

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 16, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Bayer, Souza, Johnson (Lodge, 11), Werk and Burgoyne

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 Hagedorn** called the Senate Judiciary and Rules Committee (Committee) to order at 1:32 p.m.

GUBERNATORIAL APPOINTMENT: **Senator Werk** moved to send the gubernatorial appointment of Jean Fisher, Sexual Offender Management Board, to the floor with a recommendation that she be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Tippetts** moved to send the gubernatorial appointment of Debra Field, State Board of Correction, to the floor with the recommendation that she be confirmed by the Senate. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Johnson(6)** moved to send the gubernatorial appointment of John Burnham, Sexual Offender Management Board, to the floor with a recommendation that he be confirmed by the Senate. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the gubernatorial appointment of Shane Evans, Sexual Offender Management Board, to the floor with a recommendation that he be confirmed by the Senate. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Kevin Kempf**, Director, Idaho Department of Corrections (DOC), presented information about the DOC and its mission. The DOC mission is to decrease recidivism, which in turn increases public safety. The DOC began assessing its structure and people and reviewing positions, duties and processes to ensure all fit the mission statement.

Director Kempf talked about the DOC's move to different facilities. The outside recreation area has been improved and the inmates are outside more. There is a clear policy on fighting; any fight would close the outside recreation area. There are plans for Correctional Industries to move into the DOC for vocational purposes, and close custody inmates are involved in the Pathway to Parole program.

Director Kempf addressed the security retention program at the DOC where they have a turnover rate of 28-38 percent per year. Fifty percent of supervisors and 64 percent of officers have less than 2 years experience.

The Justice Reinvestment Initiative (JRI) was significant to the DOC (see attachment 1). He pointed out that the DOC is seeing outcomes from the resources the JRI was putting toward high and moderate risk offenders. JRI had asked the DOC to get the case load at 50:1. Today the case load is 73:1. DOC is working to get those numbers down.

Director Kempf explained the ongoing education program at the DOC. GED testing is changing and is more difficult to pass. Fewer are graduating. Teachers are working to ensure that more students pass.

Director Kempf pointed out the ongoing change in the lighting system throughout the DOC. White lighting has proved to be more efficient and less expensive, and they are working to change all prisons to it.

Senator Tippetts questioned the turnover rate of employees and asked if it was related to pay. **Director Kempf** answered that it was a combination of things, not just pay. They need to grow roots and to celebrate each other establishing bonds. These activities will increase retention of good people and good leaders.

Senator Johnson(11) questioned when inmates housed in Colorado will be returned to Idaho. **Director Kempf** stated they are working to get those inmates back. JRI is changing the DOC system so it can happen. DOC is under contract to Colorado now, and attrition will be used to bring back Idaho inmates. As to the cost, **Director Kempf** assured the Committee he will get that information to them.

Senator Johnson(11) stated that a GED was no longer considered for entrance to colleges and universities and that the SAT and ACT were more acceptable. She inquired if the DOC has these tests available for the inmates. **Director Kempf** did not know, but would find out.

Senator Burgoyne questioned whether retention was related to the issue of a job description not matching what is expected, especially with the mental health issues faced by officers. **Director Kempf** said the job description is very descriptive and inclusive. Correctional officers do find the job stressful and there is correctional fatigue. The DOC is considering showing incoming applicants a 45 minute video giving an accurate summary of what to expect.

Vice Chairman Hagedorn asked for clarification on the bed capacity count for custody. **Director Kempf** answered currently there is an 8,300 bed capacity.

Senator Johnson(6) inquired about the health outcomes of prisoners. **Mr. Kempf** responded that tobacco was banned in all DOC facilities, and the cost of medical care has gone down since this ban.

S 1026

Michael Henderson, Legal Counsel, Idaho Supreme Court, outlined **S 1026** involving Idaho Code §18-8005 concerning driving under the influence of alcohol or drugs and the penalties imposed. The concerns of the Court are in Subsection 6(D) and (E) where there is a conflict on driving privileges.

Senator Tippetts asked if the loss of driving privileges was for two DUI convictions. **Mr. Henderson** replied yes, at least two in the past ten years. **Senator Tippetts** questioned if the language mirrors a first time DUI offender. **Mr. Henderson** answered in the affirmative. **Senator Tippetts** asked for clarification on needed driving privileges for family health. **Mr. Henderson** answered it could be given for any family health need.

Senator Johnson(11) wondered if this bill included any misdemeanors filed previously. **Mr. Henderson** answered yes, but within a ten year period.

Senator Davis asked if the court could use discretion on a felony DUI before Subsection E was established. **Mr. Henderson** answered Subsection E introduced the confusion. **Senator Davis** wondered if there was another way to solve the issue by striking Subsection E. **Mr. Henderson** explained Subsection E contains federal guidelines in using an ignition interlock, and the guidelines are needed for the courts.

Vice Chairman Hagedorn inquired if Subsection E were removed, would the courts still have discretion to return privileges. He further asked if the limitation on the time would still be confusing. **Mr. Henderson** replied in the affirmative.

Senator Davis asked for comments from Judge Wood or Holly Kolle Rebholtz, judges who have experience with these situations.

Judge Barry Wood, Senior District Judge Supreme Court, interpreted subsection D as requiring a one year suspension and up to five years total. Not everyone interprets the wording the same, so the privileges could be determined by the judge's interpretation of the Subsection.

Holly Kolle Rebholtz, Prosecutors Association, stated the term of the license suspension depends upon the seriousness of the DUI and individual circumstances.

Vice Chairman Hagedorn questioned whether different interpretations of the code occur from judge to judge. **Ms. Rebholtz** answered no, not in her experience.

Senator Tippets asked for clarification on federal law regarding the interlock systems. **Mr. Henderson** answered he does not have it with him but will get it to the Committee.

Senator Tippets restated that passage of this bill would allow more flexibility to the courts for setting restricted driving privileges. **Mr. Henderson** agreed noting that some judges may use this to allow restricted driving privileges for medical and employment purposes.

Senator Johnson(6) questioned the interlock driving period, as the language was not parallel in Idaho Code. **Mr. Henderson** stated it would be up to four years.

MOTION:

Senator Burgoyne moved to send **S 1026** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S 1027

Michael Henderson, Legal Counsel Idaho Supreme Court, explained **S 1027** is to correct provisions regarding the outside activities of Idaho senior judges. The bill states senior judges must comply with the applicable provisions of the Idaho Code of Judicial Conduct. It would also remove the provisions in statutes stating that senior judges may not engage in the practice of law.

Senator Davis questioned if there was a defect in the law. **Mr. Henderson** answered the bill fixed the overextended reach for senior judges. **Senator Davis** questioned if there is in statute a prohibition of a non-senior magistrate judge or district court judge to practice law. **Mr. Henderson** answered yes.

MOTION:

Senator Davis moved to send **S 1027** to the floor with a **do pass** recommendation. **Senator Johnson(6)** seconded the motion. The motion passed by **voice vote**.

S 1029

Michael Henderson, Legal Counsel Idaho Supreme Court, explained **S 1029** corrects an omission by adding "intent to use to defraud" to the crime of acquiring a Financial Transaction Card or Financial Transaction Card number.

MOTION: **Senator Davis** moved to send **S 1029** to the floor with at **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

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

Senator Hagedorn
Vice Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary