

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 24, 2014

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: None

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 1:32 p.m.

CONFIRMATION VOTE: The appointment of **Thomas J. Ryan** to the Idaho Judicial Council.

MOTION: **Senator Lakey** moved to recommend that the Senate approve the appointment of Thomas J. Ryan to the Idaho Judicial Council. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Davis** moved to send the gubernatorial appointment of Kathy Simpson to the Idaho Judicial Council to the floor with the recommendation that it be confirmed by the Senate. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Davis** moved to send the gubernatorial appointment of Dolly Ouita Bedal to the Sexual Offender Management Board to the floor with the recommendation that it be confirmed by the Senate. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Lakey** moved to send the gubernatorial appointment of Paula K. Garay to the Sexual Offender Management Board to the floor with the recommendation that it be confirmed by the Senate. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Nuxoll** moved to send the gubernatorial appointment of Kimberly Simmons to the Sexual Offender Management Board to the floor with the recommendation that it be confirmed by the Senate. Seconded by **Senator Davis**. The motion carried by **voice vote**.

S 1250 **Relating to Protected Persons - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc. stated in the initial presentation of this legislation there were some questions that came up dealing with the language in the bill. **Senator Davis** addressed the Committee reminding them that this was the bill that they heard on February 3, 2014 and a motion was not made. At that time, we requested that the bill have some additional research and when that was completed to bring it before the Committee. This bill, as written, is probably not what should be recommended to pass. Some of the issues with the language are due to testamentary capacity which is unique to our State. **Senator Werk** responded that he was hesitant to move legislation forward under the Amending Order if the changes needed would be substantial. **Mr. Aldridge** explained that they have outstanding cases right now which are raising these issues. With the Roger and Connelly decisions in place there are active cases that need

clarification which this legislation was crafted to address. **Senator Davis** asked for assistance from **Senator Bock** and **Senator Lakey** in crafting the language for a quick solution so this legislation can move forward.

MOTION: **Senator Davis** moved to hold the bill to a time certain. Seconded by **Senator Werk**. The motion carried by **voice vote**.

S 1357

Relating to Justice Reinvestment - Representative Wills stated a year ago discussions were started to explore how we can change the way we do business with the prison population in the State. The prison system seemed to be working from some aspects, but the Legislature was seeing enormous bills. The rising costs of the prison system challenged them to look at what was working and not working within that system. A working group was formed out of the three branches of the state government; which met with every agency involved in the correction system to move forward with needed changes. This is a success story which will be improved on over the next five years. Some of the changes will be an improvement in processes and a reduction in funds spent on the correction system. This bill before you today is a complete compilation of the three branches investing in better outcomes for Idaho.

Marc Pelka, Council of State Governments (CSG), stated that he would focus his remarks on three areas: 1) Modified impact estimates for the justice reinvestment policy framework; 2) The public safety improvements justice reinvestment will deliver to Idaho's system; and 3) What successful implementation of justice reinvestment legislation involves. From the beginning of this project in June, CSG's key focus has been on the intersection between data analysis, research and the frontline perspective of people who work in the criminal justice system (see attachment 1).

Following the Committee's February 12, 2014 public hearing, modifications were made to the original bill **S 1331** containing Idaho's justice reinvestment framework. These changes were agreed upon after a variety of meetings with criminal justice system stakeholders to address specific concerns with the bill language. **S 1357** is a product of the agreement reached. New language for Policy 2 (D), appearing in **S 1357**, Section 12, requires the following: (1) That the Idaho Department of Correction (IDOC) promulgate rules to prepare individuals in prison for parole; (2) That the Commission on Pardons and Paroles establish guidelines for reducing the average percent of time in prison beyond the fixed term; (3) That the agencies submit annual reports to the Legislature on the percentage of property and drug offenders released by 150 percent of their fixed term. The optimal point for the criminal justice stakeholders and policy makers leading it. When they collaborated with their research team to model the impact of the revised policy framework there were three lines for the prison population projection (see Figure 1 in attachment 1). Depending on the speed and degree of implementation, the justice reinvestment policy framework could avert between \$221 and \$288 million in corrections costs by 2019.

There are three challenges to Idaho's criminal justice system that are contributing to increases in Idaho's prison population, spending on corrections, and recidivism.

First challenge: Idaho has a revolving door of recidivism. Corrective measures to address the problem:

- Identify how to improve offender behavior and outcomes in the system.
- Better trained probation and parole officer workforce.
- More probation and parole officers time and attention to the highest risk offenders based on risk assessment.

- Increase substance use treatment in the community which will increase the confidence of the prosecutors, judges and parole commission that the resources exist to manage offender behavior in the community.
- Introduction of the administrative sanction capability which allows probation and parole officers to respond in a swift manner to violations of the conditions of supervision. This will tie a response sanction to the violation that is committed to help change offender behavior to avoid the significant costs of revocation to prison and the crime and dysfunction that occur as a result.

Second challenge: Idaho has an inefficient use of prison space. Corrective measures to address the problem:

- Length of stay. People convicted of property and drug offenses spend almost twice as much time in prison than the national average.
- Idaho has the use of the Rider Program which can produce enormous reduction in recidivism if the right people are placed in the program. The variation occurs on whether they are low, medium or high risk people coming into that prison system. The Rider Program framework would help to prioritize the highest risk offenders who would benefit the most from this programming.
- The length of stay that people spend following the violation term in prison.
- The legislation charges the Department of Correction and Parole Commission to work together to manage the length of time that people are serving beyond fixed term prison following a conviction of property and drug offenses.

Third challenge: There is insufficient oversight to track Idaho's recidivism-reduction efforts. Corrective measures to address the problem:

- Idaho stands out nationally for the range of offender risk and need assessments conducted throughout its criminal justice system.
- The State is investing resources in community-based substance use treatment, data and IT capacity.
- Risk assessments used to sort offenders into categories based on risk of recidivism would be validated every five years to ensure that they are being used consistently.

Finally, continued oversight and tracking of progress toward implementing these policies. States that create these working groups tend to see coordination across state branches and levels of government to maximize the success of this reinvestment.

Senator Davis asked for clarification on page 14, paragraph 2. **Marc Pelka** responded that the language in that paragraph provides the ability for any party of the Board of Corrections to submit to the court a request to modify the terms and conditions of probation along with termination. This all ties into policy 1 (c) in the report to prioritize supervision resources based on the individual's risk of recidivism. **Senator Davis** asked if there is similar language as it relates to parole. **Marc Pelka** replied page 21, line 45, paragraph 2, relates to the ability to submit a request to the Parole Commission for termination of parole supervision. **Senator Davis** asked will there be due process required that will also compel the Parole Commission to hold some form of a dispositional proceeding. **Marc Pelka** replied that in most states the process is constructed to create a waiver option which parole violators will accept and begin serving the determinant area of confinement.

Sheriff Gary Raney - stated within the system the vast majority of the people will get out of prison and the State must look at the recidivism rate and practices to make the communities safer. The community is not willing to fund the continued expansion of jails without some proof that there is value in the process.

Holly Koole - representing Idaho Prosecuting Attorneys Association (IPAA), stated because IPAA's inclusion in how the bill was drafted their Association is in support of the bill.

Patti Tobias - Administrative Director of Courts, said each step of the way the judiciary has contributed to the justice reinvestment process. All three branches of Idaho government are supportive of exploring a justice reinvestment and resource allocation approach to improve public safety, reduce recidivism, and reduce spending on corrections. Early on, the district judges identified the following priorities for the study: 1) Maintain the judges flexibility and discretion in crafting an appropriate sentence for each offender. 2) Strengthen probation supervision by addressing caseloads and training, and using evidence-based practices. 3) Increase community based treatment for offenders for substance use disorders. 4) Increase drug testing funds available to provide rigorous testing. 5) Ensure timely and accurate pre-sentence information and assessments.

Judge Wood explained that felony sentencing is at the core of what district judges do. Sentencing is extremely serious in every respect; for society; the individual defendant and their families; and the victim.

There are four long established and recognized goals and objectives of a sentence: 1) Protection of society is the primary goal. 2) Deterrence of which there are two types: general to the community and specific to the individual defendant. 3) Retribution or what is known in the law as punishment for the sake of punishment. 4) Rehabilitation. In fashioning a particular sentence, the sentencing judge is to take into account the nature of the offense, the circumstances of the offense, and the background, attitude and character of the offender, all in light of those four goals and objectives.

S 1357 Does not change the following:

- The Unified Sentencing Act, Idaho Code §19-2513. Every felony sentence is made up of two distinct parts, the sum of which is called the unified sentence: 1) Fixed or determinate portion during this part an offender is not eligible to be paroled. 2) Indeterminate portion, during which a defendant is parole eligible.
- Unified Sentencing Statute, Idaho Code §19-2521. The length of sentence and the track the offender will take. The other part of §19-2521 is a series of factors, which if the court finds, in the exercise of discretion primarily exist, weigh in favor of a period of imprisonment.
- Idaho Code §19-2601 Commute the sentence, grant withheld judgment, suspend the sentence, or place the defendant in retained jurisdiction program.

S 1357 only changes Idaho Code §19-2601, Subsection 5, which provides that if the court elects to place a defendant on supervised probation, it must require the defendant to sign an agreement of supervision with the Idaho Department of Corrections. Finally, **S 1357** does not interfere with the discretion of district judges.

Senator Werk said the implementation of **S 1357** will take some oversight to be successful. Do the courts have a process to ensure that implementation is robust and that areas of improvement will be identified as the process proceeds? **Ms. Tobias** explained the judiciary is committed to this implementation process and there are a number of opportunities for this oversight as part of the legislation. Senator Lodge will be introducing a resolution to provide another year of interim committee oversight for the implementation of the legislation. The ongoing criminal justice commission will also provide their expertise. A number of the provisions of the statute provide for reports to the Legislature and the timing of the implementation of the bill was specifically structured to allow reporting directly to the Legislature at the beginning of the 2015 session.

Director Brent Reinke - Idaho Department of Corrections (IDOC), pledged the commitment of his Department to accomplishing the timelines that are laid out before them in the legislation (see attachment 2).

Michael Kane - representing the Idaho Sheriffs Association, stated that the Idaho Sheriffs Association is in support of **S 1357**. The Association's residual of concerns have been addressed for the question of whether or not a parolee is entitled to a hearing before his parole is revoked. The language has been included on page 21, line 41, stipulating the explicit rights of the parolee. Mandatory parole has been completely removed from the legislation. As each individual in prison comes up at the end of their fixed time they are entitled to be reviewed by the Parole Commission in section 9, page 16. This language replaced mandatory parole and the bill has now injected back into it the ability for the Parole Commission to look at the offender on an individual basis and apply the factors including risk assessment.

Representative Wills stated in closing he has not seen many bills that have had this type of an endorsement across a broad spectrum of agencies unilaterally and no agency abstained from giving their input as the legislation was formed. What we have today is something that is rare in the State of Idaho, which are substantial cost savings and more collaborative work than has been seen in the history of Idaho for a long time.

MOTION: **Senator Bock** moved to send **S 1357** to the floor with a do pass recommendation. Seconded by **Senator Werk**. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:06 p.m.

Senator Lodge
Chair

Carol Deis
Secretary