

Legislature kills Kyra's bill

By Mary Truman

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A Senate bill, which would have given judges the flexibility to impose a longer sentence for felony injury to a child, died in the Senate after returning from the House changed.

The bill, proposed by Sen. Joyce Broadsword, was prompted by the severe abuse to local three-year-old Kyra Wine, who suffered the loss of both of her feet, a finger and a kidney, but whose abuser was sentenced to the maximum 10 years in prison.

"I'm really disappointed," Sen. Broadsword said. "I got it through the Senate with no problem, and then we ran into the brain trust over there (in the House)."

The original bill proposed an increase in the maximum penalty for felony injury to a child from 10 to 20 years. The belief was that the change would bring the law into line with the penalties for similar crimes.

"It would have increased the penalty but only in aggravated circumstance cases; those with great bodily injury, permanent disability or disfigurement," Sen. Broadsword said. "The bill passed the Senate unanimously."

After the bill was passed to the House, the Judiciary and Rules Committee amended the bill. Changes included taking out the language "great bodily injury" and dropping the maximum penalty from 20 to 15 years.

"Although they left in permanent disfigurement and permanent disability it made the bill inconsistent with Idaho criminal codes," Sen. Broadsword said. "There are many cases where the child could be done great bodily harm but didn't suffer permanent disability or disfigurement."

She said she was not sure what the purpose of rejecting the bill as written was.

Rep. Phil Hart said they amended the bill because they were afraid the similar language between the current law and the proposed bill would create confusion for the courts.

"It would be difficult to decide whether a person should be prosecuted under the enhanced penalty or the lesser penalty, because the definitions were the same," Rep. Hart said.

He likened it to being cited two different dollar amounts for the same traffic violation.

"Let's say the law says you get a \$100 ticket for not stopping at a stop sign and a \$500 ticket for not stopping at a stop sign," he said. "So which is it?"

There is no clear definition of "great bodily harm" in the law, added Rep. Lynn Luker.

Because the current law included the requirement of "intent to cause serious bodily harm" the representatives thought that an enhanced penalty required something more to differentiate the old law from the new proposed law, he said.

"Therefore, in order to avoid ambiguity and minimize inconsistent application of the law but still cover the more serious situation, the term 'great bodily harm' was removed, but the other conditions (permanent impairment and/or disability) were left in," Rep. Luker said.

Sen. Broadsword said that Rep. Luker is mistaken.

"He is not a criminal lawyer or he would know the case law defines 'great bodily injury,' she said. "He was part of the problem. He doesn't listen."

The penalty was also changed to make the bill more consistent with other laws and to lessen the load on taxpayers.

Rep. Hart said the longer penalty was not based on any evidence and lacked support.

"Nobody brought any information that indicated that the 20-year prison sentence was based on anything scientific," Rep. Hart said. "We just don't want to put people in a warehouse not knowing whether we got them there for the appropriate amount of time, so we lessened it."

Sen. Broadsword said Rep. Hart was not paying attention.

"The testimony before the committee included the fact that current Idaho code requires a 25-year penalty for sexual battery of a child," she said. "As well as numerous other code sections where the penalty was more severe than the current 10 years for felony injury to a child."

After discussion in the Judiciary and Rules Committee it was decided that 15 years would serve the three reasons for incarceration, which are retribution, deterrence and rehabilitation, just as well as 20 years would, Rep. Luker said.

"Aggravated battery carries a term of up to 15 years," he said. "Therefore, for reasons of consistency plus consideration of cost verse benefit to the taxpayers, it was felt that 15 years was a reasonable enhancement."

Sen. Broadsword said she could have settled for the lesser penalty but could not approve the removal of "great bodily injury."

"I could have lived with the 15 years, but removal of 'great bodily injury' made the bill inconsistent with other Idaho criminal codes and placed voluminous amounts of case law at risk," she said. "I couldn't allow criminals to contest their sentence because of a misguided change the House made so the Senate refused to concur with the amendments; effectively killing the bill."