

Date: 1-27-21

House Law Enforcement and Criminal Justice Committee

Bill: HB 21 Stalking Amendments

Sponsor: Rep. Pierucci

Floor Sponsor: Sen. Fillmore

UASD Position: Tracking

This Bill: modifies the elements for the offense of stalking.

Discussion: Rep. Pierucci worked with the Commission on Criminal and Juvenile Justice over the summer on cited ambiguity and vagueness in the stalking code. Will Carlson's team did a 50-state analysis of stalking definition in all 50 states. Sixteen other states have this bill's exact language on continuity of purpose. This bill would not require that the offender have a continuity of purpose, but that the acts evidence a continuity of purpose. She explained that the original bill would increase the number of acts required from two to three, but the amendment strikes that and keeps it at two. Will Carlson with Salt Lake County District Attorney's Office spoke in support of the bill. He said it will clarify the code, but still allow them to file stalking cases. He noted that just because something doesn't qualify as stalking, doesn't mean it's legal. A single threat isn't stalking, but can still be prosecuted. Rep. Burton asked if the requirement for continuity of purpose shows a pattern of behavior so it's a protection to not give a frivolous stalking charge. Rep. Pierucci confirmed that. Alexandra Meritt with the Utah Crime Victims Legal Clinic said our code already makes it clear there must be a purpose from the stalker. She said stalking is on the rise, and cited statistics from Utah's universities. She argued that changing the code doesn't just change it for prosecutors, it changes it for the victims. Stalking is already known to be difficult to prosecute. Ms. Meritt said the standard is already so high, and opposed the bill. Rep. Miles asked Mr. Carlson if this makes it more or less difficult to prosecute stalking. Mr. Carlson said this restricts the universe of cases which could theoretically be filed. At the same time, the Salt Lake County District Attorney's Office felt comfortable with this language because it aligns with the charges they choose to file. He said that yes, this language restricts the statute, but it ultimately empowers prosecutors. Rep. Miles asked Ms. Meritt whether she agrees or disagrees. She said it makes it more difficult to prosecute. The counties across the state haven't been consulted. She explained that when it comes to the victims she works with, it is extremely difficult to get criminal charges, and they don't usually come until a civil stalking injunction is acquired and violated. She doesn't know how many stalking cases are being filed, but this will make it harder. Rep. Gibson asked if there's a legal definition of stalking and how that differs

from the stalking cases she sees. Ms. Merit said the code defining stalking is in 78B. It can result in criminal charges, but there's also a civil stalking injunction which also requires proof. It's the same code that applies to both scenarios. Chief Tom Ross spoke with the Commission on Criminal and Juvenile Justice. They voted in support of this bill. Megan Mullineaux spoke about her experience with stalking, explaining that her stalker has been very clever at hiding his purpose when he shows up to where she is. It is very difficult to prove stalking, and continuity of purpose would make it more difficult. She opposed the bill. Attorney Bethany Warr with the Utah Crime Victims Legal Clinic, said she represents victims in stalking cases. Stalking is defined so that in order to get civil recourse, a layperson has to give evidence to the court on their own, with no legal background, and no idea of the rules of evidence. This will make it harder by adding more rules. Steve Burton, Executive Director of the Utah Association of Criminal Defense Lawyers, said that stalking law in Utah is written very broadly. It is defined as actions toward a person that put someone in fear of their safety or that cause them emotional distress. He wanted the bill to go farther. James Swink spoke in support of the amendment. He is the Cache County Attorney and chairs the Utah Council on Victims of crime. Continuity of purpose will raise the bar and make it more difficult to prove these cases. It is unnecessary. Matt Bartley said his partner was involved in a stalking case and it's been extremely difficult to navigate it in the legal system. There are all kinds of stalkers. In their case, the stalker is aware of what he's doing and covering his tracks very well. It has been very difficult to prove any one instance is connected to another. He is really concerned about the continuity of purpose language. Everybody that's worked on his situation agrees it's stalking, but they don't have the legal framework to prosecute it. The bill was amended in line with Rep. Pierucci's earlier comments. A question was asked about the substantive difference between the current code and this language. If someone believes they're being stalked and runs into their stalker at a gas station and a grocery store, what would be the outcomes under current code versus this bill? Mr. Carlson said under current law, that could be filed as stalking as long as the defendant knew or should know the victim was distressed. Under this bill, the prosecution would have to prove that the actions were connected by a similar purpose. Rep. Pierucci said this is a measured, small change that will have an important impact. Rep. Ray said he looked at this legislation in October on the Criminal Justice Task Force Commission and they supported the bill 14-0. The legal experts support the bill. He supports the bill.

Yeas: 10

Nays: 1

N/V: 0

Outcome: Passed unanimously with a favorable recommendation.

Date: 1-27-21

House Law Enforcement and Criminal Justice Committee

Bill: 2nd Sub HB 138 Post Council Membership Amendments

Sponsor: Rep. Winder

Floor Sponsor: Sen. Thatcher

UASD Position: Tracking

This Bill: adds a representative of the Utah State Fraternal Order of Police to the POST Council.

Discussion: Rep. Winder said he would speak to the second substitute. The POST Council currently has four at-large members. For the past several years, one of those has been a representative from the Utah Fraternal Order of Police. This summer, the governor replaced their representative with Jeanetta Williams from NAACP. The Fraternal Order of Police said it's important to have a voice from a rank-and-file police officer. This bill would make it so there are three at-large members, and add two additional members - one from the Fraternal Order of Police who is a current or former law enforcement officer, and one who is a representative of a non-profit civil rights organization that represents minority populations. Cameron Noel, Beaver County Sheriff and member of the POST Council, said he opposes the bill because it's unnecessary to have someone from a union based organization that pays dues as a council member. Ian Adams, Executive Director of the Fraternal Order of Police, said they are the largest law enforcement organization across the state. The POST Council makes important decisions about who gets certified and who gets decertified as a law enforcement officer. He said the order is a labor organization, not a union, and has held a seat for 8 years. He supports the bill. Rep. Gibson asked if members of the Fraternal Order of Police pay dues. Mr. Adams said they do. Rep. Gibson asked if he meant they weren't in the traditional sense, or not a union in any capacity at all. Mr. Adams said he's referring to strict definition — being able to leverage contracts and collective bargaining. David Spatafore spoke on behalf of the Salt Lake Valley Law Enforcement Association in support of the bill. He said it is important to have the voice of a rank and file law enforcement line officer on POST council. The second substitute, which they had been discussing the whole time, was adopted. Rep. Miles asked if any organizations oppose the bill. Rep. Winder said he didn't know of any.

Yeas: 9

Nays: 0

N/V: 2

Outcome: 2nd substitute passed unanimously with a favorable recommendation.

Date: 1-27-21

House Law Enforcement and Criminal Justice Committee

Bill: HB 208 Water Quality Act Amendments

Sponsor: Rep. Ray

Floor Sponsor:

UASD Position: Tracking

This Bill: addresses enforcement of water quality provisions.

Discussion: Rep. Ray said the brunt of the bill is in lines 141-149. It clarifies that an employee cannot be arrested when the worst case scenario should be a company fine. Annalise Wilson said she represents Ivory Development. They support the bill.

Yeas: 10

Nays: 0

N/V: 1

Outcome: Passed unanimously with a favorable recommendation.

Date: 1-27-21

House Law Enforcement and Criminal Justice Committee

Bill: HB 220 Pretrial Detention Amendments

Sponsor: Rep. Schultz

Floor Sponsor: Sen. Cullimore

UASD Position: Oppose

This Bill: This bill removes the substantive changes to the bail system that were made by 2020 General Session H.B. 206, Bail and Pretrial Release Amendments.

Discussion: Rep. Schultz presented the bill. He said the concept of last year's HB 206 was to make everything more fair and equitable by focusing less on bail. It was presented as a way to ensure that low-level offenders could be released without a major financial hit, and that those who shouldn't be released because of the severity of their crime would be held. He said he has heard from almost every stakeholder that it isn't working and needs to be fixed. He argued that it is better to repeal the law and start from the ground up, than try to adjust the problems with little information. This bill takes us back to something we know and doesn't jeopardize public safety while we try to figure out how to get it right. He explained that the monetary bail schedule has been eliminated, serious criminals have been released, there are significantly more outstanding warrants, and that judges have little to no discretion now. Rep. Schultz said neither of the bills proposed this year will have support from all of the stakeholders who supported last year's bill. He suggested that we need to find ways to let out people who aren't a threat, while detaining those who are. Sheriff Jensen said the sheriffs really want to get this right. They aren't opposed to bail reform. 18 sheriffs across the state support this bill. He gave several examples of negative results of the bill, and stated that things are not being handled the same way across the state. Rep. Schultz said there are examples on both extremes — serious offenders are being released, and low-level offenders are being held. No one has figured out what the fix is, so that's why we need to just go back to our old policy. Rep. Judkins asked why they should abandon all the hard work of last year's bill. Sheriff Jensen said the sheriffs didn't see the bill last year before the session started. The bill ended up extremely different from the one that they gave feedback on. Rep. Schultz said coming into the session last year not all the stakeholders were on board. The way the bill was implemented was bad, as well as some of the language. Some stakeholders say it was the implementation, some say it was the bill, most people say it was both. Rep. Stoddard asked if there is official data on how HB 206 is working. Any charts or graphs, or is it all anecdotal? Sheriff said they have the booking sheets and orders from the judge, everything from his records. Rep. Stoddard asked if they have put that up against previous years' public safety. He said he's a prosecutor and it's been a weird year for everyone and the courts. He noted that many of the penny bails came from covid. He said he wants to look at the data and agrees last year's bill needs tweaks, but there isn't enough to scrap it and start over because it's going to negatively impact a lot more people. We need more data and it's premature to repeal it without more time. Rep. Romero asked why we should go back to how it used to be, rather than keep where it is and

work on it with the previous sponsor. Rep. Schultz said if we'd seen a coalition of stakeholders starting to coalesce around a bill, that would be a good way to go. The problem is, you start making little changes, but every time it affects so many other stakeholders. It's important to get everyone in the same room. He wants to take these experiences, come together as a group, and find a way forward. Ben Aldana, a public defender in Utah County, said he deals with this statute every day and the changes since October are disturbing. Repealing it and starting over is the best way. He's looked at every other bail bill and this is the only one that is productive. Crystal Powell, a victim's rights attorney, said last year's bill proposed to fix a very big problem and big problems require bold solutions. She opposes this bill because HB 240 provides a better fix. A repeal of last year's bill would drastically reduce protections afforded to crime victims, who are most vulnerable and do not have access to representation. Scott Burns, executive director of the Utah Sheriff's Association, said they were told last year's bill was optional. It has been a disaster. Jojo Liu, Director of Salt Lake County's Office of Criminal Justice Initiatives, spoke. She said they develop data and analysis on the functioning of the criminal justice system. She does not take a position on the bill but has data and analysis from Salt Lake County Jail. Their analysis has focused on HB 206's impact on pretrial release for first degree felonies and other serious cases. The net effect has been that for those types of cases, release during pretrial is now far less likely. What's driving these trends is the increased use of no-bail holds. Rep. Stoddard asked her to confirm that no-bail holds went up in domestic violence cases and regular bail went down because of HB 206? Ms. Liu said that was correct. Rep. Stoddard asked if there's a way to differentiate between the results of covid orders and the results of HB 206. Ms. Liu said this analysis focuses on felony offenses because there has been no covid effect on felonies. It's impossible to judge the effect on low level offenses because of covid. Jeff Buhman, executive director of the Statewide Association of Prosecutors said prosecutors are on the front lines of the bail system. They oppose this bill and support HB 240. They have worked with Rep. Pitcher for months to address the implementation issues and believe HB 240 addresses everything and maintains the policy improvements that HB 206 implemented. Mr. Buhman said lines 440-441 provide the court with unfettered discretion to release someone on its own recognizance without conditions to ensure public safety. He also referenced lines 804-805 and said that in many districts judges act as magistrates. The changes in this bill indicate that magistrates may no longer deny bail in any case. Sim Gill said he is opposed to the bill. HB 206 went into effect in October, and it has been a short period of time since. It was a good bill and in its application they have not compromised on public safety. There are things they would like to tweak, but repealing it undoes all the progress they have made. Under HB 206, they can save taxpayer dollars by releasing people who are not a risk, while being able to argue for pretrial detention for people who are a genuine risk. He noted that he supports HB 240. James Swink, Cache County Attorney and chair of the Utah Council on Victims of Crime said he supports this bill. He argued that a reset is necessary because of the problems indicated by law enforcement and that warrants are being issued at twice the previous rate. When you push the reset button, you can look at the issue holistically. He noted that it would be helpful to give courts guidelines on who to keep in and

who to release, and said they needed to take a look at the risk assessment program. David Leavitt spoke in opposition to the bill. He said that the stakeholders got together last year because public safety was being damaged by the way the system was operating before. To go back to that would continue to erode public safety. The question of release or detention is a balancing act and causes problems on all sides. Giving anecdotal examples isn't helpful. He argued that the old system benefited those who have money and harmed those who didn't. Mr. Leavitt suggested that it doesn't make sense to think that the broad coalition of people who worked on this would magically be able to get this right by scrapping everything and starting over. He noted that HB 240 has the support of many involved. Steve Burton, executive director of the Utah Association of Criminal Defense Lawyers, said he was part of last year's coalition and the bail reform efforts were intended to help his clients, people presumed innocent who were sitting in jail while their case was being resolved. Instead, it has caused more problems for their clients. He said some of these can be fixed, but a holistic approach is best. Michael Drechsel spoke on behalf of the courts. The Judicial Council was initially opposed to this bill, but is now neutral after speaking with Rep. Schultz. They expect to be involved in a task force/working group, and would like that included in the bill. He also noted that Rep. Schultz had said he would work to look at provisions in HB 206 that didn't cause problems that could be kept in law. He said penny warrants are 100% covid related and have nothing to do with HB 206. Rep. Stoddard asked if the Judicial Council has looked at pretrial release before. Mr. Drechsel said it has been scrutinized and many of their recommendations were incorporated into HB 206. Rep. Miles asked who should be included in the working group. Mr. Drechsel said every stakeholder that has an interest in the criminal justice system. Gary Jensen spoke on his own behalf and said that HB 206 has resulted in confusion at all levels. He supports this bill because it brings all of the stakeholders back to work the issues out now that they have a greater understanding of the unintended consequences. Rep. Ray said repealing is the best move. Rep. Stoddard said there are a number of bills dealing with HB 206 and it would be appropriate to hear all the options before moving forward. He also noted that the old system benefited people with money and left out marginalized people. Rep. Wilcox said there are two issues that concern him - mental health for law enforcement, and the absolute failure of bail reform from last session. Rep. Schultz said there are some good components in 206 and he has committed to work with the courts and all the stakeholders to make sure that all of those changes make it back into the bill. He said it is true that there are several bills out there trying to address some of the concerns, but there's no one coalescing around any of those options. Rep. Gibson said repealing is the best way to address the problems caused by HB 206. Rep. Schultz said the point about data is important. He suggested we work on getting the data as we work on getting this fixed. He noted that the attorney general's office supports the repeal. He also mentioned that most domestic violence cases are misdemeanors and considered low level offenses.

Yeas: 7

Nays: 4

N/V: 0

Outcome: Passed with a favorable recommendation.