

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 06, 2012
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, Bock, and LeFavour
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 Darrington called the meeting to order at 1:33 p.m. and asked the secretary to call the roll.

RS 21014C1 **Relating to Execution. Brent Reinke**, Director of Idaho Department of Correction (IDOC), introduced Mark Kubinski, Lead Deputy Attorney General of the Idaho Department of Correction. Mark Kubinski explained that this RS was reformatted from the previous RS due to the concerns of the committee members. It is basically the same as RS 21014, but clarifies some of the confusion and by making the language more direct. It proposes to create a new section, 19-2716A and to leave 19-2716 in tact. Subsection (1) clarifies that carrying out an execution is not the practice of medicine and the director and individuals acting under his authority are exempt from any legal requirements regarding the practice of medicine. Subsection (2) of the statute allows for any entity that is authorized to possess controlled substances to be able to distribute those to the director and department for purposes of carrying out an execution. Subsection (3) authorizes the director to obtain, possess and store controlled substances for purposes of carrying out an execution. This section also clarifies that employees participating in an execution are entitled to immunity from liability or wrongful death. Lastly, he said there was an emergency provision attached to this section.

Senator Davis asked why the emergency provision was retroactive to January 1, 2012. **Mr. Kubinski** said it was probably unnecessary, but was a holdover from the previous RS.

MOTION **Senator Mortimer** moved, seconded by **Senator Nuxoll** to print **RS 21014C1**. The motion carried by **voice vote**.

S 1265 **Relating to Execution. Brent Reinke** introduced Lamont Anderson, Deputy Attorney General of the Criminal Law Division, to present the bill. **Mr. Anderson** explained the purpose of the proposed legislation was to clarify that upon execution, the death warrant is to be returned to the district court, making this part of the procedure consistent with Idaho Code § 19-2715.

Leo Morales, Public Education and Communications Coordinator for the American Civil Liberties Union of Idaho, stated that they were in support of both S1265 and S1266 legislation.

MOTION **Senator Nuxoll** moved, seconded by **Senator Malloy**, to send **S 1265** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

- S 1266** **Relating to Execution.** **Mr. Anderson** explained this legislation clarifies the process of obtaining a death warrant, including specifying a time during which the warrant must be obtained, and sets forth a process for obtaining successive warrants if necessary. It also clarifies responsibilities if an execution does not proceed.
- MOTION** **Senator Davis** moved, seconded by **Senator Lodge**, to send **S 1266** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**, with **Senator Bock** and **Senator LeFavour** voting no.
- S 1215** **Relating to Escape or Rescue of Prisoners.** **Brent Reinke** introduced **Tim Higgins**, Deputy Warden, who has a background of investigation and a great knowledge of contraband and the challenges it causes IDOC behind the fence. **Mr. Higgins** explained this legislation seeks to make it harder for inmates to continue their criminal behavior while incarcerated. Cell phones are becoming the most sought after contraband inside the prisons today. Prisoners smuggle cell phones to participate in drug trafficking, targeting hits on civilians in Idaho communities. He gave an example of a recently confiscated cell phone from a gang member inside one of their facilities; it was used 33,000 times in a period of six months which included 11,000 telephone calls, 22,000 text message all of which bypassed the security system as he continued to conduct gang business while incarcerated. The proposed bill makes it a felony to possess, introduce cell phones, or any other telecommunication into their prison system. Lastly, he stated that the proposed Section 18-2510, Idaho Code, would enhance safety and security in correctional facilities statewide.
- Senator Davis** noted that the effective date of the bill appeared to be July 1st instead of at the signature of the Governor and he wondered if that was correct. With the problem as significant as it was, **Senator Davis** thought they would rather have it effective sooner than later. **Director Reinke** said they were not thinking of having an emergency clause in the legislation, but perhaps they should pursue that. **Senator Davis** asked if the Director would find it valuable to be effective with the Governor's signature. **Director Reinke** replied that he would.
- Senator Vick** asked how long ago was tobacco banned. **Mr. Higgins** replied it was about ten years. **Senator Vick** said that he had information from someone that having tobacco as contraband was a positive thing compared to marijuana or some other illegal drug. **Mr. Higgins** said more tobacco was smuggled in than marijuana. One advantage they saw was that cigarette smoke would mask the smell of marijuana, but now if they smell cigarette smoke they know it is inappropriate and can target that very quickly. He said they were trying to stop the major flow of tobacco products from coming in. He stated that it would be a felony for the person introducing the contraband or for the one in possession.
- MOTION** **Senator Davis** moved, seconded by **Senator Lodge**, to send **S 1215** to the **14th Order for Amendment** to add the emergency clause. The motion carried by **voice vote**.
- APPOINTMENT** **Gubernatorial Appointment.** **Sara B. Thomas** of Meridian, Idaho was appointed to the State Appellate Public Defender (SAPD) to serve a term commencing January 12, 2012 and expiring August 1, 2014. Ms. Thomas has been working for the State Appellate Public Defender since 1999. In 2002, she became Chief of the Appellate Unit where she was second in command. She participated in various committees including the Idaho Supreme Court's Appellate Rules Committee and the Criminal Rules Committee. She also participated in the Idaho Criminal Justice Commission's Sex Offender Registration Subcommittee. She stated that the way she sees the position is to represent people in their appeals to the Idaho Supreme Court and considers the position to, literally, be one of law enforcement. Ms. Thomas said the Constitution has procedural statutes that protects people's rights.

Senator Darrington asked Ms. Thomas if she saw her role as getting a person off or protecting their rights. **Ms. Thomas** said the role of SAPD was protecting someone's rights. She added that the job of SAPD was to make sure that the Court or prosecutor did their job properly. **Chairman Darrington** said at the time SAPD was created it was to help the counties financially and also to give uniform defense counsel throughout the state on appeals. **Ms. Thomas** stated that those goals had been met. After a few questions from the committee to Ms. Thomas, **Chairman Darrington** said the committee would act on the confirmation at the top of the order on Wednesday's meeting.

PRESENTATION Idaho Criminal Justice Commission Overview and Update. Brent Reinke, Director of Idaho Department of Correction, explained that the Commission was established in 2005 with 25 members and three major branches of government, county, city and citizen representatives. They meet ten times a year and it truly is an opportunity to break the process down from an educational standpoint and they have had great success in developing relationships with all three branches of government and with citizen representatives as well. He stated that there were several subcommittees within the Commission and their focus this year has been: the (1) Research Alliance chaired by Gary Raney, (2) Children of Incarcerated Parents, sponsored by the Department of Health & Welfare, Ross Edmunds, from the Division of Behavioral Health, (3) Public Defense, headed by Dan Chadwick, (4) Misdemeanor Probation Project, chaired by Gary Hahn, (5) Gang Strategies headed by Jim Tibbs, (6) Sex Offender Management Board, chaired by Shane Evans, and the Grant Review Council which is an entirely new function of the Commission. Slide presentation is attached.

Chief Jim Tibbs, said they would continue to look at the Gang Enforcement Act, which was created last session, to make sure that it provides the necessary safety and that it was constitutional. He felt it would be a tool box for communities to use, not just enforcement.

**MINUTES
MOTION**

Senator Bock moved, seconded by **Senator Davis**, to approve the minutes of **January 30, 2012** as written. The motion carried by **voice vote**.

ADJOURNMENT There being no further business, **Chairman Darrington** adjourned the meeting at 2:33 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary