

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Thursday, February 07, 2013
TIME: 1:30 P.M.
PLACE: Room EW42
MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** None.

GUESTS: Dawn Peck, Idaho State Police; Matt Wetherell, Parole Commission; Emily McClure, IMA; Fernando Castro & Darcy Nesor, Dept. Health & Welfare; Cathy Hart, ID Commission on Aging; Mark Kubinski, ID Dept. of Corrections/Attorney General's Office; Holly Koole, Idaho Prosecuting Attorneys Association; Christine Pesan, Criminal; Joe Rain, Self Advocate

Vice Chairman Luker called the meeting to order at 1:39 p.m.

RS 21692C1: **Rep. Burgoyne** presented **RS 21692C1** and said this proposed legislation changes to 6 code sections and 3 titles. He said the purpose of the legislation is to enhance protections for vulnerable adults by obtaining background information on guardians and conservators as per the court's discretion. Additionally, he said the purpose of a criminal background check is not to automatically disqualify an applicant from serving as a guardian or conservator but is rather a safety measure to protect vulnerable adults. He said there would be no fiscal impact to the state because the person seeking appointment will pay the \$40 background check cost.

Rep. Burgoyne next outlined the various section changes. He said the first change would allow, but not require, the court to order background checks on anyone who will live in the residence with an incapacitated adult. Next, he said the changes in section 2, mandates that anyone who wishes to be a guardian or conservator must undergo a criminal history and background check prior to appointment. He noted that section 3 changes would allow a guardian ad litem to request a background check, the court would review the request and would have discretion to order one. He said the changes to section 4, which applies to both incapacitated and developmentally disabled adults, authorizes the Department of Health and Welfare to conduct background checks, make the findings of the those checks available and creates the authority to promulgate necessary rules. He said the changes in sections 5 & 6 have the same effect as in sections 1-3, but pertain to developmentally disabled adults rather than incapacitated adults. Additionally, the term "developmentally disabled person" is changed to "person with a disability" to phase out terminology that defines stakeholders by their disability.

In response to committee questions, **Rep. Burgoyne** said a guardian or conservator may not be appointed unless there is a background check completed, but the check is discretionary for those residing in the home with the developmentally disabled adult. He confirmed that a guardian/conservator is a position of trust and there has been abuses in the past, so even in the case there is a family relationship, the court still needs to know that person will pass the background check. In regards to a situation where a guardianship has already been entered, and there is a material change to information that affects the background check, the guardian has a duty to update their information with the court. Additionally, each guardianship proceeding stands on its own, requiring a separate background check for each.

MOTION: **Rep. Nielsen** made a motion to introduce **RS 21692C1**. **Motion carried by voice vote.**

RS 21686: **Matt Wetherell**, Hearing Officer for the Idaho Commission of Pardons and Parole presented **RS 21686** and said the purpose of the proposed legislation is to clean up the bond process. He said that originally, bond was set up to fund the extradition of parole violators if they fled out-of-state, especially in light of the fact that approximately 25% of parolees are released out-of-state. He next indicated that currently, there is no time frame for requesting a refund of the bond, which makes it difficult to manage. He said this legislation would allow a person who has been discharged from parole 12 months to request a refund of bond monies and after that, the monies would be forfeited.

MOTION: **Rep. Bolz** made a motion to introduce **RS 21686**. **Motion carried by voice vote.**

RS 21748C1: **Rep. Malek** presented **RS 21748C1**. He said this legislation proposes an addition of "medical care providers" to a list of personnel who may be also battered while working in a hospital. He outlined the problem that spawned this legislation: In emergency rooms in Idaho, persons can become violent, and hospital employees are not protected while they are providing health services. He next provided many examples of this occurring in hospitals in Kootenai County, and throughout Idaho. He said the effect of legislation would "raise the bar" for battery offenses in the medical setting against professionals who provide health care and are battered in the course of their work.

In response to committee questions, **Rep. Malek** said each of the protected individuals in the statute will receive the same standard of protection. He also noted that the purpose of the proposed change is not to create a protected class, but rather that it will protect those persons in a public service role. In regards to committee concern over those with a mental illness potentially being charged as a felon due to this addition, he answered that the same argument can be made for all felonies. The committee commented that those that are mentally ill are likely to be found incompetent and the criminal rules in Idaho would prevent prosecution of those individuals.

MOTION: **Rep. Trujillo** made a motion to introduce **RS 21748C1**.

In response to committee questions regarding the possibility of those suffering from severe mental illness could act in ways that would result in being charged with this offense, **Rep. Malek** responded that intent would need to be proven in most crimes, except per se crimes, and the individual would need to be mentally competent to be prosecuted. He also said there would be no fiscal impact to the general fund, and agreed to provide information on possible fiscal impact of the legislation if printed.

VOTE ON THE MOTION: **Motion carried by voice vote.**

Director Brent Reinke, Idaho Department of Corrections (IDOC), said the purpose of his presentation was to provide a yearly IDOC update to the committee. He said IDOC's priorities this year are staff, population and balla/mental health. Walter Balla was an inmate who filed a suit which, after 31 years, is finally wrapping up due to an agreement that IDOC is making changes at ISCI that will be monitored until November 2014. If all goes well, then the case will be closed. He indicated that IDOC wants to invest in their programs in a way that will minimize lawsuits and ultimately save the department money. He said the IDOC employs 1550 employees and there is a great need to care for those employees which will involve strategies that will encourage greater employee retention. He next provided some figures on cost of inmates, probationers and parolees. He said there are 11 prisons and 4 community work centers, with a total of 8,000 offenders. Additionally, there are 34 county jails.

Dir. Reinke next outlined some Department of Corrections terminology, and explained that an inmate is someone with a fixed prison sentence, retained jurisdiction means that a judge retains oversight over the individual (commonly termed "rider") for 90-365 days and if the individual is successful, they will stay on probation rather than serve an extended prison sentence. Also, a parole violator is a parolee who violates the terms of his/her parole agreement and returns to prison. In regards to prison population, he said the goals are to stabilize, in order to reinvest in employees. As a means of driving down population, IDOC has used a violator survey to determine what went wrong. He concluded by saying that 27% of the current prison population has some sort of mental health need which is risky and the department is making strides at addressing mental health issues.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:32 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary