

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 27, 2023

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Lee, Toews, Wintrow, and Ruchti

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 Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:01 a.m.

MINUTES APPROVAL: **Senator Wintrow** moved to approve the minutes of March 13, 2023. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

H 242

ABORTION - Amends and adds to existing law to provide for the crime of abortion trafficking, to provide certain requirements and restrictions on a civil action, and to provide prosecution authority for the attorney general. **Representative Ehardt** described this as a parental rights bill. She provided transporting a minor, without parental consent, from Idaho to another state for the purpose of an abortion was trafficking. She clarified this bill did not prohibit the parent's right to do so, or to cede their right to someone else to do so. The bill emphasized transporting without parental permission. She relinquished time to Megan Wold.

Megan Wold, Right to Life of Idaho, spoke in support of **H 242**. She talked about amendment language to accomplish five things: 1) An insurance provider would not be captured by this bill for telling someone what their benefits covered related to abortion; 2) removal of the authority for the Attorney General to prosecute (reference Idaho Code § 18-622, Trigger Law); 3) removal of the existing provision that applied to rape and incest and added a broader provision that applied to rape, incest, sexual assault, or other criminal conduct to assure civil remedies could not be received by a defendant; 4) removal of duplicate limitations; and 5) removal of the provisions that allowed a physician to use his/her insurance policy to cover civil penalties.

Senator Bernt asked for clarification of the rape and incest language. **Ms. Wold** said, on page 1, lines 16-18, which was currently part of Idaho law, said "Notwithstanding any other provision of law, a civil cause of action under this section may not be brought by a person who impregnated the mother through an act of rape or incest." On page 3, lines 1-4, "Notwithstanding any other law to the contrary, a civil action may not be brought under this section who, through an act of rape, sexual assault, incest, or other criminal conduct impregnated the woman." **Ms. Wold** explained the broader explanation amended the language. **Senator Bernt** asked, why the civil cause of action, which he did not like. He asked why a regular prosecutorial approach would not suffice. **Ms. Wold** stated the civil remedy provision already existed in Idaho Code and did not apply to the trafficking offense, it was part of the heartbeat legislation.

Senator Wintrow said that with the civil cause of action, it sounded like the rapist could not sue but his family members could pursue lawsuits. **Ms. Wold** stated that was how Idaho Code was currently drafted and it was not being changed by this bill. **Senator Wintrow** referred to page 1, Affirmative Defense, line 24, that read, "It shall not be an affirmative defense to a prosecution under subsection 1 of the subsection Abortion Provider..." **Ms. Wold** described the bill as creating a criminal abortion trafficking offense for someone who recruited, harbored, or transported an underage girl within Idaho no matter where the abortion would ultimately take place with the intent of concealing the abortion from her parents. A real life example was the parents of a boyfriend taking an underage girl to Oregon or Washington to obtain an abortion. Their acts of recruiting, harboring, and transporting her within Idaho without parental consent were a criminal offense. **Senator Wintrow** said the parent still had to prove that they gave consent so she wondered why the affirmative defense was still in the bill. **Ms. Wold** said the bill was structured as an affirmative defense. Any prosecutor would know their case before filing it and they would not bring the action knowing a parent consented to the abortion.

TESTIMONY:

The following five individuals electronically registered in opposition to **H 242**: Emilie Jackson-Edney, Peg Dougherty, Nissa Nagel, Lourdes Matsumoto, and Dylan Goldade. The following four individuals electronically registered in support of **H 242**: Samantha Doty, Dr. Katherine Aberle, Linda Thomas, and Melissa Blevins. Over 400 emails were submitted in opposition to **H 242**, most of which appeared to have scripted verbiage. The majority of them contained the phrases, "HB 242, the bill criminalizing helping minors get an abortion, is dangerous and irresponsible. I am writing to encourage you to OPPOSE this bill. This bill would discourage young people in potentially risky situations from talking to trusted adults and seeking the help they need. I urge you to please vote NO on this terrible legislation." (Attachment 1).

Samantha Doty, a Physician Assistant and Director of Clinical Services at Stanton Healthcare (Stanton), urged a yes vote on **H 242**. She promoted actions to protect vulnerable young woman who might be coerced by adults to get an abortion. She claimed about five percent of the clients at Stanton were under the age of 18. Many had not yet shared the news of a pregnancy with their parents and they were vulnerable as they sought direction for the next steps. Depending on who they turn to, the women could be convinced or coerced into procuring an abortion across state lines, versus giving life-affirming care and support provided at Stanton and other pregnancy clinics in the state. **Ms. Doty** believed this law was designed to protect young women who were being abused or trafficked. Abortion added to the trauma some of these women endured and Idaho needed to protect them. She felt this law would encourage conversations between young women and their parents, and protect women in cases of human trafficking.

Dr. Katherine Aberle said she supported women in crisis for over 20 years. As a surgeon, it was illegal for her to provide medical care to a minor without written or verbal consent from a parent. In her practice, documentation from a parent or guardian was necessary prior to seeing the patient in office. Additionally, parents or guardians were always present during pre-surgical, consultation visits. It was imperative to Dr. Aberle that parents be present during discussions of surgical risk, including life threatening complications that can occur even during routine surgeries. Parental consent was required for all surgical procedures as minors were not considered able to provide their own consent until the age of 18. **Dr. Aberle** stated the surgical risks of abortion were rarely discussed in the abortion debate. She cited life threatening bleeding and infection, in addition to the significant emotional toll carried by women the rest of their lives. Human trafficking, as well as statutory rape victims were also left out of the abortion discussion. The women were sometimes coerced into obtaining abortions to protect the trafficker and rapist. **Dr. Aberle** said **H 242** supported parental consent and protected vulnerable minors.

Peg Dougherty, Deputy General Counsel for St. Luke's Regional Medical Center, said she preferred to withhold her comments until she had a chance to review the amendments proposed to **H 242**. **Senator Wintrow** asked what Ms. Dougherty thought was problematic. **Ms. Dougherty** responded that she was not in support of the bill, but as a health system she was concerned about additions to Idaho Code § 18-8807, subsection 10, page 2, lines 45-50. She said it prohibited the use of standard insurance coverage provided for and relied upon by health care providers and civil actions that may be brought against health care professionals. She was concerned about the prohibition on retaining and recruiting providers like family practice and other physicians at a time when the state suffered from health care staffing shortages and losing services.

Senator Wintrow understood the sponsors of the bill wanted to allow the doctors to be able to use their insurance if they were sued, but they were not eliminating the lawsuit. **Ms. Dougherty** agreed and said as a health care system it was preferred that section 18-8807 of the Idaho Code be deleted. If subsection 10 was deleted, she would support the deletion, but would not support the bill in its entirety.

Christian Welp, represented the Catholic church in Idaho. He stated the Catholic church supported the bill. He agreed that it should be illegal for an adult to traffic a minor for an abortion without parental consent.

Misty DelliCarpini-Tolman, State Director for Planned Parenthood, opposed **H 242**. She stated the bill was designed to inhibit young people from seeking abortion care and punish those who offer to help people in need. The policy would discourage young people from asking trusted adults for help and thus put them at risk. **Ms. Tolman** claimed a majority of young people facing an unexpected pregnancy involved their parents in decision making. For those who lived in an abusive household, disclosing sexual activity or pregnancy could trigger physical or emotional abuse, including direct physical or sexual violence, or being thrown out of their home. She cited a study of young people who could not seek advice from parents, nearly half experienced negative consequences when a parent learned of the pregnancy. This bill would put vulnerable young people at risk by discouraging them from talking to trusted adults. **Ms. Tolman** denied that **H 242** included an exception in circumstances where a minor's parent consented to the abortion care. Instead, it provided an affirmative defense to prosecution when a parent consented to their child obtaining an abortion, leaving those open to supporting minors open to criminal prosecution. She argued people could face prosecution for helping someone access legal health care in another state. She characterized this bill as restrictive, dangerous, and an over extension of the powers of the legislature.

Blaine Konzatti, President of Idaho Family Policy Center, informed that on August 12, 2023 the Idaho Supreme Court vacated the stay on the civil cause of action in the heartbeat law. With that, abortions ended in the state. The heartbeat law codified in law that abortion caused harm and created victims. He reported harm from abortion was done to the mother and father, and extended family members. He stressed the importance of parental involvement in the abortion discussion with minors. He clarified that the civil enforcement mechanism of the heartbeat law, 8807 of Idaho Code, was in effect as it required doctors to comply with the trigger law and the heartbeat law, and exceptions for rape and incest. He said if an abortion was performed on a women in the case of rape/incest, the family members could not sue the abortionist.

Senator Lakey closed requesting the bill be sent to the **14th Order of Business** for possible amendments.

Senator Wintrow was uncomfortable with the title and the characterization of trafficking. She believed exploiting human beings should be in a human trafficking section, rather than potentially labeling a neighbor or family member for helping a young person. She cautioned setting up some harmful things for everyday citizens who were trying to be helpful versus people who captured, sold, and marketed other human beings. **Senator Lakey** acknowledged nuances and differences between human trafficking as described, but in this context the bill talked about abortion. The trafficking section in the bill only applied to those who intentionally tried to conceal their efforts from the minor's parents. **Senator Wintrow** said minors had rights to reproductive health care. She did not want help shrouded as maniacal. **Senator Lakey** repeated this dealt with intent to conceal actions from the parents for the purpose of getting an abortion for a minor. This did not apply to health care, it applied to abortion.

Senator Harris moved to send **H 242** to the **14th Order of Business** for possible amendments. **Senator Toews** seconded the motion.

DISCUSSION: **Senator Ruchti** addressed the concept of making it unlawful to travel across state lines. He asked if the prohibition on travel across state lines to obtain services that were illegal in Idaho but legal in the travel to state be used in areas like the purchase of marijuana. **Senator Lakey** referred to lines 19-20 that talked about recruiting, harboring, or transporting for procurement of an abortion, which was unlawful in Idaho. He stated it referred to the activity that occurred within the state, not the transport across state lines, "...transporting the pregnant minor within the state..." commits the crime. The bill said abortion was illegal in Idaho and if someone furthered that without the knowledge of the parents, that conduct was illegal. **Senator Ruchti** said putting a pregnant person in your car and traveling to the border was not criminal. How was it made illegal for purposes of this legislation. **Senator Lakey** replied that legislators defined crimes in Idaho. In that case, the conduct constituted a crime. **Senator Ruchti** suggested putting someone in your car and driving to Oregon to purchase marijuana, under this reasoning the state legislature could make traveling from Boise to the border illegal. **Senator Lakey** agreed, if the legislature decided to go down that road.

Senator Wintrow asked how a parent could consent to an illegal activity if he already said it was illegal. And she did not understand what it meant to recruit or harbor. **Senator Lakey** explained the bill was not talking about the parent, it was about the person attempting to procure an abortion for a minor without the knowledge of the parent. Recruiting, harboring, and transporting were descriptive words and the courts would have to decide if the conduct constituted one of those three things.

VOICE VOTE: The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** requested to be recorded as voting no.

ADJOURNED: There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 8:40 a.m.

Senator Guthrie
Chair

Joyce Brewer
Secretary