MINUTES

SENATE JUDICIARY & RULES COMMITTEE

DATE:	Wednesday, March 12, 2025
TIME:	1:00 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Lakey, Vice Chairman Shippy, Senators Ricks, Foreman, Lent, Lenney, Keyser, 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 Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.
H 88	**COMMERCIAL SEXUAL ACTIVITY - Amends existing law to provide that soliciting commercial sexual activity shall be a felony**. **Representative Raybould** reported that the legislation had amended existing law to make soliciting commercial sexual activity a felony. Previously, the law charged a misdemeanor for the first offense and a felony for the second offense. This section was supposed to be corrected the previous year. The new legislation removed the misdemeanor charge and retained the felony. The message conveyed by this legislation was that Idaho did not tolerate such behavior.
DISCUSSION:	**Senator Foreman** remarked that when data was examined, the overwhelming majority of individuals who engaged in this activity were repeat offenders. He questioned the reality that participation was not a one-time occurrence and queried about misunderstandings, noting that the burden of proof still rested on the State. He suggested that if the punishment was too harsh, one should not commit the crime. **Vice Chairman Shippy** commented that those who typically committed this type of crime were repeat offenders. He questioned if this legislation was meant for adults or minors. He noted that an 18-year-old who made a single mistake and then became a felon, was very different from repeat offenders. **Representative Raybould** commented that other sections of the code addressed different instances and that it was not an immediate crime if someone was picked up for soliciting; the prosecutor had to determine if there was a case. **Vice Chairman Shippy** noted there could be misunderstandings and cited a young man who admitted to solicitation and was sentenced to five years. **Representative Raybould** remarked that the idea that it was usually the same people doing repeated activity got lost. The law, as written, showed the potential risk and did not encourage offenders to change their behavior. **Vice Chairman Shippy** remarked that it sounded as if repeat offenders were the major issue and suggested other laws could deal with them. **Representative Raybould** remarked that the State of Idaho decided to follow a policy that did not believe such behavior was permissible. **Senator Ruchti** stated that Idaho already had felony statutes for sex trafficking. He questioned if two adults engaged in consensual activity, would they go to jail. He believed that punishments should be more severe if someone was being trafficked, but between two consenting adults, it should not be a felony. **Representative**

Raybould clarified that the change did not affect the trafficked individuals but targeted those buying sex. She emphasized that no one was required to engage in such activities for money and that consent was complex.

Senator Lenney noted that the term "prostitute" had been replaced with "worker" in the code, yet these individuals were still being punished. He questioned why one consenting adult was charged with a felony while the other received no punishment, highlighting that the person soliciting sex made an active choice.

Senator Ruchti observed that the bill made offering to pay for sex a felony. **Representative Raybould** explained that making an offer was equivalent to committing a crime, similar to being charged for planning a murder even if not present at the crime scene.

Senator Wintrow queried whether the felony portion of soliciting sex was covered under the human trafficking statute, while another statute defined something illegal but with a different punishment. She asked if the felony portion in human trafficking differed from something illegal that someone did anyway.

Chairman Lakey stated that both supply and demand should be addressed. He asked Representative Raybould to elaborate on the Attorney General's report and the reasons for tracking. **Representative Raybould** remarked that there was a supply and demand dynamic, and Idaho could send a message that human trafficking was not tolerated. She emphasized that the baseline should be higher and that exemptions for people paying for sex were wrong.

Senator Ruchti remarked that many actions against morality should not necessarily be felonies. **Representative Raybould** explained that a higher standard was needed, and such behavior was inappropriate and a felony in Idaho.

Senator Wintrow queried again about the felony portion of soliciting sex under the human trafficking statute versus another statute defining illegal actions with different punishments. **Representative Raybould** explained that the legislation required proof that the person soliciting knew the individual was being trafficked. If not, they would be charged under a different provision. She noted that this was not a new felony, but existing law aimed at removing people from the streets and protecting individuals.

Senator Lenney remarked that the bill went too far in punishing one person and not the other. **Vice Chairman Shippy** commented that the code was fair, but the felony punishment did not serve as a deterrent.

MOTION: **Senator Ricks** moved to send **H 88** to the floor without recommendation. **Senator Lent** seconded the motion.

DISCUSSION: **Senator Ricks** remarked everyone wanted to see a reduction in sex trafficking. This reduced the demand for this type of activity. He thought this was a good topic for the entire body.

Senator Foreman stated the current code was fair, measured, and balanced.

Vice Chairman Shippy stated he agreed with Senator Foreman. He stated he thought our current laws were fair and balanced.

SUBSTITUTE MOTION: **Senator Lenney** moved to hold **H 88** in Committee. **Senator Foreman** seconded the motion.

DISCUSSION: **Chairman Lakey** had stated that he did not believe the current statute was effective and discussed the human trafficking issue. He felt that the new legislation would reduce the solicitation of trafficking.

Senator Wintrow stated that she believed the crime was already covered under the human trafficking statute and noted that human trafficking was worse than domestic violence.

ROLL CALL VOTE: **Chairman Lakey** called for a roll call vote on the substitute motion to hold **H 88** in Committee. **Senators Foreman**, **Lenney, Keyser, Wintrow, Ruchti,** and **Vice Chairman Shippy** voted aye. **Senators Ricks, Lent**, and **Chairman Lakey** voted nay. The motion carried.

H 158 **PRODUCTION OF EVIDENCE - Adds to existing law to establish provisions regarding media source confidentiality**. **Senator Lent** explained that this bill amended Idaho Code, Chapter 7, Title 9, by adding a new § 9-714 to create a shield law to protect media source confidentiality during news gathering activities, except in cases of national security or imminent physical harm. He noted that this bill provided a way to protect witnesses in press reports.

TESTIMONY: **Melissa Davlin**, Idaho Press Club, testified in support of the bill, remarking that this legislation ensured reporters would not have to reveal their sources. This bill protected individuals when an attorney was hired to represent them. Idaho was one of 12 states without a subpoena shield law. The practice of journalism involved obtaining information and making it public.

Don Day, Boise Development Company Cofounder, testified in support of the bill, noting that hired legal counsel helped keep files private. He emphasized that the First Amendment allowed reporters to speak freely.

Nate Sunderland, Editor, East Idaho News, testified in support of the bill describing it as a horrifying experience to listen to testimony in open court because every year, hundreds of Idahoans had sources they wanted to protect.

MOTION: **Senator Foreman** moved to send **H 158** to the floor with a **do pass** recommendation. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Senator Ricks** spoke in support of the motion. He stated he appreciated this legislation moving forward as it was important to have a shield. He appreciated the media and especially the reporting they did. The press needed the tools to be able to present the news.

VOICE VOTE: The motion to send **H 158** to the floor with a **do pass** recommendation carried by **voice vote**.

H 9AA **IDAHO ADMINISTRATIVE PROCEDURE ACT - Amends, repeals, and adds to existing law to revise the procedures for the conducting of contested cases**. **Senator Ruchti** explained that Idaho's Administrative Procedure Act (APA), which governed contested cases before Idaho's administrative agencies, was primarily based on the 1961 Model State Administrative Procedure Act (MSAPA), with updates and Idaho-specific modifications since its initial codification in 1992. Modern practices and developments in administrative law warranted updates to several provisions of the Idaho APA. This bill also updated the 1961 MSAPA references from "hearing office," referring to full-time hearing officers in the Office of Administrative Hearing (OAH), to the modern term "administrative law judge," which had been used in other jurisdictions since the 1981 MSAPA version. Additionally, this bill cleaned up references in other parts of Idaho Code to the Idaho Rules of Administrative Procedure of the Attorney General, which were eliminated with

the introduction of the new Idaho Rules of Administrative Procedure created and maintained by the Office of Administrative Hearings on July 1, 2024.

DISCUSSION: **Bryan Nickels**, Chief Administrative Officer, outlined the changes. He noted that the changes aimed to update the law from the 1966 version to the 2022 version. He explained that agencies now had a maximum of 120 days to complete a contested case proceeding if they initially took emergency action, providing "due process" protection. The bill incorporated existing practices requiring agencies to publish guidance on a single webpage. This legislation ensured fairness for individuals involved in contested cases by guaranteeing they had the same understanding and access to knowledge as the agencies and their attorneys. It formalized and made it statutory that agencies needed to maintain a page indicating the precedents they intended to rely upon going forward.

Mr. Nickels pointed out that the current contested case provisions referenced a practice called "exceptions," which referred to an outdated legal practice known as "bills of exception." This practice, a mandatory prerequisite before filing an appeal, was abolished in 1977. However, the APA, primarily based on the 1961 version of the MSAPA, still included references to exceptions. In the first few years of operation, this was identified as problematic for self-represented individuals, as they struggled to respond to and address it meaningfully. This bill cleaned up and simplified the process for appealing an agency order.

MOTION: **Senator Keyser** moved to send **H 9aa** to the floor with a **do pass** recommendation.

DISCUSSION: **Senator Ricks** asked to be reassured there was no need to send this bill to the amending order. **Chairman Lakey** explained even though the Committee did not have the engrossed version, there was no need to send this bill to the amending order since it was already engrossed. **Senator Ricks** seconded the motion.

VOICE VOTE: The motion to send **H 9aa** to the floor with a **do pass** recommendation carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:00 p.m.

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Senator Lakey
Chair

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Sharon Pennington
Secretary

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Linda Kambeitz
Asst. Secretary