

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 07, 2022

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

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 1:30 p.m. He indicated that due to scheduling issues, the Committee meeting would not follow the Agenda. He stated that **RS 29357** would be presented first. He indicated that **S 1250** would not be heard today.

RS 29357 **Murphy Olmstead**, Representing the Idaho Sheriff's Association, presented **RS 29357** relating to county jails. **Mr. Olmstead** explained that this legislation would allow a county sheriff to hire a temporary guard or private security firm to assist in transporting inmates from one location to another, stand guard over prisoners at locations such as hospitals, hospice facilities or long term care when it was required. It allowed the deputy who was assigned to such duties to be available to do more valuable assignments while using the security firm employees to do the less demanding responsibilities. **Mr. Olmstead** added that the counties would benefit financially from using the lower cost security firm employees while giving the security businesses more employment opportunities.

DISCUSSION: **Senator Burgoyne** asked Mr. Olmstead several questions relating to the qualifications of the security firm employees. **Mr. Olmstead** explained that the security officers would not be POST certified nor would they be armed. He stated that many sheriffs already have designated private security services who have training programs of their own.

MOTION: **Senator Lodge** moved to send **RS 29357** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Josh Tewalt, Director, Idaho Department of Correction (Department)** presented the 2022 Department Update. **Director Tewalt** stated there were three critical issues for his department and for the people of Idaho. The first issue was the staffing concerns for his department. In fiscal 2021 the Department had the worst staffing crises ever experienced. The Governor's support enabled the Department of Corrections to give pay raises to the prison staff. Starting pay was raised from \$16.75 to \$19.00 an hour. A one time signing bonus for new hires was implemented, to be paid back in 12 months if 12 months of employment was not completed. **Director Tewalt** explained it was important to take care of the current staff. They implemented compression adjustments for all the security staff. A retention bonus program was designed to provide a series of five one time bonuses for security staff through their first five years with the agency. The hope was to encourage employees to make their careers working for the Department. These incentives had helped to increase the number of applicants for open positions.

Director Tewalt commented on community supervision and the importance it played for those under the supervision of the Department. The bulk of the population in the prison system was a function of people who had been unable to take advantage of opportunities available to them. The Department recognized that one area needing support was in probation and parole. Significant progress had been made in that area and part of that was due to electronic monitoring systems. They have enabled the parole officers to spend more quality time helping those they work with.

Director Tewalt stated that because of support from the Legislature and the Governor, a significant investment was made in intervention stations which were specifically targeted for high risk, high need individuals in the community. The stations had allowed parole officers to recognize when people were struggling and get them out of the communities before they committed a crime. **Director Tewalt** commented that they had been piloting two programs to help resource the community supervision differently to gain better results. The first was the creation of the Probation and Parole Specialist. These individuals worked closely with newly sentenced probationers or newly released parolees. They provided customer service for the clients who had needs and supported parole officers. **Director Tewalt** explained that the other positive pilot program was creating the new position of Re-entry Specialist. These employees targeted those people who were high risk. In addition the Re-entry Specialists worked for 60 days before the parolees were released, developed a solid case plan and then followed them for 60 days upon release and helped them troubleshoot any issues they encountered. **Director Tewalt** stated the program was very successful and determined that it was needed in many Idaho communities.

Director Tewalt briefly explained the need for infrastructure to care appropriately for the people sentenced to their custody. He mentioned that capacity was not just the number of beds but the number of beds needed to fit specific needs. The Department requested funds to build an 848 bed female facility which would allow 700 minimum custody male beds to be reclaimed for their intended use. The second part of the proposal involved a 280 bed housing unit at the Idaho State Correctional Institution which would include 140 ADA compliant areas.

DISCUSSION:

Senator Lee asked if the amount of funding requested would cover all the costs. **Director Tewalt** responded that he didn't know. He explained that he was looking at compensation from two perspectives. The first was compensating the employees in a way that was commensurate with what was expected of them. The second was compensating them in a way that was commensurate with the value they bring to the criminal justice system that others do not provide. **Director Tewalt** stated he believed they were going to be able to compensate the staff and increase starting pay to continue to be more competitive.

Senator Lodge asked what kind of internet access people had in their facilities. **Director Tewalt** explained that it was limited but there are projects underway to increase their access. Some CARES money was used to increase bandwidth. The goal was to have Wi-Fi and internet access available to every bed in the institutions. **Director Tewalt** commented that internet access is a scary proposition in correctional facilities but it was also used for education as well as communication with families. **Senator Lodge** asked how email worked at the centers. **Director Tewalt** said that kiosks and tablets were available for use and were heavily regulated.

**PASSED THE
GAVEL**

Chairman Lakey passed the gavel to Vice Chairman Ricks for hearing on the Public Defense Commission Rules.

61-0101-2101
AND
61-0102-2101

Kathleen Elliott, Executive Director, Idaho Public Defense Commission (PDC), introduced Chairman Bowles (attending through zoom), Vice Chair Eric Frederickson and Emma Nowacki, Deputy Attorney General of Civil Litigation. **Director Elliott** stated the mission of the PDC was to improve trial level defense to ensure compliance with state and federal regulations.

Emma Nowacki, Deputy Attorney General, gave an update on the Tucker Class Action Lawsuit which had challenged the public defense system in Idaho (see Attachment 1).

DISCUSSION: **Senator Burgoyne** and **Ms. Nowacki** had a discussion regarding the costs involved with this case. **Senator Burgoyne** questioned whether anyone had computed the costs to the State. **Ms. Nowacki** responded that she did not know. **Senator Burgoyne** asked Ms. Nowacki to find out how much money this lawsuit had cost the State of Idaho to date. **Director Elliott** commented that the amount could be estimated.

Director Elliott discussed the last few years of the rulemaking process. In 2019 the PDC negotiated rulemaking but held off proposing new rules to comply with stakeholder's requests. In 2020 there were two more standards to negotiate and the PDC wanted to involve the public in the process. The old rules were moved to new locations and cleanup was done. **Director Elliott** stated that after many comments and several meetings, the attached legal sheet was produced prior to the 2021 Legislative Session. The sheet shows the end result of each of the 21 provisions that were taken through the negotiated rulemaking process (see Attachment 2). **Director Elliott** enumerated and explained each provision verbally to the Committee. She stated that all the comments were given in a summary version and given to each committee member. She indicated that the comments, in their entirety, were on their website and were given to the full Commission. The Commission determined what language to keep and how to proceed. The result of that process was what the Commission approved as the pending rules.

DISCUSSION: **Senator Burgoyne** asked if Director Elliott thought the State provided enough money to the counties so that the rules promulgated could be met. **Director Elliott** stated that in her perspective the State had been incrementally increasing the standards and they have also increased the amount of money allotted. She stated the Commission works very hard to make sure there is enough money available for their needs and that it would appropriately benefit public defense. **Senator Wintrow** asked Director Elliott if the rules, as they were currently printed, were a result of incorporations suggested by the Commission as a body and not just as Director Elliott's interpretations. **Director Elliott** reiterated that the language had to be approved by the Public Defense Commission.

Senator Anthon questioned the interplay between statute and the rulemaking process. He stated he did not understand how the PDC could impose qualifications on the counties and still be abiding by the statutes. **Director Elliott** responded there were three elements that came into play. It was necessary to have the structure of the funding, the oversight, and the standards that were nationally recognized. **Senator Anthon** asked questions regarding the removal process from the rosters. **Director Elliott** explained there were two rosters. One was the public defense roster and the second was the capital counsel roster. The public defense roster was a simple application to be completed. **Director Elliott** reiterated that she had never removed anyone from the capital roster. There were people whose grand-fathered terms had expired and at that time they were taken off the roster.

TESTIMONY: The following people testified or submitted written testimony to reject **Docket No. 61-0101-2101** and **Docket No. 61-0102-2101**: (see Attachment 3).

Teresa Molitor, representing The Idaho Association of Criminal Defense Lawyers, testified in person.

Anne Taylor, Chief Public Defender, Kootenai County, testified in person.

ACLU, letter testimony by Lauren Bramwell, Policy Strategist.

Jeanne M. Howe, Chief Public Defender, Kootenai County, letter testimony.

TESTIMONY: **Darrell Bolz**, Chair, Public Defense Commission, testified by letter in favor of **Docket No. 61-0101-2101** and **Docket No. 61-0102-2101**: (see Attachment 4).

PASSED THE GAVEL Vice Chairman Ricks passed the gavel back to Chairman Lakey.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:02 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary