

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

- DATE:** Wednesday, February 06, 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 1:30 p.m. and asked the secretary to call the roll. She then asked for a motion on the gubernatorial appointment of Kimberly Simmons.
- CONFIRMATION:** **Senator Bock** moved to send the gubernatorial appointment of **Kimberly Simmons** to the Sex Offender Management Board to the floor with recommendation that she be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.
- MINUTES:** **Senator Mortimer** moved to approve the minutes of January 23, 2013 as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.  
**Senator Lakey** moved to approve the minutes of January 28, 2013 as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.
- GUB APPT:** **David A. McClusky, M.D.** of Twin Falls, Idaho was appointed to the State Board of Correction to serve a term commencing January 2, 2013 and expiring January 1, 2019. Dr. McClusky said he was a general surgeon by trade and also has a huge family practice. He is a third generation doctor from the Magic Valley and his son, a fourth generation doctor, tells him that most of what he does is of historic interest only because the new generation does it better. Dr. McClusky went to the University of Idaho, served in the U.S. Air Force for five years as a military officer, went to Northwestern Medical School, did his internship and residency in Atlanta, Georgia and returned to Idaho to set up practice. He is now employed by the St. Lukes Medical Regional Center of Magic Valley. He has been involved with the Boy Scouts of America, the American Cancer Society, and founded Camp Rainbow Gold (a children's camp). He has fought the battles for tobacco control and also started the Wellness Free Clinic in Magic Valley. He said it was possibly there that he became interested in working with the prison system or the parole board to help people that were coming back into society and have health care problems. He said when the opportunity came to accept this job, he saw an opportunity as a physician to help solve some of the mental health problems coming into society.

In response to questions from the senators, **Dr. McClusky** said his work in the free clinic would be similar to that of the prisoners making the transition into society. He knew that mental health was a huge challenge and he hoped to bring together the people he works with in the health field so building institutions would not be necessary. The senators congratulated him for his community work and thanked him for his leadership. **Chairman Lodge** said they would vote on his confirmation next Monday and asked Robin Sandy to come to the podium. **Robin Sandy**, Chairman of the Board of Correction, said she appreciated the consideration for Dr. McClusky. She has the utmost respect for him. He brings to the board a logical, business-like supervisory experience.

Chairman Lodge turned the meeting over to Vice Chairman Vick to present the rules review of the Board of Correction. **Director Reinke** came forward to introduce other members of the department; subject matter expert, Lorenzo Washington; Chief Deputy Attorney General, Mark Kubinski; as well as Henry Atencio, Probation and Parole Division Chief. He said any of the four could answer questions, but Mr. Washington would present the rule.

**DOCKET NO.  
06-0101-1202**

**Rules of the Board of Correction (Proclamation) - Lorenzo Washington**, Acting Policy Coordinator, explained that he moved on to a new position in the department. The new Policy Coordinator is Lisa Jones. He reminded the committee members that the Board of Correction rulemaking process is different from most Idaho agencies. In Idaho Code § 20-212, the Department of Corrections is exempted from two sections of the Idaho Administrative Procedure Act in that the department is exempted from holding public meetings and holding negotiated rulemaking. Their rulemaking was reviewed by the Legislative Services Office on September 27, 2012 and there were no objections.

**Mr. Washington** explained the proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. The Board of Correction rule changes are summarized as follows:

- 013. Department Fee Structure - This new section describes fees that IDOC may charge to help defray the cost of services provided to offenders. (Mr. Washington said these fees have always been charged to offenders, but this will codify them. Attachment 1.)
- 117. Department Visitor - This amendment ensures better identification and accountability of IDOC visitors and puts in place restrictions from bringing firearms and other deadly weapons into secured areas of IDOC property.
- 312. Deceased Offenders - Revisions in this section relates to the disposition of a deceased offender's money and property.
- 510. Searches of Persons and Vehicles Entering Department Facilities - This section is deleted as it is combined with section 511.
- 511. Access to Department Properties - The amendment of this rule is necessary for the purpose of protecting staff and offenders from harm. The amendment ensures better identification and accountability of IDOC visitors from bringing contraband and controlled substances into IDOC correctional facilities, community work centers, and district probation and parole offices.

**MOTION:**

**Senator Nuxoll** moved to approve **Docket No. 06-0101-1202**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Vick turned the meeting back to Chairman Lodge. **Chairman Lodge** recognized Sara Thomas to present RS 21687C1.

**RS 21687C1**

**Relating to Prostitution - Sara Thomas**, State Appellate Public Defender, representing Idaho Criminal Justice Commission (ICJC), explained the purpose of this legislation is to:

1. ensure that an act of exchanging anything of value for sexual conduct or contact with a minor is a felony carrying a potential life sentence;
2. require those convicted of doing so, or attempting to do so, to register as a sex offender; and
3. provide that those who induce a minor into prostitution or procure a person for use as a prostitute forfeit the proceeds gained and/or property used to commit the crime.

**Vice Chairman Vick** asked where the forfeitures would go. **Ms. Thomas** said that was not covered in this legislation and they are looking at a few options, it may be put in the victim's compensation fund. **Senator Bock** would be interested in a discussion about these people registering as sex offenders. He wanted to make sure they were not overreaching on the sexual offender registry. **Ms. Thomas** said the sex offender registration is for anyone that engages in sex with a minor and would be consistent with all other sex crimes. **Senator Werk** asked if under Section 18-5610, what are the standards for someone that they knowingly understood that the person was over the age of 18. **Ms. Thomas** stated that currently in Idaho, if you commit a sex crime with a minor, lack of knowledge of the victim's age is not a defense. **Senator Werk** said incarceration was quite broad, from two years to a life sentence. **Ms. Thomas** said she would address this when she came back with the bill. **Senator Nuxoll** asked if this was standard language compared to other states or was it Idaho specific. **Ms. Thomas** said the language for Idaho Code § 18-5610 came out of Idaho's prostitution statute. The change is to stress that not only exchanging sexual conduct for a fee, but for "anything of value," which is taken out of the federal human trafficking statute. **Senator Hagedorn** asked for the logic behind not identifying where the funding goes; why the forfeiture was not in this bill. **Ms. Thomas** said it was overlooked in the beginning. She said they plan to fix that. **Senator Hagedorn** proposed another option would be an amendment when the bill is brought back.

**MOTION:**

**Senator Bock** moved to introduce **RS 21687C1** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**RS 21581**

**Relating to the Control of Venereal Diseases; in prisons - Shane Evans**, Chief Education Treatment and Reentry for the Idaho Department of Correction (IDOC), explained the purpose of this minor modification to Idaho Code § 39-604 is to update the venereal disease examination and testing process of Idaho's incarcerated population from mandatory to opt-in testing upon release. These modifications are based on medical best practices and a fiscally-responsible approach to testing. **Senator Werk** said that on admission to the facility, they test and treat; and now on release will they test and treat. **Mr. Evans** said he thought that was inconsistent language to their practice. At intake, thorough and exhaustive health care and mental health screenings are administered and all emerging medical issues are treated. **Senator Werk** said he was trying to get an idea if a high percentage of the population being released from the facility would have diseases that could become a problem within the community. **Mr. Evans** said if anyone was diagnosed with a progressive or chronic disease, they connect them to the community health services. **Senator Bock** asked about the scope of the problem and why it's important to retest when released; and if it was such a problem, it should be part of a larger presentation. **Mr. Evans** asked if he wanted current numbers of the folks that have been identified with a disease. **Senator Hagedorn** said the statute currently reads that you are required to test before release. The change you are requesting is upon offender's request. He added that the Fiscal Note on

the Statement of Purpose indicates that if five percent of the population requests the opt-in testing, our costs would increase by approximately \$7,720 with a total impact of \$360,000. **Mr. Evans** said they do not test everyone coming out and they intended to make current practice in alignment with statute. Based on what is known nationally, correctional agencies have an opt-in policy for most unless identified at the beginning and then they are treated throughout. **Senator Bock** reiterated that if it was a significant problem perhaps everyone should be tested and he expected a full discussion at a later date. **Mr. Evans** said they would bring back proposals for the adoption of the full testing and the significant impact on the department.

**MOTION:** **Senator Mortimer** moved to introduce **RS 21581** to print. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**PRESENTATION: IDOC Overview and Update - Brent Reinke**, Director of IDOC, directed the committee's attention to the Annual Report FY12 (Attachment 2) and also the brochure (Attachment 3) which is a simple overview that can be provided to give to constituents. **Director Reinke** said they were a staff of 1,557 and managed 22,000 individuals statewide in the correction facilities and communities. The three topics focused on this year were that of staff, population, and the Balla or mental health settlement at the Idaho State Institution. They have some significant needs regarding staff issues. He mentioned that probation, parole, and correction officers have to go through at least a five week academy at the POST facility. He said they are trying to retain the individuals that they have done background work on and recruited. He pointed out the eleven facilities, including three which are contract facilities plus four community work centers, and 34 county jails. The incarcerated population in June 2012 was 8,097 with an average bed cost of \$53.24/ per day. They have seen an increase in terms, but a decrease in Riders and Parole Violators and are attempting to better manage the population.

**Vice Chairman Vick** asked why there was a decrease in Riders and Parole Violators. **Director Reinke** said they were evaluating all violations in district offices around the state and trying to understand what practices they have changed and the outcomes of decisions that were made. **Senator Bock** asked of the increase, what percentage of those were perpetrators of victimless crimes. **Director Reinke** said he would research that information and supply the committee the answer.

**Director Reinke** reminded the committee that in the last ten years, they have gone from a bed driven system in Idaho to a program driven system and they have learned a tremendous amount from problem solving courts and specialty courts. They are going to see irregularity in their forecasting practice. Ten years ago, offenders just did their time; now the department is focusing on rehabilitation. He also pointed out how they were driving down population by use of the following: (1) Violation Survey, (2) Limited Supervision Unit, (3) Substance Use Disorder Funding, and (4) Community Transition Program. Finally, the Balla stipulated agreement is critical; the suit was filed 31 years ago and there is finally an agreement to settle in the next 30 to 40 days.

**Senator Werk** said he was tired of reading about issues with the Correction Corporation of America (CCA) in the newspaper and would like to know when the contract with CCA ends. **Director Reinke** said the current contract has a five year life with a year and a half left on this contract and a possibility of a four year renewal. **Senator Werk** asked who made the decision of a renewal, the department or CCA. **Director Reinke** said it would be up to the Board of Correction to make that determination. **Senator Werk** asked how many people oversee the work at CCA and what is the cost. **Director Reinke** said they now have three full-time staff to monitor that facility. The goal is to monitor and audit all three shifts and they expect better outcomes in the future. **Senator Werk** mentioned the papers stated irregularities of time sheets and staffing levels which were also identified by the department, but has not been acted upon in a number of months. He asked if

they had determined that an investigation was in order if violations were occurring. **Director Reinke** said the investigation was being conducted on several levels and the Idaho State Police have been involved in the investigation. **Senator Werk** asked if any of the liability from lawsuits will flow down to the state. **Director Reinke** replied that would be a question for the Attorney General.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:55 p.m.

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Senator Lodge  
Chairman

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Leigh Hinds  
Secretary