

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 01, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: Senator Davis

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

CORRECTION: The Agenda was corrected to reflect that Docket No. 06-0102-1501 should be Docket No. 06-0102-1502.

MINUTES APPROVAL: **Senator Lee** moved to approve the Minutes of January 20, 2016. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT HEARING: **Cindy P. Wilson**, having been appointed to the State Board of Correction (Board), introduced herself as being a home-grown Idahoan. She enthusiastically described her Idaho roots, her interest in politics and government resulting from her service as a page when she was in high school, her dedicated involvement in education and her love for her students. **Ms. Wilson** declared that her reason for wanting to be on the Board is that she sees a definitive connection between education and correction. **Ms. Wilson** continued, emphasizing that she was highly impressed by the professionalism and dedication of the teachers and the probation and parole officers. She recognized the improvement being implemented in corrections and emphatically affirmed her hope to assist offenders in changing their lives and gaining dignity.

Senator Burgoyne asked Ms. Wilson to explain her background in business and administration, qualifications set forth in Idaho code. **Ms. Wilson** expressed that her background in education and government activities would be her expertise. **Senator Burgoyne** then inquired about the statutory criteria relating to political party. He wanted to be sure she was in compliance with the requirements for . **Ms. Wilson** assured him that she was in compliance.

Senator Lee stated she was very impressed with Ms. Wilson's enthusiasm and her experience. She asked Ms. Wilson to identify issues she sees as a challenge in connection with corrections. **Ms. Wilson** stated that financial constraints, balancing the security of the community with individual rights and the successful return of offenders to society at large are current challenges.

Senator Souza was impressed by Ms. Wilson's overwhelming enthusiasm for learning, for teaching and for being part of change. **Senator Souza** referred to a concern expressed previously by Director Kempf regarding the decrease in General Education Development (GED) graduates among offenders and asked if there has been any improvement. **Ms. Wilson** replied that the GED program recently put out a new test and there has been a drop in the graduation rate nationwide. When the teachers are familiar with the new curriculum and testing procedures she expects the graduation rate will go up. **Senator Souza** inquired if the GED aligned with Idaho core standards. **Ms. Wilson** replied that common core standards are not applied in teaching in the correctional facilities. The GED test is completely separate from other tests.

Senator Johnson solicited Ms. Wilson's suggestions for recruiting the right people for the Idaho Department of Correction (IDOC). **Ms. Wilson** advised that there have recently been some innovative ways to bring the right people in. IDOC needs positive press to show that working in corrections is a good career. **Senator Johnson** noted that the Board encourages IDOC to establish advisory committee groups and work with the community. He requested she share her ideas about advisory committees. **Ms. Wilson** emphasized that IDOC now has advisory committees and people from communities being mentors for those moving into the community, helping with finding housing, getting jobs and other functions of living in the community. Advisories can be groups or individuals and their mentoring helps keep the offenders from immediately returning to previous behaviors.

Chairman Lodge advised that the Committee will vote on her appointment at the next Committee meeting.

Senator Jordan commented on Ms. Wilson's intelligence and her encouraging interaction with students. She expressed confidence that Ms. Wilson will bring exceptional talent to the Board.

RS 24001

Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections, advised that this legislation would amend Idaho Code § 20-511 to more clearly define when an informal adjustment can occur and when it can be dismissed. She went on to detail the results of this change (see attachment 1).

MOTION:

Senator Burgoyne moved to introduce **RS 24001** to print. **Vice Chairman Nonini** seconded the motion. Motion passed by **voice vote**.

**PASSED THE
GAVEL**

Chairman Lodge passed the gavel to Vice Chairman Nonini.

**DOCKET
NO.06-0102-1502**

Andrea Sprengel, Financial Manager for Idaho Correctional Industries, IDOC, recounted that this rule was adopted last session and went into effect November 6, 2015. At that time the Committee requested that modifications be made to language related to the definition of a private agricultural employer and the use of the word "shall." **Ms. Sprengel** stated that the definition of a private agricultural employer was changed by referencing Idaho Code § 44-1601(2). The word "shall" has been replaced with "will."

Vice Chairman Nonini and the Committee were unable to access this docket as it was only available online through a program pathway unfamiliar to Committee members, as explained and demonstrated by **Brad Hunt**, Office of the Administrative Rules Coordinator. **Senator Jordan** expressed concern that the public would have difficulty accessing the rule using the procedure shown. She asked consideration of the rule be deferred to the next meeting, allowing the public a chance to see it.

Vice Chairman Nonini announced that the Committee will not vote on this rule today but will take it up again at the next meeting.

Chairman Lodge explained that she had carried this legislation and she emphasized the need for the inmates to have the opportunity to work in agriculture. She thanked IDOC for supporting it and giving inmates a way to pay fines, charges and child support so they can return to the community without charges pending. This positive circumstance will help reduce recidivism.

Senator Johnson inquired who gets paid first if there is a hierarchy for payment. **Ms. Sprengel** replied that the inmates are paid first, then the costs for the program are covered, next are contributions to the Victim's Compensation Fund, and whatever is left is used by Correctional Industries.

Chairman Lodge questioned how the money for the commissary and for saving for their release is maintained. **Ms. Sprengel** stated that the inmates' wages will go into their trust account and can then be used for paying restitution, child support or in the commissary.

Vice Chairman Nonini thanked Ms. Sprengel and reiterated that the Committee will take action at the next meeting.

**DOCKET NO.
50-0101-1501**

Jack Carpenter, Business Operations Manager, Commission of Pardons and Parole (Commission), informed the Committee that most of the changes are minor and will not create a significant impact for the Commission. He pointed out that the changes relate to clarifying language, making process more transparent and bringing the rules into compliance with statutes. He provided a listing of all changes covered in this docket (see attachment 2).

Senator Jordan asked for clarification of the term "excessive" in item five (see attachment 2). **Mr. Carpenter** explained that the term "excessive" was too hard to define. The term "no alcohol use" is the current practice, hence this change.

Mr. Carpenter pointed out that item six removes reference to institutional parole. He advised that changes are in progress that may require the use of institutional parole. Due to that circumstance, **Mr. Carpenter** requested that the Committee reject item six and leave the term in the rules.

Vice Chairman Nonini inquired why Mr. Carpenter was not taking the items in order. **Mr. Carpenter** replied the items he addressed were those that were discussed when previously presented and seemed to be of greater concern. The others are minor changes. He added that he would go straight through if the Committee preferred. **Chairman Nonini** inquired if by "previously" Mr. Carpenter meant in a presentation to the Senate Committee or to the House Committee. **Mr. Carpenter** replied that it was to the House Committee. **Vice Chairman Nonini** requested that the items be presented in order.

Mr. Carpenter proceeded to present each item as listed in attachment 2. There were questions regarding only some of the items.

Senator Burgoyne questioned item one, asking why the term "infractions" is being removed from both technical and non-technical violations. He also requested an explanation of how infractions are considered. **Mr. Carpenter** referred the question to Sandy Jones, Executive Director. **Director Jones** explained that infractions are not considered unless connected to another parole violation. She pointed out that the word "infraction" is not used in statute and this change aligns the wording in the rule with that in statute.

A lengthy discussion ensued around the Justice Reinvestment Initiative (JRI) changes, violent infractions and the difference between technical and non-technical violations.

Mr. Carpenter explained minor changes for items three, four, seven and eight (see attachment 2). He explained that item nine makes the process of having one's firearms rights restored more transparent and understandable. **Vice Chairman Nonini** inquired if it is possible to get firearms back with a felony conviction. **Mr. Carpenter** indicated that it is and that this change would make the process more understandable.

Seantor Lee asked if the Commission now has the authority to determine firearm restoration, who had that authority before? **Mr. Carpenter** stated that the authority has been with the Commission. This change made that more understandable and more transparent.

Mr. Carpenter related that item ten was simply the removal of a provision that has never been used and would not be good practice if it were used.

Mr. Carpenter stated that the change to item eleven is to clarify the process for an offender to be transferred to his country of citizenship under the Foreign National Treaty (FNT). A Memorandum of Understanding (MOU) was signed in 2006 by the Governor, Department of Correction and the Committee to give the authority to comply with the FNT. The Committee felt the statement of authority should be added to the IDAPA rules. **Senator Souza** expressed concern that this was all new language, and she requested more explanation. **Director Jones** detailed the history of Idaho's involvement with the FNT and stated this change is simply to put in rule what has been done since 2006. She also explained the process involved in having an inmate sent to his or her country of citizenship.

Senator Bourgoyne inquired if this rule limits the Governor's discretion or if it only limits what the Commission can do, allowing the Governor to act independently at any time he wants to. **Director Jones** answered that she does not believe it binds the Governor.

MOTION:

Senator Anthon moved to accept **Docket No. 50-0101-1501**, provided that the Committee reject subsection 250, parole subsection 5, and all subsequent numbering remain the same. Seconded by **Senator Jordan**.

Senator Burgoyne stated that he supports the motion but has serious concerns that the rule may serve to limit the statutory or constitutional discretion of the Governor. **Senator Anthon** agreed with Senator Burgoyne. He suggested the Committee consider that ambiguity of this rule.

The motion passed by voice vote.

**PASSED THE
GAVEL**

Vice Chairman Nonini passed the gavel back to **Chairman Lodge**.

Chairman Lodge requested that Sara Thomas, Chairperson, Idaho Criminal Justice Commission, come back at a later date to make her presentation as the committee meeting time as ended.

ADJOURNED:

There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:05 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary