

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 05, 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: **Vice Chairman Vick** called the meeting to order at 1:31 p.m. and asked the secretary to take a silent roll call.

GUBERNATORIAL APPOINTMENT: **Vice Chairman Vick** introduced Raymond "David" Moore, the Governor's appointment to the Commission on Pardons and Parole to serve a term commencing February 19, 2014 and expiring January 1, 2017. **Mr. Moore** began his introduction by giving a brief overview of his education and experience. He indicated that he had attended Idaho State University and received both his B.S. and M.S. degrees in education. He spent several years teaching at various locations. He was employed in law enforcement for 36 years and served 16 years as Chief of Police in Blackfoot, Idaho. His education and experience ultimately led him to assume a special mission for the United States Department of Energy in Almaty and Aktau, Kazakhstan. Mr. Moore was assigned to work with the Kazakhstan military personnel training them to secure, protect and safeguard massive amounts of weapons grade material. In 1997 he was offered a position as the Chief of Police for the City of Blackfoot, Idaho. He served there for 16 years until his retirement. This position allowed him to become acquainted and involved with many people statewide in various areas of interest. He was the sponsor of the "video voyeurism" law. His most satisfying work was with former representative Debbie Field when they changed the statute of limitations for reporting and prosecuting childhood sexual abuse.

Mr. Moore has had the following Gubernatorial Appointments. Under Governor Kempthorne he was appointed to the Idaho Law Enforcement Telecommunications Board, served 14 years; appointed to the Governors Coordinating Council for Families and Children, served 2002-2006; appointed to the Idaho Emergency Communications Commission in 2004, served 2004-2012; appointed to the Idaho Kroc Initiative Task Force in 2005. Under Governor Otter he was appointed to the Idaho Peace Officer Standards and Training Council in 2008 and served until he retired. Mr. Moore is grateful for the opportunity to serve on the Idaho Pardons and Parole Commission and feels his education and experience qualify him for this position.

Vice Chairman Vick asked for questions. **Senator Davis** thanked Mr. Moore for his willingness to serve on the Idaho Pardons and Parole Commission. **Senator Davis** asked if Mr. Moore had had a chance to look at the legislation proposed by the Justice Reinvestment Committee. **Mr. Moore** indicated that he had met with the Justice Reinvestment Committee and with other police chiefs to review early drafts of the legislation. He said the police chiefs gave suggestions at that time and some of their recommendations had been included in the current legislation. **Mr. Moore** said that he had discussed with the Director what the impacts would be with the Commission. **Senator Davis** indicated that Mr. Moore has been in a leadership role for a very long time. This position would require him to serve as part of a team, and he wondered if Mr. Moore could work in that type of role. **Mr. Moore** said that he had to learn to use cooperation to succeed in his position as chief of police so he didn't see that as being a problem. **Senator Davis** asked Mr. Moore to connect the dots between his degrees in education and his work in criminal justice. **Mr. Moore** said that early in his career he was injured. When he returned to college in 1983 he got his BS in vocational education with expertise in law enforcement training. His MS degree is in corporate training management. He felt that it was a good combination. **Senator Bock** said that one of the problem areas has been the extent to which people get sent back to prison. He asked for thoughts as to how the Commission could help to fulfill the objectives of the Justice Reinvestment Act. **Mr. Moore** said there is going to have to be more emphasis on the parole side of the program getting the monitoring and help they need from the community. **Senator Hagedorn** thanked Mr. Moore and his family for their sacrifice. **Senator Hagedorn** asked what will be your main focus as a member of the Commission. **Mr. Moore** believes his main focus will be to get input from the staff who are involved with these offenders on a day to day basis such as the Department of Corrections and the Parole Commission. **Vice Chairman Vick** thanked Mr. Moore for his participation and indicated that they would vote on his appointment Friday.

H 447

Vice Chairman Vick asked Judge Michael Dennard to introduce himself. He is a Senior Judge and Senior Manager of Court Services for Children and Families at the Administrative Office of the Court. **Judge Dennard** said the Idaho Supreme Court's Guardianship and Conservatorship Committee recommends statutory amendments to improve the monitoring of guardianships and conservatorships to better protect minors, incapacitated adults, and persons with disabilities. Idaho Code includes several detailed provisions regarding the content and form of reports to be filed with the court by guardians and reports, inventories, and accountings to be filed by conservators. It is the view of the judges, practitioners and other concerned individuals on the Guardianship and Conservatorship Committee, that modifications of these requirements will more readily reflect the information that is needed to ensure the protection of those persons whose health, welfare, and assets are at risk by allowing the Idaho Supreme Court to specify the form and content of these filings in rules. This bill simplifies provisions for filings in the statutes and amends the statutes to provide that reports, accountings, and inventories are to be made under oath or affirmation and shall comply with the Idaho Supreme Court rules. The position of court visitor is defined in Idaho Code § 15-5-308. In guardianship and conservatorship cases, the visitor has the responsibility to investigate and report to the court on all of the critical aspects of a guardianship or conservatorship, including the nature of the incapacity, the needs of the individual, the appropriateness of the guardian or conservator whose appointment is sought, whether a full or limited guardianship or conservatorship should be ordered, and other important information. As a continuing effort to improve the monitoring of guardianships and conservatorships to better protect minors, incapacitated adults, and persons with disabilities, the court may use court personnel to provide court visitor services through the Guardianship and Conservatorship Project Fund,

established by Idaho Code § 31-3210(G). This bill amends § 15-5, Idaho Code 314, to provide that any money recovered from the ward's estate for visitor services provided by court personnel will be deposited into the Guardianship and Conservatorship Project Fund, Idaho Code § 31-3201(G).

Senator Bock questioned why there should be a change made to let the courts have more flexibility as to how to structure these changes. **Judge Dennard** replied that they have been given the responsibility to actively monitor cases. Those people who are involved with providing information and identifying problematic areas are the best ones to identify the red flags, and they need the flexibility to figure out how to acquire that information. The flexibility that I mention is that as the committee goes forward in identifying changes, and in their experience in monitoring their procedures, they will develop ideas about what might be more appropriate. It is easier to process and put that in a rule rather than constantly proposing it to them in a statute. **Senator Bock** suggested that Judge Dennard give some examples of the behavior they are referring to. **Judge Dennard** said that some of the red flags are very large expenses being paid to a conservator of a very small estate. He mentioned some abuses described by a professional conservator from Phoenix that included stealing, overcharging the estates, and an elderly person in a nursing home who is being charged an expense for a home. The Chief Justices focus is to monitor professional conservator's practices and protect the people of Idaho. **Senator Davis** commented that he felt that having a requirement to report to the court periodically and in the form determined by the Court will solve a lot of the misconduct.

Vice Chairman Vick mentioned that he is in the process of applying for guardianship of their disabled daughter. He asked if Judge Dennard could explain what the annual report would look like. **Judge Dennard** replied that they have developed a standardized form which goes into the details of the well-being of the person in the guardianship. It focuses mostly on what you are doing to promote the best interest of the person under your control. There will be reminders sent that the time for filing is either due or past due. If the guardian has moved or had an address change, a "party locator" will be assigned to find a current address to resend the reminders. **Senator Hagedorn** asked what was the periodicity for guidance of conservatorships for those reports. **Judge Dennard** said that it was still 90 days. That rule has not been changed. It must be at least done annually. A program to determine which cases need more or less monitoring is being devised so that the judge can increase the reporting time if he sees a necessity.

MOTION:

Senator Bock moved to send **H 447** to the floor with a do pass recommendation. Seconded by **Senator Davis**. **Vice Chairman Vick** stated pursuant to rules of the Senate 39 (H), of the Idaho State Legislature, he has a conflict but still wishes to vote on **H 447**. The motion carried by **voice vote**.

**PASSING OF THE
GAVEL:**

Vice Chairman Vick passed the gavel to Chairman Lodge.

This bill amends Idaho Code § 32-717(D) by adding a subsection which would give the court the discretion to award attorney's fees and costs to the prevailing party on a motion to set aside or modify the decision of a parenting coordinator. Under Idaho Code § 32-717(D) a court that has entered a judgment or order establishing child custody may appoint a parenting coordinator to report to the court on issues relating to the custody of the child, to engage in collaborative dispute resolution in parenting, and to perform other duties specified by the court, consistent with the court's orders regarding the child. The decisions of the parenting coordinator may sometimes be challenged by the parties. However, repeated challenges can erode the effectiveness of the parenting coordinator, absorb family resources, and bring further uncertainty into the life of the child. The Idaho Supreme Court's Children and Families in the Courts Committee has recommended that a provision be added to the statute stating that the court may award attorney's fees and costs to the prevailing party on a motion to set aside or modify the decision of a parenting coordinator. Giving the court discretion to make such an award will help to promote stability for the family and provide some deterrent against the filing of needless motions.

Senator Lakey stated that he appreciates the approach and use of parenting coordinators to reduce court involvement, but has concerns that it may be used too soon. **Judge Dennard** replied that is where the discretion provision comes in. The Court wants the ability to address both the meritless and repetitive claims. The judge will be able to see the history of the claims and make an appropriate decision on that basis. **Senator Lakey** indicated that he had a concern about awarding attorney's fees relating to an appeal being given to a lay person without proper judicial training. **Judge Dennard** pointed out that the parent coordinators are matched to cases where they have a certain amount of training related to the specific issues involved. He went on to indicate that the court really does limit the decision making to areas within the competence of that person, and many times the court coordinators are uniquely fitted to the needs of the child. We are encouraging people to think carefully about pursuing the cases they file. **Senator Lakey** pointed out that there is no language to state that an appeal was brought without basis or fact of law or that it was meritless. He would be more comfortable with this bill if there was a standard like that in the language. **Senator Davis** asked that if this bill doesn't pass, does the court have another basis under the Rules of Civil Procedure to make an award or grant of attorney's fees. **Judge Dennard** said that there may be other areas, but the application may be questionable. That is why they want this provision to make it clear to the judges that they might have this kind of authority. **Senator Davis** asked if Judge Dennard believed that this bill would have the effect of minimizing frivolous petitions to amend the prior determinations that were made, and does it provide a reasonable method of case management for difficult domestic litigation cases. **Judge Dennard** said that the impact upon judicial resources and case management is the highest in cases involving modifications of custody following a divorce. We have taken that problem and tried to address it by moving it out of the judicial system into the hands of people who should have the skill set to work with these individuals. **Senator Davis** asked whether significant progress hadn't been made when the bill for parenting coordinators was first passed. He also wondered whether other states have done something similar with parenting coordinators. **Judge Dennard** replied that the people using the rule were still finding ways to improve it and the way it is currently set up, it is impacting their effectiveness. He knows that other states have used a similar plan, but doesn't know about their success. **Senator Bock** asked about how this works with pro se cases. **Judge Dennard** replied that this process isn't usually used in those types of cases. It is usually used by funded people.

MOTION: **Senator Bock** moved to send **H 446** to the floor with a do pass recommendation. Seconded by **Senator Davis**. "**Senator Werk** would like a report back in a few years to see exactly how the plan worked." The motion carried by **voice vote**. **Senators Lakey, Vick, Nuxoll and Mortimer** requested that they be recorded as voting **nay**.

HCR 40 **Representative Bolz** explained the purpose of this legislation is to authorize the Legislative Council to appoint an interim study committee to complete a study of the public defender system in Idaho. Currently there are only seven public defender offices within Idaho serving eight counties with one more county moving to a public defender office. The remainder of the counties contract for public defender services, most of which are flat fee contracts. The 6th Amendment of the U.S. Constitution requires that the accused have the assistance of counsel for their defense. The State of Idaho may delegate certain obligations imposed by the Idaho Constitution to the counties but cannot abdicate its constitutional duty. The Idaho Criminal Justice Commission for over three years had a subcommittee study this issue and reached the conclusion, due to the funding issue as well as other issues, that an interim study committee would be the appropriate approach in looking at this issue. An interim committee was formed and studied the issue during the past interim but found that the issue is of such scope that it could not complete its work in one interim. Legislation is being submitted during this session to begin the process of resolving the public defense issue in Idaho, but further study is necessary to complete the work.

Senator Werk mentioned that the legislation states that the committee will consist of 5 Senators and 5 Representatives. It does not specify minority/majority membership. The prior committee had representation from both parties. He asked if it would be his intention that there would be minority representation on this committee. **Representative Bolz** indicated that he hoped the committee would have the same membership as the prior committee since they have background knowledge. He said that there would be minority representation on the new committee. **Senator Hagedorn** wondered if the committees for **HCR 40** and the Justice Reinvestment Oversight Committee could be combined as one. Chairman Lodge and Representative Bolz agree that there is a need for both committees. Justice Reinvestment is looking at the State's system in criminal justice, where as public defenders are also looking at counties. **Senator Davis** indicated that leadership will want a concurrent resolution to proceed with this legislation, and that meeting has not happened yet. He would like to hold this for a week, until a decision was made. **Representative Bolz** said he had talked with the ProTem and he was in favor of passing said legislation, but he would have no problem holding this.

MOTION: **Senator Davis** moved to send **HCR 40** to the floor with a do pass recommendation. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

H 457 **Michael Kane** - representing Property Casualty Insurers Association, stated the purpose of this bill is to modify the law that prevents a jury from learning that a person who is a plaintiff in a personal injury action stemming from an automobile accident failed to wear a seatbelt. The bill sets limits on the types of cases where the information regarding lack of seatbelt use can be used in court. There are two clarification items being added to this legislation. The first is that cases involving first party actions between the insurance company and the individual himself under a policy of uninsured and underinsured motorist coverage are not allowed. Second, this does not apply to children under the driving age.

Senator Davis questioned why language such as "defendant" and "plaintiff" was being used in **H 457**. **Mr. Kane** said because in this instance there will be a court action where there will be a plaintiff and a defendant. It was the choice of the legislative council to use that language.

MOTION: **Senator Davis** moved that **H 457** be referred to the 14th Order for amendment. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

PASSING OF THE GAVEL: Senator Lodge passed the gavel to Vice Chairman Vick.

S 1374 **Relating to the Correctional Industries Act - Senator Lodge** stated that there was not enough labor to pick the fruit this summer in the Sunny Slope area. She visited with Director Reinke, Idaho Department of Corrections, about using people in the correctional institutions. Director Reinke answered that there were people available who would like to work, but legislation would be needed to allow the inmates to do the work. **S 1374** would allow the correctional industries to contract with individual employers. Along with **S 1374** Committee has before it an engrossed copy of the amendment to the original legislation. The amendment adds that correctional industries contract with the employer. The amendments are as follows: deletes the language on line 17 "contracts entered into pursuant to the agriculture employee and the inmate shall be paid at least the Idaho minimum wage." This section will provide that the inmate will be an employee of the private agriculture employer; adds on line 24, "all monies derived from such contracts shall be deposited to the Correctional Industries Bettermen Account established in 2015" . Adds after No. 3 on line 25 "inmates shall be compensated for their services pursuant to § 2417 of the Idaho Code." The enactment of this legislation will assure that we are able to get out Idaho perishable crops harvested. Attachment 1 shows some of the substantial loss to Idaho's fruit farmers because of the lack of labor this season. **Senator Vick** asked if anyone was opposed to this legislation. No one was opposed.

MOTION: Senator Davis moved that **S 1374** be referred to the 14th Order for possible amendment. Seconded by **Senator Mortimer**. Motion carried by **voice vote**.

A question was raised by **Senator Werk**. He wondered if the pay for the labor performed by a person in the correctional system would be comparable to that of a worker who was not in prison and did the same work. **Senator Lodge** responded that it would be. Salary would be determined according to their skill and be distributed by the Correctional Industries Betterment Fund. **Senator Werk** indicated that, if this bill does pass, he would like a report on how it worked out in the community.

PASSING OF THE GAVEL: Vice Chairman Vick passed the gavel back to Senator Lodge.

RS 23085 **Senator Lodge** introduced **RS 23085** stating that it was legislation to create the Justice Reinvestment Oversight Committee tasked with the study and monitoring of the performance and outcome measures that have been set forth.

MOTION: **Senator Hagedorn** moved to print **RS 23085**. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

MOTION: **Senator Mortimer** moved to approve the Minutes of February 14, 2014 and moved for their adoption. The motion was seconded by **Senator Bock**. Motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:04 p.m.

Senator Lodge
Chair

Carol Deis
Secretary

Sharon Pennington, Asst.
Secretary