

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 07, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Hagedorn, Lakey, Bock and Werk

ABSENT/ EXCUSED: Senators Davis and Nuxoll

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: **Senator Lodge** called the meeting to order at 1:32 p.m.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Hagedorn** moved to send the gubernatorial appointment of Raymond "David" Moore to the Commission on Pardons and Parole to the floor with a recommendation that it be confirmed by the Senate. **Senator Werk** seconded the motion. The motion was carried by **voice vote**.

RS 23087 **Relating to Education**, with a letter of unanimous consent request from the Education Committee to print the RS.

MOTION: **Senator Mortimer** moved to print **RS 23087** for the Education Committee. The motion was seconded by **Senator Vick**. Motion carried by **voice vote**.

H 459 **Relating to Sex Crimes: Representative Luke Malek** explained that this bill fixes a gap in the current statute that fails to protect victims molested in the fashion described by law, but who are asleep or unconscious at the time of molestation.

MOTION: **Senator Werk** moved to send **H 459** to the floor with a do pass recommendation. The motion was seconded by **Senator Lakey**. Motion passed by **voice vote**.

Senator Hagedorn asked how the victim would know the event occurred if they were unaware of it.

Representative Malek explained that there are circumstances where that can be shown without the victim knowing at the time that it occurred.

H 563 **Relating to Video Voyeurism: Representative Malek** explained that current law does not address the sharing of private images without consent for purposes such as revenge, extortion, harassment or humiliation. **H 563** changes the video voyeurism act to cover that behavior in a current statute.

Senator Vick asked if there would be an explanation of the referenced United States Code.

Representative Malek explained that the language came directly from AT&T. It is standard language that ensures that the Internet Service Provider is not liable for content that is shared over the connection.

Senator Bock asked for an explanation of the effect expected from these changes.

Representative Malek explained that this change adds the new circumstances but does not change the penalty.

Senator Bock was concerned that if someone was acting with reckless disregard or negligent behavior, that it could be considered a felony. He stated that "reasonably should have known" would be a negligent standard and doesn't seem to be a standard for a felony.

Considerable discussion of this concern ensued culminating in **Senator Bock** indicating that he would prefer the standard to be "knew".

Holly Koole, Idaho Prosecuting Attorneys Association (Association), stated that the Association has worked with Representative Malek in drafting **H 563** and it does support the bill.

John Dinger, Ada County Prosecutor's Office and the Internet Crimes Against Children Task Force, explained that this bill does not create a new crime, but specifies elements of current Code to better protect victims. He pointed out that legislation isn't keeping up with technology. **Mr. Dinger** gave examples of times when he was unable to prosecute because the Code was not specific. He asked that the Committee help to put the statutes in line with where technology is today.

Representative Malek explained that with circumstantial evidence elements can be used to prove the evidence and successfully prove the crime beyond a reasonable doubt as was pointed out by Ms. Koole and Mr. Dinger.

MOTION:

Senator Hagdorn moved to send **H 563** to the floor with a do pass recommendation. The motion was seconded by **Senator Lakey**.

SUBSTITUTE MOTION:

Senator Werk moved that **H 563** be held in Committee at the call of the Chair. Motion failed for lack of second.

Senator Hagedorn explained that because the language of the bill has been vetted by prosecutors and trial lawyers, and because the language is similar to and consistent with language currently in Code, he will be supporting the original motion.

Senator Bock stated that the testimony has reduced his concerns. He asked that Senator Lakey share his questions.

Senator Lakey said he is still concerned with the knowledge issue.

Senator Werk explained that he would like to hear Senator Davis's assessment of this bill.

ORIGINAL MOTION VOTE:

Motion to send **H 563** to the floor with a do pass recommendation passed by **voice vote**.

S 1379

Relating to Uniform Controlled Substances: Senator Todd Lakey explained that this bill takes a categorical approach to listing controlled substances. This would allow drugs that have been altered but still produce similar effects to be included without legislative action on each alteration.

Berk Fraser, Deputy Executive, Idaho Board of Pharmacy (Board), stated that the Board supports **S 1379**.

Elisha Figueroa, Administrator of the Office of Drug Policy, stated the support of her office for this bill. She cited several instances of abuse of these dangerous drugs.

Corinna Owsley, Idaho State Police Forensic Services, explained that they are trying to update the Code with the new designer drugs. The legislation contains three general classes of structures and takes the same categorical approach as the Code uses for other drugs which has been very successful. In the development of the bill, drugs used for legitimate purposes have been eliminated. **Ms. Owsley** explained problems that are involved with relying on the federal laws.

Senator Bock asked why we don't have an analog law.

Ms. Owsley replied that each time you are proving a case, you have to prove that the drug has the same pharmacological activity, but there are not research studies on them to show how they affect the body.

MOTION:

Senator Hagedorn moved that **S 1379** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Vick**. The motion passed by **voice vote**.

S 1380

Senator Hagedorn moved that **S 1380** be held in committee. The motion was seconded by **Senator Bock**. The motion passed by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 2:27 p.m.

Senator Lodge
Chair

Carol Deis
Secretary