

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

- DATE:** Friday, February 15, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk
- ABSENT/ EXCUSED:**
- 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 Lodge** called the meeting to order at 1:37 p.m. and asked the secretary to call the roll. **Chairman Lodge** called attention to the letter from Director Reinke of Idaho Department of Correction with answers to questions asked of him at the last meeting and also a calendar of Commission Hearings from the Parole Commission in the event a member wants to attend a hearing.
- RS 22038** **Relating to Annuity Contracts - Senator Davis** explained that Idaho law allows you to retain some of your property regardless of how destitute. There are also allowances for retaining wages, household goods and furnishings, equity of their home, all within statutory limits. There is also an exemption in Title 41, which provides for the protection of annuity contracts. However, the purpose of this legislation is to put a limit on the annuitant, to prevent the dumping of money or property inside an annuity to safely protect them and avoid the filing of just claims. This concept comes from a couple of other states and shall not allow the exemption and protections to apply to any annuity contract that allows the annuitant to receive or begin receiving monthly or other periodic payment on or before the age of 58 years or to receive payment over a period of 60 months or less. **Senator Bock** said he had some concerns for an annuity that would provide for earlier payments due to a disability or something to that affect. **Senator Davis** had the same concern and would like to have this printed even if an amendment is needed.
- MOTION:** **Senator Mortimer** moved to print **RS 22038**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.
- RS 21945** **Relating to Attorney's Fees when an Insurer Fails to pay a Person Entitled - Lyn Darrington**, representing State Farm Insurance Company, explained this legislation relates to insurers liability for attorney fees. It provides first-party insurers up to 60 days to make claim payment decisions on uninsured motorist and underinsured motorist claims. It also eliminates requirement that insurers deposit a claim settlement offer into court before an insured commences suit for benefits recovery. It sets settlement offer standard for consideration of attorney fees related to uninsured motorist and underinsured motorist claims. **Ms. Darrington** said it was a complicated issue and she would like to have the RS printed as they continue to work with interested parties. **Senator Davis** asked if she had agreement with Idaho Trial Lawyers Association (ITLA) on this issue. **Ms. Darrington** said they have had meetings, but have not come to an agreement.
- MOTION:** **Senator Davis** moved to print **RS 21945**. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**. **Senator Bock** voiced his concern that if he had a claim against his insurance policy, typically he would not be expected to litigate that claim to get insurance coverage. He asked why it would take 60 days to resolve the issue. He would like some answers to these questions when it is presented as a bill.

Chairman Lodge said the next order of business was to vote on the three gubernatorial appointments to the Commission of Pardons and Parole.

CONFIRMATION: **Senator Davis** moved to send the gubernatorial appointment of **Lisa Growette Bostaph** to the Commission on Pardons and Parole be sent to the floor with the recommendation that she be confirmed. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Senator Davis moved to send the gubernatorial appointment of **Anna Jane "Janie" Dressen** to the Commission on Pardons and Parole be sent to the floor with the recommendation that she be confirmed. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

Senator Mortimer moved to send the gubernatorial appointment of **Mike H. Matthews** to the Commission on Pardons and Parole be sent to the floor with the recommendation that he be confirmed. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

S 1034

Relating to County Jails; relating to the Governor's Authority to order removal of prisoners - Michael J. Kane, Idaho Sheriffs Association, explained the purpose of this bill is to repeal Idaho Code § 20-625, which is an obsolete statute that requires a sheriff to get written permission from the governor before moving a prisoner from one jail to another. This was adopted in 1864, but has not been followed. There are many reasons why prisoners might be moved;

- there may be a federally imposed cap on the number of prisoners,
- they may need mental health treatment,
- they may be in one jail, but are prosecuted in another county,
- there may be programs available in one jail and not another,
- the reason may be to break up a gang.

Senator Davis asked if this statute was repealed, what are the codified standards for moving a prisoner or will there be none. **Mr. Kane** said he knew of none.

Senator Davis asked if there should be some codified standards. **Mr. Kane** said he didn't know if there needed to be a law to move prisoners; the sheriff is the authority and the responsible party. There were questions from the senators as to who set the jail standards. **Mr. Kane** said the Idaho jail standards are the creation of the Sheriffs' Association in conjunction with counties and corrections and are adopted on national standards and reviewed on a regular basis. They are adopted statewide, self-imposed and follow federal laws as well.

TESTIMONY:

Monica Hopkins, Executive Director of American Civil Liberty Union (ACLU), said she was here to oppose the bill. While she recognizes the burden of having the Governor sign off on the transfer of prisoners, without codifying something in law that oversees that transfer, they have concerns about the special transfer situations that raise constitutional concerns and liberty interest. She voiced concerns of prisoners who were transferred to a mental hospital; they were entitled to a review. Prisoners can challenge transfers if they show that the transfer decision was made in retaliation for filing a grievance lawsuit, or for exercising their other constitutional rights. Pretrial detainees have a greater constitutional protection if the transfer interferes with their 6th amendment right to effective assistance of counsel and to a speedy trial. Therefore, she said, repealing statute 20-625 leaves you with the following questions:

- Who statutorily has the current authority to authorize?
- How is the transfer going to be documented to ensure constitutional compliance?

- Is there an opportunity for the inmate to object to the transfer ensuring their due process rights?

Ms. Hopkins challenged the fiscal note as not having the impact on the state, counties, or cities. She cited a case of Young vs. Smith where inmate Harris was transferred to solitary confinement and he was told by the jailer that drove him that he was being moved because he was writing to the ACLU.

Senator Davis asked Ms. Hopkins, since the statute had never been modified, was she aware of its current application or use. **Ms. Hopkins** did not know that it was on the books, but she would seek to have a record created and also some authority outside of the sheriff's department for moving prisoners. Jail standards are not codified and can be changed. She said she would be happy to work with the Sheriffs' Association and other bodies to craft a solution. **Senator Davis** suggested that they hold Section 20-625 open and asked if she could come back next year with provided language. **Ms. Hopkins** said she would be fine with that as long as she had the commitment from the Sheriffs' Association.

Mr. Kane said they had a good relationship with the ACLU. They would certainly agree to work with them on this matter. **Senator Bock** noted that the legislature was in the sixth week and asked if it was possible to work out a solution in the next couple of weeks that would satisfy the ACLU. **Mr. Kane** said they had already met with sheriffs all over the state in February and could only work on it for next session.

MOTION:

Senator Hagedorn moved to send **S 1034** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

S 1035

Relating to County Jails; relating to the authority to designate detention officers to act as Peace Officers - Mr. Kane said this bill deals with the powers of arrest by detention deputies. He explained that there had been a law for the last 15 years that detention deputies who were certified by POST may be appointed as peace officers for arrest powers in limited circumstances, i.e. transportation of prisoners, apprehension of escapees, someone who has violated probation or they can serve court orders or arrest warrants. He said that in a jail setting, it is not unusual for prisoners to need to be arrested or confined and it can be a burden to bring in a deputy from outside of the jail to make the arrest. He said when the bill was done originally, nothing was addressed in the case of a crime that occurred inside of the jail. The detention officer did not have the ability to arrest the prisoner. That is what this bill will address. An outside deputy will still be called to do the investigation and then it goes to a prosecuting attorney for independent investigation and possible prosecution.

Senator Nuxoll said she received an email that suggested that the detention officer should arrest only when the officer was not a victim. **Mr. Kane** said the bill does not speak to investigation. He thought the email was referencing inmate violence. **Senator Bock** wondered why someone already in custody would be arrested. **Mr. Kane** said while they were confined they had rights or privileges. However, when a crime was committed, privileges could not be denied so they would be arrested and put in a holding cell pending investigation and hearing. **Senator Werk** said if there was an assault that was witnessed was there leeway within the jail to apply sanctions to the guilty party immediately. **Mr. Kane** said administrative sanctions, yes, but not criminal sanctions. He was speaking of criminal activity that rises to a level of battery on an officer or another inmate and of a significant nature. **Senator Werk** said he had concerns about a prisoner that has a longstanding relationship with a particular guard that might use abuse of authority to make this arrest. He asked for an explanation of what would occur after the arrest. **Mr. Kane** said in any criminal case, if there is an arrest, they have 48 hours to have a probable cause hearing and a formal complaint filed. **Senator Werk** said he was inclined to believe

that someone could use the arrest process as a type of harassment of a prisoner with whom they have a poor relationship. **Mr. Kane** said if the guard was found to be harassing prisoners by unlawfully arresting them, it would end his career and even create a civil rights action. **Senator Davis** said why not be patient and let the investigation occur and then make the arrest. He understood that with these guidelines, it would provide some constitutional protections for the prisoner. **Mr. Kane** said there were all kinds of criminal activities occurring in jails from sexual violations, violence, contraband and to the manufacture of weaponry. This is a way to stop the violation immediately. Otherwise, the detention officer would need to make a citizen's arrest. **Senator Davis** said while that process exists, have the sheriffs around the state found those to be inadequate. **Mr. Kane** said that they are familiar with cases going back in time where reserve deputies even in uniform were not considered to be peace officers and only capable of making citizen's arrest. However, then they were told it was not a citizen's arrest since they were in uniform.

MOTION: **Senator Nuxoll** moved to send **S 1035** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. **Senators Bock** and **Werk** voted no and asked to be recorded in the minutes.

GRADUATION: **Austin Petellin** was graduated from his page duties. He said he appreciated the opportunity of working with the committee. He has possible plans to attend Northwest Nazarene College. He wants to stay connected and thanked everyone for having him. **Chairman Lodge** presented him with a gift and a letter signed by all the committee with a letter of recommendation to follow. She thanked him for his service and for Vice Chairman Vick sponsoring him.

INTRODUCTION: **Chairman Lodge** introduced Madeline Breen and welcomed her to the committee as the new Page for the rest of the session. She said many would know Madeline's mother who had been before the committee on many occasions as the State Appellate Public Defender, and was now Judge Molly Huskey.

There being no further business, **Chairman Lodge** adjourned the meeting at 2:40 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary