fight into a gun fight" have been mitigated by the fact that other states with similar legislation enacted have had no significant negative impact. He said concealed carry is a matter of public safety for students, faculty and staff.

Keith Pinkerton, business appraiser and adjunct faculty member at Boise State University, said that when he goes to class to teach he will be without an effective means of self defense. A low probability of violence does not mean it will not happen. He said that the plan that Boise State has in place for an active shooter says that the guarantee for safety of people on campus was to lie motionless on the floor or confront the individual. **Senator Werk** asked if Mr. Pinkerton had asked the administration if he could carry on campus to which he responded that he had not.

Chairman McKenzie stated that they were now pushing up against their hard deadline to be on the floor for the Lincoln Day presentation and he asked the Committee's consideration of the bill.

Senator Werk said he learned a lot and wanted to continue testimony.

Senator Fulcher stated that the overriding issue is that non law abiding citizens simply do not care about the restraints already in place; those restraints only impact those who are law abiding citizens. He said that they would be better off with the bill in place than the way things are currently.

MOTION: **Senator Fulcher** moved to send **S 1254** to the floor with a **do pass** recommendation. The motion was seconded by **Senator Siddoway**.

Senator Stennett said that they have not heard from all the universities and law enforcement and they were being hasty by voting today. **Senator Werk** agreed.

SUBSTITUTE MOTION: **Senator Werk** made a substitute motion to hold the bill in Committee at the call of the Chair. The motion was seconded by **Senator Stennett**.

Senator Lodge said she wanted more information.

ROLL CALL VOTE ON SUBSTITUTE MOTION: **Chairman McKenzie** called for a **roll call vote** on the substitute motion. **Senators McKenzie, Davis, Fulcher, Hill, Winder and Siddoway** voted **nay**. **Senators Lodge, Stennett and Werk** voted **aye**. The motion failed.

Senator Hill said that there were scenarios on both sides of the issues with positive and negative aspects. The "tie breaker" was that, when he took his oath of office, he swore to uphold the Constitution of the United States. He quoted the words of Benjamin Franklin, "they that give up essential liberty to obtain a little safety deserve neither liberty nor safety."

Senator Werk listed his concerns about the indemnity, diffuse campuses, and sororities and fraternities on campuses being "weaponized."

ROLL CALL VOTE: **Chairman McKenzie** called for a **roll call vote** on the motion to send **S 1254** to the floor with a **do pass** recommendation. **Senators McKenzie, Davis, Fulcher, Hill, Winder, Lodge and Siddoway** voted **aye**. **Senators Stennett and Werk** voted **nay**. The motion carried.

ADJOURNED: There being no further business, **Chairman McKenzie** adjourned the meeting at 10:37 a.m.

Senator McKenzie
Chair

Twyla Melton, Secretary

Assisted by David Ayotte