

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, January 18, 2012
TIME: 8:00 A.M.
PLACE: Room WW55
MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett
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.

Chairman McKenzie called the meeting to order at 8:00 a.m. with a quorum present and called on **Senator Darrington** to introduce **SJR 102**.

SJR 102 **PROPOSING AN AMENDMENT TO SECTION 5, ARTICLE X, OF THE CONSTITUTION OF IDAHO** to clarify that the Board of Corrections' duty to supervise adult probation extends only to adult felony probation.

Senator Darrington opened his remarks stating that It is unusual to have a one word constitutional amendment. Currently, the Idaho State Constitution, Article 10, Section 5 is crystal clear about "the control, direction, and management of the penitentiaries of the state, their employees and properties, and of adult probation and parole," when referring to the Board of Corrections (Board). A system has been established for probation supervision and misdemeanants in the counties for a fee. The counties, in most parts of the state, have been using this system since 2008. This system has had some positive impact on the prison system as well as the specialty courts. Recently, the matter of good constitutional ground has been questioned. A group was organized to work out a solution to make sure they were on good grounds. After reviewing several alternatives, adding the word "felony" as a limiting factor in the Constitution regarding the powers of the Board, will allow them to carry on with the Misdemeanor Supervision Program. This change has the full support of the Governor's Criminal Justice Commission. **Senator Darrington** deferred to Mr. Panther.

Senator Winder asked if there ever was a time when there would be a juvenile in this system. **Senator Darrington** responded that occasionally there would be a juvenile (<18) on probation.

Paul Panther, Chief of the Criminal Division (Division) of the Attorney General's Office, discussed the history of adult probation. Article 10, Section 5, ratified in 1942, grants the Board supervision over adult probation. Prior to that time, it didn't address the issue of probation. In 1940, the Governor appointed a prison committee to report on the state of the correctional system in Idaho. It recommended full time probation and parole officers to serve the counties of the various judicial districts and it did not distinguish between misdemeanor and felony probation although it distinguished between juvenile and adult probation. In 1947, the Legislature enacted Idaho Code 2219 that spelled out that the Board was to supervise all persons placed on probation. In 1993, that statute was amended that the Board was to supervise "all persons convicted of a felony" placed on probation. Subsequently, there were other statutes that were added to deal with misdemeanor probation at the county level, one of those in 2008 expressly authorized the counties to supervise misdemeanor probation. An earlier statute (1998) authorized counties to collect costs from misdemeanor probationers. Some of this legislation accretion seems to

be contradictory to the express language in the constitutional provision. None of the statutes have been found to be unconstitutional although there are some potential legal challenges to the counties' authority to supervise misdemeanor probation.

Chairman McKenzie called for questions from the committee.

Senator Davis asked if Idaho can contractually and constitutionally contract with counties to have supervisory power. **Mr. Panther** said there is a statute that expressly gives the Department the authority to contract with counties, other states, and private entities regarding the incarceration of prisoners. There isn't anything that expressly grants authority for probation supervision. Article 10, Section 5, Idaho Code says that the Board's duties, as prescribed by law, can be applied to probation. Constitutionally, it would apply if it had the Legislatures prescription by law but it is not clear if it could do it on its own initiative. **Senator Davis** asked why a statute should not be run in parallel to this action. **Mr. Panther** changed hats and spoke as a person sitting on the Criminal Justice Commission (Commission). It is the recommendation of the Commission that the fastest, clearest, and easiest way to fix this problem for everybody concerned was just to amend the constitution and essentially ratify all the existing statutes then proceed with the system as it is. The Commission felt that this action was consistent with the system. **Senator Davis** commented that having the statute in place might give the Department and the State something to rely on until after the public had a chance to be heard. **Mr. Panther** agreed that there could be some kind of legal action between now and November that could result in an injunction which could affect the current system.

Senator Hill stated that there didn't seem to be a down side to this resolution. However, some bail bond company thought there was a problem. What was their motivation to spend the time and money to take action? **Mr. Panther** said he read the court's decision but didn't pursue any further investigation. **Senator Hill** asked for some of the reasons someone would challenge this change. **Mr. Panther** provided a scenario. If an individual was on misdemeanor probation and his probation officer gave him discretionary jail time then that individual could file a habeas corpus petition in the county court challenging the constitutionality of being supervised by the person who put him in jail.

Dan Chadwick, Executive Director, Idaho Association of Counties (IAC); also, a member of the Commission and a member of the subcommittee that crafted the constitutional amendment, spoke in support of sending **SJR 102** to the Senate floor with a do pass recommendation. The arguments have been outlined very well. In response to **Senator Hill's** question about consequences, the State will end up with different opinions in different judicial districts as to whether or not it is constitutional until it reaches the Idaho Supreme Court. The State will also end up with a system with unsupervised probation. We want to maintain this system that has been created. It has a good source of funding, it is practical, and it converts people out of the felony system. By acting now, this constitutional amendment will fix the problem. **Mr. Chadwick** asked for the Committees support.

Senator Davis asked what the fiscal impact to the State would be if this did not become law and misdemeanor probation by counties was determined to be unconstitutional. **Mr. Chadwick** responded that it would be substantial. There are 14,000-16,000 probationers in the State with fees ranging anywhere from \$25/month to \$75/month which are set by the administrative district judge. In addition, there are the dollars spent to collect. It could cost the state hundreds of thousands of dollars if not millions. The state would have full responsibility to administer any misdemeanor probation system.

Senator Darrington closed by saying that other solutions were discussed but they were not as straight forward as this amendment. They will discuss **Senator Davis'** suggestion concerning statutes, but if this amendment passes by a 2/3 vote in both houses, it could be on the November ballot and that is not far away.

Chairman McKenzie asked for the will of the Committee for **SJR 102**

MOTION: **Senator Davis** moved, seconded by **Senator Lodge**, to send **SJR 102** to the Senate floor with a do pass recommendation.

VOTE: The motion carried by voice vote.

Chairman McKenzie thanked **Senator Darrington** and passed the gavel to **Vice Chairman Fulcher** in order to present two RSs.

Vice Chairman Fulcher asked **Chairman McKenzie** to present **RS20930** and **RS20964**.

RS20930 **RELATING TO THE FILING OF FOREIGN JUDGEMENTS** to amend Section 10-1302, Idaho Code to revise where copies of foreign judgements shall be filed.

Chairman McKenzie explained that both RSs on the agenda today are brought forward by constituents. Before either RS goes on to a hearing, more information would be required by other involved persons.

RS20930 - Foreign judgements in the state of Idaho. Under current law, a company or person can get a judgement against an Idahoan or Idaho business anywhere in the country but they must show that they have personal jurisdiction over that person with a basis to bring him to court. This is generally done by the attorney filing the lawsuit. Many times, a person goes into default because the judgement was filed in a foreign jurisdiction. Before any property can be attached, the judgement must be filed in Idaho. Current law allows judgements to be filed in any county within the state regardless of where the Idaho resident lives. That is different than the general venue statute, Idaho Code, 5-404, that outlines where lawsuits can be filed; it typically requires them to be filed in the county of residence. The Foreign Judgement Recording Act does not require that. That can be a hardship because there are rights to challenge that judgement. This change would require that the judgement would be entered in the county in which the persons lives but if that cannot be reasonably determined, then it could be filed in any district court in any county in the state. If **RS20930** is printed, the plan would be to get input from the Judiciary, the Bar Association, and the Uniform Law Commissioners. It seems like a reasonable issue to review.

MOTION: **Senator Davis** moved, seconded by **Senator Lodge**, to send **RS20930** to print.

Senator Stennett asked if this is a different type of procedure than those from out of the country. **Chairman McKenzie** stated that when "foreign" is used as in the context of this RS, it is generally within the United States but outside state borders. The difference would be clarified if this goes forward.

Senator Davis explained that the Uniform Foreign Money Judgement Recognition Act defines a foreign state to mean a state of the United States. There are different approaches to domestic and international judgements. Also, this has some modest overtones with child custody issues that are covered by The Uniform Child Custody Jurisdiction Enforcement Act and there are separate procedures to deal those international and instate conflicts. What **Chairman McKenzie** is discussing is where there may be judgements for state aid and they want to enforce that judgement in the state of Idaho.

VOTE: The motion carried by voice vote.

RELATING TO A MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM limiting the financial burden on individual Idahoans as a result of mandatory emission testing.

Chairman McKenzie stated that this only relates to Ada and Canyon Counties; it would directly affect the Chairman but it was brought up by his constituents. Both counties have inspection programs related to vehicle emissions. If a vehicle doesn't pass inspection, it must be repaired. There is a waiver for the first year then if the vehicle does not pass again, whatever repairs necessary to pass inspection must be made regardless of the cost. That is a concern. This RS spreads the cost of the repairs over a period of time. The social good is related to air quality within the state. However, it seems unfair that the burden is imposed on the least affluent individuals who could be facing an open ended liability. Most people who are driving vehicles that this would apply to are unable to afford a newer vehicle. Unemployment in Canyon County is 10.3%, there are record food stamps, and household income is low. If **RS20964** is printed, input would be requested from the Department of Environmental Quality, and various industries because air quality standards affect their ability to manufacture. This is a request to print in recognition of the cost that is borne by those individuals who drive older, impaired vehicles.

Senator Stennett stated that, as the law stands, there is not a requirement to spend any more than \$250 in a calendar year then they are given a waiver to drive for a year. The next year there must be an effort to bring the vehicle into compliance up to \$250 and so on. Is that the current system? **Chairman McKenzie** responded that the current practice is if a vehicle doesn't pass inspection and the owner makes repairs but the vehicle still doesn't pass, there is a waiver for a year and then, if it isn't in compliance, a registration will not be issued. **Senator Davis** asked what could be anticipated on the federal level if this should come into law – how unhappy will they be? **Chairman McKenzie** said that the issue for the state would be, in that small category of older vehicles that this applies too, what would be the contribution between taking those vehicles off the road or allowing the owner to have the provision where they spend a certain amount to fix it? It is unknown how many vehicles would get fixed within that dollar amount and what the contribution to air quality would be. Typically, vehicles within the state are 7-8 years old on average. Idaho has an older fleet than most states. This would have to be determined before the bill would go to a full hearing.

Senator McGee stated that the L. A. Times reported that the average age of cars on the road in the US today is a record 10.8 years, so it is more dramatic than has been described. This certainly deserves discussion.

MOTION: **Senator McGee** moved, seconded by **Senator Winder**, to print **RS20964**.

VOTE: The motion carried by voice vote.

Vice Chairman Fulcher thanked **Chairman McKenzie** and passed that gavel back to the Chairman.

ADJOURNMENT: **Chairman McKenzie** thanked the Committee members for their attendance and, being no further business, the meeting adjourned at 8:40 p.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary