

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 27, 2017

TIME: 1:15 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye

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: **Vice Chairman Lee** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:17 p.m.

RS 25359 **Regarding Delegation of Powers.** **Robert Aldridge**, Trust and Estate Professionals of Idaho, pointed out that this bill amends Idaho Code § 15-5-104, originally created in 1991 to aid deploying families in Desert Storm to provide temporary delegation of parental powers to someone at home. This bill adds a springing power of delegation based on the occurrence of certain events, and it makes some changes in the statute. **Mr. Aldridge** detailed the changes including the time an immediate delegation shall continue, provision for requirements for the delegation of powers to co-guardians, revision of terminology, and technical corrections. Under this bill, a delegation of powers shall not supersede a court order.

MOTION: **Senator Hagedorn** moved to send **RS 25359**, **RS 25023C2**, and **RS 25154C1** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

S 1109 **Regarding gun restoration.** **Senator Burgoyne** explained that this bill amends Idaho Code § 20-213A which defines the open meeting requirements, executive requirements, and related confidentiality and disclosure requirements for the Idaho Commission on Pardons and Parole (Commission). He shared the background information regarding the Commission's responsibility for the restoration of firearms rights. **Senator Burgoyne** identified the problems in the current statute as:

- the omission in subsection (a) of paroles and firearm restoration from the list of proceedings allowed to be heard in executive session; and
- the omission in subsection (b) of firearm restoration from list of offenses for which votes of individual members of the Commission shall not be made public.

S 1109 adds firearm restoration to these subsections and elsewhere where applicable. **Senator Burgoyne** went on to state that the bill also adds "hearings" to the reference to meetings in subsection 1.

Senator Burgoyne pointed out that the new language will clarify the exceptions to the open meeting law and the instances in which those exceptions may be applied through the use of executive session. He remarked that records must be kept of the actions taken in executive session, and that they must be kept confidential and privileged from disclosure, except that they shall be available to the Governor, the Governor's representative, and the Chairs and most senior minority members of the respective legislative judiciary committees.

Senator Davis referring to page 2, line 13, asked who the most senior minority member is. **Senator Burgoyne** felt it is good to have a multiplicity of views. He believed whoever drafted the original statute wanted the Governor to have access to the information, and the committee chairs were added. He pointed out that other agencies provide for minority and majority membership. **Senator Davis** inquired if "the governor, the governor's representative" meant both, or if it meant one or the other. **Senator Burgoyne** responded that his understanding is that it means the governor or the governor's representative.

Senator Nye asked for the rationale for having executive session meetings in the case of firearms restoration. **Senator Burgoyne** explained that executive sessions apply to the decisions regarding granting the hearing for parole, pardon, or commutation. Firearms restoration is not being singled out for any different process. He reaffirmed the reason for preserving from disclosure the individual votes of Commission members as a matter of their safety. **Senator Nye** referred to page 1, line 15-18, and stated that the initial decision is confidential; a hearing is conducted in open session. He commented that his understanding is that the firearms restoration would all be confidential. **Senator Burgoyne** stated that the hearing is public. He specified that the only parts that are confidential are deciding whether the application warrants a hearing, and to take the vote. The resulting aggregate vote is public, but how the individual Commissioners voted is confidential.

Senator Hagedorn asked if an individual doesn't request firearms restoration, is it possible to request the restoration after he/she is on parole. **Senator Burgoyne** referred to Idaho Code § 18-310 which explains the procedure and time frame involved in requesting firearms restoration.

MOTION:

Senator Hagedorn moved to send **S 1109** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

Senator Anthon acknowledged that there is confusion, but the need for executive session in this instance is obvious with respect for the public policy for the safety of the Commissioners

The motion carried by **voice vote**. **Senator Nye** requested to be recorded as voting no.

S 1113

Regarding the Idaho Criminal Justice System. **Senator Lodge** stated that this legislation was introduced after some tragic events in Boise, Idaho involving Corporal Chris Davis, whom she recognized in the audience, and Corporal Kevin Holtry, still in recovery, who were injured in the line of duty. **Senator Lodge** dedicated **S 1113** to them and others who have been injured and who have given their lives in the service of public safety. The purpose of the legislation is to make improvements to the Justice Reinvestment Initiative (JRI). **Senator Lodge** reviewed the history of JRI, initially introduced by Senator Bart Davis, after he became aware of the Council of State Governments Justice Center (CSG). The process included an invitation being sent to stakeholders inviting them to meet with legislators and the CSG to complete a study and develop solutions using evidence based practices to improve Idaho's criminal justice system, making it more effective and efficient. She pointed out that all three branches of government were involved in addressing resource allocation to improve public safety, reducing recidivism, and reducing spending on correction. The CSG studied Idaho's system to discover why there was a high recidivism rate even though there was not a high crime rate. After meeting with 35 stakeholders from education, business, and those affected by the criminal justice system, legislation was proposed to begin the process of revising the system. Although some were not pleased with everything in the proposal, the JRI provided a data driven approach to a statewide framework for changes in our correction system. This legislation forms the basis of an improved justice system, but continual refinement is necessary. **S 1113** represents the changes that need to

be made to continue moving toward a successful justice system.

Senator Lodge explained that the biggest changes enacted by **S 1113** involve the Parole Commission (Commission). She described the extensive workload parole commissioners carry, and pointed out that two more members are being requested in order to hold the revocation hearings in a more timely fashion. The changes the legislation proposes will move offenders through the system and into proper placement, i.e. out into the community or back into incarceration, whichever is appropriate. **Senator Lodge** described other changes provided by **S 1113**, including the assignment of sanctions by parole officers without the necessity of a hearing. She advised that a main focus of the bill is to use prison space for those who commit the most serious offenses, or who have the highest likelihood of offending in the future. She pointed out that this legislation instructs the Department of Correction to create sufficient programming opportunities so lack of access to programming is not the primary cause in delaying parole. She noted that a report is due to the legislature including data involving the delay and/or denial of release. **Senator Lodge** emphasized that the most important part of the bill is increasing the number of members of the Commission.

TESTIMONY:

Jan Bennets, Ada County Prosecuting Attorney, stated she is testifying in support of **S 1113** on behalf of the Ada County Prosecutor's office and the Idaho Prosecuting Attorneys Association. She expressed appreciation for all who have assisted in bringing this legislation forward. **Prosecutor Bennets** said Chairman Lodge covered the main points of this bill, but she wanted to add that these changes will have a positive impact on Idaho's communities and citizens. She declared that **S 1113** will provide the tools to the prosecutors and law enforcement to perform their responsibilities.

Senator Hagedorn mentioned that he did not see an emergency clause on the bill, so he understood that it would go into effect July 1. He asked if that is sufficient time. **Chairman Lodge** responded that it was an oversight and Prosecutor Bennets should be consulted. **Prosecutor Bennets** answered that she would support an emergency clause. **Senator Hagedorn** commented that including an emergency clause would impact the fiscal note. He asked why the date of reporting addressed in the bill had not been clarified. **Chairman Lodge** indicated that the JRI committee chose to leave it, but that they could reconsider the date in the future. She also expressed a need to consult the Commission prior to adding an emergency clause.

Senator Anthon referred to the use of open meetings and executive meetings for the Commission in determining if a parole would be granted to an offender in cases when only two commissioners will be conducting the hearing. **Sandy Jones**, Executive Director, Idaho Commission of Pardons and Parole, stated that a revocation hearing will still be an open meeting. After they hear the case they will go into executive session to deliberate and vote; then they will go back into open session to give the aggregate results of the vote, without announcing individual votes. This will not change with the new legislation except it can be done with a panel of two commissioners instead of three for expediency.

Senator Foreman asked what was wrong with the existing legislation, and how this legislation will rectify it. **Director Jones** responded that the main problem revolves around the short term caps on parole violators, i.e. the mandatory sanctions prescribed in statute. There is no discretion allowed to decide if a violator should receive sanctions or have his/her parole revoked. She detailed the behaviors of violators under the current procedures, indicating that for many violators the system is not working. **Senator Foreman** asked if the change goes far enough to protect officers and society. **Director Jones** felt the part of JRI that focused on the prison population was based on the premise that it is more expensive to hold drug and property offenders in prison than it is to put them in the community. It was suggested that those people be put in the community, get appropriate treatment so they won't recidivate, and work toward becoming productive citizens. She pointed out that another factor involving the prison population dealt with changes in programming. **Senator Foreman** explained that his major concern is that this may release violators for whom rehabilitation does not occur. **Director Jones** replied that this change moves Idaho closer to the goal of considering each violator individually and making decisions accordingly, rather than having nondiscretionary direction.

Senator Nye stated he had a possible conflict of interest pursuant to Senate Rule 39(H), but intended to vote.

Senator Lee asked Director Jones to clarify if the intent language regarding focusing prison space was removed or if it had been moved to a different section. **Director Jones** responded that it had been moved, and that the wording had been changed to better describe those offenders who would remain incarcerated.

Chris Davis, Boise Police Department and Fraternal Order of Police, expressed his appreciation for the attention given this legislation. He stated that changes needed to be made, and he reviewed the shootings that recently occurred in the Treasure Valley. **Officer Davis** observed that officers around the State experience similar situations, often perpetrated by individuals who are in the community because of the current JRI requirements. He felt passage of **S 1113** would help Idaho move toward safer communities.

John Evans, Mayor of Garden City, stated he is here in his capacity as Legislative Committee Chair for the Association of Idaho Cities (AIC). **Mayor Evans** spoke in support of the legislation. He pointed out that although there may be cost savings at the State level, there are financial and human costs being incurred by the local governments caused by individuals who should be incarcerated. He emphasized that the major concern is for the safety of the police officers and the community.

Senator Nye noted that Idaho has one of the lowest rates of violent crime, but the highest rate of incarceration in the Intermountain West. He asked Mayor Evans for his understanding of the situation. **Mayor Evans** responded that having had five officer involved shootings by parolees in Ada County in one year, he does not view statistical data as very meaningful. He felt the changes made with **S 1113** will help considerably in keeping dangerous offenders in prison. **Senator Nye** asked what the Mayor saw as the reason for Idaho having the higher rate of incarceration per capita. **Mayor Evans** said he believed it to be due to a higher level of commitment and performance by Idaho's police officers.

Senator Foreman surmised that the JRI has inadvertently taken costs associated with crime and transferred those costs to the municipalities. **Senator Foreman** asked Mayor Evans if he shared that perception. **Mayor Evans** said he did view the situation in that way.

Senator Burgoyne observed that when JRI was first considered, some felt one of the reasons Idaho has a low crime rate is because more people are incarcerated than neighboring states. He pointed out that there was no statistical evidence identifying the cause of Idaho's lower crime rate. **Senator Burgoyne** felt this legislation is an important correction of the JRI. **Mayor Evans** reiterated that he sees the impact on the police department. He emphasized that under the current law individuals are given numerous chances. But parole in itself is a chance, and these offenders need to obey the rules or be put back into prison where they are not a danger to officers or communities.

Chris Goetz, Legislative Chair for the Idaho Sheriffs Association (ISA), spoke in support of **S 1113**. The ISA appreciates the new tools allowing the Commission to move parolees through the system more efficiently, reducing the number of individuals being held in the county jails. **Senator Hagedorn** asked if taking out the 90 and 180 day sanctions would have made a difference regarding the individual involved in the November shootings. **Mr. Goetz** replied that he did not know. **Senator Foreman** asked if the jails were full prior to JRI. **Mr. Goetz** acknowledged that they were.

Rick Allen, Chief of Police of Garden City and Idaho Chiefs of Police Association (ICPA), spoke in support of **S 1113**. **Chief Allen** expressed that this bill is extremely important for the safety of communities. He commented that since the implementation of JRI law enforcement has experienced a serious increase in violent crimes involving parolees. He reported that Garden City, an area of 4.5 square miles, has experienced increased violent crimes involving parolees including homicides, carjackings, robberies, and assault on officers. **Chief Allen** stated that in Ada County in the last year, there have been nine officer involved shootings, with 55 percent involving parolees. He emphasized that the ICPA does not support mass incarceration of non-violent offenders, and recognizes the difficulty of deciding whom to release. The JRI must continually be monitored and evaluated to insure it is efficiently and effectively achieving its goal.

Henry Atencio, Director, Idaho Department of Correction (IDOC), spoke in support of **S 1113**. **Director Atencio** expressed thanks to those who have worked on this legislation. He reiterated the important changes in this law, especially those allowing more discretion for the parole officers. He stated that he would like to have an emergency clause in this bill.

Lisa Growett Bostaff, Commissioner, Commission on Pardons and Parole, spoke in favor of **S 1113**. **Commissioner Bostaff** observed that when JRI was first enacted, the only area wherein the Commission did not have discretion was when dealing with parole violators. The Commission retained discretion with regard to initial paroles, commutations, or pardons. She remarked that prior to JRI the Commission could revoke a parole without waiting. **Commissioner Bostaff** emphasized that the changes in this legislation will restore that ability to the Commission, providing a way to respond quickly rather than waiting until the severity of violation increases.

Senator Lee inquired how the Commissioner views the change in the size of the Commission related to the ability to consider cases more thoroughly. **Commissioner Bostaff** replied that she supports having two more commissioners. She expressed concern about an emergency clause, and pointed out that those new commissioners need to be in place prior to bringing back violators. She detailed the work load and the process of the Commission in dealing with parole decisions.

Senator Lee asked how long it would take to get two additional commissioners.

Kendra Leighton, Governor's Office, said it would depend on the amount of interest in the position. She outlined the process as advertising the position, interviewing, and then hiring.

DISCUSSION: **Senator Davis** commented that this is an important bill, reflecting a course Idaho needs to pursue. The State cannot afford to build another prison. He pointed out that Idaho Code allows the revocation of parole if the violation, shown by a preponderance of the evidence, was sexual or violent in nature. He asserted that passage of this bill will not totally solve the problem. He reminded the Committee that the purpose of the fixed standards was to deal with those instances that did not involve sex crimes and that were non-violent. **Senator Davis** shared the concern that this bill will have a fiscal impact Idaho cannot afford. He stated that he will support the bill, but he has serious concerns.

Senator Hagedorn asked Chief Allen how many of the nine parolees previously mentioned by the Chief had gone through at least the 90 or 60 day period of incarceration. **Chief Allen** replied that he did not know. **Senator Hagedorn** asked if anyone who has testified had that information. **Jan Bennets** said she did not have that information at hand but could get it for Senator Hagedorn. She pointed out that the perpetrator in the November shootings had been through the sanctions, and his parole could have been revoked if the Commission had the discretion this bill provides.

Senator Nye asked if the emergency clause could be added to the bill at this time. **Senator Davis** replied that it could not.

MOTION: **Senator Nye** moved to send **S 1113** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

Senator Burgoyne asserted that there are people who do not commit violent or sexual acts, whose behavior indicates that they do not belong out in the community. The Commission should be aware of those who may be escalating in the level of crimes they commit, and should have the discretion to make that judgement. **Senator Burgoyne** emphasized that the Commission should be able to make the decisions for which they are responsible.

Senator Lee noted she had a conflict of interest pursuant to Senate Rule 39(H).

Senator Anthon shared his concern for the high cost involved in this legislation. In looking at cost-benefit analysis, we have to look at the financial costs and public safety. He pointed out that those who commit crimes do their own risk assessment, considering how far they can go before receiving negative results from their behavior. **Senator Hagedorn** agreed with Senator Anthon's analysis.

Senator Davis expressed concerns involved with changing the number of commissioners in a hearing to two, such as having fewer people involved in making the decision about who will or will not go to prison. He reiterated his concerns about the financial cost involved in this change.

Senator Lodge thanked everyone for presenting their views, and acknowledged that the change will not solve all problems. She reaffirmed that Idaho will always have to fight crime, that all stakeholders need to work together, and that by so doing a safer Idaho will emerge.

The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Lee** adjourned the meeting at 3:03 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary