

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 17, 2014
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock 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 Lodge** called the meeting to order at 1:31 p.m.

S 1274 **Relating to Boating - Senator Keough** stated that **S 1274** relates to amending the current statute Idaho Code §67-7016 which defines grossly negligent operation in the Idaho Safe Boating Act and that there was a copy of the court case involving that statute included in the Committee's packet. The purpose of the bill is to update the Idaho Safe Boating Act involving a recent court case where Idaho Code §67-7016 was found void for vagueness and therefore violates the Due Process Clause of the 14th Amendment. There have been two recent incidents of boating accidents in Idaho in which §67-7016 has been used to hold boaters responsible for their actions that resulted in injuries and damages. This bill seeks to clarify the law so that accountability and responsibility can be assigned appropriately. On line 13 the current section of code was repealed due to the language being deemed to be void for vagueness by the magistrate court. In the order granting the motion to dismiss in the case of Stauber v. Idaho and State v Pigge, which had virtually identical language found unconstitutionally vague and the court held that the current statute does not specify nor define any acts, general or specific, covered by its terms – and does not even require that the vehicle be driven or operated in a negligent, careless, or unlawful manner. In granting the motion to dismiss in the Stauber case, the presiding judge stated "as in Pigge, the statute in this case fails to identify any general or specific acts that are prohibited." This legislation will replace the language in the Negligent Boating Statute with that from the Reckless Driving Statute in §49-1401, which was changed after the Pigge case and has since withstood constitutional scrutiny without being overruled. **Senator Keough** stated that the new proposed statute is more specific with what constitutes grossly negligent operation and lists action that can be taken if a violation occurs. **Senator Keough** reviewed the penalties of the proposed changes. Outlining the definition of negligent operation as a lesser offense than grossly negligent and stated that it was a misdemeanor. On page 2, line 4 "negligent operation" is repealed because the new language in the bill proposes to merge into the new section of code both negligent and grossly negligent. In August 2012, a boat operator crashed into a moored sail boat on Lake Ponderay and was charged with grossly negligent operation, three violations of the Idaho Safe Boating Act and misdemeanor child endangerment. The public defender successfully moved to dismiss the negligent operation charge after the same charge was dismissed in another boating accident because the statute was unconstitutionally vague. On July 4th 2013, Stauber, a boat operator on Priest Lake, collided with an anchored cabin cruiser. That case was dismissed because the statute was again found unconstitutionally vague. **Senator Keough** said that she and her cosponsors have been asked to clarify this statute to provide

the tools needed by law enforcement, prosecutors and judges to appropriately hold people accountable for their negligent conduct on Idaho waterways.

Senator Lakey inquired concerning the language of §67-7033, which talks about the judge having the ability to remove privileges to operate a boat on the second offense and asked how law enforcement would know they did not have a license. **Senator Keough** responded that she was unaware if there would be a database with boat license information but would find out. **Senator Lakey** asked about §67-7077 and wondered if there was a need for the 100 feet proximity to another boat in order to be considered negligent. **Senator Keough** responded that she decided to leave it in the bill for safety reasons. **Senator Lakey** asked if the proximity applied to grossly negligent. **Senator Keough** answered that it was unknown at the time.

Senator Hagedorn inquired into Title 49, Chapter 14 which defines reckless and inattentive driving, and its comparison to Title 67. In the language he noticed that negligent operation and inattentive driving are similar, that they are both misdemeanors. Would you consider making negligent operation an infraction instead of a misdemeanor as there would be more options for law enforcement to issue a citation that did not result in a court date? **Senator Keough** replied that she left it as a misdemeanor because that is currently in code and because the prosecutors she consulted suggested that they might change the penalty of grossly negligent operation to a felony.

Senator Davis said he compared the proposed language to §49-1401 where the phrase "any person who drives or is in actual physical control of any vehicle upon a highway" and wondered if there was a reason there was not a specification for actual physical control. **Senator Keough** responded that the focus was more on the specification of language for prosecution.

Senator Davis asked if there was an infraction that included loss of life and could law enforcement be able to prosecute for manslaughter. **Senator Davis** asked **Ms. Somoza**, Nampa Prosecuting Attorney for clarification concerning the difference between an infraction and a misdemeanor. **Ms. Somoza** replied that the prosecuting attorney would be unable to have a jury trial for an infraction and that an infraction does not allow for restitution under the statute. A lengthy discussion ensued about the difference between having an infraction versus a misdemeanor as the penalty for negligent operation.

MOTION: **Senator Davis** moved to send **S 1274** to the floor with a do pass recommendation. Seconded by **Senator Bock**. The motion carried by **voice vote**. **Senator Nuxoll** requested that she be recorded as voting **nay**.

S 1221 **Relating to the Child Protective Act - Senator Guthrie** said that **S 1221** seeks to amend Idaho Code Sections §§16-1602, 16-1617, 16-1618. Section 16-1602 is in the definition section on page 2, line 39 and includes the addition of "child advocacy center" as a definition and "Idaho Network of Children's Advocacy Centers". The proposed changes to §16-1617 seek to include Child Advocacy Centers as part of the interagency multidisciplinary teams. Those teams include: law enforcement, the Department of Health and Welfare – Child Protection Risk Assessment, prosecuting attorney's office and health professionals. The changes in lines 41 through 44 were to allow the opportunity for the Idaho Network of Children's Advocacy Centers to train team members if the request is made. On page 6, line 16, language was added to allow child advocacy centers to conduct interviews making that language the most important change in the code. **Senator Guthrie** referenced letters of support in the packet the Committee received and stated that there would be testimony. Unfortunately it is sad to say that 1 in 4 children are abused before the age of 18, and advocacy centers provide a child-friendly center where examinations and counseling can take place. The staff's ability to put children at ease helps

prosecutors obtain more information for a better chance at conviction. Child Advocacy Centers have been in place for some time but have not been included in code. There are better opportunities for federal funding; last year, federal dollars paid for the training of over a hundred counselors, case workers, physicians, nurses and law enforcement personnel. There are more resources in the prosecuting process and Child Advocacy Centers allow for a greater amount of witnesses for prosecutors to use in court. This bill requires no state funding.

Vice Chairman Vick asked if the Child Advocacy Centers are non-profit organizations. **Senator Guthrie** replied that some were 501 (c) C3s and for the most part non-profit. **Vice Chairman Vick** asked if the centers existed in most areas of the State. **Senator Guthrie** answered that there currently are five centers and one being built.

Chairman Lodge asked for a rundown on the funding and asked if the centers were put in statute would they then request state funding. **Senator Guthrie** explained that funding comes from grants from the United Way, the Idaho Council of Domestic Violence and Victims Assistance, Victims of Crime, Act Crime Victims Compensation Fund, and donations from law enforcement and city agencies, as well as the ability to bill for some services through Medicaid and insurance.

MOTION:

Senator Hagedorn moved to send **S 1221** to the floor with a do pass recommendation. Seconded by **Senator Nuxoll**.

Senator Mortimer moved that **S 1221** be referred to the 14th Order for amendment. Seconded by **Senator Lakey**. The substitute motion carried by **voice vote**.

Senator Mortimer stated that Section 1617 in which "each county shall" and "the team shall consist of" and "available in the State" should be clarified. **Senator Lakey** also stated that the reference to the State needed to be clarified. **Senator Davis** said that the motion to amend should not be perceived as hostile and that a minimal amount of amendment could be carried out quickly.

Senator Guthrie replied that in his understanding the prosecuting attorney shall be responsible for the development of the teams specific to each county. **Senator Davis** stated that the reason the Committee did not feel the need to hear further testimony is because the Committee already agreed and supported the bill.

Chairman Lodge responded she agreed with Senator Davis that the Committee supported the bill and thanked those in the audience for attending.

S 1290

Relating to the Juvenile Corrections Act - Senator McKenzie explained that this bill relates to the jurisdiction of the Juvenile Corrections Act. There are separate juvenile courts for minors and a code section that defines what cases go to juvenile court, which would be the section they would be amending. Section 20-505 provides for jurisdiction and in Subsection 4, the current language said that it does not apply to juvenile violators of beer/wine/alcohol or tobacco laws, except if the juvenile offender is under the age of 18, then the court has discretion to treat them under the Juvenile Corrections Act. This change would provide that, if a violation is a statutory violation (a violation just because the offender is a child) then it would fall under the Juvenile Corrections Act. Under that act other crimes that relate to alcohol or tobacco would be in adult court, which would have the discretion to treat them under the Juvenile Corrections Act. **Senator McKenzie** related cases in which the provision was referenced and outlined a study in which research indicated that transferring juveniles to the criminal court and punishing them as adults has a number of harmful effects for the youth and society. Juvenile courts allow for better results, particularly in the issue of underage drinking and that there were more options for helping the juvenile get back on the right track. Without this change, the juvenile would have an adult criminal record that follows them their entire life. In speaking to a magistrate judge who said that there are too many people who have

a criminal record for minor offenses committed when they were juvenile. **Senator McKenzie** cautioned that the fines are smaller in juvenile court versus being tried in an adult court and therefore the State will be collecting less funds. The idea of collecting fines is not a reason to have jurisdiction in one court or another.

Michael Henderson, Legal Counsel for the Courts, explained that passing this bill will be a policy decision and must be informed by practical concerns. Their department became involved because the Idaho Association of Counties asked their department to circulate this issue to Idaho magistrate judges for comment. The judges expressed some concerns. This provision used to say that the "chapter shall not apply to juvenile violators of alcohol and tobacco laws except a juvenile violator under the age of 14 at the time of violation may be treated under the provisions of this chapter." In 2005 H 205 changed that age from 14 to 18. Different counties treated these cases differently. The judges had several concerns, including that the present system was working well, as well as concern over how the issue would be handled in the larger counties? What will be the physical impact in the larger counties; how will they handle the influx of cases? Part of the impact will be a fiscal impact, the loss of dedicated funds which come from collected fines and costs, which should be considered in the implementation of the legislation. He said that it appeared that by excluding those that would be a crime, if committed by an adult, it created an anomalous circumstance as a juvenile could commit an alcohol violation that is not a violation by reason of age. For example, a juvenile who is working at a restaurant and provides alcohol to other minors, which is a misdemeanor no matter what, could create conflict in the sentencing process.

Vice Chairman Vick inquired into the loss of revenue **Mr. Henderson** replied that there were hundreds of cases and that, when they looked at Ada County, there were 300 in a fiscal year. **Vice Chairman Vick** asked if that meant then that there were hundreds of juveniles whose lives were being impacted more negatively than they should be, and how would that concern would be addressed if they delayed the change. **Mr. Henderson** replied that they would like to have the ability to have programs in place in order to affect their lives in a positive manner.

Senator Lakey said that all the juvenile cases are handled by magistrates, and if there was a reduction in the adult case load and an increase in the juvenile case load, how would it affect the counties that specifically designate juvenile magistrates. **Mr. Henderson** said that there is more intense focus at the juvenile level. **Senator Bock** asked if the statute was changed would there be more cases that resulted in detention. **Mr. Henderson** replied many of the cases that are handled in the adult criminal court result in the imposition of a fine and court costs with no jail time and that there would be a greater likelihood at the juvenile court level to involve detention time in the penalty.

MOTION: **Senator Nuxoll** moved to send **S 1290** to the floor with a do pass recommendation. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

S 1340 **Relating to Civil Actions - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc., stated that Light Portable Battery Operated Devices (AED) are becoming extremely widespread and the existing statute from 1999 does not encompass the modern trend to remove the physician from the original statutory requirement that the physician prescribe or oversee the maintenance and training of the equipment. AEDs are freely available online and the American Red Cross and American Heart Association provide training and maintenance carried out pursuant to manufacturer specifications.

MOTION: **Senator Davis** moved to send **S 1340** floor with a do pass recommendation. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

S 1341

Relating to the Idaho Criminal Gang Enforcement Act - Ellie Somoza, Nampa Prosecuting Attorney. Before Ms. Somoza began her presentation **Senator Davis** asked if there was anyone present that wished to speak in opposition of this legislation. **Chairman Lodge** answered that there was no one on the sign-in sheet that wished to speak in opposition to the legislation.

Senator Davis said that he remembered the print hearing presentation on this legislation and at that hearing it was determined that this is a technical correction to the bill language.

Senator Hagedorn asked for an explanation on line 35 "complaint or petition" has been added. How is that not information? **Ms. Somoza** answered that information or indictment only applies to adult felonies.

MOTION: **Senator Davis** moved to send **S 1341** to the floor with a do pass recommendation. Seconded by **Senator Bock**. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:02 p.m.

Senator Lodge

Chair

Carol Deis
Secretary

David Ayotte
Majority Staff Assistant