

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, February 08, 2019

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Harris, Senators Hill, Winder, Vick, Anthon, Souza, Stennett, and Buckner-Webb

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: **Chairwoman Lodge** called the Senate State Affairs Committee (Committee) to order at 8:02 a.m.

VOTE ON GUBERNATORIAL RE-APPOINTMENTS: **Vote on the Gubernatorial Re-appointment** of Joe McNeal to the Idaho Commission on Human Rights.
Vote on the Gubernatorial Re-appointment of Kevin Settles to the Idaho Commission on Human Rights.

MOTION: **Senator Souza** moved to send the Gubernatorial re-appointment of Joe McNeal to the Idaho Commission on Human Rights to the floor with the recommendation that he be confirmed by the Senate. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Winder** moved to send the Gubernatorial re-appointment of Keven Settles to the Idaho Commission on Human Rights to the floor with the recommendation that he be confirmed by the Senate. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

RS 26783 **RELATING TO ALCOHOL** to amend Idaho Code, Section 23-313, and add a new Section 23-314 to authorize sample tasting of liquor in certain instances.
Kate Haas, Kestrel West, spoke on behalf of the Distilled Spirits Council. **Ms. Haas** stated that **RS 26783** amends Idaho Code § 23-313 and adds Idaho Code § 23-314 to authorize sample tasting of liquor in certain instances. The amendment allows for the sampling of liquor, wine, and beer inside of a liquor store. Provisions are included to prevent underage drinking and to limit the sample size to one quarter ounce per sample and a maximum of three samples within a 24-hour period. The company representative would be pouring and all samples must be pre-approved.
Senator Anthon supported the motion to print the RS for a hearing. He addressed the potential liabilities for the State and urged the Committee to show temperance.

MOTION: **Senator Vick** moved to send **RS 26783** to print. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

S 1049 **RELATING TO ABORTION** to update the Idaho Partial-Birth Abortion ban so it is consistent with the Federal law.
Senator Den Hartog, District 22, stated **S 1049** relates to existing Idaho law enacted in 2003 prohibiting partial abortions in the State. She mentioned that

this law has currently had multiple court challenges and is upheld by the Supreme Court. **Senator Den Hartog** gave a brief history of the court challenges, and discussed the 2003 law. While the law has a clear description, she suggested that it might not be enforceable in the state without the changes listed in the bill. The bill identifies exceptions for illness and physical injury, and clarifies who has the right to speak in civil court.

Senator Hill asked how it would affect caesarian sections. **Senator Den Hartog** stated that she doesn't think there is an effect.

TESTIMONY:

Kerry Uhlenkott, Right to Life of Idaho, asked for support of **S 1049**. After referencing the 2007 Supreme Court decision to uphold the illegality of partial birth abortions, she mentioned that a large percentage of healthy mothers have healthy babies. She further referenced doctors who have stated that there is no need for third trimester abortions. She further stated that if the amendments are passed this session, Idaho will join 12 other states that have similar policies.

Senator Hill asked if this also applies to save the life of the mother. **Ms. Uhlenkott** stressed that even though it does apply in certain medical emergencies, most medical people say that situation doesn't apply to the majority of cases. **Senator Hill** asked whether a vote in favor or against will change that. **Ms. Uhlenkott** did not have an answer.

Senator Stennett stated that partial birth abortions have not been legal for 10 years, as Ms. Uhlenkott had previously stated. She said cases regarding mothers' fetuses that are not viable are difficult since those are sometimes late term. **Senator Stennett** stated there is never a reason for a woman to make those difficult decisions. **Ms. Uhlenkott** replied most obstetrician-gynecologist (OBGYN) physicians would deliver the baby, and that there is never a reason to kill a baby at any time.

Christain Welf, spoke on behalf of the Catholic Diocese of Boise (Catholic Diocese). He voiced their support of **S 1049**. The process is never medically necessary. Partial birth abortions are not good medicine; the Catholic Diocese supports matching the Federal language.

John Paulton, Family Policy Alliance of Idaho, voiced support of this bill. He stated that it is a common sense policy and protects the child.

Senator Den Hartog concluded her discussion of **S 1049**

MOTION:

Senator Hill moved to send **S 1049** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**. **Senator Stennett** and **Senator Buckner-Webb** requested to be recorded as voting nay.

SJR 101

PROPOSING AN AMENDMENT to Section 22, Article I, of the Constitution of the State of Idaho (Constitution), Relating to Rights of Crime Victims.

Senator Todd Lakey, District 12, gave a brief history of **SJR 101**. He outlined several provisions in **SJR 101** including: reasonable & timely notice; notice of the escape of a perpetrator; opportunity to be present at all open proceedings, and the right to be heard. He further explained that all of these rights were based on the victim's choice. **SJR 101** has been a collaborative effort between legislators, prosecutors, law enforcement, victims rights advocates and legal experts. The courts have not taken a position on this issue but have been at the table and their input has been considered and incorporated into this resolution. **SJR 101** is a result of this ongoing collaborative effort, and is

designed to give crime victims in Idaho an effective voice in the criminal justice process. It provides for three foundational principles: 1.) the opportunity for notice; 2.) the opportunity to be present; and 3.) the opportunity to be heard.

Senator Lakey reminded everyone that a constitutional amendment is a floor or foundation, not a ceiling. It must be followed with regulation and rules. **Senator Lakey** walked the Committee through the legislation with a full explanation of what it would do.

Senator Lakey asked for general support of **SJR 101**.

DISCUSSION:

Senator Stennett asked Senator Lakey if there is already a requirement to opt in or if crime victims are currently not being provided this option. She also asked how reiterating the language is more enforceable. **Senator Lakey** stated that prosecutors and law enforcement support Marsy's Law and emphasized the State Constitution shows the importance of victims right's issues. He further stated that rights in the State Constitution provide standing for victims to raise issues themselves and to allow courts to reconsider.

Senator Stennett asked if there was any distinction between the levels of treatment victims would receive. **Senator Lakey** replied Marsy's Law treats all victims equally but it does depend on the level of violence. **Senator Stennett** asked who the courts are looking to for finding evidence of what the victim endured. **Senator Lakey** replied that the courts retain the right if there is injury.

Senator Stennett asked for clarification on the fiscal note and why it does not specifically direct money to crime victims. She further noted that those with financial means may be the only ones with representation and agencies are light in estimation. She referenced North Dakota and asked how adopting Marsy's Law would not be a financial burden to the State. **Senator Lakey** replied other states did not have existing baselines that Idaho currently has. He continued by saying the fiscal impact is incremental for the cases and the defendant has the Constitutional right to representation. He further explained that the victims have the option of representation and the prosecutors must assist, but it is not a requirement they represent the victim.

Senator Vick asked Senator Lakey why language was struck in the bill.

Senator Lakey clarified the language did not authorize the policy to inform victims of their rights and the intention was to correct it. **Senator Vick** asked why the time frame for cases could not simply be reduced rather than have a Constitutional amendment. **Senator Lakey** stated that it would not solve the current issue and this law creates a new baseline that if challenged will have the strength of the State Constitution behind it.

TESTIMONY:

The following participants spoke in support of **SJR 101**:

- Dr. Paul Cassell, Professor of Law at the University of Utah
- Holly Koole-Rebholtz, Idaho Professional Attorneys Association
- Pamela Lassiter Simlock, Institute of Preventing Relationship Violence
- Rob Shoplock, Professional Firefighters of Idaho
- Page Dinger, Executive for Faces of Hope Victims Center
- Carolyn Casey read written testimony for Matt Morgan, Building Hope Today, Idaho Falls, ID
- Mike Kane, Idaho Sheriff's Association
- Susan Nally, Bingham County Sheriff's Office
- John Buck, Gem County Coroner and County Coroners Association

The points they made were:

1. Clarification of rights of victims already given in the Constitution
2. Funding and needs of victims' are not exclusive

3. The Constitution gives more weight than a statute in court
4. No additional costs
5. Idaho needs to do more for victims
6. **SJ R 101** expands the existing policy in Idaho Code § 19-5306.

The following spoke in opposition to **SJR 101**:

- Joseph C. Miller, Idaho Association of Criminal Defense Attorneys
- Fafa Aldijari, self and Idaho Attorneys Association
- Kathy Griesmyer, Policy Director, American Civil Liberties Union (ACLU)
- Annie Hightower, Director of Law and Policy, Idaho Coalition Against Sexual and Domestic Violence
- Mathew Jensen, representing himself

The points they made were:

1. Victims already have a voice in Idaho
2. More difficult to correct and address the Constitution than a statute
3. **SJR 101** does not clearly address the solution or problems associated with victims' rights
4. Third parties cannot intervene to serve as a victim's attorney
5. It is unclear whether the enforcement of victims' rights has to take place in the criminal proceeding or during an ancillary civil proceeding
6. Idaho Code § 19-5306 already mirrors SJR 101.

DISCUSSION:

Senator Stennett stated she would be more comfortable with this law being a statute rather than a Constitutional amendment. She asked Dr. Paul Cassell how the new Constitutional requirement would avoid the pitfalls other states have experienced. **Dr. Cassell** stated that the pitfalls in other states are exaggerated. He elaborated on the experiences of several states and concluded saying that California, with 40 million people, has had no significant issues or concerns and no efforts to change Marsy's Law there.

Senator Hill asked Dr. Cassell how a victim who has Constitutional rights would not have standing. **Dr. Cassell** thought they had those rights but in court, they do not have enforceable rights; Marsy's Law clarifies those rights to avoid litigation.

Senator Vick stated that he does not want to take away the victims' right to be heard. **Dr. Cassell** replied that certain parameters exist and there are enforcement mechanisms which allow victims other ways of relief.

Senator Stennett asked Pamela Lassiter if, under current law, the State of Idaho is doing all it can to preserve victims' rights in court. **Ms. Lassiter** replied that Marsy's Law would give victims more opportunities in the court system.

Chairwoman Lodge asked Michael Kane if the statutes could be added today. **Mr. Kane** said it wouldn't be easy. What **SJR 101** stands for is that victimized people would be heard.

Senator Stennett asked Mr. Kane if the Constitution has more weight than a statute. **Mr. Kane** replied that the Constitution always has more power than statutes. **Senator Stennett** asked if statutes do more than the Constitution for victims rights. **Mr. Kane** replied in the negative and adopting Marsy's Law would be for the good of society.

Senator Stennett asked Joseph C. Miller if, by passing Marsy's Law, the Legislature is prohibiting the victim's ability to access the current provisions already given in Idaho Code § 19-5306. **Mr. Miller** stated the code can be expanded or limited depending on the case but both scenarios can be handled by the statute.

Senator Winder asked Mr. Miller about the length of parole hearings. **Mr. Miller** stated that he did not have specifics but gave general examples of how parole hearings are extended. **Senator Winder** asked why Mr. Miller would object to having a shorter hearing than a longer one. **Mr. Miller** responded that it was better to do things right than fast, with a proper balance, and with both the defendant and the victim receiving their rights.

Senator Souza asked Mr. Miller if delaying any hearings would be unfair treatment to the defendant and if in those cases, the victim should not be notified. **Mr. Miller** stated that victims should be notified and that it is fair and in the statute. **Senator Souza** asked about the powers of a statute compared to a Constitutional amendment. **Mr. Miller** stated that a statute is more applicable in court and does not require the backing of the State Constitution. **Senator Souza** asked if the rights of the accused should also be added to the State Constitution. **Mr. Miller** stated that Idaho already has a good legal baseline.

Senator Winder thanked Kathy Griesmyer and asked about specific length of parole hearings. He also asked why the ACLU would not be supportive of women who are the majority of victims in these types of cases. **Ms. Griesmyer** answered the question regarding length of parole hearings and also stated that Marsy's Law is not the right solution for this particular problem.

Senator Stennett asked Ms. Griesmyer if the State has the necessary infrastructure in place for victims' rights. She also asked if new language would insert a third party to assist victims or would it lead to further confusion of the system. **Ms. Griesmyer** answered adding new language would insert a third party and that the State already had the necessary infrastructure.

Senator Buckner-Webb asked Ms Griesmyer if the increased wait times for parole hearings in California were a result of implementing Marsy's Law. **Ms. Griesmyer** stated that she did not have that data but could provide it.

Senator Winder asked Ms. Hightower if she could be more precise in the point she was trying to make. **Ms. Hightower** stated that the problems causing the need for victim's to have rights were not being addressed.

Senator Buckner-Webb asked if the bill and the current statutes can collaborate together for victims' rights. **Ms. Hightower** said they could work together, the problem is enforcement..

Senator Hill thanked all who came, and said he respected all of the perspectives given.

Senator Vick thanked those who testified and stated he is also a strong supporter of victims' rights and the right to keep and bear arms. He read the last sentence in the Constitution and stated that victims' rights are already enshrined and should not be added into the Constitution.

Senator Stennett stated she was still on the fence about the issue because current laws are still not being enforced. She stated she wanted to improve and add more, but there is no provision in the budget or means to inform the victims of their rights. She stated when it is in statute, you can make changes but it is much harder to make Constitutional amendments. She stated she will opt to support the Constitutional amendment with trepidation. She hoped it will be enforced and victims will not be abandoned.

Chairwoman Lodge said she is on the fence, and recognized prosecutors do all they can to notify people. She raised concerns about funding coming from out-of-state to push the amendment. She continues to believe it is not an

Idaho solution, however it is better than what the State had two years ago. She said there are still some things that bother her, and a big issue is cost to counties and taxpayers, court flow interruption, and lengthening of hearings. She also voiced concerns about victims and was willing to move this to floor while retaining the right to change her vote on the floor.

**PASSED THE
GAVEL:**

Vice Chairman Harris passed the gavel back to Chairwoman Lodge.

MOTION:

Senator Hill moved to send **SJR 101** to the floor with a **do pass** recommendation. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**. **Senator Vick** requested to be recorded as voting nay.

ADJOURNED:

The remaining items on the agenda will be heard at the next meeting. There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 10:55 a.m.

Senator Lodge, Chair

Twyla Melton, Secretary

Assisted by Jonathan von Nieda